



CITY OF SWEET HOME CITY COUNCIL AGENDA

November 10, 2020, 6:30 PM
Sweet Home City Hall, 3225 Main Street
Sweet Home, OR 97386

WIFI Passcode: guestwifi

PLEASE silence all cell phones – Anyone who wishes to speak, please sign in.

Mission Statement

The City of Sweet Home will work to build an economically strong community with an efficient and effective local government that will provide infrastructure and essential services to the citizens we serve. As efficient stewards of the valuable assets available, we will be responsive to the community while planning and preparing for the future.

Meeting Information

The City Council will hold a Regular City Council meeting at 6:30 p.m. in the City Council Chambers at City Hall, 3225 Main Street. In order to protect residents, staff, and elected officials due to the novel COVID-19 virus, the frequency and length of public meetings, including the City Council, boards and commissions, will be minimized. Non-urgent and non-essential City business with expected public feedback will be postponed whenever possible. Individuals attending public meetings in person will be limited to the first six people, required to maintain appropriate social distancing, (6-ft.) and be free of symptoms related to COVID-19. The City of Sweet Home City Council is streaming the meeting via the Microsoft Teams platform and asks the public to consider this option. There will be opportunity for public input via the live stream. To view the City Council meeting live, online visit live.sweethomeor.gov. If you don't have access to the internet you can call in to 541-367-5128 and you'll be asked to choose option #1 to be logged in to the call.

This video stream and call in options are allowed under Council Rules, meet the requirements for Oregon public meeting law, and has been approved by the Mayor as Chairperson of the meeting. All votes will be conducted by Roll Call Vote.

Call to Order and Pledge of Allegiance

Roll Call

Consent Agenda:

Approval of Minutes:

- a) [2020-10-27 City Council \(pg. 3\)](#)
- b) [2020-10-27 Charter Review Committee \(pg. 7\)](#)

Recognition of Visitors and Hearing of Petitions:

Old Business:

New Business:

- a) [For Information Only – Fire Hall Property \(pg. 9\)](#)
- b) [WWTP Value Engineering Study Contract Authorization \(pg. 16\)](#)

The location of the meeting is accessible to the disabled. If you have a disability that requires accommodation, advanced notice is requested by notifying the City Manager's Office at 541-367-8969.

- c) [Request for Council Action - Resolution No. 29 for 2020 - Refinancing of existing debt \(pg. 56\)](#)

Ordinance Bills

Request for Council Action and First Reading of Ordinance Bills

Second Reading of Ordinance Bills

Third Reading of Ordinance Bills (Roll Call Vote Required)

Reports of Committees:

Administrative and Finance/Property

Park and Tree Committee

Youth Advisory Council

Chamber of Commerce

Council of Governments

Area Commission on Transportation

Solid Waste Advisory Council

Ad Hoc Committee on Health

Legislative Committee

Reports of City Officials:

Mayor's Report

City Manager's Report

Department Director's Reports (1st meeting of the Month)

Library Services Director

- a) [Library Monthly Report - October, 2020 \(pg. 85\)](#)

Community and Economic Development Director

- a) [Community & Economic Development Department October Report \(pg. 87\)](#)

Public Works Director

- a) [Public Works Activities Report - October 2020 \(pg. 92\)](#)

City Attorney

Council Business for Good of the Order

Adjournment



CITY OF SWEET HOME CITY COUNCIL MINUTES

October 27, 2020, 6:30 PM
Sweet Home City Hall, 3225 Main Street
Sweet Home, OR 97386

WIFI Passcode: guestwifi

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The City of Sweet Home will work to build an economically strong community with an efficient and effective local government that will provide infrastructure and essential services to the citizens we serve. As efficient stewards of the valuable assets available, we will be responsive to the community while planning and preparing for the future.

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Call to Order and Pledge of Allegiance

The meeting was called to order at 6:30 PM.

Roll Call

PRESENT

Mayor Greg Mahler

President Pro Tem Diane Gerson

Councilor Cortney Nash

Councilor Dave Trask

Councilor James Goble

Councilor Lisa Gourley

Councilor Susan Coleman

STAFF

Finance Director Brandon Neish
Community and Economic Development Director Blair Larsen
City Attorney Robert Snyder
Public Works Director Greg Springman
Administrative Assistant Julie Fisher (Video)
Public Works Superintendent Dominic Valloni
Chief of Police Jeff Lynn

Consent Agenda:

Motion made by Councilor Coleman, Seconded by Councilor Nash.
Voting Yea: Mayor Mahler, President Pro Tem Gerson, Councilor Nash, Councilor Trask, Councilor Goble, Councilor Gourley, Councilor Coleman

Approval of Minutes:

- a) 10-20-2020 City Council Special Meeting (pg. 3)

Recognition of Visitors and Hearing of Petitions:

None

Old Business:

- a) Request for Council Action - Resolution No. 25 for 2020 - Surplus City Hall Annex and Donate to the City of Detroit, Oregon (pg. 6)

City Attorney Snyder requested the 1996 Sweet Home Annex be donated to the City of Detroit who lost their building during a wild fire. There was discussion on the surplus Annex and moving options.

Motion made by Councilor Gourley, Seconded by Councilor Coleman.
Voting Yea: Mayor Mahler, President Pro Tem Gerson, Councilor Nash, Councilor Trask, Councilor Goble, Councilor Gourley, Councilor Coleman

- b) SDC Update Project Discussion (pg. 9)

Finance Director Neish introduced guests from Murraysmith who gave an update on the SDC's. Deb Galardi and Austin Rambin requested Council feedback on SDC implementation options. The SDC project schedule was reviewed. Council direction was that SDCs should be included in both residential and commercial development.

New Business:

- a) Request for Council Action - Resolution No. 26 for 2020 - CDBG Certifying Officer Resolution (pg. 13)

Community and Economic Development Director Blair Larsen asked Council for a resolution naming the City Manager as the certifying officer for the purpose of execution of all CDBG applications.

Motion made by President Pro Tem Gerson, Seconded by Councilor Gourley.
Voting Yea: Mayor Mahler, President Pro Tem Gerson, Councilor Nash, Councilor Trask, Councilor Goble, Councilor Gourley, Councilor Coleman

- b) Request for Council Action - Resolution No. 27 for 2020 Authorizing Transfer of Appropriations (pg. 16)

Finance Director Brandon Neish stated the need for transfer of funds for a supplemental budget as the last step in handing the finances over to the auditors on November 9th.

Motion made by Councilor Trask, Seconded by Councilor Gourley.

Voting Yea: Mayor Mahler, President Pro Tem Gerson, Councilor Nash, Councilor Trask, Councilor Goble, Councilor Gourley, Councilor Coleman

- c) Request for Council Action - Resolution No. 28 for 2020 - Replacement of Public Works' Street Sweeper (pg. 21)

Finance Director Brandon Neish presented the request for a new street sweeper. Public Works Superintendent Dominic Valloni explained to Council the difference in the various types of sweeper. Staff tried 4 different sweepers before they decided which sweeper would best serve the community. Staff is requesting \$206,186 to purchase outright a new street sweeper using an inter-fund loan from Fund 570, a street improvement fund.

Motion made by Councilor Trask, Seconded by Councilor Gourley.

Voting Yea: Mayor Mahler, President Pro Tem Gerson, Councilor Nash, Councilor Trask, Councilor Goble, Councilor Gourley, Councilor Coleman

Ordinance Bills

Request for Council Action and First Reading of Ordinance Bills

Second Reading of Ordinance Bills

Third Reading of Ordinance Bills (Roll Call Vote Required)

Reports of Committees:

Administrative and Finance/Property

Charter Review Committee

November 17th next meeting

Park and Tree Committee

Youth Advisory Council

Chamber of Commerce

Council of Governments

Area Commission on Transportation

Solid Waste Advisory Council

Ad Hoc Committee on Health

Legislative Committee

Reports of City Officials:

Mayor's Report

Reminder to vote.

City Manager's Report

CEDD Blair Larsen reported things at City Hall are going smoothly with the absence of the City Manager.

Department Director's Reports (2nd meeting of the Month)

Finance Director

Finance Director Neish reported compression dropped to 15% and means additional revenues in the police and library levy funds.

- a) Finance Monthly Report (pg. 37)

A written report was included in the packet.

Police Chief

Chief Lynn gave a report on new officers hired.

- a) Police Department Monthly Report (pg. 46)

A written report was included in the packet.

City Attorney

Council Business for Good of the Order

Councilor Gourley asked if the traffic control sign is available in residential neighborhoods.

Councilor Gerson asked for an update of Community Court.

Adjournment

With no further business, the meeting adjourned at 7:45 PM.

Mayor

ATTEST:

City Manager – Ex Officio City Recorder



CITY OF SWEET HOME CHARTER REVIEW COMMITTEE MINUTES

October 27, 2020, 5:00 PM
Sweet Home City Hall, 3225 Main Street
Sweet Home, OR 97386

WiFi Passcode: guestwifi

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Meeting Information

The Charter Review Committee will hold their first meeting to review the Sweet Home Charter. To view the meeting live, online visit live.sweethomeor.gov. If you don't have access to the internet you can call in to 541-367-5128 and you'll be asked to choose option #1 to be logged in to the call.

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Call to Order

Roll Call

Present were: Councilor Dave Trask, President Pro-Tem Diane Gerson, Tim McQueary (Phone), Dave Holley, Robert Briana, and David Lowman.

Absent: Lisa Willson.

Staff Present: City Manager Pro Tem Blair Larsen, Finance Director Brandon Neish, City Attorney Robert Snyder, Public Works Director Greg Springman.

New Business:

President Pro-Tem Gerson stated that tonight's meeting was to examine Chapters one through four. She asked what kind of format the committee would like to follow—chapters, sections, or one of the other formats used by other cities, and whether the City should include a preamble. The consensus of the committee was that a long preamble wasn't really necessary, but some sort of introduction is a good idea.

No questions came up for Chapter 1.

Chapter 2: President Pro-Tem Gerson asked about the election of the office of Mayor, and whether any changes should be made. David Lowman said that the people he has spoken to stated that they would like to vote directly for the mayor rather than have the Council elect the mayor. Mr. Holley stated that if the Mayor was elected directly by the people, he would like the mayor to be a voting member of the Council. Mr. Snyder said that the current system results in a mayor who is already an experienced

member of the Council. Councilor Trask voiced support for the current method of electing the mayor, which resulted in an experienced mayor. The committee discussed sending out surveys or questionnaires.

President Pro Tem Gerson said that she thought the Charter should state that the City has a Council-Manager form of government. She asked about the provision that the City Manager appoint a Treasurer, when the City has a Finance Director, and asked if it could be changed to simply state that the City Manager appoints city officers as deemed necessary by the Council. The consensus was to keep the term "treasurer."

Chapter 3: The committee discussed qualifications for City Councilors.

Chapter 4: Mr. Holley said that sometimes the Council takes too long to act on repeated absences by individual Councilors. The committee discussed absences and whether there should be an effect on stipends. President Pro Tem Gerson asked if the term "absence" needed to be defined, and the committee discussed the matter. President Pro Tem Gerson suggested that the committee research that matter before the next meeting. She also stated that the Charter needs to be reader friendly.

President Pro Tem Gerson said that the next meeting will involve discussion of Chapters 5 and 6.

The next meeting was set for November 17th at 5:00 PM.

Adjournment

The meeting was adjourned at 6:13 PM.

Mayor

ATTEST:

City Manager – Ex Officio City Recorder



REQUEST FOR COUNCIL ACTION

Title: For Information Only – Fire Hall Property

Preferred Agenda: November 10, 2020

Submitted By: Robert Snyder, City Attorney

Reviewed By: Ray Towry, City Manager

Type of Action: Resolution X Motion ____ Roll Call ____ Other ____

Relevant Code/Policy: ORS 271.330

Towards Council Goal: Goal 3 section 3 Develop partnerships w/regional services. Vision Statement III WE ASPIRE to provide viable and sustainable infrastructure.

Attachments: Proposed Resolution, Proposed Deed

Purpose of this RCA:

The purpose of this RCA is to present to City Council a deed to transfer to the Sweet Home Fire and Ambulance District the fire department properties on Long Street and in Foster.

Background/Context:

The City of Sweet Home is the current owner of the real property at 1099 Long Street (Firehall) and at 1390 47th Avenue (Substation in Foster) Sweet Home Oregon. The District currently leases the properties for \$100 a year with the lease to expire on June 30, 2051. Under ORS 271.330 the City is allowed to transfer real property to another political subdivision (includes city and district) that is not needed for public use by the City providing the real property shall be used for not less than 20 years for a public purpose by the District. In the proposed deed it has a reservation in the City whereby if the real property is not used for fire department purposes then the real property reverts to the City. Please note that there is now on the title to the Foster Substation donated to the City a reservation that shows up on Exhibit A of the deed. This transfer was discussed by the Finance and Property Committee and the recommendation was to present it to City Council for a decision. In discussions by Staff it has been brought up that the City could be exposed to liability by owning the real property with no apparent benefit by said ownership since the District is about as permanent an entity as the City

particularly since the deed has a reservation that will transfer the real property back to the City if and when it is no longer used for fire department purposes. Finally, with ownership the District

will be responsible for all maintenance (it is also under the lease) and ownership could help in future financing of the District's fire, ambulance, and other emergency operations.

The Challenge/Problem:

Should the City approve the proposed resolution to authorize the transfer of the real property that is currently being leased by the Fire and Ambulance District?

Stakeholders:

- The City of Sweet Home would be transferring real property for a public purpose that is fire protection to the Fire and Ambulance District that serves the City with fire and ambulance protection.
- The Fire and Ambulance District would be in better control of its services by owning its facilities for future decisions on how to provide its services to the citizens of Sweet Home.

Issues and Financial Impacts:

The real property does have monetary value if sold but the real value to the City is having it used by the Fire and Ambulance District for the housing of its offices and the vehicles and equipment that are used by the District on fires and ambulance runs for the citizens of Sweet Home.

Elements of a Stable Solution:

The transfer will allow the District to own the real property that they use for fire department purposes so that they can make the best decisions for themselves in providing their services and have the most options on what to do on the properties to provide those services.

Options:

1. Do nothing. Do not make the transfer and keep the real property in City ownership.
2. Transfer Real Property. Provide Sweet Home Fire and Ambulance District with ownership of its own facilities by passing the proposed Resolution and thereby deeding the said real property to them.

Recommendation:

November 10, 2020 - For Information Only

RESOLUTION NO. FOR 2020

A RESOLUTION TO TRANSFER CITY REAL PROPERTY
TO SWEET HOME FIRE AND AMBULANCE DISTRICT

WHEREAS, The City of Sweet Home is the owner of real property that is currently being used by the Sweet Home Fire and Ambulance District for fire department purposes (operating fire, ambulance and/or related emergency services);

WHEREAS, The City of Sweet Home hereby declares that the real property is not needed for public use by the City of Sweet Home;

WHEREAS, The City of Sweet Home desires to transfer said real property to the Sweet Home Fire and Ambulance District to use for fire department purposes being a public purpose;

WHEREAS, The Sweet Home Fire and Ambulance District desires to have the ownership of the said real property to use for fire department purposes;

NOW THEREFORE, BE IT RESOLVED BY THE SWEET HOME CITY COUNCIL that the real property located at 1099 Long Street and 1390 47th Avenue Sweet Home OR 97386 currently being used for fire department purposes be transferred to the Sweet Home Fire and Ambulance District as set forth in the deed attached hereto.

This resolution shall be effective immediately upon its passage and approval.

PASSED by the City Council and approved by the Mayor this _____ day of November, 2020.

Mayor

ATTEST:

City Manager - Ex Officio City Recorder

After Recording Return To:

Robert Snyder
City Attorney
P O Box 486
Sweet Home, OR 97386

Send Tax Statements To:

Sweet Home Fire and Ambulance District
1099 Long Street
Sweet Home, OR 97386

BARGAIN AND SALE DEED

CITY OF SWEET HOME, an Oregon Municipal Corporation herein called the grantor, hereby conveys to SWEET HOME FIRE AND AMBULANCE DISTRICT, an Oregon Special District under ORS Chapter 478 herein called the grantee, the following real property situated in the County of Linn, State of Oregon, described as follows:

SEE LEGAL DESCRIPTION OF REAL PROPERTY ON EXHIBIT A ATTACHED HERETO

SUBJECT TO: A reservation that if the real property is used for anything other than fire department purposes (operating fire, ambulance and/or related emergency services) it shall revert in fee simple to the grantor without further action by either party.

The true and actual consideration for this conveyance is \$0 dollars and other value given.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this _____ day of _____, 20__.

Gregory Mahler, Mayor
City of Sweet Home

Raymond Towry, City Manager
City of Sweet Home

STATE OF OREGON)
) ss.
County of Linn)

Personally appeared on _____, 2020 the above named GREGORY MAHLER, Mayor and RAYMOND TOWRY, City Manager, for the City of Sweet Home and by authority of its Common Council, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

BEFORE ME:

Notary Public for Oregon
My Commission Expires:_____

EXHIBIT A

PARCEL I: A tract of land situated in the City of Sweet Home, County of Linn, State of Oregon, more particularly described as follows: The West 40 feet of even width, of the following described property: A part of the John T. Ames DLC No. 46 situated in Section 31, Township 13 South, Range 1 East of the Willamette Meridian, described as follows: Beginning at the Southeast corner of the East projection of the Lowell Ames DLC No. 47, in said Section 31; thence South 348.2 feet; thence East 81.2 feet; thence North 74° East 162 feet to the Northwest corner of that certain tract of land conveyed to W.R. Dempsey and wife by W.C. Kahle, et al, by deed recorded January 15, 1940 in Book 151, page 72, Deed Records, said Northwest corner being the true place of beginning of the property herein described; thence South 16° East along the West line of that said Dempsey tract 100 feet; thence South 74° West 80 feet to the West line of that certain tract of land conveyed to J. T. Ames by Joseph S. Ames by deed recorded May 1, 1890 in Book 38, page 165, Deed Records; thence North 16° West along the West line of said J.T. Ames tract 100 feet; thence North 74° East 80 feet to the point of beginning.

PARCEL II: A tract of land situated in the City of Sweet Home, County of Linn, State of Oregon, more particularly described as follows: A part of the John T. Ames DLC No. 46 in Township 13 South, Range 1 East of the Willamette Meridian, more particularly described as follows: Beginning at the Southeast corner of the East projection of the Lowell Ames DLC No 47 in said Section 31; thence South 348.2 feet; thence East 81.2 feet; thence North 74° East 162 feet to the Northwest corner of that certain tract of land conveyed to W. R. Dempsey and wife by W.C. Kahle, et al, by deed recorded January 15, 1940 in Book 151, page 72, Deed Records, said Northwest corner being the true place of beginning of the property herein described; thence South 16° East along the West line of that certain Dempsey tract 100 feet; thence South 74° West 80 feet to the West line of that certain tract of land conveyed to J.T. Ames by Joseph S. Ames by deed recorded May 1, 1890, in Book 38, page 165, Deed Records; thence North 16° West along the West line of J. T. Ames tract 100 feet; thence North 74° East 80 feet to the place of beginning.

EXCEPTING THEREFROM West 40 feet of even width thereof.

PARCEL III:

Beginning on the West line of Sweet Home Proper South 15°10' East 100 feet from the Northwest corner of Block 1, SWEET HOME PROPER; thence Southeasterly along said West line 346.5 feet; thence South 74°50' West parallel to the South line of Long Street 160 feet to the Southeast corner of that certain tract of land conveyed by Ralph Blanchard to G. W. Gessler by deed recorded May 10, 1946, Book 179, page 493, Deed Records; thence Northwesterly along the East line of said Gessler tract 266.5 feet to the Southwest corner of that certain tract of land conveyed by Lowell G. Weber and wife to George W. Gessler and wife by deed recorded January 18, 1946, Book 175, page 425, Deed Records; thence North 74°50' East along the South line 80 feet to the Southeast corner of said Gessler tract; thence North 15°10' West along the East line of said Gessler tract 80 feet; thence North 74°50' East parallel to the South line of Long Street 80 feet to the place of beginning.

PARCEL IV:

Beginning at a point which is 54 feet south 74°48' West from the Northwest corner of Block 1, Sweet Home, Linn County, Oregon, thence South 74°48' West along the Southerly line of Long Street 156.0 feet to the Northeasterly corner of that tract of land conveyed to James G. VayRosky, et ux, by deed recorded April 28, 1958, in Deed Book 259, page 214; thence South 15°44' East, along the Easterly line of said VayRosky tract, 100 feet to the Southeasterly corner thereof; thence South 74°48' West 195.3 feet; thence South 15°44' East, 205.1 feet to the centerline of Ames Creek; thence Southeasterly along the centerline of Ames Creek to a point on the Westerly line of a tract of land conveyed to Lowell G. Weber, et ux, by deed recorded February 24, 1937, in Book 145, page 454, Deed Records; thence North 15°44' West along the Westerly line of said Weber tract to the Southwest corner of a tract of land conveyed to George W. Gessler, et ux, by deed recorded January 18, 1946, in Book 175, page 425, Deed Records; thence North 74°50' East 80 feet; thence North 15°10' West 80 feet; thence North 74°48' East 26 feet; thence North 15°44' West 100 feet to the point of beginning. SAVE AND EXCEPT that portion of the above described tract of land lying within the boundaries of public roads and highways; as found in MF 173, page 972 Deed Records.

EXHIBIT A

PARCEL V.

Beginning at a 3/4 inch iron bolt in the center of 47th Ave. said bolt being North 0° 24' 30" West, 268.78 feet from the Southwest corner of the Milton Humphrey D.L.C. #38 in Section 27, T. 13 S., R. 1 E., W.M. in Linn County, Oregon; said bolt being also the Southeast corner of that certain tract of land conveyed to James E. and Frances K. Stock in Volume 262, Page 272, Linn County Deed Records; running thence South 89° 35' 30" West, along the South line of said Stock Tract, 145.00 feet; thence North 0° 24' 30" West, parallel with the West line of said D.L.C. #38, 125.00 feet; thence North 89° 35' 30" East, 145.00 feet to the West line of said D.L.C. #38; thence South 0° 24' 30" East, 125.00 feet to the point of beginning.

Containing 0.4161 acres, less 0.0574 acres in Public Road, leaving 0.3587 acres net.

SUBJECT TO that portion of the above described property lying in Public Roads.

This deed is made on the condition that the said real property shall be used by the fire department of the grantee, and if the grantee shall discontinue said use for a period of one year, then the title to said real property shall revert to the grantors, their heirs and assigns.



REQUEST FOR COUNCIL ACTION

Title: WWTP Value Engineering Study Contract Authorization

Preferred Agenda: November 10, 2020

Submitted By: Trish Rice, Engineering Technician 2
Greg Springman, Public Works Director

Reviewed By: Ray Towry, City Manager

Type of Action: Resolution ____ Motion ____ Roll Call X Other ____

Relevant Code/Policy: N/A

Towards Council Goal: 1.b Develop specific steps for implementation of the adopted infrastructure master plans – sewer
2.5 Continue to implement best financial practices

Attachments: Value Engineering services contract

Purpose of this RCA:

Staff is requesting authorization to execute the attached contract for Value Engineering Study for the Wastewater Treatment Plant (WWTP) Improvement Project.

Background/Context:

The WWTP Improvement Project 60% design was completed in June 2020 and is now entering the 90% design phase. USDA and DEQ require a Value Engineering (VE) study as part of our financing application. A VE study is a third-party engineering review that checks the design for construction efficiency, equipment selections, and other cost-saving measures. This study is necessary before beginning 90% design work. The estimated contract value is \$80,000.

On September 22, 2020, Council authorized staff to advertise the Request for Proposals. The RFP was posted September 23 and closed October 2. The City received no proposals.

Feedback from the consultant community indicates that various firms were interested, but a variety of factors discouraged them from competing such as the relatively quick deadline, competition with other jobs that closed on the same day, and misunderstandings over the contract's budgeted value.

Staff considered whether to re-issue the RFP or to directly appoint a consultant pursuant to ORS 279C.110(10). After consulting with the Murraysmith project manager and USDA/DEQ financing staff, City staff opted to directly appoint a consultant in order to avoid delays to the project schedule. The VE study is on the critical path of the WWTP project schedule, meaning any delays to VE will delay the entire WWTP project, which is extremely undesirable.

Staff reached out to Keller Associates, of Salem, which was the second-ranked consultant in the Engineer of Record RFP earlier this year based upon consideration of the criteria outlined

in ORS 279C.110(3)(a) through (3)(g). Keller Associates has been responsive to our scheduling needs to deliver the VE study on an accelerated schedule. Minor changes to the contract terms have been negotiated. Contract completion is targeted for Dec 31.

The Challenge/Problem:

How will the City ensure the best value for the City's capital investment and meet financing application requirements?

Stakeholders:

- City of Sweet Home citizens – Ratepayers pay for all treatment works. It is our responsibility to deliver services as effectively and efficiently as possible.
- City of Sweet Home – The City must be a responsible steward of the public money and facilities in our care.
- City of Sweet Home Public Works staff – Public Works staff provide oversight and support for the WWTP design. City staff and Murraysmith engineers will work together to review the VE study results and incorporate changes.
- Murraysmith – The design engineers are responsible for designing efficient treatment processes. City staff and Murraysmith engineers will work together to review the VE study results and incorporate changes.
- USDA and DEQ – These regulatory agencies require the VE study as part of the City's financing application.

Issues and Financial Impacts:

Keller Associates has quoted us \$77,630 which will be charged to the WWTP project budget. This is below our \$80,000 estimate. Staff also anticipates tasking West Yost as the engineer of record to assist with reviewing the VE study recommendations for inclusion in the WWTP design, at the hourly rate of \$227/hr for key West Yost staff.

Elements of a Stable Solution:

The ideal solution will meet financing application requirements and ensure the best value for the City's investment.

Options:

1. Do Nothing. This will require us to seek an alternative financing source and will delay the project.
2. Execute the contract with Keller Associates. Staff will execute the contract and issue the Notice to Proceed. The VE study will stay on schedule.
3. Review the Value Engineering services contract and suggest revisions. Staff will renegotiate the contract with Keller Associates to address Council's areas of concern and present a new draft to Council at a later date. This will delay the project.
4. Direct Appoint a different firm. Use a different methodology to select a different consultant for direct appointment. This will delay the project.
5. Post the RFP again. This will delay the project.

Recommendation:

Staff recommends Option 2, Execute the contract with Keller Associates.

**City of Sweet Home
Personal Services Contract for
City Engineering Services**

This Contract is by and between the City of Sweet Home ("City") and Keller Associates, Inc ("Engineer") for the performance of a Value Engineering Study for the Wastewater Treatment Plant Improvements Project.

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A. RECITALS

City has conducted a formal solicitation for proposals from engineering firms pursuant to ~~Public Contracting law, local Public Contracting law, and, having received zero proposals in response to the solicitation, City has directly appointed Engineer pursuant to local and state Public Contracting law, as provided by ORS 279C.110(10).~~

~~Engineer submitted its proposal, having examined the Request for Proposals (RFP), and was chosen as the most highly qualified engineer, best suited to meet City's needs pursuant to the RFP criteria.~~

~~Engineer submitted its proposed scope and fees.~~

City has awarded the contract to Engineer.

B. CONTRACT EXHIBITS

The following exhibits are hereby incorporated by reference into this Contract:

Exhibit A – Scope of Work and Fee Proposal

Exhibit B – Oregon Personal Services Public Contracting Code Requirements

~~Exhibit C – Request for Proposals~~

~~Exhibit D – Engineer's Proposal~~

~~Exhibit E – Engineer's Price Proposal~~

C. AGREEMENT

1. Schedule for Rendering Services

1.1 Commencement. Engineer is authorized to begin rendering services under this contract from the date of its execution.

1.2 Time for Completion. Engineer shall complete its obligations ~~by December 31, 2020~~ per the schedule presented in Exhibit A.

If, through no fault of Engineer, such time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

If City authorizes changes in the scope, extent, or character of Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

City shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then City shall be entitled to the recovery of direct damages, if any, resulting from such failure.

2. Scope of Work

Engineer shall provide all services and deliver all materials as specified in the attached Exhibits ~~A, C and D~~, and as may be described by future addenda to this Contract.

3. Compensation

3.1 Compensation. For the services described and performed by Engineer, the City agrees to pay, and the Engineer agrees to accept, compensation in a lump sum amount not to exceed ~~\$77,630~~, in accordance with Exhibit ~~AE, Engineer's Price Proposal~~.

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3.2 Invoices. Within 60 days following City acceptance of project deliverables as identified in Exhibits ~~A, C, and D~~, Engineer shall invoice the City in summary form, itemized by work tasks, for all services performed under this contract. Reimbursable expenses shall be itemized and backup invoices provided if required by City.

3.3 Payments.

- a. City will review Engineer's invoice and within ten (10) days of receipt notify Engineer in writing if there is a disagreement or dispute with the invoice. If there are no such disputes with the invoice, City shall pay the invoice amount in full within thirty (30) days of invoice date.
- b. If City fails to make any payment due Engineer for services and expenses within thirty (30) days of the date on Engineer's invoice therefore, late fees will be added to amounts due Engineer at the rate of 1.0 percent per month from original invoice date. Invoices in dispute are not subject to such late fees until such time as they are no longer in dispute. In addition, Engineer may, after giving seven (7) days written notice to City, suspend services under this Contract until Engineer has been paid in full all amounts due for services, expenses, and charges, except any invoices in dispute.

4. Contractor Is an Independent Contractor

Engineer shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under this Contract. While City reserves the right to set various schedules and evaluate the quality of Engineer's completed work, City cannot and will not control the means and manner of Engineer's performance. Engineer is responsible for determining the appropriate means and manner of performing work. Engineer is responsible for all federal and state taxes applicable to compensation and payment paid to Engineer under the Contract and will not have any amounts withheld by City to cover Engineer's tax obligations. Engineer is not eligible for any City fringe benefit plans.

5. Notices

All notices provided for hereunder shall be in writing and shall be deemed to be duly served on the date of delivery if delivered in person, when receipt of transmission is generated by the transmitting facsimile machine if delivered by facsimile transmission, on the day after deposit if delivered by overnight courier, or three days after deposit if delivered by placing in the U.S. mail, first-class, postage prepaid. Any notice delivered by facsimile transmission shall be followed by a hard copy. All notices shall be addressed as follows:

City: Greg Springman, Public Works Director
City of Sweet Home
1400 24th Ave
Sweet Home, OR 97386
Phone: (541) 367-6359
Fax: (541) 367-7592

Engineer: Peter Olsen, PE, Project
Manager

245 Commercial St SE, Suite
210
Salem OR 97301

Phone: (503) 364-2002

Fax: ()

6. Indemnification

Engineer shall indemnify and, hold harmless, ~~and defend~~ City and its representatives, officers, directors, and employees from any loss or claim made by third parties, including legal fees ~~and costs of defending actions or suits~~ resulting directly or indirectly from Engineer's negligent performance and/or fault of Engineer, its employees, representatives, or subcontractors. If the loss or claim is caused by the joint concurrent negligence or other fault of City and Engineer, the loss or claim shall be borne by each in proportion to the degree of negligence or other fault attributable to each.

~~Engineer shall defend City from claims covered under this section at Engineer's sole cost and expense until such time (1) as an arbitration panel or a court of competent jurisdiction determines that City is liable in whole or in part for the loss or claim caused by City's negligence or (2) until City and Engineer mutually agree to allocate the liability.~~

7. Insurance Requirements

7.1 During the term of this Contract, Engineer shall maintain, at its own expense, the following types of insurance in the following amounts:

- a. Commercial general liability insurance, including coverage for premises operations, independent contractors, protected products, completed operations, contractual liability, personal injury, and broad form for property damage (including coverage for explosion, collapse, and underground hazards, if applicable):
 - \$1,000,000 – each occurrence (bodily injury)
 - \$2,000,000 – general aggregate
 - \$1,000,000 – property damage, contractual, etc.
 - \$2,000,000 – umbrella liability coverage
 Coverage shall also include contractual liability coverage for the indemnity provided under this contract.
- b. Automobile Liability insurance limit shall not be less than \$1,000,000 combined single limit per accident.
- c. Workers' Compensation and employer's liability insurance per ORS Chapter 656. The employer's liability limit shall not be less than \$1,000,000 per occurrence.
- d. Professional Liability for Errors and Omissions insurance covering Engineer's liability arising out of negligent acts, errors or omissions in its performance of work or services under this Contract. Such policy will have a combined single limit of not less than \$2,000,000 per each claim, incident or occurrence for the term of the Project. Such policy will be on a claims made basis and will have an extended claims reporting period of five (5) years after final completion.
- e. The limits required in this Section 7.1 may be met with a combination of underlying and umbrella coverage.

7.2 Except as required in 7.1(d) above, if any of the above required insurance is arranged on a "claims made" basis, "tail" coverage will be required at final completion or termination of this Contract for a duration of two (2) years.

7.3 Policies shall provide that City, its council, officers, representatives, employees, and agents will be included as an additional insured with respect to the coverages required in Section 7.1(a) and a waiver of subrogation against them shall be obtained for all coverages.

7.4 All coverages under Section 7.1 shall be primary over any insurance City may carry on its own.

7.5 City shall be solely responsible for any loss, damage or destruction to its own property, equipment, and materials used in conjunction with the work or services under this Contract.

7.6 All policies of insurance shall be issued by good, responsible companies, with a rating reasonably acceptable to City and that are qualified to do business in the state of Oregon.

7.7 Engineer shall furnish City with certificates of insurance evidencing all required coverages prior to commencing any work or services under this Contract. If requested by City, Engineer shall furnish City with executed copies of such policies of insurance. Engineer shall furnish City with at least 30 days' written notice of cancellation of, or any modification to, the required insurance coverages. Failure to maintain any required insurance coverages in the minimum required amounts shall constitute a material breach of this Contract and shall be grounds for immediate termination of this Contract.

7.8 All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Contract must include an additional insured endorsement with the certificate of insurance specifying the City of Sweet Home, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of Engineer's ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent and attached to Certificate of Insurance.

8. Workers' Compensation

8.1 Engineer, its subcontractors, if any, and all employers working under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all subject workers.

8.2 Engineer warrants that all persons engaged in Contract work and subject to the Oregon Workers' Compensation Law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Engineer shall indemnify City for any liability incurred by City as a result of Engineer's breach of the warranty under this paragraph.

9. Hours of Employment

Engineer shall comply with all applicable state and federal laws regarding employment.

10. Assignments and Subcontractors

Engineer may not assign or subcontract any of its responsibilities under this Contract without City's prior written consent. Engineer's assigning or subcontracting of any of its responsibilities under the Contract without City's consent shall constitute a material breach of this Contract. Regardless of any assignment or subcontract, Engineer shall remain liable for all of its obligations under this Contract.

11. Labor and Material

Engineer shall provide and pay for all labor, materials, equipment, tools, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of all Contract work, all at no cost to City other than the compensation provided in this Contract.

12. Ownership of Work and Documents

All work performed by Engineer and compensated by City pursuant to this Contract shall be the property of City upon full compensation for that work performed or document produced to Engineer, and it is agreed by the parties that such documents are works made for hire. Engineer hereby conveys, transfers and grants to City all rights of reproduction and the copyright to all such documents. However, in the event City reuses or modifies any materials furnished to City by Engineer, without Engineer's involvement or consent, then Engineer shall not be responsible for the materials.

Notwithstanding the aforementioned, Engineer retains a right to reuse such documents on future projects.

13. Termination for Convenience

13.1 This Contract may be terminated by mutual consent of the parties upon written notice. In addition, City may terminate all or part of this Contract upon determining that termination is in the best interest of City by giving seven (7) days' prior written notice of intent to terminate, without waiving any claims or remedies it may have against Engineer. Upon termination under this paragraph, Engineer shall be entitled to payment in accordance with the terms of this Contract for Contract work completed and accepted before termination less previous amounts paid and any claim(s) City has against Engineer. Pursuant to this paragraph, Engineer shall submit an itemized invoice for all unreimbursed Contract work completed before termination and all Contract closeout costs actually incurred by Engineer. City shall not be liable for any costs invoiced later than thirty (30) days after termination unless Engineer can show good cause beyond its control for the delay.

13.2 City may unilaterally order Engineer to suspend all or part of the services under this Contract. If City suspends certain services under this Contract and later orders Engineer to resume those services, Engineer will be entitled to reimbursements for the costs actually and reasonably incurred, if any, in re-starting the suspended services.

14. Termination for Cause

City may terminate this Contract effective upon delivery of written notice to Engineer, or at such later date as may be established by City, under any of the following conditions:

14.1 If City funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.

14.2 If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under

this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.

14.3 If any license or certificate required by law or regulation to be held by Engineer to provide the services required by this Contract is for any reason denied, revoked, or not renewed.

15. Termination for Default

Either City or Engineer may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

If Engineer fails to perform in the manner called for in this Contract or if Engineer fails to comply with any other provisions of the Contract, City may terminate this Contract for default. Termination shall be effected by serving a notice of termination on Engineer setting forth the manner in which Engineer is in default. Engineer shall be paid the Contract price only for services performed in accordance with the manner of performance as set forth in this Contract.

16. Remedies

In the event of breach of this Contract the parties shall have the following remedies:

16.1 If terminated under paragraph 15 by City due to a breach by Engineer, City may complete the work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Engineer shall pay to City the amount of the reasonable excess.

16.2 In addition to the above remedies for a breach by Engineer, City also shall be entitled to any other equitable and legal remedies that are available.

16.3 If City breaches this Contract, Engineer's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Engineer is entitled.

16.4 City shall not be liable for any indirect, incidental, consequential, or special damages under the Contract or any damages arising solely from terminating the Contract in accordance with its terms.

16.5 Upon receiving a notice of termination, and except as otherwise directed in writing by City, Engineer shall immediately cease all activities related to the services and work under this Contract. As directed by City, Engineer shall, upon termination, deliver to City all then existing work product that, if the Contract had been completed, would be required to be delivered to City.

17. Nondiscrimination

During the term of this Contract, Engineer shall not discriminate against any employee or applicant for employment on the basis of any protected class as defined in ORS279A.112(b).

18. Governing Law; Jurisdiction; Venue

This Contract shall be governed by and construed in accordance with the laws of the state of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between City and Engineer that arises from or relates to this Contract which results in litigation shall be brought and conducted solely and exclusively within the Circuit Court of Linn County for the state of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. ENGINEER BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing herein shall be construed as a waiver of City's protections under the Oregon Tort Claims Act.

19. Compliance with Laws and Regulations

Engineer shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the services under this Contract. Without limiting the generality of the foregoing, Engineer expressly agrees to comply with: (i) ORS 659a.142; (ii) all regulations and administrative rules established pursuant to the foregoing laws; and (iii) City's performance under this Contract is conditioned upon Engineer's compliance with all applicable provisions of the Oregon Public Contracting Code, as more particularly set forth in Exhibit B and incorporated herein by this reference. Engineer, its sub-consultants and all employers providing work, labor or materials under this Contract are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers. Engineer shall adhere to all safety standards and regulations established by City for work performed on its premises or under its auspices.

20. Experience, Capabilities and Resources

By execution of this Contract, the Engineer agrees that:

Engineer is an experienced engineering firm having the skill, legal capacity, and professional ability necessary to perform all the services required under this Contract to design or administer any work within the scope and complexity contemplated by this Contract.

Engineer has the capabilities and resources necessary to perform the obligations of this Contract.

Engineer is familiar with all current laws, rules, and regulations which are applicable to the design and construction of work which may fall within the scope of this Contract, and that all drawings, specifications, and other documents prepared by Engineer shall be prepared in accordance with the standard of care of other professionals performing

similar services under similar conditions and in an effort to accurately reflect and incorporate all such laws, rules, and regulations.

21. Drawings, Specifications and Other Documents

~~Engineer hereby agrees that it will, in a manner consistent with its standard of care defined in above in Section 20, prepare all drawings, specifications, and other documents pursuant to this Contract so that they are complete and that any project, if constructed in accordance with the intent established by such drawings, specifications, and other documents, shall be structurally sound and a complete and properly functioning facility.~~

22-21. Errors and Omissions

Engineer shall be responsible for correcting any errors or omissions in the ~~drawings, specifications, and/or other documents~~ documents prepared by Engineer which deviate from the standard of care set forth in Section 240. Engineer shall correct at no additional cost to City any and all such errors and omissions in the ~~drawings, specifications, and other~~ documents prepared by Engineer or its sub-consultants. Engineer further agrees to assist City in resolving problems relating to any project designs or specified materials.

23-22. Contract Performance

Engineer shall at all times carry on the services diligently, without delay and punctually fulfill all requirements herein. Engineer shall not be liable for delays that are beyond Engineer's control. Contract expiration shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any breach of Engineer's warranties or a default or defect in performance by Engineer that has not been cured.

24-23. Access to Records

For not less than three (3) years after the Contract expiration and for the purpose of making audit, examination, excerpts, and transcripts, City, and its duly authorized representatives shall have access to Engineer's books, documents, papers, and records that are pertinent to this Contract. If, for any reason, any part of this Contract, or any resulting construction contract(s) is involved in litigation, Engineer shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. Engineer shall provide full access to these records to City, and City's duly authorized representatives in preparation for and during litigation.

25-24. Representations and Warranties

Engineer represents and warrants to City that (1) Engineer has the power and authority to enter into and perform this Contract, (2) when executed and delivered, this Contract shall be a valid and binding obligation of Engineer enforceable in accordance with its terms, (3) Engineer shall, at all times during the term of this Contract, be duly licensed to perform the services, and if there is no licensing requirement for the profession or services, be duly qualified and competent, (4) the services under this Contract shall be performed in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

26.25. City Obligations

26.1 City shall provide full information in a timely manner regarding requirements for and limitations on projects and work tasks. With regard to subcontractor liens, City shall furnish to Engineer, within fifteen (15) days after receipt of a written request, information necessary and relevant for Engineer to evaluate, give notice of, or enforce lien.

26.2 City shall establish and update, if necessary, overall project budgets, including engineering and construction costs.

26.3 City shall furnish the services of consultants, including geotechnical engineers, when such services are requested by Engineer, reasonably required by the scope of a project, and agreed to by City.

26.4 City shall furnish all testing as required by law or the contract documents.

26.5 City shall furnish all legal accounting, auditing and insurance services as necessary for projects to meet the City's needs and interests, after Engineer has performed requisite project management and oversight duties.

26.6 City shall provide prompt written notice to Engineer if City becomes aware of any fault or defect in a project, including any errors, omissions or inconsistencies in Engineer's design or performance under the contract.

26.7 City shall pay Engineer in accordance with paragraph 3 and Exhibit AE of this Contract, upon receipt of Engineer's submission of monthly invoices, and satisfactory progress and performance made in accordance with the scope of work. Payments shall reflect work completed, or progress made on a project to date, on a pro rata basis.

26.8 City shall report the total amount of all payments to Engineer, including any expenses, in accordance with federal Internal Revenue Service and State of Oregon Department of Revenue regulations.

26.9 City shall guarantee access to, and make all provisions for Engineer to enter upon public and private property necessary for performance of the Scope of Work over which City exercises control.

26.10 Extra work or work on contingency tasks is not permitted unless authorized by the City in writing. Failure of Engineer to secure written authorization for extra work shall constitute a waiver of all rights to an adjustment in the Agreement price or Agreement time.

27.26. ArbitrationGoverning Law, Jurisdiction, Venue

~~26.1 This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon without regard to principles of conflicts of law. All claims, disputes, and other matters in question between the City and Engineer arising out of, or relating to this Contract, including rescission, reformation, enforcement, or the breach thereof except for claims which may have been waived by the making or acceptance of final payment, may be decided by binding arbitration in City's sole discretion, in accordance~~

with Uniform Oregon Arbitration Act ORS 36.600 et seq. and any additional rules mutually agreed to by both parties. If the parties cannot agree on rules within ten (10) days after the notice of demand, the presiding judge of the Linn County Circuit Court will establish rules to govern the arbitration. The City shall have the sole discretion as to whether or not dispute will be decided by arbitration rather than through the court process.

26.2

A claim by Engineer arising out of, or relating to this Contract must be made in writing and delivered to the City Manager not less than 30 days after the date of the occurrence giving rise to the claim. Failure to file a claim with the City Manager within 30 days of the date of the occurrence that gave rise to the claim shall constitute a waiver of the claim. A claim filed with the City Manager will be considered by the City Council at the Council's next regularly scheduled meeting. At that meeting the Council will render a written decision approving or denying the claim. If the claim is denied by the Council, the Engineer may file a written request for arbitration with the City Manager. No demand for arbitration shall be effective until the City Council has rendered a written decision denying the underlying claim. No demand for arbitration shall be made later than thirty (30) days after the date on which the City has rendered a written decision on the underlying claim. The failure to demand arbitration within said 30 days shall result in the City Council's decision being binding upon the City and Engineer.

Notice of demand for arbitration shall be filed in writing with the other party to the agreement. The demand for arbitration shall be made within the 30-day period specified above. The City, if not the party demanding arbitration, has the option of allowing the matter to proceed with binding arbitration or by written notice within five (5) days after receipt of a demand for arbitration, to reject arbitration and require the Engineer to proceed through the courts for relief. If arbitration is followed, the parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modifications or appeal except to the extent permitted by Oregon law. In the event of any disputes hereunder, the parties shall first attempt to resolve the situation by good faith discussions which shall take place in a timely manner. If the dispute cannot be resolved within sixty (60) days, the parties may mediate their dispute before a mediator acceptable to both parties. If they cannot agree on the selection of a mediator, they shall ask the Director of the Federal Mediation and Conciliation Service to nominate a mediator. The parties shall bear their own costs of the mediation but the parties shall share equally the costs of the mediator and the mediation facilities.

26.3 Any claim, action, suit or proceeding (collectively "Claim") between City and Engineer that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Linn County for the state of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. ENGINEER BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

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28-27. Attorney Fees

~~If any litigation is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees which are directly attributed to such litigation in addition to any other relief to which it may be entitled.~~

~~If suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for City to incur the services of an attorney to enforce any provision of this contract without initiating litigation, Engineer agrees to pay City's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.~~

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29-28. Successors and Assigns

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

30-29. Limitation of Liabilities

City shall not be liable for (i) any indirect, incidental, consequential, or special damages under the Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. Engineer shall not be liable for any consequential damages under this Contract.

31-30. Foreign Contractor

If Engineer is not domiciled in or registered to do business in the state of Oregon, Engineer shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Engineer shall demonstrate its legal capacity to perform the work under this Contract in the state of Oregon prior to entering into this Contract.

32-31. Confidentiality

Engineer shall maintain the confidentiality of any of City's information that has been so marked as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent Engineer from establishing a claim or defense in an adjudicatory proceeding. Engineer shall require similar agreements from City's and/or Engineer's sub-consultants to maintain the confidentiality of information of City.

33-32. Force Majeure

Engineer shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authorities, fires, floods, windstorms, earthquakes, strikes or other labor disturbances, civil commotion or war.

34.33. Waivers

No waiver by City of any provision of this Contract shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Engineer of the same or any other provision. City's consent to or approval of any act by Engineer requiring City's consent or approval shall not be deemed to render unnecessary the obtaining of City's consent to or approval of any subsequent act by Engineer, whether or not similar to the act so consented to or approved.

35.34. Severability

Any provision of this Contract which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

36.35. Survival

All provisions of this Agreement that would reasonably be expected to survive the termination of this Agreement will do so.

37.36. Headings

The captions contained in this Contract are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

38.37. Integration and Modification

This Contract, including the attached exhibits referenced in Section B, contains the entire agreement between the parties regarding the matters referenced herein and supersedes all prior written or oral discussions or agreements regarding the matters addressed by this Contract. Any modifications or amendments to this Contract will only be effective when made in writing and signed by authorized parties for each party to this Contract.

39.38. Authority

The representatives signing on behalf of the parties certify that they are duly authorized by the party for which they sign to make this Contract.

40.39. Certificate of Compliance with Oregon Tax Laws

By executing this Contract, Engineer certifies under penalty of perjury that Engineer is, to the best of Engineer's knowledge, not in violation of any Oregon tax laws described in ORS 305.385(6) and (7).

41.40. Time is of the Essence

Time is of the essence under this Contract.

CITY OF SWEET HOME

ENGINEER

By: _____

By: _____
Authorized Signature

Name: Ray Towry
PE _____

Name: James Bledsoe,

Title: City Manager
Principal

Title:

Date: _____

Date: _____

Authorized & Approved by the City Council.
City Manager approves contract.

Approved as to form.

By: _____

Name: Robert Snyder

Title: City Attorney

Date: _____

DRAFT

Exhibit A

Scope of Work and Fee Proposal

SERVICES AND RESPONSIBILITY OF ENGINEER

- Comprise a value analysis team that includes qualified professionals proficient in wastewater treatment design, operations, and construction. This team will work closely with staff at the City's Public Works department and Murraysmith design staff to develop a final evaluation report.
- Provide a written job plan for the value analysis that includes scope and methodology of the value analysis, schedule, and deliverables.
- Conduct a four-day value analysis workshop/session consisting of an information and function phase, creative phase, evaluation phase, development phase, and closing/presentation phase. The design engineer will present a project overview on the first day of the workshop, be available during the workshop for questions, and be present for the closing phase of recommended concepts from the value analysis team.
- Review the Schematic Design report and appendices including NPDES permit.
- Review 60% design package including drawings, specifications, and Engineer's opinion of probable construction costs (OPCC).
- The team shall provide constructive input and feedback based on the review of materials.
- The Team will:
 - Evaluate process components and recommend cost-saving alternatives and/or approaches to achieve similar or better treatment performance.
 - Evaluate or recommend energy efficient options that may provide savings over the lifespan of plant operations.
 - Review operational functionality of the proposed improvements and provide recommendations to improve operational efficiencies.
 - Review constructability and OPCC and provide recommendations related to constructability.
- **Deliverable:** Provide a draft written report of workshop findings and recommendations for review and comment by the City.
- **Deliverable:** Provide final written report that incorporates City comments generated by the draft report. The report must satisfy USDA's infrastructure financing application requirements regarding value engineering studies.

Exhibit B

Oregon Public Contracting Requirements

ORS CHAPTERS 279B AND 279C REQUIREMENTS

- (1) Consultant shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.
- (2) Consultant shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Consultant or Subcontractor incurred in the performance of the contract.
- (3) Consultant shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
- (4) Consultant and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617.
- (5) If Consultant fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Consultant or a Subcontractor by any person in connection with the contract as such claim becomes due, the City may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Consultant by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Consultant or his surety from his or its obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or material furnished, the City may withhold from any current payment due Consultant an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
- (6) Consultant shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Consultant, of all sums which the Consultant agrees to pay for such services and all monies and sums which the Consultant collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- (7) Consultant shall pay Consultant's employees who work under the public contract at least time and a half for all overtime the employees work in excess of 40 hours in any one week, except for employees under a personal services public contract who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
- (8) The Consultant must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.
- (9) All subject employers working under the Consultant are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126.

(10) All sums due the State Unemployment Compensation Fund from the Consultant or any Subcontractor in connection with the performance of the contract shall be promptly so paid.

(11) The contract may be canceled at the election of City for any willful failure on the part of Consultant to faithfully perform the contract according to its terms.

(12) Consultant certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.

(13) Consultant certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors.

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Exhibit C
Request for Proposals

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Exhibit D

**Engineer's Proposal
Exhibit E**

Engineer's Schedule of Rates and Charges

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**City of Sweet Home
Personal Services Contract for
City Engineering Services**

This Contract is by and between the City of Sweet Home ("City") and Keller Associates, Inc ("Engineer") for the performance of a Value Engineering Study for the Wastewater Treatment Plant Improvements Project.

A. RECITALS

City has conducted a formal solicitation for proposals from engineering firms pursuant to local Public Contracting law, and, having received zero proposals in response to the solicitation, City has directly appointed Engineer pursuant to local and state Public Contracting law, as provided by ORS 279C.110(10).

Engineer submitted its proposed scope and fees.

City has awarded the contract to Engineer.

B. CONTRACT EXHIBITS

The following exhibits are hereby incorporated by reference into this Contract:

Exhibit A – Scope of Work and Fee Proposal

Exhibit B – Oregon Personal Services Public Contracting Code Requirements

C. AGREEMENT

1. Schedule for Rendering Services

1.1 Commencement. Engineer is authorized to begin rendering services under this contract from the date of its execution.

1.2 Time for Completion. Engineer shall complete its obligations per the schedule presented in Exhibit A.

If, through no fault of Engineer, such time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

If City authorizes changes in the scope, extent, or character of Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

City shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then City shall be entitled to the recovery of direct damages, if any, resulting from such failure.

2. Scope of Work

Engineer shall provide all services and deliver all materials as specified in the attached Exhibit A and as may be described by future addenda to this Contract.

3. Compensation

3.1 Compensation. For the services described and performed by Engineer, the City agrees to pay, and the Engineer agrees to accept, compensation in a lump sum amount not to exceed \$77,630, in accordance with Exhibit A.

3.2 Invoices. Within 60 days following City acceptance of project deliverables as identified in Exhibit A, Engineer shall invoice the City in summary form, itemized by work tasks, for all services performed under this contract. Reimbursable expenses shall be itemized and backup invoices provided if required by City.

3.3 Payments.

- a. City will review Engineer's invoice and within ten (10) days of receipt notify Engineer in writing if there is a disagreement or dispute with the invoice. If there are no such disputes with the invoice, City shall pay the invoice amount in full within thirty (30) days of invoice date.
- b. If City fails to make any payment due Engineer for services and expenses within thirty (30) days of the date on Engineer's invoice therefore, late fees will be added to amounts due Engineer at the rate of 1.0 percent per month from original invoice date. Invoices in dispute are not subject to such late fees until such time as they are no longer in dispute. In addition, Engineer may, after giving seven (7) days written notice to City, suspend services under this Contract until Engineer has been paid in full all amounts due for services, expenses, and charges, except any invoices in dispute.

4. Contractor Is an Independent Contractor

Engineer shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under this Contract. While City reserves the right to set various schedules and evaluate the quality of Engineer's completed work, City cannot and will not control the means and manner of Engineer's performance. Engineer is responsible for determining the appropriate means and manner of performing work. Engineer is responsible for all federal and state taxes applicable to compensation and payment paid to Engineer under the Contract and will not have any amounts withheld by City to cover Engineer's tax obligations. Engineer is not eligible for any City fringe benefit plans.

5. Notices

All notices provided for hereunder shall be in writing and shall be deemed to be duly served on the date of delivery if delivered in person, when receipt of transmission is generated by the transmitting facsimile machine if delivered by facsimile transmission, on the day after deposit if delivered by overnight courier, or three days after deposit if delivered by placing in the U.S. mail, first-class, postage prepaid. Any notice delivered

by facsimile transmission shall be followed by a hard copy. All notices shall be addressed as follows:

City: Greg Springman, Public Works Director
City of Sweet Home
1400 24th Ave
Sweet Home, OR 97386
Phone: (541) 367-6359
Fax: (541) 367-7592

Engineer: Peter Olsen, PE, Project Manager
245 Commercial St SE, Suite 210
Salem OR 97301
Phone: (503) 364-2002

6. Indemnification

Engineer shall indemnify and hold harmless City and its representatives, officers, directors, and employees from any loss or claim made by third parties, including legal fees resulting directly or indirectly from Engineer's negligent performance and/or fault of Engineer, its employees, representatives, or subcontractors. If the loss or claim is caused by the joint concurrent negligence or other fault of City and Engineer, the loss or claim shall be borne by each in proportion to the degree of negligence or other fault attributable to each.

7. Insurance Requirements

7.1 During the term of this Contract, Engineer shall maintain, at its own expense, the following types of insurance in the following amounts:

- a. Commercial general liability insurance, including coverage for premises operations, independent contractors, protected products, completed operations, contractual liability, personal injury, and broad form for property damage (including coverage for explosion, collapse, and underground hazards, if applicable):
 - \$1,000,000 – each occurrence (bodily injury)
 - \$2,000,000 – general aggregate
 - \$1,000,000 – property damage, contractual, etc.
 - \$2,000,000 – umbrella liability coverageCoverage shall also include contractual liability coverage for the indemnity provided under this contract.
- b. Automobile Liability insurance limit shall not be less than \$1,000,000 combined single limit per accident.
- c. Workers' Compensation and employer's liability insurance per ORS Chapter 656. The employer's liability limit shall not be less than \$1,000,000 per occurrence.
- d. Professional Liability for Errors and Omissions insurance covering Engineer's liability arising out of negligent acts, errors or omissions in its performance of

work or services under this Contract. Such policy will have a combined single limit of not less than \$2,000,000 per each claim, incident or occurrence for the term of the Project. Such policy will be on a claims made basis and will have an extended claims reporting period of five (5) years after final completion.

- e. The limits required in this Section 7.1 may be met with a combination of underlying and umbrella coverage.

7.2 Except as required in 7.1(d) above, if any of the above required insurance is arranged on a "claims made" basis, "tail" coverage will be required at final completion or termination of this Contract for a duration of two (2) years.

7.3 Policies shall provide that City, its council, officers, representatives, employees, and agents will be included as an additional insured with respect to the coverages required in Section 7.1(a) and a waiver of subrogation against them shall be obtained for all coverages.

7.4 All coverages under Section 7.1 shall be primary over any insurance City may carry on its own.

7.5 City shall be solely responsible for any loss, damage or destruction to its own property, equipment, and materials used in conjunction with the work or services under this Contract.

7.6 All policies of insurance shall be issued by good, responsible companies, with a rating reasonably acceptable to City and that are qualified to do business in the state of Oregon.

7.7 Engineer shall furnish City with certificates of insurance evidencing all required coverages prior to commencing any work or services under this Contract. If requested by City, Engineer shall furnish City with executed copies of such policies of insurance. Engineer shall furnish City with at least 30 days' written notice of cancellation of, or any modification to, the required insurance coverages. Failure to maintain any required insurance coverages in the minimum required amounts shall constitute a material breach of this Contract and shall be grounds for immediate termination of this Contract.

7.8 All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Contract must include an additional insured endorsement with the certificate of insurance specifying the City of Sweet Home, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of Engineer's ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent and attached to Certificate of Insurance.

8. Workers' Compensation

8.1 Engineer, its subcontractors, if any, and all employers working under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all subject workers.

8.2 Engineer warrants that all persons engaged in Contract work and subject to the Oregon Workers' Compensation Law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Engineer shall indemnify City for any liability incurred by City as a result of Engineer's breach of the warranty under this paragraph.

9. Hours of Employment

Engineer shall comply with all applicable state and federal laws regarding employment.

10. Assignments and Subcontractors

Engineer may not assign or subcontract any of its responsibilities under this Contract without City's prior written consent. Engineer's assigning or subcontracting of any of its responsibilities under the Contract without City's consent shall constitute a material breach of this Contract. Regardless of any assignment or subcontract, Engineer shall remain liable for all of its obligations under this Contract.

11. Labor and Material

Engineer shall provide and pay for all labor, materials, equipment, tools, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of all Contract work, all at no cost to City other than the compensation provided in this Contract.

12. Ownership of Work and Documents

All work performed by Engineer and compensated by City pursuant to this Contract shall be the property of City upon full compensation for that work performed or document produced to Engineer, and it is agreed by the parties that such documents are works made for hire. Engineer hereby conveys, transfers and grants to City all rights of reproduction and the copyright to all such documents. However, in the event City reuses or modifies any materials furnished to City by Engineer, without Engineer's involvement or consent, then Engineer shall not be responsible for the materials.

Notwithstanding the aforementioned, Engineer retains a right to reuse such documents on future projects.

13. Termination for Convenience

13.1 This Contract may be terminated by mutual consent of the parties upon written notice. In addition, City may terminate all or part of this Contract upon determining that termination is in the best interest of City by giving seven (7) days' prior written notice of intent to terminate, without waiving any claims or remedies it may have against

Engineer. Upon termination under this paragraph, Engineer shall be entitled to payment in accordance with the terms of this Contract for Contract work completed and accepted before termination less previous amounts paid and any claim(s) City has against Engineer. Pursuant to this paragraph, Engineer shall submit an itemized invoice for all unreimbursed Contract work completed before termination and all Contract closeout costs actually incurred by Engineer. City shall not be liable for any costs invoiced later than thirty (30) days after termination unless Engineer can show good cause beyond its control for the delay.

13.2 City may unilaterally order Engineer to suspend all or part of the services under this Contract. If City suspends certain services under this Contract and later orders Engineer to resume those services, Engineer will be entitled to reimbursements for the costs actually and reasonably incurred, if any, in re-starting the suspended services.

14. Termination for Cause

City may terminate this Contract effective upon delivery of written notice to Engineer, or at such later date as may be established by City, under any of the following conditions:

14.1 If City funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.

14.2 If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.

14.3 If any license or certificate required by law or regulation to be held by Engineer to provide the services required by this Contract is for any reason denied, revoked, or not renewed.

15. Termination for Default

Either City or Engineer may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

If Engineer fails to perform in the manner called for in this Contract or if Engineer fails to comply with any other provisions of the Contract, City may terminate this Contract for default. Termination shall be effected by serving a notice of termination on Engineer setting forth the manner in which Engineer is in default. Engineer shall be paid the Contract price only for services performed in accordance with the manner of performance as set forth in this Contract.

16. Remedies

In the event of breach of this Contract the parties shall have the following remedies:

16.1 If terminated under paragraph 15 by City due to a breach by Engineer, City may complete the work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Engineer shall pay to City the amount of the reasonable excess.

16.2 In addition to the above remedies for a breach by Engineer, City also shall be entitled to any other equitable and legal remedies that are available.

16.3 If City breaches this Contract, Engineer's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Engineer is entitled.

16.4 City shall not be liable for any indirect, incidental, consequential, or special damages under the Contract or any damages arising solely from terminating the Contract in accordance with its terms.

16.5 Upon receiving a notice of termination, and except as otherwise directed in writing by City, Engineer shall immediately cease all activities related to the services and work under this Contract. As directed by City, Engineer shall, upon termination, deliver to City all then existing work product that, if the Contract had been completed, would be required to be delivered to City.

17. Nondiscrimination

During the term of this Contract, Engineer shall not discriminate against any employee or applicant for employment on the basis of any protected class as defined in ORS279A.112(b).

18. Governing Law; Jurisdiction; Venue

This Contract shall be governed by and construed in accordance with the laws of the state of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between City and Engineer that arises from or relates to this Contract which results in litigation shall be brought and conducted solely and exclusively within the Circuit Court of Linn County for the state of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. ENGINEER BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing herein shall be construed as a waiver of City's protections under the Oregon Tort Claims Act.

19. Compliance with Laws and Regulations

Engineer shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the services under this Contract. Without limiting the generality of the foregoing, Engineer expressly agrees to comply with: (i) ORS 659a.142; (ii) all regulations and administrative rules established pursuant to the foregoing laws; and (iii) City's performance under this Contract is conditioned upon Engineer's compliance with all applicable provisions of the Oregon Public Contracting Code, as more particularly set forth in Exhibit B and incorporated herein by this reference.

Engineer, its sub-consultants and all employers providing work, labor or materials under this Contract are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers. Engineer shall adhere to all safety standards and regulations established by City for work performed on its premises or under its auspices.

20. Experience, Capabilities and Resources

By execution of this Contract, the Engineer agrees that:

Engineer is an experienced engineering firm having the skill, legal capacity, and professional ability necessary to perform all the services required under this Contract to design or administer any work within the scope and complexity contemplated by this Contract.

Engineer has the capabilities and resources necessary to perform the obligations of this Contract.

Engineer is familiar with all current laws, rules, and regulations which are applicable to the design and construction of work which may fall within the scope of this Contract, and that all drawings, specifications, and other documents prepared by Engineer shall be prepared in accordance with the standard of care of other professionals performing similar services under similar conditions and in an effort to accurately reflect and incorporate all such laws, rules, and regulations.

21. Errors and Omissions

Engineer shall be responsible for correcting any errors or omissions in the documents prepared by Engineer which deviate from the standard of care set forth in Section 20. Engineer shall correct at no additional cost to City any and all such errors and omissions in the documents prepared by Engineer or its sub-consultants. Engineer further agrees to assist City in resolving problems relating to any project designs or specified materials.

22. Contract Performance

Engineer shall at all times carry on the services diligently, without delay and punctually fulfill all requirements herein. Engineer shall not be liable for delays that are beyond Engineer's control. Contract expiration shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any breach of Engineer's warranties or a default or defect in performance by Engineer that has not been cured.

23. Access to Records

For not less than three (3) years after the Contract expiration and for the purpose of making audit, examination, excerpts, and transcripts, City, and its duly authorized representatives shall have access to Engineer's books, documents, papers, and records that are pertinent to this Contract. If, for any reason, any part of this Contract, or any resulting construction contract(s) is involved in litigation, Engineer shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever

is longer. Engineer shall provide full access to these records to City, and City's duly authorized representatives in preparation for and during litigation.

24. Representations and Warranties

Engineer represents and warrants to City that (1) Engineer has the power and authority to enter into and perform this Contract, (2) when executed and delivered, this Contract shall be a valid and binding obligation of Engineer enforceable in accordance with its terms, (3) Engineer shall, at all times during the term of this Contract, be duly licensed to perform the services, and if there is no licensing requirement for the profession or services, be duly qualified and competent, (4) the services under this Contract shall be performed in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

25. City Obligations

26.1 City shall provide full information in a timely manner regarding requirements for and limitations on projects and work tasks. With regard to subcontractor liens, City shall furnish to Engineer, within fifteen (15) days after receipt of a written request, information necessary and relevant for Engineer to evaluate, give notice of, or enforce lien.

26.2 City shall establish and update, if necessary, overall project budgets, including engineering and construction costs.

26.3 City shall furnish the services of consultants, including geotechnical engineers, when such services are requested by Engineer, reasonably required by the scope of a project, and agreed to by City.

26.4 City shall furnish all testing as required by law or the contract documents.

26.5 City shall furnish all legal accounting, auditing and insurance services as necessary for projects to meet the City's needs and interests, after Engineer has performed requisite project management and oversight duties.

26.6 City shall provide prompt written notice to Engineer if City becomes aware of any fault or defect in a project, including any errors, omissions or inconsistencies in Engineer's design or performance under the contract.

26.7 City shall pay Engineer in accordance with paragraph 3 and Exhibit A of this Contract, upon receipt of Engineer's submission of monthly invoices, and satisfactory progress and performance made in accordance with the scope of work. Payments shall reflect work completed, or progress made on a project to date, on a pro rata basis.

26.8 City shall report the total amount of all payments to Engineer, including any expenses, in accordance with federal Internal Revenue Service and State of Oregon Department of Revenue regulations.

26.9 City shall guarantee access to, and make all provisions for Engineer to enter upon public and private property necessary for performance of the Scope of Work over which City exercises control.

26.10 Extra work or work on contingency tasks is not permitted unless authorized by the City in writing. Failure of Engineer to secure written authorization for extra work shall constitute a waiver of all rights to an adjustment in the Agreement price or Agreement time.

26. Governing Law, Jurisdiction, Venue

26.1 This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon without regard to principles of conflicts of law.

26.2 In the event of any disputes hereunder, the parties shall first attempt to resolve the situation by good faith discussions which shall take place in a timely manner. If the dispute cannot be resolved within sixty (60) days, the parties may mediate their dispute before a mediator acceptable to both parties. If they cannot agree on the selection of a mediator, they shall ask the Director of the Federal Mediation and Conciliation Service to nominate a mediator. The parties shall bear their own costs of the mediation but the parties shall share equally the costs of the mediator and the mediation facilities.

26.3 Any claim, action, suit or proceeding (collectively "Claim") between City and Engineer that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Linn County for the state of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. ENGINEER BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

27. Attorney Fees

If any litigation is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees which are directly attributed to such litigation in addition to any other relief to which it may be entitled.

28. Successors and Assigns

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

29. Limitation of Liabilities

City shall not be liable for (i) any indirect, incidental, consequential, or special damages under the Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. Engineer shall not be liable for any consequential damages under this Contract.

30. Foreign Contractor

If Engineer is not domiciled in or registered to do business in the state of Oregon, Engineer shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies

relative to this Contract. Engineer shall demonstrate its legal capacity to perform the work under this Contract in the state of Oregon prior to entering into this Contract.

31. Confidentiality

Engineer shall maintain the confidentiality of any of City's information that has been so marked as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent Engineer from establishing a claim or defense in an adjudicatory proceeding. Engineer shall require similar agreements from City's and/or Engineer's sub-consultants to maintain the confidentiality of information of City.

32. Force Majeure

Engineer shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authorities, fires, floods, windstorms, earthquakes, strikes or other labor disturbances, civil commotion or war.

33. Waivers

No waiver by City of any provision of this Contract shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Engineer of the same or any other provision. City's consent to or approval of any act by Engineer requiring City's consent or approval shall not be deemed to render unnecessary the obtaining of City's consent to or approval of any subsequent act by Engineer, whether or not similar to the act so consented to or approved.

34. Severability

Any provision of this Contract which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

35. Survival

All provisions of this Agreement that would reasonably be expected to survive the termination of this Agreement will do so.

36. Headings

The captions contained in this Contract are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

37. Integration and Modification

This Contract, including the attached exhibits referenced in Section B, contains the entire agreement between the parties regarding the matters referenced herein and supersedes all prior written or oral discussions or agreements regarding the matters

addressed by this Contract. Any modifications or amendments to this Contract will only be effective when made in writing and signed by authorized parties for each party to this Contract.

38. Authority

The representatives signing on behalf of the parties certify that they are duly authorized by the party for which they sign to make this Contract.

39. Certificate of Compliance with Oregon Tax Laws

By executing this Contract, Engineer certifies under penalty of perjury that Engineer is, to the best of Engineer's knowledge, not in violation of any Oregon tax laws described in ORS 305.385(6) and (7).

40. Time is of the Essence

Time is of the essence under this Contract.

CITY OF SWEET HOME

ENGINEER

By: _____

By: _____

Authorized Signature

Name: Ray Towry

Name: James Bledsoe, PE

Title: City Manager

Title: Principal

Date: _____

Date: _____

Authorized & Approved by the City Council.
City Manager approves contract.

Approved as to form.

By: _____

Name: Robert Snyder

Title: City Attorney

Date: _____

Exhibit A

Scope of Work and Fee Proposal

Date: October 23, 2020

Project Number: KA# 220130-000

Project Name: Sweet Home WWTP – Value Engineering Study

PROJECT DESCRIPTION

The City of Sweet Home (City) is currently under contract with Murraysmith for the design of a major wastewater treatment plant (WWTP) expansion project. The project includes upgrades to the influent pump station, a headworks screening facility, a primary clarifier, a secondary clarifier, expansion of the existing aeration basin, installation of a cloth media filter, and conversion of chlorine disinfection to UV disinfection. The plan also includes a new solids thickener, new anaerobic digester, repurposing the existing sludge storage tank to a secondary anaerobic digester, new dewatering equipment, and a new administration building with a lab. The improvements are designed to decrease the operations and maintenance, improve effluent quality and consistency, and meet current and future permitting requirements for the next 20-years. The design is currently 60% complete.

A Value Engineering Analysis is the next step to satisfy funding agency requirements. A Value Engineering Analysis examines the function and cost of each improvement, with the chief goal that the improvements provide the best overall value to the City. The City would like Keller Associates (Engineer) to perform the Value Engineering Analysis to satisfy USDA's and DEQ's infrastructure financing application requirements and to provide an experienced, independent, outside view of the improvements. The Design Engineer (Murraysmith) and City staff will review the Value Analysis Report and make decisions on which ideas to incorporate into the 90% Design. The services to be completed by the Engineer are described below.

Task 1 – Project Management

Engineer Responsibilities:

- 1.1. Project Management. Provide general project management, including contract administration, project accounting, and internal project administration.
- 1.2. Workshop Documents. The Engineer will provide an outline, agenda, and schedule for the value analysis workshop.
 - 1.2.1. Project management will include a written job plan, that outlines the scope and methodology of the value analysis as well as the schedule and deliverables. The Engineer will orient the value analysis team at the start of the workshop.

Assumptions:

- Project management budget is based on project as described in the Schedule section below.

Deliverables:

- Project meeting agendas and minutes.
- Project schedule.

Task 2 – Pre-Workshop Preparation

Engineer Responsibilities:

- 2.1 Request for Information. The Engineer will assemble a request for information (RFI) to prepare for the Value Analysis. The RFI will include a request for the 2016 Wastewater Facilities Plan, Schematic Design

Report and appendices including the NPDES permit and the 60% design package including drawings, specifications, and Engineer's opinion of probable construction costs (OPCC).

2.2 Data Review. The Engineer will review information collected from the Design Engineer (Murraysmith) and City staff in preparation for the workshop. The Engineer will also prepare rough cost and energy models to utilize during the workshop to provide feedback to the value analysis team.

City Responsibilities:

- Provide the 2016 Wastewater Facilities Plan, Schematic Design Report and appendices including the NPDES permit, and the 60% design package including drawings, specifications, and Engineer's opinion of probable construction costs (OPCC).
- Provide any additional documents, such as record drawings, operation and maintenance costs, and other existing reports, that may be helpful for the Value Analysis.
- Arrange for desired City staff and Design Engineer staff to attend the Value Analysis Workshop targeted to take place the week of November 30th.

Deliverables:

- RFI in the form of an email to the City's project manager.
- Workshop outline, agenda, and schedule.

Task 3 – Value Analysis Workshop and Report

Engineer Responsibilities:

- 3.1. Workshop: The Engineer will lead a four-day workshop meeting with the Design Engineer (Murraysmith) and City staff to discuss the 60% design package. The Engineer will provide a minimum of four qualified professional engineers for the workshop who are experienced in wastewater treatment design, operations, construction, and value engineering.
 - 3.1.1 The workshop sessions will include an information and function phase, creative phase, evaluation phase, development phase, and closing/presentation phase. It is understood that the Design Engineer will present a project overview on the first day of the workshop, be available during the workshop for questions, and be present for the closing phase of recommended concepts from the value analysis team.
 - 3.1.2 The value analysis team will tour the existing WWTP as part of the information and function phase on the first day of the workshop to view existing conditions and operational procedures.
 - 3.1.3 The value analysis will include a review of the design criteria (both liquids and solids), plant schematic and layout, and redundancy provisions. The design criteria review will rely on the Design Engineer (Murraysmith) summary of data and does not include a separate data review.
 - 3.1.4 The value analysis team will provide constructive input and feedback based on the review of the materials.
 - 3.1.5 The value analysis team will evaluate process components and recommend cost saving alternatives and/or approaches to achieve similar or better treatment performance.
 - 3.1.6 The value analysis team will evaluate or recommend energy efficient options that may provide savings over the lifespan of plant operations.
 - 3.1.7 The value analysis team will review operational functionality of the proposed improvements and provide recommendations to improve operational efficiencies.
 - 3.1.8 The value analysis team will review constructability and OPCC and provide recommendations

related to constructability.

3.1.9 During the creative phase typically a large number of ideas are generated. The ideas will be ranked as part of the evaluation phase, based on advantages and disadvantages. During the development phase, the best ideas will be further defined to allow a comparison to be made on the value of the alternative to the current 60% design package (base case).

3.1.10 At the conclusion of the workshop, the Engineer will present the workshop results and recommendations, which will be included in the value analysis report.

3.2. Value Analysis Report: Following the workshop, the Engineer will prepare a draft written report which documents the workshop findings and recommendations. The draft report will be sent to the City and Design Engineer (Murraysmith) for comment. Following receipt of any City comments, the Engineer will address the comments and provide a final version of the report to the City. It is assumed that the decision on the implementation will be made by the City and the Design Engineer (Murraysmith) following finalization of the value analysis report.

City Responsibilities:

- Provide a venue with WiFi access for the value analysis workshop.
- Provide operations staff for a WWTP tour.
- Attend the value analysis workshop and provide input.
- Provide comments on the draft Value Analysis Report.

Assumptions:

- The Engineer will rely on the provided information to complete the work.
- The implementation of any of the alternatives identified in the value analysis report will be documented by others.

Deliverables:

- Draft Value Analysis Report in PDF format.
- Final Value Analysis Report in PDF format.

Additional Services

Any other efforts not described in Tasks 1 to 3 shall be considered additional services. As this may cause delays in the schedule, the Engineer and the City will agree to a negotiated fee and revised schedule to complete any additional services before the additional work begins.

SCHEDULE

The Engineer anticipates the following project schedule. Cooperation by the City and Design Engineer (Murraysmith) in scheduling the four-day value analysis workshop will be critical to meeting this schedule. The number of days associated with each of the tasks is approximate and assumes timely delivery of requested information. The actual schedule may vary.

Task	Schedule	Comments
Task 1 – Project Management	45 Days	An overall schedule of 45 days has been assumed.
Task 2 – Pre-Workshop Preparation	15 days	Schedule for this task will begin upon receipt of signed contract.
Task 3 – Value Analysis Workshop and Report	30 days	Schedule for this task will begin following the Engineer receiving information requested in the RFI produced in Task 2.

CONTRACT SUM

The Engineer will be compensated on a Lump Sum basis, for the services outlined above, as illustrated in the following table.

As compensation for services to be performed by Engineer, the Owner will pay Engineer as described in the following table. The total authorized budget amount shall not be exceeded without written authorization from the Owner.

Task	Description	Budget
Task 1	Project Management	\$4,960
Task 2	Pre-Workshop Preparation	\$18,050
Task 3	Value Analysis Workshop and Report	\$54,620
Total		\$77,630

Exhibit B

Oregon Public Contracting Requirements

ORS CHAPTERS 279B AND 279C REQUIREMENTS

(1) Consultant shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.

(2) Consultant shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Consultant or Subcontractor incurred in the performance of the contract.

(3) Consultant shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.

(4) Consultant and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617.

(5) If Consultant fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Consultant or a Subcontractor by any person in connection with the contract as such claim becomes due, the City may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Consultant by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Consultant or his surety from his or its obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or material furnished, the City may withhold from any current payment due Consultant an amount equal to said claim until its validity is determined and the claim, if valid, is paid.

(6) Consultant shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Consultant, of all sums which the Consultant agrees to pay for such services and all monies and sums which the Consultant collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

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

(8) The Consultant must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.

(9) All subject employers working under the Consultant are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126.

(10) All sums due the State Unemployment Compensation Fund from the Consultant or any Subcontractor in connection with the performance of the contract shall be promptly so paid.

(11) The contract may be canceled at the election of City for any willful failure on the part of Consultant to faithfully perform the contract according to its terms.

(12) Consultant certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.

(13) Consultant certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors.



REQUEST FOR COUNCIL ACTION

Title: Refinancing of existing City Debt for Wastewater and Water Treatment Systems

Preferred Agenda: November 10, 2020

Submitted By: Brandon Neish, Finance Director

Reviewed By: Ray Towry, City Manager

Type of Action: Resolution X Motion ___ Roll Call ___ Other ___

Relevant Code/Policy: Local Contract Review Board Rules of Procedure

Towards Council Goal: Goal 1.2(c): Increase community awareness of infrastructure needs and appropriate planning documents
Goal 2.5: Continue to implement strong financial “best” practices

Attachments: Municipal Bonds: Understanding Credit Risk (U.S. Securities & Exchange Commission)
Debt 101: Issuing Bonds and Your Continuing Obligations (Government Finance Officers Association)
Resolution No. 29 for 2020

Purpose of this RCA:

To review Resolution No. 29 for 2020, authorizing the Finance Director to refinance existing City debt.

Background/Context:

The City has \$15.6 million in existing debt related to the wastewater collections and water treatment systems. There are five loans that the City pays annually which were obtained with total payments of approximately \$1.4 million. The proposal included allows the City to refinance \$6.5 million in debt to obtain a lower interest rate, saving the City an estimated \$1.5 million over the life of the loans. The additional loans (\$9.1 million) are currently financed with interest rates at or below current interest rates and does not make sense to refinance at this time.

Three loans exist through the State’s Clean Water State Revolving Fund which were leveraged by the City to complete work on the sewer collection system. The work completed reduced the City’s inflow and infiltration (I&I) into the wastewater treatment plant and allows for better flow through City sewer pipes. As the City’s infrastructure ages, the collection pipes crack and allow for groundwater to slip into the pipes. Per Oregon Department of Environmental Quality (DEQ) estimates, this can add 7-9 million gallons of sewer flow per day to the Wastewater Treatment Plant which was not designed to handle this volume. Among other issues with the treatment plant necessitating the City’s need to rehabilitate and expand the plant, the I&I work was done to reduce the risk of overflow events at City manholes and other locations within the sewer

system. In total, the City incurred \$14.8 million in loans to complete this work which has been hailed at a state and national level. For the purposes of this refinancing, the City would be looking for \$4.1 million in loans on a remaining balance of \$7.1 million. The remainder has a zero percent interest rate and would not be refinanced under this proposal.

Two loans exist from the Oregon Economic & Community Development Department (now Business Oregon) which the City took on to pay for the construction of the current Water Treatment facility completed in 2009. The City borrowed \$10.7 million for the construction of the plant and currently owes \$7.5 million with a payoff scheduled for fiscal year 2035. The original loan for the treatment plant was issued at a repayment rate of 1% while a secondary loan (amendment) was obtained due to cost overruns. That loan had a varying rate of 2-4%. This is the component which the City would be refinancing to reduce the rate. The refinancing of \$2.4 million would be added to the \$4.1 million in sewer refinancing.

Fund	Debt Name	Existing Interest Rate	Remaining Interest Cost	New Interest Rate	Revised Interest Cost	Interest Savings
Water	G04003	2-4%	\$ 832,416	~1.7%	\$343,682	(\$488,734)
Wastewater	R89750	3.14%	\$ 109,436	~1.7%	\$63,868	(\$ 45,568)
Wastewater	R89751	2.90%	\$ 476,583	~1.7%	\$299,004	(\$177,579)
Totals			\$1,418,435		\$706,554	(\$711,881)

The City has been working with D.A. Davidson Companies, an investment and financial planning firm on the details of a possible refinancing of City debt. The current recommendation from D.A. Davidson is to issue full-faith and credit bonds, which obligates the City to repay a debt through any means and resources available. These bonds, at the time of review, would carry a repayment rate near 1.7% for all three loans being reinanced and would save an estimated \$700k over the remaining life of the loans (sewer in 2025 and 2031 and water in 2034). The other option for this type of transaction is to issue a revenue bond. A revenue bond attaches the loans to the revenue generated through user fees. In the event the user fees cease due to an unanticipated event, the City would be absolved of the responsibilities of the loans. While there is an obvious benefit to this, the rates for such a loan are generally higher than a full-faith and credit bond for which all City resources are fair game for the repayment. Additional information regarding municipal bonds and information on issuing debt has been attached for Council’s review to facilitate the discussion on this matter.

The Challenge/Problem:

What is the best approach for municipal debt financing that ensures the “most good, for the most people, for the longest period of time?”

Stakeholders:

- Sweet Home Citizens & Businesses – Through water and sewer utility fees, citizens and businesses are paying for the infrastructure that exists to deliver water to their homes/businesses and carry wastewater away. These stakeholders have a major stake in debt financing as this directly impacts the rates, they pay for the services they receive. A reduction in loan rates could provide much needed relief to utility rates.
- Sweet Home City Council – The City Council is charged with making decisions that do the most good, for the most people, for the longest period of time. This decision has lasting impacts on utility fees and long-term implications water and wastewater systems in the City. Additionally, reducing debt payments will benefit the City as additional debt will be necessary to complete the rehabilitation and expansion of the existing Wastewater Treatment Plant.

- Sweet Home staff – It is the responsibility of staff to ensure that residents and businesses are receiving the best services at the optimum price. Lowering annual debt service payments has a direct effect on staff's abilities to deliver services at a maximum benefit for consumers while focusing on the future.

Issues and Financial Impacts:

Refinancing the existing loans provides a direct benefit to the City's overall budget for the water and wastewater operations budgets and extends the viability for those funds for future system needs or rate buy-downs for customers. Alternatively, there are costs associated with refinancing existing debt, including staff time for annual reports and the issuance of bonds. Over the life of the loans we could save the ratepayers \$700k.

Elements of a Stable Solution:

A decision on next steps regarding existing debt is important as the City reaches a critical junction regarding utility fees long-term.

Options:

1. Do Nothing – The existing debt incurred by the City for projects would remain on the City's books. No changes in payments would occur at this time.
2. Move to approve Resolution No. 29 for 2020 – Approving the resolution directs staff to negotiate a solution for existing debt which would maximize value for the City and its utility customers. The existing loans would be paid off and refinanced at a lower interest rate under a full-faith and credit bond at or near an interest rate of 1.7%. The City's existing loan for the Water Treatment Plant is a full-faith and credit loan.
3. Direct staff to review the options and costs associated with a revenue bond – Also available as part of this review is the option to engage in the sale of a revenue bond to refinance existing debt. A revenue bond would use the monthly utility revenues generated from user fees as the backing for the bond and often require specific debt reserves to be maintained. The current sewer loans through DEQ are secured by net revenues of the wastewater system.
4. Direct staff to review alternative options for existing debt – The City Council could direct staff to review alternative proposals including, but not limited to, paying off existing debt with available reserves, private financing proposals and refinancing through Oregon state agencies.

Recommendation:

Staff recommends option 2, move to approve Resolution No. 29 for 2020. This option saves the City significant resources over time with a direct benefit to consumers and staff. Additional conversations and decisions by the Council would be required to determine appropriate next steps.

Resolution No. 29 for 2020

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A FULL FAITH AND CREDIT FINANCING AGREEMENT FOR THE PURPOSE OF REFINANCING OUTSTANDING OBLIGATIONS OF THE CITY; DESIGNATING AN AUTHORIZED REPRESENTATIVE, PLACEMENT AGENT/UNDERWRITER AND SPECIAL COUNSEL; AND RELATED MATTERS.

WHEREAS, the City of Sweet Home, Linn County, Oregon (herein the "City"), is authorized by Oregon Revised Statutes (ORS) Sections 271.390 and 287A.315 to (i) enter into financing agreements to refinance real and personal property that the City determines is needed, (ii) pledge its full faith and credit and, (iii) pay the costs of issuance of such financing agreements; and,

WHEREAS, on or about December 23, 2002, the City entered into a Clean Water State Revolving Fund Loan Agreement R89750, as amended by Amendment No. 1 dated August 1, 2003 and Amendment No. 2 dated February 13, 2004, in the revised principal amount of \$4,000,000 (herein the "R89750 Loan") to finance improvements to the City's sewer collection system; and,

WHEREAS, on or about April 1, 2005, the City entered into a Clean Water State Revolving Fund Loan Agreement R89751, as amended by Amendment No. 1 dated April 30, 2005, Amendment No. 2 dated January 31, 2006, Amendment No. 3 dated August 24, 2007 and Amendment No. 4 dated November 22, 2013, in the revised principal amount of \$4,667,024 (herein the "R89751 Loan") to finance improvements to the City's sewer collection system; and

WHEREAS, on or about September 22, 2004, the City entered into a Safe Drinking Water Revolving Loan Fund Financial Assistance Contract S04002 in the revised principal amount of \$4,030,000 (herein the "S04002 Loan") to finance a new water treatment plant; and

WHEREAS, the R89750 Loan and R89751 Loan may be prepaid without penalty in whole or in part upon 24 hours prior written notice; and,

WHEREAS, the S04002 Loan may be prepaid without penalty in whole or in part upon five (5) business days' notice to the State; and,

WHEREAS, the City is advised refinancing the R89750 Loan, the R89751 Loan and the S04002 Loan will result in debt service savings to the City; and,

WHEREAS, the City desires to refinance the R89750 Loan, the R89751 Loan and S04002 Loan (collectively, the "Loans"); and,

WHEREAS, the City desires to authorize the execution and delivery of one or more financing agreements and escrow agreements to refinance the Loans and related matters; and,

WHEREAS, the estimated weighted average life of the financing agreements will not exceed the estimated dollar weighted average life of that portion of the facilities financed with the Loans being refinanced.

THEREFORE, BE IT RESOLVED THAT THE CITY OF SWEET HOME RESOLVES AS FOLLOWS:

Section 1. Authorization. The City Council hereby authorizes:

- A. Financing Agreement. The City authorizes the execution and delivery of one or more full faith and credit financing agreements (the "Financing Agreement") in a form satisfactory to the Authorized Representative (defined herein). The aggregate principal amount of the Financing Agreement shall be in an amount sufficient to refinance the Loans and pay the costs of issuance of the Financing Agreement. The Financing Agreement may consist of one or more financing agreements and may be issued as taxable and/or tax-exempt obligations at an interest rate not to exceed four percent (4.0%) per annum as determined by the Authorized Representative and shall mature not later than sixteen (16) years from the date of issuance on date(s) set by the Authorized Representative.
- B. Method of Sale. The Financing Agreement may be entered into directly with a lender (a "Private Placement") or obligations representing the principal amount payable under the Financing Agreement may be sold to an

underwriter by negotiated or competitive sale (a "Public Offering"), as determined by the Authorized Representative.

- C. **Private Placement.** The Financing Agreement may be evidenced by a note and may be entered into with a lender(s) as determined by the Authorized Representative.
- D. **Public Offering.** The City authorizes the issuance and sale of Full Faith and Credit Obligations, Series 2020 (the "Series 2020 Obligations" or such other name approved by the Authorized Representative, as defined below) which shall be issued by the escrow agent, for and on behalf of the City, representing the principal amount payable under the Financing Agreement. The Series 2020 Obligations may be issued in one or more series, shall be issued at a true effective rate as determined by the Authorized Representative and shall mature on dates set by the Authorized Representative. The City authorizes the execution and delivery of one or more escrow agreements between the City and the escrow agent (the "Escrow Agreement"), in a form satisfactory to the Authorized Representative, pursuant to which the escrow agent shall execute the Series 2020 Obligations representing the principal amount payable under the Financing Agreement, and evidencing the right of the escrow agent to receive the City's Financing Payments under the Financing Agreement.

Section 2. Security.

The Financing Agreement shall be a full faith and credit obligation of the City payable from the lawfully available, non-restricted funds of the City, including the unspent proceeds of the Financing Agreement, and other funds which may be available for that purpose, including taxes levied within the restrictions of Sections 11 and 11b, Article XI of the Constitution of the State of Oregon.

Section 3. Designation of Authorized Representative.

The City Council hereby authorizes the City Manager and the Finance Director (the "Authorized Representative") to act as the authorized representatives on behalf of the City and determine the remaining terms of the Financing Agreement as delegated herein.

Section 4. Delegation of Final Terms of the Financing Agreement and Additional Documents.

The Authorized Representative is authorized, on behalf of the City, to:

- A. determine the method of sale, determine the provisions of the notice of sale if sold at a competitive sale, act upon bids received, negotiate the terms of, and execute and deliver a purchase agreement if sold at a negotiated sale, and negotiate the terms of, and execute and deliver documents if privately placed with a lender;
- B. establish the maturity and interest payment dates, dated dates, principal amounts, capitalized interest (if any), optional and/or mandatory redemption provisions, interest rates, draw-down provisions, amortization schedules, covenants, fees, denominations, and all other terms under which the Financing Agreement and Series 2020 Obligations shall be issued, sold, executed, and delivered;
- C. negotiate the terms and approve of the Financing Agreement and the Escrow Agreement, if applicable, as the Authorized Representative determines to be in the best interest of the City, and to execute and deliver the Financing Agreement and the Escrow Agreement;
- D. deem final, approve of and authorize the distribution of any preliminary and final Official Statements to prospective purchasers of the Series 2020 Obligations;
- E. determine whether the Series 2020 Obligations shall be Book-Entry certificates and to take such actions as are necessary to qualify the Series 2020 Obligations for the Book-Entry System of DTC, including the execution of a Blanket Issuer Letter of Representations;
- F. apply for ratings for the Series 2020 Obligations and determine whether to purchase municipal bond insurance or other credit enhancement, negotiate and enter into agreements with providers of credit enhancers, and expend proceeds to pay credit enhancement fees;
- G. determine if the Financing Agreement will be issued on a tax-exempt basis and/or a taxable basis; and all other terms of the Financing Agreement and approve, execute and deliver the Financing Agreement;
- H. designate the Financing Agreement and the Series 2020 Obligations as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code") if they qualify for such designation;

- I. approve, execute and deliver a Tax Certificate for that portion of the Financing Agreement issued on a tax-exempt basis;
- J. approve, execute and deliver a continuing disclosure certificate pursuant to SEC Rule 15c2-12, as amended (17 CFR Part 240, §240.15c2-12) for each series of Series 2020 Obligations;
- K. engage the services of any professionals whose services the Authorized Representative determines are necessary or desirable, including the appointment of an escrow agent for the Series 2020 Obligations;
- L. execute and deliver a certificate specifying the action taken pursuant to this Resolution, and any other documents, agreements or certificates that the Authorized Representative determines are necessary and desirable to issue, sell and deliver the Financing Agreement and Series 2020 Obligations in accordance with this Resolution and take any other actions that the Authorized Representative determines are necessary or desirable to refinance the Loans with the Financing Agreement in accordance with this Resolution; and
- M. take any other actions which the Authorized Representative determines are necessary or desirable to refinance the Loans in accordance with this Resolution.

Section 5. Maintenance of Tax-Exempt Status.

The City hereby covenants for the benefit of the Owners of the Financing Agreement issued on a tax-exempt basis to use the Financing Agreement proceeds and the facilities refinanced with such proceeds in the manner required, and to otherwise comply with all provisions of the Code, which are required so that interest paid on the Financing Agreement will not be includable in gross income of the Owners of such Financing Agreement for federal income tax purposes. The City makes the following specific covenants with respect to the Code:

- A. The City will not take any action or omit any action if it would cause the Financing Agreement to become “arbitrage bonds” under Section 148 of the Code.
- B. The City shall operate the facilities refinanced with a tax-exempt Financing Agreement so that the Financing Agreement does not become a “private activity bond” within the meaning of Section 141 of the Code.
- C. The City shall comply with appropriate Code reporting requirements.
- D. The City shall pay, when due, all rebates and penalties with respect to the Financing Agreement which are required by Section 148(f) of the Code.

The covenants contained in this Section 5 and any covenants in the closing documents for the Financing Agreement shall constitute contracts with the owners of the Financing Agreement, and shall be enforceable by them. The Authorized Representative may enter into covenants on behalf of the City to protect the tax-exempt status of the Financing Agreement.

Section 6. Conditional Notice of Optional Redemption.

Any notice of optional redemption to the Paying Agent or to the Owners may state that the optional redemption is conditional upon receipt by the Paying Agent of moneys sufficient to pay the redemption price of such Series 2020 Obligations or upon the satisfaction of any other condition, and/or that such notice may be rescinded upon the occurrence of any other event, and any conditional notice so given may be rescinded at any time before payment of such redemption price if any such condition so specified is not satisfied or if any such other event occurs. Notice of such rescission or of the failure of any such condition shall be given by the Paying Agent to affected Series 2020 Owners of Obligations as promptly as practicable upon the failure of such condition or the occurrence of such other event.

Section 7. Defeasance.

The City may defease the Series 2020 Obligations by setting aside, with a duly appointed escrow agent, in a special escrow account irrevocably pledged to the payment of the Series 2020 Obligations to be defeased, cash or direct obligations of the United States in an amount which, in the opinion of an independent certified public accountant, is sufficient without reinvestment to pay all principal and interest on the defeased Series 2020 Obligations until their maturity date or any earlier redemption date. Series 2020 Obligations which have been defeased pursuant to this Resolution shall be deemed paid and no longer outstanding, and shall cease to be entitled to any lien, benefit or security under this Resolution except the right to receive payment from such special escrow account.

Section 8. Appointment of Independent Municipal Financial Advisor

If it is deemed advisable by the Authorized Representative, the Authorized Representative is authorized to appoint an independent municipal financial advisor to the City.

Section 9. Appointment of Placement Agent/Underwriter.

The City appoints D.A. Davidson & Co. as placement agent/underwriter for the issuance of the Financing Agreement and the Series 2020 Obligations.

Section 10. Appointment of Special Counsel.

The City appoints Mersereau Shannon LLP as special counsel to the City for the issuance of the Financing Agreement and the Series 2020 Obligations.

Section 11. Continuing Disclosure.

The City covenants and agrees to comply with and carry out all of the provisions of a Continuing Disclosure Agreement which may be negotiated with the underwriter. Notwithstanding any other provision of this Resolution, failure by the City to comply with the Continuing Disclosure Agreement will not constitute an event of default; however, any Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Section and the Continuing Disclosure Certificate.

Section 12. Preliminary and Final Official Statement.

The City may prepare or cause to be prepared a preliminary official statement for the Series 2020 Obligations which shall be available for distribution to prospective purchasers. In addition, an official statement may be prepared and shall be ready for delivery to the purchasers of the Series 2020 Obligations no later than the seventh (7th) business day after the sale of the Series 2020 Obligations. When the City determines that the final official statement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained in the official statement not misleading in the light of the circumstances under which they are made, the Authorized Representative is authorized to certify the accuracy of the official statement on behalf of the City.

Section 13. Closing of the Financing Agreement.

The Authorized Representative is authorized to negotiate the terms and conditions of a term sheet or commitment letter in the case of a Private Placement or a purchase agreement in the case of a Public Offering. The Authorized Representative is authorized to execute the commitment letter or the purchase agreement, as the case may be, for and on behalf of the City and to execute such additional documents, including a Tax Certificate, and to perform any and all other things or acts necessary for the sale and delivery of the Financing Agreement or Series 2020 Obligations as herein authorized. Such acts of the Authorized Representative are for and on behalf of and are authorized by the Council of the City.

Section 14. Resolution to Constitute Contract.

In consideration of the purchase and acceptance of any or all of the Financing Agreement or Series 2020 Obligations by those who shall own the same from time to time (the "Owners"), the provisions of this Resolution shall be part of the contract of the City with the Owners and shall be deemed to be and shall constitute a contract between the City and the Owners. The covenants, pledges, representations and warranties contained in this Resolution or in the closing documents executed in connection with the Financing Agreement or Series 2020 Obligations and the other covenants and agreements herein set forth to be performed by or on behalf of the City shall be contracts for the equal benefit, protection

and security of the Owners, all of which shall be of equal rank without preference, priority or distinction of any of such Financing Agreement and Series 2020 Obligations over any other thereof, except as expressly provided in or pursuant to this Resolution.

Section 15. Post Issuance Compliance Procedures.

The Authorized Representative is authorized to adopt, or modify existing, procedures regarding post issuance compliance related to tax-exempt and taxable obligations of the City.

This resolution shall take effect upon its passage and approval.

PASSED by the Council and approved by the Mayor this 10th day of November, 2020

Mayor

City Manager – Ex Officio City Recorder



SEC

OFFICE of INVESTOR
EDUCATION and ADVOCACY

INVESTOR BULLETIN

Municipal Bonds: Understanding Credit Risk

The SEC's Office of Investor Education and Advocacy is issuing this Investor Bulletin to help educate investors about assessing credit risks they face when purchasing municipal bonds, which may also be called notes or certificates of participation. Credit risk—or default risk—is the risk that interest and/or principal on the securities will not be paid on time and in full. Investors need to know who is responsible for repayment of the securities and the financial condition of that entity to assess the credit risk and decide whether to purchase the securities. It is important to look beyond the short-hand label given to a municipal bond, such as “general obligation bond” or “revenue bond,” or the bond's credit rating. Investors should read the disclosure document, known as the “official statement,” which provides important details about the offering, including the factors described below.

What are Municipal Bonds?

Municipal bonds are debt securities issued by states, cities, counties and other governmental entities to fund day-to-day obligations and to finance capital projects such as building schools, highways or sewer systems. By purchasing municipal bonds, you are in effect lending money to the issuer in exchange for a promise of regular interest payments, usually semi-annually, and the return of the original investment—or principal. The entity responsible for repaying the principal and

interest on the bonds may be the issuer, or an underlying borrower, known as the obligor or “obligated person.” Obligor could be another governmental entity, a for-profit firm, or a non-profit entity. The date on which the principal is scheduled to be repaid, known as the security's maturity date, may be years in the future.

Generally, the interest on municipal bonds is exempt from federal income tax. The interest may also be exempt from state and local taxes if you reside in the state where the bond is issued or if issued by a U.S. territory, such as Puerto Rico. Given the tax benefits, the interest on municipal bonds is usually lower than on taxable fixed-income securities such as corporate bonds.

Factors investors should consider when assessing the credit risk of municipal bonds:

1. Types of Municipal Bonds

The type of municipal bond issued affects both the risk of default and the value of the municipal bond. Repayment may come from the issuer, an obligor, or from a single tax or revenue source. There are two major types of municipal bonds: “general obligation bonds” and

“revenue bonds.” Because these types come in many varieties, you should look beyond the short-hand label when deciding whether to purchase.

- **General obligation bonds** are issued by governmental entities and are not backed by revenues from a specific project or source. Some general obligation bonds are backed by dedicated taxes on real property and, on occasion, other taxes. Other general obligation bonds are payable from general funds and are often referred to as backed by the “full faith and credit” of the governmental entity. While in many instances “general obligation” means that the issuer or other governmental entity responsible for repaying the bonds has the unlimited authority to tax residents to pay bondholders, in other cases, the issuer or other governmental entity may have limited or no taxing authority. ***Investors should carefully read the official statement describing the general obligation bond before making an investment decision.***
- **Revenue bonds** are backed by revenues from a specific project or source. There is a wide diversity of types of revenue bonds, each with unique credit characteristics. For example, municipal entities frequently issue securities on behalf of other borrowers such as non-profit colleges or hospitals or certain for-profit entities. These underlying “conduit” borrowers typically agree to repay the issuer, who pays the interest and principal on the securities solely from the “revenue” provided by the conduit borrower. ***Investors should carefully read the official statement describing the revenue bond, and understand both the identity of the conduit borrower, if any, and what revenues are actually pledged to back the bonds, before making an investment decision.***

2. Non-Recourse Financings

Some revenue bonds are “non-recourse,” meaning that if the revenue stream dries up, or if payments on the bonds are otherwise not paid, the bondholders do not have a claim on the underlying revenue source or against the conduit borrower. In instances where a conduit borrower fails to make a payment to the municipal issuer, the issuer is usually not required to pay the bondholders. *For these reasons, it is essential to understand the source of the revenues that will be used to repay the bonds.*

3. Purpose of the Financing

Municipal bond default rates vary considerably depending on a variety of factors, including the types of bonds issued and whether the ultimate obligor is a municipal entity or a non-municipal entity (i.e., a conduit borrower). For example, if you are considering purchasing municipal securities that finance speculative projects, including those involving for-profit businesses, pay close attention to the potential risks involved. The official statement for this kind of offering usually will include a feasibility study showing the key assumptions made in evaluating the project. Understanding those assumptions can help you evaluate the risks.

4. Financial Condition of the Issuer or Other Obligor

A key concern is whether the issuer or other obligor will be able to pay interest and principal in full. To evaluate the financial condition of the issuer or other obligor, consider (among other things):

- Debt and other longer-term liabilities payable from or impacting the same source of revenue as the bonds, including, if applicable, pension and other post-employment benefit obligations of the municipal bond issuer;

- The underlying local economy, including employment, income, wealth, and tax burden; and
- The audited financial statements of the issuer or obligor, including both revenues and expenses.

5. Other Sources of Funds to Pay Principal and Interest

While some municipal bonds are general obligation bonds, others are repaid not by an issuer or other obligor, but from a specific payment stream. You should evaluate the viability of the sources of revenue to be used to make these payments. In evaluating the source of payment for the bonds, you should consider (among other things):

- Economic or social trends that may limit demand for particular goods or services (such as gasoline or cigarettes) when those goods or services are being taxed to fund the repayment of the securities; and
- Statutory limits on raising revenues, such as the need for voter approval.

What are Credit Ratings?

While some investors find it helpful to consider credit ratings when making an investment decision, it is important that you not rely solely on credit ratings when deciding whether to purchase municipal bonds.

Investors need to undertake their own independent review of the municipal bonds' risk by reading the official statement and other relevant information described below.

Credit ratings are assessments of municipal bonds' credit risk at a particular point in time. You should be aware that because credit ratings may change over time, the credit rating found on the official statement may not be the credit rating of the municipal bonds if you purchase them on a subsequent date. Investors should

also be aware that, in general, credit rating agencies are paid by the issuer whose municipal bonds they are rating.

Credit ratings are only assessments by credit rating agencies of the credit risk associated with a municipal bond. Each credit rating agency evaluates credit risk based on its own standards, applies its own ratings methodology, and weighs the various factors in the methodology differently. Credit ratings are not investment advice, guarantees of credit quality or of future credit risk, or indications that an investment is suitable. They are designed to address only one aspect of an investment decision—credit risk. As an investor, you may or may not agree with the credit rating.

Where should I look for information regarding municipal securities?

In most cases, official statements as well as updated information regarding the issuer and the municipal bonds can be found on the Electronic Municipal Market Access (EMMA) website, www.emma.msrb.org. The issuer's financial information is often updated each year. In addition, many municipal bond issuers provide "material event notices" that contain information concerning, among other things, delinquent principal and interest payments, other types of defaults, rating changes, events impacting the tax status of the securities, and bond redemptions or calls. EMMA also has some credit ratings information.

Often, the official statement contains a section titled "investment risk factors" or "investment considerations," which provides information relevant to your investment decision. In addition, pertinent financial information regarding the issuer generally may be found in an appendix attached to the official statement. This publication focuses on credit risk. Investments in municipal bonds entail other risks, such as call risk, interest rate risk, inflation risk, and liquidity risk. Please refer to the material listed below for more information on these risks.

Related Information

[Investor Bulletin: Municipal Bonds](http://www.sec.gov/investor/alerts/municipal-bonds.htm) (available at <http://www.sec.gov/investor/alerts/municipal-bonds.htm>)

[FINRA and MSRB Investor Alert: Municipal Bonds—Staying on the Safe Side of the Street in Rough Times](http://www.finra.org/investors/protectyourself/investoralerts/bonds/p118923) (available at <http://www.finra.org/investors/protectyourself/investoralerts/bonds/p118923>)

The Office of Investor Education and Advocacy has provided this information as a service to investors. It is neither a legal interpretation nor a statement of SEC policy. If you have questions concerning the meaning or application of a particular law or rule, please consult with an attorney who specializes in securities law.





DEBT 101: Issuing Bonds and Your Continuing Obligations



Issuing debt results in major responsibilities that many public finance professionals undertake with limited experience and typically as a secondary or tertiary responsibility to their main duties of preparing the budget, meeting payroll deadlines, issuing the CAFR, or addressing the hundreds of other assignments that come up from time-to-time. But issuing debt and the responsibilities that follow once the bond sale is complete cannot be taken lightly and possibly could create an unanticipated burden not foreseen at the beginning of the process.

This document provides the reader with a basic understanding of what a bond is, who the typical players are, what you need to be thinking about from a legal standpoint, what are the structuring considerations, how bonds get sold, your responsibilities during and, as important, following the bond sale so long as the bonds remain outstanding, and will also provide a brief overview of alternative financing products. This document is not going to make you an expert; however, will provide you with a framework from which to understand the mechanics and responsibilities that come with going to the public markets. In addition, references are provided to more detailed Best Practices, Advisories and other resources. The GFOA strongly advises that issuers wishing to proceed with a debt financing review these resources as well.

Getting Ready to Issue a Bond

Governmental entities have been using debt (most often in the form of “municipal bonds”) for over 200 years to fund public infrastructure such as government buildings, water distribution systems, schools, police stations and many other projects that require significant capital investment. When a government issues debt (Issuers), it receives an infusion of cash to build a project; in return the government repays the bond purchasers (Investors) over time, plus interest. By using debt, the government can complete a capital project today with a repayment schedule that spreads the cost of that project over its useful life.

Before issuing debt, there are many factors that a government official should consider. Appropriate planning and understanding helps to provide the most favorable results and also helps avoid unnecessary risks and negative consequences. Debt issuance requires working with a number of partners, each of whom has a specific role. The debt issuance will result in a financing agreement that is legally binding, and it is critically important that government officials understand the basic terms of the agreement and what the agreement commits them to do.

Successful financing requires **assembling a team of capable professionals** to assist the Issuer.



The Financing Team

A successful financing requires assembling a team of capable professionals to assist the Issuer, each with a different specialization and focus on the financing. It is important to understand the different roles of each team member.

Bond Counsel

Bond Counsel works directly for the Issuer. Bond Counsel is an attorney (or team of attorneys), typically with specialized experience in municipal financings, that generally issues two legal opinions in conjunction with the offering:

1. An opinion as to whether the financing is a valid legal, binding obligation of the Issuer, and,
2. An opinion of the nature of the taxability of the interest the investor earns on the financing.

These two opinions are relied upon by Investors when considering whether to purchase the bonds. In order to provide these opinions, Bond Counsel must work closely with the Issuer to understand the nature and structure of the issue.

Bond Counsel should also be knowledgeable in local, State and federal laws and regulations related to municipal financings and any special requirements for public agencies.

The Bond Counsel will often also serve as a disclosure counselor for the issue. This attorney assists with the preparation of the official statement and the continuing disclosure agreement, and will help facilitate preparation of the final (closing) documentation.

Municipal Advisor/Financial Advisor

A financial advisor (or “Municipal Advisor” or “MA”) is a professional consultant that works directly for the Issuer. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, a Municipal Advisor working for a municipality must be registered with the Securities and Exchange Commission Securities and Exchange Commission (SEC) and Municipal Securities Rulemaking Board (MSRB) and must give fiduciary care in advising the Issuer by putting the Issuer’s interests above their own financial interests in a transaction.



The role of the MA varies upon the level of sophistication of the Issuer, but often the MA works as an extension of the Issuer's staff with a specialty focus on the proposed financing. The MA has an independent view of the financing market, and works closely with Bond Counsel and the Issuer to assist in structuring and marketing the financing in the most economical way. The MA will also assist in determining if the bonds should be through a competitive or negotiated sale. They will further assist by participating in the credit rating process, managing the sale, and assisting the Issuer through the closing process.

Underwriter/Investment Banker

An Underwriter or Investment Banker is the key conduit between the Issuer and Investor. In a financing, they are ultimately working for the Investors. The Underwriter, via the bond sale, agrees to buy the bonds and resell them to investors. Their role varies by the type of sale the Issuer chooses ("competitive" versus "negotiated") as described under "Issuance Process" below. Unlike the MA, the Underwriter is not a fiduciary and has a naturally built in

conflict of interest between trying to obtain the lowest borrowing costs for the Issuer, while providing the Investor with the highest yield. This is neither good nor bad, but a fact the Issuer needs to be aware of.

Other Participants

Paying Agent/Trustee. A paying agent or trustee may be used to take debt service payments from the Issuer and distribute to the investors that actually own the bonds. A paying agent may also be used to hold a reserve or other funds as determined in the issuing documents.

Rating Agency. A credit rating may be requested in order to help the investor determine the level of repayment risk before purchasing a bond. The higher the rating, in the opinion of the rating agency, the less risk of delinquency or default, and ultimately the lower the interest rate.

Bond Insurance Provider or Other Credit Enhancer. The financing may also include a credit enhancer to entice the investor to offer a lower rate. The enhancer can be an insurance company, bank or other government authority.

➔ Further information regarding the financing team is available in the following resources:

[GFOA Best Practice: Selecting Bond Counsel](#)

[GFOA Best Practice: Selecting and Managing Municipal Advisors](#)

[GFOA Best Practice: Using Credit Rating Agencies](#)

[GFOA Best Practice: Debt Issuance Transaction Costs](#)

Legal Considerations

In order to issue debt, Issuers must comply with local, State and federal laws, and enter into a number of legal agreements with various parties. Local and State laws will vary, and it is critical that Issuers consult with specialized legal counsel (Bond Counsel) to determine if they are authorized to issue debt, what actions are required to authorize issuance, and any constraints placed on debt issuance. For example, State law may place legal limits on the amount of debt to be secured by a government's general revenues.

The use of the capital project(s) financed by debt will impact the project's eligibility for federal tax exemption, and the associated reduced borrowing cost to the Issuer. Legal counsel should advise the Issuer on tax implications related to private use and tax exempt status affecting the debt obligation. These requirements could have significant impact on interest rates, repayment and continuing disclosure for the debt instrument selected.

Additionally, an Issuer's legal counsel (and/or MA) should consider outstanding debt agreements or other legal agreements that may include financial covenants or restrictions. An Issuer's debt management policy may also provide guidance or limits related to legal considerations.

Structuring Considerations

Issuers looking to utilize debt financing should review and update annual capital improvement plans to identify projects that can be funded with annual operating funds, in addition to those that might be candidates for debt financing. Projects should be thoroughly reviewed as to scope, feasibility, cost, useful life of the financed asset, and capacity to repay debt. All of these factors will help determine whether long-term financing is an appropriate tool – and if so, what revenues are appropriate to pledge for repayment and what the term of repayment should be.

Sufficient revenues should be available to meet ongoing debt payments and jurisdiction needs to understand what type of revenues are pledged to support (or “secure”) the debt. Potential revenues may include a full or limited taxing power of the jurisdiction, utility revenues, other specific revenue streams, or collateral such as the asset that is being acquired with the debt proceeds.

Various types of debt are typically available to Issuers. Financing tools may include municipal bonds (both taxable and tax-exempt), direct loans from financial institutions, and other less common alternatives. Each option has its own benefits and risks, and the Issuer should utilize a MA to assist with determining which type of obligation best suits a specific circumstance.



Further information is available in the following resources:

[Debt Issuance Checklist: Considerations When Issuing Bonds](#)

[GFOA Best Practice: Selecting and Managing the Method of Sale of Bonds](#)

[GFOA Best Practice: Issuing Taxable Debt](#)

[GFOA Best Practice: Bank Loans and Direct Placements](#)

[GFOA Best Practice: Debt Management Policy](#)

How do Bonds Get Sold?

Most local governments do not have the in-house expertise or resources to find Investors for their proposed bond offerings, and will require the services of a specialized municipal securities broker/dealer, bank or a syndicate of firms to underwrite the bonds for them (Underwriter).

The decision of how to market municipal bonds should be based on the characteristics of the Issuer, the bond issue, and the financial market. Governmental entities usually issue bonds through competitive bid or a negotiated sale. The primary goal of an Issuer undertaking a bond issue should be the proper administration of the bond issue at the least possible issuance cost and lowest interest rate. Both methods are used frequently in bringing municipal bonds to market.

The overriding concern of many Issuers is the minimization of interest rates and issuance costs; however, there currently are varying opinions regarding which type of sale results in the best outcome. Competitive bidding is most appropriate when the Issuer is well known and/or highly rated, high demand for the bonds is predicted, and the market is stable. A negotiated sale can be more appropriate when the Issuer is less known, the financing instrument is complex and less well understood by investors, and/or the market is less stable.

Competitive Bid Process

In a competitive bid sale, the Issuer conducts all of the tasks necessary to offer bonds for sale including structuring the maturity schedule, preparing the official statement, verifying legal documents, obtaining a bond rating, securing credit enhancement, if advantageous, and considering the timing of the sale. These tasks are normally done with the assistance of outside consultants, including a Municipal Advisor and Bond Counsel. Once the issue is structured, the public sale begins with the publication of an official notice of sale that describes the size, maturities, purpose, and structure of the proposed issue, along with instructions for submitting bids. Underwriters submit closed bids to the Issuer on the day and

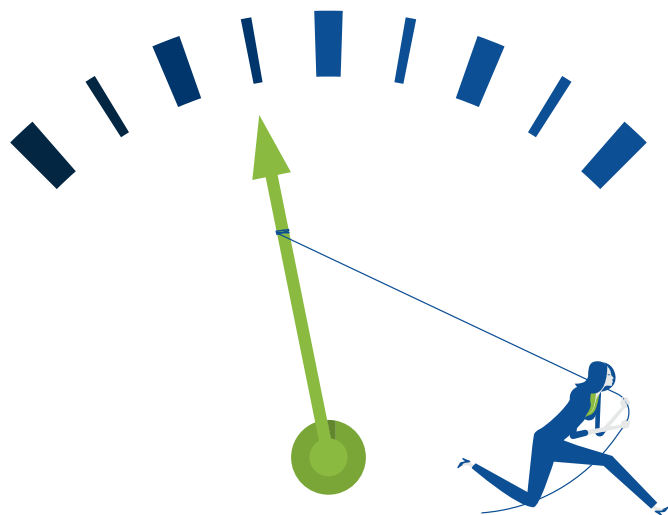
time designated in the official notice of sale. The bonds are awarded to the Underwriter that has submitted the best price (i.e., the lowest true interest cost bid). Once the bid is awarded, pricing and major structural aspects of the bonds are locked in regardless of the success or failure of the Underwriter to sell the bonds to Investors.

Negotiated Sale Process

In a negotiated sale, the bond issue is not structured before an Underwriter is chosen. If the Issuer has not retained a Municipal Advisor, the Underwriter may assist the Issuer in determining what is to be financed, the method of financing and the financing structure. The Underwriter is chosen based on expertise, financial resources, compatibility, and experience. After the Underwriter is selected, the Issuer and the Underwriter will begin the process of structuring the bond issue and completing the other origination tasks. The Underwriter starts the marketing process and develops an interest rate to be negotiated with the Issuer. It is highly recommended that Issuers using a negotiated sale employ a Municipal Advisor not associated with the underwriting firm to assist in representing the Issuer's interests in the process.

The decision of how to market municipal bonds should be based on the **characteristics of the Issuer, the bond issue, and the financial market.**





Investors use the bond ratings to determine the level of repayment risk associated with the specific issue and determine a **minimum rate of return for the risk involved.**

Credit Rating Agencies

Municipal bond credit ratings measure the Issuer’s risk of paying all interest and principal back to investors. A bond rating system helps Investors assess credit risk. Municipal Issuers rely on specialized rating agencies to determine the overall risk of the issue and assign a “grade” to the bond. The four major rating agencies are Fitch Ratings, Kroll Bond Rating Agency, Moody’s Investors Services, and Standard and Poor’s Global Ratings. Ratings have a significant effect on both the ability of the Issuer to raise funds and the price the Issuer will be required to pay.

Bond Ratings

Debt issued by governmental entities is rated to reflect the degree of risk and probability of repayment of all interest and principal to the investor. Investors use the bond ratings to determine the level of repayment risk associated with the specific issue and determine a minimum rate of return for the risk involved. If the bonds have high ratings, they are assumed to have low risk and the investor will therefore require a lower yield. Just the opposite will occur for a lower rated (riskier) bond. There are four major investment grade ratings assigned to bonds by the rating agencies—

Highest (AAA/Aaa), High (AA/Aa), Above Average (A), and Medium (BBB/ Baa). All long-term bonds rated below the fourth category are judged to be below investment grade (speculative grade) and are often referred to as “junk” bonds.

➔ Below are the Best Practices related to the sale of bonds. These resources should be read and considered in conjunction with each other because of the interaction of the processes to which they apply.

[GFOA Best Practice: Selecting and Managing the Method of Sale of Bonds](#)

[GFOA Best Practice: Selecting and Managing Underwriters for Negotiated Bond Sales](#)

[GFOA Best Practice: Pricing Bonds in a Negotiated Sale](#)

Issuer Responsibilities During and Following the Bond Sale

The Issuer is more than just a participant in the sale of the bonds. The governmental entity is the owner of the transaction and the obligor of the debt until “maturity” when the debt is fully repaid - perhaps a period of 20 to 30 years. This means staff must take more than a casual interest in the transaction. While the Issuer will hire various finance professionals to assist in the structuring of the transaction and the preparation of various legal documents and financial analysis, staff must also have a firm understanding of the commitments being made on behalf of their organization. When the transaction closes, the financing team will move on and the public entity will be left with a number of ongoing obligations. If staff cannot explain the structure and obligations of the transaction to their governing board, the deal most likely should not be done.

The Issuer’s typical duties at and after the time of sale include the approval of a pricing scale (if the bonds are to be sold on a negotiated basis). While it may only be a few basis points, the decision to accept or reject a proposed pricing scale could mean the difference of hundreds of thousands of dollars in interest expense over the life of the bonds. Once the sale is completed and bids accepted, the designated staff will sign a bond purchase agreement. Following this, the lawyers will finalize the remaining legal documents which will likely be signed a day or two before the actual closing of the transaction.

Once the deal closes, staff will need to book the transaction in the general ledger/balance sheet. Depending upon the structure, consulting with external auditors may be advised. In addition, setting up a tickler file with key dates of when bond payments are due and when continuing disclosure information needs to be filed is extremely useful. During the period when there are unspent bond proceeds or reserve funds, staff will want to determine how these funds should be invested. This may be with the help of a third party, the purchase of a guaranteed investment contract, providing specific investment instructions to the Trustee, or in some instances, managing the funds directly in-house. Federal tax laws, in some instances, will require Issuers to rebate any net positive arbitrage earned on the investments of the bond proceeds. As such, staff will need to track interest earnings, offset by the true interest costs, in order to do the calculations. Finally, the organization needs to keep detailed records as to how the bond proceeds were spent. First of all, when the original bond documents were signed, staff acknowledged that there was a reasonable expectation that the bond proceeds will be spent within a three year period. If this does not happen, the issuing agency will be required to yield restrict the investments of any remaining unspent bond proceeds. In addition, it is important to be able to report the use of bond proceeds to the governing board and the general public, should the transaction ever be audited by the IRS.



While it may only be a few basis points, **the decision to accept or reject a proposed pricing scale** could mean the difference of hundreds of thousands of dollars in interest expense over the life of the bonds.

Alternative Financing Products

In addition to traditional municipal bonds, a number of alternative financing products are available to Issuers. These financing tools carry special considerations, as described briefly below. These financing tools may be more or less appropriate for less frequent Issuers and – as with municipal bonds – a Municipal Advisor and Bond Counsel should be consulted before proceeding.

Commercial Paper is a fixed-income instrument that matures in 270 days or less. This short-term instrument can be a viable alternative to the more traditional long term debt and may be an appropriate source of funding for the design and construction phase of a project or projects with the long term debt being issued once there is more certainty as to the completion of the project. While often supported by one or more dedicated revenue streams or an Issuer’s general obligation pledge, commercial paper sometimes in an unsecured form of a promissory note that pays a fixed rate of interest. The commercial paper may be rolled into a new commercial paper issue at maturity and is typically backed by a letter of credit issued by a bank. As with any other type of bond or debt instrument, the issuing entity offers the paper assuming that it will be in a position to pay both interest and principal by maturity. One significant aspect of commercial paper is that it is negotiable, which means that it can be freely transferred (traded) from one Investor to another.

Bank Loans and Direct Placements can take on many forms and can typically be structured to provide the Issuer with flexibility regarding duration and repayment. A bank loan may carry a fixed or variable interest rate, in which interest may be repaid in equal payments over a fixed period of time, or there may be interest only with a balloon payment at maturity. In addition, bank loans can be structured as a revolving line of credit.

This means the borrower can draw on the funds up to the loan amount, pay some or all of the loan back, and then redraw funds all during the term of the loan.



Bank loans can take on many forms and can typically be structured to provide the Issuer with **flexibility regarding duration and repayment.**

Typically bank loans are for a shorter duration than traditional bonds and are usually in the five to ten year duration, though some banks may be willing to go as long as 20 years. The legal work involved in preparing loan documents is more straightforward and thus less expensive than a traditional bond deal. Bank loans and direct replacements are required to be disclosed as part of the debt portfolio.

Inter-fund Borrowing can be complex, and the ability to do so may be restricted by an Issuer’s local charter, governing board policies, and State laws. The duration of inter-fund borrowing may also be limited in duration. If permitted, this may be a quick, flexible and inexpensive way to do some short-term borrowing for necessary projects or equipment. Typically, the internal borrowing rate would be tied to the investment rate of return on the Issuer’s pooled portfolio in order to ensure that one fund is not subsidizing another fund.

Your Continuing Disclosure Obligations After a Bond Has Been Issued

Governments that issue bonds have an obligation to meet specific continuing disclosure requirements that are identified specifically in a continuing disclosure agreement (CDA's, also called continuing disclosure certificates or undertakings). These are entered into at the time of bond issuance pursuant to SEC Rule 15c2-12 (Rule). Obligations that have a maturity of 270 days or less are exempt from these requirements, while other short-term issues with a maturity of 18 months or less are subject to lesser requirements.

When bonds are issued, the Issuer covenants via the CDA to provide certain annual and possibly more frequent financial information as identified in the CDA, and to notify the public within 10 business days of occurrence of certain material events as described in the Rule. Such information is required to be submitted electronically either by the Issuer or by their agent via the Municipal Securities Rulemaking Board's (MSRB) Electronic Municipal Market

Access (EMMA) portal (www.emma.msrb.org). In addition to filing through EMMA, an Issuer may also choose to post its annual financial information or other reports on its own web site.

Typically, a series of bonds will require its own CDA. While a separate CDA will generally be required with the issuance of each series of bonds, the information that is required to be disclosed is generally quite similar for each issue. In the offering document for those bonds, Issuers will be required to state whether or not they are in compliance with all previous continuing disclosure obligations for the prior five years.

Issuers may choose to provide information beyond that required by the Rule and identified in its CDA on a voluntary basis. Such information may also be posted on EMMA. Issuers should be aware that they should disseminate such information to the market as a whole and not provide any one individual or group with any information that is not readily available to the public as a whole. Issuers should also develop a continuing disclosure policy or procedure as further described below.



➔ Issuers should review the following GFOA best practices for further information on meeting their disclosure responsibilities:

[GFOA Best Practice: Primary Market Disclosure](#)

[GFOA Best Practice: Understanding Your Continuing Disclosure Responsibilities](#)

[GFOA Best Practice: Using Technology for Disclosure](#)

Tax Compliance

When tax-advantaged bonds are issued, an Issuer needs to ensure they have the appropriate procedures in place to comply with all the federal tax rules applicable to those bonds from the date of issuance through their final maturity.

Federal tax rules applicable to tax-advantaged bonds generally include the following major areas:

Expenditure of Proceeds:

At the time of sale, the Issuer must expect to expend bond proceeds promptly, and, in some cases, by time-specific deadlines set forth in the Internal Revenue Code and Treasury Regulations. Furthermore, bond proceeds may only be spent for purposes permitted based upon the type of bonds issued.

Use of Financed Assets:

Internal Revenue Code and Treasury Regulations limit how an Issuer may use assets financed with the proceeds of tax-advantaged bonds. For example, for governmental purpose bonds, there are detailed rules that limit both direct and indirect use of bond-financed assets by private entities.

Issuers need to ensure they have the **appropriate procedures in place** to comply with all federal tax rules applicable to tax-advantaged bonds.



Investment of Proceeds:

Tax rules generally require that, except during certain temporary periods, the proceeds of tax-advantaged bonds may not be invested at a yield materially higher than the yield on the bonds. Any permitted investment income above the yield on the bonds is rebated to the federal government.

Recordkeeping:

The Issuer needs to retain sufficient records to support the continuing tax-advantaged status of its bonds, and to prove compliance with the rules for expenditure of proceeds, use of the financed assets, and investment of proceeds.



The National Association of Bond Lawyers and GFOA have collaborated on a useful and detailed document “Considerations for Developing Post-Issuance Compliance Policies,” that Issuers are encouraged to consult for much more detail on tax compliance requirements. That document may be found at:

[Developing and Implementing Procedures for Post-Issuance Compliance for Issuers of Governmental Bonds](#)

[GFOA/NABL Post Issuance Compliance Checklist](#)



Developing a Policy and Establishing a Compliance Program

It is recommended that Issuers establish written policies and procedures to comply with post-issuance and ongoing requirements. The policy should identify a single individual with primary responsibility for monitoring and complying with the program and be approved by the governing body. While multiple individuals (or external service providers) may help with performing compliance tasks, assigning a single point of responsibility can help prevent inconsistency and unintentional omissions. It is also helpful to create a checklist or inventory of requirements, including when the tasks are performed and by whom.

It is critical that once a policy and/or program are defined, Issuers closely follow the requirements and document their compliance. Documented proof of intentional compliance can be a very effective defense against any potential regulatory investigation. It is also important that a compliance program consider the process for dealing with non-compliance in the event this is discovered. Generally, Issuers should take actions to get back into compliance as soon as possible.



Further detail on post-issuance compliance is available at the following resources:

[GFOA Best Practice: Debt Management Policy](#)

[GFOA/NABL Post Issuance Compliance Checklist](#)

[Debt Issuance Checklist: Considerations When Issuing Bonds](#)

Investment of Bond Proceeds

Upon the issuance of bonds by a State or local government, the bond proceeds are usually deposited in various funds. These funds may be construction funds, debt service funds, debt service reserve funds, an escrow fund, etc. The deposited proceeds are usually invested until they are needed.

There are a number of items governments should consider when making decisions to invest such proceeds. Examples of these considerations include the anticipated drawdown schedule of the proceeds, federal and State regulations governing the types of investments permitted for the investments, the arbitrage yield, the State or local government's investment policy, and requirements from rating agencies.

The anticipated use and drawdown of the invested proceeds, such as projected expenditures for capital projects or use for coverage of debt service, will be a major consideration in the investment of the proceeds. Those responsible for making investment decisions should coordinate closely with departments and staff that will be drawing down proceeds, depending upon the purpose of the bonds issued. This may involve coordinating with the staff responsible for engineering and construction of the bonds issued for capital projects, or with cash management and treasury staff responsible for making debt service payments for bonds issued for refunding purposes.

A written investment policy is the single most important element in a public funds investment program. The investment policy should describe the most prudent objectives for a sound policy, including safety, liquidity, and yield. It should indicate the type of instruments eligible for purchase by a government entity, the investment process, and the management of a portfolio, and conform to applicable State laws. Adherence to the investment policy signals to rating agencies, the capital markets and the public that a government

agency is well managed and is earning interest income suitable to its situation and economic and regulatory environment. The GFOA has developed a Best Practice titled *Creating an Investment Policy* available for reference.

In 2014, the SEC Municipal Advisors (MA) Rule took effect. The MA Rule has implications that may impact the investment of bond proceeds, as it limits the kinds of communications brokers may have with Issuers. Specifically, brokers may be considered Municipal Advisors if they provide advice on investments of bond proceeds to governments. Brokers are prohibited from providing advice to governments unless the brokers become Municipal Advisors in accordance with the MA Rule, including following requirements to register with the SEC and the MSRB, or meet one of the exemptions to the MA Rule.

One result of the MA Rule is that certain brokers are sending letters to State and local governments asking them to indicate that none of the funds they are investing on behalf of the government are bond proceeds. They do this because bond proceeds now have certain requirements under the MA Rule within which the brokers may be out of compliance. The investment of bond proceeds is now treated differently in some respects, and is subject to different requirements, than investment of other funds, in accordance with the MA Rule.

The GFOA has issued an *Alert on the MA Rule and Issuers*, and this Alert details the multiple exemptions permitted. It is recommended that Issuers become familiar with the MA Rule and its definitions, requirements and exemptions. A link to the Alert is provided below.

As with the investment of other governmental funds, there are risks inherent in investing bond proceeds. These include credit risk (safety), the risk of investing in instruments that may degrade in credit quality or default; market risk (liquidity), the risk of selling an investment prior to maturity at less than book value; and opportunity risk (yield/return),

the risk of investing long term and having interest rates rise, or investing short term and having interest rates fall while needing to reinvest the bond proceeds. Issuers should develop and adhere to investment policies and activities that minimize these risks. The GFOA has a Best Practice on the *Investment of Bond Proceeds*.

Issuer should become acquainted with federal tax law as it applies to arbitrage restrictions, and maintain adequate records to comply with arbitrage reporting and rebate requirements. Arbitrage is the ability to obtain tax-exempt bond proceeds and invest the funds in higher yielding taxable securities, resulting in a profit. In short, arbitrage occurs when interest earned on invested proceeds exceeds the interest rate of the interest repayment, or debt service, of the proceeds. Investments should be considered in light of the yields permitted to comply with federal arbitrage requirements. Procedures should be established to monitor any arbitrage rebate liabilities and reserve liabilities for future remittance to the IRS.



Further detail is available at the following resources:

[Alert on the MA Rule and Issuers](#)

[GFOA Best Practice: Creating an Investment Policy](#)

[GFOA Best Practice: Investment of Bond Proceeds](#)

Payment of Debt Service

Issuers of government debt have a fiduciary responsibility to manage their funds in a manner that assures timely and accurate payment of debt service principal and interest. Failure to make a debt service payment generally results in a default, a requirement to post a Material Events Notice pursuant to Rule 15c2-12 on the MSRB EMMA system, and can have major negative consequences. If a debt service payment is missed, Issuers should take immediate action to remedy the situation.

It is recommended that Issuers review GFOA's Best Practice *Settlement Procedures for Debt Service Payments*. Major recommendations of this Best Practice include:

- » Establishing procedures and appropriate contractual terms for making debt service payments
- » Use of electronic funds transfers to ensure timely payments and to ensure full utilization of funds until the due date.

In addition to the recommendations from the Best Practice, Issuers should consider the following items when designing procedures and policies for making debt service payments:

- » Issuers should have a debt service schedule for each bond issue containing all principal and interest payment dates and amounts
- » Issuers should be aware of any “flow of funds” requirements contained in a bond indenture. Some bond issues may require monthly or other periodic transfers of funds before actual payment dates (i.e. 1/12th of principal payment each month)
- » Issuers with variable rate debt should understand and monitor changing debt service requirements

Refunding Analysis

It is common that – prior to the final maturity of the debt – an Issuer will have the opportunity to refinance the remaining debt at lower interest rates (called a “refunding”). Municipal debt is typically issued with an optional call or redemption feature. The call feature must be specific and include what bonds can be called,

at what time, and for what price, giving flexibility to the Issuer. The date is usually approximately 10 years after the original issue date, but can vary based upon the specific terms agreed to at the time of issuance and the term of the bonds. Refunding debt at or after the call date is called a “current refunding.” Debt can also be refunded prior to the call date via an “advance refunding”, though there are typically additional cost requirements and tax compliance issues associated with an advance refunding prior to the call date. The Tax Cuts and Jobs Act enacted in December 2017 removed the tax exemption from advance refunding of municipal bonds.

Refunding of debt requires essentially the same process and effort as a “new money” issue, and often there is only one opportunity to refund debt for significant interest savings. Therefore, an Issuer should have a policy or guidelines that set a minimum savings baseline under which a refunding would be pursued. For example, many Issuers require a minimum of 3% or 5% savings (and/or a minimum dollar amount of savings) in order for a refunding to proceed. Setting an appropriate savings minimum avoids inefficient use of time exploring inefficient refundings, and can prevent refunding too early and missing greater savings by waiting until a later date.

Typically, the final maturity in a refunding remains unchanged, and the other terms of the refunding often closely match the original debt issue. The proceeds of the refunding are generally placed into an escrow until the call date (or next payment date) occurs, at which point the original bonds are paid off from money in the escrow. It is important that an Issuer work with service providers to create an escrow that earns as much as possible (i.e. an efficient escrow) without exceeding maximums allowed under federal regulations.



Further detail is available at the following resource:

[GFOA Best Practice: Refunding Municipal Bonds](#)



Other Requirements

Issuers should be aware that in addition to continuing disclosure and tax compliance requirements, there are often other legal documents, laws and regulations, policies, contractual requirements, and/or relationships that must be monitored. Some of the most common of these are included in this section.

Bond Indentures/Bond Ordinance/ Bond Resolution

Many bond issues have an ordinance and/or resolution that authorize and set many of the terms of the bond issue. Also, some bonds may have a bond indenture, which is a legal contract between the Issuer and bond holders. These documents can contain a variety of requirements that may include:

- i. Notice requirements
- ii. Reporting requirements
- iii. Coverage ratio or revenue covenants
- iv. Additional bonds tests
- v. Permitted investments
- vi. Debt service payment requirements
- vii. Debt service reserve fund requirements
- viii. Bond insurance or surety bond requirements
- ix. Required accounts/segregation of funds
- x. Requirements related to a trustee or paying agent
- xi. Restrictions on the use of bond proceeds
- xii. Redemption provisions

State/Local Law Requirements

Issuers should work with Bond Counsel and/or legal counsel to determine if there are any ongoing requirements related to State or local law that must be monitored. These may include items such as notice requirements, public protest procedures, legal debt limits, or limitations on revenue used to pay debt service.

Policy Requirements

Issuers may have debt or other financial policies that must be monitored to ensure compliance. Common

policy items that relate to debt issuance are debt limits, use of debt, debt ratios, and investment policies.

Rating Agencies

Issuers should be familiar with the GFOA best practice Using Credit Rating Agencies. Issuers (often with assistance from their Municipal Advisor) are responsible for managing the relationship with rating agencies after issuance. This can involve keeping the rating agencies informed of material events and responding to ongoing requests for information.

Investor Relations

Issuers should be familiar with the GFOA best practice Maintaining an Investor Relations Program. An effective investor relations program that responds to the informational needs of investors may lead to lower future borrowing costs for Issuers.

Financing Team Relationships

Issuers should manage the ongoing relationships with the various members of the financing team, which may include a Municipal Advisor, Bond Counsel, disclosure counsel, trustee banks, and/or paying agents. Issuers should continuously evaluate services provided, ensure compliance with contracts, and periodically conduct selection processes as needed.



Further detail is available at the following resources:

[GFOA Best Practice: Refunding Municipal Bonds](#)

[GFOA Best Practice: Using Credit Rating Agencies](#)

[GFOA Best Practice: Maintaining an Investor Relations Program](#)



Glossary / Other References

For additional information on post-issuance compliance you can refer to the following references:

<http://www.msrb.org/msrb1/pdfs/MSRB-Glossary-of-Municipal-Securities-Terms-Third%20Edition-August-2013.pdf>

<http://www.investinginbonds.com/story.asp?id=52>

About GFOA

Founded in 1906, the Government Finance Officers Association represents public finance officials throughout the United States. The association's nearly 20,000 members are federal, state and local finance officials who are deeply involved in planning, financing and implementing thousands of governmental operations in each of their jurisdictions. GFOA's mission is to promote excellence in state and local government financial management. For information about GFOA or to discuss any state or local finance matters, please contact our Federal Liaison Center, 202-393-8467. 660 North Capitol Street, NW, Suite 410, Washington DC 20001



Government Finance Officers Association

www.gfoa.org



City of Sweet Home
 Sweet Home Public Library
 1101 – 13th Avenue
 Sweet Home, OR 97386
 541-367-5007

Sweet Home Public Library

Statistics

	Sept, 2020	Oct, 2020	2020 YTD	2019	3 YR AVG
Patron Activity					
OPAC Logins*	188	226	1384	3229	2808
SIP2 Logins**	568	618	4937	5069	4703
Circulation and Renewals					
Checkouts	2746	2966	14628	41328	41687
Renewals by Staff	308	256	1511	5581	7469
Renewals by OPAC	105	220	638	2973	2824
Holds Requested					
Holds by Staff	134	115	759	1629	1546
Holds by OPAC	88	96	913	1720	1547
Monthly Active Patrons	2043	2021	2185	2375	2431
New Patrons					
Resident	6	23	65	409	465
Nonresident	5	1	11	71	54
Item Counts	36125	35997	35811	35973	35348
Public Access Computers					
Logins	195	154	1793	5425	5256
Pages Printed	636	851	3848	10636	5075
Resource Sharing Savings	\$448.40	\$1018.30	\$3945.00	\$35213.57	Not available

Statistics for “Monthly Active Patrons” and “Item Counts” for 2020 and 2019 year to date are calculated on averages. All other year to date statistics are cumulative.

Events

The Library participated in the Harvest Festival where we introduced our Storybook Walk with children and parents walking and reading, "Mouse's First Fall".

The Library submitted the required "Public Library Statistics" to the State Library.

We began our program Area 55 an afterhours program in partnership with 4-H, Outdoor School and OSU Department of Education. The program continues to grow in number of children attending. The program allows 30 children on Monday and Tuesday and 30 different children on Wednesday and Thursday.

Rose participated in a Zoom meeting with the Library Directors from around the state. One breakout session of note was "Community Engagement" by Buzzy Nielsen which highlighted how libraries have adapted and expanded services during these times.

The Library participated in a meeting with LBCC to promote and re-engage the Adult Literacy program. The second year of the grant will focus on literacy for Spanish speaking adults.

MEMORANDUM



TO: City Council
Ray Towry, City Manager
Interested Parties

FROM: Blair Larsen, Community and Economic Dev. Director

DATE: November 10, 2020

SUBJECT: Community and Economic Development Department Report for October, 2020

The Community and Economic Development Department (CEDD) consists of the City's Building, Planning, Engineering, Economic Development, Code Enforcement, and Parks and Recreation programs. The following is a summary of activities and notes on current projects from October 1st, to October 31st, 2020.

1. BUILDING

- Summary of Building Program Permits Issued.

Permit Category	October, 2020	September, 2020	2020 YTD	2019 Total	2015-2019 Annual Average
Residential 1 and 2 Family Dwellings	1	5	19	31	33.2
Residential Demolition	0	1	6	8	7.2
Residential Manufactured Dwellings	0	0	5	17	13.6
Residential Mechanical Permits	4	7	81	116	100.8
Residential Plumbing	6	1	21	38	35
Residential Site Development	0	0	0	1	1.6
Residential Structural	2	4	46	54	41.8
Commercial Alarm or Suppression Systems	0	0	1	2	1.0
Commercial Demolition	2	0	3	3	2.4
Commercial Mechanical	4	1	17	18	14.6
Commercial Plumbing	4	0	9	15	11.6
Commercial Site Development	0	1	2	0	2.8
Commercial Structural	5	4	25	50	44.0
Total Permits	28	24	235	353	309.6
Value Estimate of All Permits	\$5,369,611.86	\$2,836,260.29	\$13,858,833.96	\$24,458,766.87	\$14,266,780.27
Fees Collected	\$68,882.63	\$34,891.45	\$193,728.06	\$298,099.90	\$201,486.98

2. PLANNING

- Summary of Planning Division Applications Approved:

Application Type	October, 2020	September, 2020	2020 YTD	2019 Total	2015-2019 Annual Average
Annexations	0	0	1	0	0.2
Code Amendments	0	0	1	1	0.2
Conditional Use	0	1	4	7	5.2
Partition	1	1	8	10	4.2
Planned Development/Subdivision	0	1	1	1	0.6
Property Line Adjustments	0	1	11	7	3.4
Vacation	0	0	0	0	0.4
Variance	0	0	1	6	4.0
Zoning Map Amendment	0	1	4	0	0.6

- 7 land use applications were submitted in October.
- 5 Land Use Applications are pending final approval.
- 4 Fence Permits were issued in October.
- The overhaul of development code portions of the Sweet Home Municipal Code (SHMC) is progressing as planned. Staff has reviewed early drafts, and our consultants are preparing the next draft, which will then be presented to the Planning Commission.
- Staff has submitted a grant application to the State to update our Transportation System Plan. An RCA requesting adoption of a resolution and support letter in favor of the application was passed by the Council on July 14th. We recently received word that our application has been approved, and we will be receiving a grant to update our Transportation System Plan and create an Area Plan for the undeveloped land on the north side of the City.
- The next Planning Commission meeting is scheduled for December 7, 2020.

3. ECONOMIC DEVELOPMENT

- After your feedback at our last Economic Development Workshop, Staff is updating the draft Business License and Vacant Buildings Ordinances and will bring them before you in the near future.
- Staff has posted the Request for Proposals for the Downtown Streetscape and Parking Plan and has received some inquiries. We are looking forward to reviewing proposals after the November 13th submission deadline.
- Staff is modifying the CEIP Program based on your feedback, and will have a new draft of the program documents prepared soon.
- Staff are working to support our local businesses during the Coronavirus Pandemic. Efforts have focused on making sure that businesses know of state and federal programs that can help them and researching how we can fill in the gaps. Staff have applied for grants with the State of Oregon and Federal Government for additional small business assistance grants. We have received three grants:
 - One is \$25,000 from the State (matched by \$25,000 from the City Economic Development Fund; We originally applied for \$50,000), which was later increased to \$50,000 for small business grants within the City of Sweet Home. We have given out a total of 6 grants. This is a disappointingly small amount. However,

- other jurisdictions are having the same problem, and many are concerned that the State requirements are too stringent. This grant has ended.
- The second grant is \$150,000 in CDBG funds for a County-wide (excluding the City of Albany) business assistance grant program that will be administered by Community Lending Works (CLW). This grant now operating, and CLW is taking applications.
 - The third grant is \$50,000 for emergency childcare to be provided by the Boys & Girls Clubs of the Greater Santiam. Staff is working with the State to obtain additional funding for this program.
- Work on a property partition and right-of-way width change for 24th Ave is progressing. This is part of a comprehensive 24th Avenue Corridor Improvement Project. Staff is now finalizing the agreement with the adjacent property owners and working on a Request for Council Action to approve the partition application and adopt a resolution to swap the land, however, the project has been stalled due to the other party's concerns about liability for any additional environmental cleanup. Staff has contacted Weyerhaeuser about the issue, and they are now back on track working toward a No Further Action designation for the property. Weyerhaeuser has provided a timeline for the remaining work, and we expect to have a No Further Action designation within the next month. At that point, the adjacent property owners will conduct their own legal review, and agree to move forward with the swap.
 - Staff has submitted an application to ODOT for a Rail Crossing at 24th Avenue. Meetings with Albany & Eastern Railroad have been positive, and they have provided a letter of support that was included with the application. Linn County has provided a letter of support committing to additional ROW dedication and agreeing to the crossing. ODOT has acknowledged receipt of the application, but has given no indication of next steps. Staff has begun reaching out to higher-ups to see what is causing the delay.
 - We continue to try to work with Linn County to develop a plan for the old Weyerhaeuser mill site. The remaining cleanup looks positive, and it is possible that it could be completed soon, however, some pollutants will be left in place, and would require a management plan that ensures that the ponds and the associated sediment are not disturbed. Staff has stayed in contact with DEQ regarding the cleanup efforts.

4. CODE ENFORCEMENT

- Summary of Actions.
 - CE currently has 57 open cases.

Case Status	October, 2020	September, 2020	2020 YTD	2019 Total	2018-2019 Annual Average
New Complaints	14	12	41	0	0
In Progress—Investigating	6	10	44	0	0
Notice Issued	1	8	84	1	1
Pending Citation	0	0	0	0	0
Citations	1	0	2	0	0
Pending Abatement	0	0	0	2	2
Complaints Noted with No Violation Found	3	0	5	37	29
Violations Resolved	13	26	125	481	392
Enforcement Type	October, 2020	September, 2020	2020 YTD	2019 Total	2018-2019 Annual Average
Abandoned Vehicle	0	0	0	5	4
Animal	2	7	7	63	51
Blight	0	0	0	2	1
Public Right-of-way	0	0	13	36	18
Graffiti	0	0	0	1	1
Illegal Burn	0	0	0	1	3
Illegal Dumping	0	0	0	0	1
Illegal Parking	0	3	13	4	2
Illegal Sign	0	0	0	2	2
Junk Vehicle	1	0	1	11	8
Minimum Housing	0	0	0	8	4.5
Occupying an RV	2	2	15	59	46
Open Storage	12	0	12	91	77
Other	0	0	1	18	32.5
Public Nuisance	17	7	43	56	37
Tall Grass & Weeds	5	18	146	161	132.5
Vacant Lot	0	0	0	0	0.5

The City's Code Enforcement Officer responds to complaints submitted through the City's website, and actively patrols the City and works to resolve identified code violations.

5. PARKS

- The Park and Tree Committee will meet next on December 16th, 2020. However, there will be a work party on Saturday, November 14th to remove ivy from trees on the South Hills Trail.
- The Sweetheart Run is coming up on Saturday, February 13th, 2021. We recently learned that the Siletz Tribes are not offering their grant this year, and Staff is now looking into other

ways to fund the event. The first planning meeting for the Sweetheart Run will be on Friday, November 13th.

- Construction of Sankey Park Improvements is continuing. Excavating for the path base, and water, power and control lines has begun. Construction on the play structures has been completed. Lighting units are being installed. The first phase of concrete has been completed, and the remaining concrete work continues. The asphalt paths will follow, and staff will be ordering the benches soon.

6. OTHER PROJECTS

- Staff has worked with the School District to submit two Safe Routes to Schools grant applications to ODOT for a pedestrian beacon on Hwy 228 at 2nd Avenue, and Sidewalks on Mountain View Road and 18th Avenue related to the Junior High School improvements.
- Preliminary work on the 18th Ave & Willow St Neighborhood Water LID (Proposed) continues. Staff is working on the LID scope, costs, and allocation to individual lots for the water system, and is working on estimates for street improvements. Staff is also researching the possibility and effect of adding adjacent county-owned land to the LID in order to spread out the costs over a larger area, and Staff is still attempting to begin negotiations with the County on this issue.
- The Council has authorized ownership of the sculpture in the ODOT right-of-way near the East Linn Museum, and we have received a proposed Intergovernmental Agreement from ODOT. However, Citizens have come forward seeking to add a roofed structure over the artwork to protect it from the weather. Staff is working with ODOT to modify the IGA in order to allow the construction of a roofed structure. Staff inquired to learn if City acquisition of the property was a possibility. Initially, ODOT informed us that such action was not a possibility. However, after additional follow-up, ODOT is indicating that a right-of-way vacation is possible, which would add some of the property to the East Linn Museum property.
- The property line adjustment for the east property line at the NCH is still pending. The Council has approved an agreement with the adjacent owner, a survey has been completed, and recording of the transaction is pending. All that remains is approval by the adjacent property owner's mortgage holder.
- The ODOT Foster Lake Sidewalk Project: Budgetary constraints have required that the project be limited to one side (the north) of US 20. The new scope also removes the section underneath the railroad bridge, and calls for a soft-surface path in that location to be constructed by the City. Construction has been delayed until 2022. ODOT has found another way to handle the stormwater near the School District Property that will not require the purchase of additional right-of-way.
- The CEDD systems analysis is ongoing. This project will "map" out all department processes so that efficiencies can be identified, delays can be removed, and operations can be made easier for both customers and staff. These process maps will be documented for staff continuity and to share with other departments.

MEMORANDUM



TO: Ray Towry, City Manager
 FROM: Greg Springman, Public Works Director
 DATE: November 10, 2020
 SUBJECT: Public Works Activities Report - October 2020

This memorandum provides a brief periodic update of specific projects, WTP/WWTP O&M and Compliance status, and activities performed by the Public Works Department.

This table section summarizes work done on key maintenance activities.

Work Type	October, 2020	September, 2020	2020 YTD	2019	2 Yr Ave*
Bathrooms/Garbage	56	37	513	742	524
Catch Basin Inspection/cleaning	0	17	48	31	268
Leaf Collection	11	1.5	12.5	223	202
Hydrant Flushing	0	137	245	303	236
Locates	45	39	463	448	281
Meter Re-Read	67	81	679	441	317
Mowing	3	4	81	129	114
Playground EQ Inspection	0	0	19	98	73
Pothole Repair	28	0	538	609	406
Sewer CCTV Miles	0	0	5.43	1.59	0.99
Street Sweeping Miles	45	249	1986	4142	3540
Water Main Repair	1	0	5	15	17
Water Service Repair	2	0	18	31	22
Water Turn Ons/Offs	71	52	806	1040	779
Total Completed Word Orders	475	539	6080	8571	6242

* Not full 2 year average as 2018 is partial year

WWTP and WTP Key Performance Indicators (KPIs)

	September, 2020	August, 2020	2020 YTD	2019	5 Yr Ave
Potable					
MG Treated	22.91	32.46	268.41	444.48	434.89
Backwash Water in MG	1.07	1.07	10.42	22.90	13.50
Ave daily demand in MG	0.89	1.05	1.00	1.21	1.17
Sanitary					
MG Treated	22.6	22.6	429.72	547.14	559.36
Max Daily Flow in MG	1.09	0.89	5.11	7.30	6.02
Average Flow in MG	0.76	0.73	1.57	1.50	1.53
Solids Inventory lbs	ND	18960	24251	ND	ND

* MG is Million Gallons

** ND is No Data

Notes: Three WWTP exceedance reported for August
 Week Ending 9/4/2020 CBOD Weekly Ave, Max mg/L 26 with a limit 15
 Week Ending 9/11/2020 CBOD Weekly Ave, Max mg/L 29 with a limit 15
 Week Ending 9/18/2020 CBOD Weekly Ave, Max mg/L 19 with a limit 15

Current & Upcoming Projects

Treatment Facilities Working on bringing Operations in House

Scope: Council voted to resume operations of treatment facilities.

Status: Current proposed transfer on July1, 2021.

Wastewater Treatment Plant Improvement Project

Scope: Upgrades to equipment & processes for DEQ Compliance

Status: Project on schedule. WWTP Final design commenced in August, 2019. In September 2019, staff met with Architect designing the WWTP Admin building to discuss building layout, vision for the structure and project schedule. WWTP Improvement Project is at the 60% design completion. Currently in progress from Value Engineering report RFP

Water Loss

Scope: Staff will continue to identify water leaks throughout the 54 miles of water distribution system.

Status: PW staff submitted updated Water Loss Charts to Council in August, 2020, projecting current water loss at 15%, down from 45% water loss in 2019.

Radar Speed Signs

Scope: Purchase 6 radar speed signs throughout the community.

Status: Staff ordered 6 radar speed signs. Installed two signs, one on 1st Avenue, second on Airport Road. Permits applications has been submitted to ODOT for multiple location along State Highway 20 and Highway 228. Currently waiting on ODOT.

Sankey Park Improvements

Scope: Install new paths, lighting, and playground equipment.

Status: Playground equipment installation was completed week of June 29, 2020. Concrete sidewalks/paths are at 50% completion. Lights are at 50% completion. Additional concrete work will occur as weather allows.

2020 Overlay Project

Scope: 29th Avenue Chip Seal completed this summer.

Status: Project on hold until FY 20/21 spending is approved.

Water Distribution System Evaluation – Murraysmith

Scope: Murraysmith will perform a hydraulic water model of the water distribution system to pinpoint operations deficiencies and develop a plan to mitigate water system deficiencies.

Status: City staff purchased water modeling software, which Murraysmith to hydraulically model the water distribution system. Project currently in progress awaiting results.

System Development Charges (SDCs) – Murraysmith

Scope: Provide an update to the current water and sewer system development charges (SDCs) and establish new transportation, parks, and stormwater SDCs based on current capital improvement plans. Council Workshop presentation took place on July 28, 2020.

Status: Actively in progress. Council to review mythology in November, 2020. 90 days notices was published November 9, 2020. Hearing date set for February 9, 2021.

Backwash Pump Evaluation – West Yost

Scope: Evaluate feasibility of adding a backwash pump and using clearwell for filter backwashes and the corresponding effects on the distribution system and treatment.

Status: In design with West Yost

Finished Water Pump Evaluation – West Yost

Scope: Evaluate feasibility to add a Variable Frequency Drive (VFD) to the current finish water pumps to maintain a constant level in clearwell to help facilitate Backwash Pump.

Status: In design with West Yost

WTP Disinfection Evaluation – The Automation Group (TAG) (sub from West Yost)

Scope: Murraysmith will perform a hydraulic water model of the water distribution system to pinpoint operations deficiencies and develop a plan to mitigate water system deficiencies.

Status: Staff procured equipment, Public Works staff to complete installation. TAG commencing with installation and programing, onsite installation scheduled for Dec 1st and 2nd