



**AGENDA**

**MOLALLA CITY COUNCIL MEETING**  
**March 11, 2020**  
**7:00 PM**  
**Molalla Adult Center**  
**315 Kennel Ave, Molalla, OR 97038**

*Mayor Keith Swigart*

*Council President Leota Childress*  
*Councilor Elizabeth Klein*  
*Councilor DeLise Palumbo*

*Councilor Terry Shankle*  
*Councilor Jody Newland*  
*Councilor Crystal Robles*

---

**1. CALL TO ORDER AND ROLL CALL**

**2. FLAG SALUTE**

**3. PRESENTATIONS, PROCLAMATIONS, CEREMONIES**

- A. Swearing -In of Police Officers (Schoenfeld)
- B. Budget Committee Appointment (Huff).....Pg. 3

**4. PUBLIC COMMENT**

*(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.)*

**5. APPROVAL OF THE AGENDA**

**6. CONSENT AGENDA**

*(This section allows the City Council to consider routine items that require no discussion and can be approved in one comprehensive motion. An item may only be discussed if it is pulled from the consent agenda.)*

- A. Meeting Minutes – February 26, 2020.....Pg. 5
- B. Meeting Minutes – February 12, 2020 (revised).....Pg. 11
- C. On Premise Liquor License Request : Bear Creek Pub & Pizza (Huff).....Pg. 15

**7. PUBLIC HEARINGS**

- A. Ordinance No. 2020-02: Revision to Chapter 13. 02 Utility Code (Fisher).....Pg. 22
- B. Ordinance No. 2020-03: Revision to Chapter 13.08 Sanitary Sewers (Fisher).....Pg. 25
- C. Ordinance No. 2020-04: Revision to Chapter 13.12 Sewer & Water Main Extensions.....Pg. 60
- D. Ordinance No. 2020-05: Revision to Chapter 13.13 Surface Water Management (Fisher).....Pg. 62

**8. ORDINANCES AND RESOLUTIONS**

- A. Ordinance No. 2020-02: Revision to Chapter 13. 02 Utility Code – First Reading (Fisher).....Pg. 22
- B. Ordinance No. 2020-03: Revision to Chapter 13.08 Sanitary Sewers – First Reading (Fisher)..Pg. 25
- C. Ordinance No. 2020-04: Revision to Chapter 13.12 Sewer and Water Main Extensions – First Reading (Fisher).....Pg. 60
- D. Ordinance No. 2020-05: Revision to Chapter 13.13 Surface Water Management – First Reading (Fisher).....Pg. 62
- E. Resolution No. 2020-04: Oregon Transportation Investment Bank (OTIF) Loan (Huff).....Pg. 83

**9. GENERAL BUSINESS**

**10. REPORTS**

- A. City Manager and Staff
- B. Mayor
- C. City Councilors

**11. ADJOURN**

---

*Agenda posted at City Hall, Library, and the City Website at <http://www.cityofmolalla.com/meetings>. This meeting location is wheelchair accessible. Disabled individuals requiring other assistance must make their request known 48 hours preceding the meeting by contacting the City Recorder's Office at 503-829-6855.*

# City of Molalla

## City Council Meeting



### Agenda Category: Presentations, Proclamations, and Ceremonies

**Subject:** Appointment to Budget Committee

**Recommendation:** Council Approval

**Date of Meeting to be Presented:** March 11, 2020

**Fiscal Impact:** None

**Background:**

The Budget Committee has a vacant seat currently. Mr. Robert Thompson has submitted an application to fill the position.

Staff recommends Mr. Thompson for the Budget Committee.

Recommended Motion: That Mr. Thompson be assigned to the Budget Committee.

**SUBMITTED BY:** Dan Huff, City Manager  
**APPROVED BY:** Dan Huff, City Manager



City of Molalla
Application for Appointment to Citizen
Committee/Board/Commission/Council

Date: 3/3/20

How long have you resided in the City: 8 YRS

Committee/Board/Commission/Council position of interest: BUDGET COMMITTEE

Name: ROBERT THOMPSON

Address: 109 RIDINGS AVE

State/Province: OR Zip/Postal Code: 97038

Home Phone: Work Phone: SAME

\*E-Mail ROBTREALTY@gmail.com

Current or Previous Community Affiliations or Activities:

Empty table for community affiliations

Why would you like to serve on this Committee/Board/Commission/Council and give any other background you might have in this area.

INVOLVEMENT w/ CITY
CREATING BUDGETS FOR SM-MD BUDGET BUSINESSES

If applying for re-appointment to this Committee/Board/Commission/Council/Task Force, please indicate what has been the key accomplishment of the group during your service.

NA

If you could make any improvement to the Commission/Board/Committee/Task Force, what would it be?

Empty table for improvement suggestions

\*Signature:

Handwritten signature of Robert Thompson

117 Molalla Ave/PO Box 248 Molalla Oregon 97038
Ph: 503.829.6855 Fax: 503.829.3676 www.cityofmolalla.com

REV: 02/14/2019 Citizen Application - City Recorder

Email back to: cityrecorder@cityofmolalla.com

RECEIVED
MAR 03 2020
BY: [Signature]



## Minutes of the Molalla City Council Regular Meeting

Molalla Adult Community Center  
315 Kennel Ave., Molalla, OR 97038  
February 26, 2020

---

### 1. CALL TO ORDER AND FLAG SALUTE

*The Molalla City Council Regular Meeting was called to order by Mayor Keith Swigart at 7:01pm.*

### 2. ROLL CALL

#### **COUNCIL ATTENDANCE:**

Mayor Keith Swigart – Present  
Councilor Elizabeth Klein – Present  
Councilor Leota Childress – Present  
Councilor DeLise Palumbo – Absent  
Councilor Terry Shankle – Present  
Councilor Jody Newland - Present  
Councilor Crystal Robles - Present  
Student Liaison Natalee Litchfield - Present

#### **STAFF IN ATTENDANCE**

Dan Huff, City Manager - Present  
Christie DeSantis, City Recorder - Present  
Gerald Fisher, Public Works Director - Present  
Chaunee Seifried, Finance Director - Absent  
Alice Cannon, Planning Director - Absent

### 3. PRESENTATIONS, PROCLAMATIONS, CEREMONIES

### 4. PUBLIC COMMENT

*(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.)*

### 5. APPROVAL OF THE AGENDA

### 6. CONSENT AGENDA

*(This section allows the City Council to consider routine items that require no discussion and can be approved in one comprehensive motion. An item may only be discussed if it is pulled from the consent agenda.)*

- A. Meeting Minutes – February 12, 2020
- B. Resolution Number 2020-02: Budget Transfer for FY 2019-2020; Update to Resolution Number 2020-03: Budget Transfer for FY 2019-2020

***A motion was made by Councilor Newland to approve the Consent Agenda, seconded by Councilor Shankle. Vote passed 6-0.***

### 7. PUBLIC HEARINGS

### 8. GENERAL BUSINESS

- A. Revision to Chapter 13.02 Utility Payments for Public Services (Fisher)
- B. Revision to Chapter 13.08 Sanitary Sewers (Fisher)
- C. Revision to Chapter 13.12 Sewer and Water Main Extensions (Fisher)
- D. Revision to Chapter 13.13 Surface Water Management (Fisher)

Public Works Director Fisher presented Council with four code revisions that need to be amended in order to align with current standards.

Chapter 13.02 Utility Payments for Public Services; recognized Water, Sewer, and Storm Water utility. In reviewing Code language, it was determined that code was not saying that sewer had the same rules in place as water, and storm was impeded partially with sewer and had its own category. Staff created language so that each would become its own distinct utility.

Chapter 13.08 Sanitary Sewers; there are two main changes. The first goal is to create sewer customer classes; Residential, Commercial 1, 2, 3, and 4, and Industrial. Each class has a concentration effect on the WWTP.

There was brief discussion about classifications for churches and schools, Mr. Fisher described the criteria for each. Councilor Newland appreciated that the City is working to anticipate what sort of establishments that we could expect in the future. Mr. Fisher explained that all Commercial businesses will be closely monitored.

Chapter 13.12 Sewer and Water Main Extensions; are requirements for developers to extend services to the end of their properties. There is a provision for folks that live in the City, but do not receive City services. This is a requirement in most Cities.

Chapter 13.13 Surface Water Management; until now, there hasn't been Surface Water Management Code in place. A few items have been imbedded with other parts of Code, but it is time for Surface Water to have rules of its own. DEQ requires permits, including the City being required for specific projects. The importance of this Code update specifically identifies that folks have proper discharge permits from DEQ (1200C Permit). If they do not, the City has the force of the Code to stop the illegal discharge that is taking place. The 1200C Permit is an Erosion Sediment Control Permit provided through DEQ.

As an aside, Mayor Swigart asked Mr. Fisher if he had heard anything regarding the Pipe Bill being brought forward. Mr. Fisher reported that the Bill is dead. There was overwhelming opposition with the Bill. The Bill was taking control away from local agencies for engineers to make the decisions for what is best for their City.

***A motion was made by Councilor Newland for staff to bring the revisions to Council in Ordinance form, seconded by Councilor Robles. Vote passed 6-0.***

## 9. REPORTS

### A. City Manager and Staff

Public Works Director Fisher – ODOT is moving forward with the signal project that is coming soon to Molalla. A signal is needed at Molalla Avenue and Main Street. Left turn pockets will need to be made. Through this design review process, it is noted that there is 12,500 cars going east to west on OR211 each day, and it continues to grow. ODOT met with the Fire Department and Fire Marshall in regards to what requirements will be needed.

Once the signal is in place, the question of trucks will have to be revisited. The TSP identifies a route around Molalla Avenue once the signal is in, as this is separate from the signal project. An Ordinance will have to be adopted that does not allow through trucks on Heintz through Section.

City Recorder DeSantis – Nothing to report.

City Manager Huff – Attended a Kiwanis meeting where he had a chance to present the Molalla Area Vision and Action Plan 2030. He appreciated that Ken Fetters, owner of The Main Shop, was there to talk with the group about the Community Program Committee relating to the Vision Plan.

B. Mayor

Mayor Swigart sent an email to Representative Lewis regarding the Cap and Trade Bill. Republicans have not been in Senate, as they want this Bill taken to the voters in November.

C. City Councilors

Council President Childress spoke with a group from Plaza Los Robles in hopes to create better community involvement from the Hispanic Community.

Celebrate Molalla planners will begin meeting on Monday, March 2<sup>nd</sup> at 10:00am at City Hall. The celebration date has been scheduled for September 19, 2020.

Councilor Klein shared her excitement about the Public Works Facility, as she had toured the new Shops. She feels this will be a huge asset to our community.

Councilor Klein and Bill Flood will be meeting with MHS Leadership in March, to review the adopted Vision and Action Plan. Councilor Klein is looking forward to meeting with the students.

Councilor Newland – Nothing to report.

Councilor Shankle – Nothing to report.

Councilor Robles – Nothing to report.

Student Liaison Litchfield shared that students are preparing for Finals. There was a Unified Basketball game held during the week, our students competed against Oregon City. Molalla FFA Members competed in Sectionals in Burns recently. Two students will be competing at the State level for Job Interview Competition, Miss Litchfield and one other student. The Share the Love event raised a total of \$147,695. Three families will benefit from the proceeds.

10. ADJOURN

***A motion was made by Councilor Klein to adjourn the meeting at 7:47pm, seconded by Councilor Robles. Vote passed 6-0.***

\_\_\_\_\_  
Keith Swigart, Mayor

\_\_\_\_\_  
Date

ATTEST: \_\_\_\_\_  
Christie DeSantis, City Recorder



**Public Works Department**

117 N Molalla Avenue

PO Box 248

Molalla, Oregon 97038

Phone: (503) 829-6855

Fax: (503) 829-3676

**February 26, 2020**

TO: Dan Huff, City Manager

FROM: Gerald Fisher, Public Works Director

CC: Christie DeSantis, City Recorder

**RE: Project Update for Public Works**

The following is a list of public and private projects currently underway or in process.

**Administrative Projects Underway**

1. Staff is working on several individual home construction permits, pre-application projects for new developments, policy and procedure updates, and other improvements to the department.
2. Municipal Code Update – Staff continuing to work on rewrite of MMC Chapter’s 10, 12, 13, and 21 as time allows.
3. Street Sign Replacement Program – Crews will be working on local streets as time allows.
4. ODOT ADA Ramp Replacements – No additional updates from ODOT at this time. Construction still tentatively scheduled for Summer 2020.
5. ODOT Crosswalk Locations – Staff is waiting on a response from ODOT regarding an IGA.

**Public Capital Projects Underway**

6. 16-07 Shops Facility Improvements – Occupancy received and contractor working on last of the punchlist items.
7. 17-04 OR 211 Bike & Ped Pathway – Right of Way anticipated closeout on 05/01/20. Bidding scheduled and bid opening on 07/09/20. Anticipate construction of pedestrian path to start sometime in late Summer 2020.
8. 17-15 WTP New Trident 2MGD Filtration Plant, Chemical & Telemetry Upgrades –Filter unit is in place and contractor is working on piping and other aspects of the project. The new filtration unit is scheduled to be up and running sometime in May. Anticipate completion during the Summer of 2020.
9. 18-04 WWTP Biosolids Removal – The contractor has mobilized to the site and started processing biosolids. Staff anticipates full production by May 1<sup>st</sup> and shut down at the end of July. Staff is also working to repair 40-year-old valves in the lagoons that have failed.
10. 18-06 WWTP New Headworks Screen – Project completed.
11. 18-08 Hwy 213 & Hwy 211 Safety Improvements – Waiting on ODOT to deliver project sometime in 2021. The City’s match is \$10,013 or 7.78%.



12. 18-08 Hwy 213-Toliver Roundabout – Staff reviewing loan agreement. Project currently in design and anticipate construction in Spring of 2023.
13. 18-09 WWTP Permit Extension – Staff still waiting to receive a response back on approved extension application and are continuing to operate under the existing permit as modified by the MAO.
14. 18-11 Trout Creek Water Right Transfer – Project to begin at conclusion of project 18-12.
15. 18-12 Trout Creek Monitoring Station – Flow monitoring underway and will continue thru the Summer of 2020. Anticipate project completion by December 2020.
16. 18-17 Phase 1 Project 7 Fenton Avenue Sewer and Water Improvements – Closeout with attorney anticipated by mid-March.
17. 19-02 Water Master Plan & Water Management & Conservation Plan – Draft Chapters 1 through 7 posted to the website. TAC/PAC meetings scheduled for 04/20/2020 and 08Aug 2020. Planning Commission and City Council hearings scheduled for the end of 2020. Contract amended to include Risk Assessment and Emergency Response Plan update beginning in July 2020. This plan addition is an EPA recommendation that will soon become a requirement. Staff will be working on the update to complete prior to EPA requirements taking effect.
18. 19-03 City Hall Remodel Ph 3 – Design of office spaces to begin in FY 20/21.
19. 19-05 Consent Decree Compliance Reporting – The fourth quarterly meeting was on 12/04/19. Violations for ammonia in November and December and BOD in January. Next quarterly meeting rescheduled for 04/01/20. Staff is monitoring and adjusting plant operations based on upsets due to yearly biosolids removal.
20. 19-07 MFR Ped Bridge (P42) – Received all permits for in water work period during Summer 2020. Anticipate intermediate procurement bid in March and construction from June through August. The first phase of this project will happen during construction of improvements on OR-211. Design of bridge structure and pathway improvements to begin in FY 20-21.
21. 19-08 SCTD Master Plan – Project completed.
22. 19-09 OR 211-Molalla Ave Signal – Design of the signal is underway as part of the conditions for Project 19-04 Cascade Center listed below. Developer plans to construct in summer of 2020. Construction will require the closure of Molalla Avenue for one block in each direction for staging of construction and night work will be allowed. Actual construction dates are still to be determined. Staff anticipates detour routing during construction. It is unlikely that closures will take place during the 4<sup>th</sup> of July events. Once staff has firm dates for construction then we will notify community through website and Facebook. Businesses will be contacted later this spring regarding potential impacts to downtown. This project is a high priority intersection safety project in the TSP. Closure of through truck traffic will likely coincide with construction in accordance with the TSP.
23. 19-10 WWTP Upgrade – Contract awarded for Value Analysis and the workshop is scheduled for 03/10/20.
24. 19-11 Molalla Ave Intersection Improvements (5<sup>th</sup> & Heintz) – Design underway for improvements to Molalla Ave-5<sup>th</sup> Street and Molalla Avenue-Heintz Street intersections. As part of TSP projects M29 and M30 to complete pedestrian crosswalk markings, all-way stops, and turn pockets in north-south directions. Anticipate construction completion in Summer 2020.

25. 19-12 Phase 1 Project 2 Patrol Street Sewer and Water Improvements – Project advertised for bids on 02/26/20. Bid opening scheduled for 03/25/20 and City Council award on 04/22/20. Construction to begin by June 2020.

**Public Capital Projects Not Started**

26. 18-14 Decant Facility – Project design will begin in FY 20-21. This project will provide a dewatering station for street sweeping and vector debris prior to disposal.
27. Shops Waterline Replacement – Project design will begin in FY 20-21 and will replace pre-1950's waterline providing service to the shops facility and elementary school.
28. Creamery Creek Park – Project design will begin in FY 20-21. As part of Lexington Estates Phase 3, the developer dedicated an 11,011 square foot parcel to the City for park use.

**Private Projects Underway**

29. 17-17 Hezzie Lane Subdivision – Preliminary Notice of Violation sent to the developer demanding conditions of approval for OR 211 improvements be completed. If developer does not move forward with the improvements, then the issue will be turned over to Code Enforcement and the City Prosecutor.
30. 17-20 Sawyer's Truck Repair – Contractor working on stormwater and frontage improvements.
31. 18-16 Tractor Supply Store – Staff waiting for developer to complete requirements for temporary access and frontage improvement agreements with ODOT in order to issue a release on Certificate of Occupancy.
32. 19-04 Cascade Center – 1<sup>st</sup> plan review underway.
33. 19-13 Dollar General – Waiting for submittal of revised plans from developer.

With ongoing work at both treatment plants as well as moving into the new PW Shops Facility, there is no Operations report for this month. A report will be provided in next month's update. Thank you and let me know if you have any questions.

# City of Molalla

## City Council Meeting



### Agenda Category: Consent Agenda

**Subject:** Meeting Minutes – February 12, 2020

**Recommendation:** Council Approval

**Date of Meeting to be Presented:** March 11, 2020

**Fiscal Impact:** None

**Background:**

The vote to approve Resolution 2020-03 was not recorded in the previous meeting minutes. Staff recognized this error and corrected it in the attached revised minutes.

**SUBMITTED BY:** Christie DeSantis, City Recorder  
**APPROVED BY:** Dan Huff, City Manager



## Minutes of the Molalla City Council Regular Meeting

Molalla Adult Community Center  
315 Kennel Ave., Molalla, OR 97038  
February 12, 2020

### 1. CALL TO ORDER AND FLAG SALUTE

*The Molalla City Council Regular Meeting was called to order by Mayor Keith Swigart at 7:00pm.*

### 2. ROLL CALL

#### COUNCIL ATTENDANCE:

Mayor Keith Swigart – Present  
Councilor Elizabeth Klein – Present  
Councilor Leota Childress – Absent  
Councilor DeLise Palumbo – Present  
Councilor Terry Shankle – Present  
Councilor Jody Newland – Present  
Councilor Crystal Robles - Present  
Student Liaison Natalee Litchfield - Absent

#### STAFF IN ATTENDANCE

Dan Huff, City Manager - Present  
Christie DeSantis, City Recorder - Present  
Gerald Fisher, Public Works Director - Present  
Chaunee Seifried, Finance Director - Present  
Alice Cannon, Planning Director - Present  
Spencer Parsons, Legal Counsel - Present

### 3. PRESENTATIONS, PROCLAMATIONS, CEREMONIES

None.

### 4. PUBLIC COMMENT

*(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.)*

None.

### 5. APPROVAL OF THE AGENDA

### 6. CONSENT AGENDA

*(This section allows the City Council to consider routine items that require no discussion and can be approved in one comprehensive motion. An item may only be discussed if it is pulled from the consent agenda.)*

A. Meeting Minutes – January 22, 2020

***A motion was made by Councilor Klein to approve the Consent Agenda, seconded by Councilor Newland. Vote Passed 6-0.***

### 7. PUBLIC HEARINGS

None.

### 8. GENERAL BUSINESS

A. Resolution 2020-03: Budget Transfer for FY 2019-2020

Finance Director Seifried explained to Council that this resolution adjusts the budget for unforeseen events including unanticipated costs or additional unanticipated revenue.

***A motion was made by Councilor Newland to Adopt Resolution Number 2020-03, seconded by Councilor Robles. Vote passed 6-0.***

## **9. REPORTS**

- A. City Manager and Staff
- B. Mayor
- C. City Councilors

Planning Director Cannon deferred her report to City Manager Huff.

Finance Director Seifried announced to Council that two additional Budget Committee members are needed for this years budgeting process.

Public Works Director Fisher shared that the 2 million gallon filtration unit had been received at the Water Plant. At the shops, paving has been completed. Occupancy should be granted within the next ten days.

City Recorder DeSantis reminded Council of upcoming Budget Committee dates; April 23 and April 29, 2020. Applications for Appointment to a Committee/Commission are available on the website.

City Manager Huff informed Council that the next CHTC Hearing will be held on March 17, 2020 at 6:00pm. The City is looking for a different venue, in an effort to create more space for attendees.

Mayor Swigart has contacted to Representative Rick Lewis regarding the Cap and Trade Bill that is before the Senate right now. He is concerned about the effect of Molalla as a “commuter community”, as fuel prices will be dramatically increased. Mayor Swigart encouraged citizens to contact the legislature in protest.

Councilor Klein attended the Clackamas County Tourism Retreat for the future of tourism. Oregon Mt. Hood Territory is looking at different impacts, what is sustainable tourism, and managed growth in tourism. There was a lot of conversation around alternative lodging, as AirBnB’s are taking away from hotel activity. Councilor Klein also passed out the new Molalla Vision and Action Plan; which people were happy to see.

Councilor Palumbo – Nothing to report.

Councilor Newland shared that Share the Love events are in full swing. Her family attended the Cops vs. Firemen Basketball Game that had been held the previous evening. She encouraged the community to get involved in the many opportunities that Share the Love offers.

Councilor Shankle – Nothing to report.

Councilor Robles – Nothing to report.

## **10. RECESS INTO EXECUTIVE SESSION**

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

- (h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

***Mayor Swigart announced that Council would recess to Executive Session at 7:14pm.***

**11. RECONVENE REGULAR SESSION**

Regular Session reconvened at 7:45pm.

***Councilor Newland made a motion to authorized the City Attorney’s Office to initiate and take all legal actions necessary to enjoin and abate CHTC, Inc., the “Person in Charge” of the CHTC Property, and the “Person Responsible” for the CHTC Property from operating the facility in any manner that creates an offensive odor, including but not limited to abatement measures and injunctive relief, and to otherwise compel compliance with all applicable federal, state and local laws. Seconded by Councilor Klein. Vote passed 6-0.***

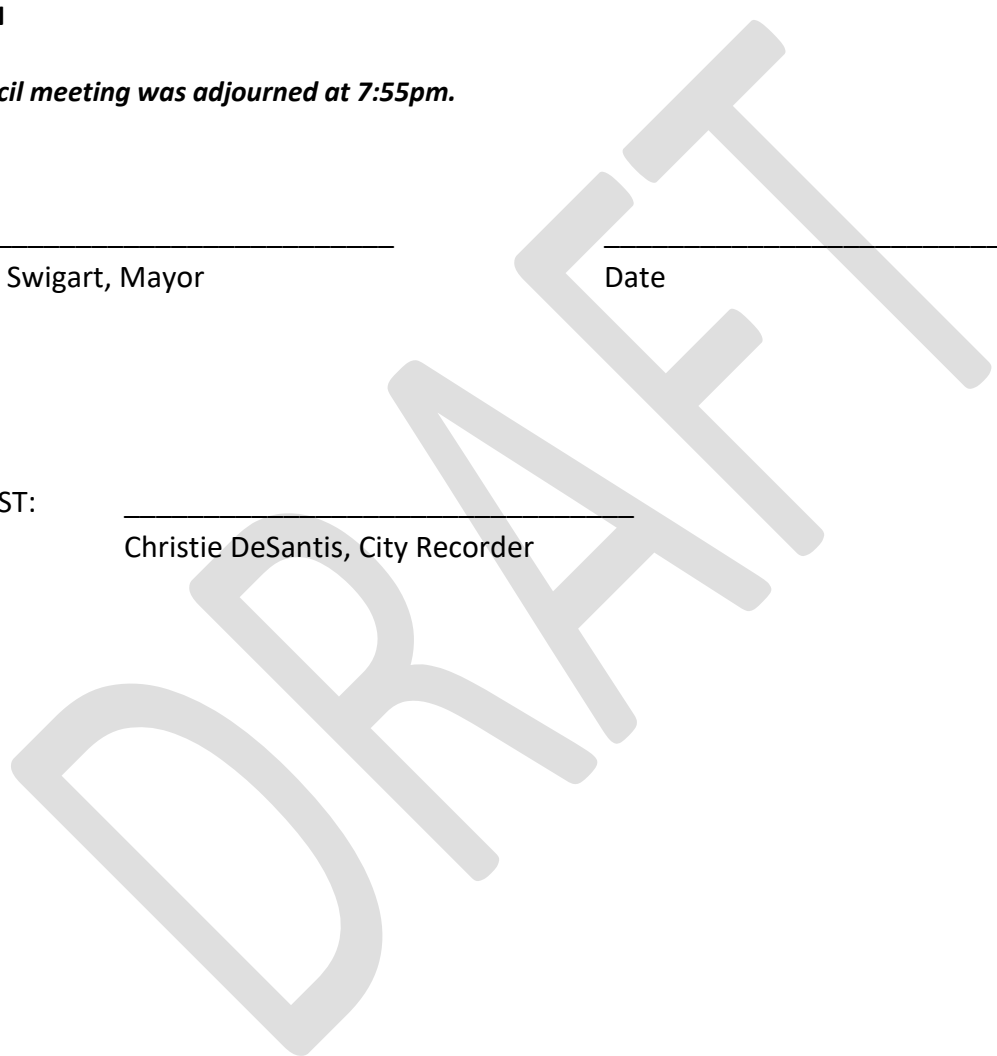
**12. ADJOURN**

***The Council meeting was adjourned at 7:55pm.***

\_\_\_\_\_  
Keith Swigart, Mayor

\_\_\_\_\_  
Date

ATTEST: \_\_\_\_\_  
Christie DeSantis, City Recorder





# LIQUOR LICENSE APPLICATION

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

License Applied For:	CITY AND COUNTY USE ONLY	
<input type="checkbox"/> Brewery 1st Location	Date application received and/or date stamp:  Name of City or County:  Recommends this license be: <input type="checkbox"/> Granted <input type="checkbox"/> Denied  By: _____ Date: _____	
<input type="checkbox"/> Brewery 2nd Location		
<input type="checkbox"/> Brewery 3rd Location		
<input type="checkbox"/> Brewery-Public House 1st Location		
<input type="checkbox"/> Brewery-Public House 2nd Location		
<input type="checkbox"/> Brewery-Public House 3rd Location		
<input type="checkbox"/> Distillery		
<input checked="" type="checkbox"/> Full On-Premises, Commercial		
<input type="checkbox"/> Full On-Premises, Caterer		
<input type="checkbox"/> Full On-Premises, Passenger Carrier		
<input type="checkbox"/> Full On-Premises, Other Public Location		
<input type="checkbox"/> Full On-Premises, For Profit Private Club		
<input type="checkbox"/> Full On-Premises, Nonprofit Private Club		
<input type="checkbox"/> Grower Sales Privilege 1st Location		
<input type="checkbox"/> Grower Sales Privilege 2nd Location		
<input type="checkbox"/> Grower Sales Privilege 3rd Location		
<input type="checkbox"/> Limited On-Premises		<b>OLCC USE ONLY</b> Date application received: <u>2/6/2020</u> By: <u>Jan Z.</u> License Action(s):  <u>N/O</u>
<input type="checkbox"/> Off-Premises		
<input type="checkbox"/> Off-Premises with Fuel Pumps		
<input type="checkbox"/> Warehouse		
<input type="checkbox"/> Wholesale Malt Beverage & Wine		
<input type="checkbox"/> Winery 1st Location		
<input type="checkbox"/> Winery 2nd Location		
<input type="checkbox"/> Winery 3rd Location		
<input type="checkbox"/> Winery 4th Location		
<input type="checkbox"/> Winery 5th Location		

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

CJVAN LLC \_\_\_\_\_  
 (Applicant #1) (Applicant #2)

\_\_\_\_\_  
 (Applicant #3) (Applicant #4)

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

Bear Creek Pizza and Pub

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

111 E Main St

City <u>Medalla</u>	County <u>Clackamas</u>	Zip Code <u>97038</u>
------------------------	----------------------------	--------------------------



# LIQUOR LICENSE APPLICATION

5. Trade Name of the Business (Name Customers Will See) <i>Bear Creek Pizza and Pub</i>			
6. Does the business address currently have an OLCC liquor license? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
7. Does the business address currently have an OLCC marijuana license? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
8. Mailing Address/PO Box, Number, Street, Rural Route (where the OLCC will send your mail) <i>P.O. Box 1347</i>			
City <i>Molalla</i>	State <i>OR</i>	Zip Code <i>97038</i>	
9. Phone Number of the Business Location <i>503) 829-3111</i>		10. Email Contact for this Application	
11. Contact Person for this Application <i>Christina Mae Van</i>			Phone Number
Contact Person's Mailing Address (if different)	City	State	Zip Code

Please note that liquor license applications are public records. A copy of the application will be posted on the OLCC website for a period of several weeks.

I understand that marijuana (such as use, consumption, ingestion, inhalation, samples, give-away, sale, etc.) is **prohibited** on the licensed premises.

I attest that all answers on all forms, documents, and information provided to the OLCC are true and complete.

### Applicant Signature(s)

- Each individual person listed as an applicant must sign the application.
- If an applicant is an entity, such as a corporation or LLC, at least one person who is authorized to sign for the entity must sign the application.
- A person with the authority to sign on behalf of the applicant (such as the applicant's attorney or a person with power of attorney) may sign the application. If a person other than an applicant signs the application, please provide proof of signature authority.

\_\_\_\_\_  
(Applicant#1)

\_\_\_\_\_  
(Applicant#2)

\_\_\_\_\_  
(Applicant#3)

\_\_\_\_\_  
(Applicant#4)





# OREGON LIQUOR CONTROL COMMISSION LIMITED LIABILITY COMPANY QUESTIONNAIRE

Please Print or Type

LLC Name: CJ VAN Year Filed: 2020

Trade Name (dba): Bear Creek Pizza and Pub

Business Location Address: 111 E Main St

City: Molalla ZIP Code: 97038

### List Members of LLC:

### Percentage of Membership Interest:

1. Christina M Van  
(managing member)

50%

2. Jayne M Van  
(members)

50%

3. \_\_\_\_\_

\_\_\_\_\_

4. \_\_\_\_\_

\_\_\_\_\_

5. \_\_\_\_\_

\_\_\_\_\_

6. \_\_\_\_\_

\_\_\_\_\_

(Note: If any LLC member is another legal entity, that entity must also complete an LLC, Limited Partnership or Corporation Questionnaire. If the LLC has officers, please list them on a separate sheet of paper with their titles.)

Server Education Designee: Christina M Van DOB: 09/15/1977

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Signature: \_\_\_\_\_ Date: 1-30-20  
(name) (title)

16. Do you, or any legal entity that you are a part of, **currently hold** or **have previously held** a liquor license or a recreational marijuana license in Oregon or another U.S. state? (Note: alcohol service permits and marijuana worker permits are not liquor licenses).

No  Yes (Please include explanation below)  Unsure (Please include explanation below)

17. Have you, or any legal entity that you are a part of, **ever had** an application for a license, permit, or certificate **denied or cancelled** by the OLCC or any other governmental agency in the U.S.?

No  Yes (Please include explanation below)  Unsure (Please include explanation below)

18. Are you applying for a Full On-Premises, Limited On-Premises, Off-Premises, or Brewery-Public House license?

No Please skip questions 19 & 20. Go directly to question 21.

Yes Please answer questions 19, 20, and 21.

19. Do you or will you have any ownership interest in a business that manufactures, wholesales, or distributes alcohol in Oregon or another U.S. state?

No  Yes (Please include explanation below)  Unsure (Please include explanation below)

20. Does or will an alcohol manufacturer, wholesaler, or distributor in Oregon or another U.S. state have any ownership interest in your business?

No  Yes (Please include explanation below)  Unsure (Please include explanation below)

21. Do you currently have, or will you have, any ownership interest in any business in Oregon with a Full On-Premises, Limited On-Premises, Off-Premises, or Brewery-Public House license?

No  Yes (Please include explanation below)  Unsure (Please include explanation below)

You must sign your own form. Another person, like your attorney or a person with power of attorney, may not sign your form. I affirm that my answers are true and complete. I understand the OLCC will use the above information to check my records, including but not limited to, criminal history. I understand that if my answers are not true and complete, the OLCC may deny my license application.

Name: (LAST) <u>Van</u>	(FIRST) <u>Christina</u>	(MIDDLE) <u>MAE</u>
Signature: _____		Date: <u>1-30-20</u>



OREGON LIQUOR CONTROL COMMISSION

INDIVIDUAL HISTORY FORM *Jayne*

1. Name: (LAST) *Van* (FIRST) *Jayne* (MIDDLE) *M*

2. Other Names Used (Maiden, Etc.):

3. Do you have a Social Security Number (SSN) issued by the U.S. Social Security Administration?  
 Yes  No If yes, please provide your SSN:

**SOCIAL SECURITY NUMBER DISCLOSURE:** As part of your application for an initial or renewal license, Federal and State laws require you to provide your Social Security Number (SSN) to the Oregon Liquor Control Commission (OLCC) for child support enforcement purposes (42 USC § 666(a)(13) & ORS 25.785). If you are an applicant or licensee and fail to provide your SSN, the OLCC may refuse to process your application. Your SSN will be used only for child support enforcement purposes unless you indicate below.

Based on our authority under ORS 471.311 and OAR 845-005-0312(6), we are requesting your voluntary consent to use your SSN for the following administrative purposes only: to match your license application to your Alcohol Server Education records (where applicable), and to ensure your identity for criminal records checks. OLCC will not deny you any rights, benefits or privileges otherwise provided by law if you do not consent to use of your SSN for these administrative purposes (5 USC § 552(a).

Do you voluntarily consent to the OLCC's use of your SSN as just described?  Yes  No

4. Date of Birth (MM/DD/YYYY): 5. Contact Phone:

6. Driver License or State ID #: 7. State: *OR*

8. Residence Address:

9.

10.

11. Do you have a spouse or domestic partner?  Yes  No  
If yes, list his/her full name: *Christina Mae Van*

12. If yes to #11, will this person be involved in the management of, or have control over the business?  
 No  Yes

13. In the past 10 years, have you been **convicted** ("convicted" includes paying a fine) in Oregon or another U.S. state of driving a car with a suspended driver license or driving a car with no insurance?  
 No  Yes (Please include explanation below)  Unsure (Please include explanation below)

14. In the past 10 years, have you been **convicted** ("convicted" includes paying a fine) in Oregon or another U.S. state of a **FELONY**?  
 No  Yes (Please include explanation below)  Unsure (Please include explanation below)

15. Have you ever been in a drug or alcohol **diversion program** in Oregon or another U.S. state? A diversion program is where you are required, usually by the court or another government agency, to complete certain requirements in place of being convicted of a drug or alcohol-related offense.  
 No  Yes (Please include explanation below)  Unsure (Please include explanation below)

*NOCH* **CCH**  
*MD 2/12/20*

16. Do you, or any legal entity that you are a part of, currently hold or have previously held a liquor license or a recreational marijuana license in Oregon or another U.S. state? (Note: alcohol service permits and marijuana worker permits are not liquor licenses).

No  Yes (Please include explanation below)  Unsure (Please include explanation below)

17. Have you, or any legal entity that you are a part of, ever had an application for a license, permit, or certificate denied or cancelled by the OLCC or any other governmental agency in the U.S.?

No  Yes (Please include explanation below)  Unsure (Please include explanation below)

18. Are you applying for a Full On-Premises, Limited On-Premises, Off-Premises, or Brewery-Public House license?

No Please skip questions 19 & 20. Go directly to question 21.  
 Yes Please answer questions 19, 20, and 21.

19. Do you or will you have any ownership interest in a business that manufactures, wholesales, or distributes alcohol in Oregon or another U.S. state?

No  Yes (Please include explanation below)  Unsure (Please include explanation below)

20. Does or will an alcohol manufacturer, wholesaler, or distributor in Oregon or another U.S. state have any ownership interest in your business?

No  Yes (Please include explanation below)  Unsure (Please include explanation below)

21. Do you currently have, or will you have, any ownership interest in any business in Oregon with a Full On-Premises, Limited On-Premises, Off-Premises, or Brewery-Public House license?

No  Yes (Please include explanation below)  Unsure (Please include explanation below)

You must sign your own form. Another person, like your attorney or a person with power of attorney, may not sign your form. I affirm that my answers are true and complete. I understand the OLCC will use the above information to check my records, including but not limited to, criminal history. I understand that if my answers are not true and complete, the OLCC may deny my license application.

Name: (LAST)

*Van*  
Signatur

(FIRST)

*Jayne*

(MIDDLE)

*Mizah*

Date:

*2-10-20*



# OREGON LIQUOR CONTROL COMMISSION BUSINESS INFORMATION

Please Print or Type

Applicant Name: CJ Van LLC Phone: 503)943-9979

Trade Name (dba): Bear Creek Pizza and Pub

Business Location Address: 111 E Main St

City: Molalla ZIP Code: 97038

### DAYS AND HOURS OF OPERATION

#### Business Hours:

Sunday	<u>11 A</u> to <u>9 P</u>
Monday	<u>11 A</u> to <u>10 P</u>
Tuesday	<u>11 A</u> to <u>10 P</u>
Wednesday	<u>11 A</u> to <u>10 P</u>
Thursday	<u>11 A</u> to <u>10 P</u>
Friday	<u>11 A</u> to <u>11 P</u>
Saturday	<u>11 A</u> to <u>11 P</u>

#### Outdoor Area Hours:

Sunday	_____ to _____
Monday	_____ to _____
Tuesday	_____ to _____
Wednesday	_____ to _____
Thursday	_____ to _____
Friday	_____ to _____
Saturday	_____ to _____

The outdoor area is used for:

- Food service Hours: \_\_\_\_\_ to \_\_\_\_\_
- Alcohol service Hours: \_\_\_\_\_ to \_\_\_\_\_
- Enclosed, how \_\_\_\_\_

The exterior area is adequately viewed and/or supervised by Service Permittees.

\_\_\_\_\_ (Investigator's Initials)

Seasonal Variations:  Yes  No If yes, explain: \_\_\_\_\_

### ENTERTAINMENT

Check all that apply:

- Live Music
- Recorded Music
- DJ Music
- Dancing
- Nude Entertainers
- Karaoke
- Coin-operated Games
- Video Lottery Machines
- Social Gaming
- Pool Tables
- Other: \_\_\_\_\_

### DAYS & HOURS OF LIVE OR DJ MUSIC

Sunday	_____ to _____
Monday	_____ to _____
Tuesday	_____ to _____
Wednesday	_____ to _____
Thursday	_____ to _____
Friday	<u>7p</u> to <u>10p</u>
Saturday	<u>7p</u> to <u>10p</u>

### SEATING COUNT

Restaurant: \_\_\_\_\_ Outdoor: \_\_\_\_\_  
 Lounge: \_\_\_\_\_ Other (explain): \_\_\_\_\_  
 Banquet: \_\_\_\_\_ Total Seating: \_\_\_\_\_

<b>OLCC USE ONLY</b>	
Investigator Verified Seating: _____(Y) _____(N)	
Investigator Initials: _____	
Date: _____	

I understand if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: \_\_\_\_\_ Date: 1-30-20



**ORDINANCE NUMBER 2020 – 02**

**AN ORDINANCE OF THE CITY OF MOLALLA, OREGON  
REPEAL OF CHAPTER 13.02 UTILITY PAYMENT FOR PUBLIC  
SERVICES IN THE MOLALLA MUNICIPAL CODE AND REPLACE WITH  
REVISED CHAPTER 13.02 UTILITY CODE.**

**WHEREAS**, staff has reviewed and recommends under Title 13 Public Services that section 13.02 Utility Payments for Public Services be repealed in its entirety and a newly revised code section 13.02 Utility Code be codified into the Molalla Municipal Code; and

**WHEREAS**, the Molalla City Council reviewed the new code during its regularly scheduled meeting on February 26, 2020 and directed staff to prepare and Ordinance for adoption.

**Now, Therefore, the City of Molalla does ordain as follows:**

Section 1. Chapter 13.02 Utility Payment for Public Services be repealed and replaced with Chapter 13.02 Utility Code herein attached.

Section 2. Effective date. The effective date of the code revision will take place thirty (30) calendar days after adoption of the Ordinance.

Read the first time on **March 11, 2020** and moved to second reading by \_\_\_\_\_ vote of the City Council.

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

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

\_\_\_\_\_  
Keith Swigart, Mayor

ATTEST:

\_\_\_\_\_  
Christie DeSantis, City Recorder

## **Chapter 13.02 UTILITY CODE**

### **13.02.010 Utility Code.**

Chapters 13.02 through 13.16 MMC shall be known as the "Utility Code."

### **13.02.020 Exclusive control of utility systems and services by city.**

The City of Molalla has exclusive control of the water, sewer and stormwater management utility systems and services within the city limits, including all connections and contributions to the utility systems. It is prohibited for any person to install any service, connect to any system, discharge sewer or stormwater into the system, provide utility service or otherwise tamper or interfere with any part of the system without authorization from the city.

### **13.02.030 Jurisdiction and operation.**

The city may provide utility service to or receive utility service from any other utility service provider pursuant to an agreement authorized by the city council. Such agreements may include, but are not limited to:

- A. Sale or purchase of surplus water to or from any other municipal corporation, special district or utility company.
- B. Sale or purchase of treatment services to or from any other municipal corporation, special district or utility company.
- C. Provision of utility service within the city limits by any other municipal corporation, special district or utility company.

### **13.02.040 Payments for utility services.**

A. All charges for utility service shall be due and payable monthly on the date of mailing and become delinquent on the 16th of each month. A late fee set by resolution shall be assessed on any utility accounts, which become delinquent. After a customer's utility bill is delinquent, the Finance Director or designee shall mail to customer a notice stating:

1. That the utility bill is delinquent;
2. The amount necessary to cure the delinquency;
3. That the utility service to the property will be shut off 20 days after the date of the notice, unless the delinquency is paid in full.
4. After termination of utility service, the full account balance including the fees will be required before service can be restored. If notice is mailed as provided in this section, the City may shut off utility service to the property 20 days after mailing of the notice unless the total amount due is paid in full, but subject to the City's compliance with the options specified in subsection C.

B. Utility services disconnected for lack of payment of the utility bills will be assessed a disconnect/reconnect fee as set by resolution and shall not be restored until all past-due-bills, late fees, and any other utility charges or connection fees are paid in full.

C. 1. The customer may request in writing a one-time emergency extension of payment (not to exceed 10 days) to avoid service being shut off and a disconnect fee being charged. If customer defaults on this agreement the utility account will be shut off the morning after the agreement expires and a disconnect fee will then be charged.

2. Any customer may request a waiver of their late fee in writing providing no other late fees have been assessed in the prior 12 months.

3. A customer may appeal a notice of utility shut-off by filing a written request for an informal hearing with the City within 15 days after the date of mailing of the notice. The appeal shall be filed with the City Manager and shall specify the reasons for the appeal. If an appeal is so filed, utility service shall not be disconnected before the business day after the announcement of the result of the hearing. The informal hearing shall be held as soon as is practically possible before the City Manager or designee. The City shall provide the customer reasonable notice of the date of the hearing. The customer may be represented by an attorney at the hearing, and any probative evidence shall be admissible. The hearing officer may affirm, overrule, or modify the notice of utility shut-off, considering applicable law and the nature of any hardship of the customer.

D. All payments shall be made to the City either by mail, online bill pay, at the office of the City, placed in drop box, or such other place as the Council may from time to time designate.





**ORDINANCE NUMBER 2020 – 03**

**AN ORDINANCE OF THE CITY OF MOLALLA, OREGON  
REPEAL OF CHAPTER 13.08 SANITARY SEWERS IN THE MOLALLA  
MUNICIPAL CODE AND REPLACE WITH REVISED CHAPTER 13.08  
SANITARY SEWERS.**

**WHEREAS**, staff has reviewed and recommends under Title 13 Public Services that section 13.08 Sanitary Sewers be repealed in its entirety and a newly revised code section 13.08 Sanitary Sewers be codified into the Molalla Municipal Code; and

**WHEREAS**, the Molalla City Council reviewed the new code during its regularly scheduled meeting on February 26, 2020 and directed staff to prepare and Ordinance for adoption.

**Now, Therefore, the City of Molalla does ordain as follows:**

Section 1. Chapter 13.08 Sanitary Sewers be repealed and replaced with Chapter 13.08 Sanitary Sewers herein attached.

Section 2. Effective date. The effective date of the code revision will take place thirty (30) calendar days after adoption of the Ordinance.

Read the first time on **March 11, 2020** and moved to second reading by \_\_\_\_\_ vote of the City Council.

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

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

\_\_\_\_\_  
Keith Swigart, Mayor

ATTEST:

\_\_\_\_\_  
Christie DeSantis, City Recorder

## Chapter 13.08 SANITARY SEWERS

### 13.08.010 Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as set forth as follows:

“**Alternative sewage disposal system**” means alternative wastewater treatment process(es) and technique(s) which are proven methods providing for the reclaiming and reuse of water and productively recycled wastewater constituents, or otherwise eliminate the discharge of pollutants. (See Appendix E of the Innovative and Alternative Technology Guidelines, EPA Innovative and Alternative Technology Assessment Manual, MCD53.)

“**Backflow preventer**” means a device or means designed to prevent backflow or back-siphonage.

“**BOD (biochemical oxygen demand)**” means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees centigrade, expressed in milligrams/liter (mg/l). (EPA Standard Methods 5210(B) shall be used for any tests of BOD.)

“**Building drain**” means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building, and conveys it to the building storm sewers, beginning five feet outside the inner face of the building walls.

“**Building service line**” means all water service piping on the customer’s side of the main service meter where the meter is within the public right-of-way or easement. Also, all other service connection piping between the meter and the main located on private property (excluding water meters) where the City does not have existing agreements to maintain and replace such piping.

“**Building sewer**” means that part of the horizontal piping of a drainage system which extends from the end of the building drain and which receives the discharge of the building drain and conveys it to a public sewer at the public right-of-way or easement, private sewer, individual sewage disposal system, or other point of disposal.

“**Business day**” or “working day” means Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding any City-recognized holidays.

“**COD (chemical oxygen demand)**” means the quantity of oxygen, expressed in milligram per liter, utilized by decomposition of organic and inorganic contaminants, dissolved or suspended in water, during a two-hour oxidation test. (EPA Standard Methods 5220(D) shall be used for any tests of COD.)

“**Commercial business**” means a business establishment which furnishes goods or services to either the general public or other commercial operations.

“**Controlled cross-connections**” means a connection between a potable water system and a non-potable water system, with an approved backflow-prevention device properly installed that will continuously afford the protection commensurate with the degree of hazard.

“**Cross-connection**” means any physical connection or arrangement of piping or fixtures between two otherwise separate piping systems, one of which contains potable water and the other non-potable water or industrial fluids of questionable safety, through which, or because of which, backflow or back-siphonage may occur into the potable water system. Other types of cross-connections include but are not limited to connectors such as swing connections, removable sections, four-way plug valves, spools, dummy sections of pipe, swivel or changeover devices, sliding multiport tube, and solid connections.

“**Customer**” see “User.”

**“Developer”** means any person, company or corporation who purchases or holds an interest in real property with the intent to increase the value thereof by the installation of utilities, construction of a building or buildings, grading, ditching, improving or enhancing the ground or structures for the purpose of resale.

**“Dwelling unit”** means any of the following:

- A. A single-family dwelling;
- B. An accessory dwelling unit;
- B. A habitable unit of multifamily dwelling(s), including an apartment;
- C. A condominium; or
- D. A manufactured home.

**“Garbage”** means the solid animal and vegetable waste from the domestic and commercial preparation, cooking and dispensing of food, and from handling, storage and sale of produce.

**“Industrial facility”** means an establishment primarily engaged in manufacturing, processing or fabrication of goods.

**“Industrial user”** means any user engaged in the introduction of pollutants into a Publicly Owned Treatment Works (POTW) from any non-domestic source regulated under section 307(b), (c) or (d) of the Federal Water Pollution Control Act, Title 33 U.S.C. 1251.

**“Industrial wastes”** means the liquid wastes from any Industrial User. A user in the divisions listed in Industrial User may be excluded if it is determined that it will introduce primarily segregated domestic wastes or wastes from sanitary conveniences.

**“Maintenance”** means preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment as needed.

**“Mains”** means collection pipelines that are part of the City sewer system.

**“Multi-user”** means a customer supplied with water service to more than one dwelling unit, commercial business or industrial facility, or combination thereof, from one water service connection.

**“Natural outlet”** means any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

**“Operation”** means control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

**“Operation and maintenance”** means activities, including but not limited to replacement, to assure the dependable and economical function of the treatment works.

**“Person”** means any individual, firm, company, association, society, group or corporation.

**“pH”** means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

**“Premises”** means the integral property or area, including improvements thereon, to which water service is or will be provided.

**“Private sewer”** means a privately owned and maintained lateral sewer system normally six or eight inches in diameter, installed to serve multi-unit structures on single-ownership properties, which cannot legally be further divided, such as apartments, mobile home parks, schools and condominiums.

**“Properly shredded garbage”** means the wastes from the preparation, cooking and disposing of food that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.

**“Property owner”** means the owner of the premises who is also the ultimate responsible party for all customer charges and fees. The property owner may also be the customer for any given premises.

**“Public sewer”** means a sewer in which all owners of abutting properties have equal rights, and which is controlled by public authority.

**“Publicly Owned Treatment Works or POTW”** means a treatment plant or system, owned and operated by the City of Molalla, for the treatment of waters collected in a sewer collection system.

**“Replacement”** means any work and/or expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term “operation and maintenance” includes replacement.

**“Sanitary sewer”** means a conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, and to which stormwater, surface water, and groundwater are not intentionally admitted.

**“Service connection”** means a water connection or sewer connection as the context indicates.

**“Service connection charge”** means the fee levied to pay for the cost of labor, materials and any inspection required during the construction of a utility service line from the water or sewer main to the property that is to be served, with the charges to be itemized on a standard City billing form.

**“Sewage”** means a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such groundwater, surface water, and stormwater as may be present.

**“Sewage treatment plant”** means any arrangement of devices and structures used for treatment of sewage.

**“Sewage works”** means all facilities for collecting, pumping, treating and disposition of sewage.

**“Sewer”** means a pipe or conduit for carrying sewage.

**“Sewer connection”** means a public sewer that has been constructed to the property line or right-of-way line from a public main for the sole purpose of providing a connection for the building sewer.

**“Shall”** is mandatory; “may” is permissive.

**“Slug”** means any discharge of water, sewage or industrial waste which, in concentration of any given constituent or in quantity of flow, exceeds for any period of duration longer than 15 minutes, more than five times the average 24-hour concentration of flows during normal operation.

**“Storm drain”** (sometimes termed “storm sewer”) means a sewer designed to carry stormwater and surface water and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

**“Stormwater”** means surface runoff and street wash waters, and drainage.

**“Surface water”** means all naturally occurring water whose surface is exposed to the atmosphere, including natural drainage ways, stream corridors, rivers, ponds, wetlands, and impoundments.

**“Suspended solids”** means solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

“**System development charge**” means the fee or charge assessed to each commercial business, industry or dwelling unit for the right to connect to the City’s sewer or water system, and which is used for expansion of those systems.

“**Temporary service**” means service of limited duration.

“**TSS (total suspended solids)**” means the total suspended matter that floats on the surface, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering. (EPA Standard Methods 2540(D) shall be used for any tests for TSS.)

“**Useful life**” means the period during which a treatment works is planned and designed to be operated.

“**User**”. means the owner, agent, tenant or other authorized representative responsible for occupancy of the premises that is served by a City utility system. A person, corporation, association or agency which rents, or leases premises shall be considered an agent of the property owner.

“**User service charge**” means a charge levied on customers that may be a combination of a base fee, a usage fee and a fixed fee as set by resolution and/or ordinance.

“**Utility**” or “**Utility system**” means sewer, water and stormwater management services provided by the City of Molalla.

“**Utility rate**” is the rate established by City Council to cover the cost of providing utility system services.

“**Utility service**” means services provided for water, sewer, and stormwater.

“**Wastewater**” means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such incidental groundwater, surface water and stormwater as may be present.

“**Watercourse**” means a channel in which a flow of water occurs, either continuously or intermittently.

### **13.08.020 Fees, rates and charges – Council authority.**

All fees, rates and charges stated within the utility code may be changed at any time by resolution of the City Council.

### **13.08.030 Fees, rates and charges set by Resolution.**

The City Council will establish the fees, rates and charges for the City’s utilities by resolution in an amount reasonable and necessary to fund the administration, debt, planning, design, construction, operation, maintenance and repair of the City’s utility systems. Rates shall be based on generally accepted rate-making principles, including the City’s true costs in upgrading the system to accommodate regulatory requirements and to provide adequate collection and treatment capacity for system users.

### **13.08.040 Application for service.**

The following criteria must be met regarding application for utility service:

A. Application for sewer service shall be made in writing by the owner of the premises to be served, or the owner’s agent duly authorized in writing on regular application forms furnished by the City. No service will be rendered until such application has been completed and the required payments made. All applications shall include signature of applicant, locations of premises for which service is requested, address to which all bills shall be sent, and such additional data as the Council from time to time may require.

B. Applications for service shall be considered merely as a request for service, and they shall not bind the City or Council to provide service.

C. Two or more parties who join together to make or who jointly make application for service are jointly and individually liable and will be sent a single billing.

D. Any person 18 years of age or older who receives utility services at a premises is liable for the services provided.

E. Contracts, other than applications, may be required prior to service where, in the opinion of the City, special circumstances exist.

F. If a service is connected to the City utility system without application, the City will disconnect the premises. Before a new connection is made, the applicant must pay double the rate of the estimated charges for the unpaid services during the period of non-City-approved connection.

G. In no case will utility service be allowed until the customer has complied with the terms of this section and all appropriate fees and charges have been paid.

H. In no case will utility service be allowed for properties that are not in compliance with any other section of the Municipal Code.

### **13.08.050 Deposit requirements.**

Each sewer service customer shall pay a deposit to secure the payment of sewer/utility bills, unless exempted under the provisions of paragraph A.3. of this subsection. The amount of the deposit shall be established by the City Council by resolution. After payment of all amounts due for sewer service, the deposit shall be refunded, within 90 calendar days, to the customer upon termination of service or upon the customer's qualification for an exemption from the deposit requirement.

A. Sewer service customers shall be exempt from the requirement to maintain a deposit if:

1. The customer has maintained a sewer service account with the City for a continuous period of one year without any delinquencies in payment; or
2. The customer previously had a sewer service account with the City of Molalla for a period of at least one year, and there were no delinquencies in payment on that account.
3. Notwithstanding the provisions of this section, the City Manager may waive a customer's deposit requirement, extend the period during which a deposit is required, or reinstate a customer's deposit requirement for good cause.

### **13.08.060 Rates – Generally.**

All users of the City's sewage system shall pay to the City the rates for sewer service as provided by this chapter.

Sewer service charges shall commence at the time a private connection to the public sewer system is installed at a property.

### **13.08.070 Service connection charges – Generally.**

A. A connection charge levied and imposed upon the owner of any property connecting to the sanitary sewer system of the City of Molalla, which shall be paid prior to such connection. The charge shall be established by the City Council by resolution.

B. The connection charge is levied upon a property based upon the existing or intended use of the property at the time of application for connection. If the property is improved, expanded, subdivided or otherwise modified so as to increase the connection charge due from that property, a connection charge

shall be levied for the modified portion of the property based upon connection charges in effect at the time of the modification.

**13.08.080 Rates – Outside-City.**

A. No services will be provided outside of City limits. User service charges for preexisting utility customers located outside the City limits will be billed at rates necessary to ensure the financial viability of the utility system as determined by a rate study and established by resolution. User service charges will include both base rate charges and metered usage charges.

B. The rate schedule for outside service shall in no instance be less than the rates charged for residents within the City limits, and it may be more in such additional amount as the Council may from time to time determine. The City shall require annexation as a condition of providing sewer service for all new service connections.

**13.08.090 Charges for restoration of service.**

The City will charge a fee to a customer for restoration of utility service when service has been discontinued under the provisions of the utility code. This charge does not apply to newly installed service connections unless the applicant has outstanding charges on another account. The City may require a deposit, or require a larger deposit, before it will restore utility service based on prior payment history.

**13.08.100 Computation and collection of charges.**

The Finance Department will collect all user service charges. User service charges are computed and payable as provided in the utility code.

**13.08.110 Revenues – Deposit and use.**

The Finance Department will deposit in the appropriate fund all the gross revenues received from charges, rates and penalties collected for the use of the utility systems. The revenues deposited in the appropriate fund must be used exclusively for administration, planning, design, construction, improvements, operation, maintenance, debt payments and repair of the City’s sewer utility system.

**13.08.120 Billing – Mailing address.**

The City will mail bills for user service charges to the mailing address specified on the application for services, unless a different owner or customer has requested to the Finance Department that services be placed in their name and has agreed in writing to be responsible for the user service charges. When requested, the City will submit bills through its online billing program.

**13.08.130 Billing – Payment responsibility.**

A. The property owner of record is ultimately responsible for payment of all charges prescribed in the utility code, regardless of any agreement the property owner may have with a third party and regardless of whether the customer’s bills were in a tenant’s name.

B. A customer who is a tenant continues to be responsible for delinquent utility charges until paid regardless of relocation to premises different from the premises at which the tenant accrued delinquent charges. The City may refuse to provide service to such tenant at any new address, and/or may terminate utility service until the delinquent bill is paid. The City may also pursue any action available under the laws of the City or State of Oregon to recover payment.

C. Multi-metered accounts must be in the property owner's name.

**13.08.140 Adjustment of accounts – Non-leaks.**

A. A customer's account will be adjusted if the customer receives less than one month of service. Customers receiving less than one month of service will be billed on a pro rata basis for base and fixed charges.

B. The City may bill the customer for utility services if the service account is active and ON, but the meter is not registering. The bill will be at an amount determined by the finance department to closely reflect what would have been billed had the meter been functioning. This may be based on the prior year's usage during the same time period, if available, or the prior two months' usage.

C. Adjustments will be in the form of credits on future bills unless the customer no longer has an active account with the City, in which case the City will issue a refund. Eligibility for an adjustment on an account will end 90 calendar days after the date a final bill was issued for that account.

D. In no event may an adjustment be made for more than six consecutive months of billing.

**13.08.150 Adjustment of accounts – No service provided.**

If a customer pays for utility services not actually received as a result of the City's error, the City will refund the amount paid for services not received. Refunded amount may not exceed a period of one year from the date the customer notified the City.

**13.08.160 Adjustment of accounts – Leaks.**

A. The City may adjust a customer's utility billing to reduce charges resulting from a verified leak when:

1. The customer notifies the City in writing of the leak;
2. The customer makes a reasonable effort to locate the leak and initiates repairs within 30 calendar days of discovering the leak;
3. The City verifies the leak exists. Verification of a leak that is not an obvious broken pipe consists of:
  - i) the customer certifying all plumbing fixtures within the building are in the OFF position, and
  - ii) the meter leak detector wheel continues to spin.;
4. The customer (or a contractor hired by the customer) fully repairs the leak within 30 calendar days of notice to the City of the leak; and
5. The customer provides proof that:
  - i) the leak was indeed caused by either a broken pipe or pipe connection, and
  - ii) the leak was repaired. Proof shall be provided to the City in a form and manner as prescribed by the Finance Department, including, but not limited to, receipts and other verification of repairs or costs.

B. If the City determines the customer meets the conditions in subsection (A) of this section, the City will adjust the billing by reducing the affected monthly usage by the excess over the user's normal amount.



Adjustments to the bill may not exceed two months from the date before the customer fixes the leak. The City will add a leak adjustment fee to the customer's bill for any adjusted billings due to leaks.

C. Faulty valves or similar devices of the customer are not grounds for the adjustment of a utility bill. In addition, obvious neglect or improper installation by the customer is not grounds for adjustment of a utility billing.

D. The City will not adjust an account balance resulting from a leak if the same leak occurred within the last two years and the customer has already received an adjustment based on that leak.

**13.08.170 Liens for delinquent utility account.**

Utility service charges become a lien against the premises served from and after the date of billing and entry on City records pertaining to the utility system. Such records are accessible for inspection by anyone interested to ascertain the amount of such charges against the property. Whenever a bill for utility service remains unpaid for 90 calendar days after billing, the lien thereby created may be foreclosed in a manner provided for in Oregon Revised Statutes, or in any other manner provided for by law or by City ordinance.

**13.08.180 Sewer classifications.**

User location classifications shall be comprised of, but not limited to, the following:

A. Residential.

1. Single-family (per dwelling unit);
2. Multi-family (per dwelling unit);
3. Mobile home park (per dwelling unit); and
4. Bed and breakfast; shall be considered one dwelling unit, unless the property is clearly divided into multiple dwelling units.

B. Commercial I.

1. Barbershops and beauty shops (each);
2. Car dealers (each);
3. Churches (each, without garbage disposal);
4. Department stores (each);
5. Fraternal clubs (each, without food service/kitchen);
6. Grocery stores (each, without meat cutting);
7. Hardware stores (each);
8. Hotels and motels (each, without food service/kitchen);
9. Laundromats (each);
10. Light industrial (each, flow less than 25,000 gpd, BOD less than 400 mg/l, TSS less than 450 mg/l);

11. Medical, dental and veterinary clinics (each);
12. Pharmacies (each);
13. Print shops (each);
14. Professional offices (each business);
15. Schools (each, without food service/kitchen);
16. Service stations (each, without food service/kitchen);
17. Tap Rooms (each, without food service/kitchen);
18. Warehouses (each); and
19. Travel trailer park (per dwelling unit).

C. Commercial II.

1. Churches (each, with food service/kitchen);
2. Drive-in restaurants (each, with food service/kitchen);
3. Taverns (each, with food service/kitchen);
4. Full-service restaurants and fraternal clubs (each, with food service/kitchen, with grease trap);  
and
5. Institutions (each, hospitals, schools, nursing homes).

D. Commercial III.

1. Bakeries (each);
2. Full-service restaurants, taverns, and fraternal clubs (each, with food service/kitchen, without grease trap);
3. Grocery stores (each, with meat cutting and/or bakery); and
4. Meat markets, if allowed by City (each).

E. Commercial IV.

1. Septic haulers, if allowed by City (each).

F. Industrial.

1. Any facility that is found by the City to be classified as a Categorical User as outlined in the Clean Water Act, or that discharges effluent to the sanitary sewer for any period which equals or exceeds the following criteria:
  - a. Flow greater than 25,000 gpd;
  - b. BOD greater than 1,500 mg/l;
  - c. TSS greater than 1,500 mg/l;

- d. pH greater than 9.0;
- e. pH less than 6.0.

G. Where two or more user classifications apply to the same water meter usage, then the higher usage rate shall apply.

**13.08.190 Service discontinuance at customer request.**

- A. A customer may have utility service discontinued by notifying the City at least five business days in advance of the desired date of discontinuance.
- B. If the customer does not give notice, the customer must pay for utility service until the date the City has learned the customer has vacated the premises or a new customer has requested service.

**13.08.200 Abandoned and non-revenue-producing services.**

- A. The City may remove a utility service connection to a premises that has been abandoned or not used for a period of one year or longer.
- B. The City will only begin new utility service when the City receives a new customer application and payment for the new connection.

**13.08.210 Disconnection from sewer system – Destroyed or removed structures.**

- A. When any structure connected to the sewer system is destroyed by an act of God, is removed, or is torn down, and/or no longer usable, it shall be required to disconnect from the sewer system. The owner must advise the City of the destruction, stating the date of destruction or removal of the structure, and pay all user service charges to the date of destruction or removal, and thereafter no sewer user service charge will be made to the property until new improvements, if any, are placed on the property. However, the customer must continue to pay other fees, including but not limited to stormwater fees.
- B. When the property is relieved from user service charges and then reconnected to the utility system, the City will determine whether the property had paid into the appropriate utility fund the amount required while the property was using City utilities. If the property had paid user service charges equal to the amount required under the utility rates that were in effect at the time of the disconnection from the utility system, the City will not levy any additional charges.
- C. In addition, when a building with sewer service is destroyed or is relocated to a different property and thereafter replaced by a new building within three years after the date of destruction or removal, the City shall not levy a system development charge for the new building, unless the new building constitutes an increase in use under the system development charge schedule currently in effect. If the replacement building requires a greater system development charge than compared to the destroyed or relocated building previously on the same site, then a credit will be given on the replacement building's system development charge equal to that of the previous building fee, and when the above provisions of this section and MMC 13.08.220 are met.
- D. The current system development charge schedule shall be used for all comparisons and credit determinations under MMC 13.14. When a destroyed or relocated building is not replaced by a new building within three years of the date of destruction or an update to the sewer master plan is completed, then the owner of any replacement building must pay the full system development charge in effect at the time of application for sewer service.

**13.08.220 Disconnection from sewer system – Reuse of old facilities.**

A. Before the City will issue a moving or demolition permit, City personnel must verify disconnection and capping of the building sewer service at the right of way cleanout. If a cleanout does not exist, property owner must install a cleanout and cap at the right of way meeting City requirements.

B. In addition, when a building with sewer service is destroyed or relocated to a different property and is not replaced by a new building within three years from the date of destruction or removal, the Director of Public Works or director’s designee may inspect the sewer service to determine whether it is in usable condition and is to be reused. If the sewer service is found unusable, the property owner is required to pay all costs for replacement of the sewer service connection.

**13.08.230 Disconnection and reconnection procedures.**

A. When any structure connected to the sewer system is destroyed by an act of God, is removed or is torn down, and/or no longer usable, it shall be required to disconnect from the sewer. The owner shall advise the City, stating the date of destruction or removal of the structure, and pay all user service charges to the date of destruction or removal, and thereafter no user service charge shall be made to the property until new improvements, if any, are placed on the property.

B. When the property is relieved from user charges and then reconnected to the sewer, the City shall determine whether the property had paid into the sewer fund the amount required while the property was using the sewer. If the property had paid user service charges equal to the amount required under sewer rates that were in effect at the time of disconnecting from the sewer, no additional charges will be levied.

C. In addition, when a building with sewer service is destroyed, or relocated to a different property and thereafter replaced by a new building within three years from the date of destruction or removal, the City shall not levy a system development charge for the new building unless the new building constitutes an increase in use under the system development charge schedule currently in effect. If the replacement building requires a greater system development charge when compared to the destroyed or relocated building previously on the same site, then a credit will be given on the replacement building system development charge equal to that of the previous building fee, and when the above provisions of this section are met.

D. The current system development charge schedule will be used for all comparisons and credit determinations under this section.

E. When a destroyed or relocated building is not replaced by a new building within three years of the date of destruction or an update to the sewer master plan is completed, then any replacement building shall pay the system development charges in effect at the time of application for sewer service.

**13.08.240 Unsanitary deposit of waste.**

It is unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City, or in any area under the jurisdiction of the City, any human or animal excrement, garbage, or other unsanitary waste.

**13.08.250 Treatment of sewage required.**

It is unlawful to discharge to any natural outlet within the City, or in any area under the jurisdiction of the City, any sewage or other polluted substances.

**13.08.260 Unlawful sewage disposal facilities.**

Except as provided in this chapter, it is unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

**13.08.270 Toilet facilities and sewer connections required.**

The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the City and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary sewer of the City, is required at the owner's expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this chapter, within 90 calendar days after date of official notice to do so, provided that the public sewer is within 100 feet of the property line.

**13.08.280 Private Sewage Disposal – When permitted.**

A. Where a public sanitary sewer is not available, the building sewer shall be connected to a private sewage disposal system complying with the requirements of the Oregon State Department of Environmental Quality, the Oregon State Board of Health, the Plumbing Code of the State of Oregon, and Clackamas County and all other applicable laws, rules and regulations.

B. The provisions of this section shall be in addition to and not in lieu of the requirements of other applicable laws, rules and regulations.

**13.08.290 Private Sewage Disposal – Operation and maintenance.**

The owner of property with a private sewage disposal system shall operate and maintain the system in a sanitary manner at all times, at no expense to the City.

**13.08.300 Upon availability of public sewer – Abandonment of private systems.**

At such times as a public sewer becomes available to a property served by a private sewage disposal system, as provided in MMC 13.08.280, and upon notification to the property owner from the City, a direct connection shall be made to the public sewer in compliance with this chapter, and any septic tanks, cesspools, and similar private sewage disposal facilities shall be decommissioned, abandoned and filled with suitable material. All costs associated with decommissioning, abandonment and connection shall be the responsibility of the property owner.

**13.08.310 Unauthorized connections and disturbances.**

No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Director of Public Works.

**13.08.320 Costs of building sewer borne by owner.**

All costs and expense incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

**13.08.330 Building sewer for each lot or parcel.**

A. Every single-ownership property which cannot legally be further subdivided, and which was constructed after February 6, 1984, must have a separate sewer and water connection. These properties include, but are not limited to, multiple-family apartments, condominiums, mobile home parks and commercial or industrial establishments. Only one sewer lateral shall be provided to a residential property.

B. Multi-users with more than one unit located in common ownership on a single parcel of property shall also comply with the Oregon State Plumbing Specialty Code.

C. Any property which is located so as to require the sewer lateral to cross any other property or parcel shall provide evidence of a duly recorded perpetual easement for such lateral, appurtenant to the property to which such lateral will provide service, before any sewer connection is made.

D. Property other than residential shall utilize a common sewer main to provide services to individual building. Exceptions to this requirement must be in the interest of the public as determined and approved by the Director of Public Works.

#### **13.08.340 Materials and connections – Private side.**

The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in connecting, excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the uniform building and plumbing code and all other applicable rules and regulations. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply, or the most current version thereof. All connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the Director of Public Works before installation.

Sewer laterals on private property that are not part of the public system or within a public right-of-way or public sewer easement, the size, slope, alignment, materials of construction of a building sewer, and the methods to be used in connecting, excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the uniform building and plumbing code and all other applicable rules and regulations.

#### **13.08.350 Elevation.**

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer at the property owner's expense.

#### **13.08.360 Connection of sources of surface runoff.**

A. No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

B. Where the City finds that any private service lateral piping is leaking or not legally connected, the property owner will be notified in writing by the City to make necessary repairs. The notification shall include the type of repairs to be made and the date, no less than 30 calendar days from the date of the notice, by which the repairs shall be completed.

C. The property owner shall notify the Director of Public Works when repairs have been made, but before any piping is buried, and the City shall inspect and retest the private service lateral for leaks. The lateral will be considered repaired when it passes the retest by the City.

#### **13.08.370 Inspection – Connection to public sewer.**

The applicant for the building sewer permit shall notify the Director of Public Works when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Director of Public Works or representative.

**13.08.380 Protection of excavations – Restoration of public property.**

All excavations for building sewer installation shall be adequately guarded with barricades and lights to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

**13.08.390 Unlawful discharge of storm and other waters.**

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.

**13.08.400 Regular Utility Service – Rules and regulations.**

A. The City may furnish and install a utility service connection of such size and location as a customer requests; provided, that the request is reasonable and is in compliance with provisions of the Oregon State Plumbing Specialty Code, the City's design standards, and the utility code. The customer is responsible for all costs, including administration, for installation of utility service.

B. The City will install the sewer service from the main to right-of-way/property line of the premises, if the main is in the street, or to a point in a City right-of-way or easement.

C. The customer or property owner must furnish, install and keep in good and safe condition equipment that may be required for receiving, controlling, applying and utilizing any city utility, and the customer or property owner must do so at their own risk and expense.

D. The City is not responsible for loss or damage caused by the improper installation of the equipment used for receiving a City utility service by customer or customer's agent, or the negligence, want of proper care, or wrongful act in installing, maintaining, using, operating or interfering with the equipment by the customer or customer's agent.

E. The City is not responsible for damage to property caused by City's regular cleaning and maintenance of sewer main lines.

F. A customer making any material change in the size, character or extent of the equipment or operation utilizing sewer service, or whose change in operations results in a large increase in the use of water, shall immediately give the City written notice of the nature of the change and, if requested, amend the customer's application.

G. Any utility service connection, whether located on public or private property, is the property of the City, and the City reserves the right to repair, maintain and/or replace it.

**13.08.410 Inspection and maintenance – Responsibility.**

The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the City, wherein such facilities are connected to the proper public sewer in accordance with this Chapter, are responsible for the maintenance and cost of maintaining the private service lateral.

**13.08.420 Inspection and maintenance – Testing, cleanouts, and right of entry.**

A. The Director of Public Works and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties, upon prior written notice, to make tests of private service lateral piping to determine whether such piping is adequately watertight.

B. The property owner shall be responsible to supply cleanout at or adjacent to the house or buildings upon 10 business days' written notice by the City. Such cleanout shall be the same size as the service lateral piping and shall conform to the City of Molalla standard specifications for service lateral cleanout.

C. The City may elect at its cost to construct a service lateral cleanout on public right-of-way for use in testing and/or repairing of service lateral piping. The cleanout shall conform to City standards.

**13.08.430 Inspection and maintenance – Grease traps and interceptors.**

Where grease, oil and sand interceptors are required under MMC 13.08.530, monthly cleaning records of traps and interceptors and monthly disposal records of grease, oils and sand shall be maintained and made available for inspection in a form established by the City.

**13.08.440 Improper connection and notice to repair.**

A. Where the City finds that any private service lateral piping is leaking or not legally connected, the property owner will be notified in writing by the City to make necessary repairs. The notification shall include the type of repairs to be made and the date, no less than 30 calendar days from the date of the notice, by which the repairs shall be completed.

B. The property owner may elect to have the City repair or replace private service laterals by notifying the Director of Public Works in writing. The property owner may then contract with the City for such repairs.

C. The City shall contract out the work and charge for any in-house labor and materials so furnished.

D. Upon completion of repairs, the City shall provide a written accounting to the property owner prepared by the Director of Public Works.

E. The property owner shall pay the City for the repairs by paying no less than one-twelfth (1/12) the cost of the improvements as a surcharge on the sewer bill until the outstanding amount has been paid in full. The City shall charge no interest on the unpaid balance.

F. The City does not assume any obligation for reasonably necessary damage to landscaping, vegetation and walkways caused by repair work, and the property owner shall be solely responsible for repairing or replacing such damages.

**13.08.450 Nonconformance – Notice.**

A. Any property owner who fails to comply with the provisions of MMC 13.08.410 through 13.08.440 shall be deemed to possess a private service lateral not in conformance.

B. The Director of Public Works shall notify by mail each property owner he or she determines is in violation at the address of such owner as listed on the latest tax rolls of the Tax Assessor for Clackamas County, Oregon. The notice shall set forth the basis for such alleged violations along with an explanation of the consequences of having a service lateral not in conformance. The notice shall include notification of the right to a hearing as described in this section.

C. Within 10 business days of the mailing of the notice described in subsection B of this section, the property owner may request a hearing before the City Manager. At such hearing the City Manager shall determine whether or not the property is in violation as alleged. Unless such request for a hearing is filed within the time provided by this Section, the property owner shall be deemed to possess a service lateral



not in conformance. If the property owner is found to be in violation at the hearing by the City Manager, then the property owner's service lateral shall be deemed not in conformance. The property owner may appeal the decision of the City Manager within 10 business days of such decision by filing a written notice of appeal with the City Manager. Appeals shall be heard by the City Council.

**13.08.460 Nonconformance – Charges.**

Any property owner who maintains a private service lateral not in conformance with the maintenance requirements of this article shall be assessed a monthly sewer charge triple the normal rate until the private service lateral is brought into conformance with the requirements of this Chapter.

**13.08.470 City may assume cost of repairs.**

At such times that the City Council shall determine by Resolution that it is in the public interest to repair a service lateral or group of service laterals without delay the City may repair such lateral at the City's expense without prior testing of such lateral and with the consent of the property owner without notice as provided in MMC 13.08.410 through 13.08.440.

**13.08.480 Damage to sewage works prohibited.**

No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the sewage works.

**13.08.490 Entry on property.**

The Director of Public Works and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this chapter. The Director of Public Works or representative shall also have the authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for wastes treatment.

**13.08.500 Observance of safety rules—Liability of City.**

While performing the necessary work on private properties referred to in MMC 13.08.490, the Director of Public Works or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the City employees and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions.

**13.08.510 Entry and work on easements.**

The Director of Public Works and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within the easement. All entry and subsequent work, if any, on the easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

**13.08.520 Certain discharges subject to approval.**

No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Director of Public Works that such wastes can harm either the sewer, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his or her opinion as to the acceptability of these wastes, the Director of Public Works will give consideration to such factors as to quantities of subject wastes in relation to flows and velocities in the sewer, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The substances prohibited are:

- A. Any liquid or vapor having a temperature higher than 150°F (65°C);
- B. Any water or waste containing fats, gas, grease, or oils, whether emulsified or not, in excess of 100 mg/l or containing substances which may solidify or become viscous at temperatures between 32°F and 150°F (0°C and 65°C);
- C. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the Director of Public Works;
- D. Any waters or wastes containing strong acid from pickling wastes, or concentrated plating solutions whether neutralized or not;
- E. Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such a degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the Director of Public Works for such materials;
- F. Any waters or wastes containing phenols or other taste or odor producing substances, in such concentrations exceeding limits which may be established by the Director of Public Works as necessary, after treatment of the composite sewage, to meet the requirements of the state, federal, or other public agencies of jurisdiction of such discharge to the receiving waters;
- G. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Director of Public Works in compliance with applicable state or federal regulations;
- H. Any waters or wastes having a pH in excess of 9.5;
- I. Materials which exert or cause:
  - 1. Unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate),
  - 2. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions),
  - 3. Unusual BOD, biochemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works,
  - 4. Unusual volume of flow or concentration of wastes constituting “slugs” as defined herein;
- J. Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

### **13.08.530 Decision of Director of Public Works regarding harmful wastes.**

If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances, or possess the characteristics enumerated in MMC 13.08.520 and which, in the judgment of the Director of Public Works, may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, nuisance, the Director of Public Works shall:

- A. Reject the wastes;
- B. Require pretreatment to an acceptable condition for discharge to the public sewers;
- C. Require control over the quantities and rates of discharge; and/or
- D. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of MMC 13.08.520 through 13.08.550 If the Director of Public Works permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Director of Public Works, and subject to the requirements of all applicable codes, ordinances and laws.

### **13.08.540 Grease, oil and sand interceptors.**

Grease, oil and sand interceptors shall be provided when, in the opinion of the Director of Public Works, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients, except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Director of Public Works and shall be located as to be readily and easily accessible for cleaning and inspection. All maintenance and cleaning shall be performed at the owner's expense, and as required by the Director of Public Works.

### **13.08.550 Restricted Discharges and Pretreatment.**

A. Standard methods for testing and analysis.

1. All measurements, tests and analyses of the characteristics of water and waste to which reference is made in the utility code shall be determined in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at such control manhole. In the event that no special manhole is required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected.

2. Sampling shall be carried out by customarily accepted methods to reflect the effect the effluent may be having on the sewer works and to determine the possible impact to the public welfare.

B. Sanitary sewers – Prohibited discharges.

1. No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or polluted industrial process waters to any sanitary sewer.

2. Dilution. No Industrial User may increase the use of potable or process water in any way, for the purpose of diluting wastewater to achieve compliance with the standards set forth in this code.

C. Storm sewer use requirements.

1. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the Director of Public Works. Industrial cooling water or unpolluted process waters may be discharged to a storm sewer or natural outlet, upon written approval of the Director.

D. Nonpermitted discharges designated.

1. No person shall discharge or cause to be discharged any one of the following described waters or wastes to any public sewers:

- a. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas; nor any kerosene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides;
- b. Any water or waste containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other waste, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant, including but not limited to cyanides in excess of two mg/l of cyanide in the waste as discharged to the public sewer;
- c. Any water and waste having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works;
- d. Solids or visceral substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, feathers, tar, asphalt, lubricating oil, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshing, entrails, paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

E. Prohibited discharges.

1. No person shall discharge or cause to be discharged the following described substances, materials, waters or wastes if it appears likely, in the opinion of the Director of Public Works or designee, that such wastes can harm either the sewer system, sewage treatment process or equipment, have an adverse effect on the receiving stream, or can otherwise endanger public health, safety or welfare, or constitute a nuisance. In forming such opinion, the Director of Public Works or designee will give consideration to such factors as to quantities of waste in relation to flows and velocities in the sewer system, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of waste in the sewage treatment plant, and other pertinent factors.

2. The substances prohibited are:

- a. Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit (65 degrees centigrade);
- b. Any water or waste containing fats, gas, grease or oils, whether emulsified or not, in excess of 100 mg/l, or containing substances which may solidify or become viscous at temperatures between 32 and 150 degrees Fahrenheit (zero and 65 degrees centigrade), or which has a temperature which will inhibit biological activity in the treatment plant, and

in no case wastewater with a temperature at the introduction into the treatment plant receiving water which exceeds 105 degrees Fahrenheit (40 degrees centigrade);

c. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower or greater shall be subject to the review and approval of the Director of Public Works;

d. Any water or waste containing strong acid, iron pickling wastes, or concentrated plating solutions, whether neutralized or not;

e. Any water or waste containing iron, chromium, copper, zinc, lead, nickel, silver, mercury, cadmium or other similar toxic substances which exceed EPA or DEQ standards;

f. Any water or waste containing high concentrations of phenols or other taste- or odor-producing substances;

g. Any radioactive waste or isotopes of such half-life or concentration as may exceed state or federal requirements;

h. Any water or waste having a pH in excess of 9.5;

i. Materials which exert or cause:

1). Unusual concentrations of inert suspended solids, such as fuller's earth, lime slurries and lime residues, or of dissolved solids such as sodium chloride and sodium sulphate,

2). Excessive discoloration, such as dye waste and vegetable tanning solutions,

3). Unusual BOD or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works,

4). Unusual volume of flow or concentration of waste constituting slugs, as defined in MMC 13.08.010;

j. Water or waste containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving water.

#### F Rejection or pretreatment conditions.

1. If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics outlined in MMC 13.08.550.E, and which may have a detrimental effect upon the sewage works, processes, equipment or receiving water, or which otherwise may create a hazard to life or constitute a public nuisance, the Director of Public Works may:

a. Reject the wastes;

b. Require pretreatment to an acceptable condition for discharge to the public sewer;

c. Require control over the quantities and rates of discharge; and/or

d. Require payment to cover any increase of administering the wastewater permit, the added cost of chemicals needed to address the situation, and the added cost of handling and treating the wastes not covered by existing taxes, fees or other charges under the provisions of the utility code.

G. Grease, oil and sand interceptors.

1. When required by the Director of Public Works, interceptors shall comply with MMC 13.08.540.

H. Pretreatment facilities – Operation and maintenance.

1. Where preliminary treatment or flow-equalizing facilities are provided for any water or waste, they shall be maintained continuously in satisfactory and effective operation by the owner at the owner's own expense.

I. Control manhole for tests.

1. When required by the Director of Public Works, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole, together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessible and safely located, and shall be constructed in accordance with plans approved by the Director of Public Works. Any cost to the City for required non-City sampling or testing shall be paid by the owner affected. The manhole shall be installed by the owner at the owner's own expense and shall be maintained by the owner so as to be safe and accessible at all times.

J. Special agreements not restricted.

1. No statement contained in this chapter shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefor, by the industrial concern, and provided such agreement is in compliance with EPA and DEQ regulations.
2. When requested, an industrial user must submit information on a survey form prepared by the Director of Public Works before commencing discharge into the City wastewater system, identifying the nature and characteristics of the user's wastewater. The Director may periodically require industrial users to update the survey. Failure to complete this survey within the time set by the Director is grounds for terminating service to the industrial user.

K. Discharges prohibited without a permit.

1. No industrial user shall discharge wastewater into the City's municipal wastewater system without first obtaining a wastewater permit.
2. No permittee shall violate the terms and conditions of a wastewater permit issued pursuant to this chapter. Obtaining a wastewater permit does not relieve a permittee from the obligation to obtain other permits required by federal, state, or local law.

L. Permitting existing connections.

1. Any industrial user, not already possessing a permit, that discharges industrial waste into the City wastewater system prior to the effective date of this chapter and who wishes to continue such discharges in the future shall, within 90 calendar days after the effective date, apply to the City for a wastewater permit, and shall not cause or allow discharges to the system to continue after 180 calendar days of the effective date except in accordance with a permit issued by the Director of Public Works.

M. Permitting new or renewed connections.

1. Any industrial user proposing to begin or to recommence discharging industrial wastes directly or indirectly into the City wastewater system must obtain a wastewater permit prior to beginning or recommencing such discharge.
2. An application for a permit renewal must be received at least 90 calendar days before the current permit expires.

N. Wastewater permit issuance.

1. Within 60 calendar days of the date the Director of Public Works deems a permit application complete, the Director will evaluate the data furnished by the industrial user and determine whether a wastewater permit should be issued. The Director will issue a permit within said 60 calendar days unless a circumstance identified in subsection (B) of this section exists.
2. If any wastewater proposed to be discharged to the City wastewater system contains substances identified or possesses the characteristics enumerated in MMC 13.08.550.D and 13.08.550.E which, in the Director's judgment, may have a deleterious effect upon the City wastewater system, processes, equipment, or waters of the state, or otherwise create a hazard to life or constitute a public nuisance, the Director may:
  - a. Refuse to permit the discharge;
  - b. Require pretreatment to an acceptable condition for discharge into the City wastewater system; or
  - c. Require control over the quantities and rates of discharge.

O. Wastewater permit duration.

1. Permits shall be issued for a time period of five years. Each permit shall indicate the specific date upon which it will expire.

P. Wastewater permit contents.

1. A wastewater permit shall include such conditions deemed reasonably necessary by the Director of Public Works, or designee, to prevent pass through or interference and to implement the objectives of this chapter. Wastewater permits shall, at a minimum, contain:
  - a. A statement of permit duration;
  - b. A statement the permit is nontransferable;
  - c. Effluent limits applicable to the industrial user, including best management practices, based on applicable pretreatment standards in 40 CFR Part 403, categorical pretreatment requirements, local limits, and state and local law;
  - d. Monitoring, sampling, reporting, notification, and record keeping requirements, including an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law;
  - e. Statement of applicable penalties for violation of pretreatment standards, pretreatment requirements, and compliance schedules; and
  - f. Requirements to control spills or slug discharges as determined necessary by the POTW, including conditions for emergency suspension of the permit, or conditions thereof.
2. Permits may contain:

- a. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
- b. Limits on the instantaneous daily and monthly average, and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties;
- c. Requirements for the installation of pretreatment technology or construction of appropriate containment devices or other similar technologies or devices designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
- d. Development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges;
- e. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the City wastewater system;
- f. Requirements for installation and maintenance of inspection and sampling facilities and equipment;
- g. Specifications for monitoring programs, which may include designation of sampling locations and frequency of sampling; the number, types, and standards for tests; and reporting schedules;
- h. Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within 30 calendar days of such noncompliance where monitoring indicates a violation;
- i. Compliance schedules for meeting pretreatment standards and pretreatment requirements;
- j. Requirements for submission of periodic monitoring or special notification reports;
- k. Requirements for maintaining and retaining plant records relating to wastewater discharge, and affording the Director or his designee access thereto;
- l. Requirements for prior notification and approval by the Director of Public Works, or designee, of any introduction of new wastewater pollutants or any unpermitted change in the volume or character of wastewater prior to introduction in the City wastewater system;
- m. Requirements for prior notification to and approval by the Director of any significant change in the manufacturing and/or pretreatment process;
- n. Requirements for immediate notification of excessive, accidental, or slug discharges, or other discharge which may cause any problems to the City wastewater system;
- o. A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards and pretreatment requirements, including those which become effective during the term of the permit; and
- p. Other conditions deemed appropriate by the Director to ensure compliance with this chapter; state and federal laws, rules, and regulations; and the terms of the permit.

Q. Wastewater permit appeals.



1. Any person, including the permittee, may appeal the conditions imposed in a permit, or the issuance or denial of a permit within 10 business days of the issuance of the final permit by filing a notice of appeal, as provided for in MMC 13.08.550.KK. Failure to submit a timely notice of appeal shall be a waiver of all rights to administrative review.
2. In addition to the requirements in MMC 13.08.550.KK, the appellant shall indicate the specific objection, the reasons for the objection, and alternative conditions, if any, the appellant seeks to have placed in the permit.
3. The effectiveness of the permit shall not be stayed pending resolution of appeal.

R. Wastewater permit modifications.

1. The Director of Public Works may modify a permit for good cause including, but not limited to, the following:
  - a. To incorporate any newly revised federal, state, or local pretreatment standards or pretreatment requirements;
  - b. To address significant alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of permit issuance;
  - c. A change in the City wastewater system that requires either a temporary or permanent reduction or elimination of the permitted discharge;
  - d. Information indicating that the permitted discharge poses a threat to the City wastewater system, City personnel, or waters of the state;
  - e. Violation of any terms or conditions of the wastewater permit;
  - f. Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required reporting;
  - g. A revision or grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13; or
  - h. To correct typographical or other errors in the permit.
2. The filing of a request by the permittee for a permit modification does not stay any permit condition.

S. Wastewater permit transfer.

1. Permits may not be reassigned or transferred from the permittee to a new industrial user.

T. Wastewater permit reissuance.

1. An industrial user shall apply for permit reissuance by submitting a complete permit application no later than 90 calendar days before the expiration of the user's permit.

U. Reports of potential problems.

1. If an accidental, slug, or other discharge occurs which may cause problems for the City wastewater system, the user shall immediately notify the City by telephone and email of the incident. Notification shall include the location of discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user. Telephone numbers and email information are provided on the Public Works pages of the City's website.
2. Unless waived by the Director, within five business days following an accidental discharge, the user shall submit a detailed written report describing the cause of the discharge and the measures

to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any fines, civil penalties, expense, loss, damage, or other liability that may be incurred or imposed as a result of damage to the City wastewater system, natural resources, or persons or property.

3. Failure to notify the City of potential problem discharges shall be deemed a separate violation of this chapter.

4. Industrial users shall prominently post a notice on a bulletin board or other similar place readily accessible to the user's employees, advising the employees of whom to call in the event of a potential problem discharge, and shall train all employees in the emergency notification procedure.

5. Where the City has performed the sampling and analysis in lieu of the industrial user, the control authority must perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis. Resampling may not be required if:

a. The City performs sampling at the industrial user at a frequency of at least once per month, or the City performs sampling at the user between the time when the initial sampling was conducted and the time when the user or the control authority receives the results of this sampling.

b. Cost to the City for repeat analysis may be recouped per MMC 13.08.530.

#### V. Reports of significant production change.

1. An industrial user operating under a waste discharge permit incorporating equivalent mass or concentration limits calculated from a production-based standard shall notify the City within two business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the City of such anticipated change will be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long-term average production rate. For purposes of this section the term "significantly" will be defined in the permit. An industrial user is not required to report or warn of a production change unless it will change the industrial discharge to an extent not allowed by the industrial user's permit.

#### W. Inspection and sampling.

1. An industrial user shall allow the City to enter the facilities of the user without unreasonable delay, to ascertain whether the user is complying with pretreatment standards and pretreatment requirements. Industrial users shall allow the Director of Public Works, or designee, ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

2. If an industrial user has security measures that require identification and clearance before entry, the industrial user shall make necessary arrangements with its security guards so that upon presentation of proper identification personnel from the City, state, and the EPA will be permitted entry without unreasonable delay to perform their specific responsibilities.

3. The City, state, and the EPA shall have the right to set up or require installation of such devices as are necessary to conduct sampling and/or metering of the industrial user's operations.

4. The City may require the industrial user to install all necessary monitoring equipment. The facility's sampling and monitoring equipment shall be maintained at all times in safe and proper operating condition by the industrial user at the industrial user's expense. A qualified technician

must calibrate all devices used to measure wastewater flow and quality at least twice yearly to ensure accuracy.

5. Any obstruction to safe and easy access to the industrial facility shall be promptly removed by the industrial user at the request of the Director and shall not be replaced. The costs of removal shall be borne by the industrial user.

6. Unreasonable delays in allowing City personnel access to the industrial user's premises shall be a violation of this chapter.

#### X. Search warrants.

1. If the Director is refused access to a building, structure, or property, or any part thereof, and has probable cause to believe there may be a violation to this chapter or needs to conduct an inspection as part of a routine program designed to protect the overall public health, safety, and welfare of the community, the Director may apply for a search warrant from a court of competent jurisdiction. The application shall identify the specific location to be searched and shall specify what locations may be searched and what property may be seized. After issuance, the Director will serve the warrant at reasonable hours.

#### Y. Confidential information.

1. Information and data on an industrial user obtained from reports, questionnaires, permit applications, permits, monitoring programs, and City inspection and sampling activities shall be available to the public without restriction unless the industrial user specifically requests and is able to demonstrate to the satisfaction of the City Attorney that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets, and are exempt from disclosure under applicable law.

2. Wastewater constituents and characteristics and other effluent data as defined by 40 CFR 2.302 are not confidential and will be available to the public without restriction.

3. Any information determined to be exempt from disclosure under subsection 1 of this section shall remain confidential, and portions of a report which might disclose trade secrets or secret processes shall not be available for public inspection; provided, that such information shall be made available to governmental agencies for uses related to this chapter or the NPDES program. Notwithstanding subsection 1 of this section, no information is confidential if the information is relevant to, and necessary for, enforcement proceedings involving the person furnishing the report.

4. For the purposes of this section, a specific request is made when the words "confidential business information" are stamped on each page containing such information. If no such specific request is made at the time of furnishing the report, the City may make the information available to the public without further notice.

5. All costs, expenses and attorney's fees associated with defending a request for confidential information shall be the responsibility of the industrial user requesting confidentiality.

#### Z. Notification of violation.

1. Whenever any industrial user has violated or is violating this chapter, a wastewater permit or order issued hereunder, or any pretreatment standard or pretreatment requirement, the Director may issue a written notice of violation. Within 10 business days of the receipt of this notice, the industrial user shall submit an explanation of the violation and a detailed plan for the satisfactory

correction of the violation and the prevention of future violation. Submission of this plan does not relieve the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the City authority to take emergency action without first issuing a notice of violation.

AA. Consent orders.

1. The Director may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with an industrial user to resolve issues of noncompliance. Such orders shall include the specific action to be taken by the industrial user to correct noncompliance within a time period specified in the order. Consent orders shall be judicially enforceable, and any costs, including attorney's fees, incurred by the City in seeking such enforcement shall be assessed against the industrial user as part of any judgment entered therein.

BB. Compliance orders.

1. When the Director finds an industrial user has violated or continues to violate any provision of this chapter, or a permit or order issued hereunder, or any pretreatment standard or pretreatment requirement, the Director may issue an order discontinuing the industrial user's sewer service unless compliance is obtained within a time certain stated in the order. Compliance orders may contain other requirements necessary and appropriate to correct noncompliance, including additional monitoring and changes to management practices designed to minimize the amount of pollutants discharged to the City wastewater system. The Director may require additional monitoring for at least 90 calendar days after consistent compliance has been achieved, after which monitoring conditions set forth in industrial user's discharge permit shall be followed.

CC. Cease and desist orders.

1. When an industrial user has violated or continues to violate any provision of this chapter, permits or orders issued hereunder, or any pretreatment standard or pretreatment requirement, the Director may issue a notice and proposed order to the industrial user to cease and desist all such violations and commanding the user to:

- a. Immediately comply with all requirements.
- b. Take such appropriate remedial or preventive action as may be needed to properly address the continuing or threatened violation, including halting operations and/or terminating the discharge.

2. The Director may order any industrial user that causes or contributes to a violation of this chapter, wastewater permits or orders issued hereunder, or any pretreatment standard or pretreatment requirement to appear and show cause why a cease and desist order should not be issued.

3. The City will serve notice on the industrial user specifying the time and place for hearing, the nature of the proposed enforcement action, the reasons for such action, and a direction that the user appear and show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served upon the industrial user or the user's authorized representative, personally or by registered or certified mail, return receipt requested, at least 10 business days prior to the hearing. A cease and desist order may be issued immediately following the hearing.

DD. Emergency suspensions.

1. The Director may immediately suspend any user's discharge that threatens to interfere with the operation of the City wastewater system, endangers the environment, or may cause violation of the NPDES permit.
2. Any user notified of a suspension of its discharge shall immediately terminate all discharges into the City wastewater system. In the event a user fails to immediately and voluntarily comply with the suspension order, the Director may take such steps deemed necessary, including immediate severance of the user's connection to the City wastewater system. The Director may allow the user to recommence discharge when the user demonstrates to the satisfaction of the Director that endangerment has passed, unless termination proceedings under MMC 13.08.550.JJ have been initiated.
3. No hearing shall be required prior to any emergency suspension.

EE. Permit revocation.

1. An industrial wastewater permit may be revoked if the user:
  - a. Fails to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
  - b. Fails to accurately report wastewater constituents and characteristics of its discharge;
  - c. Falsifies monitoring reports;
  - d. Refuses reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling;
  - e. Tampers with monitoring equipment;
  - f. Refuses to allow the City timely access to the facility premises and records;
  - g. Fails to meet effluent limitations;
  - h. Fails to pay fines;
  - i. Fails to pay sewer charges;
  - j. Fails to meet compliance schedules;
  - k. Fails to complete a wastewater survey; or
2. Violates any pretreatment standard or pretreatment requirement, the user's permit, any order issued pursuant to this chapter, or any provision of this chapter.
3. Industrial users shall be notified of proposed termination and be offered an opportunity to appear and show cause why the permit should not be revoked. Termination of a permit shall not be a bar to, or a prerequisite for, taking any other enforcement action against the user.
4. Notice shall be served on the industrial user specifying the time and place for the show cause hearing, the reasons for permit revocation, and a direction that the user appear and show cause why the permit should not be revoked. The notice of the hearing shall be served upon the industrial user or the user's authorized representative personally or by registered or certified mail, return receipt requested, at least 10 business days prior to the hearing. An order revoking the permit may be issued immediately after the hearing.

FF. Injunctive relief.

1. In addition to other relief, the City Attorney may petition a court of competent jurisdiction for the issuance of temporary or permanent injunction to restrain a violation, or compel specific

performance, of the terms and conditions of the wastewater permit, order, pretreatment standard or pretreatment requirement, or other provision of this chapter.

GG. Civil penalties – Industrial users only.

1. The Director may impose upon any industrial user that has violated or continues to violate this chapter, any order or permit hereunder, or any pretreatment standard or pretreatment requirement a maximum civil penalty of \$2,500 per violation per day. In the case of a monthly or other long-term average discharge limit, penalties may accrue for each day during the period of this violation.
2. Where appropriate, the Director may accept mitigation projects in lieu of the payment of civil penalties where the project provides a valuable service to the City and the industrial user's expense in undertaking the project is at least 150 percent of the civil penalty.
3. For purposes of this section, the term "civil penalty" means the same as the term "administrative fine" as set forth in any enforcement response plan adopted by the City Council pursuant to this chapter's authority. Any civil penalty assessed pursuant to this section will be based on the severity of the violation using the factors outlined in the enforcement response plan.

HH. Civil penalties – Nonindustrial users.

1. A violation of MMC 13.08.550.GG or 13.08.550.N is punishable by a civil penalty not exceeding \$2,500.
2. A violation of any other provision of this chapter is punishable by a civil penalty of \$1,000.00 in accordance with MMC 1.04.
3. Any civil penalty assessed pursuant to this section will be based on the severity of the violation using the factors outlined in a City Council-adopted enforcement response plan, even if the offender is not a party to that plan.

II. Remedies nonexclusive.

1. The Director of Public Works shall prepare an enforcement response plan to be adopted by a resolution of the City Council for use with industrial users related to any violation of this chapter. The remedies provided for in this chapter are not exclusive, and the Director may take any, all, or any combination of these actions against a noncompliant user, and may bring more than one enforcement action against any noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan; however, the Director may take other action against any user when the circumstances warrant.

JJ. Water supply severance.

1. Whenever an industrial user has violated or continues to violate the provisions of this chapter or orders or permits issued hereunder, water service to the industrial user may be severed and service will only be resumed, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

KK. Administrative review.

1. Any person aggrieved by any decision or action of the Director may appeal such decision or action as provided in this section.
2. The appeal must be filed with the City Manager within 30 calendar days after the date of the decision or action being appealed, must be in writing and must state:

- a. The name and address of the appellant;
- b. Nature of the decision or action being appealed;
- c. The reason the decision or action is incorrect; and
- d. What the correct decision or action should be.

Within 10 business days of an appeal being filed with the City Manager, the City Manager will meet with the appealing industrial user and attempt to resolve the matter prior to action by the City Council.

3. An appellant who fails to file such a statement within the time permitted waives all objections, and the appeal shall not be considered.
4. Unless the appellant and City agree to a longer period, an appeal shall be heard by the City Council within 45 calendar days of the receipt of the notice of appeal. At least 10 business days prior to the hearing, the City shall mail notice of the time and location of the hearing to the appellant.
5. The City Council will hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the council deems appropriate. At the hearing, the appellant may present testimony and oral arguments personally or by counsel.
6. If the appeal is from the modification of a permit pursuant to the imposition of a civil penalty, the burden is on the Director to prove that the modification or civil penalty was proper. If the appeal is from the denial of a permit, the burden is on the appellant to prove that the denial was improper. In all other cases the burden of proof is on the proponent of a fact or position.
7. The City Council will issue a written decision within 30 calendar days of the hearing date. The decision of the City Council is final.
8. An appeal fee established by Council Resolution must accompany the statement of appeal.

#### **13.08.560 Reporting of harmful discharges.**

Businesses are required to accurately report chemical discharges to the sewerage system and other discharges that may affect the sewerage system as directed by the Director of Public Works via survey or other means as pre-approved by the Director of Public Works or designee.

#### **13.08.570 Construction – Public works design standards.**

Sanitary sewers shall be designed in compliance MMC 12.12 for all public improvements and the Oregon Plumbing Specialty Code for all private plumbing services.

#### **13.08.580 Construction – Construction specifications.**

Sanitary sewers shall be constructed in compliance MMC 12.12 for all public improvements. All building sewers shall be constructed in compliance with the Oregon Plumbing Specialty Code, except where higher standards apply within the utility code.

#### **13.08.590 Construction – Permit required for sewer work.**

No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Director of Public Works.

#### **13.08.600 Construction – Building sewer permit classes and application.**

A. There are two classes of building sewer permits:

1. For residential and commercial service;
2. For service to establishments producing industrial wastes.

B. In either case, the owner or the owner's agent shall make application on a form furnished by the city. The permit application shall be supplemented by any plans, specifications or other information considered pertinent, in the judgment of the Director of Public Works. No permit shall be issued until all required fees have been paid. Permit fees shall be established and revised by City Council Resolution.

**13.08.610 Construction – Cost of installation and connection.**

All costs and expenses incident to the installation and connection of the building sewer shall be borne by the owner. It shall be the responsibility of the owner, lessee or occupant of a building to maintain the building sanitary sewer or private collection system in a free-flowing and watertight condition, from the structure served to the public sewer. All existing private sewers shall be maintained in a safe and sanitary condition.

**13.08.620 Construction – Cleanout specifications.**

At the connection with the public sewer and the building sewer, there shall be a cleanout of the same material as the public sewer connection pipe furnished by the owner. The cleanout shall extend vertically to within six inches of the finished ground surface and shall be sealed with an approved cap or plug. This riser shall be used for inserting a test plug for water or air testing the building sewer, and as an auxiliary cleanout. Backfilling around the riser shall be done in such a manner as not to damage the pipe.

**13.08.630 Construction – Separate sewers for each building.**

Every building sewer shall be separate and independent of any other building, whether connecting to a public or private sewer.

**13.08.640 Construction – Private sewer restrictions.**

Private sewer lines shall only be allowed where the building or buildings affected are located on a single parcel of land. Private sewer connections to public sewer shall be subject to the same design and construction standards as public sewers of the city and shall be subject to complete review and approval by the Director of Public Works.

**13.08.650 Construction – Leaks and extraneous discharges – Monitoring procedures.**

A. New and existing private sewers, building drains and building sewers will be monitored for leaks or discharges of extraneous water. This monitoring may take the form of, but is not limited to:

1. Direct visual observation;
2. Indirect measurement;
3. Tele-inspection; or
4. Air or water pressure tests, smoke tests, or exfiltration tests.

B. If, in the opinion of the Director of Public Works, such monitoring shows a sewer to be defective, no further proof is needed for the Director to require the sewer to be repaired to current standards.

C. Existing sewer exceeding a maximum allowable infiltration/inflow rate of more than 300 gallons per day per single detached dwelling unit, or 1,200 gallons per acre per day, are deemed unsafe and unsanitary and shall be repaired.



D. Those users who do not comply with these infiltration/inflow regulations shall have a period of time, as determined by the Director of Public Works, but not to exceed six months, to reach compliance with the regulations.

**13.08.660 Construction – Capping and inspection prior to abandonment.**

A. Before a moving or demolition permit is allowed to be issued, evidence must be presented showing the sewer has been properly capped and inspected. No exceptions will be allowed. All building sanitary sewer shall be capped at the public main in an approved manner by the applicant or the applicant's contractor and inspected by City forces prior to closure of the excavation.

B. Exception. If adequate proof can be given showing a sewer service is in usable condition and is to be reused, the inspector may allow the service to be capped at the property line. It is the applicant's responsibility to ensure that no other structure is connected to the sewer service being abandoned. If the line abandoned is serving more than one structure, a service connection for the structure(s) still using the service must be provided. If the Director of Public Works determines that capping at the main will cause undue hazard to the public, or if a street has been recently resurfaced, a variance to this section may be granted to require that the sewer be capped as close to the main as practical.

**13.08.670 Construction – Public Works Inspection fees.**

A. The construction inspection services and fee is mandatory and not subject to request by the property owner. All construction costs must be verified from actual invoices and receipts when the City is not responsible for contract administration.

B. The City Council will establish the fees, rates and charges for the City's inspection services by Resolution.

**13.08.680 Construction – Bonding and insurance.**

Bonding and insurance for utility construction will be as provided in the Molalla Municipal Code or the Public Works design standards adopted MMC 12.12.

**13.08.690 Construction – Sewer main extensions.**

Whenever a public improvement is to construct or extend a sewer main, the following shall apply:

A. Extension of all lines will be to the farthest edge of the property requesting service, unless otherwise authorized by the Director of Public Works.

B. Minimum pipe sizes shall be in compliance with the Public Works Standards unless otherwise approved by the Director of Public Works.

C. When required by the City, the City will share in the cost of sewer lines larger than the minimum size provided in MMC 13.08.690.B by paying the difference in cost between a minimum size pipe and the larger size, except:

1. When a new development requires a larger line to provide adequate service, as determined by the Director of Public Works;
2. Only pipe and fitting materials will be paid by the city unless the line size is greater than 10 inches in diameter.

D. The property owner requesting the extension must pay the cost for extending new sewer lines. If a property owner requests service from a portion of the sewer line provided by the original developer, then

the city shall collect a proportionate share of the sewer line cost, and reimburse the original developer or assignee that amount, less administrative costs. This reimbursement policy shall continue for 10 years from the date of line construction, and then end.

E. When service is requested by a developer from an existing line less than six inches in diameter, the city engineer will determine if both fire protection or domestic flow are adequate.

1. If fire protection is not adequate to either the new structure or neighboring structures, but domestic flow is adequate, then service will be allowed. However, an advance assessment or waiver of remonstrance for the cost of future upgrading of the line will be collected or obtained before any service connections are completed.

2. If both fire protection and domestic flow are inadequate, the developer must replace all lines necessary to adequately supply both fire and domestic flows as determined by the city engineer; however, in no case will the line be replaced to a size less than six inches in diameter. If the property or properties were previously assessed by the city for an undersized line, a credit will be given toward construction of a new line. The developer shall initiate the request for credit, and shall provide written documentation to the satisfaction of the city manager that the assessment is valid. Upon construction of the new line, the developer shall have the right of reimbursement from new water users on the new line. The right to reimbursement shall continue for a period of 10 years and then end.

F. Costs of any construction pursuant to the utility code shall include not only the water line, but also the cost of replacing street paving, sidewalks, driveways, and other improvements damaged during construction.

**13.08.700 Violation—Notice.**

Unless otherwise stated in section of this Chapter, any person found to be violating any provision of this chapter shall be served by the City with written notice stating the nature of the violation and providing a 14-day time limit for the satisfactory correction thereof.

**13.08.710 Violation—Penalty.**

Any person who continues any violation beyond the time limit provided for in MMC 13.08.700 shall be guilty of a violation and, on conviction thereof, shall be fined in the amount set by Council resolution or subject to fines established per code MMC 1.04.010, general provisions for each violation. Each day in which any such violation continues shall be deemed a separate offense. Failure to comply with a written directive or timeline of the City Manager made under the authority of this chapter is a punishable offense and may result in a temporary loss of City water and sewer services.

**13.08.720 Violators liable to City.**

Any person violating any of the provisions of this chapter shall become liable to the City for any expense, loss, or damage occasioned by the City of Molalla by reason of such violation.



**ORDINANCE NUMBER 2020 – 04**

**AN ORDINANCE OF THE CITY OF MOLALLA, OREGON  
REPEAL OF CHAPTER 13.12 SEWER AND WATER MAIN  
EXTENSIONS IN THE MOLALLA MUNICIPAL CODE AND REPLACE WITH  
REVISED CHAPTER 13.12 SEWER AND WATER MAIN EXTENSIONS.**

**WHEREAS**, staff has reviewed and recommends under Title 13 Public Services that section 13.12 Sewer and Water Main Extensions be repealed in its entirety and a newly revised code section 13.12 Sewer and Water Main Extensions be codified into the Molalla Municipal Code; and

**WHEREAS**, the Molalla City Council reviewed the new code during its regularly scheduled meeting on February 26, 2020 and directed staff to prepare and Ordinance for adoption.

**Now, Therefore, the City of Molalla does ordain as follows:**

Section 1. Chapter 13.12 Sewer and Water Main Extensions be repealed and replaced with Chapter 13.12 Sewer and Water Main Extensions herein attached.

Section 2. Effective date. The effective date of the code revision will take place thirty (30) calendar days after adoption of the Ordinance.

Read the first time on **March 11, 2020** and moved to second reading by \_\_\_\_\_ vote of the City Council.

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

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

\_\_\_\_\_  
Keith Swigart, Mayor

ATTEST:

\_\_\_\_\_  
Christie DeSantis, City Recorder

## **Chapter 13.12 SEWER AND WATER MAIN EXTENSIONS**

### **13.12.010 Extension of mains by City.**

Any extension of a sanitary sewer, storm sewer or water main by the City shall be at the discretion of the City and only if adequate funding for engineering, construction, and ongoing maintenance is available.

### **13.12.020 Costs paid by persons requesting extensions.**

Any extension of a sanitary sewer, storm sewer or water main that is not in accordance with 13.12.010 shall be paid for by the person, firm, or corporation requesting such extension. The amount paid shall be the actual cost of engineering and construction plus 10% for City supervision and overhead. All such extension shall be made by the City of Molalla or by a contract approved by the City in accordance with standards and specifications governing such work and materials. The City of Molalla shall determine the size and location of the water and sewer mains and appurtenances in accordance with current standards and policy.

### **13.12.030 Location.**

All sanitary sewer, storm sewer or water main extensions shall be made within a public right-of-way to a point opposite the furthestmost point on the person's property making agreement for the extension. The extensions may be terminated at a lesser point if it is found that the extension cannot be extended to serve other properties in the area, due to existing development or topography, if approved by the City.

### **13.12.040 Advance payment of costs.**

Advance payment for extensions including engineering, construction and overhead shall be made by the owner or owners of property for which service is desired. The advance payment shall be made in accordance with an estimate of cost by the City in accordance with approved plans and specifications. Work shall not proceed until payment has been made for the full amount of the proposed work including engineering and 10% for overhead.

### **13.12.050 Tabulation of costs after completion.**

After completion of the work, a tabulation of costs shall be prepared by the City and any excess money deposited prior to the work shall be refunded to the depositor, and any deficiencies shall be forthwith paid to the City of Molalla by the depositor or owner as the case may be.

### **13.12.060 City ownership and maintenance.**

All sanitary sewer, storm sewer or water main and appurtenances installed shall become the sole property of the City of Molalla, and furthermore shall be maintained and operated by the City.



**ORDINANCE NUMBER 2020 – 05**

**AN ORDINANCE OF THE CITY OF MOLALLA, OREGON  
REPEAL OF CHAPTER 13.13 SURFACE WATER MANAGEMENT IN  
THE MOLALLA MUNICIPAL CODE AND REPLACE WITH REVISED  
CHAPTER 13.13 SURFACE WATER MANAGEMENT.**

**WHEREAS**, staff has reviewed and recommends under Title 13 Public Services that section 13.13 Surface Water Management be repealed in its entirety and a newly revised code section 13.13 Surface Water Management be codified into the Molalla Municipal Code; and

**WHEREAS**, the Molalla City Council reviewed the new code during its regularly scheduled meeting on February 26, 2020 and directed staff to prepare and Ordinance for adoption.

**Now, Therefore, the City of Molalla does ordain as follows:**

Section 1. Chapter 13.13 Surface Water Management be repealed and replaced with Chapter 13.13 Surface Water Management herein attached.

Section 2. Effective date. The effective date of the code revision will take place thirty (30) calendar days after adoption of the Ordinance.

Read the first time on **March 11, 2020** and moved to second reading by \_\_\_\_\_ vote of the City Council.

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

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

\_\_\_\_\_  
Keith Swigart, Mayor

ATTEST:

\_\_\_\_\_  
Christie DeSantis, City Recorder

## Chapter 13.13 SURFACE WATER MANAGEMENT

### 13.13.010 Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as set forth as follows:

“**Auxiliary water supply**” means any water supply on or available to the premises, other than the City’s approved public potable water supply. These auxiliary waters may include water from another provider’s public potable water supply, or any natural source(s) such as a well, spring, river, stream, harbor, etc., or “used waters” or “industrial fluids.” These waters may be polluted or contaminated, or they may be objectionable and constitute an unacceptable water source over which the City does not have sanitary control.

“**Back-siphonage**” means the flow of water or other liquids, mixtures or substances into the distributing pipes of a potable water supply system, from any source other than its intended source, caused by the sudden reduction of pressure in the potable water supply system.

“**Backflow**” means the flow of water or other liquids, mixtures or substances under pressure into the distributing pipes of a potable water supply from any source or sources other than its intended source.

“**Backflow preventer**” means a device or means designed to prevent backflow or back-siphonage.

“**Building drain**” means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building, and conveys it to the building storm sewers, beginning five feet outside the inner face of the building walls.

“**Building sewer**” means that part of the horizontal piping of a drainage system which extends from the end of the building drain and which receives the discharge of the building drain and conveys it to a public sewer at the public right-of-way or easement, private sewer, individual sewage disposal system, or other point of disposal.

“**Business day**” or “working day” means Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding any City-recognized holidays.

“**Commercial business**” means a business establishment which furnishes goods or services to either the general public or other commercial operations.

“**Controlled cross-connections**” means a connection between a potable water system and a non-potable water system, with an approved backflow-prevention device properly installed that will continuously afford the protection commensurate with the degree of hazard.

“**Cross-connection**” means any physical connection or arrangement of piping or fixtures between two otherwise separate piping systems, one of which contains potable water and the other non-potable water or industrial fluids of questionable safety, through which, or because of which, backflow or back-siphonage may occur into the potable water system. Other types of cross-connections include but are not limited to connectors such as swing connections, removable sections, four-way plug valves, spools, dummy sections of pipe, swivel or changeover devices, sliding multiport tube, and solid connections.

“**Customer**” see “User.”

“**DEQ**” means the Oregon Department of Environmental Quality.

“**Developed**” means any property which has been altered by grading, filling of the ground surface, or by construction of any improvement or impervious surface area, which could affect the hydraulic or hydrologic properties of the property.

“**Developer**” means any person, company or corporation who purchases or holds an interest in real property with the intent to increase the value thereof by the installation of utilities, construction of a

building or buildings, grading, ditching, improving or enhancing the ground or structures for the purpose of resale.

**“Domestic stormwater”** means surface or subsurface drainage of the type commonly introduced into a drainageway or storm sewer system by residential users.

**“Double-check valve assembly”** means an assembly of two independently operating approved check valves with tightly closing shutoff valves on each side of the check valves, plus properly located test cocks for the testing of each check valve. The entire assembly shall meet the design and performance specifications and approval of a recognized and City-approved testing agency for backflow-prevention devices. To be approved, these devices must be readily accessible for the in-line maintenance and testing.

**“Dwelling unit”** means any of the following:

- A. A single-family dwelling;
- B. An accessory dwelling unit;
- B. A habitable unit of multifamily dwelling(s), including an apartment;
- C. A condominium; or
- D. A manufactured home.

**“Equivalent development unit (EDU)”** means a unit of measurement of impervious surface. One EDU is equal to the estimated amount of impervious surface that would contribute the same amount of runoff to the City’s storm and surface water drainage system as the impervious surface on the average single-family residential use in the City of Molalla. One EDU is therefore equal to square feet of impervious surface area or any portion thereof.

**“Erosion Prevention and Sediment Control (ESC)”** means any temporary or permanent measures taken to reduce erosion, control siltation and sedimentation, and ensure that sediment laden water does not leave a site.

**“Erosion Prevention and Sediment Control Plan (ESC plan)”** means plan approved by the Oregon Department of Environmental Quality through a 1200-C permit or other state agency permit for construction activities within the City of Molalla.

**“Impervious surface”** means a developed hard surface area which prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate of flow than would occur under natural or undeveloped conditions. “Impervious surface” includes, but is not limited to, rooftops, concrete or asphalt paving, compacted gravel, walkways, patios, driveways, parking lots or storage areas, and oiled, macadam or other surfaces which similarly impede the natural infiltration or runoff of surface water.

**“Industrial facility”** means an establishment primarily engaged in manufacturing, processing or fabrication of goods.

**“Industrial user”** means any user engaged in the introduction of pollutants into a Publicly Owned Treatment Works (POTW) from any non-domestic source regulated under section 307(b), (c) or (d) of the Federal Water Pollution Control Act, Title 33 U.S.C. 1251.

**“Industrial wastes”** means the liquid wastes from any Industrial User. A user in the divisions listed in Industrial User may be excluded if it is determined that it will introduce primarily segregated domestic wastes or wastes from sanitary conveniences.

**“Maintenance”** means preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment as needed.

**“Mains”** means collection pipelines that are part of the City stormwater system.



“**Multi-user**” means a customer supplied with water service to more than one dwelling unit, commercial business or industrial facility, or combination thereof, from one water service connection.

“**Natural outlet**” means any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

“**Non-potable water**” means water that is not safe for human consumption, or which is of questionable potability.

“**NPDES**” means National Pollution Discharge Elimination System.

“**Operation**” means control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

“**Operation and maintenance**” means activities required to assure the dependable and economical function of the treatment works.

“**Person**” means any individual, firm, company, association, society, group or corporation.

“**pH**” means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

“**Premises**” means the integral property or area, including improvements thereon, to which water service is or will be provided.

“**Private sewer**” means a privately owned and maintained lateral sewer system normally six or eight inches in diameter, installed to serve multi-unit structures on single-ownership properties, which cannot legally be further divided, such as apartments, mobile home parks, schools and condominiums.

“**Property owner**” means the owner of the premises who is also the ultimate responsible party for all customer charges and fees. The property owner may also be the customer for any given premises.

“**Public sewer**” means a sewer in which all owners of abutting properties have equal rights, and which is controlled by public authority.

“**Publicly Owned Treatment Works or POTW**” means a treatment plant or system, owned and operated by the City of Molalla, for the treatment of waters collected in a sewer collection system.

“**Replacement**” means expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term “operation and maintenance” includes replacement.

“**Service connection**” means a water connection or sewer connection as the context indicates.

“**Service connection charge**” means the fee levied to pay for the cost of labor, materials and any inspection required during the construction of a utility service line from the water or sewer main to the property that is to be served, with the charges to be itemized on a standard City billing form.

“**Sewage**” means a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such groundwater, surface water, and stormwater as may be present.

“**Sewer**” means a pipe or conduit for carrying sewage.

“**Sewer connection**” means a public sewer that has been constructed to the property line or right-of-way line from a public main for the sole purpose of providing a connection for the building sewer.

“**Shall**” is mandatory; “may” is permissive.

**“Single-family residential”** means any service location which is improved with a dwelling unit for occupancy by a single family or a similar group of persons.

**“Slug”** means any discharge of water, sewage or industrial waste which, in concentration of any given constituent or in quantity of flow, exceeds for any period of duration longer than 15 minutes, more than five times the average 24-hour concentration of flows during normal operation.

**“Storm drain”** (sometimes termed “storm sewer”) means a sewer designed to carry stormwater and surface water and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

**“Stormwater”** means surface runoff and street wash waters, and drainage.

**“Surface water”** means all naturally occurring water whose surface is exposed to the atmosphere, including natural drainage ways, stream corridors, rivers, ponds, wetlands, and impoundments.

**“Surface water management system”** means all facilities, both natural and constructed, used by the City to regulate the quantity and quality of surface water, including drainage easements, culverts, storm drains, catch basins, stream corridors, rivers, ponds, wetlands and impoundments.

**“Suspended solids”** means solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

**“System development charge”** means the fee or charge assessed to each commercial business, industry or dwelling unit for the right to connect to the City’s sewer or water system, and which is used for expansion of those systems.

**“Temporary service”** means service of limited duration.

**“TSS (total suspended solids)”** means the total suspended matter that floats on the surface, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering. (EPA Standard Methods 2540(D) shall be used for any tests for TSS.)

**“Undeveloped”** means any location which has not been altered by grading or filling of the ground surface, or by construction of any improvements or other impervious area, which could affect the hydraulic or hydrologic properties of the property.

**“Untreated Stormwater”** means any runoff from a site or property, whether by storm, washdown, or any other form, that either violates the basin approved Molalla-Pudding River Subbasin TMDL standards for Temperature, Bacteria, Pesticides, Nitrate, Metals, the conditions of any NPDES permit that applies, or that in the opinion of the Public Works Director constitutes a harmful discharge to the ecology or use of the receiving body within the City.

**“Useful life”** means the period during which a treatment works is planned and designed to be operated.

**“User”**. means the owner, agent, tenant or other authorized representative responsible for occupancy of the premises that is served by a City utility system. A person, corporation, association or agency which rents, or leases premises shall be considered an agent of the property owner.

**“User service charge”** means a charge levied on customers that may be a combination of a base fee, a usage fee and a fixed fee as set by resolution and/or ordinance.

**“Utility”** or **“Utility system”** means sewer, water and stormwater management services provided by the City of Molalla.

**“Utility rate”** is the rate established by City Council to cover the cost of providing utility system services.

**“Utility service”** means services provided for water, sewer, and stormwater.

“**Wastewater**” means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such incidental groundwater, surface water and stormwater as may be present.

“**Watercourse**” means a channel in which a flow of water occurs, either continuously or intermittently.

“**Water connection**” means the pipe, valves, fittings and meter by means of which the City conducts water from its main to and through a meter(s), but not including piping from the meter to the premises served.

“**Water main**” means water pipe and all necessary valves, fittings, hydrant connections and other appurtenances used for the distribution of water.

“**Water system**” means all municipally owned facilities of the City used to supply, process and distribute drinking-quality water to each customer service connection or temporary service.

### **13.13.020 Fees, rates and charges – Council authority.**

All fees, rates and charges stated within the utility code may be changed at any time by resolution of the City Council.

### **13.13.030 Fees, rates and charges set by Resolution.**

The City Council will establish the fees, rates and charges for the City’s utilities by resolution in an amount reasonable and necessary to fund the administration, debt, planning, design, construction, operation, maintenance and repair of the City’s utility systems. Rates shall be based on generally accepted rate-making principles, including the City’s true costs in upgrading the system to accommodate regulatory requirements and to provide adequate collection and treatment capacity for system users.

### **13.13.040 Application for service.**

The following criteria must be met regarding application for utility service:

- A. Application for storm sewer service shall be made in writing by the owner of the premises to be served, or the owner’s agent duly authorized in writing on regular application forms furnished by the City. No service will be rendered until such application has been completed and the required payments made. All applications shall include signature of applicant, locations of premises for which service is requested, address to which all bills shall be sent, and such additional data as the Council from time to time may require.
- B. Applications for service shall be considered merely as a request for service, and they shall not bind the City or Council to provide service.
- C. Two or more parties who join together to make or who jointly make application for service are jointly and individually liable and will be sent a single billing.
- D. Any person 18 years of age or older who receives utility services at a premises is liable for the services provided.
- E. Contracts, other than applications, may be required prior to service where, in the opinion of the City, special circumstances exist.
- F. If a service is connected to the City utility system without application, the City will disconnect the premises. Before a new connection is made, the applicant must pay double the rate of the estimated charges for the unpaid services during the period of non-City-approved connection.
- G. In no case will utility service be allowed until the customer has complied with the terms of this section and all appropriate fees and charges have been paid.

H. In no case will utility service be allowed for properties that are not in compliance with any other section of the Municipal Code.

**13.13.050 Deposit requirements.**

Each storm sewer service customer shall pay a deposit to secure the payment of sewer/utility bills, unless exempted under the provisions of paragraph A.3. of this subsection. The amount of the deposit shall be established by the City Council by resolution. After payment of all amounts due for storm sewer service, the deposit shall be refunded, within 90 calendar days, to the customer upon termination of service or upon the customer's qualification for an exemption from the deposit requirement.

A. Storm sewer service customers shall be exempt from the requirement to maintain a deposit if:

1. The customer has maintained a storm sewer service account with the City for a continuous period of one year without any delinquencies in payment; or
2. The customer previously had a storm sewer service account with the City of Molalla for a period of at least one year, and there were no delinquencies in payment on that account.
3. Notwithstanding the provisions of this section, the City Manager may waive a customer's deposit requirement, extend the period during which a deposit is required, or reinstate a customer's deposit requirement for good cause.

**13.13.060 Rates – Generally.**

All users of the City's stormwater system shall pay to the City the rates for storm sewer service as provided by this chapter. A surface water utility user charge, which shall be set by the City Council by resolution, is established. The rate shall be in an amount reasonable and necessary to fund the administration, planning, design, construction, operation, maintenance and repair of the surface water management system.

The surface water utility user charge shall be based upon the amount of developed impervious surface used by a customer. Owners or occupants of undeveloped property shall not be charged. Each customer using a location for one single-family residential use shall be charged a uniform rate based upon one equivalent development unit (EDU). For multifamily residential uses, the charge shall be one EDU per each residential unit. The charge for all other uses shall be based upon the total amount of measured impervious surface used, divided by one EDU and rounded to the nearest whole number. The actual service charge shall be computed by multiplying the total amount of EDUs measured for each use by the rate established for each EDU.

**13.13.070 Service connection charges – Generally.**

A. A connection charge levied and imposed upon the owner of any property connecting to the storm sewer system of the City of Molalla, which shall be paid prior to such connection. The charge shall be established by the City Council by resolution.

B. The connection charge is levied upon a property based upon the existing or intended use of the property at the time of application for connection. If the property is improved, expanded, subdivided or otherwise modified so as to increase the connection charge due from that property, a connection charge shall be levied for the modified portion of the property based upon connection charges in effect at the time of the modification.

**13.13.080 Rates – Outside-City.**

No services will be provided outside of City limits.

**13.13.090 Charges for restoration of service.**

The City will charge a fee to a customer for restoration of utility service when service has been discontinued under the provisions of the utility code. This charge does not apply to newly installed service connections unless the applicant has outstanding charges on another account. The City may require a deposit, or require a larger deposit, before it will restore utility service based on prior payment history.

**13.13.100 Computation and collection of charges.**

The Finance Department will collect all user service charges. User service charges are computed and payable as provided in the utility code.

**13.13.110 Revenues – Deposit and use.**

The Finance Department will deposit in the appropriate fund all the gross revenues received from charges, rates and penalties collected for the use of the utility systems. The revenues deposited in the appropriate fund must be used exclusively for administration, planning, design, construction, improvements, operation, maintenance, debt payments and repair of the City’s storm sewer utility system.

**13.13.120 Billing – Mailing address.**

The City will mail bills for user service charges to the mailing address specified on the application for services, unless a different owner or customer has requested to the Finance Department that services be placed in their name and has agreed in writing to be responsible for the user service charges. When requested, the City will submit bills through its online billing program.

**13.13.130 Billing – Payment responsibility.**

A. The property owner of record is ultimately responsible for payment of all charges prescribed in the utility code, regardless of any agreement the property owner may have with a third party and regardless of whether the customer’s bills were in a tenant’s name.

B. A customer who is a tenant continues to be responsible for delinquent utility charges until paid regardless of relocation to premises different from the premises at which the tenant accrued delinquent charges. The City may refuse to provide service to such tenant at any new address, and/or may terminate utility service until the delinquent bill is paid. The City may also pursue any action available under the laws of the City or State of Oregon to recover payment.

C. Multi-metered accounts must be in the property owner’s name.

**13.13.140 Reserved.**

**13.13.150 Adjustment of accounts – No service provided.**

If a customer pays for utility services not actually received as a result of the City’s error, the City will refund the amount paid for services not received. Refunded amount may not exceed a period of one year from the date the customer notified the City. To be designated as property not receiving service, the property must be undeveloped.

**13.13.160 Reserved.**

**13.13.170 Liens for delinquent utility account.**

Utility service charges become a lien against the premises served from and after the date of billing and entry on City records pertaining to the utility system. Such records are accessible for inspection by anyone interested to ascertain the amount of such charges against the property. Whenever a bill for utility service remains unpaid for 90 calendar days after billing, the lien thereby created may be foreclosed in a manner provided for in Oregon Revised Statutes, or in any other manner provided for by law or by City ordinance.

**13.13.180 Exclusive control of system and services by City.**

The surface water management system within the City limits, including all connections and contributions to the system, shall be under the exclusive control of the City. No person shall install any service, connect to any part of the system, discharge storm sewer or surface water into the system, or otherwise interfere with any part of the system without authorization of the City.

**13.13.190 Service discontinuance at customer request.**

A. A customer may have utility service discontinued by notifying the City at least five business days in advance of the desired date of discontinuance.

B. If the customer does not give notice, the customer must pay for utility service until the date the City has learned the customer has vacated the premises or a new customer has requested service.

**13.13.200 Abandoned and non-revenue-producing services.**

A. The City may remove a utility service connection to a premises that has been abandoned or not used for a period of one year or longer.

B. The City will only begin new utility service when the City receives a new customer application and payment for the new connection.

**13.13.210 Disconnection from storm sewer system – Destroyed or removed structures.**

A. When any structure connected to the storm sewer system is destroyed by an act of God, is removed, or is torn down, and/or no longer usable, it shall be required to disconnect from the storm sewer system and remove all impervious surfaces from site. The owner must advise the City of the destruction, stating the date of destruction or removal of the structure, and pay all user service charges to the date of destruction or removal, and thereafter no storm sewer user service charge will be made to the property until new improvements, if any, are placed on the property.

B. When the property is relieved from user service charges and then reconnected to the utility system, the City will determine whether the property had paid into the appropriate utility fund the amount required while the property was using City utilities. If the property had paid user service charges equal to the amount required under the utility rates that were in effect at the time of the disconnection from the utility system, the City will not levy any additional charges.

C. In addition, when a building with storm sewer service is destroyed or is relocated to a different property and thereafter replaced by a new building within three years after the date of destruction or removal, the City shall not levy a system development charge for the new building, unless the new building constitutes an increase in use under the system development charge schedule currently in effect. If the replacement building requires a greater system development charge than compared to the destroyed or relocated building previously on the same site, then a credit will be given on the replacement building's

system development charge equal to that of the previous building fee, and when the above provisions of this section and MMC 13.13.220 are met.

D. The current system development charge schedule shall be used for all comparisons and credit determinations under MMC 13.14. When a destroyed or relocated building is not replaced by a new building within three years of the date of destruction or an update to the storm sewer master plan is completed, then the owner of any replacement building must pay the full system development charge in effect at the time of application for storm sewer service.

**13.13.220 Disconnection from storm sewer system – Reuse of old facilities.**

A. Before the City will issue a moving or demolition permit, City personnel must verify disconnection and capping of the building storm sewer service at the right of way cleanout. If a cleanout does not exist, property owner must install a cleanout and cap at the right of way meeting City requirements.

B. In addition, when a building with storm sewer service is destroyed or relocated to a different property and is not replaced by a new building within three years from the date of destruction or removal, the Director of Public Works or director's designee may inspect the storm sewer service to determine whether it is in usable condition and is to be reused. If the storm sewer service is found unusable, the property owner is required to pay all costs for replacement of the storm sewer service connection.

**13.13.230 Disconnection and reconnection procedures.**

A. When any structure connected to the storm sewer system is destroyed by an act of God, is removed or is torn down, and/or no longer usable, it shall be required to disconnect from the storm sewer. The owner shall advise the City, stating the date of destruction or removal of the structure, and pay all user service charges to the date of destruction or removal, and thereafter no user service charge shall be made to the property until new improvements, if any, are placed on the property.

B. When the property is relieved from user charges and then reconnected to the storm sewer, the City shall determine whether the property had paid into the storm sewer fund the amount required while the property was using the storm sewer. If the property had paid user service charges equal to the amount required under storm sewer rates that were in effect at the time of disconnecting from the storm sewer, no additional charges will be levied.

C. In addition, when a building with storm sewer service is destroyed, or relocated to a different property and thereafter replaced by a new building within three years from the date of destruction or removal, the City shall not levy a system development charge for the new building unless the new building constitutes an increase in use under the system development charge schedule currently in effect. If the replacement building requires a greater system development charge when compared to the destroyed or relocated building previously on the same site, then a credit will be given on the replacement building system development charge equal to that of the previous building fee, and when the above provisions of this section are met.

D. The current system development charge schedule will be used for all comparisons and credit determinations under this section.

E. When a destroyed or relocated building is not replaced by a new building within three years of the date of destruction or an update to the storm sewer master plan is completed, then any replacement building shall pay the system development charges in effect at the time of application for storm sewer service.

**13.13.240 Unsanitary deposit of waste.**

It is unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City, or in any area under the jurisdiction of the City, any human or animal excrement, garbage, or other unsanitary waste that can drain into or impact a storm sewer or drainageway. This includes ranging livestock, poultry, or pet-runs near or within storm facilities such as bioswales.

**13.13.250 Treatment of storm sewer required.**

It is unlawful to discharge to any natural outlet within the City, or in any area under the jurisdiction of the City, any untreated stormwater or other polluted substances. All discharges shall comply with the Molalla Public Works Standards and its NPDES permit issued by the DEQ. Stormwater shall be protected from soap, wax or other pollution runoff from vehicle wash facilities.

**13.13.260 Unlawful sewage disposal facilities.**

Except as provided in this chapter, it is unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage that may have an effect on groundwater or surface water within the City limits.

**13.13.270 Storm sewer connections required.**

The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the City and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public storm sewer of the City, is required at the owner's expense to install storm facilities therein, and to connect such facilities directly with the proper public storm sewer in accordance with the provisions of this chapter, within 90 calendar days after date of official notice to do so, provided that the public storm sewer is within 100 feet of the property line.

**13.13.280 Private Storm Sewer Disposal – When permitted.**

A. Where a public storm sewer is not available the building storm sewer shall be connected to a private storm system that meets all federal and state rules, and does not impact groundwater, drainageways, or downstream properties.

B. The provisions of this section shall be in addition to and not in lieu of the requirements of other applicable laws, rules and regulations.

**13.13.290 Private Storm Sewer Disposal – Operation and maintenance.**

The owner of property with a private storm sewer disposal system shall always operate and maintain the system in a sanitary manner, at no expense to the City.

**13.13.300 Upon availability of public storm sewer – Abandonment of private systems.**

At such times as a public storm sewer becomes available to a property served by a private sewage disposal system, as provided in MMC 13.13.280, and upon notification to the property owner from the City, a direct connection shall be made to the public storm sewer in compliance with this chapter, and any drywell and similar private storm sewer disposal facilities shall be decommissioned, abandoned and filled with suitable material. All costs associated with decommissioning, abandonment and connection shall be the responsibility of the property owner.

**13.13.310 Unauthorized connections and disturbances.**



No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public storm sewer or appurtenance thereof without first obtaining a written permit from the Director of Public Works.

**13.13.320 Costs of building storm sewer borne by owner.**

All costs and expense incident to the installation and connection of the building storm sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building storm sewer.

**13.13.330 Building storm sewer for each lot or parcel.**

A. Every single-ownership property which cannot legally be further subdivided must have a separate storm sewer connection. These properties include, but are not limited to, multiple-family apartments, condominiums, mobile home parks and commercial or industrial establishments. Only one storm sewer lateral shall be provided to a residential property.

B. Multi-users with more than one unit located in common ownership on a single parcel of property shall also comply with the Oregon State Plumbing Specialty Code.

C. Any property which is located so as to require the storm sewer lateral to cross any other property or parcel shall provide evidence of a duly recorded perpetual easement for such lateral, appurtenant to the property to which such lateral will provide service, before any storm sewer connection is made.

D. Property other than residential shall utilize a common storm sewer main to provide services to individual building. Exceptions to this requirement must be in the interest of the public as determined and approved by the Director of Public Works.

**13.13.340 Materials and connections – Private side.**

The size, slope, alignment, materials of construction of a building storm sewer, and the methods to be used in connecting, excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the uniform building and plumbing code and all other applicable rules and regulations. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply, or the most current version thereof. All connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the Director of Public Works before installation.

Storm sewer laterals on private property that are not part of the public system or within a public right-of-way or public storm sewer easement, the size, slope, alignment, materials of construction of a building storm sewer, and the methods to be used in connecting, excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the uniform building and plumbing code and all other applicable rules and regulations.

**13.13.350 Elevation.**

Whenever possible, the building storm sewer shall be brought to the building at an elevation to drain directly to the street through a weep hole in the curb. In all buildings in which any building drain is too low to permit gravity flow to the public storm sewer, storm sewer carried by a building drain shall be lifted by an approved means and discharged to the public storm sewer at the property owner's expense.

**13.13.360 Connection of sources of surface runoff.**

A. No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sanitary sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

B. Where the City finds that any private service lateral piping is leaking or not legally connected, the property owner will be notified in writing by the City to make necessary repairs. The notification shall include the type of repairs to be made and the date, no less than 30 calendar days from the date of the notice, by which the repairs shall be completed.

C. The property owner shall notify the Director of Public Works when repairs have been made, but before any piping is buried, and the City shall inspect and retest the private service lateral for leaks. The lateral will be considered repaired when it passes the retest by the City.

#### **13.13.370 Inspection – Connection to public storm sewer.**

The applicant for the building storm sewer permit shall notify the Director of Public Works when the building storm sewer is ready for inspection and connection to the public storm sewer. The connection shall be made under the supervision of the Director of Public Works or representative.

#### **13.13.380 Protection of excavations – Restoration of public property.**

All excavations for building storm sewer installation shall be adequately guarded with barricades and lights to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

#### **13.13.390 Unlawful discharge of storm and other waters.**

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.

#### **13.13.400 Regular Utility Service – Rules and regulations.**

A. The City may furnish and install a utility service connection of such size and location as a customer requests; provided, that the request is reasonable and is in compliance with provisions of the Oregon State Plumbing Specialty Code, the City's design standards, and the utility code. The customer is responsible for all costs, including administration, for installation of utility service.

B. The City will install the storm sewer service from the main to right-of-way/property line of the premises, if the main is in the street, or to a point in a City right-of-way or easement unless storm access through a weep hole in the curb is a viable option.

C. The customer or property owner must furnish, install and keep in good and safe condition equipment that may be required for receiving, controlling, applying and utilizing any city utility, and the customer or property owner must do so at their own risk and expense.

D. The City is not responsible for loss or damage caused by the improper installation of the equipment used for receiving a City utility service by customer or customer's agent, or the negligence, want of proper care, or wrongful act in installing, maintaining, using, operating or interfering with the equipment by the customer or customer's agent.

E. The City is not responsible for damage to property caused by City's regular cleaning and maintenance of storm sewer main lines.

F. A customer making any material change in the size, character or extent of the equipment or operation utilizing storm sewer service, or whose change in operations results in a large increase in the use of water, shall immediately give the City written notice of the nature of the change and, if requested, amend the customer's application.

G. Any utility service connection, whether located on public or private property, is the property of the City, and the City reserves the right to repair, maintain and/or replace it.

#### **13.13.410 Inspection and maintenance – Responsibility.**

The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the City, wherein such facilities are connected to the proper public storm sewer in accordance with this Chapter, are responsible for the maintenance and cost of maintaining the private service lateral and private site systems.

#### **13.13.420 Inspection and maintenance – Testing, cleanouts, and right of entry.**

A. The Director of Public Works and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties, upon prior written notice, to make tests of private service lateral piping to determine whether such piping is adequately watertight.

B. The property owner shall be responsible to supply cleanout at or adjacent to the house or buildings upon 10 business days' written notice by the City. Such cleanout shall be the same size as the service lateral piping and shall conform to the City of Molalla standard specifications for service lateral cleanout.

C. The City may elect at its cost to construct a service lateral cleanout on public right-of-way for use in testing and/or repairing of service lateral piping. The cleanout shall conform to City standards.

#### **13.13.430 Inspection and maintenance – Grease traps and interceptors.**

Where no polluted waters are allowed to discharge to the storm system, groundwater, or drainageway, no grease traps or interceptors shall be connected to the storm system or any other facility carrying stormwater.

#### **13.13.440 Improper connection and notice to repair.**

A. Where the City finds that any private service lateral piping is leaking or not legally connected, the property owner will be notified in writing by the City to make necessary repairs. The notification shall include the type of repairs to be made and the date, no less than 30 calendar days from the date of the notice, by which the repairs shall be completed.

B. The property owner may elect to have the City repair or replace private service laterals by notifying the Director of Public Works in writing. The property owner may then contract with the City for such repairs.

C. The City shall contract out the work and charge for any in-house labor and materials so furnished.

D. Upon completion of repairs, the City shall provide a written accounting to the property owner prepared by the Director of Public Works.

E. The property owner shall pay the City for the repairs by paying no less than one-twelfth (1/12) the cost of the improvements as a surcharge on the storm sewer bill until the outstanding amount has been paid in full. The City shall charge no interest on the unpaid balance.

F. The City does not assume any obligation for reasonably necessary damage to landscaping, vegetation and walkways caused by repair work, and the property owner shall be solely responsible for repairing or replacing such damages.

**13.13.450 Nonconformance – Notice.**

A. Any property owner who fails to comply with the provisions of MMC 13.13.410 through 13.13.440 shall be deemed to possess a private service lateral not in conformance.

B. The Director of Public Works shall notify by mail each property owner he or she determines is in violation at the address of such owner as listed on the latest tax rolls of the Tax Assessor for Clackamas County, Oregon. The notice shall set forth the basis for such alleged violations along with an explanation of the consequences of having a service lateral not in conformance. The notice shall include notification of the right to a hearing as described in this section.

C. Within 10 business days of the mailing of the notice described in subsection B of this section, the property owner may request a hearing before the City Manager. At such hearing the City Manager shall determine whether or not the property is in violation as alleged. Unless such request for a hearing is filed within the time provided by this Section, the property owner shall be deemed to possess a service lateral not in conformance. If the property owner is found to be in violation at the hearing by the City Manager, then the property owner's service lateral shall be deemed not in conformance. The property owner may appeal the decision of the City Manager within 10 business days of such decision by filing a written notice of appeal with the City Manager. Appeals shall be heard by the City Council.

**13.13.460 Nonconformance – Charges.**

Any property owner who maintains a private service lateral not in conformance with the maintenance requirements of this article shall be assessed a monthly storm sewer charge triple the normal rate until the private service lateral is brought into conformance with the requirements of this Chapter.

**13.13.470 City may assume cost of repairs.**

At such times that the City Council shall determine by Resolution that it is in the public interest to repair a service lateral or group of service laterals without delay the City may repair such lateral at the City's expense without prior testing of such lateral and with the consent of the property owner without notice as provided in MMC 13.13.410 through 13.13.440.

**13.13.480 Damage to sewage works prohibited.**

No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the storm system.

**13.13.490 Entry on property.**

The Director of Public Works and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties, upon prior written notice, for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this chapter. The Director of Public Works or representative shall also have the authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the storm sewers or waterways or facilities for wastes treatment.

**13.13.500 Observance of safety rules—Liability of City.**

While performing the necessary work on private properties referred to in MMC 13.13.490, the Director of Public Works or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the City employees and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions.

**13.13.510 Entry and work on easements.**

The Director of Public Works and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within the easement. All entry and subsequent work, if any, on the easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

**13.13.520 Certain discharges subject to approval.**

No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Director of Public Works that such wastes can harm the storm sewer system or public drainageways. The substances prohibited are including but not limited to the following:

- A. Any untreated stormwater as defined in MMC 13.13.010.
- B. Stormwater discharges a temperature higher than 150°F (65°C);
- C. Stormwater discharges containing fats, gas, grease, or oils, whether emulsified or not;
- D. Stormwater discharges containing acid, plating solutions whether neutralized or not;
- E. Stormwater discharges containing iron, chromium, copper, zinc, and similar objectionable or toxic substances, or chlorine;
- F. Stormwater discharges containing phenols or other taste or odor producing substances;
- G. Stormwater discharges containing any radioactive wastes or isotopes;
- H. Stormwater discharges containing having a pH in excess of 8.0 or less than 6.0;
- I. Stormwater discharges containing unusual concentrations of inert suspended solids or discoloration;
- J. Stormwater discharges containing paint, stains, or other coatings.
- K. Stormwater discharges containing substances which are not amenable to treatment or reduction by the water quality facilities.
- L. Stormwater discharges or runoff containing fluids or materials from a defective or improperly maintained septic system.

**13.13.530 Decision of Director of Public Works regarding harmful wastes.**

If any waters or wastes are discharged, or are proposed to be discharged to the public storm sewers, which waters contain the substances, or possess the characteristics enumerated in MMC 13.13.520 and which, in the judgment of the Director of Public Works, may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, nuisance, the Director of Public Works shall require

pretreatment prior to discharge to water quality or detention facilities to an acceptable condition for discharge to the public storm sewers. Stormwater pretreatment shall be permitted and monitored through the DEQ.

#### **13.13.540 Notification of Spills.**

A. As soon as any Person in charge of a facility or responsible for emergency response for a facility becomes aware of any suspected, confirmed, or unconfirmed release of material, Pollutants, or waste creating a risk of Discharge to the Public Stormwater System, such Persons shall:

1. Begin containment procedures;
2. Notify proper emergency personnel in case of an emergency;
3. Notify appropriate city and/or State officials regarding the nature of the spill; and
4. Follow-up with the city regarding compliance and modified practices to minimize future spills, as appropriate.

B. The notification requirements of this section are in addition to any other notification requirements set forth in local State, or Federal regulations and laws. The notification requirements do not relieve the Person of necessary remediation.

#### **13.13.550 Illicit discharges and connections.**

A. The Public Works Director may require by written notice that any user who makes an illicit connection to the public stormwater system complies with the requirements of this Chapter to eliminate the illicit connection or secure approval for the connection by a specified date.

B. If, subsequent to eliminating a connection found to be in violation of this Chapter, the responsible party can demonstrate that an illicit discharge will no longer occur, that user may request approval to reconnect. The reconnection or reinstallation of the connection shall be at the user's expense.

C. Whenever the City finds that a discharge of pollutants is taking place or has taken place which will result in or has resulted in pollution of stormwater or the stormwater system, the Public Works Director may require by written notice to the responsible party that the pollution is remediated and the affected property restored, to the requirements of this Chapter.

D. Whenever the Public Works Director determines that any person engaged in any activity which may cause or contribute to stormwater pollution or illicit discharges to the stormwater system, the Public Works Director may, by written notice, order that the responsible party undertake such monitoring activities and/or analyses and furnish such reports as the Public Works Director may deem necessary to demonstrate compliance with this Chapter. The written notice shall be served either by personal delivery or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required including but not limited to, that which may be undertaken by a third party independent monitor, sampler and/or tester. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the order. If the City cannot locate the responsible party and the responsible party is a person other than the owner of the property, the City will notify the owner of the property in writing via personal delivery or certified mail requiring the owner to monitor the property and furnish such reports as the Public Works Director may deem necessary to demonstrate compliance with this Chapter.

#### **13.13.560 Reporting of harmful discharges.**

Businesses are required to accurately report any chemical discharges to the storm sewer system to the Director of Public Works and the DEQ.

**13.13.570 Construction – Public works design standards.**

Storm sewers shall be designed in compliance MMC 12.12 for all public improvements and the Oregon Plumbing Specialty Code for all private plumbing services.

**13.13.580 Construction – Construction specifications.**

Storm sewers shall be constructed in compliance MMC 12.12 for all public improvements. All building storm sewers shall be constructed in compliance with the Oregon Plumbing Specialty Code, except where higher standards apply within the utility code.

**13.13.590 Construction – Permit required for storm sewer work.**

No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public storm sewer or appurtenance thereof without first obtaining a written permit from the Director of Public Works.

**13.13.600 Construction – Erosion prevention and sediment control.**

A. Purpose. These regulations contained herein, together with the current version of the Molalla Public Works Standards will be referred to herein as “these Standards.” The purpose of these Standards is to establish uniform requirements for land development and construction-related activities in order to control the occurrence of erosion and to prevent the creation, migration and/or transport of erosion at the source during construction and land development.

B. Standards. These Standards shall be administered and enforced by the Public Works Director or designee. The Public Works Director shall have the authority to develop and implement procedures, forms, policies, and interpretations for administering the provisions of these Standards.

C. ESC Permit Required. An ESC applicant must obtain an ESC permit from the DEQ and a City of Molalla Public Works permit before commencing any ground disturbing activity affecting 500 square feet or greater, cumulatively, throughout the duration of development, redevelopment, or other construction related activity of a parcel or parcels. A copy of the approved DEQ 1200-C permit shall be submitted to the Public Works Director before issuance of any Public Works permit and before any clearing or grading shall be allowed to proceed.

D. ESC Plan Required. The ESC applicant shall submit a copy of the approved DEQ ESC plan with and incorporate into all construction plans.

E. ESC Implementation. An approved ESC permit shall be implemented and maintained in accordance with DEQ requirements and as follows:

1. It shall be the duty of the ESC applicant to inspect the property in conformance with the permit issued to ensure ESC measures are effective.

2. The ESC Applicant is responsible to ensure that no visible and measurable erosion and sediment leaves the permitted site.

3. The ESC Applicant shall keep a record of inspections with a brief explanation as to any signs of erosion or sediment release and measures taken to prevent future releases as well as any measures taken to clean up the sediment that has left the site. Records must be made available to the City and DEQ upon request and must be submitted to the City upon final completion of work if requested by the City.

4. During periods of wet weather, disturbed areas of the site and/or stockpiled soil shall be covered by the ESC applicant by tarps or straws at the end of each day's operations; all disturbed, unworked areas of the site shall be protected from erosion.

5. The ESC applicant shall remove ESC measures, establish permanent groundcover on all exposed soils; clean and remove trash, construction waste and sediment deposits before receiving a final ESC inspection approval.

F. Ineffective Measures and ESC Plan Amendment. If the facilities and techniques in the approved ESC Plan are not effective or sufficient to meet the purposes of this Chapter, based on an on-site inspection, the Public Works Director or designee may require the ESC applicant to revise the ESC Plan. Such requirement shall be in writing and shall explain the problem. The written requirement shall be presented to the ESC applicant and any other related parties.

1. The revised ESC Plan shall be submitted by the ESC applicant not later than three (3) business days of when written notification by the Public Works Director is received. Receipt of such notice shall be deemed complete three (3) days after simultaneous regular mail and certified mail is deposited in the mail or completed the same day as personal delivery.

2. The ESC applicant shall implement fully the revised ESC Plan not later than three (3) business days after mailing the revised ESC Plan to the City, or within such other time frame as the Public Works Director may specify.

3. In cases where significant erosion is occurring, the Public Works Director or designee may require the ESC Applicant to immediately install interim control measures before submittal of a revised ESC Plan.

4. If there is a confirmed or imminent threat of significant off-site erosion, the Public Works Director or designee shall issue a stop work order, upon issuance of which all work on the development site shall halt. The stop work order shall not be lifted until mitigation measures are implemented that comply with the City of Molalla and DEQ's performance standards for ESC and are approved by the Public Works Director or designee.

G. Duty of ESC responsibilities are with applicant. It is the duty of the ESC applicant to maintain ESC measures and to comply with the requirements of the DEQ 1200-C permit. The City of Molalla is not responsible for ensuring ESC applicants compliance with DEQ's permit.

#### **13.13.610 Construction – Cost of installation and connection.**

All costs and expenses incident to the installation and connection of the building storm sewer shall be borne by the owner. It shall be the responsibility of the owner, lessee or occupant of a building to maintain the building storm sewer or private collection system in a free-flowing and watertight condition, from the structure served to the public storm sewer. All existing private storm sewers shall be maintained in a safe and sanitary condition.

#### **13.13.620 Construction – Cleanout specifications.**

At the connection with the public storm sewer and the building storm sewer, there shall be a cleanout of the same material as the public storm sewer connection pipe furnished by the owner. The cleanout shall extend vertically to within six inches of the finished ground surface and shall be sealed with an approved cap or plug. This riser shall be used for inserting a test plug for water or air testing the building storm sewer, and as an auxiliary cleanout. Backfilling around the riser shall be done in such a manner as not to damage the pipe.



**13.13.630 Construction – Separate storm sewers for each building.**

Every building storm sewer shall be separate and independent of any other building, whether connecting to a public or private storm sewer.

**13.13.640 Construction – Private storm sewer restrictions.**

Private storm sewer lines shall only be allowed where the building or buildings affected are located on a single parcel of land. Private storm sewer connections to public storm sewer shall be subject to the same design and construction standards as public storm sewers of the city and shall be subject to complete review and approval by the Director of Public Works.

**13.13.650 Construction – Leaks and extraneous discharges – Monitoring procedures.**

A. New and existing private storm sewers, building drains and building storm sewers will be monitored for leaks or discharges of extraneous water. This monitoring may take the form of, but is not limited to:

1. Direct visual observation;
2. Indirect measurement;
3. Tele-inspection; or
4. Air or water pressure tests, smoke tests, or exfiltration tests.

B. If, in the opinion of the Director of Public Works, such monitoring shows a storm sewer to be defective, no further proof is needed for the Director to require the storm sewer to be repaired to current standards.

**13.13.660 Construction – Capping and inspection prior to abandonment.**

A. Before a moving or demolition permit is allowed to be issued, evidence must be presented showing the storm sewer has been properly capped and inspected. No exceptions will be allowed. All building storm sewer shall be capped at the public main in an approved manner by the applicant or the applicant's contractor and inspected by City forces prior to closure of the excavation.

B. Exception. If adequate proof can be given showing a storm sewer service is in usable condition and is to be reused, the inspector may allow the service to be capped at the property line. It is the applicant's responsibility to ensure that no other structure is connected to the storm sewer service being abandoned. If the line abandoned is serving more than one structure, a service connection for the structure(s) still using the service must be provided. If the Director of Public Works determines that capping at the main will cause undue hazard to the public, or if a street has been recently resurfaced, a variance to this section may be granted to require that the storm sewer be capped as close to the main as practical.

**13.13.670 Construction – Public Works Inspection fees.**

A. The construction inspection services and fee is mandatory and not subject to request by the property owner. All construction costs must be verified from actual invoices and receipts when the City is not responsible for contract administration.

B. The City Council will establish the fees, rates and charges for the City's inspection services by Resolution.

**13.13.680 Construction – Bonding and insurance.**

Bonding and insurance for utility construction will be as provided in the Molalla Municipal Code or the Public Works design standards adopted MMC 12.12.

**13.13.690 Construction – Storm sewer main extensions.**

Whenever a public improvement is to construct or extend a storm sewer main, the following shall apply:

A. Extension of all lines will be to the farthest edge of the property requesting service, unless otherwise authorized by the Director of Public Works.

B. Minimum pipe sizes shall be in compliance with the Public Works Standards unless otherwise approved by the Director of Public Works.

C. When required by the City, the City will share in the cost of storm sewer lines larger than the minimum size provided in MMC 13.13.690.B by paying the difference in cost between a minimum size pipe and the larger size, except:

1. When a new development requires a larger line to provide adequate service, as determined by the Director of Public Works;
2. Only pipe and fitting materials will be paid by the city unless the line size is greater than 10 inches in diameter.

D. The property owner requesting the extension must pay the cost for extending new storm sewer lines. If a property owner requests service from a portion of the storm sewer line provided by the original developer, then the city shall collect a proportionate share of the storm sewer line cost, and reimburse the original developer or assignee that amount, less administrative costs. This reimbursement policy shall continue for 10 years from the date of line construction, and then end.

**13.13.700 Violation—Notice.**

Unless otherwise stated in section of this Chapter, any person found to be violating any provision of this chapter shall be served by the City with written notice stating the nature of the violation and providing a 14-day time limit for the satisfactory correction thereof.

**13.13.710 Violation—Penalty.**

Any person who continues any violation beyond the time limit provided for in MMC 13.13.700 shall be guilty of a violation and, on conviction thereof, shall be fined in the amount set by Council resolution or subject to fines established per code MMC 1.04.010, general provisions for each violation. Each day in which any such violation continues shall be deemed a separate offense. Failure to comply with a written directive or timeline of the City Manager made under the authority of this chapter is a punishable offense and may result in a temporary loss of City water and storm sewer services.

**13.13.720 Violators liable to City.**

Any person violating any of the provisions of this chapter shall become liable to the City for any expense, loss, or damage occasioned by the City of Molalla by reason of such violation.

# City of Molalla

## City Council Meeting



### Agenda Category: Ordinances & Resolutions

**Subject:** Resolution 2020-04: OTIF Loan Agreement – OR 213-Toliver Road Intersection Improvement & OR 211-Molalla Avenue Signal

**Recommendation:** Adopt Resolution

**Date of Meeting to be Presented:** March 11, 2020

**Fiscal Impact:** Street Fund, Capital Projects Fund

**Background:**

Attached to this memo is the standard Oregon Transportation Infrastructure Fund (OTIF) loan agreement between the City of Molalla and the Department of Transportation (ODOT). Staff and the City Attorney are working with ODOT to modify some of the language to better fit the two intersection projects.

This agreement provides a mechanism for ODOT to loan the City of Molalla \$2,500,000 through OTIF to cover intersection costs for OR 213-Toliver and OR 211-Molalla. One of the loan requirements is that execution of the contract be authorized by the Molalla City Council through a Resolution.

Recommended Motion: Adopt Resolution 2020-04 authorizing the City Manager to negotiate and execute the loan agreement with ODOT.

**SUBMITTED BY:** Gerald Fisher, Public Works Director  
**APPROVED BY:** Dan Huff, City Manager



**RESOLUTION NUMBER 2020-04**

**A RESOLUTION OF THE CITY OF MOLALLA, OREGON,  
AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN  
OREGON DEPARTMENT OF TRANSPORTATION LOAN AGREEMENT  
FOR OREGON TRANSPORTATION INFRASTRUCTURE FUNDS**

**WHEREAS**, the City of Molalla; has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public; and

**WHEREAS**, the City of Molalla has identified intersection projects at OR 213-Toliver Road and OR 211-Molalla Avenue in its 2018 Transportation System Plan and 2018 Capital Improvement Plan; and

**WHEREAS**, the City of Molalla intends to fund its portion of the design and construction of the projects known as OR 213-Toliver Road Intersection Improvements Project #18-08 and OR 211-Molalla Avenue Signal Project #19-09 with a Oregon Transportation Infrastructure Fund (OTIF) loan through the Oregon Department of Transportation (ODOT); and

**WHEREAS**, the loan agreement must be authorized by a Resolution of the City of Molalla as required by ORS 367.035(4).

**Now, Therefore, the City of Molalla resolves as follows:**

Section 1. The City Council authorizes the City Manager to negotiate and execute the OTIF loan agreement with ODOT for projects #18-08 and #19-09.

Duly adopted by Molalla City Council the 11<sup>th</sup> day of March, 2020.

---

Mayor, Keith Swigart

ATTEST the 11<sup>th</sup> day of March, 2020

---

Christie DeSantis, City Recorder

LOAN AGREEMENT

between

STATE OF OREGON

acting by and through its

DEPARTMENT OF TRANSPORTATION

and

CITY OF MOLALLA

THIS LOAN AGREEMENT, is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the State of Oregon, acting by and through its Department of Transportation (the “State” or “ODOT”), and the Borrower (as defined below). The reference number for this Loan Agreement is OTIF-0070. Terms not otherwise defined in this Loan Agreement shall have the meanings assigned to them by Section 1.01 below.

**WITNESSETH:**

WHEREAS, the State, in accordance with the Act, will provide funds from the Oregon Transportation Infrastructure Fund for the purpose of making loans to Municipalities, including the Borrower, to finance a portion of the cost of transportation projects (as that term is defined in the Rules);

WHEREAS, the Borrower has made timely application to the State for a loan to finance all or a portion of the cost of a transportation project, and the Oregon Transportation Commission and the State have approved the Borrower's application for a loan to finance a portion of the cost of such project;

WHEREAS, the Borrower has agreed to make payments sufficient to pay when due the principal of, premium, if any, and interest on the Loan from the State pursuant to the terms of the Note and this Loan Agreement; and

NOW, THEREFORE, for and in consideration of the Loan by the State, the Borrower agrees to perform its obligations under this Loan Agreement in accordance with the conditions, covenants and procedures set forth below:

## ARTICLE 1

### DEFINITIONS

**Section 1.01. Definitions.** The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the meanings assigned to them below:

"Act" means ORS 367.010 to 367.050 and related provisions, as the same may be from time to time amended and supplemented.

"Agreement" or "Loan Agreement" means this loan agreement, including the attached Exhibits, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

"Authorized Officer" means, in the case of the Borrower, the person or persons authorized pursuant to a resolution or ordinance of the governing body of the Borrower to act as an authorized officer of the Borrower to perform any act or execute any document relating to the Loan or this Loan Agreement and whose name is furnished in writing to the State.

"Borrower" means the **City of Molalla**, and its successors and permitted assigns.

"Business Day" means any day other than:

- (i) a Saturday, Sunday or legal holiday;
- (ii) a day on which banking institutions in the State of Oregon are closed; or
- (iii) a day on which the New York Stock Exchange is closed.

"Costs of the Project" shall mean only those specified costs listed in Exhibit B. The term "Costs of the Project" does not include:

- (i) costs in excess of one-hundred percent (100%) of the total cost of the Project;
- (ii) the purchase of equipment and other property not directly related to the Project;
- (iii) construction or repair of facilities owned or operated by private parties;
- (iv) costs incurred prior to the date of the Loan, except as provided in Section 5.01; and
- (v) administrative expenses of the Borrower.

"Counsel" means an attorney at law or firm of attorneys at law (who may be, without limitation, of counsel to, or an employee of, the State or the Borrower) duly admitted to practice law before the highest court of any state.

"Event of Default" means any occurrence or event specified in Section 7.01 of this Agreement.

"Loan" means the loan evidenced by the Note and made by the State to the Borrower to finance or refinance a portion of the Costs of the Project pursuant to this Loan Agreement. The Loan may be funded by the State from amounts held in the OTIF.

"Loan Closing Date" means the date on which all conditions to closing are satisfied by the Borrower (or waived by State) and the Loan actually closes.

"Loan Closing Deadline" means **May 8, 2020**, the date by which the Loan must close.

"Loan Prepayment" means, as to any payment, the amount paid by the Borrower that is in excess of the amount required to be paid as a Loan Repayment.

"Loan Repayment(s)" means the scheduled payment(s) of principal and interest of **Ninety-one Thousand Four Hundred Forty-three and 97/100 Dollars (\$91,443.97)** each required to be made by the Borrower pursuant to the provisions of the Note and this Loan Agreement.

"Maturity Date" means the date on which the Loan is payable in full, which date shall be **October 1, 2037**.

"Municipality" means a city, county, road district, school district, special district, metropolitan service district, the Port of Portland, or an intergovernmental entity organized under ORS 190.010.

"Note" means the promissory note of the Borrower substantially in the form of Exhibit C, as it may be amended, extended or renewed.

"Oregon Transportation Infrastructure Bank" or "OTIB" means the program authorized by Section 350 of the National Highway System Designation Act of 1995, 23 U.S.C. 101 note, Public Law 104-59, and a cooperative agreement between the Federal Highway Administration, Federal Transit Administration, of the United States Department of Transportation and the Oregon Department of Transportation dated August 20, 1996.

"Oregon Transportation Infrastructure Fund" or "OTIF" means the fund created by the Act. Loans from the OTIF may include OTIB loans or loans to finance transportation projects from any accounts established within the OTIF.

"Pledged Revenues" means

- (i) Any funds payable from the State to the Borrower, including but not limited to, any amounts due to the Borrower from the State pursuant to ORS 366.785 to 366.820; and



(ii) All lawfully available funds of Borrower.

"Project" means the transportation project of the Borrower described in Exhibit A, a portion of the Costs of the Project of which is financed or refinanced by the State through the making of the Loan under this Loan Agreement.

"Project Completion Date" means the date on which the Borrower completes construction of the Project.

"Project Completion Deadline" means June 1, 2023.

"Rule" or "Rules" means Oregon Administrative Rules, chapter 731, division 30, as they may be supplemented, modified or amended from time to time.

"State" means the State of Oregon, acting by and through its Department of Transportation.

"State Highway Fund" means the fund described in ORS 366.505.

**Section 1.02. General Rules.** Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, agencies and districts. Words importing one gender shall include the other gender.

## ARTICLE II

### LOAN

**Section 2.01. Loan Amount.** On the Loan Closing Date the State hereby agrees to make to the Borrower, and the Borrower agrees to borrow and accept from the State, a Loan in the maximum aggregate principal amount of **Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000).**

**Section 2.02. Use of Loan Proceeds.** The Borrower shall use the proceeds of the Loan strictly in accordance with Section 5.01 of this Agreement.

**Section 2.03. Loan Term.** The term of the Loan is set forth in the Note.

**Section 2.04. Interest.** The Note shall bear interest at the rate of **One and 22/100 percent (1.22%)** per annum. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12), thirty (30) day months. Interest shall be due and payable in arrears and shall accrue on the outstanding principal balance from the date of this Agreement until the principal amount of the Note, together with accrued unpaid interest thereon, is paid in full.

**Section 2.05. Payments.**

(a) The Loan shall be due and payable in scheduled payments of principal and interest as

set forth herein and in the Note. The Loan Repayments, when taken together, shall be in an amount sufficient to amortize the original principal amount of the Note, together with interest thereon, from the date of this Agreement to the Maturity Date.

(b) A scheduled payment received before the scheduled Loan Repayment date will be applied to interest and principal on the scheduled Loan Repayment date, rather than on the day such payment is received, and will be applied first to the State's expenses (if any) and any fees due, then to interest, and then to principal according to the applicable Loan Repayment schedule.

**Section 2.06. Prepayments.** Each Loan Prepayment shall include any prepayment premium and all unpaid interest on the amount prepaid that accrued to the date of prepayment.

(a) *Mandatory Prepayment.* The Borrower shall prepay the outstanding balance of the Loan upon the destruction of all or a substantial portion of the Project.

(b) *Optional Prepayment.* The Borrower may make Loan Prepayments upon prior written approval of the State obtained not less than one hundred twenty (120) days prior to the prepayment date. On the prepayment date, the Borrower shall remit to the State the principal amount of the Loan Prepayments, plus the unpaid interest accrued on such amount to the date of prepayment, and any applicable prepayment premium.

(c) *General.* Loan Prepayments shall be applied first to any expenses of the State and accrued interest on the portion of the Loan prepaid, and then to principal payments (including premium, if any) on the Loan. In the case of a Loan Prepayment that does not prepay all of the principal of the Loan, the State shall determine, in its sole discretion, the method by which such Loan Prepayment shall be applied to the outstanding principal payments. After a partial Loan Prepayment, the State may, in its sole and absolute discretion, reamortize the outstanding Loan amount at the same interest rate for the same number of remaining payments to decrease the Loan Repayment amount; provided, however, that nothing in this Agreement requires the State to reamortize the outstanding Loan amount if it accepts a partial Loan Prepayment.

**Section 2.07. Unconditional Obligation.** Except as provided in Section 2.10, the obligation of the Borrower to make the Loan Repayments and all other payments required under this Agreement and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained in this Agreement is payable solely from the sources of repayment described in Section 2.10 and shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any payments under this Loan Agreement remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Oregon or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the State to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project, this Loan Agreement, or any intergovernmental agreement

related to the Project or any rights of set off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the State or any other party or parties; provided, however, that payments under the Agreement shall not constitute a waiver of any such rights.

**Section 2.08. Disclaimer of Warranties and Indemnification.** The Borrower acknowledges and agrees that:

(a) the State does not make any warranty or representation, either expressed or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions of the Project or any other warranty or representation;

(b) in no event shall the State or its commissioners, officers, agents or employees be liable or responsible for any direct, incidental, indirect, special, consequential, punitive or other damages in connection with or arising out of this Loan Agreement or the Project or the existence, furnishing, functioning or use of the Project; and

(c) to the extent authorized by law, the Borrower shall indemnify, save, hold harmless and defend the State and its commissioners, officers, agents and employees, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Borrower, or its officers, employees, agents or subcontractors pursuant to the terms of this Loan Agreement; provided, however, that the provisions of this subsection (c) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to Chapter 30 of the Oregon Revised Statutes or the laws of the United States of America or other laws of the State of Oregon.

**Section 2.09. Termination of Availability.** The State shall have no obligation to make any disbursements to the Borrower under this Loan Agreement after the Project Completion Deadline, except for Costs of the Project incurred by the Borrower prior to the Project Completion Deadline.

**Section 2.10. Sources of Repayment of the Borrower's Obligations.**

(a) The State and the Borrower agree that the amounts payable by the Borrower under this Loan Agreement, including, without limitation, the amounts payable by the Borrower pursuant to Section 2.05, Section 2.06, and Section 7.04 of this Loan Agreement, are payable from the sources of repayment described in subsections (b) and (c) of this Section 2.10. Nothing herein shall be deemed to prevent the Borrower from paying the amounts payable under this Loan Agreement from any other legally available source.

(b) The amounts payable by the Borrower under this Loan Agreement are payable from the Pledged Revenues.

(c) The Borrower pledges its full faith and credit and taxing power, within the limitations of Article XI, sections 11 and 11 b of the Oregon Constitution, to pay the amounts payable by Borrower under this Loan Agreement. The amounts payable by Borrower under this Loan

Agreement are secured by and payable from all lawfully available funds of the Borrower.

(d) The Borrower acknowledges that the State of Oregon is entitled to withhold any amounts due to the Borrower from the State of Oregon, including but not limited to any amounts due to the Borrower from the State of Oregon pursuant to ORS 366.785 to 366.820, and to apply any such amounts to payments due under this Loan Agreement if the Borrower defaults on payments due under this Loan Agreement.

(e) Borrower hereby grants a security interest in and irrevocably pledges its Pledged Revenues to pay Borrower's obligations hereunder. The Pledged Revenues so pledged and hereafter received by Borrower shall immediately be subject to the lien of such pledge without physical delivery, filing or other act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, to the fullest extent permitted by ORS 287A.310. Borrower hereby represents and warrants that the pledge of Pledged Revenues hereby made by Borrower complies with, and shall be valid and binding from the date of this Agreement pursuant to, ORS 287A.310.

**Section 2.11. Loan Fee.** The Borrower shall pay to the State a one-time Loan fee equal to one percent (1%) of the Loan. This fee shall be in addition to any interest charged on the Loan. The Borrower may elect to:

pay the entire amount of this Loan fee on the Loan Closing Date; or

authorize the State to deduct the Loan fee from the Loan proceeds;

provided however that if the Loan is not fully disbursed, the State shall refund to the Borrower the portion of the Loan fee allocated to the undisbursed portion of the Loan.

**Section 2.12. Late Fee.** If any Loan Repayment required under the Note is delinquent more than fifteen (15) days, the Borrower shall pay to the State a late charge of five percent (5%) of the delinquent Loan Repayment in addition to the Loan Repayment due under the Note.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF BORROWER

The Borrower represents and warrants to the State as follows:

**Section 3.01. Organization and Authority.**

(a) The Borrower is a Municipality.

(b) The Borrower has full legal right and authority and all necessary licenses and permits required as of the date of this Agreement to own, operate and maintain the Project, other than licenses and permits relating to the Project which the Borrower expects to receive in the ordinary course of business, to carry on its activities relating to the Project, to execute and deliver this Loan Agreement, to undertake and complete the Project, and to carry out and consummate all

transactions contemplated by this Loan Agreement.

(c) The Project is a project which the Borrower may undertake pursuant to Oregon law and for which the Borrower is authorized by law to borrow money.

(d) The proceedings of the Borrower's governing members and voters, if necessary, approving this Loan Agreement and the Note and authorizing the execution, issuance and delivery of this Loan Agreement and the Note on behalf of the Borrower and authorizing the Borrower to undertake and complete the Project have been duly and lawfully adopted in accordance with the laws of Oregon, and such proceedings were duly approved and published, if necessary, in accordance with applicable Oregon law, at a meeting or meetings which were duly called pursuant to necessary public notice and held in accordance with applicable Oregon law and at which quorums were present and acting throughout.

(e) This Loan Agreement has been duly authorized, executed and delivered by an Authorized Officer of the Borrower, and, assuming that the State has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered, this Loan Agreement, this Loan Agreement constitutes the legal, valid and binding obligation of the Borrower in accordance with its terms, and the information contained in Exhibits A and B is true and accurate in all respects.

(f) This Loan Agreement is duly authorized by a resolution of the Borrower which was adopted as required by ORS 367.035(4), and was adopted in accordance with applicable law and the Borrower's requirements for filing public notices and holding public meetings.

**Section 3.02. Full Disclosure.** There is no fact that the Borrower has not disclosed to the State in writing, on the Borrower's application for the Loan or otherwise, that materially adversely affects the properties, activities, prospects or the condition (financial or otherwise) of the Borrower or the Project or the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement. Neither the Borrower's application for the Loan nor the Borrower's representations and warranties in this Loan Agreement contain any untrue statement of a material fact or omits any statement or information which is necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

**Section 3.03. Pending Litigation.** There are no proceedings pending, or, to the knowledge of the Borrower threatened, against or affecting the Borrower, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect (a) the Project, (b) properties, activities, prospects or the condition (financial or otherwise) of the Borrower, or (c) the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

**Section 3.04. Compliance with Existing Laws and Agreements.** The authorization, execution and delivery of this Loan Agreement by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements under this

Loan Agreement and the consummation of the transactions provided for in this Loan Agreement, and the undertaking and completion of the Project will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Borrower pursuant to, any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument (other than any lien and charge arising under this Loan Agreement or any of the documents related to this Loan Agreement) to which the Borrower is a party or by which the Borrower or any of its property or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, resolutions, rules, regulations or court orders to which the Borrower or its properties or operations is subject.

**Section 3.05. No Defaults.** No event has occurred and no condition exists that, upon authorization, execution and delivery of this Loan Agreement or receipt of the amount of the Loan, would constitute an Event of Default under this Loan Agreement. The Borrower is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it or its properties may be bound, which violation would materially adversely affect the (a) Project, (b) properties, activities, prospects or the condition (financial or otherwise) of the Borrower, or (c) the ability of the Borrower to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

**Section 3.06. Governmental Consent.** The Borrower has obtained or will obtain all permits and approvals required by any governmental body or officer for the making, observance or performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or for the undertaking or completion of the Project and the financing or refinancing of the Project; and the Borrower has complied or will comply with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or with the undertaking or completion of the Project and the financing or refinancing of the Project. No consent, approval or authorization of, or filing, registration or qualification with, any governmental body or officer that has not been obtained is required on the part of the Borrower as a condition to the authorization, execution and delivery of this Loan Agreement.

**Section 3.07. Compliance with Law.** The Borrower:

(a) is in compliance with all laws, ordinances, rules and regulations to which it is subject, non-compliance with which would materially adversely affect the condition (financial or otherwise) of the Borrower or the ability of the Borrower to conduct its activities or undertake or complete the Project; and

(b) has obtained or will obtain all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property or for the conduct of its activities which, if not obtained, would materially adversely affect the ability of the Borrower to conduct its activities or undertake or complete the Project or the condition (financial or

otherwise) of the Borrower.

**Section 3.08. The Project.**

- (a) The Project is feasible, and there will be adequate funds available to repay the Loan.
- (b) The Borrower has been provided with a copy of the Rules, and the Project is in compliance with such Rules.

**Section 3.09. Costs of the Project.**

- (a) The Costs of the Project is a reasonable and accurate estimation and based upon an engineer's feasibility report and engineer's estimate stamped by a registered professional engineer.
- (b) The principal amount of the Loan is not in excess of the Costs of the Project.

**Section 3.10. [Reserved.]**

**ARTICLE IV**

**CONDITIONS TO LOAN AND DISBURSEMENTS**

**Section 4.01. Conditions Precedent to Loan.** The State shall be under no obligation to make the Loan to the Borrower pursuant to the terms of this Loan Agreement unless:

- (a) the Borrower delivers to the State, on or prior to the Loan Closing Deadline, the following documents in form and substance satisfactory to the State and its Counsel:
  - (i) An opinion of the Borrower's Counsel on the power and authority of the Borrower, the validity and enforceability of the Loan Agreement, and such other matters as the State may require;
  - (ii) This Loan Agreement duly executed and delivered by an Authorized Officer of the Borrower;
  - (iii) The Note duly executed and delivered by an Authorized Officer of the Borrower;
  - (iv) A copy of the ordinance/resolution, duly adopted by the governing body of the Borrower, authorizing this Loan, the pledge of Borrower's full faith and credit and taxing power, the pledge of the Pledged Revenues and execution of the Loan documents, which copy of ordinance/resolution shall be certified by an Authorized Officer of the Borrower;
  - (v) [Reserved.]
  - (vi) Such other certificates, documents, opinions and information as the State; and

- (b) there is availability of moneys in the OTIF for use in the Project;

provided, however, the State shall be under no obligation to make the Loan if there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement.

**Section 4.02. Conditions to Disbursement.** The obligation of the State to make any disbursement to the Borrower is subject to the following conditions:

- (a) All the conditions set forth in Section 4.01 of this Loan Agreement have been satisfied;
- (b) There shall exist no Event of Default, or event, omission or failure of a condition which would constitute an Event of Default after notice or lapse of time or both;
- (c) All representations and warranties of the Borrower made in this Loan Agreement shall be true and correct on the date of disbursement with the same effect as if made on such date;
- (d) The State has received documentation satisfactory to the State evidencing that the Borrower has obtained any matching funds that are needed to pay for the Costs of the Project; and
- (e) The State receives:
  - (i) a requisition executed by the Borrower in substantially the form of Exhibit D; and
  - (ii) any other written evidence of materials and labor furnished to or performed upon the Project, itemized receipts or invoices for the payment of the same, and releases, satisfactions and other signed statements and forms as the State may require as a condition for making disbursements of the Loan.

The State may, at its option, from time to time, either reimburse the Borrower for construction costs paid or may make direct payment for construction costs to suppliers, subcontractors and others for sums due them in connection with construction of the Project. Nothing in this Loan Agreement shall require the State to pay any amounts for labor or materials unless satisfied that such claims are reasonable and that such labor and materials were actually expended and used in the construction of the Project. The State, at its option, from time to time, may also require that the Borrower have a contractor or subcontractor execute and deliver a surety bond or indemnification form acceptable to the State for the faithful performance of the construction contract or subcontract and payment of all liens and lienable expenses in connection with such performance in a sum equal to the contract or subcontract price. Disbursements for the Costs of the Project shall be subject to a retainage at the rate of five percent (5%) which will be released upon satisfactory completion of the Project.

Further, the State shall have no obligation to make any disbursement to the Borrower if, on or before the time for disbursement, there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement or if ODOT does not receive sufficient funding, appropriations, limitation, allotments and other expenditure authority



to allow ODOT or OTIF, in the exercise of its reasonable administrative discretion, to provide such funding.

## ARTICLE V

### COVENANTS OF BORROWER

**Section 5.01.** Use of Proceeds. The Borrower will apply the proceeds of the Loan to finance all or a portion of the Costs of the Project. None of the proceeds of the Loan shall be used for administrative purposes by the Borrower.

**Section 5.02.** Source of Repayment. The Loan shall be paid from the sources of repayment described in Section 2.10 of this Loan Agreement. Such sources shall be applied to the punctual payment of the principal of and the interest on the Loan, and all other amounts due under this Loan Agreement according to the terms of this Agreement.

**Section 5.03.** Performance Under Loan Agreement. The Borrower covenants and agrees to cooperate with the State in the observance and performance of the respective duties, covenants, obligations and agreements of the Borrower and the State under this Loan Agreement.

**Section 5.04.** Completion of Project and Provision of Moneys for the Project. The Borrower covenants and agrees to provide State with copies of all permits, plans and specifications relating to the Project promptly, but in any event no later than the Project Completion Date. The Borrower shall obtain as-built drawings for all facilities of the Project and obtain certification of completion per as-built drawings from the Project engineer within ninety (90) days of the Project Completion Date. The Borrower shall supply a copy of such drawings and certification to the State upon request. The Borrower further covenants and agrees: (a) to exercise its best efforts in accordance with prudent practice to complete the Project and to so accomplish such completion on or before the estimated Project Completion Date; (b) to proceed expeditiously with, and complete, the Project; and (c) to provide from its own fiscal resources all moneys in excess of the total amount of proceeds it receives pursuant to this Loan Agreement required to complete the Project. The Borrower shall have a program, documented to the satisfaction of the State, for the on-going maintenance, operation and replacement, at its sole expense, of the Project. The program shall include a plan for generating revenues sufficient to assure the operation, maintenance and replacement of the Project during the useful life of the Project. The Borrower shall provide such documentation to the State on or before December 31, 2019.

**Section 5.05.** Disposition of Project. Unless it is worn out, obsolete or, in the reasonable opinion of the Borrower, no longer useful in the operation of the Project, the Borrower shall not sell, lease, abandon, exchange or otherwise dispose of (collectively for the purposes of this Section "transfer") all or substantially all or any substantial portion of the Project or any other properties or assets which provide revenues for the payment of the amounts due under this Loan Agreement except on ninety (90) days' prior written notice to the State and, in any event, shall not so transfer the same unless the State consents to such transfer. Proceeds of any such transfer not used to replace property that is part of the Project shall be applied to payment of the

outstanding principal and interest of the Loan as a Loan Prepayment subject to a prepayment premium, if any, as provided in Section 2.06 of this Agreement.

**Section 5.06. Operation and Maintenance of Project.** The Borrower covenants and agrees that it shall, in accordance with prudent practice, maintain the Project in good repair, working order and operating condition.

**Section 5.07. Records; Accounts.** The Borrower shall keep accurate records and accounts for the revenues and funds that are the sources of repayment of the Loan, including but not limited to those Pledged Revenues (the "Repayment Revenues Records"), separate and distinct from its other records and accounts (the "General Records"). Such Repayment Revenues Records shall be maintained in accordance with generally accepted accounting principles as established by the Government Accounting Standards Board as in effect from time to time and shall be audited annually by an independent accountant, which audit may be part of the annual audit of the General Records of the Borrower. Such Repayment Revenues Records and General Records shall be made available for inspection by the State and the federal government (including but not limited to the Federal Highway Administration and the Federal Transit Administration, if applicable) at any reasonable time, and a copy of such annual audit(s), including all written comments and recommendations of such accountant, shall be furnished to the State within two hundred ten (210) calendar days of the close of the fiscal year being so audited.

**Section 5.08. Inspections; Information.** The Borrower shall permit the State and the federal government (including but not limited to the Federal Highway Administration and the Federal Transit Administration, if applicable) and any party designated by any of such parties to examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts and any other matters relating to the Project and to its financial standing, and shall supply such reports and information as the State may reasonably require in connection with this Agreement. In addition, the Borrower shall provide the State with copies of loan documents or other financing documents and any official statements or other forms of offering documents relating to any bonds, notes or other indebtedness of the Borrower that are issued after the Loan Closing Date and are secured by the Pledged Revenues.

**Section 5.09. Insurance.** The Borrower shall maintain or cause to be maintained insurance policies with responsible insurers or self-insurance programs providing against risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is usually carried, or self-insurance is usually provided for, by governmental units constructing, operating and maintaining facilities of the nature of the Borrower's Project, including liability coverage, all to the extent available at reasonable cost. Unless otherwise prohibited by law, the Borrower shall cause the State to be listed on such insurance policies as a loss payee on such policy. Nothing herein shall be deemed to preclude the Borrower from asserting against any party, other than the State, a defense which may be available to the Borrower, including, without limitation, a defense of immunity. In the event the Project or any portion thereof is destroyed, any insurance proceeds shall be paid to the State and shall be

applied to the principal and interest on the Loan, unless the State agrees in writing that the insurance proceeds shall be used to rebuild the Project. Any application of insurance proceeds to prepay the outstanding principal of the Loan shall not be subject to the prepayment premium, if any, as provided in Section 2.06.

**Section 5.10. Condemnation.** In the event the Project or any portion of the Project is condemned, any condemnation proceeds shall be used to prepay the outstanding principal on the Loan, and shall not be subject to the prepayment premium, if any, as provided in Section 2.06.

**Section 5.11. Engineer's Report.** Upon request by the State, the Borrower shall promptly provide the stamped engineer's feasibility report and estimate described in Section 3.09(a) to the State.

**Section 5.12. Notice of Material Adverse Change.** The Borrower shall promptly notify the State of any material adverse change in the properties, activities, prospects or the condition (financial or otherwise) of the Borrower or the Project or in the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

**Section 5.13. Financial Statements; Reports.** The Borrower shall deliver to the State in form and detail satisfactory to the State:

(a) As soon as reasonably possible and in any event within Two Hundred Seventy (270) days after the close of each fiscal year of the Borrower, the annual audited financial statements of Borrower, including revenues, expenditures, cash flows, and changes in retained earnings for each of the funds constituting the Pledged Revenues for the fiscal year just ended, prepared by an independent certified public accountant(s) satisfactory to the State, all financial statements to be prepared in accordance with generally accepted accounting principles.

(b) Such other statement or statements or reports as to the Borrower as the State may reasonably request.

**Section 5.14. Compliance with Applicable Laws.** The Borrower will comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority that relate to the financing, construction and operation of the Project. In particular, but without limitation, the Borrower shall comply with the following, **as applicable:**

- a. The National Environmental Policy Act (NEPA), and other environmental laws and requirements;
- b. The Uniform Relocation Assistance Act (Right of Way);
- c. The Civil Rights Act of 1964 and other civil rights laws and requirements including the DBE program;
- d. The Davis Bacon Act and other labor laws and requirements;
- e. The Common Rule (49 C.F.R.19) with respect to procurement;
- f. The Brooks Act;
- g. Competitive bidding requirements and state labor standards and wage rates found in

the Oregon Public Contracting Code, ORS 279A, 279B, and 279C, as applicable, including but not limited to ORS 279B.220, 279B.225 (if applicable to this Agreement), 279B.230, and 279B.235 (if applicable to this Agreement), as amended from time to time, which provisions are hereby incorporated by reference, and ORS 279B.280, as amended from time to time;

- h. Buy America;
- i. Manual of Uniform Traffic Control Devices;
- j. The Americans with Disabilities Act (ADA) and other federal and state laws prohibiting discrimination against persons with disabilities;
- k. OAR, Chapter 731, Division 30, as amended from time to time at the discretion of the State; and
- l. State municipal bonding requirements found in ORS Chapters 280, 286A, and 287A.

**Section 5.15.** Compliance with State Handbook. The Borrower agrees that it will at all times comply with the provisions of any project management handbook of the State for OTIF loans.

**Section 5.16.** Continuing Representations. The representations of the Borrower contained in this Loan Agreement shall be true at the time of the execution of this Loan Agreement and at all times during the term of this Loan Agreement.

**Section 5.17.** [Reserved.]

**Section 5.18.** Further Assurances. The Borrower shall, at the request of the State, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement.

**Section 5.19.** [Reserved.]

## ARTICLE VI

### ASSIGNMENT

**Section 6.01.** Assignment and Transfer by State.

The Borrower hereby approves and consents to any assignment, sale or transfer of this Loan Agreement that the State deems to be necessary.

**Section 6.02.** Assignment by Borrower. This Loan Agreement may not be assigned by the Borrower without the prior written consent of the State. The State may grant or withhold such consent in its sole discretion. In the event of an assignment of this Loan Agreement by the Borrower and assumption of the Borrower's obligations under this Agreement, the Borrower shall pay, or cause to be paid, to the State any fees or costs incurred by the State as the result of such assignment, including but not limited to, attorney fees.

## ARTICLE VII

### DEFAULTS AND REMEDIES

**Section 7.01.** Event of Default. If any of the following events occurs, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) Failure by the Borrower to pay, or cause to be paid, any Loan Repayment required to be paid hereunder on the due date thereof; or

(b) Failure by the Borrower to make, or cause to be made, any required payments of principal, redemption premium, if any, and interest on any bonds, notes or other obligations of the Borrower for borrowed money (other than the Loan), after giving effect to the applicable grace period; or

(c) Any representation made by or on behalf of the Borrower contained in this Loan Agreement, or in any agreement, instrument, certificate or document furnished in compliance with or with reference to this Loan Agreement or the Loan, is false or misleading in any material respect; or

(d) A petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Borrower such petition shall be dismissed within twenty (20) calendar days after such filing, and such dismissal shall be final and not subject to appeal; or the Borrower shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including without limitation, a trustee, receiver, custodian, liquidator, or the like of the Borrower or any of its property) shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) calendar days; or

(e) [Reserved.]

(f) [Reserved.]

(g) The Borrower fails to proceed expeditiously with, or to complete, the Project or any segment or phase of the Project in accordance with the plans and schedules approved by the State, provided that the Borrower may request the State's written approval of reasonable modifications to such plans and schedules, which approval shall not be unreasonably withheld; or

(h) The Borrower defaults in the performance or observance of any covenants or agreements contained in any loan documents between itself and another lender or lenders (including but not limited to other Oregon state agencies) or in any loan documents between itself and the Department of Transportation for another loan, and the default remains uncured upon the expiration of any cure period provided for such a default by said loan documents; or

(i) Failure by the Borrower to observe and perform any duty, covenant, obligation or

agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in subsections (a) through (h) of this Section, which failure shall continue for a period of thirty (30) calendar days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the State, unless the State agrees in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the State may not unreasonably withhold its consent to an extension of such time up to one hundred twenty (120) calendar days of the written notice referred to above if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Event of Default is corrected.

**Section 7.02. Notice of Default.** The Borrower shall give the State prompt telephonic notice of the occurrence of any Event of Default referred to in Section 7.01(d) of this Agreement and of the occurrence of any other event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof. Any telephonic notice pursuant to this Section 7.02 shall be confirmed in writing as soon as is practicable by the Borrower.

**Section 7.03. Remedies on Default.** Whenever an Event of Default referred to in Section 7.01 of this Agreement shall have occurred and be continuing, the State shall have the right to take any action permitted or required pursuant to the Loan Agreement and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due under this Loan Agreement or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Borrower under this Agreement, including, without limitation:

- (a) declaring all Loan Repayments and all other amounts due under this Loan Agreement to be immediately due and payable, and upon notice to the Borrower the same shall become due and payable without further notice or demand,
- (b) appointment of a receiver,
- (c) refusal to disburse any Loan proceeds,
- (d) barring the Borrower from applying for future OTIF assistance, or
- (e) withholding other State of Oregon funds, including but not limited to, the Borrower's apportionment of State Highway Fund revenues due under ORS 366.785 to 366.820, to the extent permitted by Section 2.10.

In addition, if an Event of Default referred to in Section 7.01(a) of this Agreement shall have occurred and be continuing, the State shall have the right to declare all Loan Repayments and all other amounts due under this Agreement to be immediately due and payable, and upon notice to the Borrower the same shall become due and payable without further notice or demand.

**Section 7.04. Attorney Fees and Other Expenses.** To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from

this Agreement shall be entitled to recover from the other its reasonable attorney fees, costs and expenses at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to the State by its attorneys. The Borrower shall, on demand, pay to the State reasonable expenses incurred by the State in the collection of Loan Repayments.

**Section 7.05.** Application of Moneys. Except as otherwise provided in another provision of this Loan Agreement, any moneys collected by the State pursuant to Section 7.03 of this Agreement shall be applied in the following order:

- (a) to pay any attorney fees, or other fees, costs and expenses incurred by the State,
- (b) to pay interest due and payable on the Loan, and
- (c) to pay principal due and payable on the Loan.

**Section 7.06.** No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the State is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. To entitle the State to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article VII.

**Section 7.07.** Retention of State's Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions of this Agreement, or anything else to the contrary contained in this Agreement, the State shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Borrower at law or in equity, as the State may, in its discretion, deem necessary to enforce the obligations of the Borrower to the State pursuant to Sections 2.05, 2.08 and 7.04 hereof.

**Section 7.08.** Default by the State. In the event of any default by the State under any covenant, agreement or obligation of this Loan Agreement, the Borrower's remedy for such default shall be limited to injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the State hereunder as may be necessary or appropriate.

## ARTICLE VIII

### MISCELLANEOUS

**Section 8.01.** Notices. All notices permitted or required under this Agreement shall be given in writing by personal delivery, facsimile, email or mail, postage prepaid, to the Borrower or the State, as the case may be, at the addresses or numbers set forth below or at such other address or number of which such party shall have notified in writing the other party:

If to the State: Oregon Department of Transportation  
Financial Services  
Attn: Debt Manager  
355 Capitol Street NE  
Salem, Oregon 97301-3872  
Email: [ODOTDebtMgt@odot.state.or.us](mailto:ODOTDebtMgt@odot.state.or.us)  
Telephone No.: (503) 986-3393  
Facsimile No.: (503) 986-3907

If to the Borrower: City of Molalla  
PO Box 248  
Molalla, OR 97038  
Telephone No. (503) 829-6855 ext. 291  
Attn: Dan Huff  
Email: [DHuff@CityofMolalla.com](mailto:DHuff@CityofMolalla.com)

Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice given by personal delivery shall be effective when actually delivered. Any notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against the State, such facsimile transmission must be confirmed by telephone notice to the Debt Manager of ODOT.

**Section 8.02. Successors and Assigns; No Third Party Beneficiaries.**

(a) This Loan Agreement shall inure to the benefit of and shall be binding upon the State and the Borrower and their respective successors and assigns.

(b) The State and the Borrower are the only parties to this Loan Agreement and are the only parties entitled to enforce its terms. Nothing in this Loan Agreement gives or provides any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name in this Loan Agreement and expressly described as intended beneficiaries of the terms of this Loan Agreement.

**Section 8.03. Severability.** In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

**Section 8.04. Amendments, Supplements and Modifications.** This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the State and the Borrower. This Loan Agreement may not be amended, supplemented or modified in a manner that is not in compliance with the Act or the Rules.

**Section 8.05. Choice of Law; Designation of Forum; Federal Forum.**



(a) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

(b) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

(c) Notwithstanding Section 8.05(b), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

**Section 8.06.** Loan not an Obligation of the United States of America. The covenants, agreements and obligations of the State contained in this Loan Agreement shall not be construed to be covenants, agreements or obligations of the United States of America.

**Section 8.07.** Headings. The Section headings in this Loan Agreement are intended to be for reference purposes only and shall in no way modify or restrict any of the terms or provisions hereof.

**Section 8.08.** No Construction against Drafter. Both parties acknowledge that they are each represented by and have sought the advice of counsel in connection with, and the transactions contemplated by, this Loan Agreement and have read and understand the terms of this Loan Agreement. The terms of this Loan Agreement shall not be construed against either party as the drafter.

**Section 8.09.** Merger; No Waiver. This Loan Agreement and attached exhibits (that are by this reference incorporated herein) constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Loan Agreement. No waiver of any provision of this Loan Agreement or consent shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the State to enforce any provision of this Loan Agreement shall not constitute a waiver by the State of that or any other provision.

**Section 8.10.** Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the State and the Borrower have caused this Loan Agreement to be executed and delivered as of the date first above written.

STATE OF OREGON, acting by and through its Department of Transportation

Borrower:  
CITY OF MOLALLA

By: \_\_\_\_\_  
Chief Financial Officer

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

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibits:

- Exhibit A: Project Description
- Exhibit B: Approved Project Budget
- Exhibit C: Form of Promissory Note  
(with Exhibit 1: Repayment Schedule)
- Exhibit D: Form of Payment Requisition

## **Exhibit A to Loan Agreement**

### **Project Description**

Borrower: CITY OF MOLALLA

Cascade Highway, OR 213, is a part of the state highway system under the jurisdiction and control of the Oregon Department of Transportation (“ODOT”). Toliver Road is a part of the city street under the jurisdiction and control of the City of Molalla (“City”).

City adopted a new Transportation System Plan and a comprehensive plan amendment with a condition of approval regarding the Intersection. City received an application from a developer to develop a large parcel of land near the Intersection, and as a condition of the zone change and comprehensive plan amendment becoming effective, City was required to establish and adopt a funding mechanism for improvements at the intersection of OR 213 and Toliver Road (the "Intersection").

ODOT conducted a Road Safety Audit (RSA) of the Intersection to outline existing intersection issues and provide suggestions for improvement, ranging from low-cost to high-cost solutions. ODOT subsequently conducted an Intersection Control Evaluation (ICE) to consider multiple context-sensitive control strategies for the modified intersection. The ICE indicated that a roundabout could provide adequate capacity and minimize delay under 2040 traffic conditions, accommodate freight movements, and accommodate bicycle and pedestrian users with significant safety benefits as compared to other alternatives. As a result of the RSA and the ICE, ODOT recommended constructing a roundabout at the Intersection to achieve safe and efficient operations of the highway.

As such, ODOT and City desire ODOT to construct a roundabout at the Intersection and City desires to contribute funds to facilitate that construction.

**Exhibit B to Loan Agreement**

**Approved Project Budget**

Borrower: CITY OF MOLALLA

Costs of Project:

<b>Sources</b>	
State Contribution (federal & state funds)	\$6,514,481
OTIB Loan City of Molalla	2,500,000
Total	\$9,014,481
<b>Uses</b>	
Preliminary Engineering	\$1,151,352
Right of Way	2,250,182
Construction	2,878,381
Design & Architectural	575,676
Other Capital Costs	633,890
Other (OR211-Molalla Signal)	1,500,000
Loan Fee	25,000
Total	\$9,014,481

-

**Exhibit C to Loan Agreement**

**Form of Promissory Note**

**PROMISSORY NOTE**

\$2,500,000 \_\_\_\_\_, 2020

For value received, the **City of Molalla** (hereinafter "Borrower") unconditionally promises to pay to the State of Oregon, acting by and through its Department of Transportation (hereinafter "State"), or order, at 350 Capitol St. NE, Salem, OR 97301-3871 or such other place as the State may designate in writing, the principal sum of **Two Million Five Hundred Thousand Dollars (\$2,500,000)**, or so much thereof as is disbursed and not repaid, plus interest from the date of this Note on the unpaid principal balance until paid. Any capitalized terms not defined in this Note have the meanings assigned to such terms in that certain loan agreement dated the same date as this Note between the State and Borrower (as amended from time to time the "Loan Agreement").

Interest shall accrue on the unpaid principal balance at the rate of **One and 22/100 percent (1.22%)** per annum and shall be computed on the basis of a 360-day year, consisting of twelve (12), thirty (30) day months.

Principal and interest shall be payable at the times and in the amounts specified in Exhibit 1: Repayment Schedule (attached to this Note and by this reference made a part hereof), and the outstanding principal balance of the Note, together with accrued unpaid interest, shall be due and payable on the Maturity Date. Each payment made by the Borrower under this Note shall be applied first to the State's expenses (if any) and any fees due, then to interest due, and then to the principal of the Loan unless the Loan Agreement provides otherwise.

This Note is payable prior to its maturity except as provided for in Section 2.06 of the Loan Agreement.

This Note is given to avoid the execution by the Borrower of an individual note for each advance by the State to the Borrower. In consideration thereof, the Borrower agrees that the State's record entries of transactions pursuant to this Note shall be conclusive evidence of borrowings and payments made pursuant to this Note, absent manifest error.

In the event that the Borrower receives written notification from the State that payments made pursuant to the Loan Agreement have been assigned, all payments hereunder shall be made directly to the assignee pursuant to such assignment.

If an Event of Default occurs, the outstanding balance under this Note, including principal, interest and other charges, if any, shall, at the option of the State, become immediately due and payable. Presentment, demand, protest, and notice of dishonor, protest and nonpayment

are waived by the Borrower.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Note shall be entitled to recover from the other its reasonable attorney fees, costs and expenses at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to the State by its attorneys. The Borrower shall, on demand, pay to the State its reasonable expenses incurred in the collection of Loan payments.

The terms, provisions and covenants contained in this Note shall apply to, inure to the benefit of, and bind the parties hereto and their respective successors and assigns.

This Note shall be governed by and construed in accordance with the laws of the State of Oregon (without giving effect to its conflicts of law principles).

This Note is subject to the terms and conditions of the Loan Agreement. The indebtedness evidenced by this Note is secured by the collateral described in the Loan Agreement.

#### NOTICE TO BORROWER

**DO NOT SIGN THIS NOTE BEFORE YOU READ IT. FULL OR PARTIAL REPAYMENT BEFORE THE DATE PROVIDED FOR REPAYMENT IN THIS NOTE AND IN THE LOAN AGREEMENT MAY NOT BE PERMITTED, AND A PREMIUM FOR ANY SUCH PREPAYMENT MAY BE CHARGED AND COLLECTED.**

CITY OF MOLALLA

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

Name & Title (print): \_\_\_\_\_

**Exhibit 1 to Promissory Note**

**Repayment Schedule**

Borrower: City of Molalla

<b>Payment Due Date:</b>	<b>Amount Due:</b>
April 1, 2023	Any unpaid accrued interest
April 1, 2024	Any unpaid accrued interest
April 1, 2025 and the first day of each October and April thereafter	Installment payment of principal and interest of \$91,443.97
Maturity Date (October 1, 2037)	The remaining principal and interest due on the Loan

DRAFT

**Exhibit D to Loan Agreement**

**Form of Payment Requisition**

TO: Oregon Transportation Infrastructure Bank  
Oregon Department of Transportation  
355 Capitol St. NE, MS #21  
Salem, Oregon 97301-3871

RE: Oregon Transportation Infrastructure Fund, Loan Number OTIF-0070

On behalf of the City of Molalla I request that the Oregon Transportation Infrastructure Fund (OTIF) disburse to the following payees the following amounts from the account established in the OTIF for this loan:

[Insert Payee]

[Insert Amount]

The foregoing disbursements are all for Costs of the Project as such term is defined in, and which are permitted under, the Loan Agreement. I have attached all necessary documentation as required by Section 4.02(e)(ii) of the Loan Agreement. No Event of Default has occurred or is continuing under the Loan Agreement.

DATED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

City of Molalla

By: \_\_\_\_\_  
Authorized Officer

Attachments