



**AGENDA**

**MOLALLA CITY COUNCIL MEETING  
December 14, 2022  
7:15 PM  
Molalla Civic Center  
315 Kennel Ave, Molalla, OR 97038**

*Mayor Scott Keyser*

*Council President Jody Newland  
Councilor Elizabeth Klein  
Councilor Terry Shankle*

*Councilor Leota Childress  
Councilor Crystal Robles  
Councilor Eric Vermillion*

**WORK SESSION begins at 6:00pm:** Open to the Public, but not open to Public Comment or Testimony

**REGULAR COUNCIL MEETING begins at 7:00pm:** Open to the Public and open to Public Comment or Testimony. Please fill out a comment card and submit it to the City Recorder, prior to the beginning of the meeting.

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*In accordance with House Bill 2560, the City of Molalla adheres to the following practices:  
Live-streaming of the Molalla City Council Meetings are available on Facebook at “Molalla City Council Meetings – LIVE” and “Molalla City Council Meetings” on YouTube.  
Citizens can submit Public Comment in the following ways: attend the meeting, email the City Recorder @ [recorder@cityofmolalla.com](mailto:recorder@cityofmolalla.com) by 4:00pm on the day of the meeting, or drop it off at City Hall, 117 N. Molalla Avenue.*

**1. CALL TO ORDER AND FLAG SALUTE**

**2. ROLL CALL**

**3. CONSENT AGENDA**

- A. City Council Meeting Minutes – November 9, 2022.....Pg. 3
- B. Joint City Council and Planning Commission Meeting Minutes – November 16, 2022.....Pg. 8
- C. Canvass of Election Results: Clackamas County November 2022 General Election.....Pg. 41

**4. PRESENTATIONS, PROCLAMATIONS, CEREMONIES**

- A. OTAK Update – New Police Facility (Huff/Dodson)

**5. PUBLIC COMMENT & WRITTEN COMMUNICATIONS**

*(Citizens are allowed up to 3 minutes to present information relevant to the City but not listed as an item on the agenda. Prior to speaking, citizens shall complete a comment form and deliver it to the City Recorder. The City Council does not generally engage in dialog with those making comments but may refer the issue to the City Manager. Complaints shall first be addressed at the department level prior to addressing the City Council.)*

- A. Mike Simmons – Public Comment and Documents Submitted.....Pg. 43

**6. PUBLIC HEARINGS**

**7. ORDINANCES AND RESOLUTIONS**

- A. Ordinance No. 2022-04: Amending Molalla Municipal Code Chapter 5.20 Show Licenses to Chapter 5.20 Special Event Licenses and Amending the Language .....Pg. 123

**8. GENERAL BUSINESS**

- A. Contract Award: New Police Facility Contractor (Huff).....Pg. 131
- B. Long Park Gazebo (Huff).....Pg. 202
- C. City of Molalla Personnel Handbook Update (Seifried).....Pg. 205

**9. STAFF COMMUNICATION**

**10. COUNCIL COMMUNICATION**

**11. ADJOURN**



## Minutes of the Molalla City Council Meeting

Molalla Civic Center  
315 Kennel Ave., Molalla, OR 97038  
November 9, 2022

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### **CALL TO ORDER**

The Molalla City Council Meeting of November 9, 2022 was called to order by Mayor Scott Keyser at 7:00pm.

### **COUNCIL ATTENDANCE**

Present: Mayor Scott Keyser, Council President Jody Newland, Councilor Terry Shankle, Councilor Crystal Robles, and Councilor Eric Vermillion.

Absent: Councilor Elizabeth Klein and Councilor Leota Childress.

### **STAFF IN ATTENDANCE**

Dan Huff, City Manager; Christie Teets, City Recorder; Mac Corthell, Community Development Director; Cindy Chauran, Senior Accountant.

### **CONSENT AGENDA**

- A. City Council Meeting Minutes – October 26, 2022
- B. Work Session Meeting Minutes – October 26, 2022
- C. Contract Renewal – City Prosecutor

*Council President Newland requested that Item C on the Consent Agenda be removed for discussion. Council agreed to move it to General Business Item B.*

*Councilor Robles made a motion to approve the Consent Agenda with the amendment made by Council President Newland. Vote passed 5-0, with all Councilors voting Aye.*

### **EXECUTIVE SESSION ANNOUNCEMENT**

Held pursuant to Oregon Public Record Law, ORS 192.660(2):

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

- A. Teamster's Union Labor Contract Ratification(Huff)

Mayor Keyser announced that the details of this session were to discuss the Teamsters Union Bargaining Contract for June 2022 through June 2025.

*Council President Newland made a motion to ratify the contract and authorize the City Manager and Mayor to sign the contract. Vote passed 5-0, with all Councilors voting Aye.*

### **PRESENTATIONS, PROCLAMATIONS, CEREMONIES**

OLCC License Request – Chepitas Mexican Restaurant

*Council President Newland made a motion to approve the OLCC License request for Chepitas Restaurant. Vote passed 5-0, with all Councilors voting Aye.*

### **PUBLIC COMMENT**

**Char Pennie, Molalla resident**, representative of the non-profit, Lentz Neighborhood Livability Association, spoke to Council about the homeless community in Molalla. They are a referring partner of Bybee Lakes Hope Center. Ms. Pennie is passionate about helping the houseless community, offering resources to drug rehab facilities. She left business cards for the City Recorder to distribute to Council members.

## **PUBLIC HEARINGS**

None.

## **ORDINANCES AND RESOLUTIONS**

- A. Resolution No. 2022-20: Public Works Supplemental Budget

*Councilor Robles made a motion to approve Resolution No. 2022-20. Vote passed 5-0, with all Councilors voting Aye.*

- B. Resolution No. 2022-21: Enterprise Zone Expansion

*Councilor Robles made a motion to approve Resolution No. 2022-21. Vote passed 5-0, with all Councilors voting Aye.*

## **GENERAL BUSINESS**

- A. Legislative Proposal Regarding Controlled Substances

Mayor Keyser presented a Request for Legislative Action that was read by Councilor Vermillion. The City of Albany is circulating a petition with other cities and councils to create a controlled substance homicide statute for the prosecution of drug dealers whose drugs that kill the users. City Manager Huff explained the complications created by the passage of Measure 110 a couple of years ago. He suggested that Council include the repeal of Measure 110 along with creating the new statute.

*Mayor Keyser made a motion for each Council member to sign the petition, including a letter of repeal of Measure 110 and return it to the City of Albany. Vote passed 5-0, with all Councilors voting Aye.*

- B. Contract Renewal – City Prosecutor

City Manager Huff explained the need for an Intergovernmental Agreement between the City of Gladstone and the City of Molalla for prosecuting services. The prosecutor works for both cities and agrees to recuse herself when there is a conflict between clients.

*Council President Newland made a motion for the City Manager to sign the prosecutor contract. Vote passed 5-0, with all Councilors voting Aye.*

## **STAFF COMMUNICATION**

- Senior Accountant Chauran shared that Finance is preparing for year end.
- Community Development Director Corthell reminded Council that there is a joint session coming up on November 16, 2022. There will be a presentation about Urban Growth Boundaries at that time.
- City Recorder Teets informed Council that the start time for the joint meeting is 6:30pm. Ms. Teets also shared unofficial results of the November 8<sup>th</sup> Election.
- City Manager Huff asked Council to send comments or agenda items for the Goal Setting Conference on January 21, 2023. Mr. Huff also shared that Council will receive a draft copy of the 2022 Personnel Policy for review. He also reminded Council that if they know of a group that would like City staff to provide a presentation, to let him know so that he can help facilitate that.

## **COUNCIL COMMUNICATION**

- Councilor Robles announced the events going on at the Library and encouraged the community to take advantage of the resources they provide.
- Council President Newland gave everyone a Parks CPC update, and promoted the bowling pins that are being raffled off for the benefit of Chief Yelkus park. She also shared the importance of getting involved in the community.
- Councilor Shankle had nothing to report, although she thanked community members for electing her to another four years as a City Councilor.
- Councilor Vermillion shared the Chamber of Commerce and MRSD meeting updates. He encouraged people to use their websites to sign up. He also shared that the Downtown Trick or Treat event was a big success, despite the rain. Councilor Vermillion appreciated the presentation by Mr. Corthell at a recent realtor's luncheon and thanked him for his time.

- Mayor Keyser encouraged citizens to apply for the open Planning Commission position. Also, Mayor Keyser working with the local VFW to hang more flags at local businesses. Lastly, he also announced that Trent Beaver will be performing at The Spot over the coming weekend.

For the complete video account of the City Council Meeting, please go to YouTube  
“Molalla City Council Meetings – November 9, 2022”

**ADJOURN**

Mayor Keyser adjourned the meeting at 7:49pm.

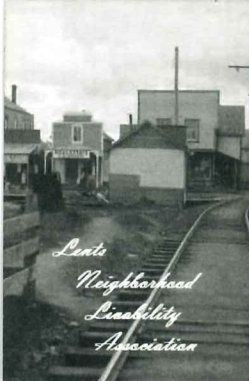
\_\_\_\_\_  
Scott Keyser, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Christie Teets, City Recorder

DRAFT



Lents Neighborhood Livability Association

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LNLA2018@gmail.com  
503-771-3311

*Lents  
Neighborhood  
Livability  
Association*

One Point of Contact  
503-823-4000

RID Patrol 503-234-3000 - garbage pickup

Parking Enforcement 503-823-5195

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[LentsNeighborhoodLivabilityAssociation.org](http://LentsNeighborhoodLivabilityAssociation.org)

AGENCY	CONTACT	OFFICE	CELL	EMAIL	SERVICES	COSTS
My Father's House	Andrea Pickett	503-492-3046 x240		<a href="mailto:andrea@familyshelter.org">andrea@familyshelter.org</a>	clean & sober family shelter	YES
Agape Village	Matt Huff	503-760-6272		<a href="mailto:mhuff@portlandcentralnaz.org">mhuff@portlandcentralnaz.org</a>	clean & sober tiny homes	
Path Home	Brandi Tuck	503-915-8307	503-719-2769	<a href="mailto:brandi@pdxhfs.org">brandi@pdxhfs.org</a>	clean & sober family shelter	
Bybee Lake Hope Center / Helping Hands	Mike Davis	971-333-0570	503-265-9046	<a href="mailto:m.davis@helpinghandsreentry.org">m.davis@helpinghandsreentry.org</a>	drug rehab, jobs	YES
Henry's Uncle	Erik Gilgore	503-720-1077		<a href="mailto:erik.kilgore@henrysuncle.org">erik.kilgore@henrysuncle.org</a>		
Union Gospel Mission	Kim Culp	503-805-7399			drug rehab, jobs, housing	
Adult & Teen Challenge	Jonah	503-765-5252			drug rehab, jobs, housing	YES
Adult & Teen Challenge	Jim	503-841-6217	503-719-5381		drug rehab, jobs, housing	YES
Central City Concern	Jay McIntyre	503-360-2619		<a href="mailto:jay.mcintyre@cccconcern.org">jay.mcintyre@cccconcern.org</a>	drug rehab, jobs, housing	
Cultivate Initiative	Matthew McCarl	406-465-2962		<a href="mailto:matthew@cultivatepdx.org">matthew@cultivatepdx.org</a>	drug rehab, jobs, housing	
Community Based Outreach Inc.	Derry Jackson	503-764-9305	682-270-1388	<a href="mailto:cboi.derry@gmail.com">cboi.derry@gmail.com</a>	training, ID, GED & jobs	
Home Forward	Evan McAvoy	503-802-8300		<a href="mailto:evan.mcavoy@homeforward.org">evan.mcavoy@homeforward.org</a>	housing	
We Heart Seattle	Kevin Dahlgren	503-618-2614	971-978-8112	<a href="mailto:kevin@weheartseattle.org">kevin@weheartseattle.org</a>	outreach / getting people into shelters	



**Minutes of the Joint Session of the  
Molalla City Council and Planning Commission  
Molalla Civic Center  
315 Kennel Ave., Molalla, OR 97038  
November 16, 2022**

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**CALL TO ORDER**

The Meeting was called to order by Mayor Scott Keyser at 6:30pm.

**COUNCIL ATTENDANCE**

Present: Mayor Scott Keyser, Council President Jody Newland, Councilor Elizabeth Klein, Councilor Leota Childress, Councilor Terry Shankle, Councilor Crystal Robles, and Councilor Eric Vermillion.

**PLANNING COMMISSION ATTENDANCE**

Planning Chair Rae Botsford, Planning Commissioner Jennifer Satter, Planning Commissioner Doug Eaglebear, Planning Commissioner Connie Sharp, Planning Commissioner Rick Deaton, and Planning Commissioner Clint Ancell.

**STAFF IN ATTENDANCE**

Dan Huff, City Manager; Christie Teets, City Recorder; Dan Zinder, Senior Planner; Ronda Lee, Support Specialist.  
From Department of Land Conservation and Development: Kevin Young (via Zoom) and Kelly Reid.

**GENERAL BUSINESS**

- A. Urban Growth Boundary (UGB) Expansion Process – Presentation by Department of Land Conservation and Development (DLCD)

Senior Planner Zinder gave a brief introduction as to why the City needs to have DLCD make a presentation on Urban Growth Boundaries.

Kelly Reid with DLCD began the presentation explaining the history of modern planning. The Commission is made up of seven volunteers that are representatives of regions of the State and appointed by the Governor and confirmed by the Senate. Ms. Reid explained the resource protection goals and who the DLCD staff represents.

Recent UGB stats reflect 38 comprehensive plan amendments to adjust their UGBs. Of those, two were not approved, resulting in 36 successful UGB adjustments.

Commissioner Satter inquired about whether the City goes through the process to add an additional 100 acres to the UGB, if the Master Plans would need to be updated. Mr. Zinder responded yes.

Planning Chair Botsford stated that it has been decades since Molalla updated their Urban Growth Boundary. She inquired as to when the City starts to look at a new UGB line, if the area to the south automatically becomes part of the City. Ms. Reid explained that the area being referred to is called an exception land. It is not considered exclusive farm use or forest use, but considered rural residential zones. Chair Botsford confirmed that to expand City lines, the areas considered part of the City's UGB have to be looked at first. Ms. Reid stated that yes, exception lands would be considered first.

Senior Planner Zinder stated that this process would bring properties into the UGB and give them a comprehensive plans zone designation. He also stated that property owners could then petition to be annexed into the city, along with the election process that would take place if the City was trying to annex a property.

Ms. Reid explained that Molalla's UGB is larger than the City limits, therefore the City can expand through the annexation process at a property owner request. She acknowledged Chair Botsford's question about property that was suitable for expansion years ago, may no longer be suitable for an expansion now. Ms. Reid explained the process of a UGB swap.

Ms. Reid informed the Council and Commission that DLCD has grant funding available to help cities do the work necessary to complete a UGB expansion. There are also grant opportunities available for Technical Assistant Grants for Economic



Opportunities Analysis, as well. The City is currently conducting a Housing Needs Analysis, with the next step being the Economic Opportunities Analysis, which would look at industrial land, parks, schools, and public facilities, following with the Urban Growth Boundary expansion.

Commissioner Satter felt that it worked best in our city with industrial land to the south, and residential and public lands toward the north of town. She feels that it will be a challenge to where additional housing is placed. Mr. Zinder stated the sequential process could help with that. Mr. Zinder shared that the City has forecasted a need for an additional 150 acres for residential area.

Commissioner Ancell questioned whether the initial 150 acres on the first draft did not include the rezoning of other properties. Ms. Reid and Mr. Zinder agreed that it did not. Ms. Reid pointed out that an expansion could indicate a rezoning of either industrial or residential areas. She felt it would depend on what was found in the studies.

Chair Botsford was relieved to know that schools would be part of the sequential study.

Councilor Childress asked Mr. Zinder for clarification of Ivor Davies Park being included in the UGB. Mr. Zinder explained that the property is city-owned, however not part of city limits. Kevin Young explained the process of what it would take to annex the property.

Mayor Keyser thanked Mr. Young and Ms. Reid for their time and presentation.

[For the complete video account of the City Council Meeting, please go to YouTube  
"Molalla City Council Meetings -DATE"](#)

**ADJOURN**

Mayor Keyser adjourned the meeting at 7:33pm.

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Scott Keyser, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Christie Teets, City Recorder



**DLCD**

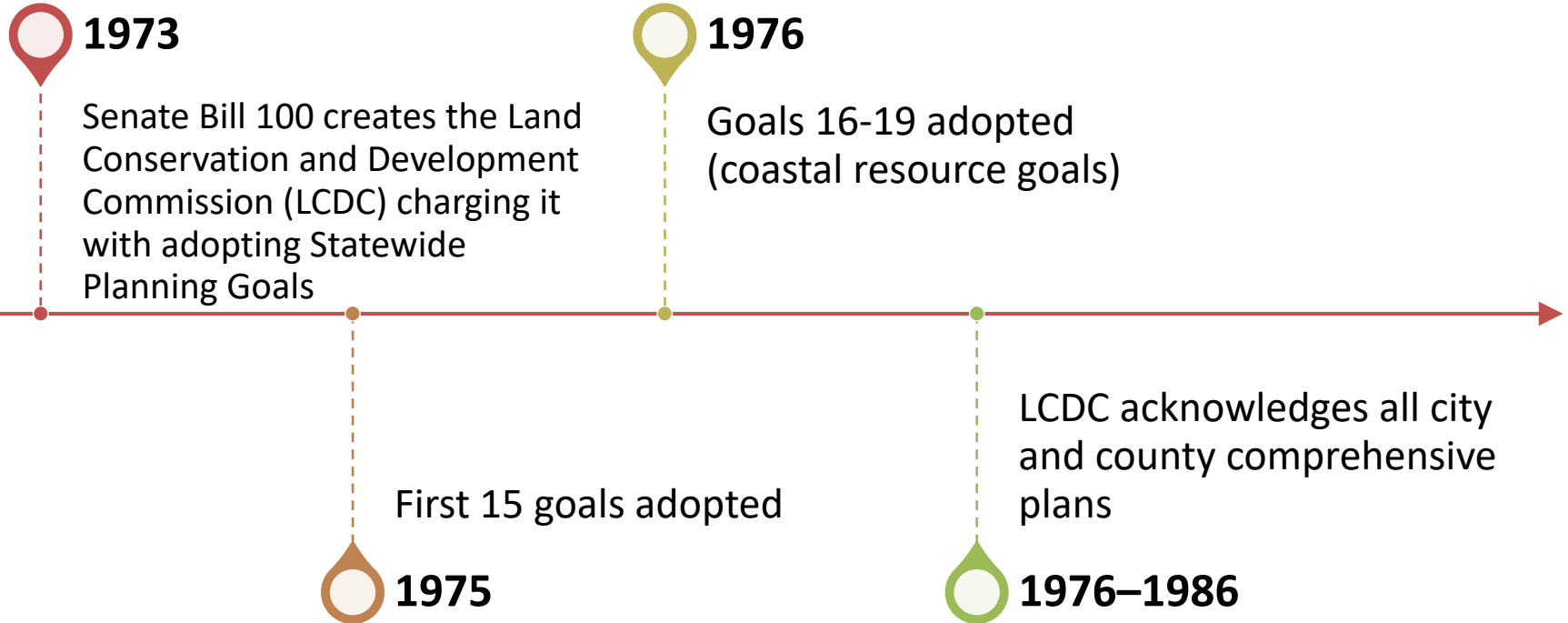


# Urban Growth Boundary Expansions and the Sequential UGB Process

City of Molalla  
November 16, 2022

Kelly Reid and Kevin Young

# History of Modern Planning in Oregon



# Land Conservation and Development Commission

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- Seven volunteer-members
  - representative of regions of the State
  - appointed by Governor and confirmed by Senate
- provides policy direction for the land use planning program
- oversees DLCD operations



# Land Conservation and Development Commission



Chair Anyeley Hallova:  
Metro Area



Gerard Sandoval, PhD:  
Willamette Valley



Kaety Jacobson: Coast



Vice Chair Nick Lelack:  
Eastern Oregon



Barbara Boyer:  
Willamette Valley



Stuart Warren:  
Southern Oregon



Allan Lazo: Metro Area

# Statewide Planning Goals

- Goal 1 – Citizen Involvement
- Goal 2 – Land Use Planning

- Goal 3 – Agricultural Lands
- Goal 4 – Forest Lands
- Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces
- Goal 6 – Air, Water, and Land Resources Quality
- Goal 7 - Areas Subject to Natural Hazards
- Goal 8 - Recreation Needs
- Goal 13 – Energy Conservation
- Goal 15 - Willamette River Greenway

- Goal 9 – Economic Development
- Goal 10 - Housing
- Goal 11 - Public Facilities and Services
- Goal 12 - Transportation
- Goal 14 – Urbanization

- Goal 16 – Estuarine Resources
- Goal 17 – Coastal Shorelands
- Goal 18 – Beaches and Dunes
- Goal 19 – Ocean Resources

# What is DLCD?

## Staff to LCDC

Charged by the Legislature with:

- managing urban growth;
- protecting farm and forest lands,
- coastal areas, natural resource lands; and
- providing for safe, livable communities in concert with the vision of the local communities.



An aerial photograph of a rural farm. In the foreground, a large, vibrant green field stretches across the frame. In the middle ground, a cluster of farm buildings is visible, including a large white barn with a gambrel roof, several smaller grey metal-roofed barns, and a few smaller structures. A fence line runs around the farm buildings. In the background, more green fields and a line of trees separate the farm from a forested hillside under a clear sky.

# LAND

“They’re not making any more of it!”





**Except in Dubai...**

# GOAL 14 - URBANIZATION

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To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment **inside urban growth boundaries**, to ensure efficient use of land, and to provide for livable communities.





## Three philosophies

1. Unmanaged growth
2. No growth
3. Managed growth – Oregon's urban planning requirements

# UGB Adjustments 2016 -2022

From 2016 through 2022, cities filed 38 comprehensive plan amendments to adjust their UGBs. Of those, only two plan amendments were not approved, resulting in 36 successful UGB adjustments.



95%  
approved

83% not  
appealed

80%  
approved  
within one  
year of local  
adoption

# SUFFICIENCY OF URBAN GROWTH BOUNDARY (TO MEET 20 YEAR LAND NEEDS, PER OREGON ADMINISTRATIVE RULES 660-24)

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## 1. LAND SUPPLY

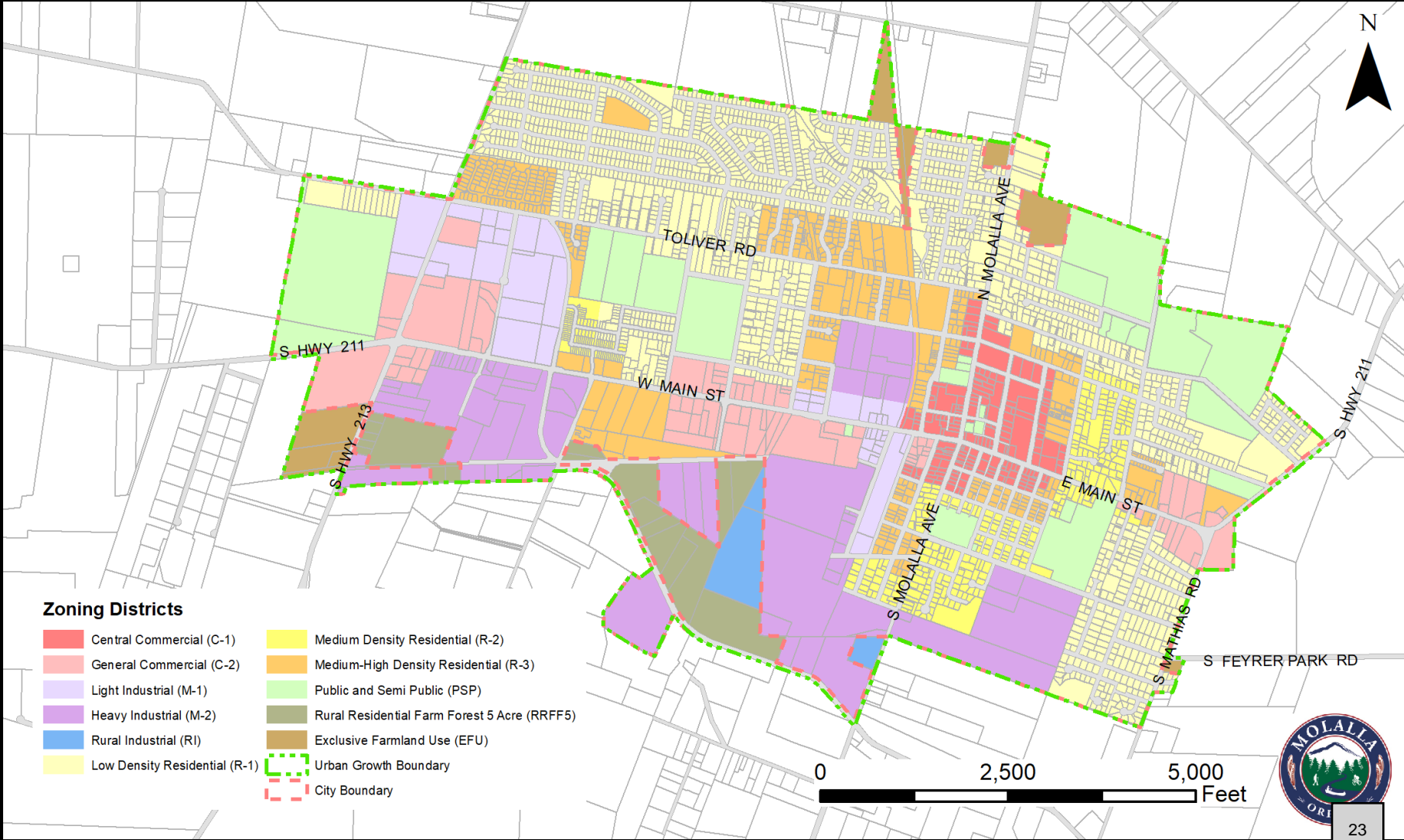
## 2. ANTICIPATED FUTURE DEMAND



# Goal, Statutes, Rules

1. Goal 14
2. ORS 197.298
3. ORS 197A.300-197A.325
4. OAR 660-024 (UGBs)

# Molalla's Lands



# Buildable Land Inventory

FIGURE 5.1: ESTIMATED BUILDABLE LANDS CAPACITY BY ACREAGE AND NO. OF UNITS (2019)

ZONE	Buildable Acreage				Projected Unit/ Net Acre	Housing Unit Capacity			
	Partially Vacant	Vacant	Total	Share		Partially Vacant	Vacant	Total	Share
R1 - Limited Residential	12	20	32	2%	4	42	93	135	1%
R2 - General Residential	171	728	899	57%	8	1,320	5,767	7,087	69%
R3 - County Residential	310	284	594	38%	4	1,097	1,523	2,620	26%
R4 - Resid. Redevelopment	3	4	7	0.4%	10	24	35	59	0.6%
CMU - Mixed Use	24	8	32	2%	10	239	77	316	3%
<i>TOTALS:</i>	<i>520</i>	<i>1,044</i>	<i>1,564</i>		<i>7</i>	<i>2,722</i>	<i>7,495</i>	<i>10,217</i>	
<i>Low Density Residential</i>	<i>322</i>	<i>304</i>	<i>626</i>	<i>40%</i>		<i>1,139</i>	<i>1,616</i>	<i>2,755</i>	<i>27%</i>
<i>Medium Density Residential</i>	<i>171</i>	<i>728</i>	<i>899</i>	<i>57%</i>		<i>1,320</i>	<i>5,767</i>	<i>7,087</i>	<i>69%</i>
<i>High Density Residential</i>	<i>27</i>	<i>12</i>	<i>39</i>	<i>2%</i>		<i>263</i>	<i>112</i>	<i>375</i>	<i>4%</i>

Source: Angelo Planning Group



# How to Determine Demand?

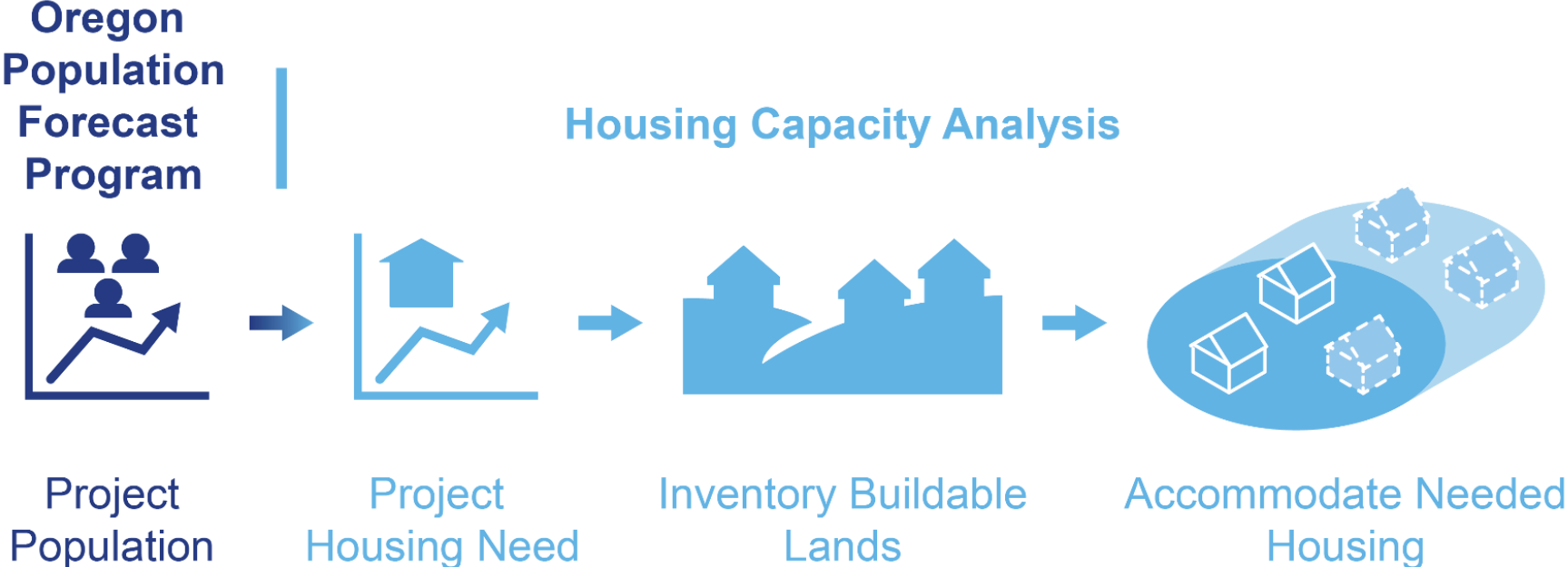
- GENERAL LAND NEEDS (generally residential and employment lands) based upon a 20-year population forecast, or for the simplified UGB process, a 14-year forecast
- SPECIFIC LAND NEEDS “housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection”



## Three Types of Studies to Determine Future Land Needs

1. **Housing Capacity Analysis (aka “Housing Needs Analysis”)**
2. **Economic Opportunities Analysis**
3. **Public Facility Studies – may be parks plan, water or sewer master plans, etc.**

# General Land Need (OAR 660-024)



# Molalla's Land Needs

**10,201**

2021 population



**15,660**

By 2042



**= 2,077 additional housing units**

# “Intermission” Between Need And UGB Expansion

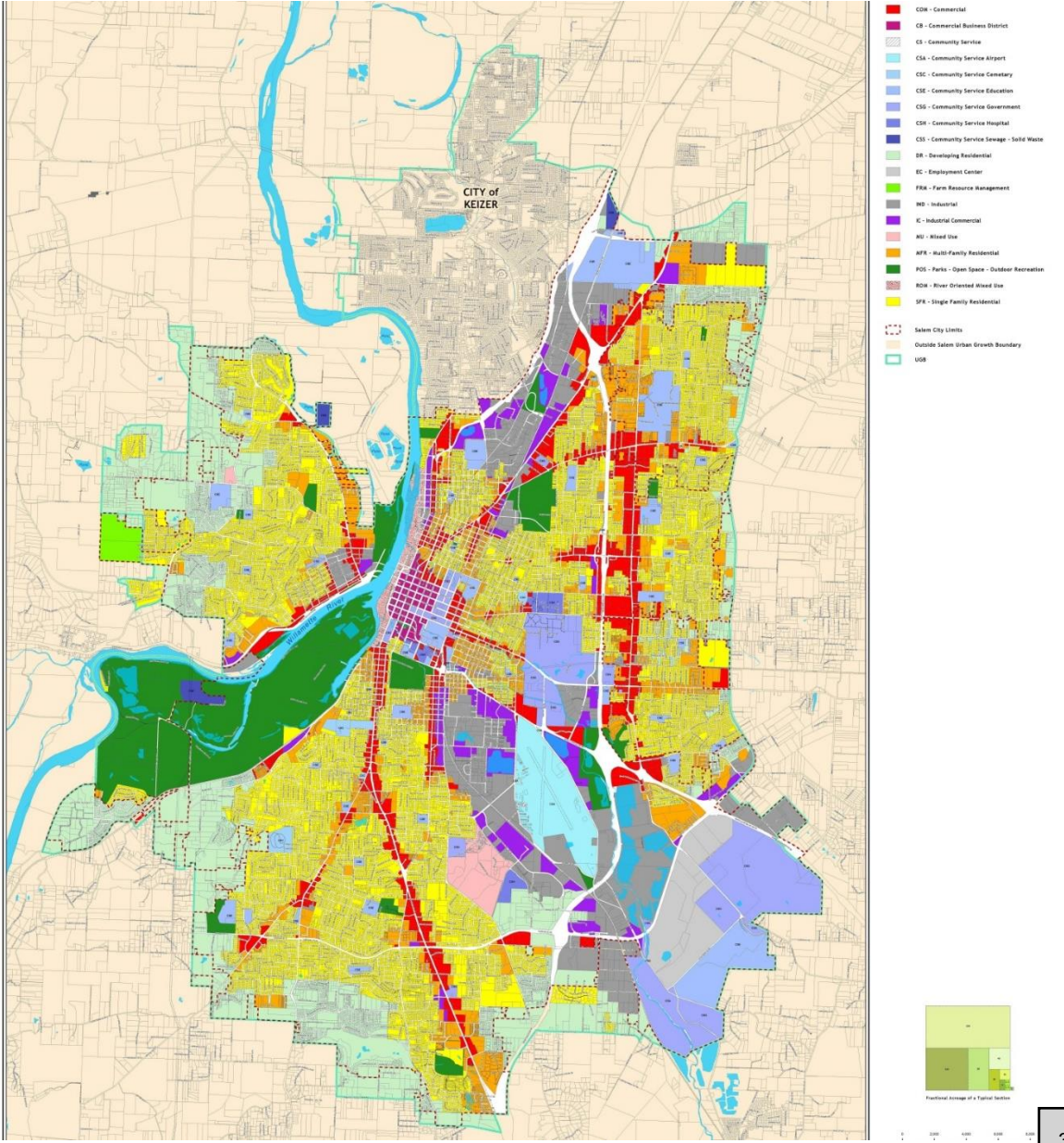
Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.

## HOW??

Show that you have adopted “Efficiency measures” such as allowing compact housing types, upzoning, etc.



# UGB Expansion Steps



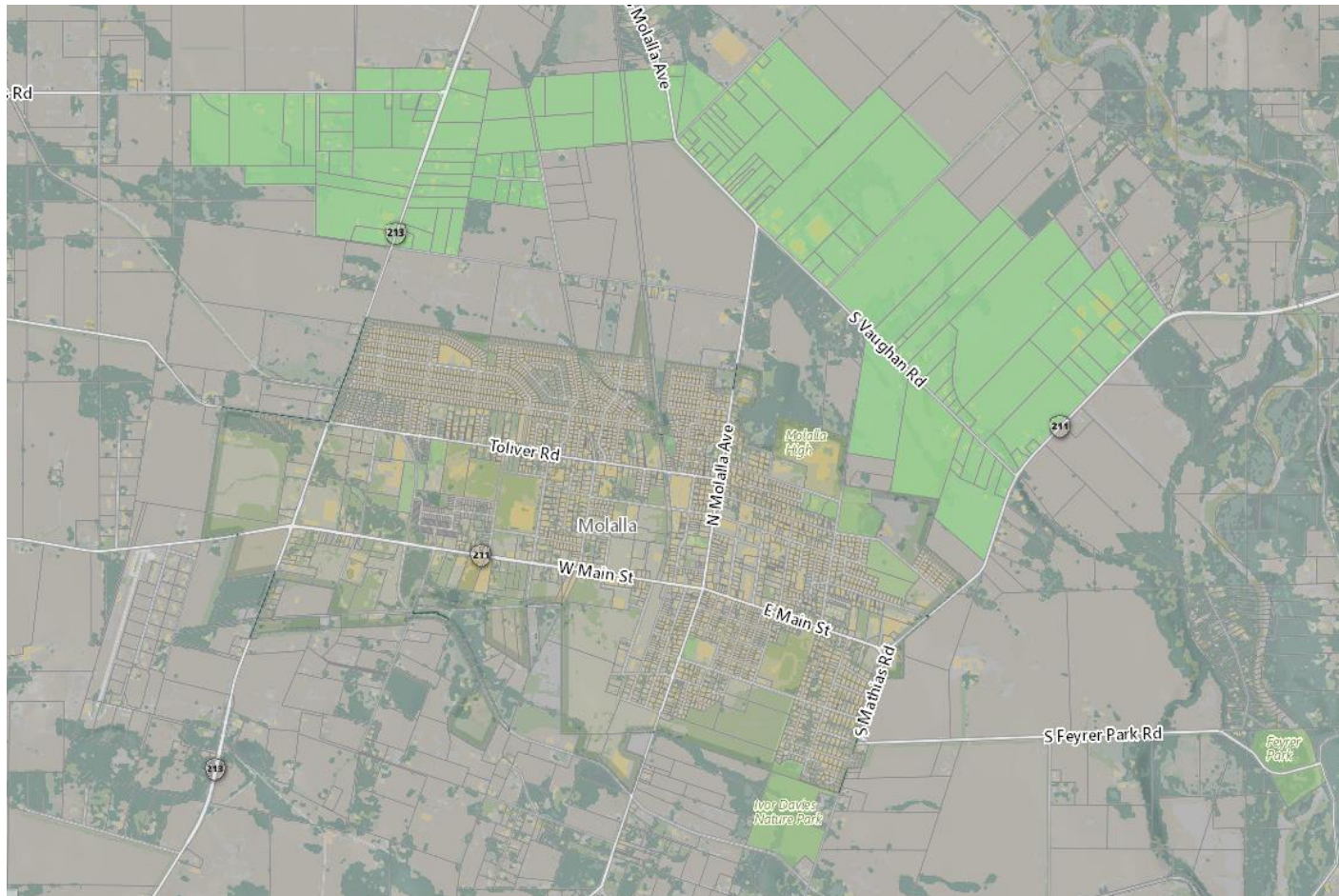
# Step 1 - Determine Study Areas (660-024--0065)

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1. PRELIMINARY STUDY AREAS – one mile area outside current UGB, adding contiguous exception areas within 1.5 miles
2. Exclusions from Preliminary Study Areas (-0065(4))
  - a. For a specific industrial or public facility land need, lack of necessary site characteristics.
  - b. Impracticable to provide public services
  - c. Land subject to natural hazards
  - d. Lands with specific scenic, natural, cultural or recreational resources.
  - e. Non-urban federal lands



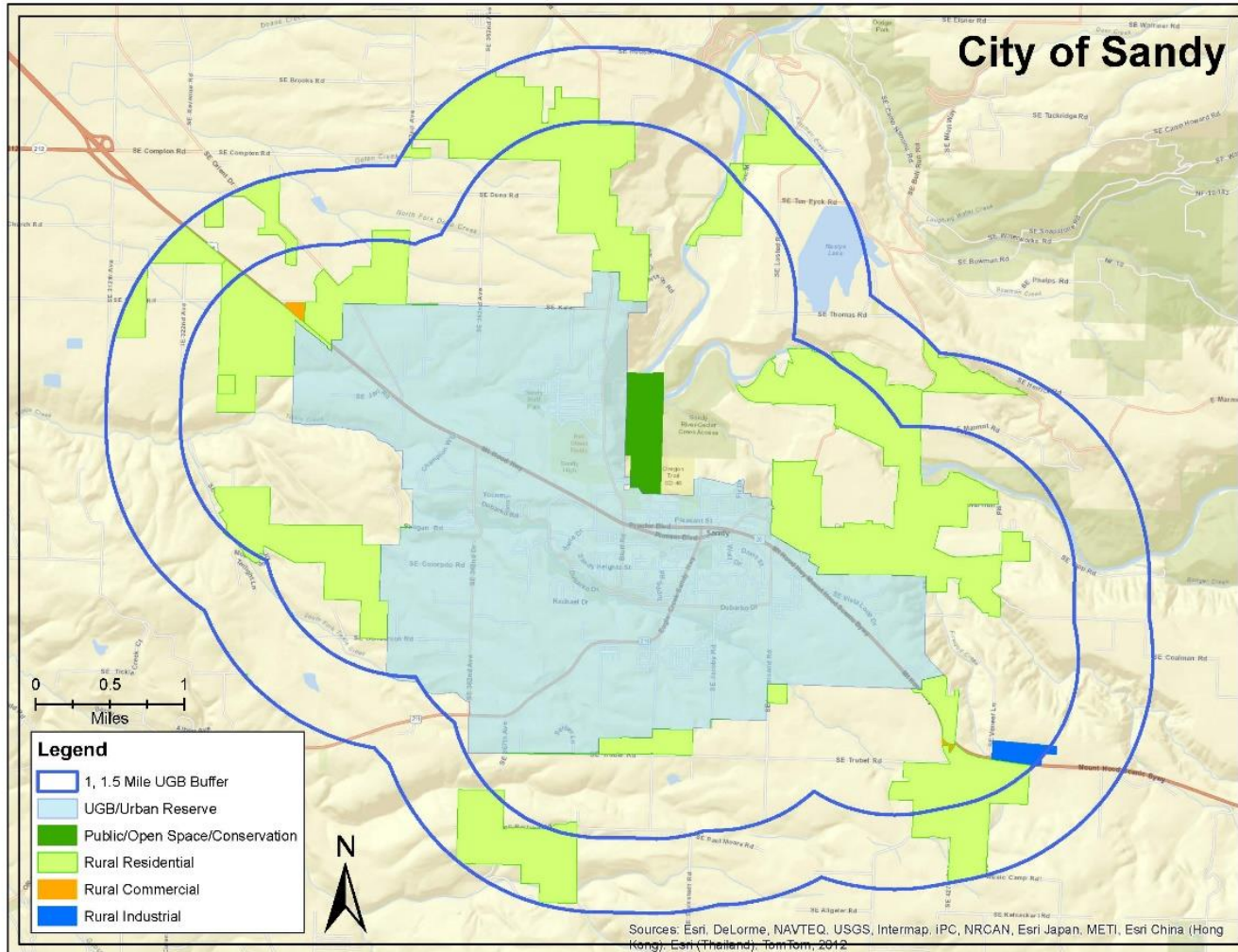
# Rural Reserves near Molalla



Should be excluded from study area, because Clackamas County may not include them in a UGB, per OAR 660-027



# Preliminary Study Area



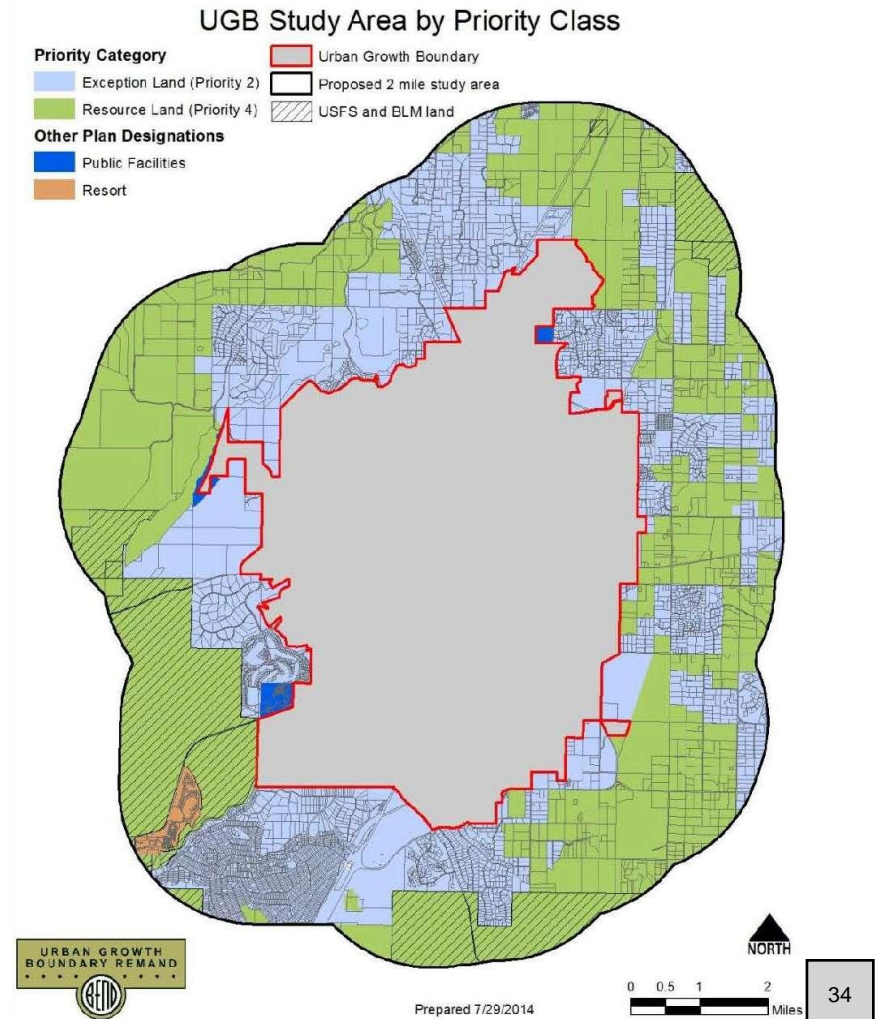
# Prioritize study areas (OAR 660-024-0067)

First – Urban Reserves, rural “exception” lands, non-resource lands

Second – Marginal lands (Lane and Washington Counties)

Third - Farm and Forest land that is not primarily high-value farmland

Fourth – Farm and Forest land that is primarily high-value farmland



# Apply “suitability” criteria (OAR 660-024-0067(5))

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## Not suitable if:

- For industrial uses, the land is too parcelized or developed with other uses
- The land could have been excluded from the preliminary study area, but was retained for further analysis
- Natural resource protection under Goal 5 will eliminate development capacity
- For industrial uses, the site is too small or too steep
- Land with a conservation easement
- Land that is a public park, school, church, cemetery, airport



# “Balance” 4 Location Factors (Goal 14)

- (1) Efficient accommodation of identified land needs;
- (2) Orderly and economic provision of public facilities and services;
- (3) Comparative environmental, energy, economic and social consequences; and
- (4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.





## UGB Adoption Process

- UGB expansion is initiated by city but must be approved by both city and county
- If more than 50 acres for a city greater than 2,500 population, must be approved by LCDC, “in the manner of periodic review”

- Allows city to “step through” the UGB expansion process, rather than completing all work prior to adoption
- Avoids concurrency requirement for HCA adoption and meeting all identified residential land needs
- Process – if UGB expansion exceeds 50 acres, city and county may request to use this process and submit draft work program
- DLCD will finalize work program within 120 days



## Sequential UGB Process

(OAR 660-025-0185)

**New rules adopted in 2019**

- Each work task submitted for director's decision
- Parties with “standing” may file an “objection,” which would be considered in director's decision
- A work task approval is valid for four years, with a possible one year extension.
- Effectively, this allows up to five years from the approval of the first work task to completion of the UGB amendment



## Sequential UGB Process – Part 2 (OAR 660-025-0185)

# Thank You!

## Urban Growth Boundaries and the Sequential UGB Process in Molalla



Source: ODOT



### DLCD



November 16, 2022

Kelly Reid, Regional Representative

Kevin Young, Senior Urban Planner





## CITY OF MOLALLA

117 N. Molalla Avenue  
PO Box 248  
Molalla, OR 97038

### Staff Report

### Agenda Category: General Business

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**Agenda Date:** December 14, 2022

**From:** Christie Teets, City Recorder  
**Approved by:** Dan Huff, City Manager

**SUBJECT:** Canvass of Election – Certified Results from Clackamas County

**FISCAL IMPACT:** None

**RECOMMENDATION/RECOMMEND MOTION:** N/A

**BACKGROUND:**

Molalla Municipal Code 2.02.190, Election notice and results, letter E states:

“The Recorder must provide certification of the election results to the Council at the first Council meeting after the results are certified by the County Clerk.”

Please see the following certified election results from the November 8, 2022 General election.

CANVASS OF ELECTION VOTES  
FOR COUNCIL POSITIONS AND BALLOT MEASURE  
OF THE CITY OF MOLALLA, OREGON  
HELD ON THE 8<sup>th</sup> DAY OF NOVEMBER 2022

An election having been held on the 8<sup>th</sup> day of November 2022, for the purpose of voting for Council positions of three Councilors. The tabulation of the votes cast at said election having been filed in the Office of Clackamas County's Elections Officer on November 8, 2022 and the undersigned, being the proper official to do so, having canvassed the votes for said election, finds that they were as follows:

**COUNCIL – ELECT THREE**

**TOTAL VOTES CAST:**

Leota Childress	2,069
Terry Shankle	1,891
Rae Botsford	1,620
Tom Luttrell	1,450

(Candidates with the three highest vote tallies are elected to City Council.)

**MEASURE 3-590 BANNING PSILOCYBIN**

YES	2,281
NO	1,494

The abstract of votes comes from the Clackamas County Clerk.  
Dated this 14<sup>th</sup> day of December 2022.

*Christie Teets*  
Elections Officer  
City of Molalla

Mike Simmons

12/1/2022

Hello Planning and Council members,

While watching the Joint Planning Commission and Council meeting on 18 November where DLCD discussed the Sequential UGB process I heard statements from DLCD that deserve comment. And I heard statements from either the commission or council that need correction.

I plan on attending the next Planning and Council meeting to present this letter in person.

First, It was mentioned that IF there were needed Employment land or Public Semi-public lands this would be addressed when those studies are completed.

It is important to understand up front as the Draft Residential Housing Supply is being considered that there is a shortage of all types of land in Molalla's 20-year need. The attached professional Housing and Employment needs studies from 2018 show this very clearly. Therefore, Molalla should not consider it reasonable to convert any other zoning types (commercial, industrial, or public) to residential if the overall plan decreases the supply of those lands. It is also not reasonable to assume that 100% of commercial land is available to have residential on top, in particular as this has never been done in Molalla. As noted by DLCD, there is no new land being created and the available land has only decreased since 2018.

Second it was stated that it will be easy to include the area to the South (exception areas) into the UGB but is less attractive due to cost and more difficult for the city to move in the preferred North direction because that is "High Value farmland".

My Family owns 63 Acres north of Big Meadow and South of Vick road, fronting Hwy 213. Our neighbors, the Burkoff's to the east have 40 acres. While the very outdated County arial study says it is class 1-2 soil, you will see in the attached Professional Soil Studies from 2007 that it is actually Class 3 and 4. I will be taking these studies to the county so that the designation can be corrected and they are also in the Cities record from 2007 along with letters stating that it is appropriate to use private professional studies.

This means that there is at least 103 acres on the North border of town is low value farmland and fits easier the criteria for inclusion in a UGB, second to Exception lands.

Third, it was stated by DLCD that the area to South can be discounted if it is shown to be either too costly or that parcellation makes development difficult. Both are true and the total number of acres in that area should have a reduction factor applied.

We are currently working with a developer, and I am told that Sewer pumping stations have costs run into six figures and a smaller development with that overhead would not be economically feasible unless the housing price was very high. This runs against the state goal of affordable middle-class housing.

Sincerely,

Michael (Mike) Simmons.

***City of Molalla***

**(DRAFT) Residential Land Needs Report**

Winterbrook Planning • July 2018



# City of Molalla

## Residential Land Needs Report

Winterbrook Planning • July 2018

### Table of Contents

Residential Land Needs .....	3
Key Findings .....	3
Housing Needs Analysis.....	4
Population Projection.....	4
Demographic Trend Analysis .....	4
Housing Need Assumptions.....	4
Household Size .....	4
Vacancy Rate .....	5
Dwelling Units Projected .....	5
Actual Development .....	6
Housing Needs Projection .....	7
Public & Semi-Public Land Needs.....	11
School District Needs .....	11
Park Needs .....	11
Religious Uses .....	12
Public / Semi-Public Land Needs Subtotal .....	12
Housing and Public / Semi-Public Land Needs Summary .....	13

## RESIDENTIAL LAND NEEDS

This Report determines year 2037 and 2067 housing and public / semi-public land needs for the City of Molalla, Oregon. Determination of Molalla’s housing needs builds upon the foundation found in the Housing section of the 2014 Molalla Comprehensive Plan (Goal 10: Housing). The 2014 Comprehensive Plan update included revised housing needs projections by type through the Year 2034, based on population and housing information developed by Portland State University (PSU) and Winterbrook Planning from 2007-2013.

In 2013, the Oregon Legislature tasked PSU to prepare updated population forecasts for every City and County in Oregon and has updated its population forecast for Molalla with a 2017 draft, providing new population forecast figures for 2035 and 2067.

To develop 20- and 50-year housing need projections, Winterbrook relied on the revised population forecast prepared by PSU, evaluation of demographic trends from the 2000 and 2010 US Census and 2016 American Community Survey, review of recent development trends and input from City staff. Winterbrook also considered the safe harbor assumptions provided by OAR 660-024. Based on this analysis, this report projects the number, type and density of housing units that will be needed to accommodate planned population growth through 2037 and 2067.

This report also projects the need for public and semi-public land through the Year 2067. To make this determination, Winterbrook relied on existing Comprehensive Plan policies, City Staff analysis of current use-to-population ratios, and continuing input from City Staff.

### Key Findings

As described in this document and summarized below in Table 1, Molalla has a total residential land need of 450 acres for the year 2037, and 1,166 acres for the year 2067.

**Table 1: Residential Land Needs Summary**

<b>Year</b>	<b>Housing Needs</b> (gross buildable acres)	<b>Public / Semi-Public Needs</b> (gross buildable acres)	<b>Total Residential Land Need</b> (gross buildable acres)
<b>2017-2037</b>	<b>272</b>	<b>120</b>	<b>392</b>
<b>2017-2067</b>	<b>737</b>	<b>297</b>	<b>1,034</b>

## **HOUSING NEEDS ANALYSIS**

The Housing Needs Analysis reviews and incorporates PSU’s updated Population Forecast and the Demographic Trends Analysis (Appendix 1), describes base housing need assumptions, reviews future housing type and density needs, analyzes recent “actual” development in Molalla, and concludes with recommended dwelling unit types, densities, and plan district allocations for 20- and 50-year timeframes.

### **Population Projection**

Oregon law requires that each urban growth area have a coordinated population projection prepared by Population Research Center at Portland State University. PSU’s June 30, 2017 adopted population projection for Molalla shows 14,705 people by 2035, and 23,687 by 2067. PSU’s 2017 population estimate for the area within the Molalla UGB is 9,939. The coordinated population projection must be adopted as part of the Molalla Comprehensive Plan and provides the foundation for the housing needs analysis.

### **Demographic Trend Analysis**

A detailed analysis of Molalla’ past and relatively current demographics, based primarily on census data, is attached as Appendix 1: Demographic Trend Analysis. The Demographic Trend Analysis provides background information relating to housing conditions in this memorandum. Preliminary demographic findings show that Molalla is still a relatively homogeneous community with *relatively* lower-priced housing, although this may change somewhat over the next 20 years. Increased employment opportunities, young commuting households, and a relatively high percentage of families with children, are likely push the demand for a broader range of housing types – including small lot single family, row homes and cottage housing.-.

### **Housing Need Assumptions**

Basic housing land need assumptions include future household size, vacancy rate and density. Oregon Administrative Rules (OAR) provide some safe harbors for housing needs analyses in OAR 660-024-0040. These safe harbors are intended to be conservative (in terms of determining land need) and apply to 20-year (UGB) analyses. For the 2017-2037 timeframe, this report applies safe harbor assumptions. For the 2037-2067 timeframe, this report makes reasonable assumptions based on the analysis of demographic trends and provisions for increased land use efficiency.

#### **Household Size**

The “safe harbor” provided by OAR 660-024-0040(8)(a) allows that:

“A local government may estimate persons per household for the 20-year planning period using the persons per household for the urban area indicated in the most current data for the urban area published by the U.S. Census Bureau.”

As part of the Housing Needs Analysis, we looked at historical trends in household size for Molalla, as well as Clackamas County, and the State of Oregon. The City of Molalla had 2.84 persons per household in 1999 and 2.78 persons per household in

2016. Household sizes in Clackamas County trended slightly down from 2.62 to 2.59 and Oregon rose very slightly from 2.51 to 2.52.

This analysis assumes a safe harbor household size of 2.78 (consistent with the safe harbor) from 2017 through 2037. We project that household size will decrease slightly after 2037 as economic development and housing policies lead to a wider range of housing types and households. More workforce housing and employment opportunities will attract a population with household sizes more consistent with statewide and county trends. Therefore, we assume a slightly decreased (though still higher than current State and County) household size of 2.7 through 2067.

**Vacancy Rate**

The “safe harbor” provided by OAR 660-024-0040(8)(e) allows that:

“A local government outside of the Metro boundary may estimate its housing vacancy rate for the 20-year planning period using the vacancy rate in the most current data published by the U.S. Census Bureau for that urban area that includes the local government.”

Molalla had overall vacancy rates of 3.9% in 2000, 5.6% in 2010, and 3.7% in 2016 (the most current data as of June 2018). While a 3.7% vacancy rate indicates a constrained housing supply and reflects Molalla’s extraordinarily low (0%) 2016 vacancy rate for non-rental units, this analysis assumes a safe harbor vacancy rate of 3.7% for the 2017-2037 timeframe. The constrained housing supply likely is related to the lack of buildable land within the Molalla UGB.

For the 2037-2067 timeframe, this analysis uses a 5% vacancy rate assumption, reflecting a healthier housing supply.<sup>1</sup> Because of the City’s forward-looking urban reserve program, we assume that Molalla will have a 20-year supply of residential land within its UGB in 2037.

**Dwelling Units Projected**

**Using the projected populations for 2035 and 2067 and the assumptions above, projected new dwelling units needed are 1,930 for 2035 and 5,563 for 2058.**

**Table 2: Projected New Dwelling Units Needed**

<b>Year</b>	<b>2037</b>	<b>2067</b>
Projected Population Increase	4,766	13,739
Households @ 2.78 & 2.7 Persons per HH	1,833	5,284
HHs Including 3.7% & 5% Vacancy Rate	<b>1,930</b>	<b>5,563</b>

<sup>1</sup> The proposed 5% vacancy rate is below current State (9.4%) and County (6.1%) vacancy rates, reflecting a conservative assumption and relatively tight housing supply through the planning timeframe.



## Actual Development

As shown on Table 3, recent development is very different than development observed a decade ago in Molalla. It's unclear whether recent development trends reflect market-based changes in development patterns consistent with Comprehensive Plan and Development Code changes, a limited snapshot of development of the few available sites in Molalla, or a combination of these factors.<sup>2</sup>

Molalla planning staff compiled recent residential development data from the last seven years (2011-2017). Tables 3-5 below show actual development for this period. The building permit data in Table 3 show that single family homes accounted for 29% of recent permitted residential development. Table 3 shows a distribution of 30% single family (including manufactured homes) and 70% multi-family (including duplexes) for the timeframe.

**Table 3: Building Permits 2001-2006 & 2011-2016**

Housing Type	2001-2006	Percent	2011-2016	Percent
Site-Built SF	487	92%	115	29%
Manufactured SF	26	5%	5	1%
Duplex (units)	10	2%	0	0%
Multi-Family (units)	6	1%	283	70%

Table 4 shows units and gross density in recent subdivision and partition applications, by plan and zone designation.<sup>3</sup> As shown in Table 5, applications for subdivisions in Low Density Residential (R-1) areas came in at 4.7 dwelling units per gross acre. Applications for

---

<sup>2</sup> Molalla has a few significant caveats related to actual (recent) development data:

- 1) Molalla's UGB was adopted in 1981 with a population horizon of 7,645 in the year 2000. Molalla now has about 10,000 people. Land supply is severely constrained, and this is very likely warping recent population growth and development trends.
- 2) Molalla adopted an updated Comprehensive Plan and Development Code in 2014.
- 3) Molalla adopted another updated Development Code in 2017.
- 4) Molalla has a very low supply of undeveloped residential land, and much of this land includes:
  - a. Development constraints relating to wetlands and riparian areas;
  - b. Development on some of the site – the land is included in supply calculations, but the landowner may have no interest in further development; and
  - c. Areas outside City Limits, with landowners uninterested in annexation, rezoning and development costs.
- 5) Molalla has had 3 different planners (including contract planning from Clackamas County) and a very high turnover of Planning Commission members over the past 5 years.

This combination of factors resulted in an inconsistent implementation of multiple code versions to a very limited number of applications. Over the last few years, applications included multiple planned developments and a major apartment complex. Several of the applications included zone changes that were required in order to develop.

<sup>3</sup> Molalla's records include subdivision and partition data from 2014 through 2018.

subdivisions in Medium Density Residential (R-2) areas were averaging 7.5 dwelling units per gross acre. Applications for subdivisions in High Density Residential (R-3) areas also averaged 7.5 dwelling units per gross acre.

As shown on Table 4, overall gross density for residential subdivision applications was 6.4 dwelling units per gross acre.<sup>4</sup>

**Table 4: Subdivision Units and Density by Zone 2014-2018**

Plan / Zone	Units	Gross Acres	Gross Density (Dwelling Units / Acre)
Low Density Residential (R-1)	86	18.1	4.7
Medium Density Residential (R-2)	81	10.8	7.5
High Density Residential (R-3)	117	15.5	7.5
<b>Total</b>	<b>284</b>	<b>44.5</b>	<b>6.4</b>

Table 5 below shows Molalla’s 2037 and 2067 residential land needs if it continued recent “actual” development densities and plan designation allocations. In 2037, Molalla would require 124 acres for R-1, 74 acres for R-2, and 107 acres for R-3, totaling 305 gross acres at a density of 6.4 dwelling units per gross buildable acre. By 2067, Molalla would need 826 gross acres to accommodate housing.

**Table 5: Land Needs – Actual Development**

Plan Designation	Percent	2037 Units	2067 Units	Gross Density	2037 Gross Acre Need	2067 Gross Acre Need
R-1	29%	555	1503	4.7	124.2	336.6
R-2	29%	569	1541	7.5	74.0	200.4
R-3	42%	822	2226	7.5	106.9	289.6
<b>Totals</b>	<b>100%</b>	<b>1946</b>	<b>5270</b>	<b>6.4</b>	<b>305.2</b>	<b>826.6</b>

## HOUSING NEEDS PROJECTION

Prior to amending an urban growth boundary, cities must show that they have made efforts to use residential land more efficiently and to provide for a variety of housing options that will be relatively affordable to existing and future residents. As discussed above, Molalla has updated its Comprehensive Plan, and twice updated its Development Code in the past 4 years. Through these updates, Molalla has implemented a number of efficiency measures, including:

- Increasing planned densities in all residential plan designations and zones;
- Implementing minimum density requirements;

<sup>4</sup> As indicated earlier, recent development may be anomalous due to residential land scarcity. Prior development trends (2001-2006) resulted in development at 4.1 units per gross acre.

- Allowing mid-block duplexes in the R-1 zone;
- Allowing accessory dwelling units in all zones;
- Providing density bonuses for planned developments;
- Increasing connectivity requirements; and
- Decreasing required parking for residential zones.

Based on recent development, Comprehensive Plan policies, discussion with City Staff, and demographic trends, Winterbrook makes the following dwelling unit and density projections. The adopted revisions to the Molalla Zoning Ordinance (Article 17) and Comprehensive Plan, including the above measures to increase land use efficiency, are reflected in this analysis and the tables below.

Table 6 below projects housing need by type and density from 2017 through 2067. As shown earlier in this document, a total of 1,946 new dwelling units will be needed by 2037. This figure increases to 5,271 new dwelling units by 2067.

Table 6 projects overall residential densities at 7.2 dwelling units per gross buildable acre – or about 8.9 dwelling units per net buildable acre.<sup>5</sup> These densities are about 13% higher than densities seen in recent “actual” development (6.4 dwelling units per buildable gross acre or 8.5 units per net buildable acre) and reflect implementation of additional efficiency measures adopted in the 2017 Development Code update.

These assumptions are conservative. For context, the proposed density is higher than the 8 units per net acre the Metropolitan Housing Rule (OAR 660-007) requires for mid-sized Metro cities like Milwaukie and Oregon City, and urban areas of Multnomah and Clackamas counties. If Molalla provides a 20-year residential land supply – development may revert to densities more traditionally seen in Molalla. However, this analysis recommends that Molalla plan for and provide the opportunity for a range of housing types as the city grows.

Because Molalla has adopted design standards to ensure neighborhood compatibility, these measures are anticipated to make planned density increases both feasible for developers and palatable to residents.

**As shown on Table 6, 272 gross buildable residential acres<sup>6</sup> are needed to accommodate projected Year 2037 housing needs, and 737 residential acres are needed to meet Year 2067**

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<sup>5</sup> A “net acre” is 43,560 square feet after removing land for streets. For example, a 5-acre parcel (without development constraints) with 1 acre of street dedication will have 5 gross buildable acres and 4 net buildable acres. Where land is dedicated for public streets, net buildable density is greater than gross buildable density. A density of 7.2 units per net acre translates into an average site size – for all housing types – of about 6,050 square feet per dwelling unit.

<sup>6</sup> A gross buildable acre is 43,560 square feet of land after removing “unbuildable” land (i.e., floodplain, slopes of 25% or greater, stream corridors and wetlands). For example, a 7-acre parcel that has 2 acres with slopes of 25% or greater will have 5 gross buildable acres.

**housing needs.** The effect of recent efficiency measures and analysis assumptions reduces housing need by 13% when compared with recent (actual) development. The measures are intended to reduce housing need by 33 gross acres through 2037, and by about 89 gross acres by 2067.<sup>7</sup>

**Table 6: Needed Acreage by Type and Density**

Unit Type	Percent	2037 Units	2067 Units	Gross Density	Net Density	2035 Gross Acres Needed	2067 Gross Acres Needed
Detached SF	45%	876	2,372	5	6.3	175	474
Middle Housing*	20%	389	1,054	10	12.5	39	105
Mobile Home Park	5%	97	264	6	7.5	16	44
Apartments	30%	584	1,581	14	17.5	42	113
<b>Totals</b>	<b>100%</b>	<b>1,946</b>	<b>5,271</b>	<b>7.2</b>	<b>8.9</b>	<b>272</b>	<b>737</b>

\* “Middle Housing” includes duplex, tri- and quad-plex, attached and cottage housing

Tables 7 and 8 break down the 2037 and 2067 acreage needs by Comprehensive Plan designation and unit type. The key to those tables:

### Residential Plan Designations

- R-1: Single Family Residential (4-8 dwelling units / net acre)
- R-2: Medium Density Residential (6-12 dwelling units / net acre)
- R-3: High Density Residential (8-24 dwelling units / net acre)

### Housing Types

- Detached Single Family (site-built and manufactured)
- Middle Housing (includes duplexes, tri- and quad-plexes, attached and cottage housing)
- MHP: Manufactured Home Park (mobile homes)
- Apartments (standard apartment units)

As shown on Table 7, most of the detached single-family housing is expected to locate on R-1 lands. Middle housing is allowed and expected in R-1, R-2, and R-3 zones. Attached single family (row houses) is permitted subject to objective special use standards in all plan designations except R-1. Duplexes are permitted subject to objective special use standards in all residential zones.

Manufactured dwelling parks are allowed only in the High Density Residential (R-3) designation.

<sup>7</sup> When compared to early 2000s development trends, changes to plan, development code, and assumptions increase densities and reduce need by nearly 75%, or over 200 acres by 2037 and 550 acres by 2067.

This projection results in a need for 165 gross buildable acres in the R-1 designation, 42 acres in the R-2 designation, and 65 acres in R-3. This totals 272 gross buildable acres to meet Molalla’s Year 2037 housing land needs.

**Table 7: Needed Acreage by Plan Designation and Type, 2035**

Plan Designation	Detached SF	Middle Housing	Mobile Home Park	Apartments	Gross Buildable Acre Needs
R-1	788	78	0	0	165
R-2	88	117	0	175	42
R-3	0	195	97	409	65
<b>Totals</b>	<b>876</b>	<b>389</b>	<b>97</b>	<b>584</b>	<b>272</b>

Table 8 shows the proposed year 2067 housing need projection. Table 8 shows a need to provide 448 gross buildable acres of R-1 land, 113 acres of R-2 land, and 176 acres of R-3 land to meet year 2067 housing needs. This totals 737 gross buildable acres.

**Table 8: Needed Acreage By Plan Designation and Unit Type, 2067**

Plan Designation	Detached SF	Middle Housing	Mobile Home Park	Apartments	Gross Buildable Acre Needs
R-1	2,135	211	0	0	448
R-2	237	316	0	474	113
R-3	0	527	264	1,107	176
<b>Totals</b>	<b>2,372</b>	<b>1,054</b>	<b>264</b>	<b>1,581</b>	<b>737</b>

## PUBLIC & SEMI-PUBLIC LAND NEEDS

Public and semi-public land needs consist of schools, parks, religious, group housing, and government uses. These uses typically locate on residential land, so the need for public and semi-public land is added to residential land needs.

### School District Needs

The Molalla River School District completed a “Long Range Planning Committee Report to the Board” in 2015. This document extends through the year 2024 and indicates enrollment rapidly increasing during this timeframe. Of particular note, the Report deferred planning beyond 10 years, because:

*“At the time of this report, the Committee feels that, except for Molalla High School, the District does not have any building that can sustain another 10 years or more. The Committee is expecting that once Phase One and Phase Two recommendations move forward and the district experiences the growth in enrollment projected in Section 9 of this report, Phase Three facility needs will become clear through future deliberations of the Committee.”*

The District is working diligently to accommodate the current student enrollment and expected enrollment over the next 10 years. The existing ratio of school district land to population is insufficient to meet existing needs. However, for planning purposes, and acknowledging the timeframes we have to work within, we believe it is reasonable to extend the current ratio of school land to population through the planning period.

There are currently 98 acres of land inside Molalla’ UGB and owned by Molalla River School District #35. The current ratio of school land to population is about 10 acres per 1,000 population. Extending the existing ratio results in a 2035 need for 48 additional acres, and a 2067 need for 137 acres of land for schools.<sup>8</sup>

**Table 9: School Needs by Population Increase**

Year	Population Increase	School Gross Buildable Acreage Need
2037	5,210	52
2067	13,739	137

### Park Needs

Using the Comprehensive Plan’s ratio of 10 acres of park per 1000 population, we can determine future park needs. Molalla currently has 36 acres of park or open space land. To serve its existing population, Molalla would need 99 acres, or an additional 63 acres for park lands.

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<sup>8</sup> In Winterbrook’s experience, this acreage is comparable to an additional elementary and middle school over the next twenty years, and a new high school and elementary school over the fifty-year timeframe.

Table 10 below includes the 63-acre existing park needs, and expands the park needs based on projected 2037 and 2067 population increases. Total 2037 park needs are about 115 acres, while 2067 park needs total about 264 acres. As some park needs can be met in natural areas, we assume 50% of park acreage need is buildable land.

**Table 10: Park Needs by Population Increase**

Year	Population Increase	Park Acreage Need, Gross	Park Acreage Need, Gross Buildable
2037	5,210	115	58
2067	13,739	264	132

**Religious Uses**

The need for land dedicated to religious uses can be projected based on existing ratios of population to religious uses in Molalla. There are currently 19 acres devoted to religious uses in Molalla, which comes out to about 2 acres per 1000 population.

Extending this ratio results in a 2037 need for about 10 acres, and a 2067 need for about 27 acres.

**Table 11: Religious Use Need by Population Increase**

Year	Population Increase	Religious Gross Buildable Acreage Need
2037	5,210	10
2067	13,739	27

**Public / Semi-Public Land Needs Subtotal**

Table 12 shows a total public and semi-public land need of about 178 acres by 2037, and about 429 acres by 2067.

**Table 12: Public / Semi-Public Subtotal**

Year	2037	2067
School	52	137
Park	58	132
Religious	10	27
<b>Total</b>	<b>120</b>	<b>297</b>

## HOUSING AND PUBLIC / SEMI-PUBLIC LAND NEEDS SUMMARY

Table 13 summarizes the overall residential land needs, including public and semi-public needs. **The total need for residential lands for 2037 is 450 acres. The total need for residential lands for 2067 is 1,166 acres.**

**Table 13: Residential Land Needs Summary**

<b>Year</b>	<b>Housing Need (gross buildable acres)</b>	<b>Public / Semi-Public Need (gross buildable acres)</b>	<b>Total Residential Land Need (gross buildable acres)</b>
<b>2035</b>	<b>272</b>	<b>120</b>	<b>392</b>
<b>2067</b>	<b>737</b>	<b>297</b>	<b>1,034</b>



**DRAFT**



**JOHNSON  
ECONOMICS**

**ECONOMIC OPPORTUNITIES &  
AND EMPLOYMENT LAND NEED ANALYSIS  
(OREGON STATEWIDE PLANNING GOAL 9)**

**CITY OF MOLALLA, OREGON**

August 2017

# TABLE OF CONTENTS

- I. INTRODUCTION ..... 1**
- II. ECONOMIC TRENDS..... 2**
  - NATIONAL AND GLOBAL TRENDS .....2
  - OREGON TRENDS .....6
  - LOCAL TRENDS .....8
- III. LOCAL INDUSTRY ANALYSIS..... 15**
- IV. FORECAST OF EMPLOYMENT AND LAND NEED ..... 18**
  - CITY OF MOLALLA EMPLOYMENT FORECAST (20-YEAR) .....18
  - EMPLOYMENT LAND FORECAST (20-YEAR) .....19
  - CITY OF MOLALLA EMPLOYMENT FORECAST (50-YEAR) .....22
  - EMPLOYMENT LAND FORECAST (50-YEAR) .....22
- V. BUILDABLE LAND INVENTORY ..... 24**
  - INTRODUCTION & METHODOLOGY .....24
  - EMPLOYMENT - BUILDABLE LANDS INVENTORY .....26
- VI. RECONCILIATION OF NEED AND CAPACITY ..... 29**
  - 20-YEAR .....29
  - 50-YEAR .....30

# I. INTRODUCTION

This report introduces analytical research presenting an Economic Opportunities Analysis (EOA) for the City of Molalla. The report fills the requirements of statewide Planning Goal 9, specifically OAR 660-009, which describes the EOA as:

*"The economic opportunities analysis must identify the major categories of industrial or other employment uses that could reasonably be expected to locate or expand in the planning area based on information about national, state, regional, county or local trends."*

Cities are required to reconcile estimates of land demand for future commercial and industrial use (employment land) with existing vacant and redevelopable employment land. The principal purpose of the analysis is to ensure an adequate land supply for economic development and employment growth by linking future demand for employment land to city infrastructure planning, community involvement, and coordination among local governments and the state.

To this end, this report is organized into four primary sections:

- **Economic Trends:** Provides an overview of national, state and local economic trends affecting Molalla, including population projections, employment growth, retail trends and a demographic profile.
- **Employment Land Needs:** Examines projected demand for industrial and commercial land based on anticipated employment growth rates by sector.
- **Capacity:** Summarizes the City's inventory of vacant and redevelopable industrial and commercial land (employment land) within the City of Molalla's urban growth boundary.
- **Reconciliation:** Compares long-term demand for employment land to the existing land inventory to determine the adequacy and appropriateness of capacity over a twenty-year horizon.

Prepared by:  
JOHNSON ECONOMICS LLC  
November 2016

## II. ECONOMIC TRENDS

This report section summarizes long and intermediate-term trends at the national, state, and local level that will influence economic conditions in Molalla over the twenty-year planning period. This section is intended to provide an economic context for growth projections and establish a socioeconomic profile of the community. The first section, *National and Global Trends*, discusses potential changes in structural socioeconomic conditions both nationally and globally. Our localized analysis considers local growth trends, demographics, and economic performance. The content contained herein is consistent with OAR 660-009-0015(1).

### NATIONAL AND GLOBAL TRENDS

The most commonly used measure of economic prosperity is real gross domestic product (GDP) per capita. Real GDP per capita is essentially a measure of national wealth considered on an individual basis. Increased purchasing power of the population translates into greater investment in health care, education, housing, leisure, and many other quality-of-life factors<sup>1</sup>. U.S. real GDP per capita remains fairly stable. Over the last century, the average annual growth rate has been 1.8%, despite considerable shifts in economic and social conditions—a finding that suggests long-term economic growth is more related to very broad trends, such as population growth and investment in physical and human capital, than temporary economic fluctuations, like the recent Recession and government policy (Elwell 2006)<sup>2</sup>. In other words, monetary, economic, and fiscal policy may influence growth within a given business cycle, but long-term growth is driven by investment, changing population, and global influences.

This first section of our analysis discusses how these factors can be expected to influence economic conditions on a national and local scale during the planning period.

### Demographic Factors and Labor Force Participation

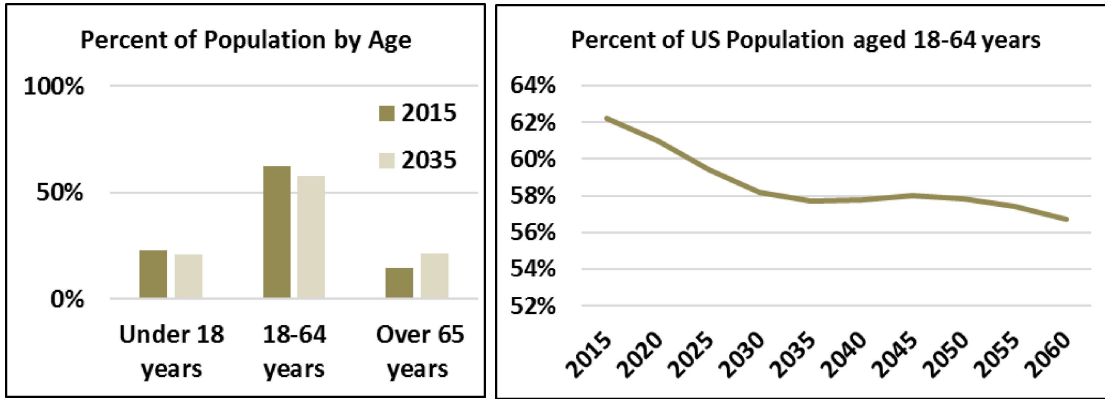
The aging of the Baby Boomers into their retirement years will perhaps be the greatest challenge to the U.S. economy over the planning period. By 2035, the share of the population age 65 and over will have grown to 21% from 14.5% today. Despite the fact that an increasing number of Boomers expect to work at least part time past age 65, the impact of this demographic shift on the labor force participation rate, and by extension potential output (goods and services produced), will be considerable. Such a demographic shift will undoubtedly reduce the size of the workforce considerably over the next 20 years.

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<sup>1</sup> This is in addition to other factors that influence quality of life, such as social and economic equality, crime, health, environmental factors, etc.

<sup>2</sup> Elwell, Craig. CRS Report to Congress: Long-Term Growth of the U.S. Economy: Significance, Determinants, and Policy (2006).

**FIGURE 2.1: PROJECTED DECLINE IN US WORKING-AGE POPULATION, 2015-2060**



Source: U.S. Census 2014 Population Projections

Boomers, however, are not the whole story. Labor force participation is also likely to shift within some cohorts. On the positive side, persons aged under 25 years, discouraged in recent years by a poor labor market, enrolled in colleges and universities across the country. The enrollment rate for 18-24 year-olds increased from 37.3% to 42.0% between 2006 and 2011<sup>3</sup>. Although the rate had fallen to 39.9% by 2013, the long-term trend is clear—college enrollment rates have been increasing more rapidly than the college-age population cohort since the 1990s. Between 2003 and 2013, the 18-24 age group grew by 9%, while college enrollment increased by 20%. Most college-educated workers return to the workforce with an enhanced productive capacity, though increasing college debt has also been a growing problem, hampering graduates’ ability to sew their income back into the economy.

Growth in the labor force participation rate among women in their most productive working years (25-54), a segment that has grown steadily over the last half century, has likely reached its peak. Labor force growth may also be modestly tempered by changes associated with the Affordable Care Act (ACA)—if health care is affordable and available on the private market, workers have a slightly diminished incentive to work.

The 2016-2026 CBO report predicts that the “slack” in the labor market (difference between actual and potential employment) will continue to diminish through 2020, despite the countervailing forces mentioned above<sup>4</sup>. Over the near-term, an improved economy and higher wages is bringing many discouraged workers back into the labor pool, narrowing the gap between actual and potential output. Long-term, an aging workforce will lower the labor force participation rate, leading to slower growth than that observed in previous expansions.

**Global Impacts on Migration**

Rising globalization has driven growth in emerging economies over the last twenty years, specifically in China, Southeast Asia, India, Latin America and some African countries. This growth has increased incomes and purchasing power in many parts of the world. With incomes in emerging economies expected to grow more quickly than U.S. incomes over at least the next 50 years, the difference between domestic and foreign incomes and standards of living will likely decrease.

<sup>3</sup> National Center for Education Statistics, Digest of Education Statistics (2014)

<sup>4</sup> Congressional Budget Office, The Budget and Economic Outlook: 2016 – 2026 (Jan 2016)

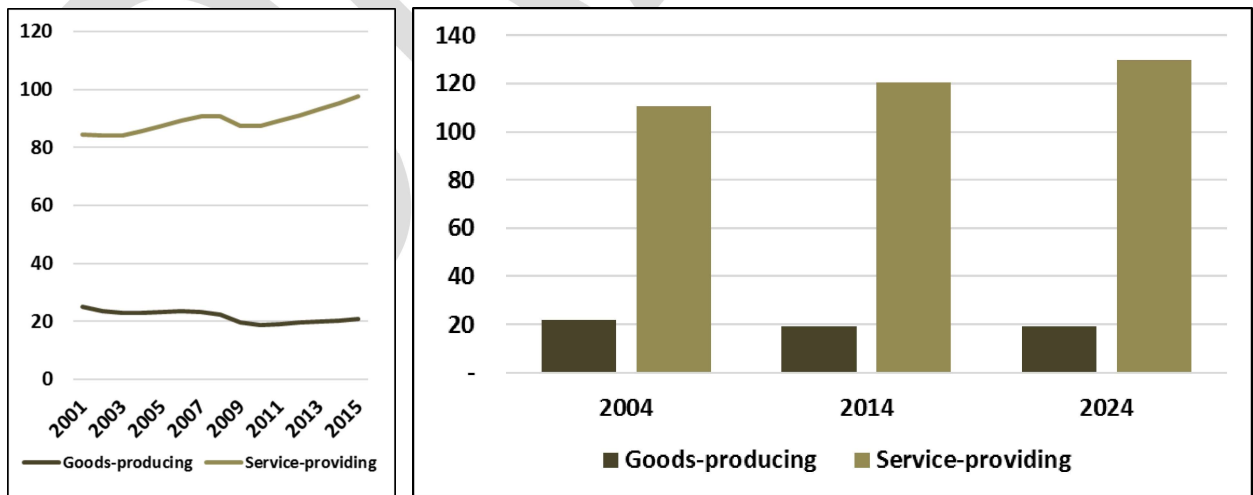
While undoubtedly a positive for reducing poverty and increasing global demand for goods and services (some of which are produced in the United States), the improved economies of emerging countries will lead to higher wages in those countries. Many who otherwise would chose to migrate to the U.S. for better opportunities will find those opportunities at home—resulting in lower rates of international migration to the U.S. Over the last 25 years roughly 35% of population growth in the U.S. was derived from international migration,<sup>5</sup> but it is possible that this share will decrease.

Taking these two factors together, the U.S. labor force could be facing the dual impacts of an aging population *and* lower migration. One estimate suggests these combined factors could result in a reduction of the domestic labor force of 15% by 2060<sup>6</sup>. In this context, to maintain its historical stability, continued growth in per-capita real GDP will be more dependent on gains in productivity, skills, innovation, and technical knowledge. In a way, this shift is will favor U.S. economic strengths, because the recent shift away from manufacturing- and resource-based industries (discussed below) has brought an increased demand for technological innovation, and human capital in the form of education. Assuming that the United States maintains its competitive advantage in education and innovation, the drop in labor force participation will be somewhat balanced out by growing productivity and GDP growth should remain stable.

**Shifting Industrial Patterns**

As mentioned above, the United States in in the process of shifting from a goods economy, featuring manufacturing and natural resources, towards a service economy, which emphasizes technological innovation, research, and design. Over the period 2014-2024, service providing industries<sup>7</sup> are expected to account for 95% of all jobs added in the United States<sup>8</sup>.

**FIGURE 2.2: US JOBS BY MAJOR SECTOR, MILLIONS**



SOURCE: US Bureau of Labor Statistics

<sup>5</sup> Migration Policy Institute tabulation of data from the United Nations, Department of Economic and Social Affairs (2013).  
<sup>6</sup> OECD (2014), Shifting Gear: Policy Challenges for the next 50 Years”, OECD Economics Department Policy Notes, No. 24 July 2014.  
<sup>7</sup> The seven service industries are: Professional and Business Services, Education and Health Services, Financial Activities, Trade/Transport/Utilities, Leisure and Hospitality, Financial Activities, Information, and Other Services  
<sup>8</sup> Bureau of Labor Statistics, Occupational Employment Projections (2014-2024)

### **Global Factors Influencing Growth**

In addition to changing population and shifting trade dynamics, there are some global factors that may influence growth.

- As emergent economies strengthen, and especially if new trade pacts like the Trans-Pacific Partnership are instituted, trade linkages between nations are likely to increase. This will influence global demand for domestic products as well as the balance of trade between the United States and its trading partners.
- This rising global demand is expected to benefit the primary sectors of resource-rich countries to the greatest degree. This bodes well for U.S. energy and agricultural markets, including lumber and wood products, provided the U.S. can keep pace with demand.
- Additionally, a stronger global market lessens the severity of domestic shocks to the economy, which in turn strengthens the global economy further.

### **Other Factors Influencing Growth**

- Increased life expectancy and an aging population will continue to support growth in health care services, but will place additional pressure on the federal government to meet Social Security and Medicare obligations.
- Lower international migration could adversely impact innovation in America. Immigrants are twice as likely to start a business, compared to domestic residents<sup>9</sup>. This is especially the case in the high-tech sector, where 25% of U.S. technology and engineering companies started over the last 20 years had at least one immigrant founder<sup>10</sup>.
- Falling domestic energy costs (most notably the price of natural gas), are expected to increase manufacturing competitiveness in some industries. Currently, transport of natural gas is limited, meaning that it cannot be easily traded overseas—a condition that is likely to persist for some time given the location and quantity of domestic reserves. As a result, natural gas is expected to remain a low-cost option, when compared to energy options in other nations. Industries that either use natural gas already, or can easily switch to natural gas, include power generation, fleet transportation, chemicals, and metals. Such industries are in the best position to increase their presence in the global market.
- The negative impacts of the “Great Recession” will be long lasting on potential output. Over the intermediate-term potential output will grow at a rate below average due to deterioration of skills from the long-term unemployed (those out of work for longer than a year).

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<sup>9</sup> Kaufman Index of Entrepreneurial Activity

<sup>10</sup> Wadhwa, Vivek, et al. *America's New Immigrant Entrepreneurs, 2007*

## OREGON TRENDS

Trends in Oregon are likely to parallel national and international trends, with some exceptions. In this section, we examine trends in Oregon that we have previously discussed in the larger context, and consider some new factors as well, where national patterns are less relevant. This section draws explicitly from the Oregon Office of Economic Analysis' most recent economic forecast.<sup>11</sup>

**Continued Recovery:** Oregon continues to surge ahead of the nation as a whole in recovery from the most recent economic recession. In 2015 and 2016, the state added 5,000 jobs per month, for a growth rate of 3.5%. This rate of job growth is comparable to that observed in the 1990s, during the population boom observed in Oregon during those years, and outpaces the average U.S. state's rate of job growth by a percentage point. Wages have also started to rise, and while they are lower than the U.S. average on an absolute basis, they are growing at a faster rate. Unemployment, is slightly higher than 5% statewide, after falling lower in mid-2016. 5% unemployment is considered near full employment (meaning that unemployment is low, but there is still some slack due to turnover and new job growth). The share of the labor force that is underemployed (working less than they would like to) is also down to the pre-recession level. Strong in-migration since 2014 is expected to continue going forward, and while the greatest growth occurs in urban areas, most rural areas are experiencing growth as well, and net in-migration is expected to accelerate<sup>12</sup>.

**Housing:** Oregon should maintain its competitive advantage in housing and cost of living in relation to other west coast markets such as San Francisco and Seattle. While expectations were that housing investment and construction would provide a greater contribution to Oregon's emergence from the Great Recession, the housing market has been slow to recover. The sales of existing homes and new construction activity have almost returned to pre-recession levels, and while foreclosures and long-term delinquency rates remain somewhat elevated, they are thought to be trending downwards.

Even as the housing market recovers, new supply entering the market has not kept up with demand and housing affordability is becoming a larger risk to the outlook. Expectations are that new construction will continue to accelerate to match the increase in demand, alleviating the squeeze on supply and returning prices to the affordable range. Until that gap is bridged, it is expected that rent and home prices will continue to increase, hopefully without outstripping the rate of growth for household income.

After years of the Portland Metro region leading the country in annual price escalation, there is evidence that price growth has started to level off somewhat, but the trend is still upward.<sup>13</sup> Price escalation in Oregon's largest population centers will continue to encourage higher prices in suburban and exurban markets as well, as households and developers seek new housing opportunities.

**Shifting Industrial Composition:** Oregon has experienced a decades-long shift away from natural resource based industries toward more value-added manufacturing activities such as technology, machinery, equipment, and fabricated metals. This trend is expected to continue. Moreover, Oregon

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<sup>11</sup> Oregon Office of Economic Analysis, Oregon Economic and Revenue Forecasts (June 2016).

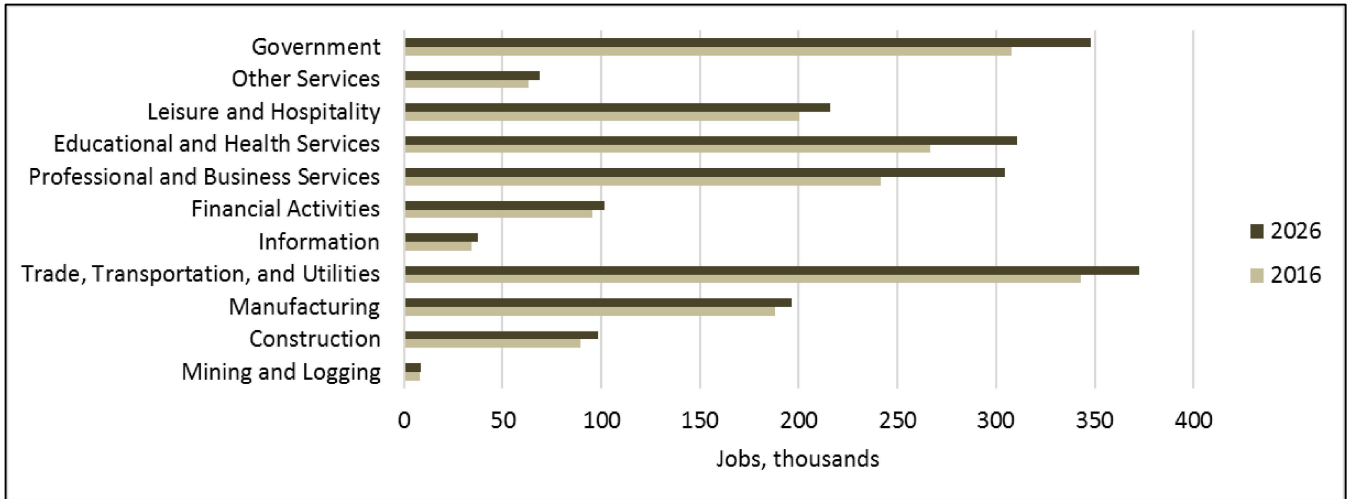
<sup>12</sup> Portland State Population Research Center, Summary of 2015 Estimates Findings (November 2015).

<sup>13</sup> Zillow.com, "Portland Home Prices and Values" (August 2016).



should continue to follow the national trend of growth in service-oriented industries outpacing goods production.

**FIGURE 2.3: 10-YEAR EMPLOYMENT FORECAST BY INDUSTRY SECTOR, STATE OF OREGON (2016-2026)**



SOURCE: Oregon Economic and Revenue Forecast September 2016, Oregon Office of Economic Analysis

**Green Technology:** Among the strategic opportunities Oregon faces is leading growth in green energy and technology. The initiative to increase energy efficiency, reduce carbon emissions, and develop alternative means of energy have resulted in increased investment across a range of industries. Oregon has a competitive advantage in many of these arenas, including biofuels, wind and wave energy, and solar energy. The extent to which these industries can achieve stabilized competitiveness through scale and/or technological advance will influence local opportunities. Additionally, the Oregon Clean Fuels initiative, which requires declining carbon intensity in transport fuel, has gone into effect as of January 2016, creating an effective subsidy for alternative fuel producers that could stimulate further production.

**Other Long-Term Advantages:** Oregon holds many other long-term competitive advantages on both a national and global scale, including but not limited to its relatively low electricity costs, strategic economic location on the Pacific Rim and proximity to Western Canada, and Asia, and to tech clusters in the Bay Area and Seattle. Relative to these markets, communities in Oregon boast clean water supplies, cost of living advantages, and lower space rents and labor costs.

**Economic Risks**

The economic outlook for Oregon is not without risks, particularly over the long-term planning period. Those risks recently identified by the June 2016 OEA forecast include:

**Federal Fiscal Policy**—While the budget cuts that took place at the federal level in 2013 continue to reverberate through the economy, Oregon has been less exposed to their impacts due to relatively low federal funding. However, Oregon does employ a higher-than-average number of federal workers, and thus is impacted by spending reductions nonetheless. However like other states, Oregon may benefit from fiscal stimulus policies and programs in the future, such as federal infrastructure spending.

**Wage Legislation**—Oregon’s recent minimum wage increase, while not anticipated to result in a loss of jobs, will slow employment growth going forwards, until the economy adjusts. In general, labor costs are now increasing as unemployment has fallen, particularly in in-demand industries such as construction and technology. Labor costs are generally one of the largest cost centers for any industry.

**Housing Market Recovery**—Oregon’s construction industry is slowly rebounding, with the rate of new starts increasing in response to excess demand. Foreclosures appear to be on the decline, and construction activity is anticipated to continue to rise into 2017.

**Commodity Prices**—Commodity prices, which recently been relatively high in comparison with historical levels, have started to decrease. However, it is normal for inflation to occur during expansions, so it is uncertain whether they will continue to do so. While energy prices fell quickly in recent years with the advent of fracking and other lower-cost energy sources, this trend is now leveling off and energy prices should also be subject to inflation in the growing economy. While Oregon does enjoy low energy prices, most goods and industry inputs are not produced locally.

**Global Debt and Instability**—While domestic credit markets are easing, problems in the Eurozone and China persist, with a remaining threat of financial market contagion. There are also significant areas of political instability and conflict in the Middle East and Eastern Europe, with uncertainty on what role the United States will play due to the transition of Presidential administrations.

## LOCAL TRENDS

Local economic growth over the planning period will be, in part, functionally representative of demographic and economic trends observed locally and in the region. A review of these conditions above provided a useful context for establishing a baseline expectation of future growth in Molalla. In this section we consider local demographic and workforce conditions, recent business activity, and the overall performance of the economy in recent years.

### Population Growth

From 2000 to 2010, Molalla’s population grew at an average rate of 3.7% per year, adding 2,461 residents in total. Compared to state and county growth, which averaged slightly higher than 1% over the described time period, Molalla’s growth is pronounced. Interim US Census estimates predict growth in Molalla of approximately 2.1% per year up to 2015, slightly higher than the 1.4% growth predicted for the county, which itself is higher than the 1.0% growth predicted for the state as a whole.

This more rapid rate of growth can potentially be attributed to Molalla’s proximity to the Portland metropolitan hub, coupled with lower housing costs. This theory is strengthened by local commuting patterns: an estimated 89% of Molalla’s working residents commute out of the city. This net outflow indicates that neighboring job markets are a strong driver of population growth, and as the local job market continues to tighten towards full employment, it can be reasonably expected that population growth will level off going forward, as Census estimates predict.

**FIGURE 2.4: RECENT POPULATION GROWTH TRENDS: OREGON, CLACKAMAS COUNTY, AND MOLALLA**

	Census		2000-2010		Est. 2015	2010-2015	
	2000	2010	Growth	AAGR		Growth	AAGR
Oregon	3,421,436	3,831,074	409,638	1.14%	4,013,845	182,771	0.94%
Clackamas County	338,391	375,992	37,601	1.06%	397,385	21,393	1.11%
<b>Molalla</b>	<b>5,647</b>	<b>8,108</b>	<b>2,461</b>	<b>3.68%</b>	<b>8,940</b>	<b>832</b>	<b>1.97%</b>

SOURCE: Portland State Population Research Center

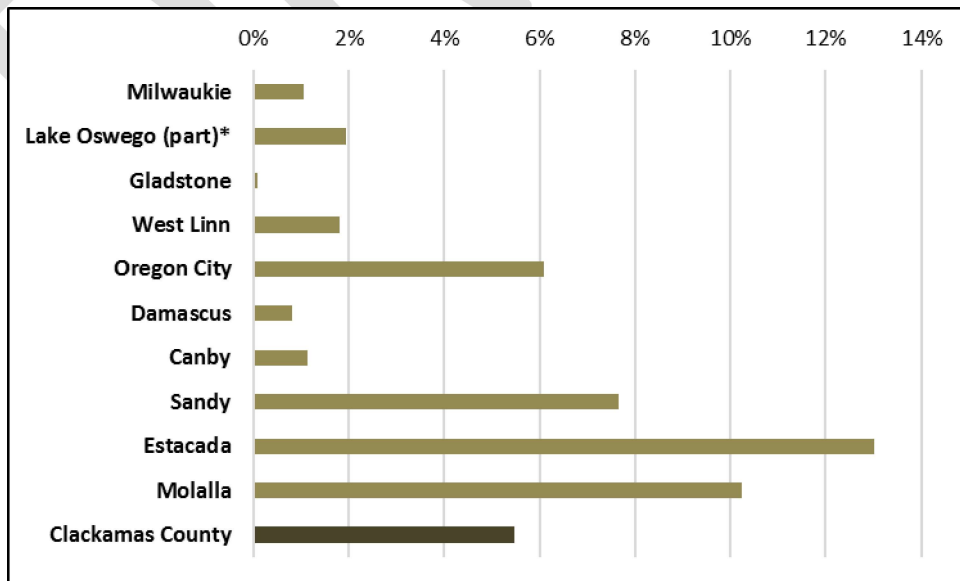
**Migration**

As mentioned above, in-migration rates in Oregon have been rising, and are expected to accelerate in coming years. This can be expected to occur in Clackamas County as well, where rates have been similarly accelerating. It is reasonable to assume that, as housing demand in densely populated areas increases more rapidly than supply, rents will continue to increase, and more new residents will choose housing in markets where prices are lower. This might be the reason why Molalla’s population growth rate exceeds that at the state and county level in recent years, especially given the number of residents who work outside of the city’s bounds.

Figure 2.5 below illustrates growth in Clackamas County over the time period 2010-2015. Cities are roughly ordered by proximity to the urban core, with those closest-in at the top. Comparing the rates of growth for Milwaukie and Oregon City with those observed in areas further from the core, such as Sandy, Estacada and Molalla, it appears that more rural areas are experiencing higher rates of growth.

Happy Valley and Wilsonville, which saw high growth of 24% and 17% respectively, were not included in this chart for presentation purposes. Both have experienced a surge in available housing over the decade which has contributed to this high growth. Areas within the Portland Metro UGB will continue to see most growth as long as buildable land is available. As land becomes more constrained, and home prices rise, more demand will be displaced to smaller communities outside of the Metro UGB.

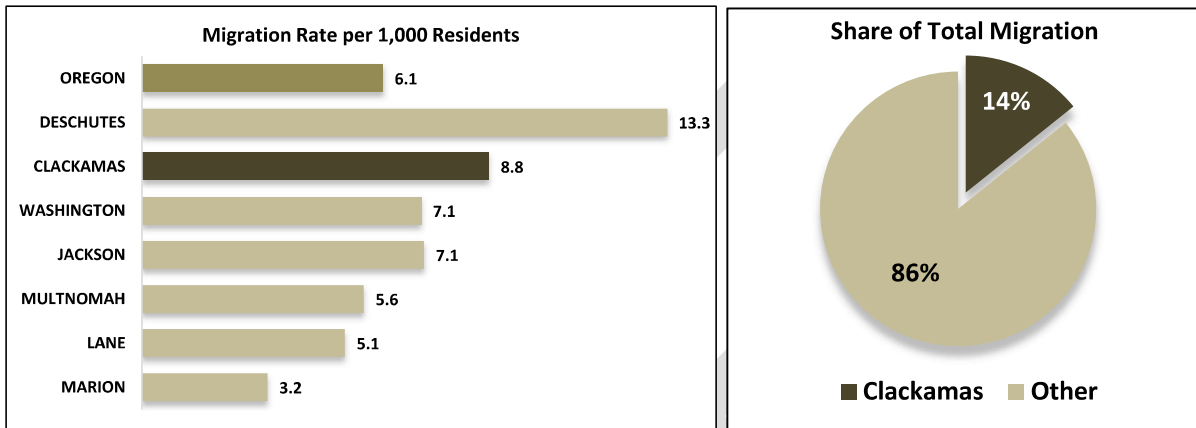
**FIGURE 2.5: POPULATION GROWTH RATE 2010-2015**



SOURCE: Portland State Population Research Center

In terms of net migration, Clackamas County stands out both in terms of total net migrants in to the county and migration rate per one thousand residents. Figure 2.6 shows the eight Oregon counties with the highest total net migration values, ranked by migration rate per one thousand residents (with Oregon’s average net migration rate for comparison). Net migration to Clackamas County constitutes 14% of overall net migration to the state.

**FIGURE 2.6: Clackamas COUNTY NET MIGRATION**

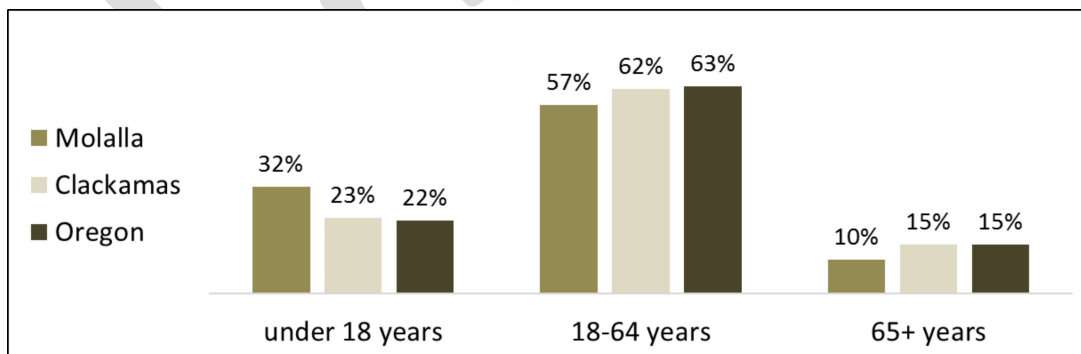


SOURCE: Portland State Population Research Center Annual Report (2015)

### Population Distribution

Molalla’s population is generally heavier in its concentration of under-18 residents than both the state and county averages, and slightly lighter in its working-age and retirement-age cohorts. Interestingly, this too could be related to the lower cost of housing: in an analysis of 2012 American Community Survey data, Forbes demographer Wendell Cox finds that the areas with the highest proportion of child residents (defined as under 14) are those with median home price to income ratios of approximately 3 to 4. This result stands independent of economic growth, indicating that home price is a highly determinant factor to heads of household when choosing where to live, particularly to raise a family.

**FIGURE 2.7: BROAD COHORT DISTRIBUTION, MOLALLA VS. Clackamas COUNTY AND OREGON**

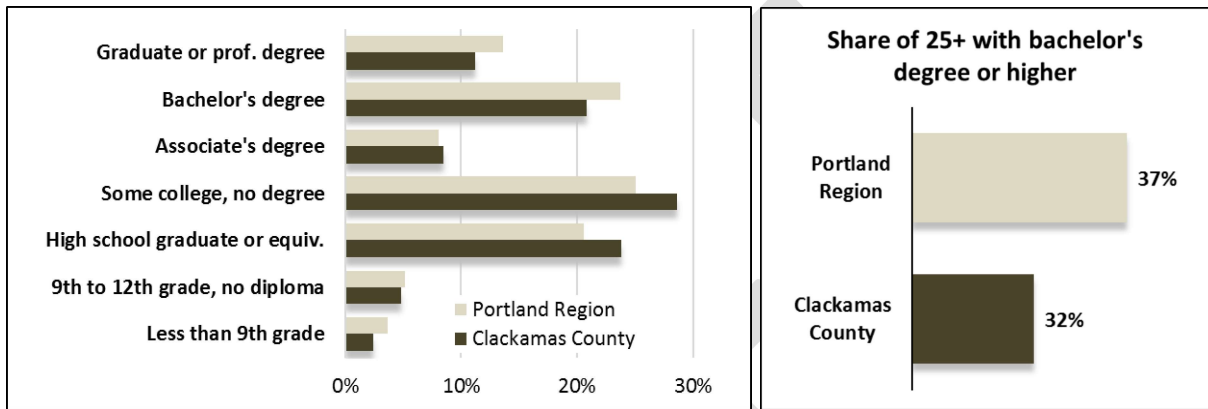


SOURCE: US Census American Community Survey (2014)

**Education**

Education is a measure of the collective skills and knowledge of a populace. In theory, populations with greater skills and knowledge should translate into a heightened capacity for innovation. Moreover, the ability of firms to find adequately trained labor is an important factor to economic and productivity growth. Clackamas County exhibits below-average rates of educational attainment, with 32% of the working age population holding at least a bachelors’ degree or higher, five percent lower than the Portland region average. (Census data on education levels in Molalla itself feature a prohibitively high margin of error.)

**FIGURE 2.8: EDUCATIONAL ATTAINMENT, Clackamas County vs. PORTLAND REGION**



SOURCE: US Census American Community Survey (2014)

**Commute Trends**

An important characteristic of the labor force is the extent to which workers are residing locally or commuting from other areas. Rates of “labor force capture” indicate if the community is an importer or exporter of labor. According to the US Census Bureau’s Employment Dynamics service, about 89% of employed Molalla residents commute elsewhere in the region for their jobs, meaning that around 11% of Molalla residents are employed within the city itself. Conversely, about 78% of Molalla’s employees live somewhere else and commute to Molalla for work, meaning that about 22% of the city’s total jobs are filled by residents. (Most recent available data is from 2014.)

**FIGURE 2.9: COMMUTE TYPE, MOLALLA (2014)**

	Count	Share
Employed in Molalla	1895	100.0%
Employed in Molalla, Living Outside	1494	78.8%
Employed and Living in Molalla	401	21.2%
Living in Molalla	3694	100.0%
Living in Molalla, Working Outside	3293	89.1%
Living and Employed in Molalla	401	10.9%

SOURCE: US Census Employment Dynamics (2014)

Figure 2.10 illustrates the basic commuting relationship in Molalla, with most people commuting out of, or in to the city for employment. This pattern is fairly common in many communities, particularly in the Willamette Valley where other employment centers are generally available within a reasonable driving

commute distance. Of those who commute from Molalla, the greatest share commute to Portland or another city in the Portland Metro area. Other common destinations are Canby and Salem.

**FIGURE 2.10: COMMUTE PATTERN, MOLALLA (2014)**

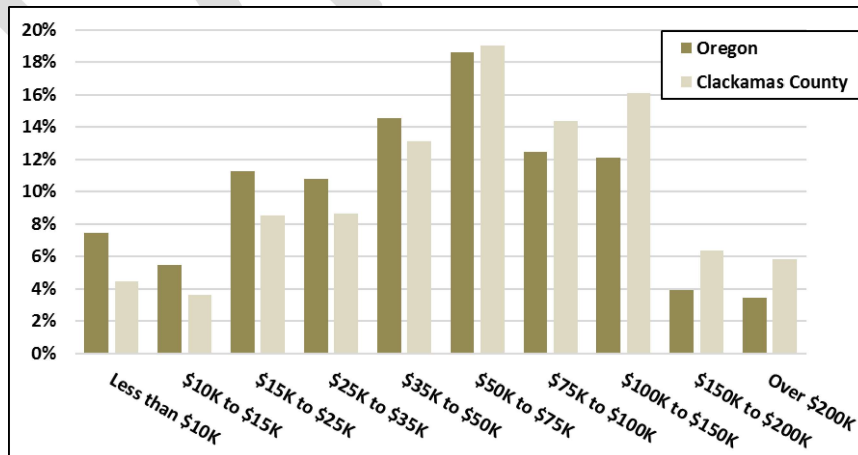


SOURCE: US Census Employment Dynamics (2014)

**Income**

On net, Clackamas County is more affluent than the state average, with a median household income of \$64,700 compared to \$50,521 for Oregon.

**FIGURE 2.11: DISTRIBUTION OF HOUSEHOLDS BY INCOME, Clackamas County AND OREGON**



SOURCE: US Census American Community Survey (2014)

Considering the household distribution among income groups, as in Figure 2.11, it is clear that Clackamas County's difference from the state distribution is due to a shift upwards: fewer households earn less than the state median, and more households exceed that value. While the Census margins of error for the precise distribution within Molalla are too high to allow reasonable use, the median household income is \$52,193, above the state average, indicating that the city is likely somewhat more affluent than the state, if not quite as relatively wealthy as the county.

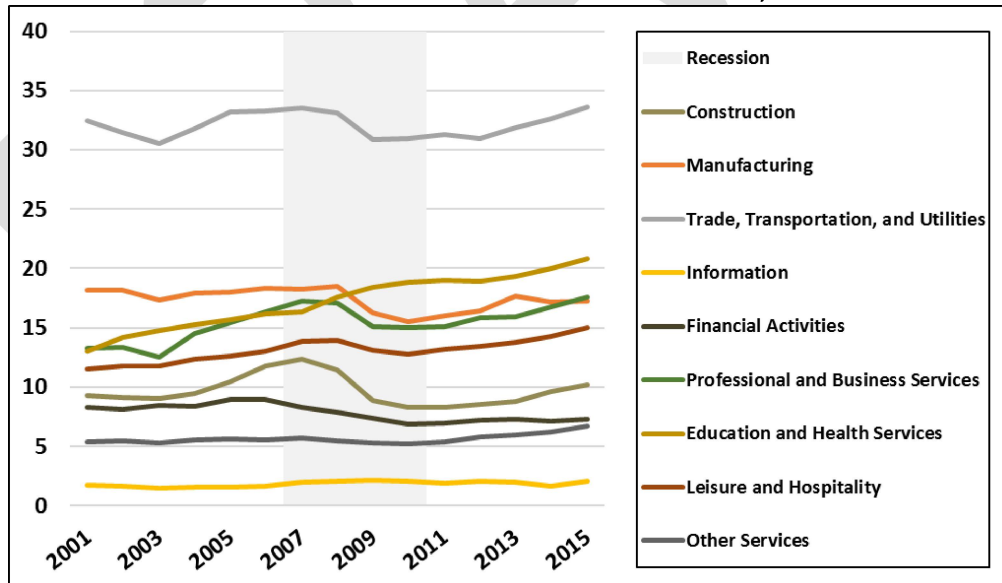
Molalla also maintains a relative wage advantage over state averages, by a margin of roughly 33%. Since the trough of the recession wages in Molalla have increased at an annual rate of 3.0%, consistent with gains statewide. With overall inflation averaging 2.0% during this period, this translates into average annual real wage growth of 1.0%.

**Employment by Industry**

With most metro areas experiencing the inflection point coming out of the recent recession and entering a slow but steady recovery, we evaluate Molalla's recovery and which industries are driving local economic expansion as an indicator of local economic strengths and early growth prospects.

Figure 2.12 shows total employment in Clackamas County by NAICS industry sector before, during, and after the 2007-2010 recession. All sectors, with the exception of Education and Health Services and Information, lost jobs during that period, with Construction, Manufacturing, and Trade, Transportation and Utilities declining more than average. However, five years later, even the most-damaged sectors are nearing or exceeding pre-recession employment levels.

**FIGURE 2.12: Clackamas COUNTY INDUSTRY SECTOR PERFORMANCE, THOUSANDS OF JOBS**



SOURCE: Bureau of Labor Statistics

**FIGURE 2.13: Clackamas COUNTY NET EMPLOYMENT CHANGE, RECESSION AND RECOVERY**

	2007-2010	2010-2015
Construction	-4,091	1,877
Manufacturing	-2,662	1,683
Trade, Transportation, and Utilities	-2,640	2,680
Information	108	-19
Financial Activities	-1,404	385
Professional and Business Services	-2,249	2,510
Education and Health Services	2,421	2,045
Leisure and Hospitality	-1,108	2,235
Other Services	-508	1,506
<b>Total</b>	<b>-12,133</b>	<b>14,902</b>

SOURCE: Bureau of Labor Statistics

Figure 2.13 describes the number of jobs lost and gained by sector in the recession and recovery. As the table shows, the total number of jobs lost has been regained since 2010, but the make of jobs by sector is changing as employment returns. For instance, the construction industry has only regained less than half of the jobs lost during the recession. Similarly, manufacturing has only recovered roughly two thirds of the lost jobs, and the financial sector just a quarter.

The greatest net job gains have come from the leisure and hospitality sector, which includes tourism activity, and “other services” which includes religious and advocacy employment, and a variety of personal care, cleaning and repair services, among others. Education and health services added jobs during both of the periods for a total of nearly 4,500 new jobs since the recession started.



### III. LOCAL INDUSTRY ANALYSIS

This report section utilizes a range of analytical tools to assess the economic landscape in Molalla toward the determination of industry categories most prominent in the City, most likely to grow or locate there going forward, or most attractive as new target industries.

#### INDUSTRY CLUSTERS

Sound regional economies are best organized around a healthy set of industry clusters—similar and related businesses and industries that are mutually supportive, regionally competitive, attract capital investment, and encourage entrepreneurship. Generally, clusters develop as an agglomeration of businesses in a geography that holds an innate competitive advantage in that industry—whether it is due to local natural resources, human capital, political policies, or geography. For example, Oregon’s oldest industries—namely forestry and agriculture, emerged from physical and environmental attributes such as its climate, trees, soils, and access to shipping and distribution networks. In turn, these industries spawned interrelated clusters that include Food Processing & Manufacturing, Wood Product Manufacturing, Wholesaling & Distribution, Machinery Manufacturing, and host of other industries.

In many local economies, we find also that a large firm or group of firms can often anchor a local industry cluster. Clustering can include the vertical integration of supply chains, distribution, wholesaling, or even competitively unrelated industries that share common inputs such as materials and trained labor. Clusters can organize around natural resources, training institutions, a particular firm or group of firms, among many other factors.

#### STUDY AREA DEFINED

For the purposes of this study, the City of Molalla and its UGB are considered the geographical study area in which employment growth is projected. Molalla is located in the central west section of Clackamas County, multiple miles from the nearest smaller towns. While the city has self-contained city limits and Urban Growth Boundary, economics do not typically conform to jurisdictional lines. The city also functions at the center of services and employment for the surrounding unincorporated area, and the business activities and market area of some employers within the city boundaries also extend beyond the study area.

#### QUARTERLY CENSUS OF EMPLOYMENT AND WAGES (QCEW) DATA

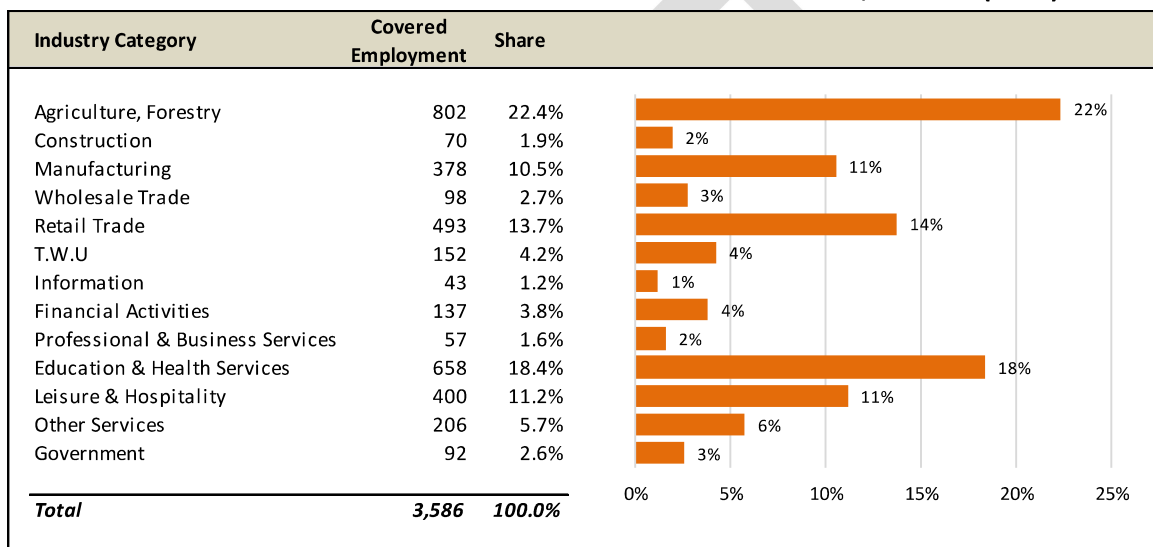
Our evaluation of Molalla industry clusters is constructed primarily from empirical QCEW data from the Oregon Employment Department. This data set provides covered employment and payroll data for Molalla firms. The term “covered” refers to employees that are covered by unemployment insurance. Therefore, it does not consider the self-employed and commissioned workers. This data is mapped at the firm level and provides information on the number of employees, payroll, and industrial sector (NAICS) of each firm.

The use of this dataset has some limitations, the most pronounced of which is the occasional misclassification of firms by industry. This is particularly problematic for large firms with multiple reporting units, who often misclassify spatially or within a particular industry classification. Other potential limitations include improperly geocoded data and misclassification in NAICS categories. These impacts generally affect

a small sample of firms in a community the size of Molalla. Where possible, we augmented the data based on known factors about local businesses and their operations.

Figure 3.1 shows the current estimated breakdown of employment in Molalla by industrial category. This analysis relied on geocoded covered employment data from the Oregon Employment Department. As noted, the term "covered employment" refers to firms where employees are covered under unemployment insurance. Jobs that are not covered include the self-employed. In order to estimate the amount of non-covered employment in the study area, data on the rate of self-proprietorship by industry sector for Clackamas County, was applied to the distribution of covered employment in Molalla. This derives an estimate of total current employment in the study area.

**FIGURE 3.1: ESTIMATED TOTAL EMPLOYMENT BY INDUSTRIAL CATEGORY, MOLALLA (2016)**



SOURCE: Oregon Employment Department

As Figure 3.1 shows, employment related to forestry and agriculture is heavily represented in Molalla. Education, health care, manufacturing and retail are also heavily represented.

A basic location quotient analysis was prepared for the City, which compares the mixture of employment by industrial sector, with the mixture of employment at the national and state levels. This type of analysis can identify industries with a disproportionate representation in the local economy, or an area where the economy has competitive advantages. As a result, these are typically a primary target of economic development efforts.

As shown in the following table, the analysis indicates that Molalla has a high concentration of employment in the Agriculture and Forestry sector, where the share of local employment is 12 times the national share, and 7 times the state share. Molalla also has a higher, but more modest representation of employment in Transportation, Warehousing and Utilities, Other Services, Education and Health, and Retail Trade.

**FIGURE 3.2: NATIONAL AND STATE LOCATION QUOTIENT  
BY INDUSTRIAL CATEGORY, MOLALLA (2016)**

<u>Industry Sector</u>	<u>Molalla</u>	<u>US</u>	<u>Oregon</u>	<u>Molalla</u>	<u>Nation</u>	<u>LQ (Nation)</u>	<u>Oregon</u>	<u>LQ (State)</u>
Agriculture, Forestry	796	2,554,380	55,329	22%	2%	12.2	3%	7.2
T.W.U	151	4,598,233	51,880	4%	3%	1.3	3%	1.5
Other Services	205	4,306,413	72,931	6%	3%	1.9	4%	1.4
Education & Health Services	654	21,078,627	251,322	18%	15%	1.2	14%	1.3
Retail Trade	489	15,639,034	201,998	14%	11%	1.2	11%	1.2
Leisure & Hospitality	397	15,094,372	191,142	11%	11%	1.0	11%	1.0
Manufacturing	375	12,290,293	185,399	11%	9%	1.2	10%	1.0
Financial Activities	136	7,827,069	81,020	4%	6%	0.7	5%	0.8
Wholesale Trade	97	5,875,265	73,689	3%	4%	0.6	4%	0.7
Information	43	2,753,845	33,056	1%	2%	0.6	2%	0.6
Construction	69	6,420,928	82,410	2%	5%	0.4	5%	0.4
Government	91	21,449,176	278,711	3%	15%	0.2	16%	0.2
Professional & Bus. Services	57	19,600,558	227,989	2%	14%	0.1	13%	0.1
<b>TOTAL:</b>	<b>3,561</b>	<b>139,488,193</b>	<b>1,786,876</b>	<b>100%</b>	<b>100%</b>	<b>1.0</b>	<b>100%</b>	<b>1.0</b>

T.W.U. = Transportation, Warehousing and Utilities

SOURCE: Bureau of Labor Statistics, JOHNSON ECONOMICS

DRAFT

## IV. FORECAST OF EMPLOYMENT AND LAND NEED

### CITY OF MOLALLA EMPLOYMENT FORECAST (20-YEAR)

Building upon our previous assessment of economic trends and conditions, and identification of economic opportunities and industry clusters, an employment forecast was generated over the planning period (2016-2036).

The following is an overview of the methodology used to determine current employment and forecasted job growth, as presented in Figure 4.1.

**Baseline Employment Profile:** As discussed in the previous section, the 2016 employment profile is based on the Quarterly Census of Employment and Wages (QCEW) data for the city itself. This data set provides covered employment and payroll data for Molalla firms. The term “covered” refers to employees that are covered by unemployment insurance. Therefore, it does not consider the self-employed and commissioned workers. In order to estimate the amount of non-covered employment in the study area, the rate of self-proprietorship by industry sector for Clackamas County, was applied to the distribution of covered employment in Molalla (source: BEA). This derives an estimate of total current employment in the study area.

**Overall Employment Growth Rate:** The overall employment growth rate used in this forecast is derived from the most recent adopted growth rate forecast over the forecast period (2.4% annually). This growth rate is from the Metro “Gamma” Forecast of employment and household growth in Clackamas, Multnomah, and Washington Counties and smaller cities within them. These forecasts included cities which are located in these counties, but outside of these the Metro regional UGB, including Molalla.

(The Metro forecast is reviewed at the county and local level with opportunity to dispute the findings. The Metro Gamma Forecast was used as the basis for the “Clackamas County Rural Cities Population Coordination Background Report and Forecasts”, adopted in 2013. This report adopted revised estimates of households and population which are higher than those found in the Metro’s Gamma Forecast, but does not revise the employment estimates from the Gamma Forecast.)

**Industry Sector Growth Rate:** While the overall growth rate is derived from the Metro forecast (2.4% AAGR), the breakdown of that new employment among sectors will depend on the relative advantages and challenges for different industries in this locale. The Oregon Employment Department prepares a ten-year forecast of employment growth by industry sector by sub-region (latest data from 2014-2024). This analysis applies the forecasted growth rate for each industry sector at the county level to employment in Molalla, while ensuring that the *overall* job growth rate matches the Metro Gamma Forecast.

Figure 4.1 presents the 20-year employment forecast in the City of Molalla.

**FIGURE 4.1: EMPLOYMENT GROWTH FORECAST (20 YEAR)  
BY INDUSTRIAL SECTOR, CITY OF MOLALLA**

Baseline Growth Scenario Employment Sector	Base Year	Total Employment by Year				Change	Growth Rate
	2016	2021	2026	2031	2036	2016 - 2036	AAGR
Agriculture, Forestry	802	926	1,070	1,237	1,429	627	2.9%
Construction	70	83	98	117	139	70	3.5%
Manufacturing	378	416	457	503	554	175	1.9%
Wholesale Trade	98	107	118	130	143	46	1.9%
Retail Trade	493	549	611	681	759	266	2.2%
T.W.U	152	169	187	208	230	78	2.1%
Information	43	47	51	56	61	18	1.8%
Financial Activities	137	154	172	192	215	78	2.3%
Professional & Business Services	57	66	77	89	103	46	3.0%
Education & Health Services	658	743	839	948	1,070	412	2.5%
Leisure & Hospitality	400	451	509	574	647	247	2.4%
Other Services	206	229	254	282	314	108	2.1%
Government	92	100	109	118	129	37	1.7%
<b>Total</b>	<b>3,586</b>	<b>4,041</b>	<b>4,554</b>	<b>5,135</b>	<b>5,793</b>	<b>2,207</b>	<b>2.4%</b>

SOURCE: Oregon Employment Department, Metro Gamma Forecast, US Bureau of Economic Analysis, JOHNSON ECONOMICS

**Forecast Results**

The forecast projects growth across sectors but with the greatest job growth in some of the sectors which are currently strongest in Molalla. These include agriculture and forestry, retail trade, education and health services, and leisure and hospitality. Construction and professional services are expected to have the highest annual growth rates, but are growing from a relatively low current baseline.

The UGR’s breakout of growth by subarea shifts allocations by Transportation Analysis Zone (TAZ) based on capacity. As the Molalla area’s employment land is largely developed, this approach will tend to redistribute marginal growth to areas with more readily available capacity.

**EMPLOYMENT LAND FORECAST (20-YEAR)**

The next analytical step in our analysis is to convert projections of employment into forecasts of land demand over the planning period. The generally accepted methodology for this conversion begins by allocating employment by sector into a distribution of appropriate building typologies. For instance, insurance agents typically locate in traditional office space, usually along commercial corridors. However, a percentage of these firms locate in commercial retail space adjacent to retail anchors. Cross-tabulating this distribution provides an estimate of employment in each building type and land use category.

The next step converts employment into space using estimates of the typical square footage exhibited within each typology. Adjusting for market clearing vacancy we arrive at an estimate of total space demand for each building type.

Finally, we can consider the physical characteristics of individual building types and the amount of land they typically require for development. The site utilization metric commonly used is referred to as a “floor area ratio” or F.A.R. For example, assume a 25,000 square foot general industrial building requires roughly two

acre to accommodate its structure, setbacks, parking, and necessary yard/storage space. This building would have an F.A.R. of roughly 0.29.

**FIGURE 4.2: EMPLOYMENT FORECAST TO LAND DEMAND METHODOLOGY**

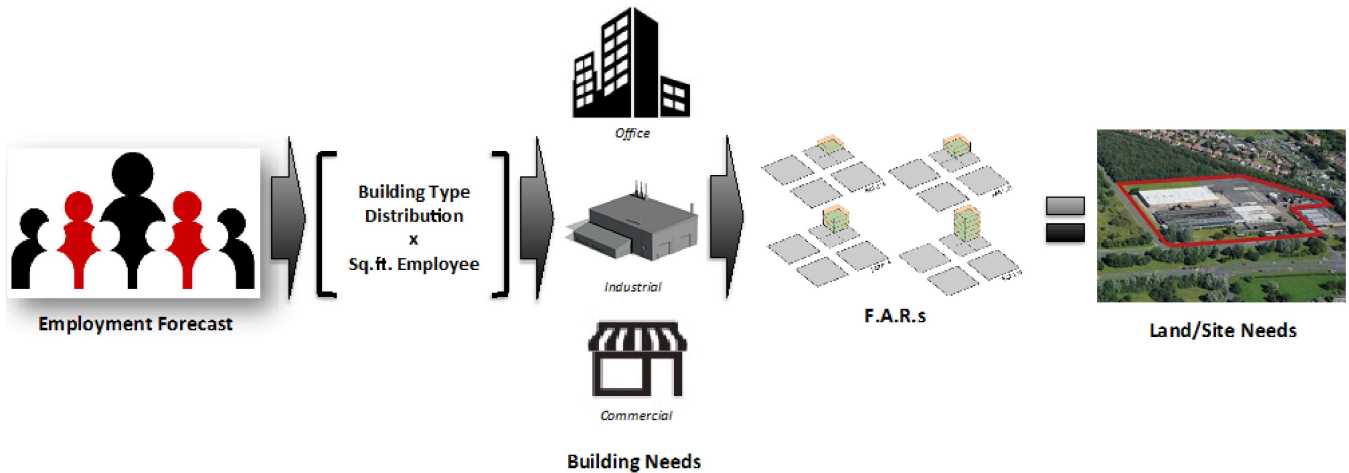


Figure 4.3 shows the estimated share of employment in each industry sector which takes place in each of six real estate typologies. Estimated usage shares are derived from the Metro Urban Growth Report methodology.

- Traditional Office (commercial)
- Institutional (commercial)
- Flex/Business Park (industrial)
- General Industrial (industrial)
- Warehouse (industrial)
- Retail (commercial)

**FIGURE 4.3: ESTIMATED SHARE OF EMPLOYMENT BY BUILDING TYPOLOGY**

Industry	Share of Employment by Real Estate Typology					
	Office	Institutional	Flex/BP	Gen. Ind.	Warehouse	Retail
	300 sf/emp	600 sf/emp	990 sf/emp	600 sf/emp	1,850 sf/emp	500 sf/emp
Agriculture, Forestry	5%	0%	0%	0%	95%	0%
Construction	14%	0%	18%	40%	18%	10%
Manufacturing	8%	0%	24%	60%	8%	0%
Wholesale Trade	8%	0%	22%	20%	40%	10%
Retail	5%	1%	6%	0%	12%	76%
T.W.U.	15%	0%	12%	13%	55%	5%
Information	40%	0%	20%	30%	0%	10%
Financial Activities	72%	1%	5%	1%	1%	20%
Prof. & Business Services	72%	1%	5%	1%	1%	20%
Education & Health Services	30%	53%	2%	0%	0%	15%
Leisure & Hospitality	20%	1%	7%	1%	1%	70%
Other Services	72%	1%	5%	1%	1%	20%
Government	43%	35%	5%	1%	1%	15%
<b>TOTAL</b>	<b>21%</b>	<b>11%</b>	<b>7%</b>	<b>9%</b>	<b>28%</b>	<b>24%</b>

SOURCE: Metro, JOHNSON ECONOMICS

Figure 4.4 shows the 20-year employment forecast translated into real estate space demand, and then into land demand in acres. The difference between the estimated current employment land need and estimated 2036 land need provides an estimate of additional commercial and industrial acreage needed over the planning period.

**FIGURE 4.4: FORECAST OF EMPLOYMENT SPACE AND LAND NEED, (20 YEAR)**

Real Estate Typology	2016		2036		Typical Floor Area Ratio	Estimated Acreage Need		
	Estimated Employment	Est. Space Sq. Ft.	Estimated Employment	Est. Space Sq. Ft.		2016	2036	20-Year New Need
	Office	758	250,200	1,204		397,400	0.35	16.4
Institutional	394	236,400	632	379,500	0.35	15.5	24.9	9.4
Flex/BP	247	269,000	380	413,300	0.35	17.6	27.1	9.5
Gen. Industrial	316	199,000	479	301,700	0.25	18.3	27.7	9.4
Warehouse	995	1,933,000	1,716	3,333,200	0.35	126.8	218.6	91.8
Retail	876	481,800	1,382	759,800	0.25	44.2	69.8	25.5
<b>Total:</b>	<b>3,586</b>	<b>3,369,400</b>	<b>5,793</b>	<b>5,584,900</b>		<b>238.9</b>	<b>394.2</b>	<b>155.3</b>
						<b>Commercial Acres:</b>	<b>54.0</b>	
						<b>Industrial Acres:</b>	<b>101.3</b>	

SOURCE: Metro, JOHNSON ECONOMICS

Figure 4.4 shows a need for an estimated 54 additional commercial acres, and an estimated 101.3 additional industrial acres over 20 years. Some of this need will be accommodated on existing available employment land, while some may require additional employment land be added to the city by the end of the period.

**Additional Considerations of Land Demand**

Beyond a consideration of gross acreage, there is a significantly broader range of site characteristics that industries would require to accommodate future growth. We summarize some key findings here:

- Industrial buildings are generally more susceptible to slope constraints due to larger building footprints. For a site to be competitive for most industrial uses, a 5% slope is the maximum for development sites. Office and commercial uses are generally smaller and more vertical, allowing for slopes up to 15%.
- Most industries require some direct access to a major transportation route, particularly manufacturing and distribution industries that move goods throughout the region and beyond. A distance of 10 to 20 miles to a major interstate is generally acceptable for most manufacturing activities, but distribution activities require 5 miles or less and generally prefer a direct interstate linkage. Visibility is highly important to most commercial activities and site location along a major commercial arterial is commonly required.
- Railroad access is preferred for most manufacturing activities, with the exception of high-tech. Some users require direct on-site access while others generally make use of a local or regional hub.

- Access and capacity for water, power, gas, and sewer infrastructure is more important to industrial than commercial operations. Water/sewer lines of up to 10" are commonly required for large manufacturers. Appendix A details utility infrastructure requirements by typology.
- Fiber telecommunications networks are likely to be increasingly required in site selection criteria for many commercial office and manufacturing industries. Medical, high-tech, creative office, research & development, and most professional service industries will prefer or require strong fiber access in the coming business cycles.

### CITY OF MOLALLA EMPLOYMENT FORECAST (50-YEAR)

An employment forecast was also generated over a 50-year planning period from 2016 to 2066. This forecast matches the 20-year forecast through 2036. Because it is very difficult to forecast economic and employment conditions over the long term, this forecast applies a more conservative estimate of employment growth beyond 2036. To this end, a more moderate growth rate (75% of the 20-year rate) was applied across industry sectors in the later decades.

Figure 4.5 presents the 50-year employment forecast in the City of Molalla, in 10-year increments.

**FIGURE 4.5: EMPLOYMENT GROWTH FORECAST (50 YEAR)  
BY INDUSTRIAL SECTOR, CITY OF MOLALLA**

Baseline Growth Scenario Employment Sector	Base Year	Total Employment by Year					Change 2016 - 2066	Growth Rate AAGR
	2016	2026	2036	2046	2056	2066		
Agriculture, Forestry	802	1,070	1,429	1,776	2,208	2,744	1,942	2.5%
Construction	70	98	139	181	234	304	235	3.0%
Manufacturing	378	457	554	639	737	851	473	1.6%
Wholesale Trade	98	118	143	166	191	221	123	1.6%
Retail Trade	493	611	759	892	1,049	1,234	741	1.9%
T.W.U	152	187	230	269	315	368	216	1.8%
Information	43	51	61	70	80	91	48	1.5%
Financial Activities	137	172	215	255	302	358	221	1.9%
Professional & Business Services	57	77	103	128	160	199	142	2.5%
Education & Health Services	658	839	1,070	1,284	1,542	1,851	1,192	2.1%
Leisure & Hospitality	400	509	647	775	929	1,113	712	2.1%
Other Services	206	254	314	367	430	504	298	1.8%
Government	92	109	129	146	166	188	96	1.4%
<b>Total</b>	<b>3,586</b>	<b>4,554</b>	<b>5,793</b>	<b>6,949</b>	<b>8,343</b>	<b>10,026</b>	<b>6,440</b>	<b>2.1%</b>

SOURCE: Oregon Employment Department, Metro Gamma Forecast, US Bureau of Economic Analysis, JOHNSON ECONOMICS

### EMPLOYMENT LAND FORECAST (50-YEAR)

Figure 4.6 shows the 50-year employment forecast translated into real estate space demand, and then into land demand in acres. This analysis used the same methodology as the 20-year forecast. The difference between the estimated current employment land need and estimated 2066 land need provides an estimate of additional commercial and industrial acreage needed over the planning period.



**FIGURE 4.6: FORECAST OF EMPLOYMENT SPACE AND LAND NEED (50 YEAR)**

Real Estate Typology	2016		2066		Typical Floor Area Ratio	Estimated Acreage Need		
	Estimated Employment	Est. Space Sq. Ft.	Estimated Employment	Est. Space Sq. Ft.		2016	2066	50-Year New Need
	Office	758	250,200	2,041		673,700	0.35	16.4
Institutional	394	236,400	1,081	648,400	0.35	15.5	42.5	27.0
Flex/BP	247	269,000	621	676,700	0.35	17.6	44.4	26.7
Gen. Industrial	316	199,000	775	488,300	0.25	18.3	44.8	26.6
Warehouse	995	1,933,000	3,192	6,200,900	0.35	126.8	406.7	279.9
Retail	876	481,800	2,315	1,273,200	0.25	44.2	116.9	72.7
<b>Total:</b>	<b>3,586</b>	<b>3,369,400</b>	<b>10,026</b>	<b>9,961,200</b>		<b>238.9</b>	<b>699.6</b>	<b>460.7</b>
						<b>Commercial Acres:</b>	<b>154.2</b>	
						<b>Industrial Acres:</b>	<b>306.5</b>	

SOURCE: Metro, JOHNSON ECONOMICS

Figure 4.6 shows a need for an estimated 154.2 additional commercial acres, and an estimated 306.5 additional industrial acres over 50 years. Some of this need will be accommodated on existing available employment land, while some may require additional employment land be added to the city by the end of the period.

The total estimate 50-year need *includes* the forecasted 20-year need (Figure 4.4). The 50-year need is roughly another 100 commercial acres *in addition to* the 20-year forecast, and another 200 industrial acres *in addition to* the 20-year forecast.

# V. BUILDABLE LAND INVENTORY

## INTRODUCTION & METHODOLOGY

The Buildable Lands Inventory (BLI) used in this analysis is based on tax lot-level data and Geographic Information Systems (GIS) mapping layers provided by Clackamas County and the Metro Regional Land Information System (RLIS). The data was provided in GIS-compatible format, providing information on land use, parcel size and other relevant data categories on the taxlot level. The latest and most up-to-date wetland survey was completed in 2001 by Pacific Habitat Services. This analysis uses GIS layers based on that survey to identify wetland and waterway constraints.

The tax account data was used to identify vacant and redevelopable parcels in Molalla and its UGB. The identified candidate parcels were then further screened in the field, and refined by JOHNSON ECONOMICS, based on the methodology described below.

In keeping with State requirements, the BLI includes an assessment of vacant buildable lands and redevelopable parcels. The BLI for employment land and residential land differ somewhat, as described below. This analysis applied the “safe harbor” assumptions allowed under state rules to determine the infill potential of developed parcels (OAR 660-024-0050).

The Buildable Lands Inventory relied on the following data sources:

- Clackamas County
- Metro
- Local Wetland Inventory
- Google Earth
- Site visits

### Identification of Vacant Parcels

JOHNSON ECONOMICS used the most recent available tax account data to identify which parcels were developed or undeveloped, and identify those existing uses. JOHNSON ECONOMICS applied the following steps to further refine the Build Lands Inventory:

- 1) Isolate the taxlots within the boundary of the City of Molalla and the Molalla UGB, and those within the applicable Commercial (C1, C2) or Industrial (M1, M2) land use designations in the City’s adopted Comprehensive Plan. *Note that some areas feature zoning which disagrees with the underlying Comp Plan designation. For this analysis, the underlying Comp Plan land use designation is used.*
- 2) The size of Molalla and the limits of the applicable Comp Plan designations within the city allowed for Google Earth surveying of all taxlots in these areas to identify developed, vacant and partially vacant parcels. All vacant, partially vacant, and parcels with poorly-defined status were visited for visual assessment and verification.
- 3) Using additional GIS data, as well as Google Earth surveying, and site visits, the vacant parcels were further refined to remove public lands such as parks and some infrastructure right-of-way. Irregular small parcels which cannot physically accommodate development were removed.
- 4) The remaining vacant parcels were characterized as either prospective commercial or industrial lands.

### **Identification of Redevelopable Parcels**

In order to identify those developed parcels which might accommodate additional development, JOHNSON ECONOMICS applied the so-called “safe harbor” provisions of the Oregon Administrative Rules, which provide smaller cities a systematic means to estimate the development capacity of larger parcels with a limited amount of existing development:

#### **OAR 660-024-0050**

#### **Land Inventory and Response to Deficiency**

- ...
- (3) As safe harbors when inventorying land to accommodate industrial and other employment needs, a local government may assume that a lot or parcel is vacant if it is:
    - (a) Equal to or larger than one-half acre, if the lot or parcel does not contain a permanent building; or
    - (b) Equal to or larger than five acres, if less than one-half acre of the lot or parcel is occupied by a permanent building.

Source: Oregon Administrative Rules, 660-024

Using GIS data, the above criteria were applied to the developed parcels in Molalla and the Molalla UGB in order to identify those developed parcels which are prospective candidates for infill development or redevelopment.

### **Identification of Environmental Constraints**

The Buildable Lands Inventory also included a screen of available lands based on environmental constraints. While this is a standard step in completing a BLI, it is especially important in Molalla, because there are significant floodway and wetland constraints on much of the low-lying land.

To this end, the preliminary inventory of buildable parcels identified through the steps outlined above, was further screened based on data on environmental constraints from the last identified local wetlands survey, completed by Pacific Habitat Services, Inc. Mapable GIS data of this survey was superimposed on top of the Molalla taxlot map to identify which parcels are impacted by creek, setbacks, and ponds and wetlands. Where environmental constraints hampered constraints on one portion of a parcel, but sufficient buildable land remained, the parcel was identified as partially buildable.

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The Buildable Lands Inventory of Employment Lands was prepared following the preceding steps by JOHNSON ECONOMICS LLC. The findings are presented below.

## EMPLOYMENT - BUILDABLE LANDS INVENTORY

The methodology as described above finds an existing buildable employment lands inventory as follows:

**FIGURE 5.1: SUMMARY OF EMPLOYMENT BUILDABLE LAND INVENTORY, MOLALLA**

### Commercial Land

<u>Parcel Type</u>	<u>Parcels</u>	<u>Gross Acres</u>	<u>Usable Acres</u>
Developed:	278	157.5	na
Vacant:	7	30.3	30.3
Part. Vac.:	1	9.6	4.5
Part Constrained:	0	0.0	0.0
Constrained:	1	0.9	0.0
<b>Total:</b>	<b>287</b>	<b>198.3</b>	<b>34.8</b>

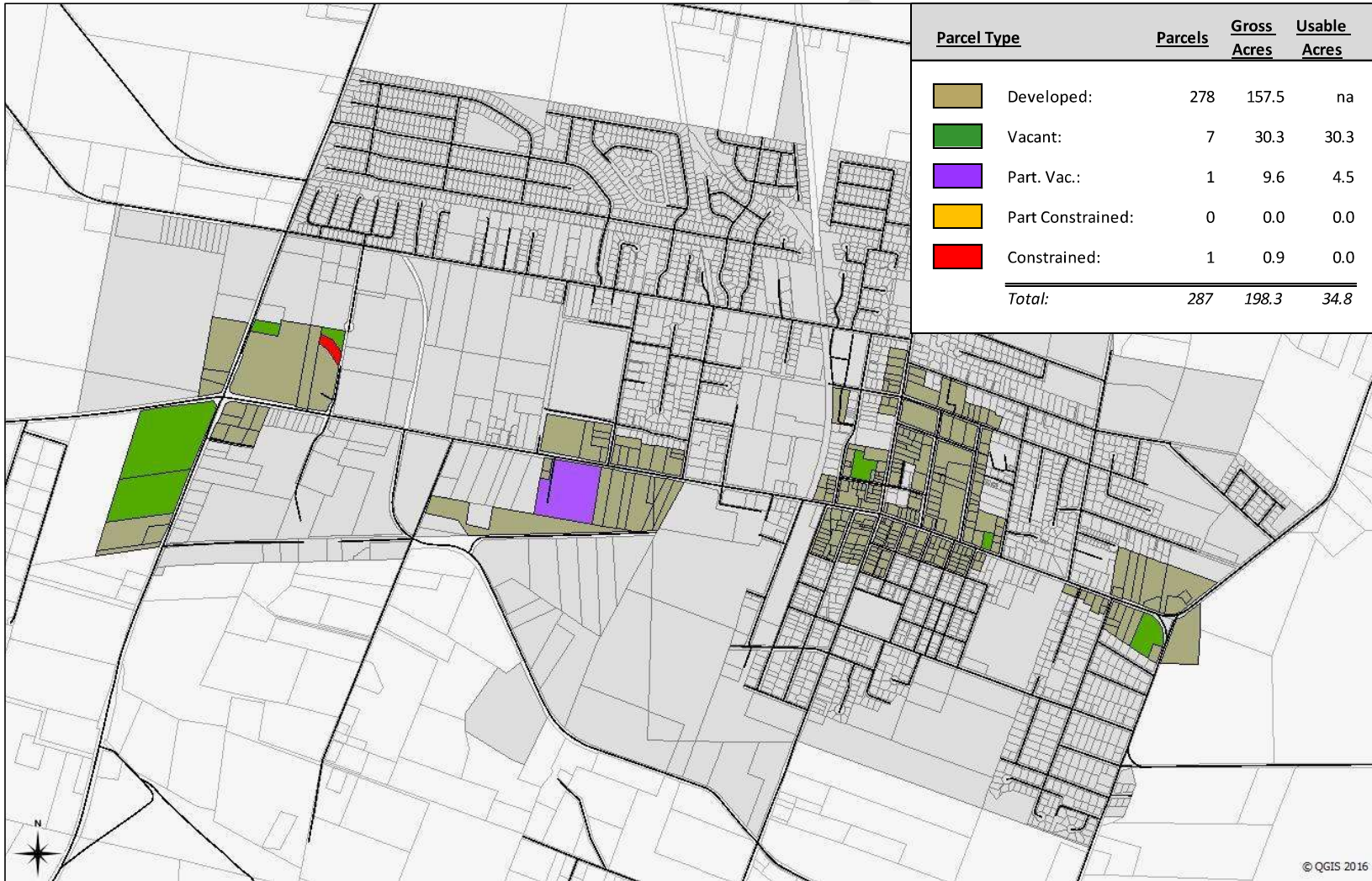
### Industrial Land

<u>Parcel Type</u>	<u>Parcels</u>	<u>Gross Acres</u>	<u>Usable Acres</u>
Developed:	202	284.2	na
Vacant:	11	39.5	39.5
Part. Vac.:	3	21.4	21.4
Part. Constrained:	7	76.7	41.0
Constrained:	13	55.8	0.0
<b>Total:</b>	<b>236</b>	<b>477.6</b>	<b>101.9</b>

Source: Metro, Clackamas County, JOHNSON ECONOMICS LLC

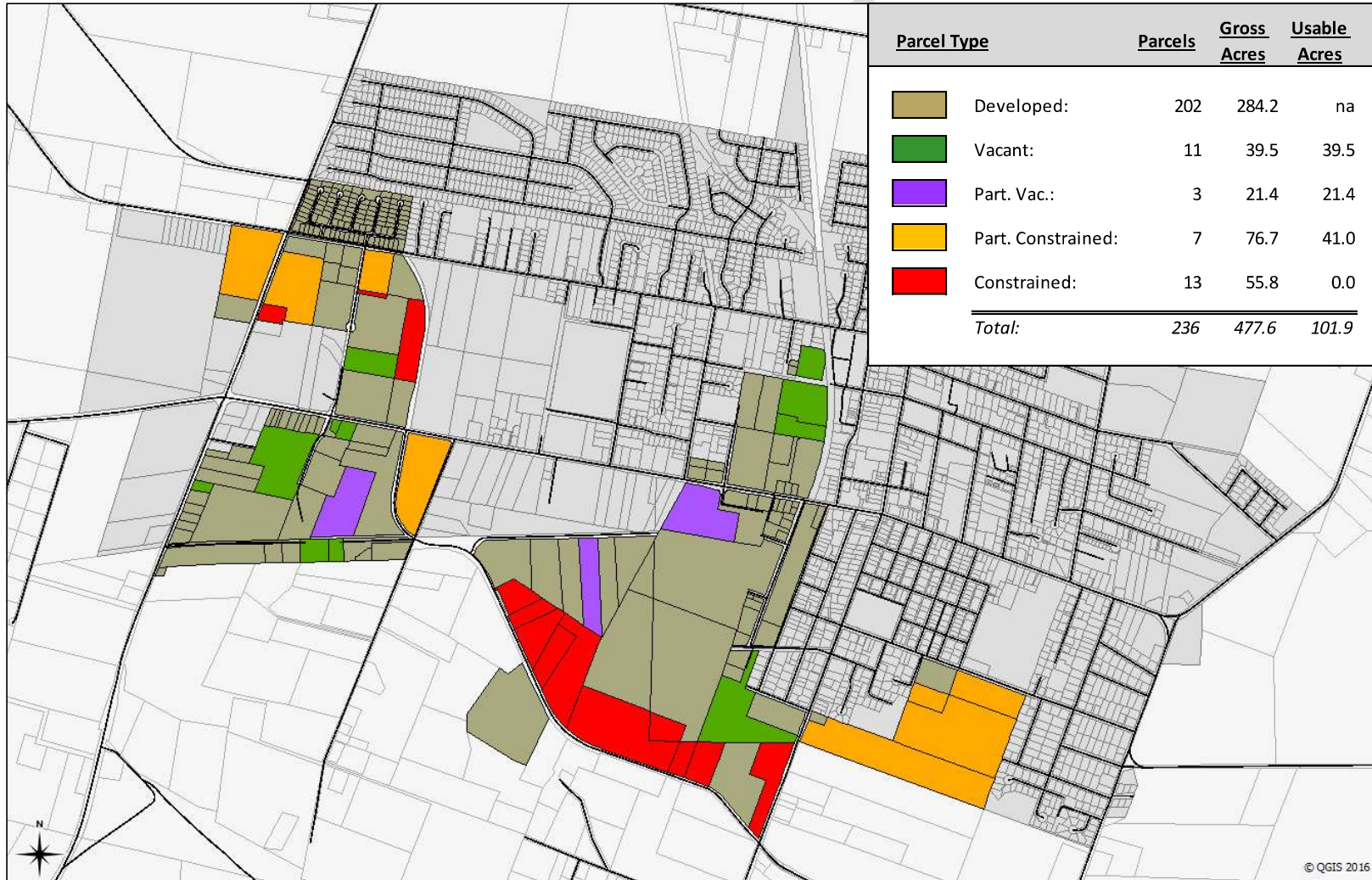
The following maps (Commercial and Industrial) show the identified parcels by category: development, vacant, constrained, or partial.

**FIGURE 5.2: EMPLOYMENT BUILDABLE LANDS INVENTORY, MOLALLA**  
**COMMERCIAL DESIGNATION: C1, C2**



Source: Metro, Clackamas County, JOHNSON ECONOMICS LLC

FIGURE 5.3: EMPLOYMENT BUILDABLE LANDS INVENTORY, MOLALLA  
 INDUSTRIAL DESIGNATION: M1, M2



Source: Metro, Clackamas County, JOHNSON ECONOMICS LLC

## VI. RECONCILIATION OF NEED AND CAPACITY

The last step of the analysis is to compare the long-term demand for industrial and commercial land from the land need forecast with the existing supply of industrial and commercial acreage as identified through the Buildable Lands Inventory (BLI). The purpose of the reconciliation is (1) to assess whether the City of Molalla has an adequate supply of suitable employment land to satisfy economic expansion demands over the next 20 years, and (2) to serve as a basis for determining Urban Growth Boundary (UGB) expansion or other policy measures to increase the available employment land supply, if necessary.

### 20-YEAR

The following table compares the findings of 20-year land need from Figure 4.4 and the buildable land inventory from Figure 5.1 in the preceding sections. Commercial land includes land for retail, office, institutional, and business park/flex space. Industrial land includes general heavy and light industrial and warehouse uses.

**FIGURE 6.1: RECONCILIATION OF 20-YEAR EMPLOYMENT LAND DEMAND AND BUILDABLE LAND INVENTORY, MOLALLA**

Employment Land Category	20-Year Demand (Acres)	Buildable Supply (Acres)	Surplus/Shortage (Acres)
Commercial land	54.03	34.85	-19.19
Industrial land	101.27	101.88	0.61
<b>Total:</b>	<b>155.30</b>	<b>136.72</b>	<b>-18.58</b>

Source: JOHNSON ECONOMICS LLC

- The City has a projected shortage of commercial land of 19.2 gross acres.
- The City currently has small projected surplus of industrial land available over the next 20 years.

With the assumptions of this analysis, Molalla has an overall forecasted shortage of 20-year employment land supply of 19.5 gross acres.

## 50-YEAR

The following table compares the findings of 50-year land need from Figure 4.6 and the buildable land inventory from Figure 5.1 in the preceding sections. Commercial land includes land for retail, office, institutional, and business park/flex space. Industrial land includes general heavy and light industrial and warehouse uses.

**FIGURE 6.2: RECONCILIATION OF 50-YEAR EMPLOYMENT LAND DEMAND AND BUILDABLE LAND INVENTORY, MOLALLA**

Employment Land Category	50-Year Demand (Acres)	Buildable Supply (Acres)	Surplus/Shortage (Acres)
Commercial land	154.21	34.85	-119.37
Industrial land	306.50	101.88	-204.62
<b>Total:</b>	<b>460.72</b>	<b>136.72</b>	<b>-323.99</b>

Source: JOHNSON ECONOMICS LLC

- Molalla currently faces an estimated shortage of 20-year land supply. As would be expected, the shortage over the 50-year time period becomes even more pronounced as all available buildable land is accounted for, and all forecasted employment growth must be accommodated on new lands.
- The City will face a projected shortage of commercial land of 119 gross acres.
- The City will face a projected shortage of industrial land of 205 gross acres.

With the assumptions of this analysis, Molalla has an overall forecasted shortage of 50-year employment land supply of 324 gross acres.



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# Report of High Intensity Soil Survey for 63.46 Acres (ML #6041868) South Vick Road, for the City of Molalla Urban Growth Boundary Expansion

For : Margaret and Fred Simmons  
13258 S. Vick Road  
Molalla, Oregon 97038.

October 9, 2007

By Andy Gallagher  
Soil Scientist

Andy Gallagher, Soil Scientist PO Box 2233 Corvallis, OR 97333

*Red Hill Soils*

541-745-7878 avg@redhillsoil.com

## SOIL REPORT

### 1. GENERAL INFORMATION

A. TITLE: Preliminary report of high intensity soil survey for 63.46 acres (ML #6041868) for the City of Molalla Urban Growth Boundary (UGB), located on South Vick Road

B. LANDOWNERS: Fred and Margaret Simmons, 13258 S. Vick Road, Molalla, Oregon, 97308.

C. SOIL SCIENTIST AND CERTIFICATION NUMBER:  
Andy Gallagher ARCPACS CPSSc/SC 03114

E. COUNTY: Clackamas County, Oregon.

F. LOCATION: LEGAL: Sec. 5 T. 5 S. R. 10 E. W.M.

G. PRESENT ZONING: Exclusive Farm Use

H. CURRENT LAND USE AND VEGETATION: This parcel and the adjoining 40 acres are currently a berry farm with small pastures and small woodlot and riparian areas along the ditch of Creamery Creek.

I. PURPOSE OF INVESTIGATION: Many decisions about land use and zoning are based on soil maps. The existing soil information for this parcel is 1:20,000 scale Clackamas County Soil Survey (CCSS) and is of a scale that is too small for intensive land use decision making. The Simmons would like their property to be considered for inclusion in the City of Molalla UGB. The Simmons farm is mapped as predominantly Class II soils in the CCSS. The landowners' experiences with farming this property led them to believe that the soils were not accurately mapped on the soil survey. Soils are wetter and are not as productive as they should be if they were Aloha soils. The soil map was revised based on high-intensity soil mapping to provide a map that shows the composition of soils at the level needed for intensive land use planning and for soil determinations to more accurately map soils and estimate land capability classes. The revised map shows soil boring locations and boundaries of soil capability classes. The information provided in the current soil report is based on a high intensity (Order 1) soil survey. The preliminary report has soil boring data summarized in a data table. Complete soil profile descriptions will be included in the final report if needed to complete documentation of this land addition into the Molalla UGB.

### 2. PREVIOUS MAPPING / BACKGROUND

The Simmons property was previously mapped in the Soil Survey of the Clackamas County Area. The property was previously mapped as

*Red Hill Soils*

predominantly Aloha soils (Capability Class IIw) with lesser amounts of Huberly soils (Capability Class IIIw), and Dayton soils (Capability Class IVw).

### **3. METHODS**

A. LEVEL ORDER OF SURVEY USED IN THE FIELD SURVEY: The current soil investigation is a high intensity order-1 soil survey that is used as a basis for making the soil classification and soil map for this parcel. Soil observations were made to best define soil boundary lines, based on terrain, vegetation and other site information.

B. DATES OF FIELD INVESTIGATIONS: Field work was done on September 11, 2007

#### **C. FIELD METHODS:**

Twenty one soil observations were made from backhoe pits (five feet deep) to capture soil variability of the site primarily focusing on areas previously mapped Aloha that were known to have poorer drainage. The soil sampling intensity was one boring per 2 to 3 acres on the average. Soils were described and classified to soil series or land type and each was classified by capability class. This is the level of sampling of Order-1 Soil Survey, described in the National Soil Survey Handbook (NSSH, 2003, Online Version).

Slope gradients were measured with a clinometer at each soil boring and additional readings were taken as necessary to refine boundaries of soil bodies. Soil colors were determined moist, using a Munsell Color Chart. Boring locations were recorded with a GPS receiver and transferred to the map after processing with GIS and AUTOCAD software. Land capability classifications are from the CCSS.

D. LIMITATIONS ENCOUNTERED: None.

### **4. RESULTS:**

A. GEOLOGY OVERVIEW: This site consists of recent alluvium on floodplains and older alluvium on terraces.

B. LANDFORMS AND TOPOGRAPHY: This site is nearly level to gently sloping. There is a narrow swale in the position of the former creek channel and floodplain of Creamery Creek, which has been ditched and straightened and cuts across the property. Elevation is 300 to 340 ft above msl.

C. SITE HYDROLOGY: Terrace soils are poorly to moderately well drained, and the soils of the former floodplain are somewhat poorly to poorly drained. Owners reported that at times of flood the old floodplain still floods in places.

D. DESCRIPTION OF SOILS: The findings of this high intensity soil survey are summarized in Data Table 1. Complete descriptions were logged but are not included in this preliminary report. Significant areas formerly mapped as Aloha soils (Class II) are reclassified as: Huberly where there is a fragipan and where soils were poorly drained, Wapato where soils are poorly drained and loamy and subject to seasonal flooding on the old Creamery Creek floodplain, and as Dayton soils and Concord soils where soils are poorly drained and have abrupt textural changes and smectitic mineralogy clay subsoil on the terrace.

#### **Revised Soil Map Units**

Soils were revised and reclassified based on high intensity soil mapping. The revised soils are described by map unit below and a more detailed boring log is provided in the final section of this report. Some soils profiles do not fit neatly into established soil series. Properties outside of Series range are described.

#### **Aloha - Al**

**Description:** The Aloha series consists of very deep, somewhat poorly drained soils that formed in mixed alluvium or lacustrine silts. Aloha soils are on terraces. A perched water table is at a depth of 1.0 to 2.0 feet from the soil surface from December through April. The Bw horizon ranges from slightly brittle to a very weak fragipan, and has few to continuous coatings of clean, gray sand and silt grains.

**Capability Class:** IIw

**Soil Variability:** The expression of the fragic soil properties is none to weak on this site and becomes more pronounced along boundaries with Huberly soils.

#### **Concord - Co**

**Description:** The Concord series consists of very deep, poorly drained soils formed in stratified glacio- lacustrine deposits. They are on terraces. These soils have ponded to slow runoff; very slow permeability. An apparent water table is at its uppermost limit from December to April.

**Capability Class:** IIIw

**Soil Variability:**

#### **Dayton -Da**

**Description:** The Dayton series consists of very deep, poorly drained soils that formed in silty and clayey glacio-lacustrine deposits. Dayton soils are on slight concave areas on terraces. The soils are usually moist and are saturated with water during the winter and spring. The 2Bt horizon has hue of 10YR, 2.5Y, 5Y, or neutral, value of 4 or 5 moist, 5 to 7 dry, and chroma of 0 to 2 moist and dry. It has weak to moderate prismatic parting to subangular or angular blocky structure. Texture is clay or silty clay with 40 to 50 percent clay. It has few to many redox concentrations.

**Capability Class:** IVw

**Soil Variability.** This unit includes a few soils with mollic epipedons that are transitional to Cove soils but with silt loam surfaces. Other inclusions are Conser series which are poorly drained soils that formed in silty and clayey alluvium

*Red Hill Soils*

derived from igneous and sedimentary materials. Conser soils are in depressions on low alluvial stream terraces.

### Huberly - Hu

**Description:** The Huberly series consists of deep, poorly drained soils that formed in stratified glacio-lacustrine deposits. Huberly soils are on level to gently sloping concave swales that dissect old alluvial terraces and terminate on the bottomland. The 2Btx horizon (fragipan) ranges from having weak coarse subangular blocky or prismatic structure to being structureless with fracture planes forming polygons. Brittleness ranges from weak to moderate and moist consistence from firm to very firm. Depth to the fragipan ranges from 20 to 30 inches. Soil depth is over 60 inches, but rooting depth may be limited by a seasonal water table that forms above the fragipan.

**Capability Class:** Illw

**Soil Variability:** Some pedons have a clayey paleosol that is very hard and brittle in the lower part of the subsoil.

### Wapato - Wa

**Description:** The Wapato series consists of very deep, poorly drained soils that formed in loamy mixed alluvium. Wapato soils are on flood plains. The soils occupy the lowest part of the swales in the old stream meanders of Creamery Creek. They lack argillic horizons and are loamy with mollic epipedons.

**Capability Class:** Illw

**Soil Variability:** Some pedons have gravelly layers in the lower C horizon.

**Table 1: PREVIOUS AND REVISED SOIL MAPPING UNITS**

Previous Map Symbol	Revised Map Symbol	Soil Series Name	Land Capability Classification	Previous Map*		Revised Map	
				Ac.	-%-	Ac.	-%-
1A	Al	Aloha	Ilw	38	60	27	42
21	Co	Concord	Illw	0	0	4	7
29	Da	Dayton	IVw	7	12	20	32
41	Hu	Huberly	Illw	18	28	7	12
83	Wa	Wapato	Illw	0	0	5	7
<b>Total</b>				<b>63</b>	<b>100</b>	<b>63</b>	<b>100</b>

**Table 2. Previous and Revised Soil Map Units by Capability Class**

Soil Map Unit	Capability Class	Previous Percent	Previous acres	Revised percent	Revised acres
A	Ilw	58.7	37	40	25
B	Illw and higher	41.3	26	60	38
<b>Total</b>		<b>100</b>	<b>63</b>	<b>100</b>	<b>63</b>

**Table 3. Soil Boring Data Summary**

Boring	Soil Series Name	Land Capability Class	Drainage Class	Slope	Notes
1	Huberly	IIIw	Poor	4	Fragipan @24 in.
2	Huberly	IIIw	Poor	1	Fragipan @24 in.
3	Dayton	IVw	poor	2	Abrupt text. change @27in
4	Dayton-Cove	IIIw	poor	1	Abrupt text. change @ 26 in
5	Dayton	IVw	poor	1	Abrupt text. change @27in
6	Aloha	IIw	Somewhat poor	1	
7	Conser	IIIw	poor	1	Thinner mollic
8	Aloha	IIw	Somewhat poor	2	Underlying clayey paleosol
9	Aloha	IIw	Somewhat poor	1	Underlying clayey paleosol
10	Concord	IIIw	poor	2	Mixed mineralogy control
11	Dayton	IIIw-IVw	poor	2	Abrupt text. change @ 30in
12	Aloha	IIw	Somewhat poor	2	Slightly brittle 14-22 in
13	Concord	IIIw	poor	1	
14	Huberly	IIIw	Poor	4	Fragipan @ 20 in.
15	Huberly	IIIw	Poor	4	Fragipan @ 30 in.
16	Wapato	IIIw	Poor	1	
17	Wapato	IIIw	poor	1	
18	Wapato	IIIw	poor	1	Pit filled with water to 18 in
19	Dayton-Concord	IIIw-IVw	poor	1	Abrupt text. change 24 in
20	Wapato	IIIw	poor	1	Pit filled with water to 48 in
21	Dayton	IV	poor	1	Abrupt text. change 28 in

**5. SUMMARY AND CONCLUSIONS:**

Soils were mapped in a high intensity (Order-1) soil survey on a 63-acre site to provide better soil information for the purpose of land use planning decisions relative to permitting a dwelling in land currently zoned exclusive farm use. Soils on this parcel are reclassified as predominantly 60 percent soils capability class III and IV and higher.

**6. REFERENCES:**

Soil Survey of Clackamas County Area (1984)



Figure 2. NRCS Soil Survey Map Scale 1:12,000 enlarged from 1:20,000)

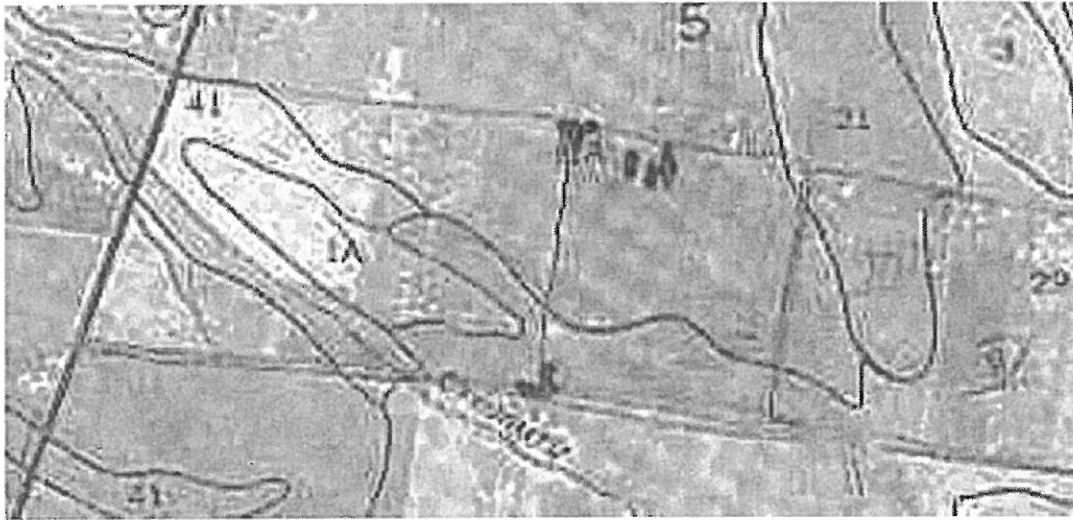


Figure 3. Site Condition Map (Approximate 1:6000 scale, project area outlined)



*Red Hill Soils*



Figure 4. USGS Topographic map of the study area.  
(Enlarged to 1:12,000 from 1:24,000 Scale).

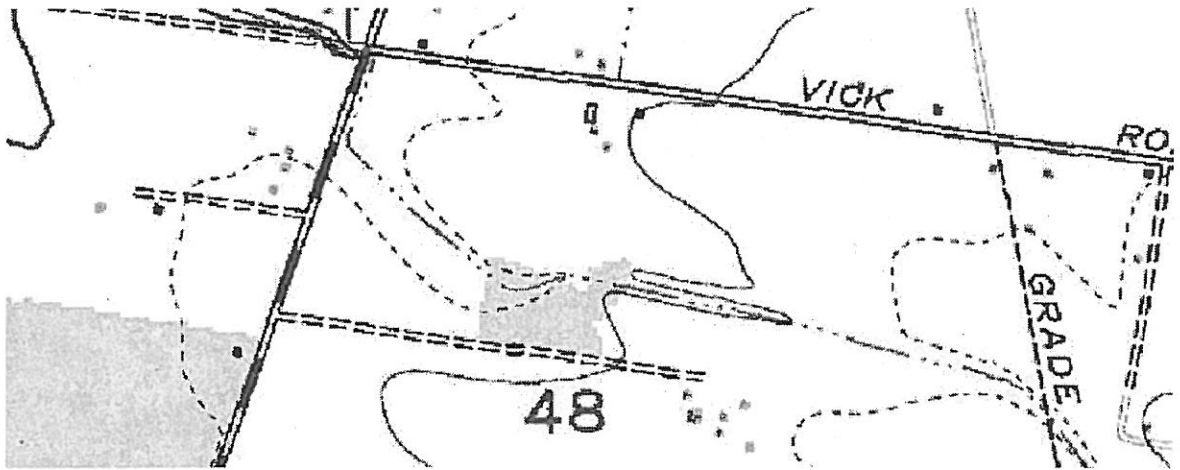


Figure 5. Assessor's map the tract under consideration. (Approx. 1:12,000 scale).





Figure 6: Revised Soil Map of the Project Site (1:4000)

*Red Hill Soils*

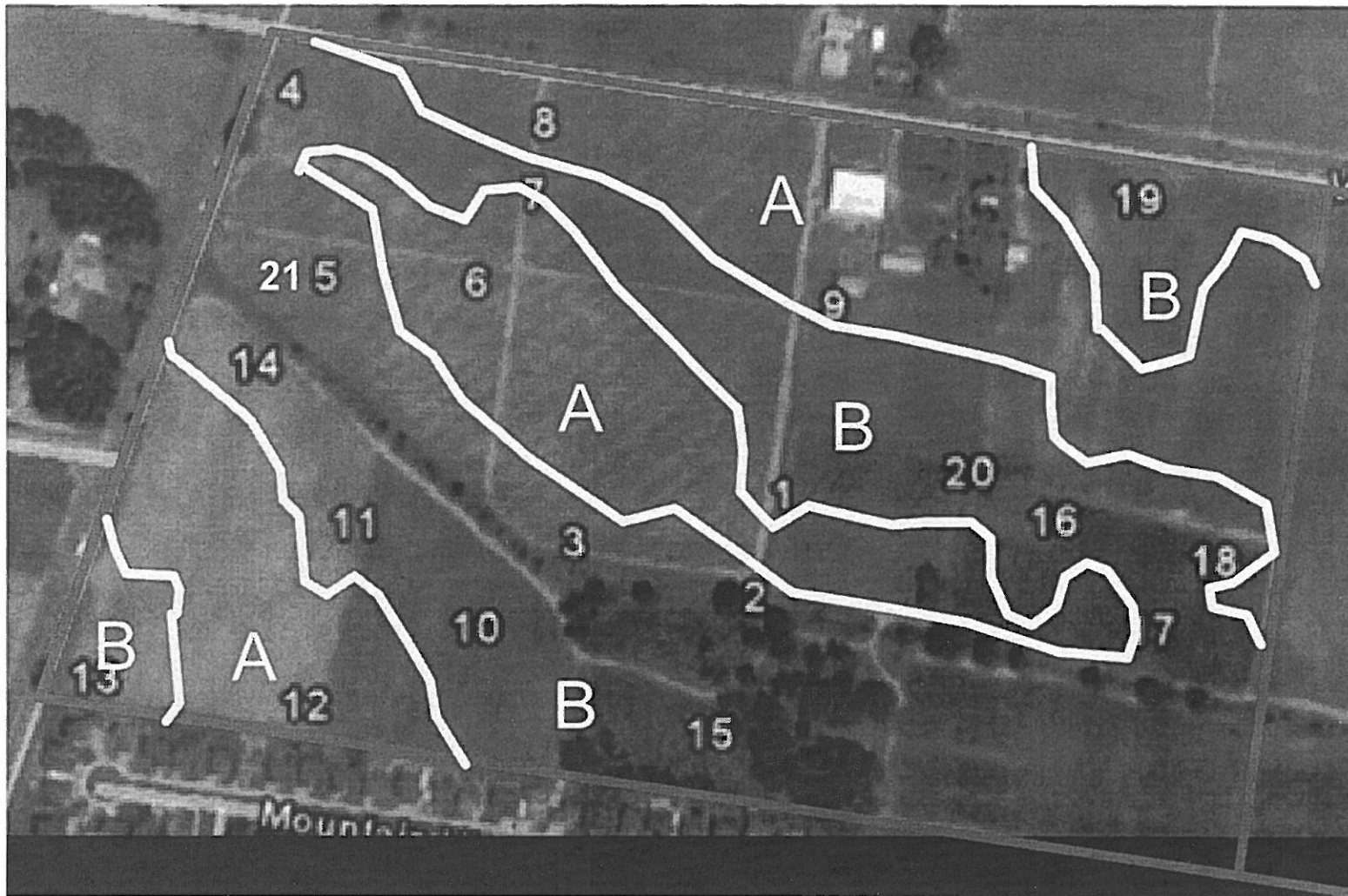


Figure 7. Revised map showing Capability Class II soils (A) and Capability Class III and IV soils (B) (1:4000)

*Red Hill Soils*

Boring	Slope	Soil Series	Horizon	Depth	Depth	Color	RMF	RMF	Texture	Note
1	4	Huberly	A	0	8	10YR4/2	5YR4/4		SIL	
			E	8	14	10YR5/3	10YR5/2	7.5YR5/6	SIL	
			Bt	14	24	10R 6/2	7.5YR5/6		SICL	
			Bx	24	40	10YR 5-6/2	10YR4/4	10YR6/1	SICL	10YR6/1 pedfaces
2	1	Huberly	Ap	0	7	10YR3/3	7.5YR5/6		SIL	
			E	7	12	7.5YR4/6	10YR5/2		SIL	
			EB	12	18	10YR6/2	10YR5/4	7.5YR5/6	SIL	
			Bx	18	28	2.5Y6/2	10YR4/4		SIL	
			Btx	28	40	10YR5-6/1	10YR5/6		SICL	
			2BC	40	50	10YR4/2	10YR5/6		C	
3	2	Dayton	Ap	0	7	10YR4/3			SIL	
			AE	7	16	10YR5/2	7.5YR5/6		SIL	
			E	16	22	10YR4/2	10YR5/6		SIL	
			E2	22	27	10YR8/1	10YR6/6		SIL	
			2Bt	27	40	10YR/61			C	
4	1	Dayton-Cove	Ap	0	9	10YR3/2	ox roots		SIL	
			A2	9	16	10YR2/2			SIL	
			A3	16	26	10YR3/1	10YR5/6		SICL	
			AC	26	40	10YR4/1	10YR6/4		C	
5	1	Dayton	Ap	0	9	10YR4/2	OX ROOT		SIL	
			E	9	14	10YR5/2	7.5YR5/6		SIL	
			Bt	14	20	10YR6-7/1	7.5YR4/6		sicl	
			2Bt	20	35	10YR5-6/1	10YR6/6		C	
			2Bt2	35	45	10YR5/2	10YR5/6		C	
6	1	Aloha	Ap	0	8	10YR4/3			SIL	
			Bw1	8	14	7.5YR5/3	7.5YR4/6	10YR5/2	SIL	
			Bw2	14	26	10YR6/2	7.5YR4/4		SIL	
			Bw3	26	40	10YR5/3	10YR6/1		SIL	
			2Bw	40	50	10YR5/4	10YR6/1		SIL	slight brittle

Boring	Slope	Soil Series	Horizon	Depth	Depth	Color	RMF	RMF	Texture	Note
7		1 Conser	Ap	0	8	10YR2/2	10YR4/4		SIL	swale old creek bed
			E1	8	15	10YR4/1	7.5YR5/6		SICL	
			E2	15	20	10YR6/2	7.5YR5/6		SICL	
			Bt1	20	28	10YR4-5/2	10YR4/4		SICL	
			Bt2	28	45	10YR5/2	7.5YR4/6	10YR4/1	SICL	
			2BC	45	60	10YR5/2	7.5YR6/6		GRCL	
8		1 Aloha	Ap	0	10	10YR4/3			SIL	
			Bw1	10	23	7.5YR4/4	10YR4/2		SIL	
			Bw2	23	30	10YR5/2	10YR4/6		SIL	
			2Bt1	30	40	10YR5/1-2	10YR4/4		C	
			2BC	40	60	10YR5/2	10YR4/6		C	
9		1 Aloha	Ap	0	9	10YR4-3/3			SIL	
			Bw1	9	18	7.5YR4/4	10YR4/2		SIL	
			Bw2	18	30	10YR6/2	10YR4/6		SICL	
			2C	30	60	10YR5/1-2	10YR4/4	7.5YR4/4	CL	
10		2 Concord	Ap	0	9	10YR3/3	7.5YR5/6		SIL	
			E	9	22	10YR6/2	7.5YR5/6		SIL	
			Bt1	22	43	10YR7/1	10YR6/6		SICL	
			Bt2	43	60	2.5Y6/1	10YR6/6		SICL	
11		2 Dayton	Ap	0	8	10YR2/2	5YR4/4		SIL	10YR3/3 oc
			AE	8	14	10YR5/2	7.5YR4/4		SIL	
			E1	14	24	10YR6/2	7.5YR5/6		SIL	
			E2	24	30	10YR6/1	10YR6/6		SICL	
			2Bt1	30	45	10YR6/1	10YR6/6		C	
			2Bt2	45	60	10YR5/2	10YR4/6		C	
12		2 Aloha	Ap	0	11	10YR3/3			SIL	
			E1	11	14	10YR4/6			SIL	
			E2	14	22	10YR5/3	10YR6/2	7.5YR5/8	SIL	
			Bt	22	48	10YR5/4	10YR6/2		SICL	slight brittle

Boring	Slope	Soil Series	Horizon	Depth	Depth	Color	RMF	RMF	Texture	Note
13	1	Concord	Ap	0	7	10YR4/3	10YR5/2	7.5YR4/6	SIL	
			E	7	20	10YR6/2	7.5YR5/6	SIL		
			Btg1	20	28	10YR7/1	10YR6/6	SICL		
			Btg2	28	33	10YR7/1	10YR5/4	SIC		
			2Btg3	33	48	10YR6/1	10YR6/4	C		
			2Btg4	48	60	10YR5/2	2.5YR4/4	C		
14	2	Huberly	Ap	0	8	10YR3/2	7.5YR5/6	SIL		
			E	8	20	10YR6/2	7.5YR5/6	SIL		
			Bx	20	29	10YR6/2	10YR6/6	SIL		
			2Btx1	29	38	10YR6/2	10YR6/6	SICL	brittle	
			2Btx2	38	48	10YR6/1	10YR5/4	SICL	brittle	
15	1	Huberly	Ap	0	9	10YR3/2	7.5YR5/6	SIL		
			E	9	16	10YR5/2	7.5YR5/6	SIL		
			Bxg	16	30	10YR6/1	10YR4/6	SICL	brittle	
			2Btx	30	44	10YR5/1	10YR4/6	SICL	brittle	
16	1	Wapato	Ap	0	9	10YR3/2	10YR4/4	SIL		
			A2	9	16	10YR3/1	5YR4/4	SIL		
			Cg1	16	29	10YR5/1	2.5YR5/6	SIL		
			2Cg2	29	40	10YR6/1	7.5YR5/6	CL		
17	1	Wapato	Similar to 16							
18	1	Wapato	Similar to 16							
19	1	Dayton-Concord	Ap	0	9	10YR3/2	7.5YR4/4	SIL		
			E1	9	18	10YR6/2	7.5YR5/6	SIL		
			E2	18	24	10YR7/1	10YR5/6	SICL		
			Bt	24	28	10YR7/1-2	10YR6/6	SICL		
			2C	28	48	2.5Y7/1	SIC			

Boring	Slope	Soil Series	Horizon	Depth	Depth	Color	RMF	RMF	Texture	Note
20	1	Wapato	Ap	0	9	10YR3/2	7.5YR4/4		SIL	
			A2	9	18	10YR3/3	5YR4/4		SIL	
			C1	18	36	10YR5-6/2	7.5YR5/6		SICL	
			Cg	36	60	10YR6-7/1	10YR5/6		SICL	
21	1	Dayton	Ap	0	9	10YR4/3	7.5YR6/8		SIL	
			E	9	28	10YR6/2	7.5YR4/4		SIL	
			Btg1	28	34	10YR6/1	10YR6/6		SIC	
			2Btg2	34	40	10YR6/1	10YR4/6		C	

**End of Boring Log**

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Andy Gallagher

ARCPACS CPSSc/SC 03114

Date: 9-Oct-07

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## Report of High Intensity Soil Survey for 40 acres (ML #6041854) South Vick Road, for the City of Molalla Urban Growth Boundary Expansion

For : Andrie and Agripina Burkoff  
23500 S. Vick Road  
Molalla, Oregon 97038.

October 10, 2007

By Andy Gallagher  
Soil Scientist

Andy Gallagher, Soil Scientist PO Box 2233 Corvallis, OR 97333

*Red Hill Soils*

541-745-7878 avg@redhillsoil.com



## SOIL REPORT

### 1. GENERAL INFORMATION

- A. TITLE: Preliminary Report of High Intensity Soil Survey for 40 acres ((ML #6041854) South Vick Road, for the City of Molalla Urban Growth Boundary Expansion
- B. LANDOWNERS: Andrie and Agripina Burkoff, 23500 S. Vick Road, Molalla, Oregon 97038.
- C. SOIL SCIENTIST AND CERTIFICATION NUMBER:  
Andy Gallagher ARCPACS CPSSc/SC 03114
- E. COUNTY: Clackamas County, Oregon.
- F. LOCATION: LEGAL: Sec. 5 T., 5 S., R. 10 E., W.M.
- G. PRESENT ZONING: Exclusive Farm Use
- H. CURRENT LAND USE AND VEGETATION: This parcel and the adjoining 63 acres are currently a berry farm with small pastures and small woodlot and riparian areas along the Creamery Creek.
- I. PURPOSE OF INVESTIGATION: Many decisions about land use and zoning are based on soil maps. The existing soil information for this parcel is 1:20,000 scale Clackamas County Soil Survey (CCSS) and is of a scale that is too small for intensive land use decision making. The Burkoffs would like their property to be considered for inclusion in the City of Molalla UGB. The Burkoff farm is mapped as predominantly Class II soils in the CCSS. The landowners' experiences with farming this property led them to believe that the soils were not accurately mapped on the soil survey. Soils are wetter and are not as productive as they should be if they were Aloha soils. The soil map was revised based on high-intensity soil mapping to provide a map that shows the composition of soils at the level needed for intensive land use planning and for soil determinations to more accurately map soils and estimate land capability classes. The revised map shows soil boring locations and boundaries of soil capability classes. The information provided in the current soil report is based on a high intensity (Order 1) soil survey. The preliminary report has soil boring data summarized in a data table. Complete soil profile descriptions will be included in the final report if needed to complete documentation of this land addition into the Molalla UGB.

### 2. PREVIOUS MAPPING / BACKGROUND

The Burkoff property was previously mapped in the Soil Survey of the Clackamas County Area. The property was previously mapped as predominantly Aloha

*Red Hill Soils*

soils (Capability Class IIw) on the north side and Dayton soils (Capability Class IVw) on the south side, with small area of Concord soils (Capability Class IIIw) in the northeast corner.

### **3. METHODS**

A. This soil investigation is a high intensity order-1 soil survey that is used as a basis for making the soil classification and soil map for this parcel. Soil observations were made to best define soil boundary lines, based on terrain, vegetation and other site information.

B. DATES OF FIELD INVESTIGATIONS: Field work was done on September 21, 2007.

#### **C. FIELD METHODS:**

Eleven soil observations were made from backhoe pits (five feet deep) to capture soil variability of the site primarily focusing on areas previously mapped Aloha that based on the landowners experience in farming the site have poorer drainage. Approximately 25 of the 40 acres (principally the slight swales) were sampled. The soil sampling intensity was one boring per 2 to 3 acres on the average on a terrain of nearly level to gently undulating terrace and floodplain. Soils were described and classified to soil series or land type and each was classified by capability class. This is the level of sampling of Order-1 Soil Survey, described in the National Soil Survey Handbook (NSSH, 2003, Online Version).

Slope gradients were measured with a clinometer at each soil boring and additional readings were taken as necessary to refine boundaries of soil bodies. Soil colors were determined moist, using a Munsell Color Chart. Boring locations were recorded with a GPS receiver and transferred to the map after processing with GIS and AUTOCAD software. Land capability classifications are from the CCSS.

D. LIMITATIONS ENCOUNTERED: None.

### **4. RESULTS:**

A. GEOLOGY OVERVIEW: This site consists of recent alluvium on floodplains and older alluvium on terraces. There is a clayey paleosol that is discontinuous across the terrace. Closer to Creamery Creek soils formed in gravelly alluvium.

B. LANDFORMS AND TOPOGRAPHY: This site is nearly level with slightly undulating surface. There is a narrow swale in the position of the former creek channel and floodplain of Creamery Creek, which is ditched and straightened and cuts across the south part of the property. The slight swales are poorly

*Red Hill Soils*

drained and the slight rises are somewhat poorly drained. Elevation is approximately 320 to 330 ft above msl.

C. SITE HYDROLOGY: Terrace soils are poorly to somewhat poorly drained, and the soils of the former floodplain are poorly drained. Owners reported that floodplain still floods occasionally.

D. DESCRIPTION OF SOILS: The findings of this high intensity soil survey are summarized in Data Table 1. Complete descriptions were logged but are not included in this preliminary report.

Significant areas formerly mapped as Aloha soils (Class II) are reclassified in the slight swales where soils are poorly drained. There were several poorly drained soil types that were sampled and reclassified. These poorly drained soils are: Huberly (Class III) where there is a fragipan and where soils were poorly drained; Concord soils (Class III) where soils are poorly drained and have clayey subsoil and smectitic mineralogy in the subsoil; and Courtney soils on the lower terrace near the creek where the soils are cobbly and clayey in the subsoil.

#### **Aloha**

**Description:** The Aloha series consists of very deep, somewhat poorly drained soils that formed in mixed alluvium or lacustrine silts. Aloha soils are on terraces. A perched water table is at a depth of 1.0 to 2.0 feet from the soil surface from December through April. The Bw horizon ranges from slightly brittle to a very weak fragipan, and has few to continuous coatings of clean, gray sand and silt grains.

**Capability Class:** IIw

**Soil Variability:** The expression of the fragic soil properties is none to weak on this site and becomes more pronounced along boundaries with Huberly soils.

#### **Concord**

**Description:** The Concord series consists of very deep, poorly drained soils formed in stratified glacio- lacustrine deposits. They are on terraces. These soils have ponded to slow runoff; very slow permeability. An apparent water table is at its uppermost limit from December to April.

**Capability Class:** IIIw

**Soil Variability:** one pedon has a mollic epipedon similar to Verboot but lacks the abrupt textural change of that series. Others have mixed mineralogy.

#### **Courtney**

**Description:** The Courtney series consists of poorly drained soils formed in gravelly alluvium. The soils have gravelly clay loam to gravelly clay subsoil. These soils are on concave portions of low terraces.

**Capability Class:** IVw

**Soil Variability:** The surface horizons have variable amounts of gravel and some pedons have less gravel in the upper solum than is typical of the series.

**Dayton Description:** The Dayton series consists of very deep, poorly drained soils that formed in silty and clayey glacio-lacustrine deposits. Dayton soils are on slight concave areas on terraces. The soils are usually moist and are saturated with water during the winter and spring. The 2Bt horizon has hue of 10YR, 2.5Y, 5Y, or neutral, value of 4 or 5 moist, 5 to 7 dry, and chroma of 0 to 2 moist and dry. It has weak to moderate prismatic parting to subangular or angular blocky structure. Texture is clay or silty clay with 40 to 50 percent clay. It has few to many redox concentrations.

**Capability Class:** IVw

**Soil Variability.** This unit includes a few soils with mollic epipedons that are transitional to Cove soils but with silt loam surfaces.

**Huberly**

**Description:** The Huberly series consists of deep, poorly drained soils that formed in stratified glacio-lacustrine deposits. Huberly soils are on level to gently sloping concave swales that dissect old alluvial terraces and terminate on the bottomland. The 2Btx horizon (fragipan) ranges from having weak coarse subangular blocky or prismatic structure to being structureless with fracture planes forming polygons. Brittleness ranges from weak to moderate and moist consistence from firm to very firm. Depth to the fragipan ranges from 20 to 30 inches. Soil depth is over 60 inches, but rooting depth may be limited by a seasonal water table that forms above the fragipan.

**Capability Class:** IIIw

**Soil Variability:** Some pedons have a clayey paleosol that is very hard and brittle in the lower part of the subsoil. This unit includes small areas of somewhat poorly drained soils with a well developed fragipan, transitional to soils like Powell series, which is capability class IIIw. Boring 4 is similar to the Powell series in drainage class and having a fragipan, but unlike Powell in having an apparent argillic horizon.

**Table 1: PREVIOUS AND REVISED SOIL MAPPING UNITS**

Previous Map Symbol	Revised Map Symbol	Soil Series Name	Land Capability Classification	Previous Map*		Revised Map	
				Ac.	-%-	Ac.	-%-
1A	Al	Aloha	IIw	28.0	70	13.4	33.4
21	Co	Concord	IIIw	0.4	1	10.8	26.9
**	Ct	Courtney	IVw	0	0	2.6	6.6
29	Da	Dayton	IVw	11.6	29.3	10.7	26.9
41	Hu	Huberly	IIIw	0	0	2.5	6.2
<b>Total</b>				<b>40</b>	<b>100</b>	<b>40</b>	<b>100</b>

\*\*Soils not previously included in NRCS Clackamas County Soils Legend.

**Table 2. Previous and Revised Soil Map Units by Capability Class**

Soil Map Unit	Capability Class	Previous Percent	Previous Acres	Revised percent	Revised acres
A	IIw	69	28	33.4	13.4
B	IIIw and IVw	31	12	66.6	27.6
<b>Total</b>		<b>100</b>	<b>40</b>	<b>100</b>	<b>40</b>

**Table 3. Soil Boring Data Summary**

Boring	Soil Series Name	Land Capability Class	Drainage Class	Slope	Notes
1	Concord	IIIw	Poor	1	Slight Swale
2	Concord	IIIw	Poor	1	Slight Swale
3	Concord	IIIw	poor	1	Slight swale
4	Powell	IIIw	Somewhat poor	1	Has a fragipan
5	Concord	IIIw	poor	1	More sand in 2BC
6	Concord	IIIw	poor	1	More cobbles in 2BC
7	Huberly	IIIw	poor	1	Slight swale
8	Huberly	IIIw	Somewhat poor	1	Slight swale
9	Aloha-Amity	IIw	Somewhat poor	1	Slight rise, slightly brittle from 25 to 29 inches, strongly developed paleosol
10	Courtney	IVw	poor	1	Swale, gravelly and cobbly alluvium
11	Courtney	IVw	poor	1	Swale, gravelly and cobbly alluvium

**5. SUMMARY AND CONCLUSIONS:**

Soils were mapped in a high intensity (Order-1) soil survey on a 40-acre site to provide better soil information for the purpose of land use planning decisions relative to permitting a dwelling in land currently zoned exclusive farm use. Soils on this parcel are reclassified as predominantly 66 percent soils capability class III and IV and higher.

**6. REFERENCES:**

Soil Survey of Clackamas County Area (1984)

**7. ATTACHMENTS:**

- a. Figure 1. Vicinity Map (1:150,000 scale, project area outlined).
- b. Figure 2. Previous Soil Map Soil Survey the Clackamas County Area, SCS 1985)
- c. Figure 3. USGS Topographic Map (Enlarged to 1:12,000 from original 1:24,000 scale)
- d. Figure 4. Site Condition Map
- e. Figure 5. Assessors Map
- f. Figure 6. Revised Soil Map of the Project Site and Boring Locations
- g. Figure 7. Revised map showing Capability Class II soils (A) and Capability Class III and IV soils (B).
- h. Soil Profile Notes and Site Observation Notes
- i. Series descriptions and associated map unit descriptions for soils not included in the Clackamas County Soil Legend.



Figure 3. Site Condition Map (Approximate 1:5000 scale, project area outlined)



*Red Hill Soils*



Figure 4. USGS Topographic map of the study area.  
(Enlarged to 1:12,000 from 1:24,000 Scale).

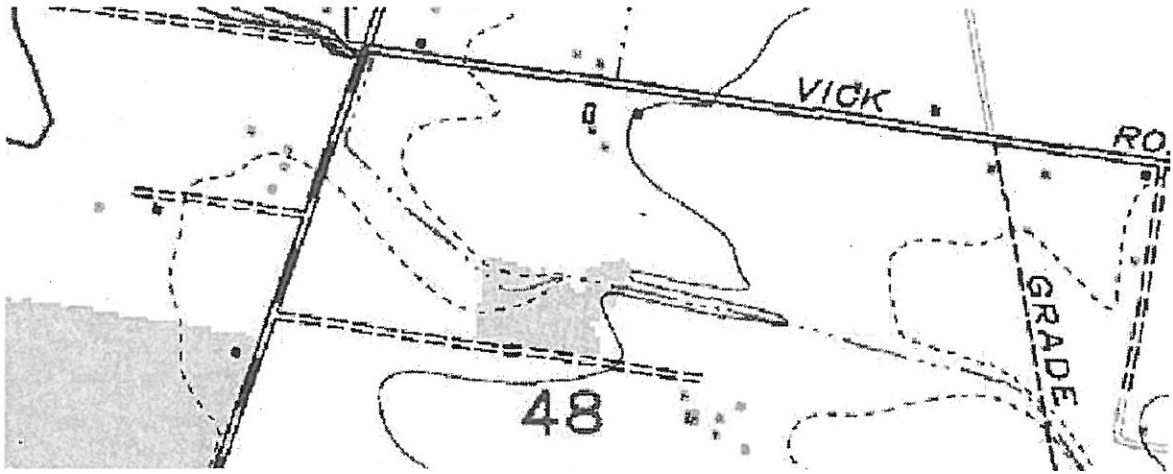


Figure 5. Assessor's map the tract under consideration. (Approx. 1:24,000 scale).



*Red Hill Soils*

Figure 6: Revised Soil Map of the Project Site and Location of Soil Borings (Approximately 1:4000)

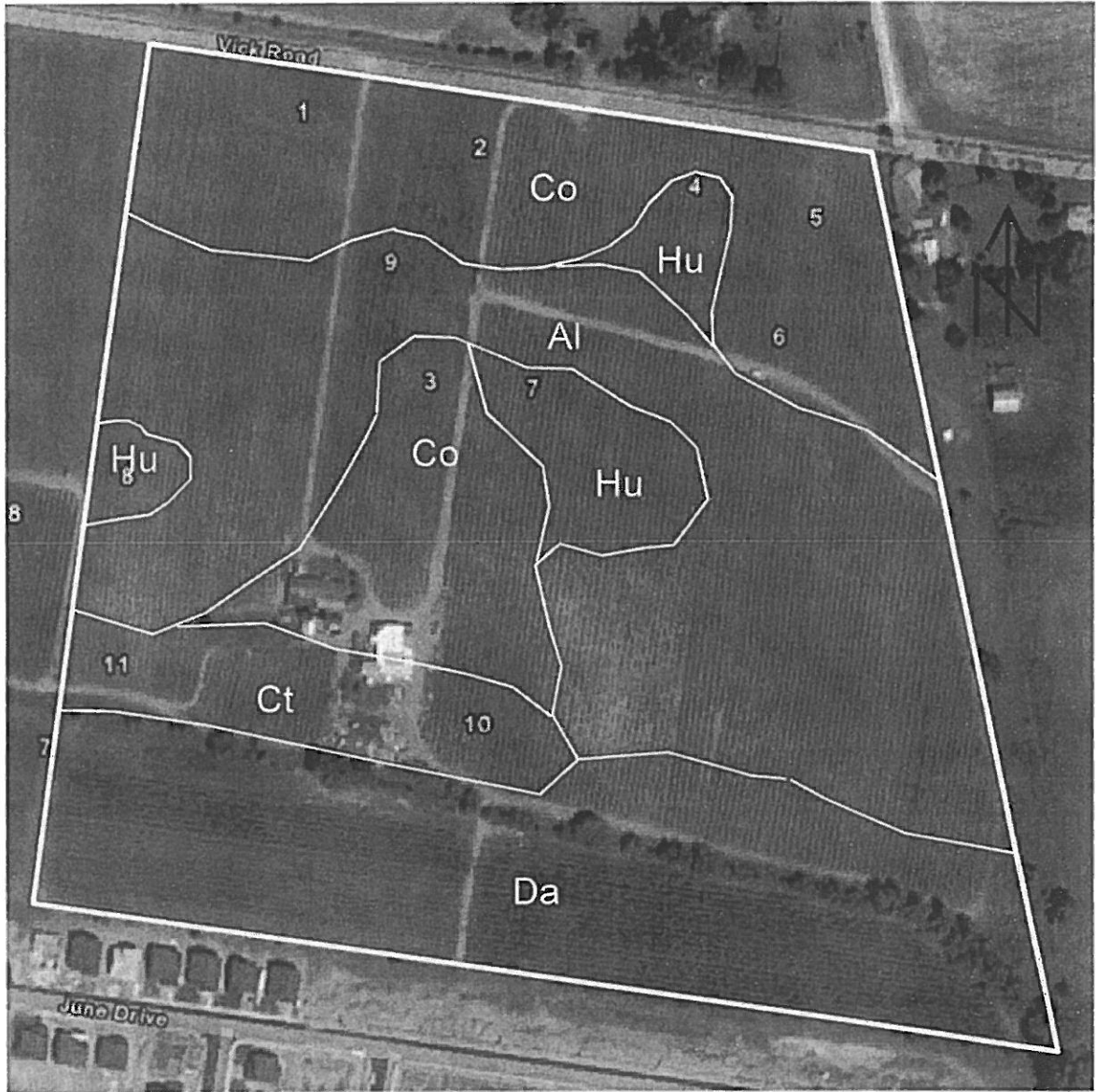
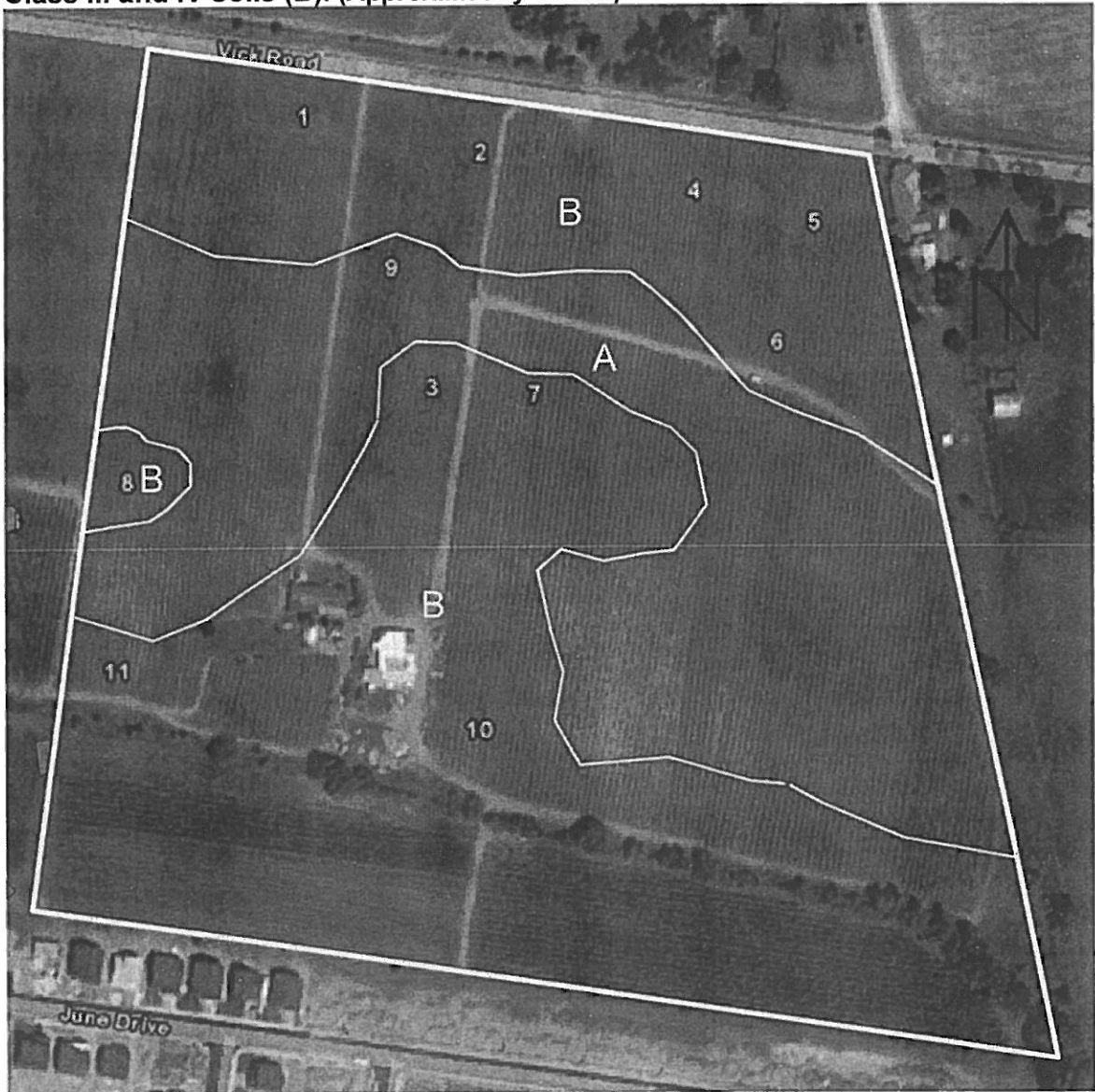


Figure 7. Revised map showing Capability Class II soils (A) and Capability Class III and IV soils (B). (Approximately 1:4000)



Boring	Slope	Soil Series	Horizon	Depth	Depth	Color	RMF	RMF	Texture	Note
1	1	Concord-Verboot	Ap	0	8	10YR3/2	5YR5/8	ox roots	SIL	
			A2	8	15	10YR3/3	5YR4/4		SIL	
			E	15	27	10YR5/2	7.5YR5/8		SIL	
			Bt1	27	36	10YR6/2	7.5YR5/6		SICL	not abrupt
			2Bt2	36	45	10YR6/1	7.5YR6/6		C	
			2BC	45	60	10YR5/1	7.5YR5/6		C	0M structure
2	1	Concord	Ap	0	5	10Y3/2			SIL	
			AE	5	12	10YR4/2			SIL	10YR3/2 oc
			E	12	22	10YR6/2, 6/1	10YR5/6		SIC	not abrupt
			Bt1	22	28	10YR7/1	10YR5/8		C	
			2Bt2	28	38	10YR5/1	7.5YR4/4		C	
			2Bt3	38	48	10YR5/1-2	10YR5/6		C	white silt coats on peds
			2C	48	60	10YR5/1	7.5YR6/6		C	0M structure
3	1	Concord	Ap	0	7	10YR3/3			SIL	
			E1	7	12	10YR5/2	7.5YR5/6		SIL	mod plow pan
			E2	12	17	10YR6/2	10YR6/1		SICL	not abrupt
			Bt1	17	24	10YR6/1	10YR5/6		C	white silt coats on peds
			2Bt2	24	35	10YR5/2	10YR5/1		C	
			2Bt3	35	44	10YR5/1	7.5YR5/6		C	
			2BC	44	60	10YR5/2	7.5YR5/6	MnO2 conc	C	
4	1	Powell	Ap	0	7	10YR3/2			SIL	
			E1	7	16	10YR4/3			SIL	
			E2	16	20	10YR5/2	10YR4/6		SIL	many white silt coats on peds
			Btx1	20	30	10YR5/2	10YR5/6		SICL	brittle and hard
			2Btx2	30	41	10YR5/1	10YR5/6		SICL	brittle and hard
			2Btx3	41	48	10YR5/1	10YR5/6		SICL	brittle and hard
			3BC	48	60	10YR5-6/2	7.5YR5/8		GRC	

Boring	Slope	Soil Series	Horizon	Depth	Depth	Color	RMF	RMF	Texture	Note
5	1	Concord	Ap	0	7	10YR3/2	ox roots		SIL	
			E	7	12	10YR5/2, 5/1	7.5YR5/8		SIL	plow pan
			EB	12	18	10YR6/1	10YR5/6		SICL	
			Bt1	18	35	10YR6-7/1	10YR6/1		C	
			Bt2	35	44	10YR5/1-2	10YR5/4		C	
			2BC	44	60	10YR6/1	7.5YR4/4		C	0M
6	1	Concord	Similar to Boring 5							
7	1	Huberly	Ap	0	6	10YR3/3	10YR5/6		SIL	
			EA	6	13	10YR5/2	10YR6/8		SIL	10YR3/3 oc
			EA	13	22	10YR5/2	2.5YR5/6		SIL	
			Btx	22	38	10YR5/1	10YR4/6		SICL	10YR7/1 si coats pf
			2BCx	38	60	10YR4-5/1	10YR5/6		GRSICL	
8	1	Huberly	Ap	0	6	10YR3/3			SIL	
			E1	6	16	10YR6/2	7.5YR4/4		SIL	
			E2	16	24	10YR6/2	7.5YR4/6		SIL	
			Bx	24	30	10YR6/1	10YR5/4		SICL	
			2Btx	30	36	10YR5/1	10YR5/4		HSICL	
			2BC	36	48	10YR5/1	10YR5/6		C	0M
9	1	Aloha-Amity	Ap	0	8	10YR3/3				
			E1	8	15	10YR4/4	7.5YR5/6			
			E2	15	25	10YR5/2	10YR5/6			
			EB	25	29	10YR6/1	7.5YR4/4			10YR6-7/1 si coats
			2Bt1	29	46	10YR5/1	10YR4/6			
			2Bt2	46	60	10YR5/1	10YR4/6			
10	1	Courtney	Ap	0	7	10YR3/2	10YR5/6		GRCL	
			A2	7	14	10YR2/2	10YR3/1	5YR3/4	VCBCL	
			AB	14	23	10YR3/3	10YR4/6	10YR4/1	VCBCL	
			Cg	23	48	10YR5-6/1	7.5YR5/6		VCBCL	

Boring	Slope	Soil Series	Horizon	Depth	Depth	Color	RMF	RMF	Texture	Note
11		1 Courtney	Ap	0	8	10YR3/3	7.5YR3/4		L	
			A2	8	15	10YR3/3	7.5YR4/6		CL	
			2Bt1	15	30	10YR5/2	2.5YR5/6		CBCL	
			2Bt2	30	48	10YR5/2	7.5YR5/6		VCBCL	

Boring Slope Soil Series Horizon Depth Depth Color RMF RMF Texture Note

**End of Boring Log**

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Andy Gallagher

ARCPACS CPSSc/SC 03114

Date:

## COURTNEY SERIES

The Courtney series consists of deep, poorly drained soils that formed in gravelly fine textured mixed alluvium. These soils are on terraces and have slopes of 0 to 3 percent. The mean annual precipitation is about 50 inches, and the mean annual temperature is about 52 degrees F.

**TAXONOMIC CLASS:** Fine, smectitic, mesic Abrupt Argiaquolls

**TYPICAL PEDON:** Courtney gravelly silty clay loam - cultivated. (Colors are for moist soil unless otherwise noted.)

**A1--**0 to 4 inches; black (10YR 2/1) gravelly silty clay loam, dark gray (10YR 4/1) dry; few fine distinct dark brown (7.5YR 4/4) mottles; strong medium and fine subangular blocky structure; hard, friable, sticky and plastic; many roots; many very fine and fine irregular pores; 20 percent coarse gravel; strongly acid (pH 5.4); clear smooth boundary. (2 to 8 inches thick)

**A2--**4 to 12 inches; very dark gray (N 3/) gravelly silty clay loam, very dark gray (10YR 3/1) rubbed and dark gray (10YR 4/1) dry; common medium distinct strong brown (7.4YR 4/4) mottles; strong medium and fine subangular blocky structure; hard, friable, sticky and plastic; many roots; many very fine tubular pores; 30 percent gravel; medium acid (pH 5.8); abrupt smooth boundary. (7 to 10 inches thick)

**2Bt--**12 to 24 inches; dark gray (10YR 4/1) gravelly clay, gray (10YR 5/1) dry; few roots; few very fine pores; few thin clay films and dark coatings on surfaces of peds; 30 percent gravel, few cobbles; slightly acid (pH 6.4); clear smooth boundary. (10 to 20 inches thick)

**3C1--**24 to 49 inches; dark grayish brown (10YR 4/2) extremely gravelly clay loam, gray (10YR 5/1) dry; massive; very hard, firm,

sticky and plastic; iron stains; 85 percent gravel, few cobbles; slightly acid (pH 6.2).

**4C2--**49 to 60 inches; dark brown (7.5YR 3/2) mottled, strong brown (7.5YR 5/6) extremely gravelly sand; massive; soft, friable, many very fine and fine pores; 80 percent gravel; neutral (pH 6.7).

**TYPE LOCATION:** Marion County, Oregon; NW1/4SE1/4 sec. 6, T. 8 S., R. 2 W.

**RANGE IN CHARACTERISTICS:** The mean annual soil temperature ranges from 52 to 55 degrees F. The soil has an aquic moisture regime and is saturated with water during the winter. The thickness of the solum ranges from 20 to 36 inches.

The A horizon has hue of 10YR or neutral, value of 2 or 3 moist, 4 or 5 dry, and chroma of 0 through 2 moist and dry. It is silty clay loam or clay loam. It is 15 to 30 percent gravel. This horizon has moderate or strong granular subangular blocky structure. It has few to many distinct or prominent mottles.

The B horizon has hue of 10YR or neutral, value of 3 or 4 moist, 5 or 6 dry, and chroma of 0 through 2. It is gravelly clay or gravelly silty clay with 50 to 60 percent clay, and with an increase in clay of more than 20 percent at the upper boundary. It is 15 to 35 percent rock fragments. This horizon has weak or moderate prismatic or blocky structure. It usually has few to many distinct or prominent mottles but some pedons lack mottles when chroma is 1 or less.

The C horizon is stratified, ranging from clay loam, sandy clay loam, loam to sand with 50 to 85 percent rock fragments, mostly gravel. Contrasting textures are lacking below the argillic horizon within a depth of 40 inches.

**COMPETING SERIES:** These are the Butler, Clackamas, Conser, Olbut and Waldo series. Butler soils have an A2 horizon, lack rock fragments, and have secondary lime at a depth of 26 to 54 inches. Clackamas soils lack an abrupt textural change and have less than 35 percent clay in the argillic horizon. Conser soils lack an abrupt textural change and have less than 10 percent rock fragments in the solum. Waldo soils lack an argillic horizon. Olbut soils have free carbonates at 10 to 24 inches.



**GEOGRAPHIC SETTING:** The Courtney soils are in depressions on terraces at elevations of 175 to 800 feet. Slopes are 0 to 3 percent. The soils formed in gravelly fine textured mixed alluvium. The climate is characterized by having dry, cool summers and wet, cool winters. The mean annual precipitation is 40 to 60 inches. The mean annual temperature is 50 to 54 degrees F, the average July temperature is about 67 degrees F, and the average January temperature is about 39 degrees F. The frost-free period is 165 to 210 days.

**GEOGRAPHICALLY ASSOCIATED SOILS:** These are the Salem and the competing Clackamas soils. Salem soils are well drained, moderately fine textured, and have contrasting textures below the argillic horizon and above depths of 40 inches.

**DRAINAGE AND PERMEABILITY:** Poorly drained; very slow runoff or ponded; very slow permeability.

**USE AND VEGETATION:** These soils are used for spring grains, grass seed production, hay, and pasture, when drained. The native vegetation is annual and perennial grasses and weeds, wild rose brush, blackberries, and scattered ash trees.

**DISTRIBUTION AND EXTENT:** Tributary valleys of the Willamette Valley and along the eastern margin of the Willamette Valley, Oregon. These soils are extensive.

**MLRA OFFICE RESPONSIBLE:** Portland, Oregon

**SERIES ESTABLISHED:** Linn County, Oregon, 1924.

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National Cooperative Soil Survey  
U.S.A.

From Soil Survey of Marion County Area (1972)

**Courtney Series**

The Courtney series consists of poorly drained soils that have formed in alluvial deposits of different ages. These soils are on gravelly alluvial terraces, where they occur in shallow depressions and in drainageways. Slopes range from 0 to 2 percent, and elevations range from 175 to 650 feet. The average annual precipitation is 40 to 45 inches, the average annual air temperature is 52° to 54° F., and the length of the frost-free season is 190 to 210 days. In areas that are not cultivated, the vegetation is mainly ash, vine maple, hazel, wild rose, blackberry, rushes, sedges, and annual and perennial grasses. Courtney soils are associated with Salem and Clackamas soils. In a typical profile, the surface layer is about 12 inches thick, and it consists of mottled, black gravelly silty clay loam in the upper part and of mottled, very dark gray gravelly silty clay loam in the lower part. The subsoil is mottled dark-gray gravelly clay about 12 inches thick.

The substratum consists of a layer of dark grayish-brown very gravelly clay loam, about 25 inches thick, that grades to mottled, dark-brown very gravelly sand, which extends to a depth of 57 inches or more.

Undrained areas of Courtney soils are used mainly for pasture, hay, and grass grown for seed. The drained areas are used for these crops and also for small grains.

**Courtney gravelly silty clay loam (Cu).**-This soil is on terraces between Stayton and Salem. It is in depressions and in narrow drainageways. This is the only soil of the Courtney series mapped in the survey area.

Representative profile (NW1/4SE1/4 sec. 6, T. 8 S., R. 2 W.).

A11-0 to 4 inches, black (10YR 2/1) gravelly silty clay loam, dark gray

(10YR. 4/1) when dry; few, fine, distinct, dark-brown (7.5YR 4/4) mottles; strong, medium and fine, subangular blocky structure; friable, hard, sticky and plastic; many roots; many, very fine and fine, interstitial pores; iron stains in root channels; 20 to 25 percent coarse pebbles; strongly acid (pH 5.4); clear, smooth boundary. (2 to 6 inches thick.)

A12-4 to 12 inches, very dark gray (7.5YR 3/0) gravelly silty clay loam, very dark gray (10YR 3/1) when crushed and dark gray (10YR 4/1) when dry; common, medium, distinct, strong-brown (7.5YR 4/4) mottles; strong, medium and fine, subangular blocky structure; friable, hard, sticky and plastic; many roots; many, very fine, tubular pores; iron stains in root channels; 30 percent pebbles; medium acid (pH 5.8); abrupt, smooth boundary. (7 to 10 inches thick.)

IIB2t-12 to 24 inches, dark-gray (10YR 4/1) gravelly clay, gray (10YR 5/1) when dry; few, fine, distinct mottles; weak, coarse, prismatic structure; firm, very hard, very sticky and very plastic; few roots; 30 percent pebbles and a few cobblestones; slightly acid (pH 6.4); clear, smooth boundary, (10 to 20 inches thick.)

IIIC1-24 to 49 inches, dark grayish-brown (10YR 4/2) very gravelly clay loam, gray (10YR 5/1) when dry; massive; firm, hard, sticky and plastic; iron stains; 85 percent pebbles; few cobblestones; slightly acid (pH 6.2); abrupt, smooth boundary. (24 to 48 inches thick.)

IVC2-49 to 57 inches, mottled dark-brown (7.5YR 3/2) very gravelly sand, strong brown (7.5YR 5/6) when moist; massive; friable, soft, nonsticky and nonplastic; many, medium, interstitial pores; neutral (pH 6.7).

Color of the A horizon ranges from black or very dark brown to very dark gray, and texture of that horizon ranges from silty clay loam or clay loam to silty clay. In some places the B horizon is very dark gray, and it is gravelly silty clay in some areas. The amount of gravel in the B horizon ranges from 20 to 30 percent. Depth to the very gravelly C horizon ranges from 24 to 36 inches. The C horizon is stratified. Both the thickness of the different layers in the C horizon and the amount of gravel and cobblestones in that horizon are highly variable.

Included with this soil in mapping were small areas that have a surface layer of very dark gray silt loam.

Above the clay subsoil, the available water capacity is less than 3 inches. Permeability is very slow, and fertility is moderate. Runoff is ponded or very slow, and the hazard of erosion is slight. The depth to which roots can penetrate is restricted by the claypan in the subsoil, but it ranges from 12 to 16 inches. Workability is fair.

Undrained areas of this soil are used for pasture, hay, and grass grown for seed. The drained areas are used for these crops and also for spring small grains and winter wheat. When irrigated, the drained areas are used for sweet corn, berries, and beans. This soil is used for these irrigated crops because it occupies only small areas and extends through and is managed like the adjacent Sifton, Salem, and Clackamas soils. Courtney soils are poorly suited to row crops and root crops. (Capability unit IVw-1; not placed in a woodland suitability group)



## CITY OF MOLALLA

117 N. Molalla Avenue  
PO Box 248  
Molalla, OR 97038

### Staff Report

#### Agenda Category: Ordinances and Resolutions

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**Agenda Date:** December 14, 2022

**From: Christie Teets, City Recorder**  
**Approved by: Dan Huff, City Manager**

**SUBJECT:** Ordinance No. 2022-04: Amending Molalla Municipal Code Chapter 5.20 Show License to become Chapter 5.20 Special Event Licenses and Amending the Language

**FISCAL IMPACT:** n/a

**RECOMMENDATION/RECOMMEND MOTION:** Hold First and Second Reading and Adopt Ordinance No. 2022-04

**BACKGROUND:**

City Council and staff have reviewed MMC Chapter 5.20 at length and discovered the last update was approved in 1979. Staff would like to amend Chapter 5.20 to align with the current practices of this year and those following. Through work sessions with Council and meeting with Department Heads, staff is presenting the necessary amendments to Chapter 5.20.



## ORDINANCE NUMBER 2022-04

### AN ORDINANCE OF THE CITY OF MOLALLA, OREGON AMENDING MOLALLA MUNICIPAL CODE, CHAPTER 5.20 SHOW LICENSES TO BECOME CHAPTER 5.20 SPECIAL EVENT LICENSES AND AMENDING THE LANGUAGE

**WHEREAS**, City Council and staff have reviewed MMC Chapter 5.20 at length and discovered the last update was approved in 1979; and

**WHEREAS**, staff would like to amend Chapter 5.20 to align with the current practices of this year and those following; and

**WHEREAS**, having discovered necessary amendments to the following section to Chapter 5.20.

**Now, Therefore, the City of Molalla Resolves the amendments to Molalla Municipal Code Chapter 5.20 as follows:**

**Section 1.** Molalla Municipal Code Chapter 5.20 Show Licenses shall be referred to as Chapter 5.20 Special Event Licenses upon passage of this ordinance.

**Section 2. 5.20.010 Application—Required—Contents.** Examples of special events include, but are not limited to; a carnival, fair or festival, concert, rodeo, sporting event, parade, protest and/or other shows desiring to locate within the City. Organizers of public performance or operation shall make written application for a license to the City Recorder if any of the following apply: gatherings/events that involve large groups of people impacting the right-of-way or City Park; advertised to the public; cause impact to City streets or a State Highway (including curb or parking lane), sidewalks, and or public rights of way; or cause impact to a Public Parking Lot.

Applications must be received at least 45 days prior to the intended date of the first public performance or operation. Events that draw a group of over 1,000 shall be submitted 60-90 days in advance. Such application shall contain, in addition to the proposed time and location of the performance, attraction or operation, such information as the City Administration shall reasonably require in order to be assured that the issuance of the requested license will in no respect endanger the public health, peace and safety of the City.

**Section 3. 5.20.030 Application—Cash deposit or bond required.** The application for the license shall be accompanied by a cash deposit or bond sufficient to indemnify the City for any

increased cost in City services caused by the performance or operation of the applicant within the City, in order to prevent the public health, peace and safety of the City from being endangered. The amount of such deposit or bond shall be fixed by the City Manager or designee. Upon completion of the event, the City Manager shall determine what the actual increased cost of City services were and deduct such amount to the general fund of the City. The license applicant shall agree to pay any excess costs of such services beyond the amount fixed by the deposit or bond and shall be entitled to the return of any amount deposited in excess of the actual increased cost.

**Section 4. 5.20.040 License—Issuance—Appeal of rejection.** If City Administration endorses approval of the application for the license required by this chapter, based on the criteria indicated in Section 5.20.010, and the evidence of adequate insurance coverage required by Section 5.20.020 is satisfactory, and the deposit or bond required in Section 5.20.030 is satisfactory, the Recorder shall issue the license as requested upon payment of the fee set forth in Section 5.20.050. In the event the application is rejected, the applicant may appeal in writing to the City Manager.

**Section 5. 5.20.050 License—Fee.** The license fee for events described in Section 5.20.010 shall be determined by the City’s fee schedule, set by Resolution. Events that require additional staff such as Peace Officers or Public Works employees may be required to pay an additional fee to the City. The fee is set by Resolution and enforced by the City Manager.

**Section 6. 5.20.060 Exemptions.** The provisions of this chapter shall not be taken to apply to motion picture shows at permanently established motion picture theaters or activities sponsored by the local public school district that are held on District owned property within the city limits.

**Section 7. 5.20.070 Following Temporary Uses Standards.** Applicant shall adhere to portions of Molalla Municipal Code Chapter 17-2.3.150, Temporary Uses, A. Seasonal and Special Events guidelines.

- A. Seasonal and Special Events. The City shall approve, approve with conditions, or deny an application for a Seasonal or Special Event, based on the following criteria:
- 1) Applicant meets all criteria as listed in the Special Event Permit.
  - 2) The use occurs for not longer than 45 consecutive days and 45 days between occurrences.
  - 3) The applicant, if different than the property owner, has proof of the owner’s permission to place the use on the property.
  - 4) There is sufficient parking to accommodate the temporary use and other uses existing on the site, pursuant to the Chapter 17-3.5 Parking and Loading.
  - 5) The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare, or lights that affect an adjoining use in a manner in which other uses allowed outright in the district do not affect the adjoining use.
  - 6) The use is adequately served by sewer or septic system and water, as applicable.
  - 7) The applicant shall be responsible for maintaining all required licenses and permits.

**Section 8. Effective Date.** The effective date of this Ordinance will take place immediately after adoption. **-OR-** This Ordinance will take effect thirty (30) days from the date of adoption.

Read the first time on December 14, 2022, and moved to a second reading by \_\_\_\_\_ vote of the City Council.

Read the second time and adopted by the City Council on \_\_\_\_\_.

Signed by the Mayor on \_\_\_\_\_.

\_\_\_\_\_  
Scott Keyser, Mayor

ATTEST:

\_\_\_\_\_  
Christie Teets, City Recorder

DRAFT

## Chapter 5.20 ~~SHOW LICENSES~~ SPECIAL EVENTS

(All Content Displayed)

- 5.20.010 Application—Required—Contents.
- 5.20.020 Application—Insurance policy required.
- 5.20.030 Application—Cash deposit or bond required.
- 5.20.040 License—Issuance—Appeal of rejection.
- 5.20.050 License—Fee.
- 5.20.060 Exemptions.

### 5.20.010 Application—Required—Contents.

Examples of special events include, but are not limited to ~~Any~~ carnival, fair or festival, concert, rodeo, sporting event, parade, protest and/or other show desiring to locate within the City. Organizers of public performance or operation shall make written application for a license to the City Recorder if any of the following apply:.

- Gatherings/events that involve large groups of people impacting the right-of-way or City park
- Advertised to the public
- Cause impact to City streets or a State Highway (including curb or parking lane), sidewalks, and or public rights of way
- Cause impact to a Public Parking Lot

Applications must be received at least ~~20~~ 45 days prior to the intended date of the first public performance or operation. Events that draw a group of over 1,000 shall be submitted 60-90 days in advance. Such application shall contain, in addition to the proposed time and location of the performance, attraction or operation, such information as the ~~Chief of Police~~ City Administration shall reasonably require in order to be assured that the issuance of the requested license will in no respect endanger the public health, peace and safety of the City. (Ord. 1979-1 §1)

### 5.20.020 Application—Insurance policy required.

The application for the license required in Section 5.20.010 must be accompanied by evidence of an adequate amount of insurance issued by a reputable insurance company, the insurance policy or policies so conditioned as to save the City harmless from any claim or liability for any injury to persons or property caused by the performance or operation of the applicant within the City. The adequacy of such insurance shall be determined by the City Recorder. (Ord. 1979-1 §2)

### **5.20.030 Application—Cash deposit or bond required.**

The application for the license shall be accompanied by a cash deposit or bond sufficient to indemnify the City for any increased cost in City services caused by the performance or operation of the applicant within the City, in order to prevent the public health, peace and safety of the City from being endangered. The amount of such deposit or bond shall be fixed by the City Recorder **Manager or designee**. Upon completion of the event, the City Recorder **Manager** shall determine what the actual increased cost of City services were and deduct such amount to the general fund of the City. The license applicant shall agree to pay any excess costs of such services beyond the amount fixed by the deposit or bond and shall be entitled to the return of any amount deposited in excess of the actual increased cost. (Ord. 1979-1 §3)

### **5.20.040 License—Issuance—Appeal of rejection.**

~~If the Chief of Police~~ **City Administration** endorses his or her approval of the application for the license required by this chapter, based on the criteria indicated in Section 5.20.010, and the evidence of adequate insurance coverage required by Section 5.20.020 is satisfactory, and the deposit or bond required in Section 5.20.030 is satisfactory, the Recorder shall issue the license as requested upon payment of the fee set forth in Section 5.20.050. In the event that the application is rejected, the applicant may appeal in writing to the **City Manager**. ~~The City Council may, by resolution, waive or modify any of the above conditions of obtaining a license as to a particular applicant when it determines that to do so would be in the best interests of the City.~~ (Ord. 1979-1 §4)

### **5.20.050 License—Fee.**

~~The license fee for circuses, carnivals, music festivals, concerts and other shows events described in Section 5.20.010 shall be determined by the City's fee schedule, set by Resolution. \$25.00 per day, or fraction thereof, during which such performance, attraction or operation is open to the public; provided, however, that no license fee shall be required of any circus, carnival, music festival or concert or other show, the entire proceeds of which are devoted to charitable purposes, and no part of which proceeds inure to the benefit of any person.~~ (Ord. 1979-1 §5)

**Events that require additional staff such as Peace Officers or Public Works employees may be required to pay an additional fee to the City. The fee is set by Resolution and enforced by the City Manager.**

### **5.20.060 Exemptions.**

The provisions of this chapter shall not be taken to apply to motion picture shows at permanently established motion picture theaters or activities sponsored by the local



public school district that are held on District owned property within the city limits. (Ord. 1979-1 §6)

### 5.20.070 Following Temporary Uses Standards

Applicant shall adhere to portions of Molalla Municipal Code Chapter 17-2.3.150, Temporary Uses, A. Seasonal and Special Events guidelines.

A. **Seasonal and Special Events.** ~~Through a Type II procedure, pursuant to Section 17-4.1.030,~~ The City shall approve, approve with conditions, or deny an temporary use application for a Seasonal or Special Event, based on the following criteria:

1. Applicant meets all criteria as listed in the Special Event Permit.
2. The use occurs for not longer than 45 consecutive days and 45 days between occurrences.
3. The applicant, if different than the property owner, has proof of the owner's permission to place the use on the property.
4. There is sufficient parking to accommodate the temporary use and other uses existing on the site, pursuant to the Chapter [17-3.5](#) Parking and Loading.
5. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare, or lights that affect an adjoining use in a manner in which other uses allowed outright in the district do not affect the adjoining use.
6. The use is adequately served by sewer or septic system and water, as applicable.
7. The applicant shall be responsible for maintaining all required licenses and permits.



Administration – City Records Office
117 N Molalla Avenue, PO Box 248, Molalla, Oregon 97038
Phone: (503) 829-6855 Ext. 285 Fax: (503) 829-3676

AFFIDAVIT OF POSTING

I, Dan Huff, City Manager for the City of Molalla, do hereby certify that I posted a copy of:
Ordinance No. 2022-04: Amending Molalla Municipal Code Chapter 5.20 Show License to become Chapter 5.20 Special Event Licenses and Amending the Language

I posted the attached Ordinance No. 2022-04 at the following public and conspicuous places.

- 1. The City website, www.cityofmolalla.com ;
2. The Molalla Public Library, located at 201 E. 5th Street, Molalla, OR 97038; and
3. The bulletin board inside Molalla City Hall located at 117 N. Molalla Ave. Molalla, OR 97038.

The ordinance was posted on December 8, 2022 and remained posted for a period of at least five days prior to the passage of the ordinance. Molalla City Charter Chapter IV, Section 17 (b).

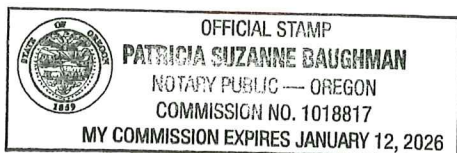
[Handwritten signature of Dan Huff]

Dan Huff
City Manager

STATE OF OREGON )
) ss.
County of Clackamas )

On this 8th day of December 2022, Dan Huff before me appeared, to me personally known, who being first duly sworn, did say that he is the City Manager for the City of Molalla, that said instrument was executed by the City of Molalla, and he acknowledged said instrument to be the free act and deed of the City of Molalla, Clackamas County, Oregon.

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



[Handwritten signature of Patricia Suzanne Baughman]
Notary Public for Oregon, County of Clackamas

My Commission expires: January 12, 2026



## CITY OF MOLALLA

117 N. Molalla Avenue  
PO Box 248  
Molalla, OR 97038

### Staff Report

#### Agenda Category: General Business

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**Agenda Date:** December 14, 2022

**From:** Dan Huff, City Manager

**Approved by:** Dan Huff, City Manager

**SUBJECT:** Preconstruction Contract award to P&C Construction through the CM/GC  
(Construction Manager/General Contractor) process

**FISCAL IMPACT:** \$38,000

**RECOMMENDATION/RECOMMEND MOTION:** Authorize City Manager to negotiate and sign Agreement

**BACKGROUND:**

On November 10, 2022, the Molalla Police Facility CM/GC Selection committee convened to hold interviews with the three highest ranking general contractors out of a total of eight submissions to reach the final scoring for the CM/GC position on the new Molalla Police Facility. The process took most of the day with each of the three firms presenting their best message and then holding a questions and answer period for the remainder of the time slots. After final scoring of the interviews, those scores were added to the previous scores of the proposal and fee scoring to bring a grand total for each firm. The outcome showed that P&C Construction scored highest 134.41 with Kirby Nagelhout 129.92 and Todd Construction 127.92 coming in respective 2<sup>nd</sup> and 3<sup>rd</sup> places. The selection committee, therefore, has selected P&C as the CM/GC firm to recommend to the City Council on December 14, 2022, and to enter preconstruction services phase.

Tonight, we are asking the City for approval of award for a CM/GC preconstruction contract with P&C Construction for \$38,000 with the intent to use this preconstruction period to achieve a GMP (Guaranteed Maximum Price) of approximately \$16.8M. The City currently has the funding for the preconstruction period and will present the final GMP for council approval later.

Staff is in the process of examining an election consultant who may be useful in guiding us through a November 2023 election for a GO Bond (General Obligation) to fund the project subject to City Council approval.

**Dan Huff**  
City Manager

**APPENDIX B**  
**City of Molalla**  
**CM/GC CONTRACT- Draft**

(Construction Manager/General Contractor)

**THE CONTRACT IS BETWEEN:**

**OWNER:**

**City of Molalla**

**And**

**P&C Construction**

**CONSTRUCTION MANAGER/  
GENERAL CONTRACTOR  
(Referred to in the Standard General  
Conditions For Public Improvement  
Contracts as Contractor and referred to  
herein as "the CM/GC"):**

**The Project is: New Police Facility**

**The Architect is:**

**Mackenzie**

**The Owner's Authorized**

**Representative is:**

**Dan Huff, City Manager**

**The Owner's Target GMP Range is:        \$10-15M**

# City of Molalla

## CM/GC CONTRACT

### TABLE OF CONTENTS

<i>ARTICLE</i>		<i>PAGE</i>
1	Definitions	p. 1
2	Contract Documents	p. 3
3	Work of The Contract	p. 4
4	Relationship and Role of the Parties	p. 10
5	Date of Commencement; Substantial and Final Completion	p. 11
6	Fees, Contract Sum and GMP	p. 13
7	Changes in the Work	p. 17
8	Cost of the Work (To Be Reimbursed)	p. 19
9	Costs Excluded From Cost of Work (Not To Be Reimbursed)	p. 23
10	Discounts, Rebates and Refunds	p. 23
11	Subcontracts and other Contracts	p. 24
12	Accounting Records	p. 27
13	Progress Payments	p. 28
14	Final Payment	p. 29
15	Termination or Suspension	p. 30
16	Representations and Warranties	p. 31
17	Miscellaneous	p. 32
	Exhibit A City of Molalla General Conditions	p. 33
	Exhibit B Form of GMP Amendment	p. 34
	Exhibit C Cost for General Conditions Work	p. 37

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**The Owner and CM/GC agree as set forth below:**

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**ARTICLE 1**  
**DEFINITIONS**

Except as expressly defined or modified below or elsewhere in this agreement (“CM/GC Contract”), all capitalized terms shall have the meanings set forth in Section A of Part IV of the State of Oregon Standard General Conditions for Public Improvement Contracts, January 1, 2012, attached as Exhibit A hereto (the "City of Molalla General Conditions"). The terms below are expressly defined as follows:

- 1.1 Affiliate.** Affiliate shall mean any subsidiary of CM/GC, and any other entity in which CM/GC has a financial interest or which has a financial interest in CM/GC (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or which controls CM/GC).
- 1.2 Allowances.** Allowances shall mean the allowance amounts shown in the GMP Supporting Documents, together with such further allowances as may be developed by the parties as the Project progresses.
- 1.3 Amendment.** Amendment shall mean a written modification of the Contract (including without limitation any agreed change to the GMP), identified as an Amendment, and executed by CM/GC, the Owner’s Authorized Representative, and, where required, approved in writing by the owner.
- 1.4 Business Days.** Business Days shall mean every day except Saturday, Sunday, and legal holidays recognized for employees of the City of Molalla.
- 1.5 Change Order.** Change Order shall mean a written modification of the Contract under Section D.1 of the City of Molalla General Conditions (including without limitation any agreed change to GMP), identified as a Change Order and executed by the Owner’s Authorized Representative, CM/GC, where applicable, and, where required, approved in writing by the owner.
- 1.6 CM/GC Field Work.** CM/GC Field Work shall mean customary portions of the Work of a minor nature and not feasibly part of the subcontracted work due to: exclusions by the Subcontractor not resolved through the process described in Article 11.3.3, undeveloped design owing to deviations in Work performed or materials delivered by Subcontractors or suppliers that do not represent defective or nonconforming work, a breach or failure to perform by the Subcontractor or supplier, complexity of coordination of the Work, and other similar reasons typically providing cause for “pick-up” or GC Work under industry standards; provided, however, that (i) the CM/GC has reasonably determined that doing such portion of the Work itself is in the best interests of Owner, (ii) such Work is identified as CM/GC Field Work in

monthly billings and (iii) CM/GC receives prior approval of Owner's Authorized Representative as to the scope of such CM/GC Field Work.

- 1.7 **CM Services.** CM Services shall have the meaning given in Article 3.3 below.
- 1.8 **Construction Documents.** Construction Documents shall have the meaning given in the City of Molalla Professional Services Agreement with the Architect for this Project.
- 1.9 **Construction Phase.** The Construction Phase shall mean the period commencing on the Owner's execution of a GMP Amendment or Early Work Amendment, together with the earlier of (i) issuance by Owner of a Notice to Proceed with any on-site construction or (ii) execution of a subcontract or issuance of a purchase order for materials or equipment required for the Work.
- 1.10 **Construction Phase Services.** Construction Phase Services shall mean all of the Work other than the Preconstruction Phase Services.
- 1.11 **Contract Documents.** Contract Documents shall have the meaning given in Section A of the City of Molalla General Conditions, as supplemented by Article 2.1 below.
- 1.12 **Design Development Documents.** Design Development Documents shall have the meaning given in the City of Molalla Professional Services Agreement with the Architect for this Project.
- 1.13 **Early Work.** Early Work shall mean Construction Phase Services authorized by Amendment that the parties agree should be performed in advance of establishment of the GMP. Permissible Early Work shall be limited to: early procurement of materials and supplies; early release of bid or proposal packages for site development and related activities; and any other advance work related to critical components of the Project for which performance prior to establishment of the GMP will materially affect the critical path schedule of the Project.
- 1.14 **Early Work Amendment.** Early Work Amendment shall mean an Amendment to the Contract executed by and between the parties to authorize Early Work.
- 1.15 **Cost for General Conditions Work.** Cost for General Conditions Work or GC Work shall mean that sum identified in Article 8.8 and/or Exhibit C. *[Note: The agency may decide not to fix General Conditions Work costs, but instead may wish to treat them as reimbursable items like all other costs of the Work. If so, this section, and all related sections should be deleted or amended as instructed in Section 8.8]*
- 1.16 **General Conditions Work.** General Conditions Work ("GC Work") shall mean (i) that portion of the Work required to support construction operations that is not included within overhead or general expense but is called out as GC Work in Exhibit C, and (ii) any other specific categories of Work approved in writing by the Owner's Authorized Representative as forming a part of the GC Work.

- 1.17 Guaranteed Maximum Price (GMP).** GMP shall mean the Guaranteed Maximum Price of the Contract, as stated in dollars within the GMP Amendment, as determined in accordance with Article 6, and as it may be adjusted from time to time pursuant to the provisions of the Contract.
- 1.18 GMP Amendment.** GMP Amendment shall mean an Amendment to the Contract, issued in the form of Exhibit B and executed by and between the parties, to establish the GMP and identify the GMP Supporting Documents for Construction Phase Services.
- 1.19 GMP Supporting Documents.** GMP Supporting Documents shall mean the documents referenced in the GMP Amendment as the basis for establishing the GMP. The GMP Supporting Documents shall expressly identify the Plans and Specifications, assumptions, qualifications, exclusions, conditions, allowances, unit prices, and alternates that form the basis for the GMP.
- 1.20 Preconstruction Phase.** The Preconstruction Phase shall mean the period commencing on the date of this CM/GC Contract and ending upon commencement of the Construction Phase; provided that if the Owner and CM/GC agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently, subject to the terms and conditions of the Contract Documents.
- 1.21 Preconstruction Phase Services.** Preconstruction Phase Services shall mean all services described in Article 3.1, and any similar services described in the Request for Proposals, including such similar services as are described in the CM/GC's RFP proposal to the extent they are accepted by Owner, but excluding any Early Work. Early Work shall be considered part of Construction Phase Services.
- 1.22 Schematic Design Documents.** Schematic Design Documents shall have the meaning given in the City of Molalla Professional Services Agreement with the Architect for this Project.
- 1.23 Savings.** Savings is defined in ORS 279C.337(4) and means a positive difference between a fixed price, a guaranteed maximum price or other maximum price set forth in a public improvement contract and the actual cost of the work, including costs for which a contracting agency reimburses a construction manager/general contractor and fees or profits the construction manager/general contractor earns.
- 1.24 Scope Change.** Scope Change shall mean only (i) changed site conditions not reasonably inferable from information available to CM/GC at the time of execution of the GMP Amendment, and (ii) significant Work modifications (including additions, substitutions, and deletions), application of Allowances, and selection of alternates, all as approved by the Owner under the Contract beyond that identified or inferable from the GMP Supporting Documents (but in the case of Allowance items, the GMP will increase only if the cost to Owner of the Allowance items exceeds the total amount of the Allowances).

## **ARTICLE 2**



## **CONTRACT DOCUMENTS**

- 2.1 Contract Documents.** For valuable consideration as stated below, Owner and the CM/GC agree to the terms of the contract that are set forth in the Contract Documents. For purposes of this Project, the Contract Document identified as "Public Improvement Contract" in the City of Molalla General Conditions shall mean this CM/GC Contract. The CM/GC Contract shall include all exhibits attached hereto, which by this reference are incorporated herein.
- 2.2 Effective Date.** The Contract (hereafter the "Contract") shall become effective on the first date on which both parties have signed this CM/GC Contract and Owner has received all necessary approvals.
- 2.3 The Contract; Order of Precedence.** This CM/GC Contract, together with the other Contract Documents, form the entire agreement between the parties. Except as expressly otherwise provided herein, the order of precedence of the Contract Documents is established in Section A.3 of the City of Molalla General Conditions, if there are inconsistent or conflicting terms among the Contract Documents.

### **ARTICLE 3** **WORK OF THE CONTRACT**

- 3.1 Preconstruction Phase Services.** The CM/GC agrees to provide all of the Preconstruction Phase Services described below on an ongoing basis in support of, and in conformance with, the time frames described in the Request for Proposals. Commencement of the Construction Phase shall not excuse CM/GC from completion of the Preconstruction Phase Services, if such services have not been fully performed at commencement of the Construction Phase. Preconstruction Phase Services shall include CM Services performed during the Preconstruction Phase.
- 3.1.1** The CM/GC shall provide a preliminary evaluation of the Owner's program and budget requirements, each in terms of the other.
- 3.1.2** The CM/GC shall provide the following services relating to design and preconstruction tasks:
- (a) The CM/GC shall consult with, advise, assist, and provide recommendations to the Owner and the design team on all aspects of the planning and design of the Work.
  - (b) The CM/GC shall jointly schedule and attend regular meetings with the Architect and Owner's Authorized Representative. The CM/GC shall consult with the Owner and Architect and Owner's Authorized Representative regarding site use and improvements, and the selection of materials, building systems and equipment.
  - (c) The CM/GC shall provide recommendations on construction feasibility; actions

designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

- (d) The CM/GC shall review in-progress design documents, including the documents generally described in the industry as Schematic Development Documents, Design Development Documents, and Construction Documents and provide input and advice on construction feasibility, budget feasibility, alternative materials, and availability. CM/GC shall review these completed Schematic Development Documents, Design Development Documents, and Construction Documents and timely suggest modifications to improve completeness and clarity.

**3.1.3** The CM/GC shall provide the following services related to the Project schedule:

- (a) The CM/GC shall prepare, and periodically update, a preliminary Project schedule for the Architect's and Owner's Authorized Representative's review and the Owner's Authorized Representative's approval.
- (b) The CM/GC shall analyze construction sequencing in order to be cost effective, to create the least amount of disruption for students, faculty, and staff in adjacent buildings, and to allow adjacent facilities to remain in operation throughout the course of construction. In addition to preparing a construction schedule, this Project shall require a site staging and logistics plan that incorporates issues such as temporary fire access and egress routes from existing buildings
- (c) The CM/GC shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect, and CM/GC. As design proceeds, CM/GC shall update the preliminary Project schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, and Owner's occupancy requirements showing portions of the Project having occupancy priority, provided that the date(s) of Substantial Completion shall not be modified without Owner's prior written approval. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the CM/GC shall make appropriate recommendations to the Owner's Authorized Representative and Architect.
- (d) The CM/GC shall continuously monitor the Project schedule and recommend adjustments in the development of design documents for construction bid packages to ensure completion of the Project in the most expeditious manner possible

**3.1.4** The CM/GC shall make recommendations to Architect and Owner's Authorized Representative regarding the phased issuance of Plans and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the

Project, taking into consideration such factors as economics, time of performance, availability of labor and materials, and provisions for temporary facilities.

**3.1.5** The CM/GC shall provide the following services relating to cost estimating:

- (a) The CM/GC shall prepare, for the review of the Architect and Owner's Authorized Representative and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.
- (b) When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the CM/GC shall prepare for the review of the Architect and Owner's Authorized Representative and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the CM/GC shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Owner's Authorized Representative and CM/GC.
- (c) When Design Development Documents have been prepared by the Architect and approved by the Owner, the CM/GC shall prepare a detailed estimate with supporting data for review by the Architect and Owner's Authorized Representative and approval by the Owner. During the preparation of the Construction Documents, the CM/GC shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Owner's Authorized Representative and CM/GC.
- (d) If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the CM/GC shall make appropriate recommendations to the Architect and Owner's Authorized Representative.
- (e) CM/GC shall notify the Owner and the design team immediately if any construction cost estimate appears to be exceeding the construction budget.
- (f) The CM/GC otherwise shall work with the Architect and Owner to develop a GMP within the Target GMP Range and within Owner's schedule.

**3.1.6** The CM/GC shall perform the following services relating to Subcontractors and suppliers:

- (a) The CM/GC shall seek to develop Subcontractor and supplier interest in the Project, consistent with applicable legal requirements, and shall furnish to the Owner's Authorized Representative and Architect for their information a list of possible Subcontractors and suppliers, including suppliers who may furnish materials or equipment fabricated to a special design, from whom competitive bids, quotes, or proposals (collectively, "Offers") will be requested for each principal portion of the Work. Submission of such list is for information and discussion purposes only and not for prequalification. The receipt of such list shall not require the Owner, Owner's Authorized Representative or Architect to

investigate the qualifications of proposed Subcontractors and suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed Subcontractor, supplier, or method of procurement.

- (b) The CM/GC shall provide input to the Owner and the design team regarding current construction market bidding climate, status of key subcontract markets, and other local economic conditions. CM/GC shall determine the division of work to facilitate bidding and award of trade contracts, considering such factors as bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues. CM/GC shall advise Owner on subcontracting opportunities for minority/women/ESB firms.

**3.1.7** The CM/GC shall recommend to the Owner's Authorized Representative and Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule, which shall be procured by the CM/GC upon execution of either a GMP Amendment or Early Work Amendment covering such procurement, and approval of such schedule by the Owner's Authorized Representative. The CM/GC shall expedite the delivery of long-lead time items.

**3.1.8** The CM/GC shall work with the Owner in identifying critical elements of the Work that may require special procurement processes, such as prequalification of offerors or alternative contracting methods.

**3.1.9** The CM/GC shall Work with the Owner and the design team to maximize energy efficiency in the Project, including without limitation providing estimating and value engineering support to the Owner's analysis and application for energy related incentive programs offered by local utilities.

**3.1.10** [This section is not required] The CM/GC shall work with the Owner and the design team to facilitate changes to the Project necessary to allow incorporation of works of art from the Project's 1% for Art program into the design and construction of the building. Owner's cost of the art objects is not included in the Cost of the Work or the GMP, but CM/GC's costs relating to facilitating changes to accommodate the handling and installation of the art are part of the Cost of the Work and are included in the GMP.

## **3.2 Construction Phase Services.**

**3.2.1** Upon execution of an Early Work Amendment or GMP Amendment, the CM/GC shall provide Construction Phase Services as provided in the Contract Documents, including without limitation providing and paying for all materials, tools, equipment, labor and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents, to furnish to Owner a complete, fully functional Project, capable of being legally occupied and fully used for its intended purposes upon completion of the Contract (or, as to an Early Work Amendment, to furnish such Work as is described in the Early Work Amendment). Construction Phase Services shall include CM Services performed during the Construction Phase.

- 3.2.2** Notwithstanding any other references to Construction Phase Services in this CM/GC Contract, the Contract shall include Preconstruction Phase Services only unless (i) the parties execute a GMP Amendment or (ii) the parties execute an Early Work Amendment, defined below.
- 3.2.3** The parties may execute one or more Early Work Amendments identifying specific Construction Phase Services that must be performed in advance of establishment of the GMP, without exceeding a not-to-exceed budget, a maximum not-to-exceed price, or a fixed price ("Early Work Price") to be stated in such Amendment, with such Amendment including all necessary City approvals where required. If the Early Work Price is a not-to-exceed budget, then CM/GC shall be obligated to perform the Early Work only to the extent that the Cost of Work therefor, together with the CM/GC Fee, does not exceed the Early Work Price; however if CM/CG performs Early Work with a maximum not-to-exceed price or fixed price, and incurs cost in excess of that maximum not-to-exceed price or fixed price, respectively, the CM/GC shall complete the Early Work and pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, the CM/GC shall diligently continue to work toward development of a GMP Amendment acceptable to Owner, which shall incorporate the Early Work Amendments. If Owner thereafter terminates the Contract prior to execution of a GMP Amendment, the provisions of Section J.5 of the City of Molalla General Conditions shall apply.
- 3.2.4** Prior to commencement of the Construction Phase, and in any event not later than mutual execution of the GMP Amendment, CM/GC shall provide to Owner a full performance bond and a payment security bond as required by Section G of the City of Molalla General Conditions in the amount of the GMP. If an Early Work Amendment is executed, CM/GC shall provide such bond in the amount of the Early Work Price under the Early Work Amendment. CM/GC shall provide to Owner additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Scope Change that increases the GMP, CM/GC shall provide to Owner an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.
- 3.3 Construction Management (CM) Services.** Throughout the Preconstruction Phase and Construction Phase of the Project, the CM/GC shall provide CM Services, generally consisting of coordinating and managing the building process as an independent contractor, in cooperation with the Owner, Owner's Authorized Representative, Architect and other designated Project consultants (the "Construction Principals"). CM Services shall include, but are not limited to:
- 3.3.1** Providing all Preconstruction Phase Services described above;
- 3.3.2** Developing and delivering schedules, preparing construction estimates, performing constructability review, analyzing alternative designs, studying labor conditions,

- coordinating and communicating the activities of the Construction Principals throughout the Construction Phase to all Construction Principals;
- 3.3.3** Continuously monitoring the Project schedule and recommending adjustments to ensure completion of the Project in the most expeditious manner possible;
  - 3.3.4** Working with the Owner, Owner's Authorized Representative, and the Architect to analyze the design, participate in decisions regarding construction materials, methods, systems, phasing, and costs, and suggest modifications to achieve the goals of providing the Owner with the highest quality Project within the budget, GMP and schedule;
  - 3.3.5** Providing Value Engineering ("VE") services ongoing through the Project. CM/GC shall develop cost proposals, in the form of additions to or deductions from the GMP, including detailed documentation to support such adjustments and shall submit such proposals to Owner for its approval. CM/GC shall actively participate in a formal VE study anticipated to be held at the end of the Design Development phase. CM/GC acknowledges that VE services are intended to improve the value received by Owner with respect to cost reduction or life cycle of the Project;
  - 3.3.6** Holding and conducting periodic meetings with the Owner and the Architect to coordinate, update and ensure progress of the Work;
  - 3.3.7** Submitting monthly written report(s) to the Owner's Authorized Representative. Each report shall include, but shall not be limited to, Project updates including (i) actual costs and progress for the reporting period as compared to the estimate of costs; (ii) explanations of significant variations; (iii) work completed; (iv) work in progress. (v) changes in the work; and (vi) other information as determined to be appropriate by the Owner. Oral or written updates shall be provided to the Owner as deemed appropriate by the CM/GC or as requested by the Owner;
  - 3.3.8** Maintaining a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered, safety violations and incidents of personal injury and property damage, and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect on request;
  - 3.3.9** Developing and implementing a system of cost control for the Work acceptable to Owner's Authorized Representative, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The CM/GC shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals;
  - 3.3.10** Cooperating with any and all consultants hired by Owner;
  - 3.3.11** At Owner's request, cooperating and performing warranty and inspection Work for the Project through the expiration date of the applicable warranty period;

- 3.3.12 Assisting Owner with start-up of the Project. Such start-up may occur in phases due to phased occupancy;
- 3.3.13 Incorporating commissioning and inspection agents' activities into the Project schedule and coordinating Subcontractors required to participate in the commissioning and inspection process;
- 3.3.14 Performing all other obligations and providing all other services set forth in the Contract Documents; and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work as required by the Contract.

**ARTICLE 4**  
**RELATIONSHIP AND ROLES OF THE PARTIES**

- 4.1 **Independent Contractor.** The CM/GC is an independent contractor and not an officer, employee, or agent of Owner as those terms are used in ORS 30.265.
- 4.2 **Performance of Work.** The CM/CG covenants with Owner to cooperate with the Architect and Owner's Authorized Representative and utilize the CM/GC's professional skill, efforts and judgment in furthering the interests of Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in conformance with the terms and conditions of the Contract Documents and in an expeditious and economical manner consistent with the interests of Owner.
- 4.3 **Design Consultants.** Owner has a separate contract with the Architect related to the Project. Both the CM/GC and the Architect shall be given direction by Owner through Owner's Authorized Representative. The CM/GC agrees to support Owner's efforts to create a collaborative and cooperative relationship among the CM/GC, Architect, other Project consultants, and Owner's Authorized Representative.
- 4.4 **Forms and Procedures.** The Owner has developed or may develop procedures and forms for the administration and tracking of the Contract. The CM/GC agrees to abide by those procedures and use those forms.
- 4.5 **CM/GC's Project Staff.** The CM/GC's Project staff shall consist of the following personnel:
  - 4.5.1 Project Manager and Assistant Project Manager/Project Engineer: Jason Burgard shall be the CM/GC's Project Manager and Alison Carpenter shall be CM/GC's Assistant Project Manager/Project Engineer and one or both will supervise and coordinate all Construction Phase and Preconstruction Phase Services of CM/GC and participate in all meetings throughout the Project term unless otherwise directed by Owner. CM/GC represents that each of the Project Manager and Assistant Project Manager have authority to execute Change Orders and Contract Amendments on behalf of CM/GC.
  - 4.5.2 Job Superintendent: If Construction Phase Services are requested and accepted by Owner, Brad Esler shall be the CM/GC's on-site job superintendent throughout the

Project term.

- 4.6 Key Persons.** The CM/GC's personnel identified in Article 4.5, and any other personnel identified by name in CM/GC's Proposal, shall be considered Key Persons and shall not be replaced during the Project without the written permission of Owner, which shall not be unreasonably withheld. If the CM/GC intends to substitute personnel, a request must be given to Owner at least 30 Days (or such shorter period as permitted by Owner) prior to the intended time of substitution. When replacements have been approved by Owner, the CM/GC shall provide a transition period of at least 10 Business Days during which the original and replacement personnel shall be working on the Project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner.

## ARTICLE 5

### **DATE OF COMMENCEMENT; SUBSTANTIAL AND FINAL COMPLETION**

- 5.1 Notice to Proceed.** If Construction Phase Services are added to the Contract as set forth in Article 3.2, then a notice to proceed will be issued by Owner to begin the designated or full Construction Phase Services ("Notice to Proceed"). It is anticipated that the Notice to Proceed will be issued on or about\_\_\_\_, 20\_\_\_\_. A separate Notice to Proceed shall be issued for any and every Early Work Amendment.
- 5.2 Completion of Project.** The CM/GC shall achieve Substantial Completion of the entire Work not later than:\_\_\_\_\_and shall achieve Final Completion not later than\_\_\_\_\_.
- 5.3 Time is of the Essence.** All time limits stated in the Contract Documents are of the essence.
- 5.4 Time Extensions.** Notwithstanding provisions for Contract time extensions in Section D.2 of the City of Molalla General Conditions, Owner and CM/GC agree that timely completion of the Work is essential to the success of the Project, and that approval for time extension shall be granted only as a last resort. CM/GC agrees to make every effort to recover "lost" time.
- 5.5 Liquidated Damages.** The CM/GC acknowledges that the Owner will sustain damages as a result of the CM/GC's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities. The CM/GC and the Owner acknowledge that the actual amount of damages would be difficult to determine accurately and agree that that the following liquidated damages figure represents a reasonable estimate of such damages and is not a penalty:
- 5.5.1 FOR SINGLE PHASE PROJECTS:** Liquidated Damages shall be \$ 1,500 for each day that Substantial Completion exceeds the required date of Substantial



Completion.

- 5.5.2** The CM/GC agrees to pay to the Owner the liquidated damage sums set forth above for each day of delay or any fraction thereof and further agrees that Owner may deduct such sums from payments the Owner otherwise owes to CM/GC under the Contract. If such deduction does not result in payment to Owner of the assessed liquidated damages in full, CM/GC shall promptly pay any and all remaining sums due to the Owner upon demand.

**ARTICLE 6**  
**FEES, CONTRACT SUM AND GMP**

- 6.1 Fees; Contract Sum; GMP.** Owner shall pay CM/GC the Preconstruction Fee described in Article 6.2. In addition, for each Early Work Amendment executed by CM/GC and Owner, Owner shall pay CM/GC, as payment for the Early Work, an amount equal to the sum of the CM/GC Fee attributable to the Early Work, and the actual cost of all Early Work completed and accepted by Owner, but not exceeding the Early Work Price.

If a GMP Amendment is executed, Owner shall pay CM/GC, as payment for the Work, the "Contract Sum" which shall equal the sum of the Preconstruction Fee, the CM/GC Fee, the actual cost of the Work including any Early Work, but not exceeding the GMP.

The GMP shall be determined in accordance with the formula set forth below and as described in Article 6.3. The "Cost of the Work" is defined in Article 8. Costs in excess of the GMP shall be paid by the CM/GC without reimbursement by Owner. Changes to the GMP shall only be authorized by Amendment or Change Order that includes any necessary City of Molalla approvals.

<b>Preconstruction Fee</b>	+	<b>CM/GC Fee*</b>	+	<b>Estimated Cost of the Work (Est COW)</b>	=	<b>GMP**</b>
Cost Reimbursement \$38,000 Maximum		5.35% of Est. COW Per RFP Response		Includes CM/GC's Contingency and the Cost for GC Work		

- 6.2 Preconstruction Fee.** The Preconstruction Fee shall be payable to CM/GC on a cost reimbursement basis up to a maximum sum of \$38,000, which shall cover constructability review, value engineering, cost estimating, development of GMP, and all other Preconstruction Phase Services, as described in Article 3. If CM/GC's costs for provision of Preconstruction Phase Services exceed the maximum Preconstruction Fee, CM/GC shall pay such additional cost without reimbursement. CM/GC shall not be entitled to any CM/GC Fee upon the Preconstruction Fee. Owner shall pay the Preconstruction Fee on a cost-reimbursement basis with each application for payment during the Preconstruction Phase. If the total actual Preconstruction Fee is less than the maximum Preconstruction Fee used for initial calculation of the GMP as provided above, the GMP shall be reduced by the difference; provided that Owner may direct instead that any unapplied portion of the maximum Preconstruction Fee be applied to Construction Phase Services, in which case the GMP shall not be reduced by the portion so applied. Except to the extent the parties may expressly agree to the contrary in the GMP Amendment, no Preconstruction Fee or other fee, compensation or reimbursement shall be payable to CM/GC with respect to Preconstruction Services performed after execution of the GMP Amendment.

### **6.3 Establishment of CM/GC Fee; Adjustments to CM/GC Fee.**

**6.3.1** The "CM/GC Fee" shall be a percentage of the cost of the work to be identified in the GMP Amendment and shall be calculated as 5.35% of the Estimated Cost of the Work at the time of establishment of the GMP. In making such calculation, the Estimated Cost of the Work shall exclude the Preconstruction Fee, the CM/GC Fee itself, Performance and Payment Bond and Liability Insurance, Builder's Risk and any other cost or charge which this CM/GC Contract states is not to be included in calculating the CM/GC Fee, but shall include Allowances, selected alternates, Cost for General Contractor Work, and reasonable CM/GC contingencies as designated in the GMP Supporting Documents. The CM/GC Fee is inclusive of profit, overhead, liability insurance, performance and payment bond, builder's risk and all other indirect or non-reimbursable costs. Owner shall pay the CM/GC Fee ratably with each application for payment during the Construction Phase. In the case of Early Work, the CM/CG Fee shall be the above percentage multiplied by the actual Cost of the Early Work, until such time as a GMP Amendment is executed, at which time such CM/GC Fee payments shall be credited against the CM/GC Fee fixed therein.

**6.3.2** Notwithstanding any provision of Section D.1.3 of the City of Molalla General Conditions to the contrary, and unless the parties agree in writing to the contrary, any Amendment or Change Order that increases or decreases the GMP shall adjust the CM/GC Fee then in effect by the multiplying the percentage shown in Article 6.3.1 by the change in the Estimated Cost of the Work reflected in such approved Amendment or Change Order. In addition, if the Contract is terminated for any reason prior to full completion of the Work (including, without limitation, termination during or following performance of Early Work), the CM/GC Fee shall be limited to the total CM/GC Fee multiplied by the percentage of Work completed and accepted at the time of termination. The CM/GC Fee shall not be subject to adjustment for any other reason, including, without limitation, schedule extensions or adjustments, Project delays, unanticipated costs, or unforeseen conditions.

### **6.4 Determination of GMP.**

**6.4.1** CM/GC shall deliver to Owner a proposed GMP and GMP Supporting Documents at a time designated by Owner during the Preconstruction Phase. If any actual subcontract Offers are available at the time the GMP is being established, CM/GC shall use those subcontract Offers in establishing the GMP.

**6.4.2** As the Plans and Specifications may not be developed to the stage of biddable design documents at the time the GMP proposal is prepared, the CM/GC shall provide in the GMP for further development of the Plans and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order or Amendment with a corresponding GMP adjustment.

- 6.4.3** The CM/GC shall include with its GMP proposal a written statement of its basis (the "GMP Supporting Documents"), which shall include:
- (a) A list of the Plans and Specifications, including all addenda thereto and the conditions of the Contract, which were used in preparation of the GMP proposal.
  - (b) A list of allowances and a statement of their basis.
  - (c) A list of the clarifications and assumptions made by the CM/GC in the preparation of the GMP proposal to supplement the information contained in the Plans and Specifications.
  - (d) The proposed GMP, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the associated fees that comprise the GMP.
  - (e) The Date of Substantial Completion upon which the proposed GMP is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.
- 6.4.4** The CM/GC shall meet with the Owner and Architect to review the GMP proposal and the written statement of its basis. If the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CM/GC, who shall make appropriate adjustments to the GMP proposal, its basis or both.
- 6.4.5** Prior to the Owner's acceptance of the CM/GC's GMP proposal and issuance of a Notice to Proceed, the CM/GC shall not incur any cost to be reimbursed as part of the Cost of the Work, except as specifically provided in an Early Work Amendment.
- 6.4.6** The Owner shall authorize and cause the Architect to revise the Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment. Such revised Plans and Specifications shall be furnished to the CM/GC in accordance with schedules agreed to by the Owner, Architect and CM/GC. The CM/GC shall promptly notify the Architect and Owner if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.
- 6.4.7** The GMP shall include in the Estimated Cost of the Work only those taxes which are enacted at the time the GMP is established.
- 6.4.8** The Estimated Cost of the Work shall include the CM/GC's contingency, a sum established by the CM/GC, with team and owner representative review and approval of all use, to cover additional development of Plans and Specifications and unanticipated costs and unforeseen conditions which are properly reimbursable as Cost of the Work but which are not the basis for a Change Order. Refer to CM/GC RFP 2.7.3 G Special Requirements for intended use of GMP Contingency.

- 6.4.9** The CM/GC shall work with the Architect and Owner to identify and confirm components and systems not specifically shown but required for a complete, fully functional Project. Owner will direct the Architect to complete the final Construction Documents in accordance with the Project scope agreed upon by all parties at the time the GMP is established.
- 6.4.10** Notwithstanding the level of detail represented in the GMP Supporting Documents, the CM/GC shall represent and warrant, at the time that it submits the GMP, that the GMP includes the entire cost of all components and systems required for a complete, fully functional facility.
- 6.4.11** In developing the GMP, the CM/GC shall include and identify such contingencies within the GMP as may be necessary to pay for unanticipated costs and unforeseen conditions that are required for a complete, fully functional facility.
- 6.5** **Failure to Furnish an Acceptable GMP.** If the CM/GC does not furnish a GMP acceptable to Owner within Owner's Target GMP Range, or if Owner determines at any time in its sole discretion that the parties may fail to reach a timely agreement on a GMP acceptable to Owner, Owner may terminate the Contract without liability, and the CM/GC shall not receive additional compensation beyond the Preconstruction Fee under the Contract and sums due under any Early Work Amendment. Termination under this provision shall proceed under Section J.5 of the City of Molalla General Conditions as a termination for Owner's convenience. CM/GC further agrees that Owner shall not be liable for any damages whether actual, consequential or otherwise for termination of the Contract under this provision.
- 6.6** **Acceptance of GMP.** Upon acceptance of the GMP by Owner, the parties shall execute a GMP Amendment.
- 6.7** **Owner Savings.** If the sum of the Preconstruction Fee, plus the CM/GC Fee, plus the actual and final Cost of the Work (the Contract Sum as defined in Article 6.1), is less than the GMP, the savings shall accrue to the Owner.
- 6.8** **Allowance Work.**
- 6.8.1** CM/GC shall not perform any Allowance Work without prior execution by Owner of a Change Order approving the Specifications for the Allowance Work and the price thereof.
- 6.8.2** Owner shall be entitled to apply any Allowance line items that are not fully expended to other line item Allowances that have been fully expended, without any resulting increase in the GMP.
- 6.8.3** If the total Cost of the Allowance Work exceeds the total Allowances within the GMP, CM/GC shall not perform any Allowance Work in excess of such amount until either (i) the parties agree that the additional Allowance work will be performed within the then-current GMP or (ii) a GMP Amendment is executed to increase the GMP by the excess

cost of the Allowance work.

- 6.8.4** The Contract Sum shall not include any Allowance items not identified in the GMP Amendment or the GMP Supporting Documents until such allowance item is reduced to a fixed price by Change Order or Amendment.
- 6.8.5** If at the Final Completion of the Project, any portion of the Allowance funds remains unexpended, the GMP shall be reduced by a corresponding amount via a Change Order or Amendment.
- 6.9 Reallocating Projected Cost Underruns after Bid (Offer) Buyout.** As soon as possible after the awarding of the Work to the primary Subcontractors, CM/GC shall review projected costs and provide the Owner with a buy-out status report showing any projected cost underruns, reconciling accepted Offers and other reasonably anticipated costs, to the cost estimate used by CM/GC to establish the GMP. CM/GC shall include with its report any underlying documentation requested by Owner used to develop or support such report. CM/GC shall also consider the reduced risk associated with known subcontracting costs, and the impact that reduced risk has on the amount of the CM/GC's Contingency. The parties shall negotiate in good faith to execute a Change Order transferring an appropriate portion of any projected cost underruns to an Owner-controlled contingency fund to be held within the GMP to pay for additional costs arising from (a) any Owner-directed or approved change to the Work, (b) schedule changes that would otherwise entitle CM/GC to an increase in the GMP, (c) Allowance items after exhaustion of all Allowances, (d) selection by Owner of more expensive alternates than those used for calculation of the GMP, (e) Owner selection of substitutions that increase the Cost of the Work, or (f) any other costs which otherwise would entitle CM/GC to an increase in the GMP. Any transfer of projected cost underruns from CM/GC's contingency to the Owner-controlled contingency fund will not affect CM/GC's obligation to furnish Owner with a complete, fully functional facility within the GMP without use of the funds transferred to the Owner-controlled contingency fund unless such funds are released by Owner for the purposes set forth in (a) through (f) of this Article 6.9. Any transfer of funds to the Owner-controlled contingency fund will not reduce the CM/GC Fee, nor will any subsequent release and use of funds from the Owner-controlled contingency fund for the purposes set forth in (a) through (f) of this Article 6.9 increase the CM/GC Fee.

## **ARTICLE 7** **CHANGES IN THE WORK**

- 7.1 Price Adjustments.** Adjustments to the Estimated Cost of the Work required by changes in the Work shall be determined by any of the methods listed in Section D of the City of Molalla General Conditions, except that, unless the adjustment is based upon fixed pricing or unit pricing:
- 7.1.1** The overhead and profit markup for the CM/GC shall be limited to the CM/GC Fee adjustment, if any, permitted under Article 6.3.2 of this CM/GC Contract;

- 7.1.2** The increase or decrease in the Estimated Cost of the Work, other than for subcontract work, shall be calculated pursuant to Articles 8 and 9 of this CM/GC Contract, instead of being based on CM/GC's Direct Costs as defined in the City of Molalla General Conditions; and
- 7.1.3** In calculating adjustments to subcontracts, unless the parties agree otherwise, the change shall be limited to the Subcontractor's Direct Costs plus the supplemental mark-up provided in Section D of the City of Molalla General Conditions and shall not be modified by Articles 8 and 9 of this CM/GC Contract.
- 7.2 Adjustments to GMP.** Adjustments to the GMP after execution of the GMP Amendment may be made only (i) in the event of Scope Changes or (ii) as otherwise expressly provided in this CM/GC Contract, and then only in accordance with the following procedure:
- 7.2.1** CM/GC shall review subsequent iterations of the Plans and Specifications as they are prepared to determine whether, in the opinion of CM/GC, they result in a Scope Change so that it can be determined if an adjustment to the GMP is warranted.
- 7.2.2** Changes to the GMP shall be initiated by written notice by one party to the other ("GMP Change Request"). CM/GC shall deliver any such GMP Change Request to Architect and Owner's Authorized Representative promptly after becoming aware of any Scope Change if, in CM/GC's opinion, it constitutes grounds for adjustment of the GMP. Any GMP Change Request shall include a proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.
- 7.2.3** CM/GC shall submit its GMP Change Requests as soon as possible, and CM/GC shall not be entitled to claim a GMP increase unless CM/GC submitted a GMP Change Request to Owner's Authorized Representative and to Architect within the earlier of (a) 30 Days after CM/GC has received the information constituting the basis for the claim, or (b) as to Work not yet bid or proposed, prior to submission of solicitations for such Work and as to Work already solicited, prior to commencement of the portion of the Work for which CM/GC intends to claim a Scope Change; and (c) in any event, prior to CM/GC's signing of a Change Order for the Scope Change.
- 7.2.4** Owner may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which shall include Owner's basis for such request, which may include, for example, reduction of the CM/GC's Contingency after further development of the Plans and Specifications that form the basis for the original GMP Amendment, and/or unused Allowances.
- 7.2.5** CM/GC shall work with Architect to reconcile all differences in its GMP Change Request with Architect within seven Days from the date of submission of the GMP Change Request. "Reconciled" means that the CM/GC and Architect have verified that their assumptions about the various categories are the same, and that they have identified the reason for differences in the GMP Change Request and the Architect's position. CM/GC shall submit the Reconciled GMP Change Request to Owner, which submission shall be a

condition to any CM/GC claim for a GMP increase.

- 7.2.6 If the Reconciled GMP Change Request is not acceptable to Owner, CM/GC agrees to work with the Owner and the Architect to provide a GMP Change Request that is acceptable to Owner.
- 7.2.7 CM/GC agrees to make all records, calculations, drawings and similar items relating to GMP Change Request available to Owner and to allow Architect and Owner access and opportunity to view such documents at CM/GC's offices. Upon Owner's reasonable notice, CM/GC shall deliver two copies of such documents to Owner's Representative and Architect at any regular meeting or at the Site.
- 7.2.8 GMP increases, if any, shall not exceed the increased Cost of the Work arising from the Scope Change (whether based on agreed fixed pricing, or the estimated Cost of the Work increase based on cost-reimbursable pricing), reconciled in accordance with the above provisions, as arising from the incident justifying the GMP increase, plus or minus the CM/GC Fee applicable to such change in the Cost of the Work.
- 7.2.9 Except as provided in this Article 7.2, adjustments to the GMP shall be reconciled in accordance with Section D of the City of Molalla General Conditions.
- 7.3 **Execution by Owner.** If Architect is not the Owner's Authorized Representative, then notwithstanding any provision in the Contract to the contrary, Architect has no authority to execute Change Orders or Amendments on behalf of Owner, and only duly authorized personnel of Owner may do so.

**ARTICLE 8**  
**COST OF THE WORK**  
**(To Be Reimbursed)**

- 8.1 **Cost of the Work.** The term "Cost of the Work" shall mean the following costs. The Cost of the Work shall include only those items necessarily and reasonably incurred by CM/GC in the proper performance of the Work and specifically identified in this Article 8, and only to the extent that they are directly related to the Project.
- 8.2 **Labor Costs.**
  - 8.2.1 Wages of construction workers directly employed by the CM/GC to perform the construction of the Work at the site.
- 8.3 **Subcontract Costs.**
  - 8.3.1 CM/GC's actual payment to Subcontractors pursuant to CM/GC's contract with such Subcontractor for the Work on the Project. No amount paid by or payable to any such Subcontractor other than the fixed or cost reimbursement price of its subcontract shall be included in the Cost of the Work, unless otherwise approved in writing by Owner.

**8.4 Costs of Materials and Equipment Incorporated in the Work or Stored On Site.**

**8.4.1** Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed Work.

**8.4.2** Costs of materials in excess of those actually installed, but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be delivered to Owner at the completion of the Work or, at Owner's option, shall be sold by the CM/GC. Any sale shall be commercially reasonable and CM/GC shall provide accounting for such a sale within 15 Days of the transaction. Net amounts realized, if any, from such sales shall be credited to Owner as a deduction from the Cost of the Work.

**8.5 Costs of Miscellaneous Equipment and Other Items; Equipment Rental Charges.**

**8.5.1** Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CM/GC at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the CM/GC; provided that Owner at Owner's option may require that CM/GC deliver to Owner (at no charge) at the end of the Project any of such items procured for this Project. Cost for items previously used by the CM/GC shall mean fair market value. CM/GC shall charge no additional administrative or other mark-up for purchased items. The CM/GC shall document all small tools purchased for the Project via invoices in monthly billing, and shall document the disposition of small tools which have an individual price that exceeds \$100. A copy of such disposition log shall accompany the payment application whenever these items are included in the application. In no case shall a tools cumulative billing to the project exceed 50% of fair market purchase price of the same new tool.

**8.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the CM/GC at the site, whether rented from the CM/GC or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be according to industry standards, shall not exceed 100% of the rental rates published from time to time in the Rental Rate Blue Book for Construction Equipment, prepared by Machinery Information Division of Primedia Information Incorporated in effect at the time of rental, shall not exceed acquisition costs, and for individual items exceeding \$ 100, will be subject to Owner's prior approval. CM/GC shall deliver to Owner a list of published rates from time to time at Owner's request. For all items rented or leased, the CM/GC shall charge Owner only the rental charge incurred by CM/GC with no additional administrative or other mark-up. CM/GC shall make efforts and use its best skills and judgment to procure equipment in the most expeditious and economical manner consistent with the interest of the Owner. Efforts shall include, but not be limited to, providing Owner with a rent/buy analysis so that Owner may elect for CM/GC to procure the item in lieu of rental if the facility at issue is expected to be rented for six months or longer. Such rent/buy analysis shall include, where available, a



leasing rate commensurate with the expected term of rental of the facility at issue.

**8.5.3** Costs of removal of debris from the site.

**8.6 Other Costs.**

**8.6.1** Deductible for builders all/risk insurance as required by Section G of the City of Molalla General Conditions.

**8.6.2** Sales, use or similar excise taxes imposed by a governmental authority which are directly related to the Work and for which the CM/GC is liable. In addition, the Contractor may account for the reasonable estimated impact of the Oregon Corporate Activity Tax (“CAT”) on the total cost of the Work.

**8.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the CM/GC is required by the Contract Documents to pay.

**8.6.4** CM/GC deposits lost for causes other than the CM/GC's fault or negligence.

**8.6.5** Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by Owner.

**8.7 Costs to Prevent Damage or Injury in Emergencies.** The Cost of the Work shall also include costs which are incurred by the CM/GC in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

**8.8 Cost For General Conditions Work.** CM/GC shall be paid a sum of \$1,173,902 for all services as stated in Exhibit C as payment for the GC Work, including all labor, materials, and direct and indirect costs thereof. To the extent any General Conditions Work is listed in Exhibit C and also otherwise described above in this Article 8, CM/GC’s compensation for the same is included in the Cost for GC Work and shall not otherwise be charged as Cost of the Work. The Cost for General Conditions Work, less 5% retainage thereon, shall be paid in equal installments monthly over the number of months of the scheduled Construction Phase, commencing with the first progress billing after commencement of the scheduled Construction Phase.

**ARTICLE 9**  
**COSTS EXCLUDED FROM COST OF WORK**  
**(Not To Be Reimbursed)**

**9.1 Costs Excluded from Cost of Work.** The following shall not be included in the Cost of the Work:

**9.1.1** Salaries and other compensation of the CM/GC's personnel stationed at the CM/GC's principal office or offices other than the site office except as allowed under Articles 8.2.

**9.1.2** Expenses of the CM/GC's principal office and offices other than the site office.

- 9.1.3 Any overhead and general expenses, except as may be expressly included in Article 8.
- 9.1.4 CM/GC's capital expenses, including interest on the CM/GC's capital employed for the Work.
- 9.1.5 Rental cost of machinery and equipment, except as provided in Article 8.5.2
- 9.1.6 Any cost associated with the Project not specifically and expressly described in Article 8.
- 9.1.7 Costs due to the fault or negligence of the CM/GC, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
- 9.1.8 The cost of correction of any repair work, nonconforming or defective work, or warranty work.
- 9.1.9 Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith, except as provided in Article 8.
- 9.1.10 Fines and penalties.
- 9.1.11 Except for Early Work, the cost of Preconstruction Phase Services.
- 9.1.12 The Cost of the Work for GC Work in excess of the Proposed Cost for General Conditions Work.
- 9.1.13 Any costs in excess of the GMP.
- 9.1.14 Premiums for Subcontractor bonds unless authorized by Owner

**ARTICLE 10**  
**DISCOUNTS, REBATES AND REFUNDS**

- 10.1 **Discounts, Rebates and Refunds.** Cash discounts obtained on payments made by the CM/GC shall accrue to Owner. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to Owner, and the CM/GC shall make provisions so that they can be secured.
- 10.2 **Amounts Credited to Owner.** Amounts which accrue to Owner in accordance with the provisions of Article 10.1 shall be credited to Owner as a deduction from the Cost of the Work.

**ARTICLE 11**  
**SUBCONTRACTS AND OTHER CONTRACTS**

- 11.1 **CM/GC's Obligations under Subcontracts.**

**11.1.1** No use of a Subcontractor or supplier shall relieve the CM/GC of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in the Contract, the CM/GC shall be fully responsible and liable for the acts or omissions of all Subcontractors and suppliers including persons directly or indirectly employed by them. The CM/GC shall have sole responsibility for managing and coordinating the operations of its Subcontractors and suppliers, including the settlement of disputes with or between the CM/GC and any such Subcontractor or supplier.

**11.1.2** The CM/GC shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, all provisions necessary to make all of the provisions of the Contract Documents, including the City of Molalla General Conditions, fully effective as applied to Subcontractors. CM/GC shall indemnify Owner for any additional cost based on a subcontractor claim which results from the failure of CM/GC to incorporate the provisions of this CM/GC Contract in each subcontract. The CM/GC shall provide all necessary Plans, Specifications, and instructions to its suppliers and Subcontractors to enable them to properly perform their work.

**11.1.3 Retainage from Subcontractors.** Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of no more than 5%. The Owner and the CM/GC shall agree upon a mutually acceptable procedure for review and approval of payments and retainage for Subcontractors.

## **11.2 Subcontractor Selection.**

**11.2.1** Subcontracts under this Contract are not Public Contracts within the meaning of the Code. Unless otherwise provided under this Section 11, however, the selection of all subcontractors and suppliers shall be made by competitive Offers in a manner that will not encourage favoritism or substantially diminish competition. Absent a written justification prepared by the CM/GC and approved by the Owner as more particularly provided for in this section, the CM/GC's subcontractor selection process must be "competitive", meaning that the process should include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts less than an amount agreed on by the Owner, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment;

**11.2.2** CM/GC shall submit to Owner's Authorized Representative its proposed procurement documents for review and comment before they are issued for solicitation. CM/GC shall consider and respond to all Owner comments regarding any proposed Offer packages. As Offers are received, CM/GC shall submit to the Owner an Offer comparison in a mutually agreeable form together with any specific back-up documentation requested by Owner. The competitive process used to award subcontracts by the CM/GC may be monitored by the Owner's Authorized Representative, provided that such monitoring shall not excuse CM/GC from compliance with the subcontracting requirements of this CM/GC Contract. CM/GC shall cooperate in all respects with Owner's monitoring. The Owner's Authorized

Representative shall be advised in advance of and be given the opportunity to be present at Offer openings, and CM/GC shall provide the Owner's Authorized Representative with a summary or abstract of all Offers in form acceptable to the Owner's Authorized Representative, and copies of particular Offers if requested, prior to CM/GC's selection of Offers. Prior to opening Offers, the CM/GC agrees to disclose in writing to Owner any financial interest it has in any such Subcontractor, supplier or other contracting party whenever such Subcontractor, supplier or contracting party intends to compete on any Project work, directly or indirectly, including whether such party is an Affiliate of CM/GC.

**11.2.3** The following minimum requirements apply to the Subcontract solicitation process:

- (a) Solicitations shall be advertised at least ten (10) days prior to opening in the Daily Journal of Commerce and at least one other newspaper specifically targeted to reach the Minority, Women and Emerging Small Business audience. CM/GC also agrees to advertise in a local community newspaper in the area in which the Project is located, in order to allow for local participation in the solicitation process.
- (b) Unless specific other prior arrangement has been made with Owner, all Offers will be written, and submitted to a specific location at a specific time. CM/GC shall time/date-stamp all bids/quotes/proposals as received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board.
- (c) If fewer than three (3) bids/quotes/proposals are submitted in response to any solicitation (inclusive of any bid submitted by CM/GC), prior written approval by Owner shall be required to accept a bid.
- (d) CM/GC may develop and implement a prequalification process in accordance with Oregon Revised Statutes for competitive bidding for particular solicitations, followed by selection of successful bids among those bidders that CM/GC determines meet the prequalification standards, with Owner's prior written approval of such prequalification process.
- (e) The CM/GC shall comply, and require subcontractor compliance, with the State of Oregon Bureau of Labor & Industries prevailing wage rate requirements. The wage rates that apply to this Project are described in Section C.1. of Exhibit A - General Conditions.
- (f) Owner may at its sole discretion, require CM/GC to re-solicit for bids/quotes/proposals based on the same or modified documents.
- (g) CM/GC and the Owner, at its' discretion, shall review all bids/quotes/proposals and shall work with bidders to clarify bids, reduce exclusions, verify scope and quantities, and seek to minimize work

subsequently awarded via the Change Order process.

- (h) The CM/GC shall document any and all discussions, questions and answers, modifications and responses to from any bidder and ensure that the same are distributed to all bidders, and Owner shall be entitled to inspect such documentation on request.
- (i) If using the low-bid or low-quote competitive method, CM/GC shall determine the lowest responsive and responsible bid/quote for each solicitation that meets CM/GC's reasonable performance standards for the components of the Work at issue; provided that if CM/GC determines it is unable to execute a suitable subcontract with such bidder, CM/GC may, with Owner's prior approval, execute a subcontract with the second-lowest Offeror pursuant to Section 14.c.4) below.

**11.2.4** When the subcontractor selection process for a particular Work package will not be "competitive" as provided for in this section, the process must meet the following requirements:

- (a) The CM/GC must prepare and submit a written justification to the Owner, explaining the project circumstances that support a non-competitive subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the CM/GC's need to utilize a key subcontractor member of the CM/GC's project team consistent with the CM/GC's project proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the subcontractor agreement, or a "sole source" justification;
- (b) For a "sole source" selection of a subcontractor to proceed, the Owner must evaluate the written justification provided by the CM/GC and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;
- (c) The Owner must approve the CM/GC's use of the non-competitive subcontractor selection process prior to the CM/GC's pursuit of the non-competitive process.

**11.2.5** CM/GC shall notify Owner in writing in advance before award of any proposed Subcontract, which notice shall include summaries in a form acceptable to Owner of all

Offers received for the Subcontract at issue. Owner reserves the right to disapprove any proposed Subcontractors, suppliers and Subcontract or supply contract awards, based on legal standards of responsibility. Owner shall not unreasonably disapprove any proposed Subcontractor or supplier and increased costs due to Owner's disapproval shall be cause for an increase in the GMP.

**11.2.6** CM/GC's subcontracting records shall not be considered public records; provided, however, that Owner and other agencies of the State shall retain the right to inspect, audit and monitor the subcontracting process in order to protect the Owner's interests.

### **11.3 CM/GC Field Work.**

**11.3.1** The CM/GC or its Affiliate(s) may provide CM/GC Field Work required to complete the Project with its own forces, without the necessity of subcontracting such work.

**11.3.2** Except as provided in Section 14.d.1), any other portion of the Work proposed to be performed by CM/GC or any Affiliate, including without limitation provision of any materials, equipment, or supplies, shall be subject to the provisions of Section 14.e.

### **11.4 Subcontracting by CM/GC.**

**11.4.1** Authorization: The CM/GC or an Affiliate or subsidiary of the CM/GC may perform or compete with other prospective subcontractors to perform work under this Contract as provided in this section.

**11.4.2** CM/GC Self-Performance or Performance by CM/GC Affiliates or Subsidiaries With Competition. If the CM/GC or an Affiliate or subsidiary of the CM/GC will be included in the subcontractor selection process to perform particular construction Work on the project, the CM/GC must disclose that fact in the selection process documents and announcements. The Owner must review and approve the conditions, processes and procedures the CM/GC will utilize in that competitive process in order to make the process impartial, competitive and fair. The Owner will monitor the selection process.

**11.4.3** CM/GC Self-Performance or Performance by CM/GC Affiliates or Subsidiaries Without Competition. Other than for GC Work, in order for the CM/GC or an Affiliate or subsidiary of the CM/GC to perform elements of the construction Work without competition from subcontractors, the CM/GC must provide a detailed proposal for performance of the Work by the CM/GC or an Affiliate or subsidiary of the CM/GC. If required by the Owner, the CM/GC's proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.

**11.4.4** When subcontracting work is performed by CM/GC, the estimate shall be verified by a 3rd party estimate and shall be reviewed and approved by the Owner. Once approved, the cost of work shall be based on GMP pricing format, with a separate schedule of values, and sufficient documentation to validate cost of work. Monthly invoices will be paid based on percentage complete and reconciled with actual costs on a quarterly

basis.

**11.4.5 Protests.** CM/GC, acting as an independent contractor, shall include in the competitive process to award all subcontracts, a protest process for subcontractors and suppliers that are competing Offerors, which process shall be subject to approval by Owner. CM/GC shall be solely responsible for resolving the procurement protests of subcontractors and suppliers. CM/GC shall indemnify, defend, protect and hold harmless Owner from and against any such procurement protests and resulting claims or litigation. CM/GC shall act as an independent contractor, and not an agent of Owner, in connection with any procurement protest. The provisions of this Section 14 are solely for the benefit of Owner, and do not grant any rights or remedies (including third party beneficiary rights) to any Offeror or other protester, in connection with any procurement protest or claim.

**11.4.6 Unsuccessful Subcontractor Briefing.** Briefing is designed to allow a subcontractor who was not selected by the CM/GC to perform a particular element of the construction Work to obtain specific information from the CM/GC, and meet with the CM/GC to discuss the subcontractor qualification and selection process involved and the CM/GC's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the Work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the Owner and the CM/GC. Nevertheless, the CM/GC is not obligated to provide this briefing opportunity unless the CM/GC receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the Owner and the CM/GC agree on a different schedule, the CM/GC Contract should include provisions:

- (a) Allowing a subcontractor 60 days from the CM/GC's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the CM/GC under this section; and
- (b) Requiring the CM/GC to set a meeting with the subcontractor under this section within 45 days of the subcontractor's written request.

## **ARTICLE 12** **ACCOUNTING RECORDS**

**12.1 Accounting; Audit Access.** The CM/GC shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract; the accounting and control systems shall be satisfactory to Owner. Owner and Owner's representatives, and auditors, shall be afforded reasonable and regular access to the CM/GC's records, books, correspondence, instructions, drawings, receipts,

subcontracts, purchase orders, vouchers, memoranda and other data relating to the Contract, and the CM/GC shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

- 12.2 Periodic and Final Audits.** Owner may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. Owner intends to conduct a final audit of reimbursable costs prior to the Contract closeout. The CM/GC shall cooperate fully with Owner in the performance of such audits. Disputes over audit findings or conclusions shall be subject to the process set forth in Article 14.4.

### **ARTICLE 13** **PROGRESS PAYMENTS**

- 13.2 Integration with City of Molalla General Conditions.** The requirements of this Article 13 and Article 14 are in addition to, and not in lieu of, the requirements of Section E of the City of Molalla General Conditions. In the event of conflict between the provisions of Articles 13 and 14 and Section E, the provision more favorable to Owner shall control. Without limitation, the provisions of Articles 13.3 and 13.4 shall control over the corresponding provisions of Section E.2.5 of the City of Molalla General Conditions.

- 13.3 Progress Payments.** Based upon applications for payment submitted pursuant to Section E of the City of Molalla General Conditions, Owner shall make progress payments on account of the Preconstruction Fee, Cost of the Work, and associated CM/GC Fee, less 5% retainage, to the CM/GC as provided below and elsewhere in the Contract Documents.

A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein.

- 13.4 Percentage of Completion.** Applications for payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage of completion shall be the lesser of (i) the percentage of that portion of the Work which has actually been completed; or (ii) the percentage obtained by dividing (a) the expense that has actually been incurred by the CM/GC on account of that portion of the Work for which the CM/GC has made or intends to make actual payment prior to the next application for payment by (b) the share of the GMP allocated to that portion of the Work in the Schedule of Values.

- 13.5 Calculation of Payment.** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- (a) Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work under the Schedule of Values by the share of the GMP allocated to that portion of the Work in the Schedule of Values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included;



- (b) Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored and otherwise in compliance with Section E.2.3 of the City of Molalla General Conditions.
- (c) Add the CM/GC's Fee. The portion of the CM/GC's Fee payable shall be an amount that bears the same ratio to CM/GC Fee as sum of the amounts in the two preceding Clauses bears to the estimated probable Cost of the Work described in Article 6.1.2, but in no event causing total CM/GC Fee payments to exceed the total CM/GC Fee;
- (d) Subtract the aggregate of previous payments made by and retained by the Owner;
- (e) Subtract the shortfall, if any, indicated by the documentation required to substantiate prior applications for payment, or resulting from errors subsequently discovered by the Owner in such documentation;
- (f) Subtract any amounts for which the Owner's Authorized Representative has withheld or denied payment as provided in the Contract Documents; and
- (g) Subtract 5% retainage on the entire progress payment.

**ARTICLE 14**  
**FINAL PAYMENT**

- 14.1 Final Payment Accounting.** CM/GC shall submit to Owner a final detailed accounting of the Cost of the Work together with CM/GC's final application for payment.
- 14.2 Calculation of Final Payment.** The amount of the final payment shall be calculated as follows:
- 14.2.1** Take the sum of the CM/GC Fee, plus the Preconstruction Fee, plus the actual Cost of the Work substantiated by the CM/GC's final accounting. Said sum shall not exceed the GMP.
- 14.2.2** Subtract amounts, if any, for which the Owner's Authorized Representative withholds, in whole or in part, approval of payment.
- 14.2.3** Subtract the aggregate of previous payments made by Owner to CM/GC. If the aggregate of previous payments made by Owner exceeds the amount due the CM/GC, the CM/GC shall reimburse the difference to Owner within 30 Days with interest at the rate applicable to Owner payments under the City of Molalla General Conditions.
- 14.3 Final Payment Review.** Owner or its accountants will review and report in writing on the CM/GC's final accounting within 30 Days after delivery of the final accounting by the CM/GC. Based upon such Cost of the Work as Owner or Owner's accountants report to be substantiated by the CM/GC's final accounting, and provided the other conditions of the Contract have been met, the Owner's Authorized Representative will, within 10 Days after receipt of the written report of Owner's accountants, either issue to Owner an approval of CM/GC's final application for payment with a copy to the CM/GC or notify

the CM/GC and Owner in writing of the Owner's Authorized Representative's reasons for withholding approval of any part of the application for payment, which disapproval shall include Owner's Authorized Representative's estimate of the amount that is due the CM/GC under the application for payment.

- 14.4 Payment Disputes.** If Owner's accountants report the Cost of the Work as substantiated by the CM/GC's final accounting to be less than claimed by the CM/GC or if Owner's Authorized Representative declines to approve any duly submitted payment request by CM/GC, the CM/GC shall be entitled to demand a review by the Owner's highest contracting authority of the disputed amount. Such demand shall be made by the CM/GC within 30 Days after the CM/GC's receipt of a copy of the rejection of the application for payment; failure to demand additional review within this 30-Day period shall result in the substantiated amount reported by Owner's accountants becoming binding on the CM/GC. In addition, If Owner or any other state agency performs a subsequent audit of the Cost of the Work and determines any item therein to have been unsubstantiated or that CM/GC was otherwise overpaid, CM/GC shall have 30 Days after delivery of request for reimbursement by Owner to demand additional review by Owner's highest contracting authority; failure to make such demand within this 30 Day period shall result in the requested reimbursement becoming unconditionally due and payable by CM/GC. If CM/GC timely submits a protest to the Agency's highest contracting authority, CM/GC's Claim shall be subject to the claims review process in Section D.3 of the City of Molalla General Conditions. Pending a final resolution, Owner shall pay the CM/GC the amount of the application for payment approved by the Owner's Authorized Representative.
- 14.5 Effect of Payment.** Neither approval of an application for payment, a progress payment, release of retainage, final payment, or partial or entire use or occupancy of the Project by the Owner shall constitute acceptance of work not conforming to the Contract Documents, or waiver of the right to assert overpayment.

## ARTICLE 15

### TERMINATION OR SUSPENSION

- 15.1 Owner's Right to Terminate Prior to Execution of GMP Amendment.** Prior to execution by both parties of the GMP Amendment, the Owner may terminate the Contract at any time without cause. Upon such termination, the amount to be paid to the CM/GC shall not exceed the Preconstruction Fee payable to the date of termination, together with amounts payable for Early Work if an Early Work Amendment has been executed. If Owner terminates for convenience during the Preconstruction Phase, Owner shall be entitled to copies of, and shall have the right to use, all work product of CM/GC and its Subcontractors performed to the date of termination, and CM/GC shall deliver copies of the same to Owner on request.
- 15.2 Owner's Termination for Convenience after GMP Amendment.** After the GMP Amendment is executed by both parties, the Contract may be terminated by Owner without penalty for convenience pursuant to Section J.5 of the City of Molalla General Conditions in which case CM/GC shall be entitled to payment of the amount stated in Article 15.1, together with the actual Cost of the Work completed, plus the CM/GC's Fee prorated based on the actual Cost of the Work completed prior to the date of

termination, but in any event not in excess of the GMP.

- 15.3 Owner's Termination for Cause.** In the event of termination of this Agreement by Owner for cause pursuant to Section J.4 of the City of Molalla General Conditions, the amount, if any, to be paid to the CM/GC after application of the City of Molalla General Conditions and Owner's rights at law shall not exceed the amount the CM/GC would be entitled to receive under Article 15.2. If the City's termination for breach is determined later to have been wrongful or without justification, then the termination will be considered to have been a termination for convenience.
- 15.4 CM/GC Termination for Cause.** CM/GC acknowledges that disputes regarding payments and Change Orders may occur as part of the CM/GC process, and that Owner's declining to pay disputed amounts shall not be grounds for suspension of the Work or termination for cause by CM/GC. If CM/GC terminates the Contract for Owner's material breach, the amount to be paid to CM/GC shall not exceed the amount CM/GC would have been entitled to receive under Article 13 above through termination and demobilization from the Project, with the CM/GC Fee prorated based on the actual Cost of the Work through the date of termination.
- 15.5 Assignment of Subcontracts.** Each subcontract and supply contract for any portion of the Work is hereby irrevocably assigned by the CM/GC to the Owner, provided that such assignment is effective only after termination of the Contract by the Owner, and only for those subcontracts and supply contracts which the Owner accepts by notifying the Subcontractor/supplier and CM/GC in writing. For those subcontracts and supply contracts accepted by Owner, if the Work has been suspended for more than 30 Days, the Subcontractor's/supplier's compensation shall be equitably adjusted for increases in cost resulting from the suspension. CM/GC shall include a provision in each subcontract and supply agreement whereby the Subcontractor/supplier acknowledges Owner's rights under this Article 15.5. With respect to any subcontracts/supply contracts that are not accepted by Owner, the provisions of Section J.6.1 of the City of Molalla General Conditions shall apply.

## **ARTICLE 16**

### **REPRESENTATIONS, WARRANTIES AND CERTIFICATIONS**

- 16.1 Representations and Warranties.** CM/GC represents and warrants to Owner as of the effective date of the Contract:
- 16.1.1** it is qualified to do business as a licensed general contractor under the laws of the State of Oregon, and has all requisite corporate power and corporate authority to carry on its business as now being conducted;
- 16.1.2** it has full corporate power and corporate authority to enter into and perform the Contract and to consummate the transactions contemplated hereby; CM/GC has duly and validly executed and delivered this CM/GC Contract to Owner and that the Contract constitutes the legal, valid and binding obligation of CM/GC, enforceable against CM/GC in accordance with its terms, except as enforceability may be limited or affected by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law);

- 16.1.3** CM/GC's execution and delivery of this CM/GC Contract and the consummation of the transactions contemplated hereby will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under, (i) CM/GC's Articles of Incorporation or Bylaws; (ii) any note, bond, mortgage, indenture, license, lease, contract, commitment, agreement or other instrument or obligation to which CM/GC is a party or by which CM/GC may be bound; or (iii) any statute, order, writ, injunction, decree, rule or regulation applicable to CM/GC;
- 16.1.4** no material consent, approval, authorization, declaration or other order of, or registration or filing with, any court or regulatory authority or any third person is required for the valid execution, delivery and performance of the Contract by CM/GC or its consummation of the transactions contemplated hereby;
- 16.1.5** there is no action, proceeding, suit, investigation or inquiry pending that questions the validity of the Contract or that would prevent or hinder the consummation of the transactions contemplated hereby; and
- 16.1.6** the CM/GC's Project Manager and Assistant Project Manager identified in Article 4 are duly appointed representatives and each has the authority to bind the CM/GC to any and all duties, obligations and liabilities under the Contract Documents and any Amendments thereto.

**16.2 Tax Compliance Certification.** The individual signing on behalf of CM/GC hereby certifies and swears under penalty of perjury that s/he is authorized to act on behalf of CM/GC, she/he has authority and knowledge regarding CM/GC's payment of taxes, and to the best of her/his knowledge, CM/GC is not in violation of any Oregon tax laws. For purposes of this certification, "Oregon tax laws" are those tax laws listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Oregon Department of Revenue under ORS 305.620.

## **ARTICLE 17** **MISCELLANEOUS**

- 17.1 Headings.** The headings used in this CM/GC Contract are solely for convenience of reference, are not part of the Contract and are not to be considered in construing or interpreting the Contract.
- 17.2 Merger.** The Contract Documents constitute the entire contract between the parties. No waiver, consent, modification or change of terms of the Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Contract. CM/GC, by signature of its representative, hereby acknowledges that it has read the Contract, understands it and agrees to be bound by its terms and conditions.
- 17.3 Exemption from Competitive Bidding.** The parties acknowledge that the Contract has been awarded under an exemption from competitive bidding requirements pursuant to ORS

279C.335, as authorized by the City of Molalla Council.

**THIS CM/GC CONTRACT** is executed in four original copies of which one is to be delivered to the CM/GC, and the remainder to Owner.

**CM/GC:**

Name of Firm: P&C Construction

Address: 2133 NW York Street, Portland, OR 97210

CM/GC's Federal Tax I.D. 93-0498305

Construction Contractor's Board Registration No.: 38619

\_\_\_\_\_  
Signature of Authorized Representative of CM/GC

Title Vice President / Operations

Date \_\_\_\_\_

**OWNER:**

CITY OF MOLALLA

\_\_\_\_\_  
Signature of City of Molalla Representative

Title \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT A**

**CITY OF MOLALLA  
GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS**

**ADOPTED BY CITY OF MOLALLA FOR USE ON THE  
NEW POLICE FACILITY PROJECT**

**EXHIBIT B**

**CITY OF MOLALLA  
GMP AMENDMENT TO CONTRACT**

**THIS AMENDMENT IS BETWEEN:**

**OWNER:**

**City of Molalla**

**And**

**P&C Construction**

**CONSTRUCTION MANAGER/  
GENERAL CONTRACTOR  
(referred to in the Standard General  
Conditions For Public Improvement  
Contracts as Contractor and referred to  
herein as "the CM/GC"):**

**The Project is: New Police Facility Project**

**Date of Original CM/GC Contract:**

**Date of this Amendment:**

The Owner and CM/GC hereby amend the Contract as set forth below. Capitalized terms used but not defined herein shall have the meanings given in the Contract Documents. Except as amended hereby, the Contract remains in full force and effect.

- 1. GMP.** The parties agree that the GMP for the Project is \$ \_\_\_\_\_, consisting of the Preconstruction Fee, the Estimated Cost of the Work and the CM/GC Fee (stated as a fixed dollar lump sum amount), as follows:

<b>Preconstruction Fee:</b>	\$ <u>38,000</u>
<b>Estimated Cost of Work (Est. COW):</b>	\$ _____
<b>CM/GC Fee/Liability. Insurance/P&amp;P Bond (5.35% of Est. COW):</b>	\$ _____
<b>GMP (Total of above categories):</b>	\$ _____

For purposes of determining the GMP, the Estimated Cost of the Work includes the CM/GC's Contingency, the Cost for GC Work, and the costs of all components and systems required for a complete, fully functional facility.

- 2. Basis of GMP.** The GMP is based on the GMP Supporting Documents attached as Attachments A-F (\_\_\_\_pages) including the Allowances, assumptions, exclusions, unit prices, and alternates designated therein.

- 3. Plans and Specifications.** The Plans and Specifications for the Project are as listed in the GMP Supporting Documents. CM/GC shall perform Construction Phase Services in accordance with the Plans and Specifications and the other Contract Documents.

- 4. Substantial Completion Date.** Notwithstanding any provision in the GMP Supporting Documents to the contrary, the required date for Substantial Completion is: *[Select one of the following (insert new date if different Substantial Completion date has been agreed upon): the date stated in the Contract/\_\_\_\_\_, 202\_ .]*

- 5. Tax Compliance Certification.** The individual signing on behalf of CM/GC hereby certifies and swears under penalty of perjury that s/he is authorized to act on behalf of CM/GC, s/he has authority and knowledge regarding CM/GC's payment of taxes, and to the best of her/his knowledge, CM/GC is not in violation of any Oregon tax laws. For purposes of this certification, "Oregon tax laws" are those tax laws listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Oregon Department of Revenue under ORS 305.620.

**THIS AMENDMENT** is executed in four original copies of which one is to be delivered to the CM/GC, and the remainder to Owner.



**CM/GC:**

Name of Firm: P&C Construction

Address: 2133 NW York Street, Portland, OR 97210

CM/GC's Federal Tax I.D. #: 93-0498305

Construction Contractor's Board Registration No.: 38619

\_\_\_\_\_  
Signature of Authorized Representative of CM/GC  
Title Vice President / Operations Date \_\_\_\_\_

**OWNER:**

CITY OF MOLALLA

\_\_\_\_\_  
Signature of City of Molalla Representative  
Title \_\_\_\_\_ Date \_\_\_\_\_

**REVIEWED AS TO SCOPE SUFFICIENCY**

Reviewed  
\_\_\_\_\_  
Signature of Owners Representative  
Date \_\_\_\_\_

Attachment A Plans, Specifications, Supplementary Conditions of the Contract, on which the  
Guaranteed Maximum Price is based, pages \_\_\_\_ through \_\_\_\_ dated  
\_\_\_\_\_.

Attachment B Allowance items, pages \_\_\_\_ through \_\_\_\_ dated \_\_\_\_\_.

Attachment C Assumptions and clarifications made in preparing the Guaranteed Maximum  
Price, pages \_\_\_\_ through \_\_\_\_\_, dated \_\_\_\_\_.

Attachment D Completion schedule, pages \_\_\_\_ through \_\_\_\_\_, dated \_\_\_\_\_.

Attachment E Alternate prices, pages \_\_\_\_ through \_\_\_\_\_, dated \_\_\_\_\_.

Attachment F Unit prices, pages \_\_\_\_ through \_\_\_\_\_, dated \_\_\_\_\_.

## EXHIBIT C

### COST FOR GENERAL CONDITIONS WORK

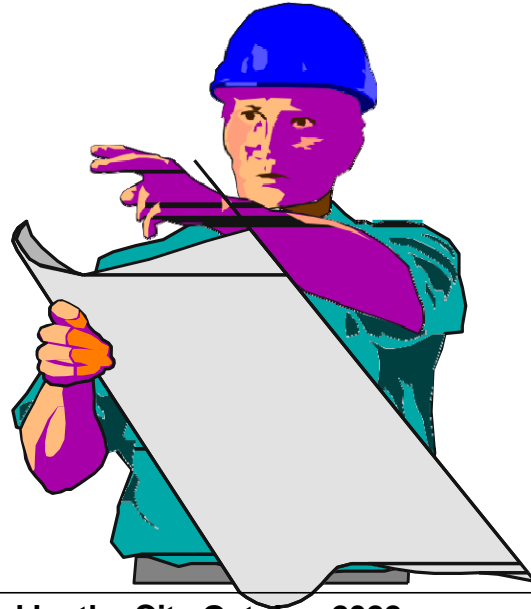
The table below states the categories of specific General Conditions Work costs that support the Cost for General Conditions Work that will be payable under the Contract. The total Cost for General Conditions Work shown below, based on the categories of General Conditions Work below, shall be the not to exceed amount that will be payable to CM/GC for General Conditions Work, regardless of the final Project cost or the actual construction period required to complete the Project. All items of General Conditions Work listed by Owner in the table below will be compensated either in a lump sum, fixed amount, or a not to exceed amount on a cost reimbursement basis. Any item of Work that might customarily be considered to be General Conditions Work by CM/GC but which Owner has not listed in the table below may be compensated on a cost reimbursement basis if it is described as Cost of the Work in Article 8.

B.1 Project Manager	B.27 Office Security
B.2 Project Engineer	B.28 Sustainability Coordinator/Supervisor
B.3 Superintendent	B.29 Clerical/Secretarial
B.4 Field Supervision	B.30 Project Coordination
B.5 Field Coordination	B.31 Estimating and Cost Engineering
B.6 General Foreman	B.32 Overtime for CM/GC Onsite Supervisory Staff
B.7 Quality Control	B.33 Field Engineer
B.8 Safety Coordinator/Supervisor	B.34 Delivery Services
B.9 Trade Coordination	B.35 Project Foreman
B.10 Office Equipment	B.36 Fork Lift for Loading/Unloading of misc. materials
B.11 Printing/Reproduction	B.37 Loading & Unloading of miscellaneous materials
B.12 Phones/Phone lines	B.38 Jobsite Clean-up (excludes Final Cleanup)
B.13 Fuel/Maintenance	B.39 Office Supplies
B.14 Substance Abuse Testing	B.40 Office Clean-up
B.15 Construction Signage	B.41 Temporary Toilets/Sinks
B.16 Progress Photo (Monthly)	B.42 First Aid Supplies
B.17 Temporary Office	B.43 IT Equipment
B.18 Postage/Delivery	B.44 Material Handling
B.19 Internet service	B.45 Staging Area Maintenance
B.20 Vehicles	B.46 Safety barrier/Safety warnings/Safety Handrails
B.21 Submittal Review & Approval	B.47 All cost for Sustainable Construction Practices,
B.22 Courier Delivery Services	B.48 Temp. water include distribution & utility charges
B.23 Drop Boxes & Disposal Fees	B.49 Drinking Water
B.24 Office Furniture	B.50 Small Tools
B.25 Drafting and Detailing	B.51 Maintenance & Monitoring of Erosion Control
B.26 Site Security	B.52 Travel / Mileage / Subsistence

# APPENDIX C

**Draft**  
**CITY OF MOLALLA**  
**GENERAL CONDITIONS**  
**FOR**  
**PUBLIC**  
**IMPROVEMENT**  
**CONTRACTS**

Adopted by the City of Molalla for use on the  
New Police Facility Project



January 1, 2012 Edition- Modified by the City October 2022

**CITY OF MOLALLA**

**GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT  
CONTRACTS JANUARY 1, 2012,  
modified by the City of Molalla in October 2022**

TABLE OF SECTIONS

**SECTION A**

**GENERAL PROVISIONS**

- A.1 DEFINITION OF TERMS
- A.2 SCOPE OF WORK
- A.3 INTERPRETATION OF CONTRACT DOCUMENTS
- A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE
- A.5 INDEPENDENT CONTRACTOR STATUS
- A.6 RETIREMENT SYSTEM STATUS AND TAXES
- A.7 GOVERNMENT EMPLOYMENT STATUS

**SECTION B**

**ADMINISTRATION OF THE CONTRACT**

- B.1 OWNER'S ADMINISTRATION OF THE CONTRACT
- B.2 CONTRACTOR'S MEANS AND METHODS
- B.3 MATERIALS AND WORKMANSHIP
- B.4 PERMITS
- B.5 COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS
- B.6 SUPERINTENDENCE
- B.7 INSPECTION
- B.8 SEVERABILITY
- B.9 ACCESS TO RECORDS
- B.10 WAIVER
- B.11 SUBCONTRACTS AND ASSIGNMENT
- B.12 SUCCESSORS IN INTEREST
- B.13 OWNER'S RIGHT TO DO WORK
- B.14 OTHER CONTRACTS
- B.15 GOVERNING LAW
- B.16 LITIGATION
- B.17 ALLOWANCES
- B.18 SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES
- B.19 SUBSTITUTIONS
- B.20 USE OF PLANS AND SPECIFICATIONS
- B.21 FUNDS AVAILABLE AND AUTHORIZED
- B.22 NO THIRD PARTY BENEFICIARIES

**SECTION C**

**WAGES AND LABOR**

- C.1 MINIMUM WAGES RATES ON PUBLIC WORKS
- C.2 PAYROLL CERTIFICATION; ADDITIONAL RETAINAGE; FEE REQUIREMENTS
- C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS
- C.4 PAYMENT FOR MEDICAL CARE
- C.5 HOURS OF LABOR

**SECTION D**

**CHANGES IN THE WORK**

- D.1 CHANGES IN THE WORK
- D.2 DELAYS
- D.3 CLAIMS REVIEW PROCESS

**SECTION E**

**PAYMENTS**

- E.1 SCHEDULE OF VALUES
- E.2 APPLICATIONS FOR PAYMENT
- E.3 PAYROLL CERTIFICATION REQUIREMENT
- E.4 DUAL PAYMENT SOURCES
- E.5 RETAINAGE
- E.6 FINAL PAYMENT

**SECTION F**

**JOB SITE CONDITIONS**

- F.1 USE OF PREMISES
- F.2 PROTECTION OF WORKERS, PROPERTY AND THE PUBLIC
- F.3 CUTTING AND PATCHING
- F.4 CLEANING UP
- F.5 ENVIRONMENTAL CONTAMINATION
- F.6 ENVIRONMENTAL CLEAN-UP
- F.7 SECURITY AND SITE BEHAVIOR
- F.8 FORCE MAJEURE

**SECTION G**

**INDEMNITY, BONDING AND INSURANCE**

- G.1 RESPONSIBILITY FOR DAMAGES/INDEMNITY
- G.2 PERFORMANCE AND PAYMENT SECURITY; PUBLIC WORKS BOND
- G.3 INSURANCE

**SECTION H**

**SCHEDULE OF WORK**

- H.1 CONTRACT PERIOD
- H.2 SCHEDULE
- H.3 PARTIAL OCCUPANCY OR USE

**SECTION I**

**CORRECTION OF WORK**

- I.1 CORRECTIONS OF WORK BEFORE FINAL PAYMENT
- I.2 WARRANTY WORK

**SECTION J**

**SUSPENSION AND/OR TERMINATION OF THE WORK**

- J.1 OWNER'S RIGHT TO SUSPEND THE WORK
- J.2 CONTRACTOR'S RESPONSIBILITIES
- J.3 COMPENSATION FOR SUSPENSION
- J.4 OWNER'S RIGHT TO TERMINATE CONTRACT
- J.5 TERMINATION FOR CONVENIENCE
- J.6 ACTION UPON TERMINATION

**SECTION K**

**CONTRACT CLOSE-OUT**

- K.1 RECORD DRAWINGS
- K.2 OPERATION AND MAINTENANCE MANUALS
- K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS
- K.4 COMPLETION NOTICES
- K.5 TRAINING
- K.6 EXTRA MATERIALS
- K.7 ENVIRONMENTAL CLEAN-UP
- K.8 CERTIFICATE OF OCCUPANCY
- K.9 OTHER CONTRACTOR RESPONSIBILITIES
- K.10 SURVIVAL

**SECTION L**

**LEGAL RELATIONS AND  
RESPONSIBILITY TO THE PUBLIC**

- L.1 LAWS TO BE OBSERVED
- L.2 FEDERAL AGENCIES
- L.3 STATE AGENCIES
- L.4 LOCAL AGENCIES

City of Molalla  
GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT  
CONTRACTS

(“General Conditions”)

**SECTION A**  
**GENERAL PROVISIONS**

**A.1 DEFINITION OF TERMS**

For the purposes of the Contract Documents, the following terms shall be as defined below:

**ARCHITECT/ENGINEER**, means the Person appointed by the Owner to make drawings and specifications and, to provide contract administration of the Work contemplated by the Contract to the extent provided herein or by supplemental instruction of Owner (under which Owner may delegate responsibilities of the Owner's Authorized Representative to the Architect/Engineer), in accordance with ORS Chapter 671 (Architects) or ORS Chapter 672 (Engineers) and administrative rules adopted thereunder.

**CHANGE ORDER**, means a written order issued by the Owner's Authorized Representative to the Contractor requiring a change in the Work within the general scope of the Contract Documents, issued under the changes provisions of Section D.1 including Owner's written change directives as well as changes reflected in a writing executed by the parties to this Contract and, if applicable, establishing a Contract Price or Contract Time adjustment for the changed Work.

**CLAIM**, means a demand by Contractor pursuant to Section D.3 for review of the denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, submitted in accordance with the requirements and within the time limits established for review of Claims in these General Conditions.

**CONTRACT** means the written agreement between the Owner and the Contractor comprised of the Contract Documents which describe the Work to be done and the obligations between the parties.

**CONTRACT DOCUMENTS**, means the Solicitation Document and addenda thereto, the CM/GC Contract, the General Conditions, Supplemental General Conditions, if any, the accepted Offer, Plans, Specifications, amendments and approved Change Orders.

**CONTRACT PERIOD**, as set forth in the Contract Documents, means the total period of time beginning with the issuance of the Notice to Proceed and concluding upon Final Completion.

**CONTRACT PRICE**, means the total of the awarded Offer amount, as increased or decreased by the price of approved alternates and Change Orders.

**CONTRACT TIME**, means any incremental period of time allowed under the Contract to complete any portion of the Work as reflected in the project schedule.

**CONTRACTOR**, means the Construction Manager/General Contractor.

**DAYS**, are calendar days, including weekdays, weekends and holidays, unless otherwise specified.

**FINAL COMPLETION**, means the final completion of all requirements under the Contract, including Contract Closeout as described in Section K but excluding Warranty Work as described in Section I.2, and the final payment and release of all retainage, if any, released.

**FORCE MAJEURE**, means an act, event or occurrence caused by any contingency beyond the control of the parties, including but not limited to war or insurrection (whether declared or not); plague, epidemic, pandemic, outbreaks of infectious disease, or any other public health crises, including but not limited to quarantine or other restrictions as directed

by state or federal government; compliance with any law or governmental order, rule, regulation or direction; strikes or lockouts by either party's own employees; walkouts by either party's own employees; fires; natural calamities; riots; or requirements of governmental agencies.

**NOTICE TO PROCEED**, means the official written notice from the Owner stating that the Contractor is to proceed with the Work defined in the Contract Documents. Notwithstanding the Notice to Proceed, Contractor shall not be authorized to proceed with the Work until all initial Contract requirements, including the Contract, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to Owner in a suitable form.

**OFFER**, means a bid in connection with an invitation to bid and a proposal in connection with a request for proposals.

**OFFEROR**, means a bidder in connection with an invitation to bid and a proposer in connection with a request for proposals.

**OVERHEAD**, means those items that may be included in the Contractor's fee (general and administrative expense and profit) and that shall not be charged as Direct Cost of the Work, including without limitation such Overhead expenses as wages or salary of personnel above the level of foreman (i.e., superintendents and project managers), expenses of Contractor's offices at the job site (e.g. job trailer) including expenses of personnel staffing the job site office, and Commercial General Liability Insurance and Automobile Liability Insurance.

**OWNER**, means the City of Molalla.

**OWNER'S AUTHORIZED REPRESENTATIVE**, means those individuals identified in writing by the Owner to act on behalf of the Owner for this project. Owner may elect, by written notice to Contractor, to delegate certain duties of the Owner's Authorized Representative to more than one party, including without limitation, to an Architect/Engineer. However, nothing in these General Conditions is intended to abrogate the separate design professional responsibilities of Architects under ORS Chapter 671 or of Engineers under ORS Chapter 672.

**PERSON** means an entity doing business as a sole proprietorship, a partnership, a joint venture, a corporation, a limited liability company or partnership, or any other entity possessing the legal capacity to contract.

**PLANS**, means the drawings that show the location, type, dimensions, and details of the Work to be done under the Contract.

**PUNCHLIST**, means the list of Work yet to be completed or deficiencies that need to be corrected in order to achieve Final Completion of the Contract.

**RECORD DOCUMENT** means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer to Owner, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.9.1 of these General Conditions, recording all Services performed.

**SOLICITATION DOCUMENT** means an invitation to bid or request for proposal or request for quotes.

**SPECIFICATION** means any description of the physical or functional characteristics of the Work, or of the nature of a supply, service or construction item. Specifications may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the work to be

performed. Specifications may be incorporated by reference and/or may be attached to the Contract.

**SUBCONTRACTOR**, means a Person having a direct contract with the Contractor, or another Subcontractor, to perform one or more items of the Work.

**SUBSTANTIAL COMPLETION**, means the date when the Owner accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose. Substantial Completion of facilities with operating systems occurs only after thirty (30) continuous Days of successful, trouble-free operation of the operating systems as provided in Section K.4.2.

**SUBSTITUTIONS**, means items that in function, performance, reliability, quality, and general configuration are the same or better than the product(s) specified. Approval of any substitute item shall be solely determined by the Owner's Authorized Representative. The decision of the Owner's Authorized Representative is final.

**SUPPLEMENTAL GENERAL CONDITIONS**, means those conditions that remove from, add to, or modify these General Conditions. Supplemental General Conditions may be included in the Solicitation Document or may be a separate attachment to the Contract.

**WORK**, means the furnishing of all services, materials, equipment, labor, transportation, services and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out of duties and obligations imposed by the Contract Documents.

## **A.2 SCOPE OF WORK**

The Work contemplated under this Contract includes all labor, materials, transportation, equipment and services for, and incidental to, the completion of all construction work in connection with the project described in the Contract Documents. The Contractor shall perform all Work necessary so that the project can be legally occupied and fully used for the intended use as set forth in the Contract Documents.

## **A.3 INTERPRETATION OF CONTRACT DOCUMENTS**

A.3.1 Unless otherwise specifically defined in the Contract Documents, words that have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complementary. Whatever is called for in one is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:

1. Contract amendments and Change Orders, with those of later date having precedence over those of an earlier date;
2. The Supplemental General Conditions;
3. The CM/GC Contract.;
4. The General Conditions
5. The Plans and Specifications
6. The Solicitation Document and any addenda thereto;

7. The accepted Offer.

A.3.2 In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner or Owner's Authorized Representative's interpretation in writing.

A.3.3 If the Contractor finds discrepancies in, or omissions from the Contract Documents, or if the Contractor is in doubt as to their meaning, the Contractor shall at once notify the Owner or Owner's Authorized Representative. The Owner's Authorized Representative, who may delegate that duty in some instances to the Architect/Engineer, will decide matters concerning performance under and interpretation of requirements of, the Contract Documents. Responses to Contractor's requests for interpretation of Contract Documents will be made in writing by Owner's Authorized Representative (or the Architect/Engineer) within any time limits agreed upon or otherwise with reasonable promptness.

A.3.4 Interpretations and decisions of the Owner's Authorized Representative (or Architect/Engineer) will be consistent with the intent of and reasonably inferable from the Contract Documents. Contractor shall not proceed without direction in writing from the Owner's Authorized Representative (or Architect/Engineer).

A.3.5 References to standard specifications, manuals, or codes of any technical society, organization or association, to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect in the jurisdiction where the project is occurring on the first published date of the Solicitation Document, except as may be otherwise specifically stated.

## **A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE**

A.4.1 It is understood that the Contractor, before submitting an Offer, has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work and the sources of supply for materials. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Contractor because of the Contractor's failure to acquire full information in advance in regard to all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the Owner, or with the Architect/Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

A.4.2 Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, Contractor shall have the duty to make inquiry of the Owner and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Contract requirements.

A.4.3 Any design errors or omissions noted by the Contractor shall be reported promptly to the Owner's Authorized Representative, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules and regulations.



A.4.4 If the Contractor believes that additional cost or Contract Time is involved because of clarifications or instructions issued by the Owner's Authorized Representative (or Architect/Engineer) in response to the Contractor's notices or requests for information, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt by Contractor of the clarifications or instructions issued. If the Owner's Authorized Representative denies Contractor's request for additional compensation, additional Contract Time, or other relief that Contractor believes results from the clarifications or instructions, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If the Contractor fails to perform the obligations of Sections A.4.1 to A.4.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

#### **A.5 INDEPENDENT CONTRACTOR STATUS**

The service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not an officer, employee or agent of the Owner.

#### **A.6 RETIREMENT SYSTEM STATUS AND TAXES**

Contractor represents and warrants that it is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment received under this Contract. Contractor will not be eligible for any benefits from these Contract payments of federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual. Unless the Contractor is subject to backup withholding, Owner will not withhold from such payments any amount(s) to cover Contractor's federal or state tax obligations.

#### **A.7 GOVERNMENT EMPLOYMENT STATUS**

A.7.1 If this payment is to be charged against federal funds, Contractor represents and warrants that it is not currently employed by the Federal Government. This does not preclude the Contractor from holding another contract with the Federal Government.

A.7.2 Contractor represents and warrants that Contractor is not an employee of the State of Oregon for purposes of performing Work under this Contract.

### **SECTION B ADMINISTRATION OF THE CONTRACT**

#### **B.1. OWNER'S ADMINISTRATION OF THE CONTRACT**

B.1.1 The Owner's Authorized Representative will provide administration of the Contract as described in the Contract Documents (1) during construction (2) until final payment is due and (3) during the one-year period for correction of Work. The Owner's Authorized Representative will act on behalf of the Owner to the extent provided in the Contract Documents, unless modified in writing in

accordance with other provisions of the Contract. In performing these tasks, the Owner's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.

B.1.2 The Owner's Authorized Representative will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.

B.1.3 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Contractor shall endeavor to communicate with each other through the Owner's Authorized Representative or designee about matters arising out of or relating to the Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner's Authorized Representative.

B.1.4 Based upon the Architect/Engineer's evaluations of the Contractor's Application for Payment, or unless otherwise stipulated by the Owner's Authorized Representative, the Architect/Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

#### **B.2 CONTRACTOR'S MEANS AND METHODS: MITIGATION OF IMPACTS**

B.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

B.2.2 The Contractor is responsible to protect and maintain the Work during the course of construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.

B.2.3 The Contractor is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. The Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of persons

who are unfit or unskilled for the tasks assigned to them.

### **B.3 MATERIALS AND WORKMANSHIP**

- B.3.1 The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described. All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, Contractor shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.
- B.3.2 The Contractor is responsible to perform the Work as required by the Contract Documents. Defective Work shall be corrected at the Contractor's expense.
- B.3.3 Work done and materials furnished shall be subject to inspection and/or observation and testing by the Owner's Authorized Representative to determine if they conform to the Contract Documents. Inspection of the Work by the Owner's Authorized Representative does not relieve the Contractor of responsibility for the Work in accordance with the Contract Documents.
- B.3.4 Contractor shall furnish adequate facilities, as required, for the Owner's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.
- B.3.5 The Contractor shall furnish Samples of materials for testing by the Owner's Authorized Representative and include the cost of the Samples in the Contract Price.
- B.3.6 CONTRACTOR shall provide materials in sufficient quantities on hand at such times as to insure uninterrupted progress of Work and shall store materials properly and protect materials as required.
- B.3.7 For all materials and equipment specified or indicated in the Drawings, CONTRACTOR shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended. CONTRACTOR shall furnish incidental items not indicated on Drawings, nor mentioned in the Specifications, that can be legitimately and reasonably inferred to belong to the Work described, or necessary in good practice to provide a complete assembly or system, as though itemized here in every detail. In all instances, CONTRACTOR shall install material and equipment in strict accordance with each manufacturer's most recent published recommendations and specifications. CONTRACTOR shall be responsible for appropriately sequencing the Work and for verification of suitability of prior work before subsequent construction activities.
- B.3.8 CONTRACTOR shall coordinate submittal approvals and place orders for materials and/or equipment so that delivery of same will be made without delays to the Work. CONTRACTOR shall, upon Owner's

reasonable request, provide documentary evidence that orders have been placed.

- B.3.9 If the Owner elects to conduct an independent review, monitoring, inspection, or other oversight of CONTRACTOR's performance of any or all of the Work under the contract, CONTRACTOR will fully cooperate with the independent reviewer selected by the Owner

### **B.4 PERMITS**

Contractor shall obtain and pay for all necessary permits and licenses, except for those specifically excluded in the Supplemental General Conditions, for the construction of the Work, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, environmental Work, etc., as required for the project. Contractor shall be responsible for all violations of the law, in connection with the construction or caused by obstructing streets, sidewalks or otherwise. Contractor shall give all requisite notices to public authorities. The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent or other proprietary rights and save harmless and blameless from loss, on account thereof, the State of Oregon, and its departments, divisions, members and employees.

### **B.5 COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS**

- B.5.1 Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and the Contract. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following as applicable: i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A; as amended (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Owner's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, which are incorporated by reference herein. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and
  - (a) ORS 279A.110 (Non-Discrimination Certification). Contractor certifies that Contractor has not discriminated and will not discriminate against a Subcontractor in the awarding of a subcontract because the Subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055.
  - (b) Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.
- B.5.2 Unless contrary to federal law, Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit

their bids to the Contractor. If Contractor is performing work as a Contractor has defined in ORS 701.005(2), Contractor must have a current valid construction contractor's license issued under ORS 701.026.

- B.5.3 Unless contrary to federal law, Contractor shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.
- B.5.4 The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.
- B.5.5 ORS 279C.510 (Recycling/Composting). If this Contract includes demolition work, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. If this Contract includes lawn or landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective
- B.5.6 Failure to comply with any or all of the requirements of B.5.1 through B.6. shall be a breach of Contract and constitute grounds for Contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of Contractor.

#### **B.6 SUPERINTENDENCE**

- B.5.7 Contractor shall keep on the site, during the progress of the Work, a competent superintendent and any necessary assistants who shall be satisfactory to the Owner and who shall represent the Contractor on the site. Directions given to the superintendent by the Owner's Authorized Representative shall be confirmed in writing to the Contractor.
- B.5.8 The Superintendent, Project Manager and Project Engineer/Assistant Project Manager (if applicable) shall not be removed from the Project by CONTRACTOR without the prior written authorization of the Owner. Requests to replace personnel must be made a minimum of thirty (30) calendar days prior to the proposed date of replacement, if feasible.
- B.5.9 CONTRACTOR shall at all times enforce strict discipline and good order among its subcontractors and employees and shall not employ or work any unfit person, or anyone not skilled in work assigned to that person. Owner may require CONTRACTOR to permanently remove any of its officers, agents, employees, or subcontractors from all Owner properties in cases where Owner determines in its sole discretion that removal of such is in Owner's best interests. CONTRACTOR shall not employ any person whom the Owner may deem incompetent or unfit on the Project except with the prior written consent of the Owner. Owner may require removal and replacement of any or all construction superintendents, project managers, foreman, or other staff from the Project upon ten (10) business days written notice to Contractor.

#### **B.7 INSPECTION**

- B.7.1 Owner's Authorized Representative shall have access to the Work at all times.
- B.7.2 Inspection of the Work will be made by the Owner's Authorized Representative at its discretion. The Owner's Authorized Representative will have authority to reject Work that does not conform to the Contract Documents. Any Work found to be not in conformance with the Contract Documents, in the discretion of the Owner's Authorized Representative, shall be removed and replaced at the Contractor's expense.
- B.7.3 Contractor shall make or obtain at the appropriate time all tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall give the Owner's Authorized Representative timely notice of when and where tests and inspections are to be made so that the Owner's Authorized Representative may be present for such procedures. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor, and promptly delivered to the Owner's Authorized Representative.
- B.7.4 As required by the Contract Documents, Work done or material used without inspection or testing by the Owner's Authorized Representative may be ordered removed at the Contractor's expense.
- B.7.5 If directed to do so any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without sufficient notice to the Owner's Authorized Representative, the uncovering and restoration shall be done at the Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to the Owner's Authorized Representative, the uncovering and restoration will be paid for as a Change Order.
- B.7.6 If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's Authorized Representative's and Architect/Engineer's services and expenses, shall be at the Contractor's expense.
- B.7.7 When the United States government participates in the cost of the Work, or the Owner has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or in close proximity to third party facilities, representatives of these organizations have the right to inspect the Work affecting their interests or property. Their right to inspect shall not make them a party to the Contract and shall not interfere with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to the

Contractor, through the Owner's Authorized Representative.

**B.8 SEVERABILITY**

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

**B.9 ACCESS TO RECORDS**

B.9.1 Contractor shall keep, always on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Change Orders and addenda, in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the Owner's Authorized Representative access thereto.

B.9.2 Contractor shall retain and the Owner and its duly authorized representatives shall have access to, for a period not less than ten (10) years, all Record Documents, financial and accounting records, and other books, documents, papers and records of Contractor which are pertinent to the Contract including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Contract is involved in litigation, Contractor shall retain all such records until all litigation is resolved. The Owner and/or its agents shall continue to be provided full access to the records during litigation.

**B.10 WAIVER**

Failure of the Owner to enforce any provision of this Contract shall not constitute a waiver or relinquishment by the Owner of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

**B.11 SUBCONTRACTS AND ASSIGNMENT**

B.11.1 Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these General Conditions, and to assume toward the Contractor all of the obligations and responsibilities which the Contractor assumes toward the Owner thereunder, unless (1) the same are clearly inapplicable to the subcontract at issue because of legal requirements or industry practices, or (2) specific exceptions are requested by Contractor and approved in writing by Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.

B.11.2 At Owner's request, Contractor shall submit to Owner prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's satisfaction. Owner's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Agreement or be deemed a waiver of such obligations of Contractor.

B.11.3 Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the Owner. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred.

**B.12 SUCCESSORS IN INTEREST**

The provisions of this Contract shall be binding upon and shall accrue to the benefit of the parties to the Contract and their respective permitted successors and assigns.

**B.13 OWNER'S RIGHT TO DO WORK**

Owner reserves the right to perform other or additional work at or near the project site with other forces than those of the Contractor. If such work takes place within or next to the project site, Contractor will coordinate work with the other contractors or forces, cooperate with all other contractors or forces, carry out the Work in a way that will minimize interference and delay for all forces involved, place and dispose of materials being used so as not to interfere with the operations of another, and join the Work with the work of the others in an acceptable manner and perform it in proper sequence to that of the others. The Owner's Authorized Representative will resolve any disagreements that may arise between or among Contractor and the other contractors over the method or order of doing all work (including the Work). In case of unavoidable interference, the Owner's Authorized Representative will establish work priority (including the Work) which generally will be in the sequence that the contracts were awarded.

**B.14 OTHER CONTRACTS**

In all cases and at any time, the Owner has the right to execute other contracts related to or unrelated to the Work of this Contract. The Contractor of this Contract will fully cooperate with any and all other contractors without additional cost to the Owner in the manner described in section B.13.

**B.15 GOVERNING LAW**

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

**B.16 LITIGATION**

Any Claim between Owner and Contractor that arises from or relates to this Contract and that is not resolved through the Claims Review Process in Section D.3 shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16.

**B.17 ATTORNEY FEES**

The parties to this Contract expressly waive and release any rights either has to recover attorney fees and costs and, expert fees and costs incurred in connection with any and all disputes or claims of any kind arising out of the Project, including, without limitation, any rights to recover such fees

and costs granted by any federal or state statute, regulation, or rule, including, but not limited to lien statutes. This waiver and release applies to any and all claims of any kind, regardless of legal or equitable theory, and applies to fees and costs incurred before, during and after any mediation, arbitration, or court proceeding. This paragraph shall not be interpreted to prohibit recovery of attorney fees as indemnity damages as described in the indemnification section of this Contract.

If applicable law prevents either party's or both parties' full waiver of attorney fees as provided in this section, then this section shall be inapplicable, only as to that action covered by the applicable law, and the prevailing party in any dispute shall be awarded their reasonable attorney fees and costs and expert fees and costs incurred pre-trial, during trial or arbitration, upon any appeal, petition for review and upon any bankruptcy, insolvency or collection.

#### **B.18 ALLOWANCES**

B.18.1 The Contractor shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct.

B.18.2 Unless otherwise provided in the Contract Documents:

- (a) when finally reconciled, allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- (b) Contractor's costs for unloading and handling at the site, labor, installation costs, Overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances;
- (c) Unless Owner requests otherwise, Contractor shall provide to Owner a proposed fixed price for any allowance work prior to its performance.
- (d) Work will only begin on allowances after written approval has been issued by the Owner.

#### **B.19 SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

B.19.1 The Contractor shall prepare and keep current, for the Architect's/Engineer's approval (or for the approval of Owner's Authorized Representative if approval authority has not been delegated to the Architect/Engineer), a schedule and list of submittals which is coordinated with the Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals. Owner reserves the right to finally approve the schedule and list of submittals. Submittals include, without limitation, Shop Drawings, Product Data, and Samples which are described below:

- (a) Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor (including any sub-subcontractor), manufacturer, supplier or distributor to illustrate some portion of the Work.

(b) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

(c) Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

B.19.2 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of submittals by the Architect/Engineer is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect/Engineer's review of the Contractor's submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect/Engineer without action.

B.19.3 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect/Engineer without action.

B.19.4 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

B.19.5 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and the Architect/Engineer has approved review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal.

B.19.6 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's review or approval of Shop Drawings, Product Data, Samples or similar

submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (ii) a Change Order has been executed by Owner authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect/Engineer's review or approval thereof.

B.19.7 In the event that Owner elects not to have the obligations and duties described under this Section B.18 performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by Owner on the project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by the Owner's Authorized Representative.

## **B.20 SUBSTITUTIONS**

The Contractor may make Substitutions only with the consent of the Owner, after evaluation by the Owner's Authorized Representative and only in accordance with a Change Order. Substitutions shall be subject to the requirements of the bid documents. By making requests for Substitutions, the Contractor represents that the Contractor has personally investigated the proposed substitute product; represents that the Contractor will provide the same warranty for the Substitution that the Contractor would for the product originally specified unless approved otherwise; certifies that the cost data presented is complete and includes all related costs under this Contract including redesign costs, and waives all claims for additional costs related to the Substitution which subsequently become apparent; and will coordinate the installation of the accepted Substitution, making such changes as may be required for the Work to be completed in all respects.

## **B.21 USE OF PLANS AND SPECIFICATIONS**

Plans, Specifications, and related Contract Documents furnished to Contractor by Owner or Owner's Architect/Engineer shall be used solely for the performance of the Work under this Contract. Contractor and its Subcontractors and suppliers are authorized to use and reproduce applicable portions of such documents appropriate to the execution of the Work but shall not claim any ownership or other interest in them beyond the scope of this Contract, and no such interest shall attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by Owner.

## **B.22 NO THIRD PARTY BENEFICIARIES**

Owner and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

## **SECTION C**

### **WAGES AND LABOR**

#### **C.1 MINIMUM WAGE RATES ON PUBLIC WORKS**

C.1.1 This Contract is subject to payment of prevailing wages under ORS 279C.800 to

279C.870. Each worker, the Contractor, Subcontractor, or other person who is party to the Contract used in performing all or part of the Contract, shall be paid not less than the applicable prevailing rate of wage for each trade or occupation as defined by the Director of the State of Oregon Bureau of Labor and Industries ("BOLI") in the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon. The prevailing wage rates for public works contracts in Oregon are set forth on the following website:

<https://www.oregon.gov/boli/employers/Pages/prevaling-wage-rates.aspx>. The applicable prevailing wage rates will be those in effect at the time the CM/GC Contract becomes a public works contract under OAR 839-025-0020(8).

C.1.2 This Contract is \_\_\_ is not \_\_\_ subject to payment of prevailing wages under the federal Davis-Bacon Act (40 U.S.C. 3141 et seq.). Notwithstanding Subsection C.1.1 of this section, if this Contract is subject to payment of prevailing wages under the Davis-Bacon Act, Contractor and any Subcontractors must pay the higher of the federal prevailing wage or the state prevailing wage. The latest state prevailing wages can be reviewed as set forth in Subsection C.1.1 of this section. The latest federal prevailing wage rates can be reviewed electronically at <http://www.wdol.gov/Index.aspx> (Search for Oregon, Multnomah County, Building Construction Type) and are hereby incorporated by reference as part of the Contract Documents. Contractors shall follow all prevailing wage rules including posting the Davis-Bacon poster at the worksite and submitting certified payroll records. The poster is available at [http://www.dol.gov/whd/regs/compliance/posters/fe\\_dprojc.pdf](http://www.dol.gov/whd/regs/compliance/posters/fe_dprojc.pdf). The payroll form is at <http://www.dol.gov/whd/forms/wh347instr.htm>.

#### **C.2 PAYROLL CERTIFICATION: ADDITIONAL RETAINAGE: FEE REQUIREMENTS**

C.2.1 In accordance with ORS 279C.845, the Contractor and every Subcontractor shall submit written certified statements to the Owner's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor that the Contractor or Subcontractor has read the certified statement, that the Contractor or Subcontractor knows the contents of the certified statement and that to the Contractor's or Subcontractor's best knowledge and belief the certified statement is true. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month.

The Contractor and Subcontractors shall preserve the certified statements for a period of ten (10) years from the date of completion of the Contract.

- C.2.2 Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by the Contractor on this public works project until the Contractor has filed the certified statements required by section C.2.1. The Owner shall pay to the Contractor the amount retained under this subsection within 14 days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.
- C.2.3 Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with the Owner the certified statements required by C.2.1. Before paying any amount retained under this subsection, the Contractor shall verify that the first-tier Subcontractor has filed the certified statement, within 14 days after the first-tier Subcontractor files the required certified statement the Contractor shall pay the first-tier Subcontractor any amount retained under this subsection.
- C.2.4 In accordance with statutory requirements, and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Owner to the Commissioner.

### **C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS**

- C.3.1 Pursuant to ORS 279C.505 and as a condition to Owner's performance hereunder, the Contractor shall:
- C.3.1.1 Make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in this Contract.
- C.3.1.2 Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.
- C.3.1.3 Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished. Contractor will not assign any claims that Contractor has against Owner, or assign any sums due by Owner, to Subcontractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Subcontractors a claim or standing to make a claim against the Owner.
- C.3.1.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- C.3.1.5 Demonstrate that an employee drug testing program is in place as follows:
- (a) Contractor represents and warrants that Contractor has in place at the time of the execution of this Contract, and shall maintain during the term of this Contract, a Qualifying Employee Drug Testing

Program for its employees that includes, at a minimum, the following:

- (1) A written employee drug testing policy,
- (2) Required drug testing for all new Subject Employees or, alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and
- (3) Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.

A drug testing program that meets the above requirements will be deemed a "Qualifying Employee Drug Testing Program." For the purposes of this section, an employee is a "Subject Employee" only if that employee will be working on the project job site.

- (b) Contractor shall require each Subcontractor providing labor for the project to:
- (1) Demonstrate to the Contractor that it has a Qualifying Employee Drug Testing Program for the Subcontractor's Subject Employees, and represent and warrant to the Contractor that the Qualifying Employee Drug Testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract, or
  - (2) Require that the Subcontractor's Subject Employees participate in the Contractor's Qualifying Employee Drug Testing Program for the duration of the subcontract.
- C.3.2 Pursuant to ORS 279C.515, and as a condition to Owner's performance hereunder, Contractor agrees:

- C.3.2.1 If Contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the Contractor or a Subcontractor in connection with the project as such claim becomes due, the proper officer that represents the Owner may pay the amount of the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Paying a claim in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to an unpaid claim.
- C.3.2.2 If the Contractor or a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public contract for a public improvement within thirty (30) Days after receiving payment from Owner or a contractor, the contractor or first-tier Subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-Day period within which payment is due under ORS 279C.580(3) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.
- C.3.2.3 If the Contractor or a Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Every

contract related to this Contract must contain a similar clause.

- C.3.3 Pursuant to ORS 279C.580, Contractor shall include in each subcontract for property or services the Contractor enters into with a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:
- (a) A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under the subcontract within ten  
(10) Days out of amounts the Owner pays to the Contractor under the Contract;
  - (b) A clause that requires the Contractor to provide the first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor;
  - (c) A clause that requires the Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. The Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor:
    - (1) Notifies the Subcontractor in writing at least  
45 days before the date on which the Contractor makes the change; and
    - (2) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.
  - (d) An interest penalty clause that obligates the Contractor, if the Contractor does not pay the first-tier Subcontractor within thirty (30) Days after receiving payment from Owner, to pay the first-tier Subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. Contractor or first-tier Subcontractor is not obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from Owner or Contractor when payment was due. The interest penalty applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and is computed at the rate specified in ORS 279C.515(2).
  - (e) A clause which requires each of Contractor's Subcontractors to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first- tier Subcontractor

shall pay its lower-tier Subcontractors and suppliers in accordance with the provisions of paragraphs (a) through

(d) above and requiring each of their Subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.

- C.3.4 All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

#### **C.4 PAYMENT FOR MEDICAL CARE**

Pursuant to ORS 279C.530, and as a condition to Owner's performance hereunder, Contractor shall promptly, as due, make payment to any person, partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, all sums of which the Contractor agrees to pay for such services and all moneys and sums which the Contractor has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

#### **C.5 HOURS OF LABOR (ORS 279C.520 and 279C.540)**

- C.3.5 Contractor shall not employ and shall require that its Subcontractors not employ any person to perform construction work for more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279A.055, the laborer shall be paid at least time and a half pay:
- (a) For all overtime in excess of eight (8) hours a day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; and
  - (b) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; and
  - (c) For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279C.540(1)(b).
- C.3.6 The requirement to pay at least time and a half for all overtime worked in excess of forty (40) hours in any one (1) week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 USC Section 201 to 209 from receiving overtime. Contractor shall and shall require its Subcontractors to give notice in writing to their employees who work under this Contract, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- C.3.7 Contractor shall comply with ORS 652.220 (Prohibition of discriminatory wage rates based on sex; employer not to discriminate against employee who is a complainant). Compliance is a material element of the Contract. Failure to comply is a breach that entitles the Owner to terminate the contact for cause.



- C.3.8 The Contractor may not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person, and may not retaliate against an employee who does so.
- C.3.9 ORS 279C.545 (Time Limitations on Claims for Overtime). Construction workers employed by the Contractor or its Subcontractor shall be foreclosed from the right to collect for any overtime under this Contract unless a claim for payment is filed with the Contractor or Subcontractor within ninety (90) days from the completion of the Contract, providing the Contractor or Subcontractor has:
  - (a) Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any and all workers employed on the Work; and
  - (b) Maintained such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

**SECTION D**  
**CHANGES IN**  
**THE WORK**

**D.1 CHANGES IN WORK**

- D.1.1 Contractor shall utilize owner provided Construction Change Issues Log (CCI Log) via smartsheet.com to manage all changes to the GMP contingency with owner authorization. The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Owner's Authorized Representative, and then only in a manner consistent with the Change Order provisions of this Section D.1 and after any necessary approvals required by public contracting laws have been obtained. Otherwise, a formal contract amendment is required, which shall not be effective until its execution by the parties to this Contract and all approvals required by public contracting laws have been obtained. It is mutually agreed that changes in Plans, quantities, or details of construction are inherent in construction and may be necessary or desirable during the course of construction. Within the general scope of this Contract, the Owner's Authorized Representative may at any time, without notice to the sureties and without impairing the Contract, require changes consistent with this Section D.1. All Change Order Work shall be executed under the conditions of the Contract Documents. Such changes may include, but are not limited to:
  - (a) Modification of specifications and design.
  - (b) Increases or decreases in quantities.
  - (c) Increases or decreases to the amount of Work.
  - (d) Addition or elimination of any Work item.
  - (e) Change in the duration of the project.

- (f) Acceleration or delay in performance of Work.
- (g) Deductive changes.

Deductive changes are those that reduce the scope of the Work, and shall be made by mutual agreement whenever feasible, as determined by Owner. In cases of suspension or partial termination under Section J, Owner reserves the right to unilaterally impose a deductive change and to self-perform such Work, for which the provisions of B.13 (Owner's Right to Do Work) shall then apply.

Adjustments in compensation shall be made under the provisions of D.1.3, in which costs for deductive changes shall be based upon a Direct Costs adjustment together with the related percentage markup specified for profit, Overhead and other indirect costs, unless otherwise agreed to by Owner.

- D.1.3 The Owner and Contractor agree that Change Order Work shall be administered and compensated according to the following:

- (a) *Unit pricing* may be utilized at the Owner's option when unit prices or solicitation alternates were provided that established the cost for additional Work, and a binding obligation exists under the Contract on the parties covering the terms and conditions of the additional Work.
- (b) If the Owner elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate, *fixed pricing* may be used for Change Order Work. In fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth in D.1.3(c) shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded by Owner without adequate justification. Cost and price data relating to Change Orders shall be supplied by Contractor to Owner upon request, but Owner shall be under no obligation to make such requests.
- (c) In the event that unit pricing and fixed pricing are not utilized, then Change Order Work shall be performed on a cost reimbursement basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to the Contractor's or Subcontractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the Contractor's or Subcontractor's own forces:
  - On Labor..... 15%
  - On Equipment..... 10%
  - On Materials..... 10%

When Change Order Work under D.1.3(c) is invoiced by an authorized Subcontractor at any level, each ascending tier Subcontractor or Contractor will be allowed a 5% supplemental mark-up on each piece of subcontract Work covered by such Change Order. Payments made to the Contractor shall be complete compensation for Overhead, profit, and all costs that were incurred by the Contractor or by other forces furnished by the Contractor, including Subcontractors, for Change Order Work. Owner may establish a maximum cost for Change Order Work under this Section D.1.3(c), which shall not be exceeded for reimbursement without additional written authorization from Owner. Contractor shall not be required to

complete such Change Order Work without additional authorization.

D.1.4 Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work unless Owner's Authorized Representative authorizes Contractor to start the Work before agreement on Contract Time adjustment. Contractor shall submit any request for additional compensation (and additional Contract Time if Contractor was authorized to start Work before an adjustment of Contract Time was approved) as soon as possible but no later than thirty (30) Days after receipt of the Change Order. If Contractor's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) day time limit, Contractor's requests pertaining to that Change Order are barred. The thirty (30) day time limit for making requests shall not be extended for any reason, including without limitation Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner. If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section D.1.5 for impact claims.

D.1.5 If any Change Order Work under Section D.1.3 causes an increase or decrease in the Contractor's cost of, or the Contract Time required for the performance of, any other part of the Work under this Contract, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt of the Change Order by Contractor.

The thirty (30) day time limit applies to claims of Subcontractors, suppliers, or manufacturers that may be affected by the Change Order and that request additional compensation or an extension of Contract Time to perform; Contractor has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the thirty (30) day time limit, and including their requests with Contractor's requests. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the Contractor in writing with full analysis and justification for the compensation and additional Contract Time requested. The Contractor will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to Contractor prior to including those requests and Contractor's analysis and evaluation of those requests with Contractor's requests for additional compensation or Contract Time that Contractor submits to the Owner's Authorized Representative. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to Contractor for inclusion with Contractor's requests submitted to Owner's

Authorized Representative within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. The Owner's Authorized Representative and the Owner will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Contract. The consideration of such requests and claims under this section does not give any person, not a party to the Contract the right to bring a claim against the State of Oregon, whether in this claims process, in litigation, or in any dispute resolution process.

If the Owner's Authorized Representative denies the Contractor's request for additional compensation or an extension of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

D.1.6 No request or Claim by the Contractor for additional costs or an extension of Contract Time shall be allowed if made after receipt of final payment application under this Contract. Contractor agrees to submit its final payment application within ninety (90) days after Substantial Completion, unless written extension is granted by Owner. Contractor shall not delay final payment application for any reason, including without limitation nonpayment of Subcontractors, suppliers, manufacturers or others not a party to this Contract, or lack of resolution of a dispute with Owner or any other person of matters arising out of or relating to the Contract. If Contractor fails to submit its final payment application within ninety (90) days after Substantial Completion, and Contractor has not obtained written extension by Owner, all requests or claims for additional costs or an extension of Contract Time shall be waived.

D.1.7 It is understood that changes in the Work are inherent in construction of this type. The number of changes, the scope of those changes, and the effect they have on the progress of the original Work cannot be defined at this time. The Contractor is notified that numerous changes may be required and that there will be no compensation made to the contractor directly related to the number of changes. Each change will be evaluated for extension of contract time and increase or decrease in compensation based on its own merit.

## **D.2 DELAYS**

D.2.1 Delays in construction include "Avoidable Delays", which are defined in Section D.2.1.1, and "Unavoidable Delays", which are defined in Section D.2.1.2. The effect of Avoidable Delays is described in Section D.2.2 and the effect of Unavoidable Delays is described in Section D.2.3.

D.2.1.1 Avoidable Delays include any delays other than unavoidable Delays, and include delays that otherwise would be considered Unavoidable Delays but that:

- (a) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (b) Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work nor the completion of the whole Work within the Contract Time.
- (c) Do not impact activities on the accepted critical path schedule.
- (d) Are associated with the reasonable interference of other contractors employed by the Owner that do not necessarily prevent the completion of

the whole Work within the Contract Time.

D.2.1.2 Unavoidable Delays include delays other than Avoidable Delays that are:

- (a) Caused by any actions of the Owner, Owner's Authorized Representative, or any other employee or agent of the Owner, or by separate contractor employed by the Owner.
- (b) Caused by any site conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents. The Contractor shall notify the Owner's Authorized Representative immediately of differing site conditions before the area has been disturbed. The Owner's Authorized Representative will investigate the area and decide as to whether the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If Contractor and the Owner's Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section D.1.5 for Change Order Work. If the Owner's Authorized Representative disagrees that a differing site condition exists and denies Contractor's request for additional compensation or Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process.
- (c) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (d) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the Contractor, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the

following levels cannot be reasonably anticipated:

- (i) Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent (25 %) or more.
- (ii) daily rainfall equal to, or greater than, 0.75 inch at any time.

The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the project site shall be considered the official agency of record for weather information. Contractor may submit a request for weather delay, for review and consideration by the Owner, for weather that causes the Owner to issue closures, or weather that does not allow materials, related to a critical path activity, to be installed per the manufacturer's requirements.

- (e) Concurrent Delays occur when more than one Avoidable or Unavoidable Delay occur within a time frame where all or part of their durations overlap. The cumulative effect of the overlapping delays results in a total impact to the Project duration less than or equal to the cumulative sum of the individual delays or greater than or equal to the longer of the two Delays.
- (f) Offsetting Delays occur when an Avoidable and/or an Unavoidable Delay occur within a time frame where all or part of their durations overlap. In some cases, Offsetting Delays occur where overlapping delays are incurred by both the Owner and Contractor, where the period of overlapping time negates any impact to the Project from the delays during that time frame. The impact of the overlap is that the total impact of the delays is lessened due to the delays happening at, to some extent, the same time and therefore the project is only impacted once. The overall impact of Offsetting Delays is equal to or less than the impact of the longer of the two delays.

D.2.2 Except as otherwise provided in ORS 279C.315, Contractor shall not be entitled to additional compensation or additional Contract Time for Avoidable Delays.

D.2.3 In the event of Unavoidable Delays, based on principles of equitable adjustment, Contractor may be entitled to the following:

- (a) Contractor may be entitled to additional compensation or additional Contract Time, or both, for Unavoidable Delays described in Section D.2.1.2 (a) and (b).
- (b) Contractor may be entitled to additional Contract Time for Unavoidable Delays described in Section D.2.1.2(c) and (d).

In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section D.2.3 for Unavoidable Delays, other than requests for additional compensation or additional Contract Time for differing site conditions for which a review process is established under Section D.2.1.2 (b), Contractor shall submit a written notification of the delay to the Owner's Authorized Representative within two (2) Days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time or the additional compensation, or both, as

applicable, resulting from the delay. Within seven (7) Days after the cause of the delay has been mitigated, or in no case more than thirty (30) Days after the initial written notification, the Contractor shall submit to the Owner's Authorized Representative, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay.

If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

- D.2.4 If Contractor does not timely submit the notices required under this Section D.2., then unless otherwise prohibited by law, Contractor's Claim shall be barred.
- D.2.5 When submitting a request for compensation under D.2.3, Contractor and the Owner shall take into account the cumulative impacts of Concurrent and Offsetting Delays that occurs within the same time frame the request for compensation covers.
- D.2.6 All requests for compensation under this section shall require Contractor to submit a detailed Time Impact Analysis as outlined in the Specifications.

### **D.3 CLAIMS REVIEW PROCESS**

- D.3.1 All Contractor Claims shall be referred to the Owner's Authorized Representative for review. Contractor's Claims, including Claims for additional compensation or additional Contract Time, shall be submitted in writing by Contractor to the Owner's Authorized Representative within five (5) Days after a denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, provided that such initial request has been submitted in accordance with the requirements and within the time limits established in these General Conditions. Within thirty (30) Days after the initial Claim, Contractor shall submit to the Owner's Authorized Representative, a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by Section D.3.2. Unless the Claim is made in accordance with these time requirements, it shall be waived.
- D.3.2 The Detailed Notice of the Claim shall be submitted in writing by Contractor and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the Owner's Authorized Representative. The Owner's Authorized Representative and the Owner will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Contract. Contractor agrees that it will make no agreement, covenant, or

assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against Owner.

- D.3.3 The Owner's Authorized Representative will review all Claims and take one or more of the following preliminary actions within ten (10) Days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from the Contractor; (2) inform the Contractor and Owner in writing of the time required for adequate review and response; (3) reject the Claim in whole or in part and identify the reasons for rejection; (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or (5) propose an alternate resolution.
- D.3.4 The Owner's Authorized Representative's decision shall be final and binding on the Contractor unless appealed by written notice to the Owner within fifteen (15) Days of receipt of the decision. The Contractor must present written documentation supporting the Claim within fifteen (15) Days of the notice of appeal. After receiving the appeal documentation, the Owner shall review the materials and render a decision within thirty (30) Days after receiving the appeal documents.

- D.3.5 The decision of the Owner shall be final and binding unless the Contractor delivers to the Owner its requests for mediation, which shall be a non-binding process, within fifteen (15) Days of the date of the Owner's decision. The mediation process will be considered to have commenced as of the date the Contractor delivers the request. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. Both parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) Days of the commencement of the mediation through the mediation process set forth herein.

In the event that a lawsuit must be filed within this sixty (60) day period in order to preserve a cause of action, the parties agree that notwithstanding the filing, they shall proceed diligently with the mediation to its conclusion prior to actively prosecuting the lawsuit, and shall seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process. Further, in the event settlements are reached on any issues through mediation, the parties agree to promptly submit the appropriate motions and orders documenting the settlement to the Court for its signature and filing.

- D.3.6 The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the Owner and the Contractor. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The parties agree to comply with Owner's administrative rules governing the confidentiality of mediation, if any, and shall execute all necessary documents to give effect to such confidentiality rules. In any event, the parties shall not subpoena the mediator or otherwise require the

mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.

- D.3.7 Owner may at any time and at its discretion issue a construction change directive adding to, modifying or reducing the scope of Work. Contractor and Owner shall negotiate the need for any additional compensation or additional Contract Time related to the change, subject to the procedures for submitting requests or Claims for additional compensation or additional Contract Time established in this Section D.
- D.3.8 Unless otherwise directed by Owner's Authorized Representative, Contractor shall proceed with the Work while any request or Claim is pending, including but not limited to, a request or Claim for additional compensation or additional Contract Time resulting from Work under a Change Order or construction change directive. Regardless of the review period or the final decision of the Owner's Authorized Representative, the Contractor shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the Contractor justified or allowed to cease Work without a written stop work order from the Owner or Owner's Authorized Representative.

## **SECTION E** **PAYMENTS**

### **E.1 SCHEDULE OF VALUES**

The Contractor shall submit, at least ten (10) Days prior to submission of its first application for progress payment, a schedule of values ("Schedule of Values") for the contracted Work. This schedule will provide a breakdown of values for the contracted Work and will be the basis for progress payments. The breakdown will demonstrate reasonable, identifiable, and measurable components of the Work. Unless objected to by the Owner's Authorized Representative, this schedule shall be used as the basis for reviewing Contractor's applications for payment. If objected to by Owner's Authorized Representative, Contractor shall revise the schedule of values and resubmit the same for approval of Owner's Authorized Representative.

### **E.2 APPLICATIONS FOR PAYMENT**

E.2.1 Owner shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. All payments shall be approved by the Owner's Authorized Representative. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Owner shall pay to Contractor interest on the progress payment, not including retainage, due the Contractor. The interest shall commence thirty (30) Days after the receipt of invoice ("application for payment") from the Contractor or fifteen (15) Days after the payment is approved by the Owner's Authorized Representative, whichever is the earlier date. The rate of interest shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) Days after receipt of the

application for payment from the Contract or fifteen (15) Days after the payment is approved by the Owner, whichever is the earlier date, but the rate of interest shall not exceed thirty (30) percent. Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, Owner shall so notify the Contractor within fifteen (15) Days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the Contractor within seven (7) Days of being notified by the Owner, shall not cause a payment to be made later than specified in this section unless interest is also paid. Accrual of interest will be postponed when payment on the principal is delayed because of disagreement between the Owner and the Contractor.

Owner reserves the right, instead of requiring the Contractor to correct or resubmit a defective or improper application for payment, to reject the defective or improper portion of the application for payment and pay the remainder of the application for payment that is correct and proper.

Owner, upon written notice to the Contractor, may elect to make payments to the Contractor only by means of Electronic Funds Transfers (EFT) through Automated Clearing House (ACH) payments. If Owner makes this election, the Contractor will be required to arrange to receive EFT/ACH payments.

E.2.2 Contractor shall submit to the Owner's Authorized Representative, an application for each payment and, if required, receipts or other vouchers showing payments for materials and labor, including payments to Subcontractors. Contractor shall include, in its application for payment, a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values which shall aggregate to the payment application total, and shall include, on the face of each copy thereof, a certificate in substantially the following form:

"I, the undersigned, hereby certify that the above bill is true and correct, and the payment therefore, has not been received.

Signed: \_\_\_\_\_

E.2.3 Generally, applications for payment will be accepted only for materials that have been installed. Under special conditions, applications for payment for stored materials will be accepted at Owner's sole discretion. Such a payment, if made, will be subject to the following conditions:

- (a) The request for stored material shall be submitted at least thirty (30) Days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components, or expenditures only.
- (b) The Contractor shall submit applications for payment showing the quantity and cost of the material stored.
- (c) The material shall be stored in a bonded warehouse and Owner's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.
- (d) The Contractor shall name the Owner as co-insured on the insurance policy covering the full value of the property while in the care and custody

- of the Contractor until it is installed. A certificate noting this coverage shall be issued to the Owner.
- (e) Payments shall be made for materials only. The submitted amount of the application for payment shall be reduced by the cost of transportation and for the cost of an inspector to check the delivery at out-of-town storage sites. The cost of said inspection shall be borne solely by the Contractor.
  - (f) Within sixty (60) Days of the application for payment, the Contractor shall submit evidence of payment covering the material stored.
  - (g) Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents.
  - (h) All required documentation must be submitted with the respective application for payment.
- E.2.4 The Owner reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss because of:
- (a) Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with the Contract Documents,
  - (b) third party claims filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to the Owner is provided by the Contractor;
  - (c) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment (in which case Owner may issue checks made payable jointly to Owner and such unpaid persons under this provision, or directly to Subcontractors and suppliers at any level under Section C.3.2.1);
  - (d) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
  - (e) damage to the Owner or another contractor;
  - (f) reasonable evidence that the Work will not be completed within the Contract Time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - (g) failure to carry out the Work in accordance with the Contract Documents; or
  - (h) assessment of liquidated damages when withholding is made for offset purposes.
- E.2.5 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
- (a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5. Pending final determination of cost to the Owner of changes in the Work, no amounts for changes in the Work can be included in application for payment until the Contract Price has been adjusted by Change Order;
  - (b) Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;
  - (c) Subtract the aggregate of previous payments made by the Owner; and
  - (d) Subtract any amounts for which the Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.
- E.2.6 Contractor's applications for payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier.
- E.2.7 The Contractor warrants to Owner that title to all Work covered by an application for payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an application for payment all Work for which payments are received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.
- E.2.8 If Contractor disputes any determination by Owner's Authorized Representative with regard to any application for payment, Contractor nevertheless shall continue to prosecute expeditiously the Work. No payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve Contractor of any of its obligations hereunder.
- E.3 PAYROLL CERTIFICATION REQUIREMENT**
- Payroll certification is required before payments are made on the Contract. Refer to Section C.2 for this information.
- E.4 RETAINAGE**
- E.4.1 Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.580:
- E.4.2 Owner may reserve as retainage from any progress payment an amount not to exceed five percent (5%) of the payment. As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract is completed if, in the Owner's sole opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by Contractor, which application shall include written approval of Contractor's surety; except that when the Work is 97-1/2 percent completed the Owner may, at its discretion and without application by Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done.

- Upon receipt of written application by Contractor, Owner shall respond in writing within a reasonable time.
- E.4.3 In accordance with the provisions of ORS 279C.560 and any applicable administrative rules, Contractor may request in writing:
- (a) to be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds and securities of equal value with Owner or in a custodial account or other mutually-agreed account satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner;
  - (b) that retainage be deposited in an interest bearing account, established through the State Treasurer for state agencies, in a bank, savings bank, trust company or savings association for the benefit of Owner, with earnings from such account accruing to Contractor; or
  - (c) that the Owner allow Contractor to deposit a surety bond for the benefit of Owner, in a form acceptable to Owner, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279C.550 to ORS 279C.625.
  - (d) Where the Owner has accepted Contractor's election of option (A) or (B), Owner may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the Owner has agreed to Contractor's request for option (C), Contractor shall accept like bonds from Subcontractors and suppliers on the project from which Contractor has required retainages.
- E.4.4 The retainage held by Owner shall be included in and paid to Contractor as part of the final payment of the Contract Price. The Owner shall pay to Contractor interest at the rate of one and one-half percent per month on the final payment due Contractor, interest to commence thirty (30) Calendar Days after the Work under the Contract has been completed, accepted and invoiced in accordance with the terms of this Agreement. Contractor shall notify Owner in writing when Contractor considers the Work complete and Owner shall, within fifteen (15) Calendar Days after receiving the written notice, either accept the Work or notify Contractor of Work yet to be performed on the Contract. If Owner does not within the time allowed notify Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run thirty (30) Calendar Days after the end of the 15-Day period.
- E.4.5 In accordance with the provisions of ORS 279C.560, Owner shall reduce the amount of the retainage if Contractor notifies the controller of the Owner that Contractor has

deposited in an escrow account with a bank or trust company, in a manner authorized by the Owner's Authorized Representative, bonds and securities of equal value of a kind approved by the Owner's Authorized Representative.

- E.4.6 Waiver of ORS 279C.570(2) (Retention Account). The application of ORS 279C.570(2) is inapplicable and is waived and disclaimed by the Parties. Retention will not be treated under the terms of those provisions. Each Party agrees to waive and release any claim it may have or acquire against the other under the final two sentences of ORS 279C.570(2). To the extent that the final two sentences of ORS 279C.570(2) are deemed or required to apply to this Agreement, the amounts withheld by Owner for retainage need not be kept in a commercial third-party escrow account notwithstanding ORS 279C.570(2). Each Party agrees to waive and release any claim it may have or acquire against the other under ORS 279C.570(2). This term must apply to all Subcontractors of any tier.
- E.4.7 As provided in Subsections C.2.2 and C.2.3, retainage in the amount of 25% of amounts earned shall be withheld and released in accordance with ORS 279C.845(7) when Contractor fails to file certified statements as required by Subsection C.2.1 shall be in addition to any retainage withheld as a part of this Section E.5.

#### **E.6 FINAL PAYMENT**

- E.4.8 Upon completion of all the Work under this Contract, Contractor shall notify the College's Authorized Representative, in writing, that Contractor has completed Contractor's part of the Contract and shall request final payment. Upon receipt of such notice the Owner's Authorized Representative will inspect the Work, and if acceptable, submit to the Owner a recommendation as to acceptance of the completed Work and as to the final estimate of the amount due Contractor. If the Work is not acceptable, Owner will notify Contractor within fifteen (15) Days of Contractor's request for final payment. Upon approval of this final estimate by the Owner and compliance by Contractor with provisions in Section K. 3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable, the Owner shall pay to Contractor all monies due under the provisions of these Contract Documents.
- E.4.9 Neither final payment nor any remaining retained percentage shall become due until Contractor submits to the Owner's Authorized Representative, (1) a notarized affidavit/release of liens and claims in a form satisfactory to Owner that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner, (3) a written statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, Contractor may furnish a bond

satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

- E.4.10 Acceptance of final payment by Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

## **SECTION F**

### **JOB SITE CONDITIONS**

#### **F.1 USE OF PREMISES**

Contractor shall confine equipment, storage of materials and operation of Work to the limits indicated by Contract Documents, law, ordinances, permits or directions of the Owner's Authorized Representative. Contractor shall follow the Owner's Authorized Representative's instructions regarding use of premises, if any.

#### **F.2 PROTECTION OF WORKERS, PROPERTY, AND THE PUBLIC**

- F.2.1 Contractor shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the Owner's Authorized Representative, workers and property from injury or loss arising in connection with this Contract. Contractor shall remedy acceptably to the Owner, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the Owner. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.
- F.2.2 Contractor shall take all necessary precautions for the safety of all personnel on the job site and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Owner's Authorized Representative. The Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of the Contractor.
- F.2.3 Contractor shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the Contractor damages any property, the Contractor shall at once notify

the property owner and make, or arrange to make, full restitution. Contractor shall immediately and in writing, report to the Owner's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.

- F.2.4 Contractor is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, and materials on the site.
- F.2.5 Contractor shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.
- F.2.6 In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner's Authorized Representative. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with Section D.

#### **F.3 CUTTING AND PATCHING**

- F.3.1 Contractor shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other contractors or Subcontractors shown upon, or reasonably implied by, the Contract Documents.
- F.3.2 Contractor shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition: provided, however, that if a different condition is specified in the Contract Documents, then Contractor shall be responsible for restoring such surfaces to the condition specified in the Contract Documents.

#### **F.4 CLEANING UP**

From time to time as may be ordered by the Owner the Contractor shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. If Contractor fails to do so within twenty-four hours after notification by the Owner the work may be done by others and the cost charged to the Contractor and deducted from payment due the Contractor.

#### **F.5 ENVIRONMENTAL CONTAMINATION**

- F.5.1 Contractor will be held responsible for and shall indemnify, defend (with counsel of Owner's choice) and hold harmless Owner from and against any costs, expenses, damages, claims, and causes of action, (including attorney fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Contract which occur as a result of, or are contributed by, the negligence or actions of Contractor or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this section F.5.1 shall limit Contractor's responsibility for obtaining insurance coverages required under Section G.3 of these General Conditions, and Contractor shall take no action that would void or impair such coverages
- F.5.1.1 Contractor agrees to promptly dispose of such spills, releases, discharge or leaks to the satisfaction of Owner and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the



Owner and be performed by properly qualified personnel.

F.5.1.2 Contractor shall obtain the Owner's written consent prior to bringing onto the Work site any

(i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from the Owner, the Contractor, at all times, shall:

- (a) properly handle, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;
- (b) be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which Contractor has brought onto the Work site; and
- (c) promptly clean up, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all applicable federal, state, or local statutes, rules, or ordinances.

F.5.2 With respect to Hazardous Materials to be used during the course of the Work, Contractor will implement and enforce a program to inventory and properly store and secure all Hazardous Materials that may be used or present on the Project site, maintain available for inspection at the Project site all material safety data sheets, and comply with all regulations required by law for the storage, use, and disposal of Hazardous Materials. The program must provide for notification of all personnel of potential chemical hazards. Review of these hazards must be included in Contractor's safety training program.

F.5.3 Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR 340-142-0050 for all products addressed therein. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:

- (a) Description of items released (identity, quantity, manifest no., and all other documentation required by law.)
- (b) Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.
- (c) Exact time and location of release, including a description of the area involved.
- (d) Containment procedures initiated.
- (e) Summary of communications about the release Contractor has had with members

of the press or State officials other than Owner.

(f) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.

(g) Personnel injuries, if any, resulting from, or aggravated by, the release.

## **F.6 ENVIRONMENTAL CLEAN-UP**

F.6.1 Unless disposition of environmental pollution is specifically a part of this Contract or was caused by the Contractor (reference F.5 Environmental Contamination), Contractor shall immediately notify Owner of any hazardous substance(s) which Contractor discovers or encounters during performance of the Work required by this Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying Owner of any hazardous substance(s) discovered or encountered, Contractor shall immediately cease working in any particular area of the project where a hazardous substance(s) has been discovered or encountered if continued work in such area would present a risk or danger to the health or wellbeing of Contractor's or any Subcontractor's work force.

F.6.2 Upon being notified by Contractor of the presence of hazardous substance(s) on the project site, Owner shall arrange for the proper disposition of such hazardous substance(s).

F.6.3 Asbestos Abatement. The Work under this Contract may include removal and abatement of asbestos (and proper transportation and disposal). All such Work shall be performed in compliance with the plans and specifications if it is determined that hazardous materials need to be abated. This Work (if required) shall be performed by an asbestos abatement contractor licensed under ORS 468A.720 employing Oregon Certified Asbestos Workers and a Certified Asbestos Supervisor shall be on site at all times asbestos abatement Work is being performed. All federal, state and local laws, statutes, regulations, administrative rules, ordinances, standards, directives and other legal requirements, and all rules and regulations pertaining to the safe removal of asbestos, including but not limited to those of the Oregon Department of Environmental Quality (DEQ), the federal Environmental Protection Agency (EPA), and OSHA, and other authorities having jurisdiction, shall be complied with at all times. Contractor shall provide Owner with air sampling records (including clearance sampling documentation) before the commencement of any construction or abatement activities as well as at completion of the asbestos abatement Work. Contractor shall include these asbestos provisions and requirements in any subcontract(s) related to the asbestos abatement Work.

F.6.4 Lead and Other Hazardous Material Abatement. The Work under this Contract may also include removal and abatement (and proper transportation and disposal) of all other hazardous materials or substances (not covered by Subsection F.6.3) from the Project site as necessary for full legal compliance, including but not limited to lead. Proper identification, assessment, notifications, handling, testing, certifications, removal, transportation and disposal are the responsibility of

Contractor. All applicable federal, state and local laws, statutes, regulations, administrative rules, ordinances, standards, directives and other legal requirements shall be complied with at all times, including but not limited to those of DEQ, EPA and OSHA. All such Work shall be performed in compliance with the applicable plans and specifications being prepared by the Architect.

#### **F.7 SECURITY AND SITE BEHAVIOR**

F.7.1 Contractor, its officers, agents and subcontractors, shall comply with Owner's policies and requirements to obtain, display, and return identification badges at any time while they are present on Owner's property. As required by owner and other Owner locations, Owner may require personnel to sign in before entering Owner properties.

F.7.2 No Unsupervised Contact with Students. "Unsupervised contact with students" means contact with students that provide the person opportunity and probability for personal communication or touch when not under direct supervision. Contractor will ensure that Contractor, any subcontractors, and their officers, agents and employees will have no direct unsupervised contact with students while on Owner property. Contractor will work with the Owner to ensure compliance with this requirement. If Contractor is unable to ensure through a security plan that none of its officers, agents or employees will have direct, unsupervised, contact with students in a particular circumstance or circumstances, Contractor shall notify the Owner prior to beginning any Work that could result in such contact. Contractor authorizes the Owner to obtain information about Contractor and Contractor's history and to conduct a criminal background check, including fingerprinting, of any officer, agent or employee of Contractor that will have unsupervised contact with students. Contractor also agrees to cause Contractor's employees and/or subcontractors, if any, to authorize the Owner to conduct such background checks. Contractor shall pay all fees assessed by the Oregon Department of Education for processing the background check. The Owner may deduct the cost of such fees from a progress or final payment to the Contractor under this contract, unless the Contractor elects to pay such fees directly. Contractor shall not deploy any employee or agent to provide services under this Contract if (a) the employee or agent would have direct, unsupervised contact with students as determined by the Owner; and (b) the employee or agent has been convicted of a crime listed in ORS 342.143(3).

F.7.3 Contractor shall comply with the following when work is performed on Owner property:

(a) Identification. Contractors performing work on Owner property or for the Owner shall be in appropriate attire all times. In addition, all such persons shall carry photo identification and will present such to anyone upon request. If such identification cannot be produced by Contractor, or is not acceptable to the Owner, the Owner may provide, at its sole discretion, such identification tags to Contractor. Contractor shall bear the entire cost of

producing and assigning such identification.

- (b) No Smoking. Smoking or other use of tobacco is prohibited on Owner property.
- (c) No Drugs. Owner property sites served by the Owner are drug-free zones.
- (d) No Weapons or Firearms. Except as provided by Oregon statutes and Owner policy, weapons and firearms are prohibited on Owner property.
- (e) Safety. Prior to instituting work on Owner property, Contractor, its subcontractors, and suppliers shall review the safety and security policies issued by the Owner's Risk Management Department and shall comply with those policies while on Owner property.

F.7.4 Student Privacy. As required by the Family Educational Rights and Privacy Act, 20 USC 1232(g) ("FERPA"), and ORS 326.565, Contractor shall not disclose any information or records regarding students or their families that Contractor may learn or obtain in the course and scope of its performance of this Contract. The parties recognize that FERPA imposes strict penalties for improper disclosure or re-disclosure of confidential student information, including but not limited to denial of access to personally identifiable information from education records for at least five (5) years (34 CFR 99.33(e)). Therefore, consistent with FERPA's requirements, personally identifiable information obtained by Contractor in the performance of this Contract may not be re-disclosed to third parties without the written consent of the student's parent/guardian and the Owner and must be used only for the purposes identified in this Contract.

F.7.5 Sexual Abuse and Misconduct Reporting and Training (ORS 339.370 to 339.400). Contractor and its agents and employees providing services to the Owner under this Contract must be trained annually on sexual abuse and misconduct information and reporting as required by ORS 339.400(2). Contractor and Contractor's agents and employees shall comply with the Owner's Abuse and Sexual Conduct Information and Reporting Requirements.

#### **F.8 FORCE MAJEURE**

A party to this Contract shall not be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party. The Owner may terminate this Contract upon written notice after determining that delay or default caused by Force Majeure acts, events or occurrences will reasonably prevent successful performance of the Contract.

### **SECTION G**

#### **INDEMNITY, BONDING, AND INSURANCE**

##### **G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY**

G.1.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, personnel, or agents.

G.1.2 To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner, Owner's Authorized Representative, Architect/Engineer, Architect/Engineer's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies (collectively "Indemnitees") from and against all

liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to, (a) any damage, injury, loss, expense, inconvenience or delay described in this Section G.1.2, (b) any accident or occurrence which happens or is alleged to have happened in or about the project site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects, (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract, (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140), and (e) any lien filed upon the project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section G.1.2.

G.1.3 In claims against any person or entity indemnified under this Section G.1.2 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section G.1.2 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

### **G.3 PERFORMANCE AND PAYMENT SECURITY: PUBLIC WORKS BOND**

G.2.1 Provided no construction Work is included with the preconstruction services to be performed under the initial form of the Contractor Contract, no performance bond or payment bond is required to be provided by the Contractor at the time of Contract signing, consistent with ORS 279C.380. Once construction Work is included in the Contract and authorized by the Owner to be performed by the Contractor, however, the Contractor must provide a performance bond and payment bond in the full amount of any Early Work to be performed by the Contractor, or the full amount of the GMP, fixed price or other maximum contract price, as applicable. Furthermore, in the event additional Early Work is added to the Contractor Contract after the initial Early Work or in the event an amendment to the Contractor Contract is made so that the GMP, fixed price or other maximum contract price must be increased, the performance bond and the payment bond must be increased in an amount equal to the additional Early Work or the increased GMP, fixed price or other maximum contract price.

G.2.2 Before execution of the Contract Contractor shall file with the Construction Contractors Board, and

maintain in full force and effect, the separate public works bond required by Oregon Laws 2005, Chapter 360, and OAR 839-025-0015, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting the Subcontractor to start Work.

G.2.3 ORS 279C.605 (Notice of Claim on Bond). Any person claiming a right of action under ORS 279C.600 must file a notice of claim as provided in ORS 279C.605.

### **G.4 INSURANCE**

G.4.1 Primary Coverage: Insurance carried by Contractor under this Contract shall be the primary coverage and non-contributory with any other insurance and self-insurance, and the Owner's insurance is excess and solely for damages or losses for which the Owner is responsible. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

G.4.2 Builder's Risk Insurance:

G.4.2.1 Builder's Risk: During the term of this Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on an all-risk form, including earthquake and flood, for an amount equal to the full amount of the Contract. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood, deductible shall not exceed 2 percent of each loss or \$50,000, and whichever is more. The policy will include as loss payees the Owner, the Contractor, and its Subcontractors as their interests may appear.

G.4.2.2 Builder's Risk Installation Floater: For other than new construction the Contractor shall obtain and keep in effect during the term of this Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials, and equipment to be used for completion of the Work performed under this Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. This insurance shall include as loss payees the State of Oregon, the Owner, the Contractor, and its Subcontractors as their interests may appear.

G.4.2.3 Such insurance shall be maintained until Owner has occupied the facility.

G.4.2.4 A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

G.4.3 Liability Insurance: As a condition precedent to payment, Contractor will at all times specified herein provide and maintain for itself and require the Subcontractors to provide and maintain the following types and the following minimum limits of insurance written on an occurrence basis by a company or companies rated A/IX or better in the most recent edition of "Best's Insurance Guide" (or such lesser rating as may be approved by Owner in writing) and authorized to do business in the state where the Project is located.

G.4.3.1 Workers' Compensation and Employer's Liability:

- (a) Workers Compensation, with limits as required by applicable law.
- (b) Employers Liability:

\$1,000,000 Each Accident

\$1,000,000 Disease, Policy Limit

\$1,000,000 Disease, Each Employee

Coverage will be carried for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

G.4.3.2 Commercial General Liability (Occurrence Form):

(a) Combined Bodily Injury and Property Damage:

\$1,000,000 Each Occurrence

\$1,000,000 Personal and Advertising Injury

\$2,000,000 General Aggregate

\$2,000,000 Products/Completed Operations Aggregate

\$300,000 Fire Damage Legal Liability.

\$10,000 Medical Expenses Per Person

(b) The scope of coverage must meet the following:

(1) Premises Operations must be included.

(2) Elevators and Escalators must be included.

(3) Coverage for Independent Contractors and work performed on Contractor's behalf by Subcontractors must be included.

(4) Contractual Liabilities must be included (including the contract obligations specified in the indemnification paragraph(s) of the Contract)

(5) The Products and Completed Operations Insurance will be maintained for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

(6) There can be no exclusions for subsidence, collapse, explosion or underground property damage.

(7) There can be no insured vs. insured cross-suit exclusion. The policies will provide for cross-liability coverage as would be achieved under the standard Insurance Services Office "separation of insureds" clause.

(8) The limits will not be eroded or wasted by defense costs.

(9) The policy will be endorsed to be primary and non-contributory with any insurance maintained by Owner, its affiliates, subsidiaries, members, directors, officers, employees and agents. (This endorsement must be shown on the insurance certificate provided to Contractor)

(10) Maximum deductible will be \$10,000.

(11) If not included in Contractor's Commercial General Liability policy, Contractor will secure Pollution Liability coverage with limits not less than \$5,000,000 per occurrence.

G.4.3.3 Commercial Business Auto:

(a) Combined Bodily Injury and Property Damage

\$1,000,000 Each Accident

(b) The following coverages must be included:

(1) Owned Automobiles

(2) Non-Owned and Hired Automobiles

Coverage will be maintained for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

G.4.3.4 Excess/Umbrella Liability Coverage:

(a) \$5,000,000 Each Occurrence

\$5,000,000 Aggregate

(b) Coverage will be at least as broad as all liability policies described above.

(c) Coverage will be carried for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

(d) The policy must provide that coverage will be triggered by exhaustion of the General Liability, Commercial Business Auto, Employer's Liability policies above only and not any other policies; exhaustion of the applicable policies above will be achieved by reasonable compromise for amounts less than the full limits of such applicable policies.

G.4.3.5 Certificates and Certified Copies of Policies.

Certificates of insurance for Design/Builder's and Subcontractors' insurance along with copies of all endorsements necessary to evidence compliance with all insurance requirements will be filed with Owner and be acceptable to Owner prior to commencement of the Work. For those insurance coverages that are required to remain in force after Final Completion, additional certificate evidencing continuation of such coverage will be submitted as part of the application for final payment and upon each annual renewal for the duration of coverage required. Upon Owner's request at any time, Design/Builder will immediately provide an actual certified copy of its insurance policies. Provision of the certificates and copies of policies as required herein will be a condition precedent to payment.

G.4.3.6 Notice of Cancellation, Reduction or Expiration.

The insurance policies required by this Exhibit will be endorsed to include a covenant that coverages or limits afforded under the policies will not be canceled, reduced or allowed to expire until at least 30 days' prior written notice has been given to Owner. In addition, Contractor and subcontractors will give immediate written notice to Owner immediately upon learning that their coverages may be cancelled, reduced or their limits impaired by claims. Information concerning cancellation or reduction of limits on account of claims paid or to be paid will be furnished by the Design/Builder to Owner not more than three (3) business days of when Design/Builder learns that revised or reduced limits are likely. When Contractor becomes aware of cancellation, expiration or reduction in coverage or available limits, Contractor within ten (10) business days will procure other policies of insurance that meet all requirements of this Exhibit.

G.4.3.7 Owner's Right To Terminate or Cure.

Failure of Design/Builder or a Subcontractor to secure and maintain insurance with the coverages and limits required by this Exhibit will be a material breach of the Contract entitling Owner, in its discretion and without waiving any other remedies, to (i) withhold payments or recoup payments already made to Contractor for work on the Project, (ii) terminate the Contractor for cause, and (iii) purchase any additional insurance it deems reasonable necessary to protect itself at the expense

of the Design/Builder. Design/Builder consents to Owner procuring replacement insurance in Design/Builder's name and will cooperate in all respects with Owner's efforts in procuring additional or replacement insurance. Owner will have the discretion to purchase an Owner's protective policy or other similar policy that affords to Owner coverages and limits providing reasonably equivalent protections as Owner would have received if Design/Builder and Subcontractors maintained the insurance required by this Exhibit. Owner's costs incurred in finding replacement insurance or an Owner's protective policy will either be reimbursed directly by Design/Builder or may be offset against amounts owed by Owner to Design/Builder on the Project or other projects. This requirement will remain enforceable for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

- G.4.3.8 Insurance In Excess of Requirements. In the event Contractors or any Subcontractor(s) purchase insurance in excess of the coverages or limits required under this Exhibit, such excess coverages or limits will apply to the Project and inure to the benefit of Owner.
- G.4.3.9 No Waiver by Owner. The insurance requirements under this Exhibit can only be waived or modified by Owner by an express written instrument signed by Owner acknowledging the reduced coverages or limits. No other act or omission by Owner or its agents, including but not limited to (i) implicit or verbal acceptance or approval of reduced coverages or limits or (ii) failure to require proof of compliant insurance, will amount to Owner's waiver of the insurance requirements of this Exhibit. The limits of coverage shall not be eroded or wasted by defense costs.
- G.4.3.10 Subcontractor Insurance. All Subcontractors' insurance will meet all insurance requirements of Design/Builder as provided in this Exhibit, including, but not limited to, the types of insurance, extent and durations of coverages, and notice requirements, except that the limits of insurance for Subcontractors will be no less than the following:

- (a) Design Professional:
- Workers' Compensation and Employer's Liability: same as above except for the following limits for Employer's Liability:
  - \$100,000 Each Accident
  - \$100,000 Disease, Policy Limit
  - \$500,000 Disease, Each Employee
  - Commercial General Liability (Occurrence Form): Combined Bodily Injury and Property Damage:
  - \$1,000,000 Each Occurrence
  - \$1,000,000 Personal and Advertising Injury
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products/Completed Operations Aggregate
  - Business Auto: same as above.
  - Excess/Umbrella Liability Coverage: none required.
  - Professional Liability \$2,000,000

- (b) Sub Contractor:
- Workers' Compensation and Employer's Liability: same as Designer
  - Commercial General Liability (Occurrence Form): Combined Bodily Injury and Property Damage:
  - \$1,000,000 Each Occurrence
  - \$1,000,000 Personal and Advertising Injury
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products/Completed Operations Aggregate
  - Business Auto: same as above.
  - Excess/Umbrella Liability Coverage: \$10,000,000.
  - Pollution Liability and Hazardous Materials Liability
  - \$1,000,000 Each Occurrence
  - \$1,000,000 General Aggregate

G.4.3.11 Waiver of Subrogation. All of Design/Builder's and Subcontractors' liability insurance policies, including worker's compensation, will contain a waiver of subrogation against Owner.

G.4.3.12 Additional Insureds. All of Design/Builder's and Subcontractors' liability insurance policies will be endorsed to expressly name Owner, its affiliates, subsidiaries, directors, officers, employees and agents (including but not limited to those listed below) as additional insureds. The coverage under the additional insured endorsement will (i) be primary and noncontributory with respect to any insurance of the additional insureds, (ii) provide the same coverages and limits to the additional insured as are afforded to the primary insured as required by this Exhibit, and will not be limited to vicarious liability, (iii) not be limited to on-going operations, and include completed operations (iv) be maintained for the same durations as the coverages afforded to the primary insured as required by this Exhibit and blanket endorsements will not be acceptable. The following persons or entities affiliated with Owner will be expressly named as Additional Insured:

**SECTION H**

**SCHEDULE OF WORK**

**H.1 CONTRACT PERIOD**

- H.1.1 **Time is of the essence on this Contract**. The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. Contractor shall commence Work on the site within fifteen (15) Days of Notice to Proceed, unless directed otherwise.
- H.1.2 Unless specifically extended by Change Order, all Work shall be complete by the date contained in the Contract Documents. The Owner shall have the right to accelerate the completion date of the Work, which may require the use of overtime. Such accelerated Work schedule shall be an acceleration in performance of Work under Section D.1.2 (f) and shall be subject to the Change Order process of Section D.1.
- H.1.3 The Owner shall not waive any rights under the Contract by permitting the Contractor to continue or complete in whole or in part the Work after the date described in Section H.1.2 above.

**H.2 SCHEDULE**

H.2.1 Contractor shall provide, by or before the pre-construction conference, a detailed schedule for review and acceptance by the Owner. The submitted schedule must illustrate Work by significant project components, significant labor trades, and long lead items, broken

down by building and/or floor where applicable. Each schedule item shall account for no greater than 5 % of the monetary value of the project or 5 % of the available Contract Time. Schedules with activities of less than one day or valued at less than 1% of the Contract will be considered too detailed and will not be accepted. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Included within the schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion. Schedules will be updated monthly and submitted with the monthly payment application. Acceptance of the Schedule by the Owner does not constitute agreement by the Owner, as to the Contractor's sequencing, means, methods, or allocated Contract Time. Any positive difference between the Contractor's scheduled completion and the Contract completion date is float owned by the Owner. Owner reserves the right to negotiate the float if it is deemed to be in Owner's best interest to do so. In no case shall the Contractor make a request for additional compensation for delays if the Work is completed within the Contract Time but after Contractor's scheduled completion.

### **H.3 PARTIAL OCCUPANCY OR USE**

H.3.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have reasonably accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, insurance or self-insurance, maintenance, heat, utilities, and damage to the Work, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents with respect to such portion of the Work. Approval by the Contractor to partial occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, the Owner and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### **SECTION I** **CORRECTION** **OF WORK**

#### **I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT**

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements shall be deemed defective. Contractor shall promptly remove from the premises and replace all defective materials and equipment as determined by the Owner's Authorized

Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. Contractor shall be allowed a period of no longer than thirty (30) Days after Substantial Completion for completion of defective (punch list) work, unless otherwise agreed. At the end of that period, or earlier if requested by the Contractor, Owner shall arrange for inspection of the Work by the Architect/Engineer. Should the Work not be complete, and all corrections made, the costs for all subsequent re-inspections shall be borne by the Contractor. If Contractor fails to complete the punch list work within the above time period, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) days after demand without affecting Contractor's obligations.

#### **I.2 WARRANTY WORK**

I.2.1 Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the Contractor from responsibility for defective Work and, unless a longer period is specified, Contractor shall correct all defects that appear in the Work within a period of one year from the date of issuance of the written notice of Substantial Completion by the Owner except for latent defects which will be remedied by the Contractor at any time they become apparent.

The Owner shall give Contractor notice of defects with reasonable promptness. Contractor shall perform such warranty work within a reasonable time after Owner's demand. If Contractor fails to complete the warranty work within such period as Owner determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) Days after demand without affecting Contractors obligations.

I.2.2 This provision does not negate guarantees or warranties for periods longer than one year including without limitation such guarantees or warranties required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.

I.2.3 In addition to Contractor's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until the Owner's Authorized Representative has accepted affected Work in writing.

I.2.4 The one-year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work, and shall be extended by corrective Work performed by the Contractor pursuant to this Section, as to the Work corrected. The Contractor shall remove from the site portions of the Work, which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

I.2.5 Nothing contained in this Section I.2 shall be construed to establish a period of limitation with respect to other obligations, which the Contractor might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section I.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the

Contractor's obligations other than specifically to correct the Work.

- I.2.6 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **SECTION J**

### **SUSPENSION AND/OR TERMINATION OF THE WORK**

#### **J.1 OWNER'S RIGHT TO SUSPEND THE WORK**

- J.1.1 The Owner and/or the Owner's Authorized Representative has the authority to suspend portions or all of the Work due to the following causes:
- (a) Failure of the Contractor to correct unsafe conditions;
  - (b) Failure of the Contractor to carry out any provision of the Contract;
  - (c) Failure of the Contractor to carry out orders;
  - (d) Conditions, in the opinion of the Owner's Authorized Representative, which are unsuitable for performing the Work;
  - (e) Time required to investigate differing site conditions;
  - (f) Any reason considered to be in the public interest.
- J.1.2 The Owner shall notify Contractor and the Contractor's Surety in writing of the effective date and time of the suspension and Owner shall notify Contractor and Contractor's surety in writing to resume Work.

#### **J.2 CONTRACTOR'S RESPONSIBILITIES**

- J.2.1 During the period of the suspension, Contractor is responsible to continue maintenance at the project just as if the Work were in progress. This includes, but is not limited to, protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.
- J.2.2 When the Work is recommenced after the suspension, the Contractor shall replace or renew any Work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the project in every respect as though its prosecution had been continuous and without suspension.

#### **J.3 COMPENSATION FOR SUSPENSION**

- J.3.1 Depending on the reason for suspension of the Work, the Contractor or the Owner may be due compensation by the other party. If the suspension was required due to acts or omissions of Contractor, the Owner may assess the Contractor actual costs of the suspension in terms of administration, remedial work by the Owner's forces or another contractor to correct the problem associated with the suspension, rent of temporary facilities, and other actual costs related to the suspension. If the suspension was caused by acts or omissions of the Owner, the Contractor shall be due

compensation which shall be defined using Section D, Changes in Work. If the suspension was required through no fault of the Contractor or the Owner, neither party owes the other for the impact.

#### **J.4 OWNER'S RIGHT TO TERMINATE CONTRACT**

- J.4.1 The Owner may, without prejudice to any other right or remedy, and after giving Contractor seven (7) Days' written notice and an opportunity to cure, terminate the Contract in whole or in part under the following conditions:
- (a) If Contractor should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and Contractor as debtor-in-possession or the Trustee for the estate fails to assume the Contract within a reasonable time.
  - (b) If Contractor should make a general assignment for the benefit of Contractor's creditors;
  - (c) If a receiver should be appointed on account of Contractor's insolvency;
  - (d) If Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;
  - (e) If Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Owner or its Authorized Representative; or
  - (f) If Contractor is otherwise in material breach of any part of the Contract.
- J.4.2 At any time that any of the above occurs, Owner may exercise all rights and remedies available to Owner at law or in equity, and in addition, Owner may take possession of the premises and of all materials and appliances and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive further payment until the Work is completed. If the Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor shall pay the difference to the Owner.

#### **J.5 TERMINATION FOR CONVENIENCE**

- J.5.1 Owner may terminate the Contract in whole or in part whenever Owner determines that termination of the Contract is in the best interest of the public.
- J.5.2 The Owner will provide the Contractor with seven (7) Days' prior written notice of a termination for public convenience. After such notice, the Contractor shall provide the Owner with immediate and peaceful possession of the premises and materials located on and off the premises for which the Contractor received progress payment under Section E. Compensation for Work terminated by the Owner under this provision will be according to Section E. In no circumstance shall Contractor be entitled to lost profits for Work not performed due to termination.

#### **J.6 ACTION UPON TERMINATION**

- J.6.1 Upon receiving a notice of termination, and except as directed otherwise by the Owner, Contractor shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, Contractor shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior written approval of the Owner, settle all outstanding liabilities and termination settlement

proposals arising from the termination of subcontracts and orders.

- J.6.2 As directed by the Owner, Contractor shall upon termination transfer title and deliver to the Owner all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to the Owner.

**SECTION K**  
**CONTRACT**  
**CLOSE OUT**

**K.1 RECORD DOCUMENTS**

As a condition of final payment (refer also to section E.6), Contractor shall comply with the following: Contractor shall provide to Owner's Authorized Representative, Record Documents of the entire project. Record Documents shall depict the project as constructed and shall reflect every change, modification, and deletion made during the construction. Record Documents are part of the Work and shall be provided prior to the Owner's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed. Media shall be electronic in addition to a cloud-based storage for owner future use and access such as Smartsheet.

**K.2 OPERATION AND MAINTENANCE MANUALS**

As part of the Work, Contractor shall submit two completed operation and maintenance manuals ("O & M Manuals") for review by the Owner's Authorized Representative prior to submission of any pay request for more than 75% of the Work. No payments beyond 75% will be made by the Owner until the O & M Manuals have been received. All O&M and closeout duties shall be via cloud-based media such as smartsheet.com or other web based media acceptable to owner in electronic formatting in addition to hard copies. The O & M Manuals shall contain a complete set of all submittals, all product data as required by the specifications, training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties and bonds. The Owner's Authorized Representative shall review and return one O & M Manual for any modifications or additions required. Prior to submission of its final pay request, Contractor shall deliver three (3) complete and approved sets of O & M Manuals to the Owner's Authorized Representative.

**K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS**

As a condition of final payment, the Contractor shall submit to the Owner's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to Owner, which states that all Subcontractors and suppliers have been paid in full, all disputes with property owners have been resolved, all obligations on the project have been satisfied, all monetary claims and indebtedness have been paid, and that, to the best of the Contractor's knowledge, there are no claims of any kind outstanding against the project. The Contractor shall indemnify, defend (with counsel of Owner's choice) and hold harmless the Owner from all claims for labor and materials finished under this Contract. The Contractor shall furnish complete and valid releases or waivers, satisfactory to the Owner, of all liens arising out of or filed in connection with the Work.

**K.4 COMPLETION NOTICES**

- K.4.1 Contractor shall provide Owner notice of both Substantial and Final Completion. The certificate of Substantial Completion shall state the date of Substantial Completion, the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and the time within which the Contractor shall finish all items on the punch list accompanying the Certificate. Both completion notices must be signed by the Contractor and the Owner to be valid. The Owner shall provide the final signature on the notices. The notices shall take effect on the date they are signed by the Owner.
- K.4.2 Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, HVAC) shall be that degree of completion that has provided a minimum of thirty (30) continuous Days of successful, trouble-free operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the Owner's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable the Owner to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. The Contractor may request that a punch list be prepared by the Owner's Authorized Representative with submission of the request for the Substantial Completion notice.

**K.5 TRAINING**

As part of the Work, and prior to submission of the request for final payment, the Contractor shall schedule with the Owner's Authorized Representative, training sessions for all equipment and systems, as required in the individual specifications sections. Contractor shall schedule training sessions at least two weeks in advance of the date of training to allow Owner personnel adequate notice. Training by video shall be conducted by contractor at owner's request as part of contract duties. The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment and/or system is completely installed and operational in its normal operating environment. All training shall be videotaped and recorded and provided by cloud based accessible electronic means acceptable to the owner.

**K.6 EXTRA MATERIALS**

As part of the Work, Contractor shall provide spare parts, extra maintenance materials, and other materials or products in the quantities specified in the specifications, prior to final payment. Delivery point for extra materials shall be designated by the Owner's Authorized Representative.

**K.7 ENVIRONMENTAL CLEAN-UP**

As part of the Final Completion notice, or as a separate written notice submitted with or before the notice of Final Completion, the Contractor shall notify the Owner that all environmental pollution clean-up performed as a part of this Contract has been disposed of in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdiction over such environmental pollution. The notice shall reaffirm the indemnification given under Section F.5.1 above.

**K.8 CERTIFICATE OF OCCUPANCY**

The Contractor shall not be granted Final Completion or receive final payment if the Owner has not received an unconditioned certificate of occupancy from the appropriate state and/or local building officials, unless failure to obtain an unconditional certificate of occupancy is due to the fault or neglect of Owner.

**K.9 OTHER CONTRACTOR RESPONSIBILITIES**

The Contractor shall be responsible for returning to the Owner all items issued during construction such as keys,



security passes, site admittance badges, and all other pertinent items. The Contractor shall be responsible for notifying the appropriate utility companies to transfer utility charges from the Contractor to the Owner. The utility transfer date shall not be before Substantial Completion and may not be until Final Completion, if the Owner does not take beneficial use of the facility and the Contractor's forces continue with the Work.

K.4.6 Compact Agencies. The Columbia River Gorge Commission.

K.4.7 Tribal Governments.

#### **K.10 SURVIVAL**

All warranty and indemnification provisions of this Contract, and all of Contractor's other obligations under this Contract that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination of the Contract.

### **SECTION L**

#### **LEGAL RELATIONS & RESPONSIBILITIES**

##### **L.1 LAWS TO BE OBSERVED**

In compliance with ORS 279C.525, Sections L.2 through L.4 contain lists of federal, state and local agencies of which the Owner has knowledge that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

K.4.3 Federal Agencies. Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Mines, Bureau of Reclamation, Geological Survey, Minerals Management Service, U.S. Fish and Wildlife Service, Department of Labor, Mine Safety and Health Administration, Occupational Safety and Health Administration, Department of Transportation, Federal Highway Administration, and Water Resources Council.

K.4.4 State Agencies. Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Consumer and Business Services, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, and Department of Water Resources.

K.4.5 Local Agencies. City councils, county courts, county boards of commissioners, metropolitan service district councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special district boards of directors, and other special districts and special governmental agencies such as Tri-Met, urban renewal agencies, and Port Districts.



## CITY OF MOLALLA

117 N. Molalla Avenue  
PO Box 248  
Molalla, OR 97038

### Staff Report

### Agenda Category: General Business

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**Agenda Date:** December 14, 2022

**SUBJECT:** Long Park Gazebo removal.

**FISCAL IMPACT:** Staff equipment and time.

**RECOMMENDATION/RECOMMEND MOTION:** Authorize City Manager to remove the Gazebo in Long Park

**BACKGROUND:**

The Gazebo in Clark Park has become an increasingly difficult situation to manage over the past few years and problems are increasing for both Public Works staff and Police personnel. We have examined the Gazebo with an intent to remove more panels, but based on the way the structure is designed, we cannot remove additional panels. We have also been aware that the structure does not meet ADA (Americans with Disabilities Act) standards and cannot be reasonably retrofitted to comply.

This subject has been taken to the Parks CPC and their recommendation is that the Gazebo be removed and a plan for replacement be developed. There are recent designs in other cities that present a safe and compliant structure for all to use. The plan would be to add this subject to the future work plan for the Park CPC.

**Dan Huff**  
**City Manager**

Gazebo photos: December 7-8, 2022.



Feces on the Civic Center ADA walkway. Occurance took place on December 7, 2022 between 6-8:30pm, while a Planning Commission Meeting was being held.





## CITY OF MOLALLA

117 N. Molalla Avenue  
PO Box 248  
Molalla, OR 97038

### Staff Report

#### Agenda Category: General Business

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**Agenda Date:** December 14, 2022

**Approved by:** Dan Huff, City Manager  
**By:** Chaunee Seifried, Finance Director

**SUBJECT:** Personnel Policy Manual

**FISCAL IMPACT:** N/A

**RECOMMENDATION/RECOMMEND MOTION:** Approve

**BACKGROUND:**

The City has not had an updated personnel policy manual since 2014. CIS, our insurance company provided us with a sample that we customized to our City.

# PERSONNEL POLICY HANDBOOK

City of Molalla



Effective January 01, 2023

Welcome!

Welcome to City of Molalla, we're glad to have you on our team. We believe that our employees are our most valuable assets. In fact, we attribute our success as an organization in significant part to our ability to recruit, hire, and maintain a motivated and productive workforce. We hope that during your employment with City of Molalla, you will become a productive and successful member of City of Molalla's team.

This employee handbook describes, in summary, the personnel policies and procedures that govern the employment relationship between City of Molalla and its employees, other than those found in applicable collective bargaining agreements. The policies stated in this handbook are subject to change at any time at the sole discretion of City of Molalla with or without prior notice. This handbook supersedes any prior handbooks or written policies of City of Molalla that are inconsistent with its provisions. It does not, however, substitute for collective bargaining agreement provisions. To the extent that a provision in a valid collective bargaining agreement contradicts or is inconsistent with what is in this employee handbook, the collective bargaining agreement provision controls.

This handbook does not create a contract of employment between City of Molalla and its employees. With the exception of employees who are subject to a collective bargaining agreement, all employment at City of Molalla is "at will." That means that either you or City of Molalla may terminate this relationship at any time, for any reason, with or without cause or notice (unless you are subject to a collective bargaining agreement or written contract of employment). No supervisor, manager, or representative of City of Molalla other than the City Manager has the authority to enter into any agreement with you regarding the terms of your employment that changes our at-will relationship or deviates from the provisions in this handbook, unless the change or deviation is put in writing and signed by City of Molalla (or that is included in a collective bargaining agreement).

You may receive updated information concerning changes in policy from time to time, and those updates should be kept with your copy of the handbook. If you have any questions about any of the provisions in the handbook, or any policies that are issued after the handbook, please contact the Human Resource department.

The City of Molalla strives to deliver cost-effective, quality municipal services, protect public health and safety, encourage public involvement in civic affairs, promote a diversified economy and community livability, safeguard the environment, and provide family-oriented recreational opportunities.

Sincerely,

Dan Huff  
City Manager  
City of Molalla

## Contents

<b>I. Equal Employment Opportunity (EEO) Policies</b> .....	1
A. No-Discrimination, No-Retaliation Policy .....	1
B. Statement Regarding Pay Equity.....	1
C. No-Harassment Policy .....	1
Sexual Harassment.....	2
Other Forms of Prohibited Harassment.....	2
Complaint Procedure .....	3
Investigation and Confidentiality .....	3
Protection Against Retaliation.....	4
D. No-Bullying Policy .....	5
E. Disability Accommodation Policy .....	6
Accommodations.....	6
Requesting an Accommodation.....	6
F. Pregnancy Accommodation Policy.....	6
G. Reporting Improper or Unlawful Conduct — No Retaliation .....	7
Additional Protection for Reporting Employees .....	8
<b>II. Classification and Compensation</b> .....	9
A. Probationary Period of Employment .....	9
B. Employee Classification .....	9
C. The Workweek.....	10
D. Meal Periods and Rest Breaks.....	10
E. Rest Breaks for Expression of Breast Milk.....	11
Notice .....	12
Storage.....	12
F. Overtime.....	12
Time-and-a-Half.....	12
Limitation on Overtime Pay.....	12
Supervisor Authorization .....	12
Compensatory (Comp) Time.....	12



G. Timekeeping Requirements.....	12
H. Employee-Incurred Expenses and Reimbursements.....	13
I. Payroll Policies .....	14
J. Statement Regarding Pay Practices .....	14
K. Reporting Changes to an Employee's Personal Data.....	14
L. Performance Reviews .....	15
<b>III. Time Off and Leaves of Absence.....</b>	<b>15</b>
A. Attendance, Punctuality and Reporting Absences.....	15
B. Vacation.....	16
C. Sick Leave .....	17
D. Holidays and Floating Holidays .....	21
Floating Holiday .....	21
E. Family Medical Leave.....	21
FMLA/OFLA Policy .....	21
• Definitions.....	22
• Reasons for Taking Leave.....	23
• Length of Leave .....	24
• One-Year Calculation Period.....	25
• Intermittent Leave .....	25
• Employee Responsibilities — Notice.....	25
• Certification.....	26
• Medical Certification Prior to Returning to Work .....	26
• Substitution of Paid Leave for Unpaid Leave.....	26
• Holiday Pay While on Leave.....	27
• On-the-Job Injury or Illness.....	27
• Benefits While on Leave .....	27
• Job Protection .....	27
F. Leave Donation .....	28
G. Bereavement Leave.....	29
H. Jury and Witness Duty .....	29
Jury Duty .....	29

Witness Duty .....	29
I. Religious Observances Leave and Accommodation Policy .....	29
J. Crime Victim Leave Policy .....	30
K. Domestic Violence Leave and Accommodation Policy .....	30
L. Military Leave .....	31
<b>IV. Employee Benefits</b> .....	<b>31</b>
A. Healthcare Benefits .....	31
B. Employee Assistance Program (EAP) .....	32
C. Workers' Compensation and Safety on the Job.....	32
Steps to Take if You are Injured on the Job .....	32
Return to Work.....	32
Early Return-to-Work Program.....	33
Overlap with Other Laws.....	33
I. PERS (Public Employees' Retirement System) Benefits .....	33
<b>V. Miscellaneous Policies</b> .....	<b>34</b>
A. Alcohol/Drug Use, Abuse and Testing .....	34
Prohibited Conduct .....	34
Prescription Drugs and Medical Marijuana .....	35
Testing.....	36
Reasonable Cause Testing .....	36
Search of Property .....	37
Employee Refusal to Test/Search .....	37
Crimes Involving Drugs and/or Alcohol .....	37
Drug and Alcohol Treatment .....	38
Discipline and Consequences of Prohibited Conduct .....	38
Confidentiality .....	38
B. Mobile Devices Policy .....	43
Cell Phones and Mobile Devices in General.....	43
Employee Use of City of Molalla -Provided or Paid For Mobile Devices .....	43
Mobile Devices and Public Records.....	44
Mobile Device Use While Driving .....	44

C.	Use of City of Molalla Email and Electronic Equipment and Services .....	44
	Ownership.....	45
	Use.....	45
	Inspection and Monitoring – No Right to Privacy.....	45
	Personal Hardware and Software .....	46
	Unauthorized Access.....	46
	Security .....	46
	Inappropriate Web Sites.....	46
D.	Social Media.....	46
	Prohibited Postings.....	46
	Encouraged Conduct .....	47
	Request for Employee Social Media Passwords.....	47
E.	Confidential City of Molalla Information .....	48
F.	Ethics .....	48
G.	Open-Door Policy.....	49
H.	Outside Employment.....	49
I.	Criminal Arrests and Convictions .....	49
J.	Political Activity.....	50
K.	Bad Weather/Emergency Closing .....	50
M.	Driving While on Business.....	50
N.	Workplace Violence.....	51
O.	Workplace Inspections — No Right to Privacy or Confidentiality.....	51
P.	Smoke-Free Workplace .....	52
R.	Hiring of Family Members.....	56
<b>VI.</b>	<b>Termination of Employment .....</b>	<b>56</b>
	A. Workplace Rules and Prohibited Conduct.....	56
	B. Retirement or Resignation from Employment .....	58
	C. References .....	59

## **I. Equal Employment Opportunity (EEO) Policies**

The following EEO Policies apply to all employees. Members of management, elected officials and employees alike are expected to adhere to and enforce the following EEO Policies. Any employee's failure to do so may result in discipline, up to and including termination.

All employees are encouraged to discuss these EEO Policies with the Human Resource department at any time if they have questions relating to the issues of harassment, discrimination or bullying, or what it means to work in a respectful workplace.

### **A. No-Discrimination, No-Retaliation Policy**

The City of Molalla provides equal employment opportunity to all qualified employees and applicants without unlawful regard to race, color, religion, sex, gender identity, pregnancy (including childbirth and related medical conditions), sexual orientation, national origin, age, disability, genetic information, veteran status, domestic violence victim status, or any other status protected by applicable federal, Oregon, or local law. The City of Molalla also recognizes an employee's right to engage in protected activity under Oregon and federal law, as discussed in various policies below, and will not retaliate against an employee for engaging in protected activity.

For purposes of this and all other City of Molalla policies, "race" is defined to include physical characteristics that are historically associated with race, including but not limited to natural hair, hair texture, hair type and protective hairstyles), Further, "protective hairstyles" is defined as "hairstyle, hair color or manner of wearing hair, including braids (regardless of whether the braids are created with extensions or styled with adornments, locs and twists)".

The City of Molalla's commitment to equal opportunity applies to all aspects of the employment relationship — including but not limited to, recruitment, hiring, compensation, promotion, demotion, transfer, disciplinary action, layoff, recall, and termination of employment.

### **B. Statement Regarding Pay Equity**

The City of Molalla supports Oregon's Pay Equity Law and federal and Oregon laws prohibiting discrimination between employees based on a protected class (as defined by Oregon or federal law) in the payment of wages or other compensation for work of comparable character. Employees who believe they are receiving wages or other compensation at a rate less than that at which the City of Molalla pays wages or other compensation to other employees for work of comparable character are encouraged to discuss the issue with Human Resources.

See also "Statement Regarding Pay Practices" policy, below.

### **C. No-Harassment Policy**

The City of Molalla prohibits harassment and sexual assault in the workplace, or harassment and sexual assault outside of the workplace that violates its employees, volunteers and interns' right to work in a harassment-free workplace. Specifically, City of

Molalla prohibits harassment or conduct related to an individual's race, color, religion, sex, pregnancy, sexual orientation, gender identity, national origin, age, disability, genetic information, veteran status, domestic violence victim status, or any other protected status or activity recognized under Oregon, federal or local law.

Each member of management is responsible for creating an atmosphere free of discrimination, harassment, and sexual assault. Further, all employees are responsible for respecting the rights of other employees and to refrain from engaging in conduct prohibited by this policy, regardless of the circumstances, and regardless of whether others participate in the conduct or did not appear to be offended. All employees are encouraged to discuss this policy with their immediate supervisor, any member of the management team, or with the Human Resource department, at any time if they have questions relating to the issues of discrimination or harassment.

This policy applies to and prohibits sexual or other forms of harassment that occur during working hours, during City of Molalla–related or –sponsored trips (such as conferences or work-related travel), and during non-working hours when that off-duty conduct creates an unlawful hostile work environment for any of City of Molalla's employees. **Such harassment is prohibited whether committed by City of Molalla employees or by non-employees (including elected officials, members of the community, volunteers, interns and vendors).**

#### Sexual Harassment

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature (regardless of whether such conduct is “welcome”), when:

1. Submission to such conduct is made either implicitly or explicitly a term or condition of employment.
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Some examples of conduct that could give rise to sexual harassment are unwanted sexual advances; demands for sexual favors in exchange for favorable treatment or continued employment; sexual jokes; flirtations; advances or propositions; verbal abuse of a sexual nature; comments about an individual's body, sexual prowess, or deficiency; talking about your sex life or asking others questions about theirs; leering or whistling; unwelcome touching or assault; sexually suggestive, insulting, or obscene comments or gestures; displays of sexually suggestive objects or pictures; making derogatory remarks about individuals who are gay, lesbian, bisexual or transgender; or discriminatory treatment based on sex.

This is not a complete list.

#### Other Forms of Prohibited Harassment

City of Molalla policy also prohibits harassment against an individual based on the individual's race, color, religion, sex, pregnancy, sexual orientation, gender identity, national origin, age, disability, genetic information, veteran status, domestic violence

victim status, or any other protected status or activity recognized under Oregon, federal or local law.

City of Molalla policy also prohibits harassment such as verbal, written, or physical conduct that denigrates, makes fun of, or shows hostility towards an individual because of that individual's protected class or protected activity, and can include:

- Jokes, pictures (including drawings), epithets, or slurs.
- Negative stereotyping.
- Displaying racist symbols anywhere on City of Molalla property.
- "Teasing" or mimicking the characteristics of someone with a physical or mental disability.
- Criticizing or making fun of another person's religious beliefs, or "pushing" your religious beliefs on someone who doesn't have them.
- Threatening, intimidating, or hostile acts that relate to a protected class or protected activity; or
- Written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of the protected status.
- Negative comments or teasing a person about their natural hair, hair texture, hair type or hairstyle (see definition of "race" on page 1). Employees may not touch another employee's hair without permission to do so, even if the touch is extended out of curiosity or as a compliment.

This is not a complete list. All employees are expected to exercise common sense and refrain from other similar kinds of unprofessional conduct.

### Complaint Procedure

Employees, volunteers, or interns who have experienced a sexual assault, any harassment, discrimination in violation of this policy, who have witnessed such behavior, or who have credible information about such behavior occurring, are expected and should bring the matter to the attention of the City Manager or the Human Resource department, or a supervisor or member of management as soon as possible. Employees are strongly encouraged to document the information or incident in any written or electronic form, or with a voice mail message (or phone call). An employee who experiences or witnesses' harassment is encouraged, but not required, to tell the harasser that the behavior is offensive and unwanted, and that he/she wants it to stop.

### Investigation and Confidentiality

All complaints and reports will be promptly and impartially investigated and will be kept confidential to the extent possible, consistent with City of Molalla's need to investigate the complaint and address the situation. If conduct in violation of this policy is found to have occurred, City of Molalla will take prompt, appropriate corrective action, and any employee found to have violated this policy will be subject to disciplinary action, up to and including termination of employment.

Employees who have been subjected to harassment, sexual assault, or discrimination are encouraged to use the City of Molalla's complaint-reporting procedure, described above, to ensure a timely, thorough investigation and handling of the situation. Employees may, however, seek redress from the Oregon Bureau of Labor and Industries (BOLI) pursuant to ORS 659A.820 to 659A.865, or in a court under any other available law,

whether criminal or civil. Although the City of Molalla cannot provide employees with legal advice, employees should be aware of the statute of limitations applicable to harassment or discrimination claims under ORS 659A.030, 659A.082 or 659A.121 (five years). Further, before an employee can take any legal action against the City of Molalla, the employee must provide written notice of the claim within 180 days of the act or omission the employee claims has caused him/her harm. When an employee can prove harm as a result of unlawful harassment or discrimination in an administrative proceeding or in a court, remedies available to the employee include enforcement of a right, imposition of a penalty, or issuance of an order to the employee's employer (in limited circumstances).

#### Protection Against Retaliation

City of Molalla prohibits retaliation in any way against an employee because the employee has made a good-faith complaint pursuant to this policy or the law, has reported (in good faith) sexual assault, harassing or discriminatory conduct, or has participated in an investigation of such conduct.

Employees who believe they have been retaliated against in violation of this policy should immediately report it to the City Manager or the Human Resource department or any supervisor or member of management. Any employee who is found to have retaliated against another employee in violation of this policy will be subject to disciplinary action up to and including termination of employment.

See also the No-Discrimination, No-Retaliation Policy, above, and the Reporting Improper and Unlawful Activity Policy, below.

#### Other Resources Available to Employees

The City of Molalla provides an Employee Assistance Program (EAP) through Canopy to employees and dependents who are enrolled in City of Molalla's medical coverage. For access to confidential help 24 hours a day, seven days a week, call toll-free: 1-800-433-2320, or go online to canopywell.com. The EAP program provides confidential counseling services and educational tools such as resources relating to eldercare, childcare, legal consultation, financial coaching, identity theft, and others.

The City of Molalla cannot provide legal resources to its employees or referrals to specific attorneys. Employees may contact the Oregon State Bar for more information: <https://www.osbar.org/public/>.

#### Other Employee Rights

Nothing in this policy is intended to diminish or discourage an employee who has experienced workplace harassment or discrimination, or sexual assault, from talking about or disclosing his/her experience.

The City of Molalla is committed to creating and maintaining a workplace free of sexual assault, harassment, discrimination, and retaliation and it has confidence in the process it has developed for addressing good-faith complaints. However, Oregon law requires the City of Molalla to inform employees that if they have been aggrieved by workplace harassment, discrimination or sexual assault and want to enter into an agreement with the City of Molalla regarding his/her experience and/or employment status, the employee should contact the Human Resource department. The employee's request to

enter into such an agreement must be in writing (email or text is acceptable). Requests of this nature will be considered on a case-by-case basis; such agreements are not appropriate for every situation. If the City of Molalla and employee do reach an agreement, the City of Molalla will not require an employee to enter into a nondisclosure agreement (which would prohibit the employee from discussing or communicating about his/her experiences in the workplace or the terms of the agreement) or a non-disparagement agreement (which would prohibit the employee from speaking slightly about the City of Molalla or making comments that would lower the City of Molalla in rank or reputation). If, however, the employee makes a request for an agreement under this paragraph, nondisclosure and non-disparagement are terms that the City of Molalla and the employee may agree to. The employee will have seven days to revoke the agreement after signing it.

#### D. No-Bullying Policy

City of Molalla strives to promote a positive, professional work environment free of physical or verbal harassment, "bullying," or discriminatory conduct of any kind. City of Molalla, therefore, prohibits employees from bullying one another or engaging in any conduct that is disrespectful, insubordinate, or that creates a hostile work environment for another employee for any reason. For purposes of this policy, "bullying" refers to repeated, unreasonable actions of individuals (or a group) directed towards an individual or a group of employees, which is intended to intimidate and that creates a risk to the health and safety of the employee(s). Examples of bullying include:

1. Verbal Bullying: Slandering, ridiculing or maligning a person or his/her family; persistent name calling that is hurtful, insulting or humiliating; using a person as butt of jokes; abusive and offensive remarks.
2. Physical Bullying: Pushing; shoving; kicking; poking; tripping; assault, or threat of physical assault; damage to a person's work area or property.
3. Gesture Bullying: Non-verbal threatening gestures, glances that can convey threatening messages.
4. Exclusion Bullying: Socially or physically excluding or disregarding a person in work-related activities. In some cases, failing to be cooperative and working well with co-workers may be viewed as bullying.
5. Cyber Bullying: Bullying that takes place using electronic technology, which includes devices and equipment such as cell phones, computers, and tablets as well as communication tools including social media sites, text messages, chat, and websites. Examples of cyberbullying include transmitting or showing mean-spirited text messages, emails, embarrassing pictures, videos or graphics, rumors sent by email or posted on social networking sites, or creating fake profiles on websites for co-workers, managers or supervisors or elected officials.

This is not a complete list.

Employees who have experienced bullying in violation of this policy, who have witnessed an incident of bullying, or who have credible information about an incident, are expected and should bring the matter to the attention of their supervisor or a member of management as soon as possible. If conduct in violation of this policy is found to have occurred City of Molalla will take prompt, appropriate action, and any employee found



to have violated this policy will be subject to disciplinary action, up to and including termination of employment.

#### E. Disability Accommodation Policy

City of Molalla is committed to complying fully with the Americans with Disabilities Act (ADA) and Oregon's disability accommodation and anti-discrimination laws. We are also committed to ensuring equal opportunity in employment for qualified persons with disabilities.

##### Accommodations

City of Molalla will make reasonable efforts to accommodate a qualified applicant or employee with a known disability unless such accommodation creates an undue hardship on the operations of City of Molalla.

##### Requesting an Accommodation

A reasonable accommodation is any change or adjustment to a job or work environment that does not cause an undue hardship on the department or unit (or, in some cases, City of Molalla) and that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. For example, a reasonable accommodation may include providing or modifying equipment or devices, job restructuring, allowing part-time or modified work schedules, reassigning an individual, adjusting or modifying examinations or training materials provided by the City of Molalla, providing readers and interpreters, or making the workplace readily accessible to and usable by people with disabilities.

Employees should request an accommodation as soon as it becomes apparent that a reasonable accommodation may be necessary to enable the employee to perform the essential duties of a position. All requests for accommodation should be made with Human Resources and should specify which essential functions of the employee's job cannot be performed without a reasonable accommodation. In most cases, an employee will need to secure medical verification of his/her need for a reasonable accommodation. Both the City of Molalla and employee must monitor the employee's accommodation situation and make adjustments as needed.

#### F. Pregnancy Accommodation Policy

Employees who are concerned that their pregnancy, childbirth, or a related medical condition (including lactation) will impact their ability to work should contact the Human Resource department to discuss their options for continuing to work and, if necessary, leave of absence options. The City of Molalla will provide one or more reasonable accommodations pursuant to this policy for employees with known limitations unless such accommodations impose an undue hardship on the City of Molalla's operations.

Although this policy refers to "employees," the City of Molalla will apply this policy equally to an applicant with known limitations caused by pregnancy, childbirth, or a related medical condition.

### Requesting a Pregnancy-Related Accommodation

Employees who are concerned that their pregnancy, childbirth, or a related medical condition will limit their ability to perform their duties should request an accommodation as soon as it becomes apparent that a reasonable accommodation may be necessary to enable the employee to work. All requests for accommodation should be made with the Human Resource department and should specify which essential functions of the employee's job cannot be performed without a reasonable accommodation. In most cases, information from the employee's doctor may be needed to assist the City of Molalla and the employee find an effective accommodation, or to verify the employee's need for an accommodation. Both the City of Molalla and employee must monitor the employee's accommodation situation and adjust as needed.

### No Discrimination, No Retaliation

The City of Molalla prohibits retaliation or discrimination against any employee who, under this policy: (1) asked for information about or requested accommodations; (2) used accommodations provided by the City of Molalla; or (3) needed an accommodation.

Employees who ask about, request, or use accommodations under this policy and applicable Oregon law have the right to refuse an accommodation that is unnecessary for the employee to perform the essential functions of the job or when the employee doesn't have a known limitation. Under Oregon law, an employer can't require an employee to use sick leave, OFLA, or FMLA if a reasonable accommodation can be made that doesn't impose an undue hardship on the operations of the City of Molalla. Also, no employee will be denied employment opportunities if the denial is based on the need of the City of Molalla to make reasonable accommodations under this policy.

### Leave of Absence Options for Pregnant Employees

Employees who are pregnant or experiencing pregnancy-related medical conditions should also be aware of their leave of absence options under Oregon's sick leave law, the Oregon Family Leave Act, and the Family Medical Leave Act]. See policies on page 24 or speak with the Human Resource department.

### G. Reporting Improper or Unlawful Conduct — No Retaliation

Employees may report concerns about the City of Molalla's compliance with any law, regulation or policy, using one of the methods identified in this policy. The City of Molalla will not retaliate against employees who disclose information that the employee reasonably believes is evidence of:

- A violation of any federal, Oregon, or local law, rules or regulations by the City of Molalla.
- A violation of law, regulation, or standard pertaining to safety and health in the place of employment.
- Mismanagement, gross waste of funds, abuse of authority.
- A substantial and specific danger to public health and safety resulting from actions of the City of Molalla or one of its employees; or
- The fact that a recipient of government services is subject to a felony or misdemeanor arrest warrant.

Further, in accordance with Oregon law, the City of Molalla will not prohibit an employee from discussing the activities of a public body or a person authorized to act on behalf of a public body with a member of the Legislative Assembly, legislative committee staff acting under the direction of a member of the Legislative Assembly, any member of the elected governing body of a political subdivision, or an elected auditor of a city, county or metropolitan service district.

#### Employee Reporting Options

In addition to the City of Molalla's Open Door Policy, employees who wish to report improper or unlawful conduct should first talk to his/her supervisor. If you are not comfortable speaking with your supervisor, or you are not satisfied with your supervisor's response, you are encouraged to speak with the Human Resource department. Supervisors and managers are required to inform the Human Resource department about reports of improper or unlawful conduct they receive from employees.

Reports of unlawful or improper conduct will be kept confidential to the extent allowed by law and consistent with the need to conduct an impartial and efficient investigation.

If the City of Molalla were to prohibit, discipline, or threaten to discipline an employee for engaging in an activity described above, the employee may file a complaint with the Oregon Bureau of Labor and Industries or bring a civil action in court to secure all remedies provided for under Oregon law.

#### Additional Protection for Reporting Employees

Oregon law provides that, in some circumstances, an employee who discloses a good faith and objectively reasonable belief of the City of Molalla's violation of law will have an "affirmative defense" to any civil or criminal charges related to the disclosure. For this defense to apply, the employee's disclosure must relate to the conduct of his/her coworker or supervisor acting within the course and scope of his/her employment. The disclosure must have been made to: (1) a state or federal regulatory agency; (2) a law enforcement agency; (3) a manager with the City of Molalla; or (4) an Oregon-licensed attorney who represents the employee making the report/disclosure. The defense also only applies in situations where the information disclosed was lawfully accessed by the reporting employee.

#### Policy Against Retaliation

The City of Molalla will not retaliate against employees who make reports or disclosures of information of the type described above when the employee reasonably believes he/she is disclosing information about conduct that is improper or unlawful, and who lawfully accessed information related to the violation (including information that is exempt from disclosure as provided in Oregon law or by City of Molalla policy).

In addition, the City of Molalla prohibits retaliation against an employee for participating in good faith in any investigation or proceeding resulting from a report made pursuant to this policy. Further, no City of Molalla employee will be adversely affected because he/she refused to carry out a directive that constitutes fraud or is a violation of local, Oregon, federal or other applicable laws and regulations. The City of Molalla may take disciplinary action (up to and including termination of employment) against an employee who has engaged in retaliatory conduct in violation of this policy.

This policy is not intended to protect an employee from the consequences of his/her own misconduct or inadequate performance simply by reporting the misconduct or inadequate performance. Furthermore, an employee is not entitled to protections under this policy if the City of Molalla determines that the report was known to be false, or information was disclosed with reckless disregard for its truth or falsity. If such a determination is made, an employee may be subject to discipline up to and including termination of employment.

## **II. Classification and Compensation**

### **A. Probationary Period of Employment**

All new employees, including current employees who are promoted or transferred within the City of Molalla, are hired into a probationary period of twelve consecutive full months during which the employee must work a minimum of two hundred days. In the event that the employee does not work two hundred days during the twelve-month period, the probationary period will be extended until the employee completes the two-hundred-day requirement. The probationary period is an extension of the employee selection process. During this period, you are in training and under observation and evaluated by your manager. Evaluation of your adjustment to work tasks, conduct and other work rules, attendance and job responsibilities will be considered during the probationary period. This period gives you an opportunity to demonstrate satisfactory performance for the position, and also provides an opportunity to determine if your knowledge, skills and abilities and the requirements of the position match. It is also an opportunity for you to decide if the City of Molalla meets your expectations of an employer.

At or before the end of the probationary period, a decision about your employment status will be made. The City of Molalla will decide whether to: (1) Extend your probationary period; (2) Move you to regular, full-time or regular, part-time status; or (3) Terminate your employment.

Employees are not guaranteed any length of employment upon hire or transfer/promotion; both you and City of Molalla may terminate the employment relationship during the probationary period for any lawful reason. Further, completion of the probationary period or continuation of employment after the probationary period does not entitle you to remain employed by City of Molalla for any definite period of time. Both you and City of Molalla are free to terminate the employment relationship, at any time, with or without notice and for any reason not prohibited by law.

### **B. Employee Classification**

City of Molalla classifies employees as follows:

1. Regular Full-time: An employee who has successfully passed the probationary period and is regularly scheduled to work 32 hours or more per week are eligible to participate in City of Molalla's benefit programs.
2. Permanent-Intermittent: An employee who is regularly scheduled to work at least 120 hours per month but less than 40 hours per week. Classification normally is eligible for benefits, though they may be on pro-rata basis.

3. Regular Part-time (Not Benefits Eligible): An employee who is hired to fill a part time position and normally works less than 120 hours per month. Such employees are paid only for the actual hours worked and are not eligible for benefits except those mandated by applicable law.
4. Temporary: An employee who is hired for a specified period to fill a budgeted or non-budgeted position not to exceed six months, but which will normally not exceed four months. If a temporary employee applies for and is hired to fill a budgeted permanent or permanent-intermittent position, his/her position is in the same class. However, benefits eligibility and accrual shall begin on the date of initial appointment into the permanent or permanent-intermittent position. This classification is not eligible for benefits except those mandated by applicable law.

Additionally, all employees are defined by federal and Oregon law as either "exempt" or "non-exempt," which determines whether the employee is eligible for overtime. Employees will be instructed as to whether they are exempt or non-exempt at the time of hire or when a promotion or demotion occurs. All employees, regardless of employment classification, are subject to all City of Molalla rules and procedures.

#### C. The Workweek

The City of Molalla has established regular working hours to promote a productive work environment that will serve our citizens. The general office hours are Monday through Friday, 8:00 a.m. to 5:00 p.m. All other schedules must be approved in writing by the City Manager and can be changed at any time.

The normal workday is eight (8) hours, and the normal work week is 40 hours. The workweek begins on Sunday and ends on Saturday. If you are a non-exempt employee, you should not begin work before your normal starting time nor continue to work beyond the normal quitting time without advance approval from your direct supervisor.

The direct supervisor scheduled specific work hours for individual full-time employees. Changes to work schedules may be made on an individual basis based on business necessity, at the discretion of the direct supervisor with written approval from the City Manager. Management reserves the right to modify schedules consistent with the needs of the City.

#### D. Meal Periods and Rest Breaks

Non-exempt employees are required to take a paid, not less than 10-minute rest break for every four-hour segment or major portion thereof in the work period. The rest break should be taken in the middle of each segment, whenever possible. Whenever a segment exceeds two hours, the employee must take a rest break for that segment.

Non-exempt employees are required to take at least a 30-minute unpaid meal period when the work period is six hours or greater. The law requires an uninterrupted period in which the employee is relieved of all duties. No meal period is required if the work period is less than six hours. If, because of the nature or circumstances of the work, an employee is required to remain on duty or to perform any tasks during the meal period, the employee must inform his/her supervisor before the end of the shift so that City of Molalla may pay the employee for that work.

Meal periods and rest breaks are mandatory and are not optional. An employee's meal period and rest break(s) may not be taken together as one break. Meal periods and rest breaks may not be "skipped" in order to start work late or leave early. An employee who fails to abide by this policy and applicable laws may be subjected to discipline, up to and including termination.

Sample rest and meal break schedules are listed below. Employees with questions about the rest or meal breaks available should contact the Human Resource department.

<b>Length of Work Period</b>	<b>Rest Breaks</b>	<b>Meal Periods</b>
2 hours or less	0	0
2 hrs & 1 min – 5 hrs & 59 min	1	0
6 hours	1	1
6 hrs & 1 min – 10 hrs	2	1
10 hrs & 1 min – 13 hr & 59 min	3	1

#### E. Rest Breaks for Expression of Breast Milk

The City of Molalla will provide reasonable rest periods to accommodate an employee who needs to express milk for her child eighteen (18) months of age or younger. If possible, the employee will take the rest periods to express milk at the same time as the rest breaks or meal periods that are otherwise provided to the employee. If not possible, or if the employee is exempt from overtime laws, the employee is entitled to take a reasonable period each time the employee has a need to express milk.

The City of Molalla will treat the rest breaks used by the employee for expressing milk as paid rest breaks up to the amount of time the City of Molalla is required to provide as paid rest breaks and/or meal periods under applicable personnel rules or collective bargaining agreements. Additional time needed beyond the paid rest breaks and/or meal periods may be taken as unpaid time.

If an employee takes unpaid rest breaks, the City of Molalla may, at the discretion of the employee's supervisor, allow the employee to work before or after her normal shift to make up the amount of time used during the unpaid rest periods. The City of Molalla will allow, but not require, an employee to substitute paid leave time for unpaid rest periods taken in accordance with this policy.

The City of Molalla will make a reasonable effort to provide the employee with a private location within close proximity to the employee's work area to express milk. For purposes of this policy, "close proximity" means within walking distance from the employee's work area that does not appreciably shorten the rest or meal period. A "private location" is a place, other than a public restroom or toilet stall, in close proximity to the employee's work area for the employee to express milk concealed from view and without intrusion by other employees or the public.

If a private location is not within close proximity to the employee's work area, the City of Molalla will identify a private location the employee can travel to. The travel time to and from the private location will not be counted as a part of the employee's break period.

## Notice

An employee who intends to express milk during work hours must give their supervisor or Human Resource department reasonable oral or written notice of her intention to do so in order to allow the City of Molalla time to make any preparations necessary for compliance with this rule.

## Storage

Employees are responsible for storing expressed milk. Employees may bring a cooler or other insulated food container to work for storing the expressed milk. If an office provides access to refrigeration for personal use, an employee who expresses milk during work hours may use the available refrigeration.

## F. Overtime

### Time-and-a-Half

City of Molalla pays one and one-half times a non-exempt employee's hourly rate for all hours actually worked over 40 in any workweek. See "Employee Classification," above.

### Limitation on Overtime Pay

Paid hours not actually worked (for example, sick, vacation, holidays, and family leave) will not be counted toward the 40 hours worked per workweek required to receive overtime pay.

### Supervisor Authorization

No overtime may be worked by non-exempt employees unless specifically authorized in writing by a supervisor or manager. Employees who work unauthorized overtime may be subject to discipline up to and including termination.

### Compensatory (Comp) Time

Overtime hours can be paid or, at the employee's option with City of Molalla approval, accumulated at time and one-half up to a maximum of 80 hours and taken as comp time off. Employees may choose whether to have the accrued comp time cashed out at the rate earned by the employee at the time the employee receives the payment. The payment will be made within a regular payroll. When an employee is separated from employment with City of Molalla, any remaining comp time will be paid to the employee.

## G. Timekeeping Requirements

All non-exempt employees must accurately record time worked on an online timesheet through Caselle Connect. Employees are required to record their own time *on a daily basis*. Filling out another employee's timecard, allowing another employee to fill out your timecard, or altering any timecard will be grounds for discipline up to and including termination. An employee who fails to record his/her time may be subjected to discipline as well.

Salaried exempt employees also may be required to record their time on a timesheet. These employees will be instructed separately on this process.

## H. Employee-Incurred Expenses and Reimbursements

The City of Molalla will pay actual and reasonable business-related expenses you incur in the performance of your job responsibilities if they are: (1) listed below or elsewhere in this handbook; and (2) pre-approved by your supervisor/manager before they are incurred. The City of Molalla will not pay for or reimburse the costs incurred by a spouse, registered same-sex domestic partner or travel companion who accompanies the employee on City of Molalla-approved travel. The paid and reimbursement amounts will be determined by IRS guidelines when applicable.

Employees must provide a completed and signed expense report and evidence of proof of purchase (receipts must be itemized) within one month of the expense being incurred or the employee risks forfeiting his/her payment or reimbursement.

Some examples of actual and reasonable business-related expenses that the City of Molalla will reimburse/pay for after verified and approved by supervisor are:

- *Professional conferences, seminars, training, and meetings as approved by your Department Director or City Manager, that will enhance the employee's performance and value to the City. City officials and employees should exercise good judgment, regard for economy and recognition of proper use of public monies when selecting training, meetings, courses, conferences, etc. in connection with City business.*  
*Also, this policy establishes guidelines regarding travel for the conduct of official City business and for the payment of, or reimbursement of, expenses incurred while performing such travel. All employees are expected to follow the guidelines outlined in this policy. Requests for training and travel shall be submitted in writing to Department Head or City Manager. Training and travel expenses must have a public purpose and serve the public interest. Persons traveling on City business are expected to be prudent and only incur costs they normally would incur if traveling on their own expense. The City will not pay travel costs for persons not employed by the City unless the person incurs the cost as a member of the City Council.*
- **Meals:** Reimbursed based on U.S. General Service Administration at [gsa.gov/travel/plan-book/per-diem-rates](http://gsa.gov/travel/plan-book/per-diem-rates). Search by State. Find Results/Meals. Max gratuity paid by the city is 20%.
- **Mileage and Parking:** Employees will be reimbursed for authorized use of their personal vehicles if a city vehicle is not available, at a rate established by the Internal Revenue Service. Reasonable parking costs are also reimbursed upon submission of receipts on an expense report. Any traffic citations or court-ordered fees relating to driving or parking offenses (including parking tickets) are the responsibility of the employee and will not be reimbursed by the City of Molalla.
- **Lodging:** The most economical lodging should be arranged at or near the meeting, conference, or training site when possible. Employees must exercise good judgment when selecting appropriate lodging for a meeting, training, or conference, and must consult with their supervisor before reserving and paying for



a hotel room that is not at the conference site and/or not the most economical choice in the area of a training or conference.

#### I. Payroll Policies

Paydays are twice a monthly on the 15<sup>th</sup> (for the 26<sup>th</sup> of prior month through the 10<sup>th</sup> of current month) and the last day of each month (11<sup>th</sup> through 25<sup>th</sup> of current month). If the payday falls on a weekend or holiday, paychecks will be distributed on the Friday prior to the established payday.

The City of Molalla does not provide advance payments of salary or loans from salary to be earned.

Net pay will be directly deposited into the employee's bank account, unless an employee requests otherwise. If an employee requests to pick up his/her paycheck from City of Molalla, only the employee named on the paycheck will be allowed to do so unless the employee provides written permission to City of Molalla for someone else to receive the check.

#### J. Statement Regarding Pay Practices

The City of Molalla makes all efforts to comply with applicable Oregon and federal wage and hour laws. In the event you believe that the City of Molalla has made any improper deductions, has failed to pay you for all hours worked or for overtime, has failed to pay you in accordance with the law, or has failed to properly calculate your wages in any way, you must immediately report the error to the Human Resource Department. City of Molalla will investigate all reports of improper pay practices and will reimburse employees for any improper deductions or omissions. No employee will suffer retaliation or discrimination for reporting an error or complaint regarding the City of Molalla's pay practices.

See also "Statement Regarding Pay Equity" policy, above.

#### K. Reporting Changes to an Employee's Personal Data

Because personnel records are used to administer pay and benefits, and other employment decisions, employees are responsible for keeping information current regarding changes in name, address, phone number, exemptions, dependents, beneficiary, etc. Keeping your personnel records current with regard to pay, deductions, benefits and other matters is important. If you have changes in any of the following items, please notify the Human Resource Department to ensure that the proper updates are completed as quickly as possible:

- Name
- Marital status/Domestic Partnership (for purposes of benefit eligibility determination only)
- Address or telephone number
- Dependents
- Person to be notified in case of emergency
- Tax withholding
- Job related physical or other limitations that impact employment
- Changes in status of driver's license or CDL if required to drive for the City of Molalla

- Changes in job related professional licenses; and
- Other information having a bearing on your employment

Employees may not intentionally withhold information from City of Molalla about the items listed above in order to continue to receive benefits or anything of value for themselves or anyone else. Upon request, City of Molalla may require employees to provide proof of marital status/domestic partnership status. All changes in personal information must be made in writing and signed/dated by the employee who the changes affect. Employees who violate this policy may be subject to discipline, up to and including termination.

#### L. Performance Reviews

All City of Molalla employees will receive periodic performance reviews. Performance reviews serve as one factor in decisions related to employment, such as training, merit pay increases, job assignments, employee development, promotions, retention and discipline/termination. Any employee who fails to satisfactorily perform the duties of his/her position is subject to disciplinary action (including termination).

City of Molalla's goal is to provide an employee with his/her first formal performance evaluation within six months after hire or promotion. After the initial evaluation, the City of Molalla will strive to provide a formal performance review on an annual basis.

Reviews will generally include the following:

- An evaluation of the employee's quality and quantity of work
- A review of exceptional employee accomplishments
- Establishment of goals for career development and job enrichment
- A review of areas needing improvement
- Setting of performance goals for the employee for the following year.

Employees who disagree with a performance evaluation may submit a written response with reasons for disagreement. The employee's response shall be filed with the employee's performance evaluation in the employee's personnel file. Such response must be filed not later than 30 days following the date the performance evaluation was received.

Supervisors and managers are encouraged to provide employees with informal evaluations of their employees' work on an as-needed basis.

### III. Time Off and Leaves of Absence

#### A. Attendance, Punctuality and Reporting Absences

Employees are expected to report to work as scheduled, on time and prepared to start work. Employees are also expected to remain at work their entire work schedule, except for unpaid break periods or when required to leave on authorized City of Molalla business, and perform the work assigned to or requested of them. Late arrivals, early departures, or other absences from scheduled hours are disruptive and must be avoided.

Unless specified otherwise in a policy below, employees who will be unexpectedly absent from work for any reason or who will not show up for work on time must inform their supervisor via phone call, email, or text based on each Supervisor's requirement no later than one hour before the start of the employee's shift/work day. Not reporting to work and not calling to report the absence is a no-call/no-show and is a serious matter. The first instance of a no call/no show will result in a final written warning. The second separate offense may result in termination of employment with no additional disciplinary steps. A no call/no show lasting three days may be considered job abandonment and may result in termination of employment.

**B. Vacation**

It is the policy of City of Molalla to provide each full-time employee with vacation time on a periodic basis. The amount of vacation to which an employee becomes entitled is determined by the employee's length of service as of his/her employment anniversary date. For regular, full-time employees, vacation accrues as follows:

<u>Years of Service</u>	<u>Accrual Rate</u>
After completion of 6 months will receive one time accrual of 48 hours	
Beginning of 7 <sup>th</sup> month-Completion of 5 <sup>th</sup> year	8 hours monthly
Beginning of 6 <sup>th</sup> year-Completion of 10 <sup>th</sup> year	10 hours monthly
Beginning of 11 <sup>th</sup> year-Completion of 15 <sup>th</sup> year	12 hours monthly
Beginning of 16 <sup>th</sup> year-Completion of 20 <sup>th</sup> year	14 hours monthly
Beginning of 21 <sup>st</sup> year and thereafter	16 hours monthly

Vacation Scheduling

Requests for vacation are to be made in writing and submitted to the department head/supervisor for approval as early as possible so that arrangements for work coverage can be made. Consideration will be given to each request, and requests will be granted whenever possible. In granting vacation leave, consideration will be given to both the employee's request and the operational needs of the department. In the event of competing requests for times submitted concurrently, approval will be given to the employee with the longest tenure.

Continuous Service

"Continuous Service" is defined as that service unbroken by separation from the City services other than by military, Peace Corps, vacation, sick leave, leave protected under applicable Oregon or federal law, other authorized paid leave, or an employee who voluntarily resigns and returns to employment with the City within thirty (30) days. Employees returning from unpaid leave or employees, who were laid off, shall be entitled to credit for service prior to the leave or layoff.

Vacation Maximum Accumulation

Vacation accruals cannot exceed 360 hours at the beginning of any calendar year for full-time regular employees. Any vacation hours exceeding 360 hours will be transferred to a non-cashable sick leave bank, not to exceed 1,056 hours.

### Treatment of Vacation Pay upon Termination or Death

Upon separation of employment, employees who have completed six consecutive months of employment will be paid for unused vacation time that has been earned through the last day of work at the employee's wage rate at the time of separation. In the case of an employee death, the City will pay any unearned wages (including accrued vacation) in accordance with ORS 652.190.

### Cash in Lieu of Vacation

Employees are encouraged to take vacations at least annually. Vacation is intended for rest and recreation away from work. The City of Molalla discourages "cashing in" vacation time but will consider such requests on a case-by case basis to accommodate unanticipated extenuating needs or circumstances such as personal emergency only. The City Manager may authorize cashing out accrued Discretionary Paid Leave under the following conditions:

1. Employees are eligible after five years of employment.
2. Employees shall have taken a minimum of two weeks of vacation during the year preceding the request.
3. The employee maintains at least 80 hours of Discretionary Paid Leave after the cash-in.
4. All requests will be considered and approved or denied by the City Manager once per year per employee based on this administrative criteria and availability of funds.

### C. Sick Leave

City of Molalla provides eligible employees with paid sick leave in accordance with Oregon's Paid Sick Leave Law. This policy will be updated as necessary to reflect changes in and to ensure compliance with Oregon law.

Employees with questions about this policy may contact the Human Resource department. Please also refer to the Oregon Sick Leave Law poster that is posted on bulletin boards in all city buildings and is incorporated here for reference. <https://www.oregon.gov/boli/workers/Documents/sick-time-protected-by-law.pdf>

### **Eligibility and Accrual of Paid Sick Leave**

Sick leave is accumulated at a rate of 8 hours per month for regular full-time employment. Employee is not eligible to use sick leave until after 6 months of continuous employment. After 6 months of service you will receive 48 hours of sick accrual in your leave bank and 8 hours per month after that.

It is in your best interest not to be at work when you are ill or injured. It is your supervisor's or manager's responsibility to send you home if you are ill or injured, and you are expected to cooperate with the decision.

Routine doctor or dentist appointments must be charged to sick time.

Sick time accumulated for full time employees will not exceed 1056 hours.

You are expected to notify your supervisor/manager at the beginning of each workday during illness or injury. Exceptions to this include a serious accidental injury, hospitalization, or when you know in advance that you will be absent for a certain period and have informed management ahead of time.

A medical release statement may be requested for review before you return to work in certain situations.

Sick leave is not accumulated while an employee is on a leave of absence.

Sick time accrued is applied towards PERS calculation upon termination for eligible employees.

Accumulated sick leave time is not paid out if you leave employment of the City of Molalla.

### Part Time Sick Accrual

Under Oregon's Paid Sick Leave Law and this policy, "employee" includes part-time employees. Sick leave runs concurrently with Oregon Family Medical Leave, federal Family and Medical Leave and other leave were allowed by law.

Employees begin to accrue paid sick leave on the first day of employment but may not use paid sick leave until the 180th day of employment. After the 180th day of employment, paid sick leave may be used as it is accrued.

Part time employees shall accrue at the rate of one hour for every 30 hours worked until the 40-hour yearly accrual cap is reached. Paid sick leave shall be taken in hourly increments except when approved by their supervisor.

### Part Time Pay Rate and Carryover

Paid sick leave will be paid at the employee's regular rate of pay. Generally, sick leave pay will be included in the paycheck provided the employee submits adequate documentation verifying that the absence was for a qualifying reason as defined in the "Use of Sick Leave" section below.

Sick leave is meant to be used or carried over; any unused sick leave will not be cashed out upon separation from employment.

Part Time Employees may carry over up to a maximum of 40 hours of accrued and unused sick leave for use in a subsequent calendar year but may use only 40 hours of sick leave each calendar year. Sick leave accrual is capped at 80 hours.

### **Use of Sick Leave**

Sick leave may be used each calendar year for any of the following reasons:

1. For the diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventive medical care. This is available for the employee or his/her covered family member.
  - "Family member" means the eligible employee's spouse, same-gender domestic partner (as described in ORS 106.300 to 106.340),

biological child, adopted child, stepchild, foster child; same-gender domestic partner's child, parent, adoptive parent, stepparent, foster parent, parent-in-law; same-gender domestic partner's parent, grandparent, grandchild; and any individual with whom the employee has or had an *in loco parentis* relationship.

2. For any purpose allowed under the Oregon Family Leave Act, including bereavement leave.
3. If the employee, or the employee's minor child or dependent, is a victim of domestic violence, harassment, sexual assault or stalking as defined by Oregon law and requires leave for any of the purposes under Oregon's domestic violence leave law (ORS 659A.272).
4. In the event of certain public health emergencies or other reasons specified under Oregon's sick leave law.

Employees absent from work for a qualifying reason must use accrued sick time hours for that reason and on each subsequent day of absence.

### **Employee Notice of Need for Sick Leave**

*Foreseeable Sick Leave.* If the need for sick leave is foreseeable, an employee must notify the Human Resource department as soon as practicable before the leave is to begin. Generally, an employee must provide at least 10 days' notice for foreseeable sick leave. The request shall include the anticipated duration of the sick leave, if possible. Employees must make a reasonable effort to schedule foreseeable sick time in a manner that minimally disrupts the operations of City of Molalla. Employees must notify the Human Resource department of any change in the expected duration of sick leave as soon as is practicable.

*Unforeseeable Sick Leave:* If the need for sick leave is unforeseeable, the employee must notify their department head/supervisor as soon as practicable and comply generally with City of Molalla's call-in procedures.

An employee must contact his/her supervisor daily while on sick leave, unless an extended period of sick leave has been prearranged with the supervisor or when off work on protected leave. The employee shall inform his/her supervisor of any change in the duration of sick leave as soon as practicable.

If an employee fails to provide proper notice or make a reasonable effort to schedule leave in a manner that is only minimally disruptive to the City of Molalla and operations, City of Molalla may deny the use and legal protections of sick leave.

### **Sick Leave Documentation**

If an employee takes more than three consecutive scheduled workdays as sick leave, City of Molalla may require reasonable documentation showing that the employee was absent for an approved reason. Reasonable documentation includes documentation signed by a healthcare provider, or documentation for victims of domestic violence, harassment, sexual assault or stalking.

### **Sick Leave Abuse**

If City of Molalla suspects sick leave abuse, including but not limited to repeated use of unscheduled sick leave or repeated use of sick leave adjacent to weekends, holidays, vacations and paydays, City of Molalla may require documentation from a healthcare provider. Employees found to have abused sick leave as described here may also be subject to discipline, up to and including termination.

## D. Holidays and Floating Holidays

City of Molalla recognizes ten holidays each year. All full-time employees will receive their regular straight-time compensation for each holiday.

The holidays celebrated are:

- |     |                         |  |
|-----|-------------------------|--|
| 1.  | New Year's Day          | January 1st  |
| 2.  | Martin Luther King Day  | 3rd Monday in January  |
| 3.  | Presidents' Day         | 3rd Monday in February   |
| 4.  | Memorial Day            | Last Monday in May   |
| 5.  | Independence Day        | July 4th   |
| 6.  | Labor Day               | First Monday in September  |
| 7.  | Veteran's Day           | November 11th  |
| 8.  | Thanksgiving Day        | Fourth Thursday in November  |
| 9.  | Day after Thanksgiving  | Friday after Thanksgiving  |
| 10. | Christmas Day           | December 25 <sup>th</sup>  |
| 11. | <b>Floating Holiday</b> | (to be used any time during the calendar year with approval by the City) |

If any of such holidays fall on Saturday, the preceding Friday shall be observed. A holiday falling on a Sunday shall be observed on the following Monday.

If a full time employee is on vacation when a holiday is observed, the employee will be paid for the holiday and will be granted an alternate day of vacation at a later date.

### Floating Holiday

Employees may select one additional day off with pay (known as a "floating holiday") during a calendar year and employees must coordinate requests with their supervisor.

Employees who begin employment after January 1 receive a pro-rated number of hours of a floating holiday of 2 hours per quarter. The floating holiday does not carry over. See the Human Resource department for more information.

## E. Family Medical Leave

### **FMLA/OFLA Policy**

The following is a summary of Family and Medical Leave policy and procedures under the federal Family Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA). Generally, and as will be discussed, eligible employees are entitled to 12 weeks of unpaid leave for the reasons identified below. Federal and state law prohibit retaliation against an employee with respect to hiring or any other term or condition of employment because the employee asked about, requested or used Family and Medical Leave. In all cases, applicable Oregon and federal laws, rules, policies and collective bargaining agreements govern the employee's and the City of Molalla's rights and obligations, not this policy.

Employees seeking further information should contact the Human Resource department. Please also refer to the "Employee Rights and Responsibilities Under the Family Medical



Leave Act” and “Oregon Family Leave Act” notices posted in the various City buildings, which are incorporated here by reference.

- Definitions

*Child/Son or Daughter*

For purposes of OFLA, “child” includes a biological, adopted, foster or stepchild, the child of a registered same-sex domestic partner or a child with whom the employee is in a relationship of *in loco parentis*. For purposes of OFLA Serious Health Condition Leave, the “child” can be any age; for all other types of leave under OFLA, the “child” must be under the age of 18 or over 18 if incapable of self-care.

A “son or daughter” is defined by FMLA as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is either under 18 years of age or is 18 years of age or older and “incapable of self-care because of a mental or physical disability” at the time FMLA leave is to commence. FMLA also provides separate definitions of “son or daughter” for FMLA military family leave that are not restricted by age — see below.

*Eligible Employee*

OFLA - To qualify for OFLA leave for a Serious Health Condition or Sick Child Leave, an employee must have been employed for at least 180 days and worked an average of at least 25 hours per week.

Parental Leave - To qualify for Parental Leave under OFLA, an employee must have been employed for at least 180 days (no per-week hourly minimum is required).

OMFLA - For purposes of Oregon Military Family Leave Act leave, the employee need have only worked 20 hours per week (no minimum length of employment required). A different calculation method applies for reemployed service members under USERRA who seek OMFLA leave; see [Contact] for more information.

FMLA - Employees are eligible for FMLA leave if they have worked for a covered employer for at least one year (which may be based on separate stints of employment) and for 1,250 hours during the 12 months preceding the date leave is to begin. They must also be employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite.

Public Health Emergency Leave - Employees are eligible to take any OFLA leave during a Public Health Emergency if they have worked: (a) more than 30 days immediately before the date on which the leave would begin; or (b) an average of 25 hours per week in the 30 days immediately before the date on which the leave would begin. This is available to employees who are eligible for OFLA only. See the definition of “public health emergency” below.

Leave under Oregon and federal law will run concurrently when permitted.

*Family Medical Leave*

This includes all of the types of leave identified in the section below, entitled “Reasons for Taking Leave,” unless otherwise specified.

*Family Member*

- For purposes of FMLA, “family member” is defined as a spouse, parent or a “son” or “daughter” (defined above).
- For purposes of OFLA, “family member” includes the definitions found under FMLA and also includes adult children (for “serious health condition” leave only), a parent-in-law, grandparent, grandchild, registered same-sex domestic partner, and parent or child of a registered same-sex domestic partner.

### *Serious Health Condition*

“Serious health condition” is defined under FMLA and OFLA as an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee’s job, or prevents the qualified family member from participating in school or other daily activities. Under OFLA only, “serious health condition” includes any period of absence for the donation of a body part, organ or tissue, including preoperative or diagnostic services, surgery, post-operative treatment and recovery.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition.

Other conditions may meet the definition of a “serious health condition;” see Human Resources for more information. The common cold, flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, and cosmetic treatments (without complications), are examples of conditions that are not generally defined as serious health conditions.

### *Public Health Emergency*

For purposes of OFLA only, a “public health emergency” is a public health emergency declared under ORS 433.441 or an emergency declaration declared under ORS 401.165. Examples of this include when the State of Oregon declared a COVID-19 state of emergency in March 2020 and the wildfire state of emergency in June 2021.

- Reasons for Taking Leave

Family Medical Leave may be taken under any of the following circumstances:

1. Call to Active-Duty Leave: Eligible employees with a spouse, son, daughter or parent on active duty or call to active duty status in the regular Armed Forces, National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain “qualifying exigencies.” “Qualifying exigencies” may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings. This type of leave is available under FMLA only; however, under OFLA, specifically under the Oregon Military Family Leave Act, during a period of military conflict, as defined by the statute, eligible employees with a spouse or registered same-sex domestic partner who is a member of the Armed

Forces, National Guard, or military reserve forces of the U.S. and who has been notified of an impending call or order to active duty, or who has been deployed, is entitled to a total of 14 days of unpaid leave per deployment after the military spouse or registered same-sex domestic partner has been notified of an impending call or order to active duty and before deployment and when the military person is on leave from deployment.

2. Employee's Serious Health Condition Leave: To recover from or seek treatment for an employee's serious health condition, including pregnancy-related conditions and prenatal care.
3. Family Member's Serious Health Condition Leave: To care for a family member with a serious health condition.
4. Parental Leave: For the birth of a child or for the placement of a child under 18 years of age for adoption or foster care. Parental leave must be completed within 12 months of the birth of a newborn or placement of an adopted or foster child.
5. Pregnancy Disability Leave: For incapacity due to pregnancy, prenatal medical care or birth.
6. Servicemember Family Leave: Eligible employees may take up to 26 weeks of leave to care for a "covered servicemember" during a single 12-month period. A "covered servicemember" is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his/her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list. Under some circumstances, a veteran will be considered a "covered servicemember." This type of leave is available under FMLA only.
7. Sick Child Leave: To care for a child who suffers from an illness or injury that does not qualify as a serious health condition but that requires home care. This type of leave does not provide for routine medical and dental appointments or issues surrounding the availability of childcare when the child is not ill or injured. Sick child leave is not available if another family member is able and willing to care for the child. This type of leave is available only to employees who are eligible under OFLA.
8. Bereavement Leave. This type of leave is addressed under OFLA; see the Bereavement Leave Policy on page 29 for more information.

- Length of Leave

In any One-Year Calculation Period, eligible employees may take:

- Up to 12 weeks of Parental Leave, Serious Health Condition Leave (employee's own or family member), Sick Child Leave, or Call to Active Duty Leave;
- An additional 12) weeks of leave may be available to an eligible employee for an illness, injury or condition related to pregnancy or childbirth that disables the employee; and
- Employees who take the entire 12 weeks of OFLA Parental Leave may be entitled to an additional 12 weeks of Sick Child Leave.

When leave is taken for Service member Family Leave, an eligible employee may take up to 26 weeks of leave during the One-Year Calculation Period to care for the

servicemember. During the One-Year Calculation Period in which Servicemember Family Leave is taken, an eligible employee is entitled to a combined total of 26 weeks of FMLA Leave (some of which may include other types of FMLA-specific leaves of absence).

- One-Year Calculation Period

The “12-month period” during which leave is available (also referred to as the “One-Year Calculation Period”) will be determined by a rolling 12-month period measured backward from the date an employee uses any Family Medical Leave. Each time an employee takes Family Medical Leave, the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months.

- Intermittent Leave

Intermittent or reduced schedule leave may be taken during a period of Family Member or Employee Serious Health Condition Leave or Servicemember Family Leave. Additionally, Call to Active Duty Leave may be taken on an intermittent or reduced leave schedule basis. An employee may be temporarily reassigned to a position that better accommodates an intermittent or reduced schedule; employees covered by OFLA will not be reassigned without his/her expressed consent and agreement. Employees must make reasonable efforts to schedule planned medical treatments to minimize disruption of City of Molalla operations, including consulting management prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both City of Molalla and the employee. Intermittent leave for Parental Leave is not available.

- Employee Responsibilities — Notice

Employees must provide at least 30 days' notice before Family Medical Leave is to begin if the reason for leave is foreseeable based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member, or the planned treatment for a serious injury or illness of a covered servicemember (Servicemember Family Leave). If 30 days' notice is not practicable, because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. If the situation giving rise to a Sick Child Leave is unforeseeable, an employee must give verbal or written notice to City of Molalla within 24 hours of commencement of the leave.

For Call to Active-Duty Leave, notice must be provided as soon as practicable, regardless of how far in advance such leave is foreseeable.

Whether leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the employee must let [Contact] know as soon as practicable if dates of scheduled leave change or are extended or were initially unknown.

If circumstances change during the leave and the leave period differs from the original request, the employee must notify Human Resources within three business days, or as soon as possible. Further, employees must provide written notice within three days of returning to work.

Regardless of the reason for leave, or whether the need for leave is foreseeable, employees will be expected to comply with City of Molalla's normal call-in procedures. Employees who fail to comply with City of Molalla's leave procedures may be denied leave, subject to discipline, or the start date of the employee's Family Medical Leave may be delayed.

- Certification

Generally speaking, employees must provide sufficient information for City of Molalla to determine if the leave may qualify for FMLA or OFLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for either Call to Active Duty or Servicemember Family Leave.

Employees also must inform the City of Molalla if the requested leave is for a reason for which FMLA leave was previously taken or certified. Additionally:

1. Employees requesting serious health condition leave for themselves or to care for a covered family member will be required to provide certification from the health care provider of the employee or the covered family member to support the request.
2. Employees requesting sick child leave under OFLA may be required to submit, at a minimum, a note from a doctor if the employee has requested to use more than three days (i.e., one three-day occurrence or three separate instances) of sick child leave within a one-year period.

Employees must furnish City of Molalla's requested medical certification information within 15 calendar days after such information is requested by City of Molalla. In some cases (except for leave to care for a sick child), City of Molalla may require a second or third opinion, at City of Molalla's expense. Employees also may be required to submit subsequent medical verification.

Employees will not be asked for, and they should not provide, any genetic information about themselves or a family member in connection with a FMLA/OFLA medical certification.

- Medical Certification Prior to Returning to Work

If Family Medical Leave is for the employee's own serious health condition, the employee must furnish, prior to returning to work, medical certification from his/her health care provider stating that the employee is able to resume work.

- Substitution of Paid Leave for Unpaid Leave

Employees are required to use accrued paid leave, including floating holidays, vacation, compensatory time, and sick leave prior to a period of unpaid leave of absence on Family Medical Leave. Use of accrued paid leaves will run concurrently with Family Medical Leave. Represented employees may reserve accrued leave and compensatory time if provided by their collective bargaining agreement. If the employee has no accrued paid leave, floating holidays, vacation, compensatory time or sick leave available to use during a Family Medical Leave, the leave will be unpaid.

- Holiday Pay While on Leave

Employees receiving short or long-term disability will not qualify for holiday pay. Employees using vacation pay or sick pay during a portion of approved Family Medical Leave in which a holiday occurs will qualify to receive holiday pay. Employees who are on unpaid leave during a holiday will not qualify to receive holiday pay.

- On-the-Job Injury or Illness

Periods of employee disability resulting from a compensable on-the-job injury or illness will qualify for FMLA Leave if the injury or illness is a "serious health condition" as defined by applicable law.

OFLA leave will not be reduced by and will not run concurrently with any period the employee is unable to work because of a disabling compensable on-the-job injury; however, if the injury or illness is a "serious health condition" as defined by Oregon law and the employee has refused a bona fide offer of light-duty or modified employment, OFLA leave will commence.

If the employee's serious health condition is the result of an on-the-job injury or illness, the employee may qualify for workers' compensation time-loss benefits.

- Benefits While on Leave

If an employee is on approved FMLA or OFLA Leave, City of Molalla will continue the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. An employee wishing to maintain health insurance during a period of approved FMLA or OFLA leave will be responsible for bearing the cost of his/her share of group health plan premiums which had been paid by the employee prior to the OFLA/FMLA leave. Employees will not accrue vacation, sick leave or other benefits (other than health insurance) while the employee is on a FMLA or OFLA leave. The leave period, however, will be treated as continuous service (i.e., no break in service) for purposes of vesting and eligibility to participate in City of Molalla benefit plans.

- Job Protection

Employees returning to work from Family Medical Leave will be reinstated to their former position. If the position has been eliminated, the employee may be reassigned to an available equivalent position. Reinstatement is not guaranteed if the position has been eliminated under circumstances where the law does not require reinstatement.

Employees are expected to promptly return to work when the circumstances requiring Family Medical Leave have been resolved, even if leave was originally approved for a longer period. If an employee does not return to work at the end of a designated Family Medical Leave period, reinstatement may not be available unless the law requires otherwise.

The use of Family Medical Leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Employees who work for other employers during a "serious health condition" leave may be subject to discipline up to and including termination. Additionally, all employees who use Family Medical Leave for reasons other than the reason for which leave had been granted may be subject to discipline up to and including termination.

- Restoration of Leave Bank at Time of Re-Employment

An employee who leaves employment with City of Molalla for any reason may be eligible for OFLA leave if they are re-employed by City of Molalla within 180 days of the separation and if the employee was eligible for OFLA leave at the time of the separation. Special rules apply to employees who temporarily stop working for City of Molalla for 180 days or less; please speak with Human Resources for more information.

## F. Leave Donation

The City of Molalla has implemented a leave donation program to allow employees to voluntarily donate sick, vacation, or compensatory time off to another employee who has less than 40 hours and is likely to exhaust, accumulated paid leave due to an employee's family medical emergency that would otherwise likely cause the employee to take unpaid leave or terminate employment. A "family medical emergency" is defined as a medical condition of the employee or an immediate family member that will require prolonged/extended absence of the employee from duty and will result in a substantial loss of income to the employee due to the exhaustion of all paid leave available. An immediate family member is defined as a spouse, child, or parent.

Any City of Molalla employee who has worked at least twelve months in a benefits-eligible position is eligible to participate in the program as a recipient.

Any employee who has sick, vacation, or compensatory time available may participate in the program as a donor. The donating employee is required to keep a minimum of 80 hours in their own combined leave banks. Donations may be made between any employees. City of Molalla will keep donations confidential, and donors will remain anonymous.

Employees seeking donated leave must provide the City of Molalla with medical verification of the need for the time off, which includes a certification of the employee's or family member's medical emergency and need for time off, and an estimated return-to-work date (if available).

An employee who is receiving, or is eligible to receive, any type of retirement disability, short-term or long-term disability, or other supplemental income is not eligible to receive donated leave. An eligible employee must apply for the short-term disability, if available, and long-term disability benefits.

Any paid sick leave not used by the recipient for the specified incident will be returned to the donor employee.

Donated leave may not be used to extend employment beyond the point that it would otherwise end by operation of law, rule, policy, or regulation. For example, if an employee would have otherwise been terminated due to layoff or other reasons, donated leave may not be used to extend employment.

Employees who would like to request donated leave are required to submit a request form to Human Resources. In this request must state the reason for the request, and to

validate that they are qualified based on this policy. Once Human Resource verifies the information it will be forwarded to the City Manager for approval. Once approved Human Resources will send an email along with the Announcement & Donation Form to all employees.

## G. Bereavement Leave

Employees who have worked for City of Molalla for 180 calendar days, and averaged at least 25 hours per week, may take up to three (3) days of paid bereavement and up to an additional seven (7) days of unpaid bereavement leave per death of a Family Member (defined below). Employees who have worked for City of Molalla for 90-180 days may use up to 40 hours of accrued sick leave for bereavement purposes, and who have experienced the death of a Family Member (refer to OFLA definition). Employees who have worked for City of Molalla for fewer than 90 days may not be eligible for leave.

## H. Jury and Witness Duty

### Jury Duty

City of Molalla will grant employees time off for mandatory jury duty and/or jury duty orientation. A copy of the court notice must be submitted to the employee's manager to verify the need for such leave. Although jury duty leave is paid, the employee must turn in the jury duty pay he/she receive, or the employee may use any accrued vacation or comp leave during the stint of jury service.

The employee is expected to report for work when doing so does not conflict with court obligations. It is the employee's responsibility to keep his/her supervisor or manager informed about the amount of time required for jury duty.

### Witness Duty

Time spent serving as a witness in a work-related, legal proceeding will be treated as time worked for pay purposes, provided the time served occurs during regularly scheduled hours, the employee is subpoenaed to testify, and the employee submits witness fees to their supervisor upon receipt.

Except for employee absences covered under City of Molalla's "Crime Victim Leave Policy" or "Domestic Violence Leave and Accommodation Policy," employees who are subpoenaed to testify in non-work-related legal proceedings must use any available vacation time to cover their absence from work. If the employee does not have any available vacation time, the employee's absences may be unexcused and may subject the employee to discipline, up to and including termination. Employees must present a copy of the subpoena served on them to their supervisor for scheduling and verification purposes no later than 24 hours after being served.

## I. Religious Observances Leave and Accommodation Policy

The City of Molalla respects the sincerely held religious beliefs and observances of all employees. The City of Molalla will make, upon request, an accommodation for such beliefs and observances when a reasonable accommodation is available that does not create an undue hardship on City of Molalla's business. Employees may use vacation or



unpaid time for religious holy days or to participate in a religious observance or practice; if accrued leave is not available, then an employee may request to take unpaid leave. Requests for religious leave or accommodation should be made with Human Resources and may require the requesting employee to provide proof of the "sincerely held" religious belief

#### J. Crime Victim Leave Policy

Any employee who has worked an average of at least 25 hours per week for 180 days is eligible for reasonable, unpaid leave to attend criminal proceedings if the employee or his/her immediate family member (defined below) has suffered financial, social, psychological or physical harm as a result of being a victim of certain felonies, such as kidnapping, rape, arson, and assault.

"Immediate family member" includes a spouse, registered same-sex domestic partner, father, mother, sibling, child, stepchild or grandparent.

Employees who are eligible for crime victim leave must:

- Use any accrued, but unused vacation/sick leave during the leave period.
- Provide as much advance notice as is practicable of his/her intention to take leave (unless giving advance notice is not feasible); and
- Submit a request for the leave in writing to [Contact] as far in advance as possible, indicating the amount of time needed, when the time will be needed, and the reason for the leave.

In all circumstances, City of Molalla may require certification of the need for leave, such as copies of any notices of scheduled criminal proceedings that the employee receives from a law enforcement agency or district attorney's office, police report, a protective order issued by a court, or similarly reliable sources.

#### K. Domestic Violence Leave and Accommodation Policy

All employees are eligible for reasonable unpaid leave to address domestic violence, harassment, sexual assault, or stalking of the employee or his/her minor dependents.

Reasons for taking leave include the employee's (or the employee's dependent's) need to: seek legal or law enforcement assistance or remedies; secure medical treatment for or time off to recover from injuries; seek counseling from a licensed mental health professional; obtain services from a victim services provider; or relocate or secure an existing home.

Leave is generally unpaid, but the employee may use any accrued vacation or sick leave while on this type of leave.

When seeking this type of leave, the employee should provide as much advance notice as is practicable of his/her intention to take leave, unless giving advance notice is not feasible.

Notice of need to take leave should be provided by submitting a request for leave in writing to [Contact] as far in advance as possible, indicating the time needed, when the time will be needed, and the reason for the leave. City of Molalla will then generally require certification of the need for the leave, such as a police report, protective order or other evidence of a court proceeding, or documentation from a law enforcement

officer, attorney, healthcare professional, member of the clergy, or victim services provider.

If more leave than originally authorized needs to be taken, the employee should give City of Molalla notice as soon as is practicable prior to the end of the authorized leave. When taking leave in an unanticipated or emergency situation, the employee must give verbal or written notice as soon as is practicable. When leave is unanticipated, this notice may be given by any person on the employee's behalf.

Finally, employees who are victims of domestic violence, harassment, sexual assault or stalking may be entitled to a "reasonable safety accommodation" that will allow the employee to more safely continue to work, unless such an accommodation would impose an "undue hardship" on City of Molalla. Please contact Human Resources immediately with requests for reasonable safety accommodations.

#### L. Military Leave

Employees who wish to serve in the military and take military leave should contact Human Resources for information about their rights before and after such leave. You are entitled to reinstatement upon completion of military service, provided you return or apply for reinstatement within the time allowed by law.

Further, eligible employees called for initial active duty for training and for all periods of annual active duty for training as a member of the National Guard, National Guard Reserve or of any reserve component of the Armed Forces of the United States or of the United States Public Health Service, may be entitled to leave with pay for all regular workdays that fall within a period not to exceed 15 calendar days in any federal training year. Weekend drill obligations are not considered "federal active duty" for training under this policy; other requirements apply. Please contact Human Resources for more information and to make arrangements for this paid leave.

### IV. Employee Benefits

#### A. Healthcare Benefits

Employees who meet the definition of "benefit eligible" under both City of Molalla policy and that of its health insurance provider are entitled to the benefit options offered by City of Molalla. That means City of Molalla offers Medical, Dental, and Vision Insurance, Life Insurance, and Employee paid HRA Veba for all of its regular, full-time employees unless otherwise established by law. City of Molalla pays 95% of the cost of health, dental, and vision premiums for its regular, full-time employees. Part-time employees are not eligible for health-insurance coverage. Employee is required to pay 5% of the monthly premium for that coverage on a semi-monthly basis payroll deduction.

The group insurance policy and the summary plan description issued to employees set out the terms and conditions of the health insurance plan offered by City of Molalla. These documents govern all issues relating to employee health insurance. As other employee benefits are offered by City of Molalla, employees will be advised and provided with copies of relevant plan documents. Copies are available from Human Resources.

## B. Employee Assistance Program (EAP)

This confidential service is provided by Canopy and is available to all FT and PT employees and anyone that is currently living in the household. The EAP can be used to assist employees and eligible household members with any personal problems, large or small. Each covered employee and eligible household members can receive up to five (5) personal counseling sessions per situation per year. Sessions can be face to face, over the phone, or online for concerns such as marital conflict, conflict at work, depressions, stress management, family relationships, anxiety, alcohol, or drug abuse, grieving a loss, and career development services.

Canopy also provides educational tools as resources relating to eldercare, childcare, legal consultation, financial coaching, identity theft, home ownership, and gym membership discounts.

More information regarding this service can be obtained by contacting Human Resources, or you can contact Canopy directly at 1-800-433-2320, text 503-851-7721, or email [info@canopywell.com](mailto:info@canopywell.com).

## C. Workers' Compensation and Safety on the Job

You are protected by workers' compensation insurance under Oregon law. This insurance covers you in case of occupational injury or illness by providing, among other things, medical care and compensation and temporary or other disability benefits. Employees are expected to work safely and in a safe environment.

### Steps to Take if You are Injured on the Job

If you are injured on the job, City of Molalla wants to know about it and expects to learn about it no later than 24 hours after your injury (report all work-related injuries to your supervisor).

If you seek treatment for your work-related injury and want to apply for workers' compensation benefits, you must do all the following:

1. Report any work-related injury to your supervisor. You must report the injury no later than 24 hours after injury.
2. Seek medical treatment and follow-up care if required.
3. Promptly complete a written Employee's Claim Form (Form 801) and return it to Human Resources.

*Failure to timely follow these steps may negatively affect your ability to receive benefits.*

### Return to Work

If you require workers' compensation leave, you will — under most circumstances — be reinstated to the same position that you held at the time your leave began, or to an equivalent position, if available. However, you must first submit documentation from a health care provider who is familiar with your condition certifying your ability to return to work and perform the essential functions of your position.

When returning from a workers' compensation leave you have no greater right to reinstatement than if you had been continuously employed rather than on leave. For example, if you would have been laid off had you not been on leave, or if your position is eliminated, and no equivalent or comparable positions are available, then you may

not be entitled to reinstatement. These are only examples and all reinstatement/reemployment decisions are subject to the terms of any applicable collective bargaining agreement. City of Molalla does not discriminate against employees who suffer a workplace injury or illness.

### Early Return-to-Work Program

Our Return-to-Work program provides guidelines for returning you to work at the earliest possible time after you have suffered an on-the-job injury or illness that results in time loss. This program is not intended as a substitute for reasonable accommodation when an injured employee also qualifies as an individual with a disability. The Return-to-Work Program is intended to be transitional work, to enable you to return to your regular job in a reasonable period of time.

The Return-to-Work program for job-related injuries consists of a team effort by City of Molalla, injured employees and their treating physicians, and our workers' compensation insurance carrier claims staff. The goal is to return our employees to full employment at the earliest possible date that is consistent with their medical condition and the advice of the treating physician.

If your doctor determines that you are able to perform modified work, City of Molalla will attempt to provide you with a temporary job assignment for a reasonable period of time until you can resume your regular duties (except where provided as an accommodation for a disability). If, due to a work-related injury, you are offered a modified position that has been medically approved, failure to phone in or report at the designated time and place may affect your compensation and employment with City of Molalla. While you are on modified or transitional work, you are still subject to all other City of Molalla rules and procedures.

### Overlap with Other Laws

City of Molalla will account for other leave and disability laws that might also apply to your situation, such as the Americans with Disabilities Act (ADA) and FMLA or OFLA. If, after returning from a workers' compensation leave, it is determined that you are unable to perform the essential functions of your position because of a qualifying disability, you may be entitled to a reasonable accommodation, as governed by the ADA and/or applicable Oregon laws covering disabilities in the workplace.

#### I. PERS (Public Employees' Retirement System) Benefits

City of Molalla participates in the Public Employees Retirement System (PERS); therefore, your designation as a Tier I, Tier II, or Oregon Public Service Retirement Plan (OPSRP) member will depend on your prior PERS service and PERS rules. An employee's designation and eligibility for participation in PERS or the OPSRP are determined by law. For more information about these plans, please contact PERS at 1-888-320-7377 or visit their website at [www.oregon.gov/PERS](http://www.oregon.gov/PERS). The City of Molalla pays the contributions for the City as well as the employees portion to employee PERS or OPSRP plans

City of Molalla may consider allowing PERS-eligible employees to retire from his/her employment with the City of Molalla and then rehiring them, as permitted under Oregon law. The City of Molalla will consider, among other factors, the uniqueness of the employee's skills or experience, the needs of the City of Molalla, and the ability of existing

employees to perform the work of the retiring employee. Please see Human Resources for more information.

## V. Miscellaneous Policies

### A. Alcohol/Drug Use, Abuse and Testing

City of Molalla works to maintain a safe and efficient work environment. Employees who misuse controlled substances, prescription or illegal drugs, or alcoholic beverages pose a risk both to themselves and to everyone who comes into contact with or depends upon them and risks damage to City of Molalla's reputation.

City of Molalla expects employees to report to work in a condition that is conducive to performing their duties in a safe, effective and efficient manner. An employee's off-the-job as well as on-the-job involvement with drugs and alcohol can have a significant impact on the workplace and can present a substantial risk to the employee who is using alcohol and drugs, to coworkers and others.

This policy applies to all employees (except where noted in this policy or where it is inconsistent with applicable law and/or collective bargaining agreement provisions.) This policy revises and supersedes all previous drug and alcohol testing policies and practices.

#### Prohibited Conduct

The following examples of prohibited conduct do not apply to law enforcement employees who possess drugs, alcohol or other items identified in this policy in connection with law enforcement work.

- Possession, transfer, use or being under the influence of any alcohol while on City of Molalla property, on City of Molalla time, while driving City of Molalla vehicles (or personal vehicles while on City of Molalla business), or in other circumstances which adversely affect City of Molalla operations or safety of City of Molalla employees or others.
  - The conduct prohibited by this rule includes consumption of any intoxicating liquor within four hours of reporting to work or during rest breaks or meal periods. If use of alcoholic liquor or an alcohol "hangover" adversely affects an employee's physical or mental faculties while at work to any perceptible degree, or the employee's blood alcohol content exceeds .02 percent, the employee will be deemed "under the influence" for purposes of this rule.
- Possession, distribution, dispensing, sale, attempted sale, use, manufacture or being under the influence of any narcotic, hallucinogen, stimulant, sedative, drug or other controlled substance while on City of Molalla property, on City of Molalla time, while driving City of Molalla vehicles (or personal vehicles while on City of

Molalla business), or in other circumstances which adversely affect City of Molalla operations or safety of City of Molalla employees. Employees may not have any detectable amount of narcotic, hallucinogen, stimulant, sedative, drug or other controlled substance in system while on City of Molalla property or on City of Molalla time.

- The conduct prohibited by this rule includes consumption of any such substance prior to reporting to work or during rest breaks or meal periods. If use of such substances or withdrawal symptoms adversely affects an employee's physical or mental faculties while at work to any perceptible degree, or the employee tests "positive" for any such substances by screening and confirmation tests, the employee will be deemed "under the influence" for purposes of this rule.
- As used in this policy, "controlled substance" includes, but is not limited to, any controlled substance listed in Schedules I through V of the Federal Controlled Substance Act, including marijuana that is otherwise lawful to use under Oregon, Washington or any other state's law.
- Bringing to City of Molalla property, or possessing, items or objects on City of Molalla property that contain any "controlled substance," including, for example, "pot brownies", "edibles" and candy containing marijuana. No employee, regardless of position held, may knowingly serve items containing marijuana or any other "controlled substance" to co-workers, members of the public, or elected officials while on work time or on/in City of Molalla property.
- Bringing equipment or any devices marketed for use or designed specifically for use in ingesting, inhaling or otherwise introducing marijuana (or controlled substances), such as pipes, bongs, "vape" pens, smoking masks, roach clips, and or other drug paraphernalia.
- Bringing equipment, products or materials that are marketed for use or designed for use in planting, propagating, cultivating, growing, or manufacturing marijuana, including live or dried marijuana plants to City of Molalla property. This prohibition does not apply to employees who possess such items in connection with law enforcement work.

#### Prescription Drugs and Medical Marijuana

With the exception of medical marijuana, nothing in this rule is intended to prohibit the use of a drug taken under supervision by a licensed health care professional, where its use does not present a safety hazard or otherwise adversely impact an employee's performance or City of Molalla operations.

Employees must inform their supervisor about their use of any prescription or over-the-counter drugs that could affect their ability to safely perform the duties of their position. If an employee's use of such prescription drugs could adversely affect City of Molalla operations or safety of City of Molalla employees or other persons, City of Molalla may reassign the employee using the prescription drugs to other work or take other appropriate action to accommodate the physical or mental effects of the medication. Failure to report use of prescription drugs covered by this rule will subject an employee to

disciplinary action, up to and including termination. (Although an employee is not required to provide City of Molalla with the name(s) of the prescription medication(s) taken, medical verification of the prescription may be required.)

The use of marijuana, which is a Schedule 1 controlled substance under federal law, is expressly prohibited under this policy, even if its medical use is authorized under state law. Employees who use medical marijuana in connection with a disability should discuss with their Supervisor other means of accommodating the disability in the workplace, as City of Molalla will not agree to allow an employee to use medical marijuana as an accommodation. (See "Disability Accommodation Policy," above.)

### Testing

City of Molalla reserves the right to:

- a. Subject applicants who are given a condition offer of employment in a safety-sensitive position to a drug and alcohol test;
- b. Test employees reasonably suspected of using drugs or alcohol in violation of this policy;
- c. Discipline or discharge employee who test positive or otherwise violate this policy; and
- d. Test employees when they: (1) cause or contribute to accidents that seriously damage a City of Molalla vehicle, machinery, equipment or property; (2) result in an injury to themselves or another employee requiring offsite medical attention; and (3) when City of Molalla reasonably suspects that the accident or injury may have been caused by drug or alcohol use.

### Reasonable Cause Testing

If there is reasonable cause to suspect that an employee is under the influence of controlled substances or alcohol during work hours or has used drugs or alcohol in violation of this policy, City of Molalla may require the employee to undergo testing for controlled substances or alcohol.

As used in this policy, unless the context indicates otherwise:

- The terms "test" and "testing" shall be construed to mean job impairment field tests, laboratory tests, breathalyzer tests, and other tests of saliva, blood and urine. No testing shall be performed under this rule without the approval of the City Manager or designee.
- "Reasonable cause" as used in this policy means an articulable belief based on specific facts and reasonable inferences drawn from those facts that an employee is more likely than not under the influence of controlled substances or alcohol or has used drugs or alcohol in violation of this policy. Circumstances which can constitute a basis for determining "reasonable cause" may include, but are not limited to:
  - a pattern of abnormal or erratic behavior;
  - information provided by a reliable and credible source;
  - direct observation of drug or alcohol use;

- presence of the physical symptoms of drug or alcohol use (i.e., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes);
- unexplained significant deterioration in individual job performance;
- unexplained or suspicious absenteeism or tardiness;
- employee admissions regarding drug or alcohol use; and
- unexplained absences from normal work areas where there is reason to suspect drug or alcohol related activity.

Supervisors should detail in writing the specific facts, symptoms or observations that form the basis for their determination that reasonable cause exists to warrant alcohol or controlled substance testing of an employee or a search. This documentation shall be forwarded to Human Resources. Whenever possible, supervisors should locate a second employee or witness to corroborate their “reasonable cause” findings.

An employee whose initial laboratory screening test for controlled substances yields a positive result shall be given a second test. The second test shall use a portion of the same test sample withdrawn from the employee for use in the initial screening test. If the second test confirms the initial positive test result, the employee shall be notified of the results in writing by Human Resource Department. The letter of notification shall state the particular substance identified by the laboratory tests. The employee may request a third test of the sample within 24 hours of receiving the letter of notification, but such testing will be paid for by the employee.

#### Search of Property

When reasonable cause exists to believe an employee possesses alcohol or a controlled substance on City of Molalla property, or has otherwise violated provisions of this rule regarding possession, sale or use of controlled substances or alcohol, City of Molalla may search furniture, equipment or other property provided to the employee by City of Molalla, including but not limited to, clothes (uniforms), locker, toolbox, and desk. Employees should have no expectation of privacy in any property, equipment or supplies provided by City of Molalla to employee.

#### Employee Refusal to Test/Search

An employee who refuses to consent to a test or a search when there is reasonable cause to suspect that the employee has violated this policy is subject to disciplinary action up to and including termination. The reasons for the refusal shall be considered in determining the appropriate disciplinary action.

An employee who refuses to cooperate with any tests required by this policy is also subject to discipline, up to and including termination. This includes, but is not limited to, tampering with, or attempting to tamper with, a specimen sample, using chemicals or other ingredients to mask or otherwise cover up the presence of metabolites, drugs or alcohol in a specimen, or providing a blood or urine specimen that was produced by anyone or anything other than the employee being tested.

#### Crimes Involving Drugs and/or Alcohol

Employees shall report:



- Any criminal arrest or conviction for drug- or alcohol-related activity within five days of the arrest or conviction;
- Entry into a drug court or diversion program; or
- Loss or limitation of driving privileges when the employee's job is identified as requiring a valid driver's license (regular or CDL). Failure to report as required will result in disciplinary action up to and including termination.

### Drug and Alcohol Treatment

City of Molalla recognizes that alcohol and drug use may be a sign of chemical dependency and that employees with alcohol and drug problems can be successfully treated. City of Molalla is willing to help such employees obtain appropriate treatment.

An employee who believes that he/she has a problem involving the use of alcohol or drugs should ask a supervisor or Human Resource for assistance.

City of Molalla will work with an employee to identify all benefits and benefit programs that may be available to help deal with the problem. Attendance at any rehabilitation or treatment program will be a shared financial responsibility of the employee and City of Molalla to the extent its existing benefits package covers some or all of the program costs.

Although City of Molalla recognizes that alcohol and drug abuse can be successfully treated and is willing to work with employees who may suffer from such problems, it is the employee's responsibility to seek assistance *before* drug or alcohol problems lead to disciplinary action. Once a violation of City of Molalla policy is discovered, the employee's willingness to seek City of Molalla or outside assistance will not "excuse" the violation and generally will have no bearing on the determination of appropriate disciplinary action.

### Discipline and Consequences of Prohibited Conduct

An employee who violates this policy will be subject to either termination or a last-chance agreement.

A last-chance agreement is an agreement whereby an employee who would otherwise be terminated is provided an opportunity to address his/her substance abuse issue and/or performance or safety issues. The last-chance agreement will inform the employee of the problems noted with his/her performance and to specify the performance required for the employee to achieve in order to continue to be employed by City of Molalla. Violation of the provisions of a last-chance agreement shall result in immediate termination of the employee, notwithstanding the provisions of any other personnel rule.

### Confidentiality

All information from an employee's drug and alcohol evaluation is confidential and only those with a need to know are to be informed of test results. Disclosure of such information to any other person, agency, or City of Molalla is prohibited unless written authorization is obtained from the employee

## Fraud

Purpose: The City of Molalla is committed to the highest standard of moral and ethical behavior by its employees, including management, elected officials, volunteers, vendors and contractors, to strengthen the public's trust in the integrity of our municipal government. This policy establishes responsibilities and procedures for reporting, investigating and resolving suspected acts of fraud, theft, waste, abuse and ethical misconduct. It will provide a structure that will encourage the reporting of any suspicions of violations of this policy and will ensure that employees are able to discuss their concerns in a secure and confidential environment.

Scope: This policy is applicable to all City of Molalla employees, elected officials, volunteers as well as outside consultants, contractors and vendors who have a business relationship with the City of Molalla.

Policy: Through all levels of management, the City of Molalla is responsible for the prevention and detection of fraud, misappropriation of City of Molalla funds, or any other deemed inappropriate conduct. It is the City of Molalla's intent to fully investigate any suspected acts of fraud, theft, abuse, waste or unethical behavior, in an impartial manner regardless of the suspected wrongdoer's length of service, position, title or relationship to the City of Molalla.

Any violation of this policy that is detected or suspected by City of Molalla employees, elected officials, volunteers as well as outside consultants, contractors and vendors, who have a business relationship with the City, must be reported immediately to the City Manager or the Anti-Fraud Committee as outlined in the Responsibilities and Procedures section of this policy. The Anti-Fraud Committee will determine who will investigate the suspected fraudulent activity in accordance with this policy.

Any employee found to have violated this policy will be subject to disciplinary action up to and including dismissal and/or prosecution by the appropriate authorities. Elected officials, volunteers and others having a business relationship with the City of Molalla may be subject to sanctions or prosecution by the appropriate authorities.

The City of Molalla intends to pursue every reasonable legal remedy when a violation has occurred and to obtain recovery of any losses from the offender including, when appropriate, notifications of bonding company, court-ordered restitution, or other available remedies.

### Definitions of Fraud

Fraud: An intentional illegal use of City of Molalla assets by any act including, but not limited to, theft, embezzlement or misrepresentation. Fraud is designed to obtain a benefit or advantage or cause some benefit that is due to be denied. Examples include, but are not limited to:

- Forgery or alteration of a check, document, or account belonging to the City of Molalla

- Misappropriation of city funds, securities, supplies, or property.  
(Misappropriation means to illegally use public funds or assets, which have been set aside for a specific purpose, for personal gain)
- Unauthorized personal use of city equipment and supplies
- Profiteering because of insider knowledge
- Theft of cash, checks or property
- Falsifying records such as timecards, expense reports or official documents
- Willful destruction of City of Molalla property
- Employee with access to confidential information who sells this information for personal gain
- Accepting or seeking anything of material value from contractors, vendors, or persons providing services/materials to the City of Molalla

Waste: The expenditure or allocation of resources significantly in excess of need.

Examples include, but are not limited to:

- Unauthorized use or misuse of city facilities, equipment or vehicles
- Falsifying time worked or leave taken on a timesheet
- Retaining ineligible dependents on health care coverage
- Unnecessary incurring of costs as a result of inefficient or negligent practices, systems or controls.

Abuse of Position: Use of employment or official position with the city to obtain personal gain or benefit from the city to which one is not entitled. Examples of *abuse of position* include, but are not limited to:

- Obtaining a benefit or service from the city which one does not qualify
- Providing a benefit or service to someone for which they do not qualify
- Unauthorized reductions in fees and fines
- Suspending or terminating enforcement action based on a personal relationship
- Bid-fixing

Ethical Misconduct: Individuals, who conduct their official duties in a manner which is not impartial, use their position for personal gain, or fail to properly disclose an actual or potential conflict of interest. See the City of Molalla's Charter and/or Personnel Policy for details. Examples include, but are not limited to:

- Authorize contracts in violation of municipal purchasing laws
- Failure to disclose an actual or potential conflict of interest
- Accepting gifts prohibited by Oregon ethics laws

Job Application Fraud: Individuals, who knowingly provide false information on job applications.

## Responsibilities and Procedures

Management and Employees: Managers, supervisors, and administrators at all levels are responsible for maintaining a system of internal controls which prevent, deter, or detect fraud, theft, waste, abuse, and/or unethical or dishonest behavior. Managers,

supervisors, and administrators are also expected and required to recognize risks and potential exposures that may be inherent within their areas of responsibility, to be alert to any indication of irregularity or potential violation of this policy, and to know and follow the requirements set forth in this policy.

Each employee is required to report any suspected or detected violation of this policy, fraud, theft, waste, abuse or other unethical or dishonest conduct. An employee may choose to report immediately the suspicion and/or detection to their department manager, who in turn must immediately report the information to the City Manager or the Anti-Fraud Committee. If the employee is not comfortable reporting directly to their department manager, the employee may immediately report their suspicion directly to the City Manager, Anti-Fraud Committee or anonymously in writing to the City Manager. Suspected fraudulent activity and/or violations of this policy involving the City Manager's Office must be reported to the Anti-Fraud Committee immediately.

The employee reporting suspected violations of this policy and/or fraudulent activity may choose to identify themselves or to remain anonymous. The identity of an employee or complainant who reports suspected fraudulent activity will be protected to the fullest extent possible, but the City of Molalla cannot guarantee confidentiality. It is the City of Molalla's intent to protect an employee who discloses information of suspected fraudulent activity from retaliatory actions by other individuals in accordance with Oregon Statutes, Section 659A.200-203 (Whistleblower's Act) which prohibits adverse personnel actions against an employee for disclosing this information. Retaliation against an employee or other person who reports a detected or suspected violation of this policy is strictly prohibited. Any employee who retaliates against a person for reporting a detected or suspected violation of this policy will be subject to discipline up to and including termination of employment.

In all cases, the reporting employee must provide enough detail about the activity to aid in the investigation. All employees, which include management employees, will cooperate with the Anti-Fraud Committee and investigators and will not by any means personally investigate the suspected fraud, or contact the suspected individual in an effort to determine facts or demand restitution.

All employees shall cooperate with the investigative processes of the Committee and law enforcement agencies including prosecution of offenders. All participants in a fraud investigation will keep details and results of the investigation confidential. All inquiries from suspected individuals and their legal representatives must be directed to the City Manager. Proper response to such an inquiry is, "I am not at liberty to discuss this matter."

#### Anti-Fraud Committee / Human Resources:

The City of Molalla's Anti-Fraud Committee will be comprised of the City Manager, Council Member, City Recorder, and Finance Director. The Committee will appoint the investigator and oversee and coordinate all actions taken during the course of the investigation. The investigator will have unlimited and unattended access to all relevant city files at all times in order to facilitate investigative work as permitted by city policy and state and federal law. All investigations conducted by the Committee are

considered part of the audit process and the working papers will be kept confidential in accordance with state statutes and administrative rules regarding public records laws.

Great care must be taken in the investigation of suspected fraudulent activity to avoid mistaken accusations or alerting suspected individuals that an investigation is under way, or making any statement which could provide a basis for a suit for false accusation or other offenses.

The Committee will evaluate the extent of any potential criminal activity, including consulting the Clackamas County District Attorney's Office if needed. If any potential prosecutable criminal activity exists, the Police Department or other appropriate law enforcement agency will be notified and conduct the investigation. The Committee will assist with the investigation if law enforcement requests such assistance. In every case, the City will cooperate fully with the investigating and prosecuting authorities. If no potentially prosecutable criminal activity exists, the City Manager will conduct the investigation with the assistance of other appropriate City officials.

If fraudulent activity is detected or reasonably suspected of the City Attorney or City Manager, the City Recorder will apprise the Mayor and Council of the investigation and update them on progress as is deemed appropriate.

In cases where the suspected fraudulent activity involves the offices of the City Manager or City Finance, the Committee will determine the investigation process and assign an investigator.

The City Manager or City Attorney will be apprised of the investigation and updated on progress as is deemed appropriate by the investigator.

The City Manager or City Recorder, as appropriate, may notify the Mayor and Council of a reported allegation of fraudulent activity upon the start of the investigation to the extent practical. The Mayor and Council will be apprised of the progress of the investigation as deemed appropriate by the City Manager. At the conclusion of the investigation, a confidential report will be issued and distributed to the Mayor, City Council, City Manager and City Attorney. After their review, a copy of the report will be provided to the appropriate department head and the Finance Director.

Disciplinary Action: If a suspected or detected violation of this policy is substantiated by an investigation, the City will take the appropriate action in conformance with City and departmental personnel policies and procedures, and union contracts if applicable. Violations of the City of Molalla's Fraud Policy will result in disciplinary actions up to and including immediate dismissal. Examples of violations of this policy which can lead to disciplinary action up to and including dismissal include, but are not limited to an employee who:

- Commits an act of fraud, theft, abuse, waste or other unethical behavior as defined by this policy.

- Suspects, discovers or has knowledge of fraudulent activity that violates or potentially violates this policy and fails to report the information as required by this policy; or
- Intentionally reports false or misleading information of fraudulent activity; or
- Retaliates against or penalizes any individual for reporting or cooperating in the investigation or prosecution of fraudulent activity.

Distribution: All City of Molalla employees, volunteers and elected officials will be given a copy of this policy. All newly hired employees and appointed volunteers will be provided a copy as part of orientation and required to provide a written acknowledgement upon receipt of the policy which be retained by the Human Resources Clerk.

Administration: The City Manager is responsible for the administration, revision, interpretation and application of this policy. The policy will be reviewed and revised as needed.

## B. Mobile Devices Policy

This policy applies to employee use of cell phones, smart phones, tablets and similar devices, all of which are referred to as “mobile devices” in this policy.

### Cell Phones and Mobile Devices in General

Employees are allowed to bring personal mobile devices to work with them. During working hours, however, employees should refrain from using them except in an emergency or during a meal period or rest break.

Employees who use personal or City of Molalla-provided mobile devices may not violate City of Molalla's policies against harassment and discrimination. Thus, employees who use a personal or City of Molalla-provided mobile device to send a text or instant message to another employee (or to a citizen or someone not employed by the City of Molalla) that is harassing or otherwise in violation of City of Molalla's policies prohibiting discrimination, harassment, bullying and retaliation will be subject to discipline up to and including termination.

Nonexempt employees may not use their personal or City of Molalla-provided mobile device for work purposes outside of their normal work schedule without written authorization in advance from their Supervisor. This includes, but is not limited to, reviewing, sending and responding to emails or text messages, and responding to calls or making calls. Employees who violate this policy may be subject to discipline, up to and including termination. Nothing in this policy removes a nonexempt employee's obligation from recording time for all hours worked.

### Employee Use of City of Molalla -Provided or Paid For Mobile Devices

Mobile devices are made available to City of Molalla employees on a limited basis to conduct City of Molalla's business. Determinations as to which employees receive City of Molalla-provided mobile devices will be made on a case-by-case basis; employees are not guaranteed a cell phone or cellular device. In some cases, City of Molalla may provide a monthly cellular telephone allowance to employees who regularly make calls

on behalf of the City of Molalla away from the office (see Human Resources for more information).

Employees who receive a mobile device from City of Molalla must agree to not use the mobile device for personal use except in emergency situations and must abide by all aspects of the Mobile Device Policy. Further, employees who receive a cell phone or mobile device from City of Molalla must acknowledge and understand that because the mobile device is paid for and provided by City of Molalla, or subsidized by City of Molalla, any communications (including text messages) received by or sent from the mobile device may be subject to inspection and review if City of Molalla has reasonable grounds to believe that the employee's use of the cell phone violates any aspect of the Mobile Device Policy or any other City of Molalla policy. Employees should have no reasonable expectation of privacy in an City of Molalla-provided or -paid for mobile device. An employee who refuses to provide City of Molalla access to his/her personal mobile device in connection with an investigation and after reasonable notice may be subject to discipline, up to and including termination.

Family and friends may not use an employee's City of Molalla-provided mobile device.

#### Mobile Devices and Public Records

City of Molalla-related business conducted on City of Molalla-provided or personal cell phones/cellular devices may be subject to disclosure and production under Oregon's Public Records laws or in connection with litigation filed against City of Molalla or individual employees.

#### Mobile Device Use While Driving

The use of a mobile device while driving may present a hazard to the driver, other employees and the general public. Subject to a few narrow exceptions for emergency or public safety purposes, Oregon law also prohibits the use of handheld cell phones while driving, even if the driving is for work-related reasons. This policy is meant to ensure the safe operation of City of Molalla vehicles and the operation of private vehicles while an employee is on work time. It applies equally to the usage of employee-owned cell phones and phones provided or subsidized by City of Molalla.

Employees are prohibited from using handheld cell phones for any purpose while driving on City of Molalla-authorized or City of Molalla-related business. This policy also prohibits employees from using a cell phone or other mobile device to send or receive text or "instant" messages while driving on City of Molalla business (other than those employees engaged in law enforcement work). Should an employee need to make a business call while driving, the employee must locate a lawfully designated area to park and make the call, unless the employee uses a hands-free cell phone or cellular device for the call. In either situation, such calls should be kept short and should the circumstances warrant (for example, heavy traffic, bad weather), the employee should locate a lawfully designated area to park to continue or make the call, even if the employee is using a hands-free device. Violation of this policy will subject the employee to discipline, up to and including termination.

#### C. Use of City of Molalla Email and Electronic Equipment and Services

City of Molalla uses multiple types of electronic equipment and services for producing documents, research and communication including, but not limited to, computers,

software, email, copiers, telephones, voicemail, fax machines, online services, the Internet and any new technologies used in the future. This policy governs the use of such City of Molalla property.

### Ownership

All information and communications in any format, stored by any means on or received or transmitted via City of Molalla's electronic equipment or services is the sole property of City of Molalla.

### Use

All of City of Molalla's electronic equipment and services are provided and intended for City of Molalla business purposes only and not for personal matters, communications or entertainment. Access to the Internet, websites and other electronic services paid for by City of Molalla are to be used for City of Molalla business only. This means, for example, that employees may not use the City of Molalla-provided Internet, or City of Molalla electronic equipment and services to:

- Display or store any sexually explicit images or documents, or any images or documents that would violate City of Molalla's no-harassment, no-discrimination or bullying policies;
- Play games (including social media games) or to use apps of any kind;
- Engage in any activity that violates the rights of any person or City of Molalla, and that is protected by copyright, trade secrets, patent or other intellectual property (or similar laws or regulations);
- Engage in any activity that violates the right to privacy, of protected healthcare information or otherwise, or other City of Molalla-specific confidential information;
- Engage in any activity that would introduce malicious software purposefully into a workstation or network (e.g., viruses, worms, Trojan horses).
- Download or view streaming video for personal use. This includes, without limitation, YouTube videos, movies, and TV shows. Streaming audio is allowed, provided it does not contain explicit material, adversely affect network speed, or interfere with others' ability to work.

Further, employees may not use City of Molalla-provided email addresses to create or manage personal accounts (e.g., shopping websites, personal bank accounts, and social media accounts). City of Molalla email addresses for professional-based social media accounts such as LinkedIn may be allowed with the approval of the employee's supervisor.

### Inspection and Monitoring – No Right to Privacy

Employee communications, both business and personal, made using City of Molalla electronic equipment and services are not private. Any data created, received or transmitted using City of Molalla equipment services are the property of City of Molalla and usually can be recovered even though deleted by the user.

All information and communications in any format, stored by any means on City of Molalla's electronic equipment or services, are subject to inspection at any time without notice. Personal passwords may be used for purposes of security, but the use of a personal password does not affect City of Molalla's ownership of the electronic information, electronic equipment or services, or City of Molalla's right to inspect such



information. City of Molalla reserves the right to access and review electronic files, documents, archived material, messages, email, voicemail and other such material to monitor the use of all of City of Molalla's electronic equipment and services, including all communications and internet usage and resources/sites visited. City of Molalla will override all personal passwords if it becomes necessary to do so for any reason.

#### Personal Hardware and Software

Employees may not install personal hardware or software on City of Molalla's computer systems or mobile devices without approval from City Manager. All software installed on City of Molalla's computer systems must be licensed. Copying or transferring of City of Molalla-owned software to a personal device/equipment may be done only for personal devices/equipment used for City of Molalla business and with the written authorization of the City Manager.

#### Unauthorized Access

Employees are not permitted unauthorized access to the electronic communications of other employees or third parties unless directed to do so by City of Molalla management. No employee can examine, change or use another person's files, output, username or password unless he/she has explicit authorization.

#### Security

Many forms of electronic communication are not secure. Employees who use cell phones, cordless phones, fax communications or email sent over the Internet should be aware that such forms of communication are subject to interception. These methods of communicating should not be used for privileged, confidential, or sensitive information unless appropriate encryption measures are implemented.

#### Inappropriate Web Sites

City of Molalla's electronic equipment, facilities or services must not be used to visit Internet sites that contain obscene, hateful or other objectionable materials, or that would otherwise violate City of Molalla's policies on harassment and discrimination.

#### D. Social Media

For purposes of this policy, "social media" includes all means of communicating or posting information or content of any sort on the Internet, including to your own or someone else's web log or blog, journal or diary, personal or commercial website, social networking web site, web bulletin board or a chat room, whether or not associated or affiliated with City of Molalla, as well as any other form of electronic communication.

Ultimately, you are solely responsible for what you post online. Before creating online content, consider some of the risks and rewards that are involved. Keep in mind that any of your conduct that adversely affects your job performance, the performance of co-workers, or otherwise adversely affects our citizens or people who work on behalf of City of Molalla or City of Molalla's legitimate business interests may result in disciplinary action up to and including termination.

#### Prohibited Postings

Employees will be subject to discipline, up to and including termination, if they create and post any text, images or other media that violate any City of Molalla policies,

including City of Molalla's no-harassment and no-discrimination and workplace violence policies. Similarly, postings that include threats of violence, that are physically threatening or intimidating, bullying or harassing, will not be tolerated and may subject an employee to discipline, up to and including termination.

Do not create a link from your blog, website or other social networking site to an City of Molalla-owned or maintained website without identifying yourself as an City of Molalla employee.

Express only your personal opinions. Never represent yourself as a spokesperson for City of Molalla unless you are authorized by your manager/supervisor to do so. If City of Molalla is a subject of the content you are creating, be clear and open about the fact that you are a City of Molalla employee and make it clear that your views do not represent those of City of Molalla or its employees or elected officials.

### Encouraged Conduct

Always be fair and courteous to co-workers, the citizens we serve, City of Molalla's employees and elected officials, and suppliers or other third parties who do business with City of Molalla.

Also, keep in mind that you are more likely to resolve work-related complaints by speaking directly with your co-workers, or by utilizing our Open-Door Policy, than by posting complaints to a social media outlet. If you decide to post complaints or criticism, avoid using statements, photographs, video or audio that reasonably could be viewed as malicious, obscene, threatening or intimidating, that disparage citizens, co-workers, City of Molalla employees or elected officials, that might constitute harassment or bullying, and/or that violate City of Molalla policies. Examples of such conduct might include offensive posts that a reasonable person would perceive as calculated to intentionally harm an individual's personal or professional reputation, posts that could contribute to a hostile work environment on the basis of race, sex, disability, religion or any other status protected by law or City of Molalla policy.

Maintain the confidentiality of City of Molalla's confidential information. Do not post internal reports, policies, procedures or other internal, City of Molalla-related confidential communications or information. (See "Confidential City of Molalla Information" policy, below.)

Nothing in this policy is meant to prevent an employee from exercising his/her right to make a complaint of discrimination or other workplace misconduct, engage in lawful collective bargaining activity, or to express an opinion on a matter of public concern that does not unduly disrupt City of Molalla operations. Employees are free to express themselves as private citizens on social media sites, but an employee's exercise of expression is balanced against the City of Molalla's interest in the effective and efficient fulfillment of its responsibilities to the public.

### Request for Employee Social Media Passwords

City of Molalla's supervisors and managers are prohibited by law from requiring or requesting an employee or an applicant for employment to disclose or to provide access through the employee's or applicant's user name and password, password or other means of authentication that provides access to a personal social media account. This

includes, without limitation, a username and password that would otherwise allow a supervisor/manager to access a private email account not provided by City of Molalla.

Nothing in this policy prohibits City of Molalla from requiring an employee to produce content from his/her social media or internet account in connection with a City of Molalla-sponsored investigation into potential misconduct, unlawful or unethical behavior, or policy or rule violations.

#### E. Confidential City of Molalla Information

Employees must not access, use or disclose sensitive or confidential information or data except in accordance with City of Molalla policies, practices and procedures, and as authorized by state or federal laws or regulations. Employees with access to confidential information, including but not limited to customer or employee financial, medical or personal information (including, without limitation, Social Security numbers), are responsible for the safekeeping and handling of that information to prevent unauthorized disclosure. Employees who access, use or disclose confidential information contrary to Oregon or federal laws or for personal use or financial gain may be subject to civil or criminal penalties under those laws, in addition to appropriate disciplinary action for violating this policy.

No records or information including (without limitation) protected medical data, documents, files, records, computer files or similar materials (except in the ordinary course of performing duties on behalf of City of Molalla) may be removed from our premises without permission from City Manager. Likewise, any materials developed by City of Molalla's employees in the performance of their jobs is the property of City of Molalla and may not be used for personal or financial gain. Additionally, the contents of records or information otherwise obtained in regard to the City of Molalla's business may not be disclosed to anyone, except where required for a business purpose or when required by law.

#### F. Ethics

At City of Molalla, we believe in treating people with respect and adhering to ethical and fair business practices. We expect employees to avoid situations that may compromise their reputation or integrity, or that might cause their personal interests to conflict with the interests of the City of Molalla or the City of Molalla 's citizens.

We at the City of Molalla are public employees, and as such, are also subject to the State of Oregon's ethics laws. In some cases, these laws provide additional limitations on employees, such as prohibitions on gifts and strict definitions of conflict of interest. If you are coming to the City of Molalla from work in the private sector, you may find that some activities that are common business practices in the private sector are prohibited in the public sector. Information on these laws is available at the Oregon Government Ethics Commission website: <http://www.oregon.gov/OGEC>.

If you have questions about whether an activity meets the City of Molalla's or Oregon's ethical standards, please talk with your Supervisor or Human Resources. Employees who violate the Ethics Policy, or who violate Oregon ethics laws, may be subject to disciplinary action up to and including termination.

### G. Open-Door Policy

City of Molalla's Open Door Policy is based on our belief that open, honest communication between managers and employees should be a common business practice. City of Molalla's managers and supervisors are responsible for creating a work environment where employee input is welcomed, and where issues are identified early and shared without the fear of retaliation (when the employee provides the input in good faith). If you have a complaint, suggestion, or question about your job, working conditions, or the treatment you are receiving from anyone in City of Molalla, please raise them first with your immediate supervisor. If you are not satisfied with the response from your immediate supervisor, or if your issue involves your immediate supervisor, request to have the facts/situation reviewed by the Human Resource department.

### H. Outside Employment

Generally, employees may obtain employment with an employer other than City of Molalla or engage in private income-producing activity of their own so long as that activity is not otherwise prohibited by these rules. Employees are responsible for assuring that their outside employment does not conflict with these rules.

An employee is prohibited from, directly or indirectly, soliciting or accepting the promise of future employment based on the understanding that the offer is influenced by the employee's official action.

Employees may not accept outside employment that involves:

- The use of City of Molalla time (including the employee's work time), City of Molalla facilities, equipment and supplies, or the prestige or influence of the employee's position with City of Molalla. In other words, the employee may not engage in private business interests or other employment activities on the City of Molalla's time or using the City of Molalla's property;
- The performance of an act that may later be subject to control, inspection, review or audit by the department for whom the employee works (or by a State agency); or
- Receipt of money or anything of value for performance of duties that the employee is required to perform for the City of Molalla.

The City of Molalla requires employees to report outside employment to their supervisor before the outside employment begins. Thereafter, an employee must provide an update to his/her supervisor and Human Resource Department on an annual basis, or sooner if any changes in outside employment occurs. Employees who accept outside employment in violation of this policy may be subject to discipline, up to and including termination.

### I. Criminal Arrests and Convictions

Employees must promptly and fully disclose to their supervisor on the next working day:

1. All drug-or alcohol-related arrests, citations, convictions, guilty pleas, no contest pleas or diversions that result from conduct which occurred while on duty, on City of Molalla property, or in an City of Molalla vehicle (see "Alcohol/Drug Use, Abuse and Testing" policy above);

2. All arrests, citations, convictions, guilty pleas or no contest pleas that result from crimes involving the theft or misappropriation of property, including money; or
3. If you are arrested, cited or convicted of a violation of any law that will prevent you from performing the essential functions of your position.

Reporting an arrest or conviction will not automatically result in termination of employment. Situations will be evaluated on a case-by-case basis.

Employees who are unavailable to report for work because they have been sent to jail or prison may not use sick leave or vacation time to cover the absence, and may be subject to disciplinary action, including termination.

#### J. Political Activity

Employees may engage in political activity except to the extent prohibited by Oregon law when on the job during working hours. This means that employees cannot:

- Be required to give money or services to aid any political committee or any political campaign;
- Solicit money or services (including signatures) to aid or oppose any political committee, nomination or election of a candidate, ballot measure or referendum, or political campaign while on the job during working hours (this is not intended to restrict the right of City of Molalla employees to express their personal political views); or
- Be disciplined or rewarded in any manner for either giving or withholding money or services for any political committee or campaign.

#### K. Bad Weather/Emergency Closing

Except for regularly scheduled holidays identified by the City of Molalla (see "Holidays" section, above), City of Molalla is open for business on Mondays through Fridays during normal business hours. If there are circumstances beyond our control, such as inclement weather, a national crisis, or other emergencies that make one or more of our office locations inaccessible for all or part of a regularly scheduled workday, the City Manager (or his/her designee) will decide whether to and to what extent the City of Molalla will close, and the City will have supervisors contact all employees.

In the event of extreme bad weather, we recognize that each employee's ability to safely reach work may be different. If you cannot safely report to work in such circumstances, you should contact your manager. If staff cannot reach the office and are able to serve City of Molalla from home, you should do so subject to approval by your manager or supervisor. If weather does not permit you to come to work, or you must leave early due to inclement weather, you are expected to use vacation or compensatory time, you will not be paid by the City of Molalla for these hours. Safety and a trustworthy approach are your guides.

#### M. Driving While on Business

Employees using a private or City vehicle to conduct City of Molalla's business must possess a valid driver's license and must carry auto liability insurance. Employees who use their own vehicles for authorized City of Molalla business use should make any necessary arrangements with their insurance carriers.

The City of Molalla may verify the validity of your driver's license and/or your driving record at the time of hire and at any point during your employment. Once you are employed with City of Molalla, we may receive automated reports from the Department of Motor Vehicles (DMV). The reports notify City of Molalla when there are transactions on your driving record such as speeding tickets and citations.

While on City of Molalla business, drivers are expected to make every reasonable effort to operate their vehicle safely, with due regard for potential hazards, weather, and road conditions. Drivers are to obey all traffic laws, posted signs and signals, and requirements applicable to the vehicle being operated. Seatbelts are to be used in all vehicles while on business. Drivers are to ensure that the use of prescribed or over the counter drugs does not interfere with their ability to drive while on business; operating a vehicle under the influence of alcohol or controlled substances is prohibited. Employees are responsible for notifying their manager of any subsequent restrictions, limitations, or other change in their driving status within 72 hours of the change or new restrictions/limitations. See also, "Mobile Device Use While Driving" policy, above.

Employees who receive a ticket or citation while driving a City of Molalla-owned vehicle or while on City of Molalla business will be responsible for paying the fine (if any) associated with the ticket or citation and may face discipline up to and including termination.

#### N. Workplace Violence

City of Molalla recognizes the importance of a safe workplace for employees, customers, vendors, contractors, and the general public. A work environment that is safe and comfortable enhances employee satisfaction as well as productivity. Therefore, threats and acts of violence made by an employee against another employee, volunteer, elected official, or member of the public with respect to that person's life, health, well-being, family, or property will be dealt with in a zero-tolerance manner by City of Molalla.

All employees have an obligation to report any incidents that pose a real or potential risk of harm to employees or others associated with City of Molalla, or that threaten the safety, security or financial interests of City of Molalla. Employees are also strongly encouraged to report threats or acts of violence by non-employees, such as vendors or citizens, against any employee, volunteer or elected official. Employees should make such reports directly to Human Resources.

City of Molalla also may conduct an investigation of a current employee where the employee's behavior raises concern about work performance, reliability, honesty, or potentially threatens the safety of co-workers or others. See policy on "Workplace Inspections."

#### O. Workplace Inspections — No Right to Privacy or Confidentiality

This policy applies to inspections and investigations conducted by City of Molalla pursuant to policy or law unless otherwise modified by a different policy in this Handbook.

An employee investigation may include, but is not limited to, investigation of criminal records; it may also include a search of desks, work areas, file cabinets, voicemail systems and computer systems. *Employees are strongly discouraged from storing personal items in the desks, lockers, work areas, file cabinets and other office equipment or furniture, as*

*well as voicemail and computer systems assigned to them by the City of Molalla; these areas are not private.*

All information related to reports generated from inspections and investigations, including the name of the reporting employee(s), will be kept as confidential as possible under the circumstances.

#### P. Smoke-Free Workplace

City of Molalla provides a tobacco-free environment for all employees and visitors. For purposes of this policy, "tobacco" includes the smoking of any tobacco-based product, smoking in any form (including, without limitation, cigars and e-cigarettes), and the use of oral tobacco products or "chew/spit" tobacco. Marijuana is also prohibited under this policy. This policy applies to employees, volunteers, and any visitors to City of Molalla vehicles or facilities/buildings.

City of Molalla buildings and vehicles are tobacco and marijuana-free areas. Tobacco/marijuana use is prohibited during working hours. Further, City of Molalla prohibits tobacco/marijuana use in or around City of Molalla vehicles and equipment or machinery.

If you wish to smoke tobacco, you must do so outside of City of Molalla's facilities/buildings, only in designated smoking areas, and out of visitor view during authorized breaks. Smoking is not allowed near building entrances; Oregon law prohibits smoking within 10 feet of building entrances and other openings, including second-story windows. Tobacco users are expected to dispose of such items appropriately. Sidewalks and parking lots are not appropriate places of disposal.

#### Q. RECRUITMENT AND SELECTION

##### I. PURPOSE

To provide a competitive system of filling positions for the city with the individuals whose skills, abilities, and qualifications best match those of the open position.

##### II. SCOPE

This policy applies to recruiting and selecting employees for regular full-time and regular part-time positions except those listed in the City Charter, as it may be amended from time to time (i.e. elected positions, City Manager, Municipal Judge).

##### III. POLICY

When a personnel vacancy occurs, the appropriate department director, in collaboration with the city manager and human resources, will carry out a recruitment and selection process designed to identify the most qualified individual for the position by carefully considering current employees as well as new applicants. All recruitment and selection practices and procedures shall be conducted in compliance with all applicable state and federal laws governing equal employment opportunity. Veteran preference shall be provided according to Oregon law.

The city is committed to using job-related criteria consistent with business necessity in its selection program. The city is also committed to providing reasonable accommodation to individuals with disabilities throughout the selection process and in its employment practices.

#### IV. DEFINITIONS

##### A. JOB RELATED

Each qualification standard, test or other selection criterion must be a legitimate measure or qualification for the specific job it is being used for. It is not enough that it measures qualifications for a general class of jobs.

##### B. CONSISTENT WITH BUSINESS NECESSITY

If a test or other selection criterion excludes an individual with a disability *because of the disability* and does not relate to the *essential functions of a job* it is not consistent with business necessity. A standard may be job-related but not justified by business necessity, because it does not concern an essential job function

##### C. REASONABLE ACCOMODATIONS

Reasonable accommodation is a modification or adjustment to a job, the work environment, or the way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity. An equal employment opportunity means an opportunity to attain the same level of performance or to enjoy equal benefits and privileges of employment as are available to an average similarly situated employee without a disability.

The Americans with Disabilities Act (ADA) requires that even if a qualification standard or selection criterion *is* job-related and consistent with business necessity, it may not be used to exclude an individual with a disability if this individual could satisfy the legitimate standard or selection criterion with a “reasonable accommodation.”

#### V. PROCEDURE

The following steps govern the recruitment and selection process:

##### A. PROMOTION AND TRANSFERS

The city encourages promotions and transfers from within city service and seeks to select the best-qualified individual for the position. Promotional appointments shall be made from employees within the city if the department director and city manager determine that there exists qualified and interested employees to compete through an internal selection process.

If only one qualified and interested employee is determined to exist, the employee interested in a promotional appointment may communicate his/her interests and concerns directly to his/her department director and may be considered for promotion. If the employee is selected for promotion, the position vacated by the promoted employee shall be filled using the recruitment and selection process adopted by the city.

##### B. TEMPORARY ASSIGNMENTS



1. A temporary appointment may be required to fill a position on an immediate, short-term basis. For example, a temporary appointment may be used to fill an unexpected vacancy, to fill in for a current, regular employee out on an approved leave of absence such as disability leave or family medical leave, or to fill a special project position resulting from the availability of grant money. The department director may fill these vacancies by appointment on a temporary basis after consultation with the city manager without following the recruitment and selection process for a period not to exceed six (6) months. Approval from the City manager for an extension is required.

2. Vacated regular positions may be filled with temporary appointments. A regular position, which is vacant because an employee is out on approved leave, may be filled by temporary appointment if there is a reasonable expectation that the employee will return. A new position funded by grant moneys or other outside source may be filled by temporary appointment for the duration of the funds. If such position becomes a regular full-time position with the city, however, the recruitment and selection process shall be initiated and followed. If a current and qualified applicant pool or list exists for any vacated position, the department director shall first consider making the temporary appointment from this pool or list.

### C. REQUEST TO RECRUIT

When a job vacancy exists or is anticipated, the department director shall make a request to the city manager to initiate the recruitment and selection process. The request shall include a current job description listing the essential job duties and responsibilities, the essential job qualifications, established salary range, and the selection criteria. Upon approval of the city manager human resources shall initiate the recruitment and selection process.

### D. JOB ANNOUNCEMENT

1. A notice announcing recruitment for an open position shall be prepared specifying the title of the job, salary range of the position, summary of the essential job duties, responsibilities and qualifications, and the application procedures. The notice shall be published and posted on the city's web site. At the city's discretion, additional notices may be circulated to professional organizations and published in professional journals or posted electronically on web sites of relevant professional organizations. The application procedures shall, at a minimum, include the time and location to apply, how to make alternate arrangements if the location is inaccessible; the selection process to be used, i.e., testing, application, assessment centers, interviews, etc., as well as the closing date for accepting applications.

Reasonable accommodations will be made to enable an applicant with a disability to apply for and test for a job. All job announcements shall include this message: "We are an Equal Opportunity Employer. We do not discriminate based on race, color, religion, sex, age, national origin, physical or mental disability, marital familial status, status as a special disabled veteran, or membership in any other group protected by law in accordance with applicable federal, state and local laws."

2. Job announcements will be posted for a minimum of five (5) working days. Posting locations include the personnel department, employee bulletin boards in city facilities. Vacancy

announcements may also be sent to newspapers for inclusion in the "help wanted" ads, the State of Oregon Employment Division, and other agencies or organizations where there may exist qualified, interested applicants. The city shall further make job announcements accessible to people with disabilities by providing written information in various formats upon request.

#### E. APPLICATIONS

Employment applications shall be available in City Hall and on the city's web site. Assistance in filling out an application shall be provided upon request. All individuals applying for a position shall complete an application form and any supplemental materials required by the city for certain positions, as specified. Application materials shall be considered confidential and reviewed only by the authorized personnel. The city shall make specific reasonable accommodation for both site accessibility and testing for applicants with disabilities.

The city accepts applications and/or resumes only when a vacancy exists. The city does not stockpile job applications or resumes for possible future consideration. When the city solicits applications for a vacant position, there will be a designated cut-off date beyond which applications will not be accepted. Unless the city is currently accepting applications for a vacant position, all applications will be returned with a Response to Unsolicited Application form letter.

#### F. SELECTION.

1. Selection criteria shall be designed to measure each applicant's qualifications, experience, and ability to perform the duties and responsibilities of the open position. When requested, specific reasonable accommodations will be made for individuals with disabilities.
2. Any combination of two or more of the following methods may be used to determine the applicant best suited for the position:
  - a) information supplied by the applicant, on the application, in resumes, letters of recommendation and through supplemental examinations, if required.
  - b) written, performance (i.e., typing test) and physical agility test (not a medical exam);
  - c) individual or group oral interviews.
  - d) assessment centers.
  - e) information and evaluation provided by previous and current employers and references.
  - f) personal background investigation for some positions; and
  - g) other appropriate job-related screening techniques.

Note: Some positions may require that medical and related information be obtained through a medical entrance exam or other means to evaluate the ability of applicants to perform essential job functions, or to promote health and safety on the job. The city will not request this information until after a conditional job offer has been made, and then only when it is consistent with business necessity.

#### G. MULTIPLE USE OF APPLICATION AND SELECTION METHODS

Multiple Use of Application and Selection Methods. When it is deemed appropriate by the city manager, selection materials including application, testing and interview results, reference, and other selection information received for one (1) vacancy may be considered for a subsequent recruitment and selection process, if the subsequent recruitment and selection process is in the same job classification and provided that no more than one (1) year has passed since the initial process. All applicants shall be notified of their application status.

#### H. APPOINTMENT

Appointment. The department director makes the appointment to the position after consultation with the city manager. All recruitment and selection records shall be retained by the city recorder based on retention requirements. Appointments may be made subject to the result of a medical entrance exam.

#### R. Hiring of Family Members

Relatives of current employees, or individuals involved in an intimate personal or financial relationship with a current employee, are eligible for hire at the City of Molalla subject to the same selection process and job requirements and will be evaluated in the same manner as any other applicant. However, persons will not be hired or promoted into positions in which one family member (as defined by Oregon law) or person involved in an intimate personal or financial relationship, would fall under the direct line of supervision of the other family member or partner.

All employees shall avoid being in a position where they are subject to supervisory or oversight authority by a family member, member of their household, or a person with whom they have an intimate personal or financial relationship. If the relative relationship is established after employment as a result of City of Molalla restructure, marriage, or a development of an intimate personal or financial relationship, the employees involved have an obligation to immediately inform their supervisor, or Human Resources. The employees and City of Molalla will jointly make a good faith effort to find an alternative assignment for one of the two employees. Depending on business need, this may include, but is not limited to restructuring duties, assignment to another position, and assignment to another shift or change in supervision. If no alternative assignment is available, the two employees will have 30 days to decide who will resign. If a decision is not made within 30 days, the City of Molalla will make the final decision, based on the City of Molalla's operational and financial needs.

Policy violations including, but not limited to, failure to disclose a family relation, or an intimate personal or financial relationship, will be investigated by the City of Molalla. Policy violations may result in progressive discipline of employees, up to and including termination of employment. Supervisors and lead workers may be disciplined for taking employment actions based upon the relationship.

### VI. Termination of Employment

#### A. Workplace Rules and Prohibited Conduct

Any violation of the rules or prohibited conduct in this policy may result in discipline, up to and including termination. This list of prohibited conduct is illustrative only; other types

of conduct injurious to security, personal safety, employee welfare and City of Molalla's operations, some of which are described elsewhere in this Handbook, may also be grounds for discipline, up to and including termination.

- Falsification of employment or other City of Molalla records.
- Recording of work time of another employee or allowing any other employee to record your work time or allowing falsification of any time sheets (your own or another employee's).
- Theft or the deliberate or careless damage or destruction of any City of Molalla property, or the property of any other employee, citizen, vendor or third party.
- Unauthorized use of City of Molalla equipment, materials or facilities.
- Provoking a fight or fighting during work hours or on City of Molalla property.
- Carrying firearms or any other dangerous weapon on City of Molalla premises at any time.
- Engaging in criminal conduct while at work.
- Causing, creating or participating in a significant or substantial disruption of work during working hours on City of Molalla property.
- Insubordination, including but not limited to failure or refusal to obey the orders or instructions of a supervisor or member of management, or the use of abusive or threatening language toward another City of Molalla employee, customer or vendor.
- Failure to notify a supervisor when unable to report to work, or when leaving work during normal working hours without permission from a supervisor to do so.
- Failure to observe work schedules, including rest breaks and meal periods. You are expected to be at work on time, remain until your workday ends, and perform the work assigned to or requested of you.
- Sleeping or malingering on the job.
- Excessive personal telephone calls during working hours.
- Unprofessional appearance during normal business hours.
- Failing to attend scheduled work sessions and related activities at conferences, workshops, or educational events that are paid for by the City of Molalla.
- Misrepresentation of City of Molalla policies, practices, procedures, or your status or authority to enter into agreements on behalf of the City of Molalla. Employees may not use the City of Molalla's name, logo, likeness, facilities, assets or other resources of the City of Molalla for personal gain or private interests.
- Violations of the Ethics Policy or Oregon's Ethics laws.
- Violation of any safety, health, security or City of Molalla policy, rule or procedure. Employees are expected to act in accordance with all appropriate codes, laws, regulations, and policies, regardless of whether they are set by City of Molalla or outside regulatory or legislative bodies.
- Harassment or discrimination that violates City of Molalla policy.

This statement of prohibited conduct does not alter City of Molalla's policy of at-will employment. Except for employees subject to a collective bargaining agreement or contract of employment, City of Molalla remains free to terminate the employment relationship at any time, with or without cause or notice.

#### B. Corrective Action/Discipline Policy

Employees are expected to perform to the best of their abilities at all times. There will be occasions, however, where employees perform at an unsatisfactory level, violate a policy or law, or commit an act that is inappropriate. When performance or conduct does not meet City of Molalla standards, City of Molalla will determine whether it will terminate the employee's employment or provide the employee a reasonable opportunity to correct the deficiency through progressive discipline such as:

1. Verbal counseling - It will be confirmed in writing by your supervisor for your personnel file.
2. Written warning - Written documentation of the written warning will contain the facts surrounding the offense, previous verbal counseling or other communications on the subject, if any, plan of action will be necessary if the offense is not corrected. Employees are given a copy of all written warnings, copies of which will be added to their personnel files.
3. Suspension - Suspension may also be used to remove an employee from City premises during an investigation. A suspension may be paid or unpaid. If you are suspended, it will be documented in your personnel file and you will receive a copy.
4. In certain instances, a "Last-Chance Agreement" may be put into place to offer one last chance to comply with City standards, behavior, or other area of correction. This agreement is signed by both the employee and manager and signifies that if compliance is not met, the employee will be terminated. This agreement is usually accompanied by a "Letter of Expectations" to clearly outline expectations of compliance with the agreement.
5. Termination – Termination decisions are confirmed in writing for the personnel file. The terminated employee also receives a copy.

In all cases, City of Molalla will determine the nature and extent of any discipline based upon the circumstances of each individual case and, where applicable, collective bargaining agreement provisions. City of Molalla may proceed directly to a written warning, demotion, last chance agreement, or termination for misconduct or performance deficiency, without any prior disciplinary steps, when City of Molalla deems such action appropriate. City of Molalla retains the right to terminate any employee's employment at any time and for any reason, with or without advance notice or other prior disciplinary action (other than those employees who are subject to a collective bargaining agreement or contract of employment).

All employees (including probationary or introductory employees) may seek to have the City Manager review any discipline or corrective action imposed on them by the City of Molalla. In order to avail oneself of this review, an employee must present a written appeal to the City Manager within five days after the discipline that is the basis of the appeal. The City Manager will then meet with the employee within five business days of receiving the appeal and attempt to resolve the issue. Within five business days of that meeting, the City Manager will prepare a written decision to the employee that addresses the appeal.

#### B. Retirement or Resignation from Employment

If you choose to resign or retire, it is anticipated that you will give City of Molalla as much notice as possible — preferably a minimum of at least (10) workdays before

departure, and (30) days before departure for supervisors and management-level personnel. When giving your two-weeks' notice, vacation, personal, or sick days should not be used in lieu of notice. If you do not give two-weeks' notice of your intent to leave City of Molalla, you will not be eligible for re-employment at a later date.

Employees who miss three or more consecutive workdays without contacting their immediate supervisor are typically considered to have resigned their employment.

If the employee's decision to resign is based on a situation that could be corrected, the employee is encouraged to discuss it with the Human Resource department before making a final decision.

Employees must return all City of Molalla property including key fob's/keys, ID cards, cell phones, tools, software, computers, credit cards, uniforms and any other items in your possession that are the property of the City of Molalla to their supervisors on or before their last day of work.

### C. References

All requests for references or recommendations must be directed to the Human Resource department. No manager, supervisor or employee is authorized to release references for current or former employees. Managers and supervisors are expressly prohibited from providing LinkedIn "recommendations" or using a website on the internet to discuss a current or former employee's performance or termination of employment.

By policy, City of Molalla discloses only the dates of employment and position(s) held of former employees. Former employees who authorize additional disclosures must make a request to do so in writing.

Acknowledgment of Receipt of 2022 Personnel Policy Handbook

I acknowledge that I have received and will read a copy of City of Molalla's 2023 Personnel Policy Handbook. I also understand that a copy of the Personnel Policy Handbook is available to me at any time to review in the Human Resource Department and on the City's Website.

I understand that City of Molalla has adopted the Personnel Policy Handbook only as a general guide about policies, work rules and the work environment, and that they are subject to change at any time in City of Molalla's sole discretion. I also understand that the Personnel Policy Handbook has control over any other contradictory statements, other than those found in applicable collective bargaining agreements. I acknowledge that the Personnel Policy Handbook is not an employment contract and is not intended to give me any express or implied right to continued employment or to any other term or condition of employment.

I understand that either City of Molalla or I may terminate my employment relationship at any time, for any lawful reason, with or without cause, and with or without notice, unless my employment is covered under a collective bargaining agreement. Other than promises that may be found in that collective bargaining agreement, I acknowledge that no promises have been made to me that are inconsistent with this "at will" statement.

I have reviewed or will review City of Molalla's policies regarding equal employment opportunity and that the City of Molalla aims to provide a workplace free of harassment and discrimination. I will bring any questions or concerns I have regarding equal employment opportunities, discrimination, retaliation, or harassment to Human Resources, or any trusted manager or supervisor.

During my employment with City of Molalla, I understand that it is my responsibility to remain informed about the policies as revisions, updates and new polices are issued, and to ask questions about any interpretation of any of the policies.

I have read this acknowledgement carefully before signing.

\_\_\_\_\_

Employee Signature

\_\_\_\_\_

Date

The original of this signature page will be kept in the Employee's personnel file.



City of Molalla – Administration Office  
117 N Molalla Avenue, PO Box 248, Molalla, Oregon 97038  
Phone: (503) 829-6855 Fax: (503) 829-3676

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Date: December 14, 2022  
To: Mayor and Council  
From: City Manager  
Subject: **City Manager 2022 Year End Report**

We (staff) tend to focus on the fiscal year regarding projects and reports so I thought I would provide a mid-year report/summary for Council. Since we will be losing Councilor Klein and gaining a new Councilor on January 1, 2023, it makes sense to have a year-end or for us a half year report.

Before I begin a summary, I would like to thank all Council members for representing this city with passion and commitment. We are blessed. We also would not be where we are today without the great staff you have graciously entrusted to me. These individuals work tremendously hard to bring effort and thought into everything we do in and for this community.

We have a goal setting session coming up at the end of January where we will discuss what we have accomplished and our expectations for next fiscal year. I will not be discussing everything we have been up to in this memo, just the cream of the crop:

**Civic Center** – We had a goal to finish the Council Chamber portion of the Civic Center and we have done that. We also have other plans for improvement, and we will get to those items over time.

**2<sup>nd</sup> Floor remodel in City Hall** – Complete and in full use.

**Strawberry Park/Fox Park Playgrounds** – These projects had delays due to weather and procurement of material but both playgrounds were open by the end of summer. It was great to see children (And, our Police Officers) using the new facilities.

**Highway 211/213 Improvements** – Multiple projects occurred on both Highway 213 and Highway 211/Main Street. These projects occurred from a combination of different providers; ODOT, ODOT in partnership with the City, developers, developers in partnership with the City, etc. As you already know there is more to come on this front over the next few years and all of it may be an inconvenience, but it will improve our community transportation system.



**Commercial/Residential Developments** – Community Development Staff have been busy keeping up with new projects all over town.

**Open Apps 12/1/22**

- Type I BP Apps – 7
- Type I Other Apps – 4
- Type II Apps – 4
- Type III Apps – 2
- Type IV Apps – 1
- Final Plat – 4
- Pre-Apps Pending - 3

**Approvals 1/01/22 – 12/1/22**

- Type I BP Apps – 20
  - Residential Units – 214
  - Com/Ind Sq Ft – 23,000
- Type I Other Apps – 93
- Type II Apps – 3
- Type III Apps – 14
- Type IV Apps – 0
- Final Plat – 0
- Pre-Apps Held - 12

**CODE ENFORCEMENT**

**1/1/22-12/01/22**

- New Complaints – 83
- Open Cases – 42
- Cases Closed – 52
  - No Violation – 11
  - Compliance – 19
  - Referred – 21
  - Exceptional - 1

**Public Projects Completed**

22-25 City Hall Police Department HVAC Emergency Replacement

22-15 Mercury TMDL Implementation

22-10 WWTP Interim Capacity Determination

22-06 Capital Improvement Plan and System Development Charge Updates

22-03 Shaver St at OR-211 Repair

22-01 City Hall Parking Lot Emergency Sewer Main Repair

21-14 City Hall Reader Board  
21-11 Fox Park Playground Equipment Replacement  
21-06 Scandia Waterline Replacement  
21-04 City Hall Upstairs Remodel  
21-03 Water Rate Study, CIP & SDC Update  
20-07 Strawberry Park Phase I  
20-05 Clark Park Pathway Phase 4  
20-04 Shops/Elementary School/WWTP Waterline Replacement  
19-09 OR-211 & Molalla Ave Signal  
19-07 Molalla Forest Road Bike/Ped Bridge Phase 2  
17-04 OR-211 Walking Path

**Significant Land Use Projects Approved**

710 W Main St - Gas Station and Convenience Store  
820 W Main St – Burger King  
1522 W Main St – Dairy Queen  
720 W Main St – Clackamas Federal Credit Union  
850 W Main St – Goodwill  
31330 S Hwy 213 – Starbucks  
1000 W Main – 60 Unit Affordable Housing  
12763 Cromptons Ln – 12 Units Multi-Family (Colima Phase II)  
200/201 S Leroy Ave – 150 Unit Multi-Family (Cascade Place)

**Wastewater** – We are moving forward with general design of the new Wastewater Treatment Plant and expect that project to meet timelines of being operational in 2024.

**Water** – We have made headway in reducing water loss by detecting and repairing leaks throughout town. One major leak repair was completed north of Bi-Mart that amounted to approximately 18% of our total water loss. We are currently working on the Eckard, Lola and 2<sup>nd</sup> water and sewer repair that will not only improve water delivery, but it is also another project that will reduce I&I in our City.

**Police Facility** – Progress toward the eventual construction of a new Police Facility is continuing. Each part has been time consuming but hopefully will get us to a GO Bond election in 2023 pursuant to Council approval.

**Municipal Court/Day Court/DUI processing locally** - December of 2022.

**Insurance Change Over** – June of 2022

**Union Negotiations** – Completed November of 2022

**Enterprise Zone Expansion** – Completed November of 2022

**2022 Elections processing** – Local processing completed prior to election.

**Personnel Policy update** – Completed November 2022

**New Book Mobile** – City received delivery in August 2022

**New Street Sweeper** – City received delivery in November 2022

**Community Event Expansion** – We have seen an uptick in numbers for 2022 events

**DLCD – Housing Needs** – Draft complete in November of 2022

**Kiosk Grant – Art Contest and Map** – Completed in August of 2022

**New Councilor Orientation and Integration**

**Future/Next year**

Police Facility – Continued effort moving forward

Park Improvements – Larger projects as well as finding smaller projects such as Pickleball Courts

Staffing Decisions:

Compliance Officer

HR/ Finance

Urban Growth Boundary process – Continued effort in a Sequential UGB expansion process.

Molalla Forest Road – We are continuing this effort to pursue multiple options here.

Park Master Plan Update

Emergency Management Plan Update

Storm Water Master Plan

Dan Huff  
City Manager