



CITY OF MILL CITY

AGENDA OF THE CITY COUNCIL

January 26, 2021

City Hall

444 S 1st Avenue

Mill City, Oregon

REGULAR SESSION

1. CALL TO ORDER/FLAG SALUTE **6:30 p.m.** Mayor Tim Kirsch

2. CITY COUNCIL ROLL CALL/INTRODUCTION OF STAFF Mayor Tim Kirsch

3. DECLARATIONS OF POTENTIAL CONFLICTS OF INTEREST

4. CONSENT AGENDA:

In order to make more efficient use of meeting time, resolutions, minutes, bills, and other items which are routine in nature and for which no debate is anticipated, shall be placed on the Consent Agenda. Any item placed on the Consent Agenda may be removed for discussion at the request of any council member prior to the time a vote is taken. All remaining items of the Consent Agenda are then disposed of in a single motion to adopt the Consent Agenda. This motion is not debatable. The secretary to the council will then poll the council members individually by a roll call vote. If there are any dissenting votes, each item on the Consent Agenda is then voted on individually by a roll call vote.

Copies of the council packets include more detailed staff reports, letters, resolutions, and other supporting materials. A citizen wishing to review these materials may do so at the Mill City, City Hall or at www.ci.mill-city.or.us/documents/packets.

- a. Approval of Minutes of Regular City Council Meeting of January 12, 2021
- b. Approval of Accounts Payable
- c. Approval of OLCC Liquor License for the Following Business:
 - i. 7 Star Convenience Store #4 829 S 1st Avenue
- d. Ratification of Planning Commission Approval of Minor Partition for Scott & Shelly Baughman, File No. 2020-11; 230/272 SW Ivy Street, Mill City

5. CITIZEN COMMENTS/QUESTIONS – LIMITED TO THREE (3) MINUTES

6. RESOLUTION NO. 8XX – SAFE DRINKING WATER REVOLVING LOAN FUND

7. SAFE DRINKING WATER REVOLVING LOAN FUND CONTRACT

8. DRAFT RIPARIAN CODE – REQUEST FOR DIRECTIVE TO HOLD HEARING

9. PACIFIC POWER GENERAL SERVICE CONTRACT – TIGER GRANT PROJECT

- a. 313 SW Broadway Street – Approximate Location
- b. 405 SW Linn Boulevard – Approximate Location

10. MISCELLANEOUS CITY RECORDER ITEMS

- a. River Road Pump Station Repair/Purchase
- b. Letter of Consideration – Tiny Homes; Klagge, Randall

- c. Request for Waiver of Water/Sewer Deposits – FEMA Housing Residents
- d. Anita Leach Memorial Tree/Plaque Update
- e. Other

11. ADJOURNMENT

CALENDAR OF UPCOMING CITY MEETINGS & EVENTS

Tuesday	February 9, 2021	Municipal Court	9:30a.m.
		Council Meeting	6:30p.m.
Monday	February 15, 2021	CITY HALL CLOSED – PRESIDENT’S DAY	
Tuesday	February 16, 2021	Planning Commission Meeting	6:30p.m.
Friday	February 19, 2021	Planning Commission Meeting – If needed	9:30a.m.
Tuesday	February 23, 2021	Municipal Court	9:30a.m.
		Council Meeting	6:30p.m.
Tuesday	March 9, 2021	Municipal Court	9:30a.m.
		Council Meeting	6:30p.m.
Tuesday	March 16, 2021	Planning Commission Meeting	6:30p.m.
Tuesday	March 23, 2021	Municipal Court	9:30a.m.
		Council Meeting	6:30p.m.
Tuesday	April 13, 2021	Municipal Court	9:30a.m.
		Council Meeting	6:30p.m.
Tuesday	April 20, 2021	Planning Commission Meeting	6:30p.m.
Tuesday	April 27, 2021	Municipal Court	9:30a.m.
		Council Meeting	6:30p.m.
Tuesday	May 11, 2021	Municipal Court	9:30a.m.
		Council Meeting	6:30p.m.
Tuesday	May 18, 2021	Planning Commission Meeting	6:30p.m.
Tuesday	May 25, 2021	Municipal Court	9:30a.m.
		Council Meeting	6:30p.m.
Monday	May 30, 2021	CITY HALL CLOSED – MEMORIAL DAY	

REQUEST FOR COUNCIL ACTION

DATE: January 22, 2021
TO: Mayor Kirsch and City Councilors
FROM: Stacie Cook, MMC, City Recorder
REGARDING: **Consent Agenda Items**

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**MILL CITY
MINUTES OF THE CITY COUNCIL
Tuesday, January 12, 2021**

Mayor Kirsch opened the meeting at 6:30 PM with the flag salute. Councilors present were Janet Zeyen-Hall, Brett Katlong, Dawn Plotts, Tony Trout and Steve Winn. Staff members in attendance were City Recorder, Stacie Cook, Public Works Supervisor, Russ Foltz, City Clerk, Tree Fredrickson, and City Attorney, Jim McGehee.

Citizens in attendance were LCSO Sgt. Beth Miller, Gary Olson, and David Plotts.

DECLARATIONS OF POTENTIAL CONFLICTS OF INTEREST: Mayor Kirsch stated that anyone who felt they may have a potential conflict with anything on tonight's agenda may say so at this time or at any time during tonight's meeting.

SWEARING IN OF MAYOR AND COUNCILORS:

City Attorney Jim McGehee gave the oaths of office to the newly elected Councilors and Mayor;

**Mayor Tim Kirsch
Councilor Brett Katlong
Councilor Dawn Plotts**

CONSENT AGENDA

Councilor Katlong moved and was seconded by **Councilor Trout**, to approve items a; Approval of Minutes of Regular City Council Meeting of December 22, 2020, b; Approval of Accounts Payable, c; Acceptance of Monthly Revenues and Expenditures Report, December, 2020, d; Acceptance of Budget Calendar for 2021-2022 FY, and e; Approval of OLCC Liquor License Renewals for the Following Businesses:

- | | |
|--------------------------------|-----------------------------|
| 1. Dollar General Store #17506 | 250 NW Santiam Blvd. |
| 2. Giovanni's Mtn. Pizza | 146 N Santiam Blvd. |
| 3. Stop and Save | 250 NW 9 th Ave. |

Mrs. Fredrickson polled the Council. The motion passed unanimously, (6:0).

ELECTION OF COUNCIL PRESIDENT: Mayor Kirsch said that this position should be someone who is available to come to City Hall to sign checks, to come in during off hours and to run meetings should the Mayor be absent.

Councilor Katlong nominated Councilor Trout for Council President. Councilor Zeyen-Hall seconded the nomination. The nomination passed unanimously, (6:0).

RECOMMENDED APPOINTMENTS AND ASSIGNMENTS BY THE MAYOR:

**Police
Parks/Safety
Building
Water/Sanitation
Street
Santiam Regional Advisory Committee
MWACT**

**Councilor Dawn Plotts
Councilor Janet Zeyen-Hall
Councilor Steven Winn
Councilor Brett N. Katlong
Councilor Tony L. Trout
No appointment
No appointment**

Mayor Kirsch said that Mrs. Cook has more information on MWACT and the Santiam Regional Advisory Committee for anyone who would like to stop by and look at it to see if they might be interested.

LINN COUNTY SHERIFF'S REPORT: Sgt. Beth Miller gave the LCSO report for the month of December, 2020.

There were two incidents of theft from the bridge project; a \$5,000 generator and gasoline.

Councilor Winn noted that there has been an unusually high amount of people in Kimmel Park causing issues and vandalizing structures. Sgt. Miller said that she would put the park on a focus patrol.

Mayor Kirsch said that with the increased pedestrian traffic and the FEMA project currently being constructed near the park, extra deputy patrols would be appreciated.

Councilor Zeyen-Hall thanked the Sgt. for the speed reader sign on SE Kingwood, noting that the blue flashing light on the reader sign quickly deters speeders.

Mayor Kirsch asked about the cost of purchasing a speed reader sign. Councilor Katlong said that a permanently mounted reader sign is around \$3,000.

PUBLIC WORKS REPORT:

Pump Report: Public Works Supervisor Russ Foltz gave the pump report for December noting that the unmetered loss percentage was up a little from 2019. He attributed this extra loss to the use of fire hydrants during the fire and recent construction.

River Road Pump Failure: The River Road pump station pump failed due to a seal failure. Xylem pulled the pump and is disassembling it to see if it can be repaired.

Councilor Trout asked if this pump was the same one replaced a few years ago that was fairly expensive. Mr. Foltz said that pump was for the Spring Street pump station. The Wall Street and River Road pumps are smaller than the Spring Street pump. Mr. Foltz said he is not sure of the cost for a new pump if it is needed. Mrs. Cook said that a new pump will likely cost around \$6,000, similar to the one most recently purchased.

WWTP Bio-filter/EF Pump Update: Mr. Foltz said that the repair done on the bio-filter at the sewer plant was holding up until the bearing retainers broke and messed up the shaft. A new shaft, seal and bearing assemblies were ordered. This will run about 3,000.

EV Parking Update: The EV parking lot on Wall Street has been paved and all the curbs are in. The EV Charging stations and the street lights are the only things that are left to be done. Mr. Foltz said that Council needs to budget for landscaping as this was not included in the original construction budget.

School Project Update: All underground work is completed at the school. A large stump was discovered when cutting out and grading the intersection of SW Second Avenue and SW Cedar Street. This stump was paved over during the original construction of the street and is why the large potholes were there.

Bridge Update: After raising the north end of the bridge to replace some earthquake retrofits, water main leaks were discovered on both ends of the bridge. Mr. Foltz said that he is working with the City Engineer and City Planner on how and who will fix the leaks as accessing the underside of the bridge requires special equipment. Mr. Foltz said the leaks are just small drips at this time.

FEMA Housing: The FEMA housing project site at the east end of SE Fairview Street is almost complete. The parking lot and street lights have been activated. The first two of 16 FEMA houses are expected to arrive by the end of next week. Mr. Foltz said that he has been pressure testing the sewer lines as well as testing and flushing water mains. Water samples will be completed in a couple of days to see if the water is drinkable.

Mayor Kirsch asked about the offer by the electrical contractor to hook up the generator. Mr. Foltz said that US West Electric has expressed appreciation of Public Works staff always being available while preparing the FEMA site and has offered to help with any electrical work the City may need at no charge. Mr. Foltz suggested they could help with the wiring of the transfer switch for the generator. The City would have to purchase the transfer switch, which was quoted at \$8,000 in 2016, but would save approximately \$4,000 in labor costs. Mr. Foltz will talk with the main electrician to see if this can be done.

Mayor Kirsch asked if there are funds available for this project. Mrs. Cook said that this expenditure would have to come out of the Water Reserve Fund, however, most of these funds have been earmarked for upcoming water projects. Mrs. Cook said that a hard cost for the part would be needed in order for a determination of fund availability to be given.

Councilor Zeyen-Hall said that it was reported that a few teenagers have been seen purposely trying to break the metal play structure platform at Kimmel Park. Mr. Foltz said he has placed caution tape and warning signs on the structure to keep kids from using it.

City Attorney Jim McGehee said that if caught, these teenagers could be cited into court for criminal mischief and trespassed. Mr. Foltz noted that cameras are located at Kimmel Park and that he has asked Linn County deputies to keep an eye out for suspicious activities.

Councilor Zeyen-Hall asked if the broken deck can be removed until it can be replaced. Mr. Foltz explained that these play structures come with special tamper-proof tools. The City does not have this tool but it will be included in the purchase of the new deck.

Councilor Winn asked if there is any concern with him removing the two fir trees on SW Ivy Street that were fell. There may be a small fee for the trucking. No concerns were stated.

Gary Olson, SW Spring Street, offered his help in cleaning up the debris.

CITIZEN COMMENTS/QUESTIONS: None.

PUBLIC HEARING: None Scheduled.

PRESENTATIONS: None Scheduled.

OLD BUSINESS:

The City's temporary RV site is about half full with more people regularly calling about a site. The City of Detroit had asked about a location for a temporary city hall and staff identified one at this site. With the inability to find someone to transport the modular unit that was donated to them, the City of Detroit has chosen to rent a space in Stayton.

Mayor Kirsch said that FEMA is looking at the City of Gates for a temporary housing site as well.

Councilor Katlong reminded Council of the six spots available for temporary RV parking at the Seventh Day Adventist church on SW Ivy Street. He said that sewer has been installed but there is no water or electricity available.

Mrs. Cook is currently working on gathering all the necessary information for the City's Request for Assistance (RFA) with FEMA. A project manager has been assigned to work with Mill City and will be assisting with this process. Once all damages and insurance coverage have been identified, FEMA will review the remaining items to determine what, if any, additional assistance the City may receive.

CARES Act: The City was able to provide the necessary proof of expenditures to qualify for the full amount of CARES Act funding allocated for Mill City. The reimbursement was direct deposited on December 24, 2020. Mrs. Cook pointed out the new conference phone in Council chambers purchased with CARES Act funds, which will make conversations with the City Attorney and City Planner easier during meetings.

Electronic Payment Update: The paperwork authorizing the purchase of the electronic payment software has been signed and returned to Accela. Mrs. Cook and Finance Clerk Lacy Classen have been working on getting additional information to the rep who will be helping to implement the software. It is possible that the City will need to adopt a modification to the fee resolution in order to pass along the fees for use to the customer as these fees are cost prohibitive for the City. Mrs. Cook said that she is not clear on how this will work behind the scenes but will advise further once clarification is received.

Mrs. Cook said that customers will only be able to pay their water/sewer bill electronically. The next step would be to implement the ability to make payments for court fines, system development charges, building permits and other fees the City charges.

Mr. Olson asked if an electronic auto payment option will be offered. Mrs. Cook said yes.

NEW BUSINESS:

Riparian Zone Update: Mrs. Cook said that the Planning Commission is ready to move forward with the Riparian Code, which the City has been working on for years. The Planning Commission at their December 15, 2020 meeting, approved a motion to forward the draft code to the Council and for Council to direct them to set a public hearing on the code.

Councilor Trout said that he would like to read the code language in full before making a decision. Councilor Plotts agreed.

Council consensus to wait until next Council meeting to make a decision on this matter.

STAFF/COMMISSION REPORTS

City Recorder Report:

List of On-going Old Business Items – A current list of on-going old business items was provided for review.

Mayor Kirsch said that Marion County has applied for a Community Development Block Grant to hire an administrator and staff to help the canyon cities with wildfire issues.

Councilor Trout asked if the extra assistance could help with the RV sites. Mayor Kirsch said that he is not sure but it is a possibility.

Councilor Trout asked about the Council survey, noting that he would like to have information on how the unexpected expenditures throughout the last few months have impacted the funds. Mrs. Cook said the sewer fund will be the major issue this year as most of the expenditures have been for sewer repairs.

Councilor Trout asked if the funds received from the CARES Act can be deposited into the sewer fund. Mrs. Cook said that these funds are just for COVID related expenditures. Dollars received from FEMA, if any, would be put into the General Fund and then transferred to the appropriate funds for use. These dollars must be used on projects indicated on the FEMA application, which includes riparian clean up and repair and the Cedar Creek footbridge/sewer line replacement. Mrs. Cook said that the city entry sign, the Reid House, and the Cedar Creek footbridge, among others, will likely be reimbursed through insurance.

BUSINESS FROM MAYOR & CITY COUNCILORS

Councilors Katlong, Trout and Winn had nothing to report.

Councilor Zeyen-Hall said that there upcoming legislative bills which will directly affect rural communities and fire relief. Councilor Zeyen-Hall will identify those bills that will affect the canyon and send this information to Councilors and staff.

Mayor Kirsch said that these bills are drafted by officials in big urban cities. The bills that are of most importance are those that impose restrictions and cost the City money.

Councilor Plotts said that she received an email from Sgt. Greg Klein who recently retired, thanking everyone for a great relationship during his time serving the City of Mill City and Linn County.

Mayor Kirsch said that at the last meeting of the NSSA held on January 7th, the engineer said that the sewer valuation and capacity study should be finished by late April. Mayor Kirsch reminded Council that the delivery system and sewer tanks are where the value is, not the sewer plant. A town hall meeting will be held to present these studies to the public.

EXECUTIVE SESSION: None scheduled.

ADJOURNMENT

The meeting was adjourned at 7:50 PM.

Prepared by:

Approved by:

Stacie Cook, MMC
City Recorder

Tim Kirsch
Mayor



City of Mill City
P. O. Box 256
Mill City, OR 97360
Phone: 503-897-2302 ▪ Fax: 503-897-3499

January 20, 2021

Scott Baughman
SBC Construction, Inc.
PO Box 943
Mill City, OR 97383
Email: sbcconst@wvi.com

SUBJECT: **Notice of Decision Approving Minor Partition**
 File No. 2020-11
 T9S R3E Section 31AA, Tax Lots 02700
 Parcel 1 of Partition Plat 2020-068
 230 & 272 SW Ivy Street, Mill City, Oregon

Dear Scott:

On Tuesday, January 19, 2021 the Mill City Planning Commission **approved** your application for a minor partition for your property at 230 and 272 SW Ivy Street in Mill City.

The Planning Commission's decision will be forwarded to the City Council for their consideration at the next regular City Council meeting on January 26, 2021. The Council may either ratify the decision or may call the matter up for a public hearing and City Council review and decision. If the City Council ratifies the decision, the decision is final unless it is appealed.

The effective date of this decision is **February 4, 2021 at 5:00 p.m.** unless the decision is appealed to the City Council or the City Council calls for a public hearing.

I. Conditions of Approval:

FILE 2020-11 --- MINOR PARTITION

The Planning Commission approved the minor partition application subject to the following conditions of approval.

- A. **Approved Map & Time Limit of Partition Approval.** The partition is approved as shown on Figure 2 and Figure 3, attached hereto, dated & stamped approved by the City of Mill City Planning Department. Approval is granted subject to the completion of the partition survey within one year from the date of City approval and compliance with all conditions of approval. The minor partition approval will expire January 31, 2022 if the final survey plat has not been recorded.
- B. **Survey.** A minor partition survey plat must be recorded with Linn County no later than January 31, 2022. The survey must be prepared by a registered professional surveyor and comply with state law and the Linn County surveyor requirements for minor partitions. The partition plat must show:

1. Parcels: Parcel 1 and Parcel 2 as shown on the approved partition map.
 2. Easements & Deed Covenants:
 - a. Reference the existing City of Mill City Sewerage System Easement(s) on the final plat.
 - b. Show the existing 7' wide PUE along the north property boundary.
 - c. Show & reference the 25' access easement and maintenance agreement for the access driveway to serve 248 & 254 SW Ivy Street.
- C. **Issuance of Building Permits:** The City of Mill City has issued one building permit (272 SW Ivy Street). No other building permits will be issued until the partition plat is filed and recorded in the Linn County Survey Records. The applicant must comply with all the conditions of approval listed below in Condition D "Public Works Requirements" and Condition E "Landscaping and Fencing".
- D. **Public Works Requirements:** The applicant shall complete the following public improvements prior to City approval of the final plat, unless otherwise specified below. Improvements will be designed and installed in accordance with the City of Mill City Public Works Design Standards and Construction Specifications.
- Permits:***
1. The property owner, or authorized contractor/representative, shall obtain a Type B Public Works Construction Permit from the City for any work performed in the public right-of-way.
- Streets:***
2. **SW Ivy Street:** The property owner will record a deferral non-remonstrance agreement for future street improvements.
- Water & Sewer Services:***
3. Tap into the 8" water main on SW Ivy Street and install individual water services for each parcel prior to or concurrently with the issuance of any building permit. All water service lines and meters shall be installed per the direction of the public works supervisor.
 4. Obtain plumbing permits and install individual sewer interceptor tanks for each parcel prior to or concurrently with the issuance of any building permit. The Public Works Supervisor may authorize the use of an existing sewer interceptor tank and sewer lateral, as long as the interceptor tank and sewer lateral are on the parcel where the home is located. Existing interceptor tanks and service laterals may not encroach over any property lines.
- Storm Drainage Plans:***
5.
 - a. Storm drainage shall be detained or retained on site using low impact storm water management facilities, such as rain gardens and infiltration trenches. The applicant for a building permit shall submit and obtain approval plan details for the rain garden and storm water infiltration trench adjacent to the joint access driveway with each set of building plans. The City shall approve the on-site storm drainage plan prior to the issuance of a building permit.
 - b. Stormwater operation and maintenance of the private storm drainage improvements are the obligation of the property owner. A stormwater operation and maintenance agreement for each lot, on a form provided by the City, shall be recorded in the Linn County Deed Records

before final inspection and issuance of a certificate of occupancy for the homes at 232, 248, 254 and 272 SW Ivy Street.

Access Driveway Requirements

6. Provide a copy of the recorded driveway easement and maintenance agreement to the City. Construct a 20' wide paved driveway to the rear parcels (248 & 254 SW Ivy Street), including a paved turnaround area, as shown on Figure 3 and per PWDS Section 2.28, 2.29 and 2.30, fire code requirements and fire department approval. Construct the storm drainage infiltration trench on the east side and west side of the driveway at the time the paved driveway is constructed.
7. Provide a clear vision area on both sides of the 25' wide access easement at SW Ivy St per PWDS Section 2.22
8. Install address signs near SW Ivy Street for 248 & 254 SW Ivy Street. Install address numbers on each new home at 230 & 272 SW Ivy Street.
9. The edge of the driveways for Parcel 1 and Parcel 2 shall be approximately 50' from the edge of the 25' joint access easement, as shown on Figure 3 and in compliance with PWDS Section 2.29.

E. Site Landscaping and Fencing

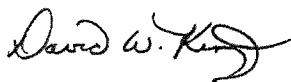
1. The developer shall show landscaping for the storm drainage rain garden, including plantings, as part of the building plans for each parcel.
2. Landscaping shall be installed for the rain gardens prior to the issuance of a certificate of occupancy for each home. If landscaping is not completed, the City may withhold the issuance of buildings permits on the remaining lots in the partition.

III. Right of Appeal

Any person aggrieved by this decision may file an appeal with City Council of the City of Mill City by filing an appeal in accordance with the appeal deadlines and requirements outlined in Mill City Municipal Code Chapter 16.52. The appeal must be filed within fourteen (14) calendar days of the mailing of this Notice of Decision, no later than 5:00 p.m., May 2, 2021.

If you have any questions regarding this decision, contact Stacie Cook at the City of Mill City.

Sincerely,



DAVID KINNEY
Planning Consultant for the City of Mill City

Enclosures: Figure 2 – File 2020-11 Approved Minor Partition Map
Figure 3 – File 2020-11 Approved Minor Partition Plan showing proposed buildings

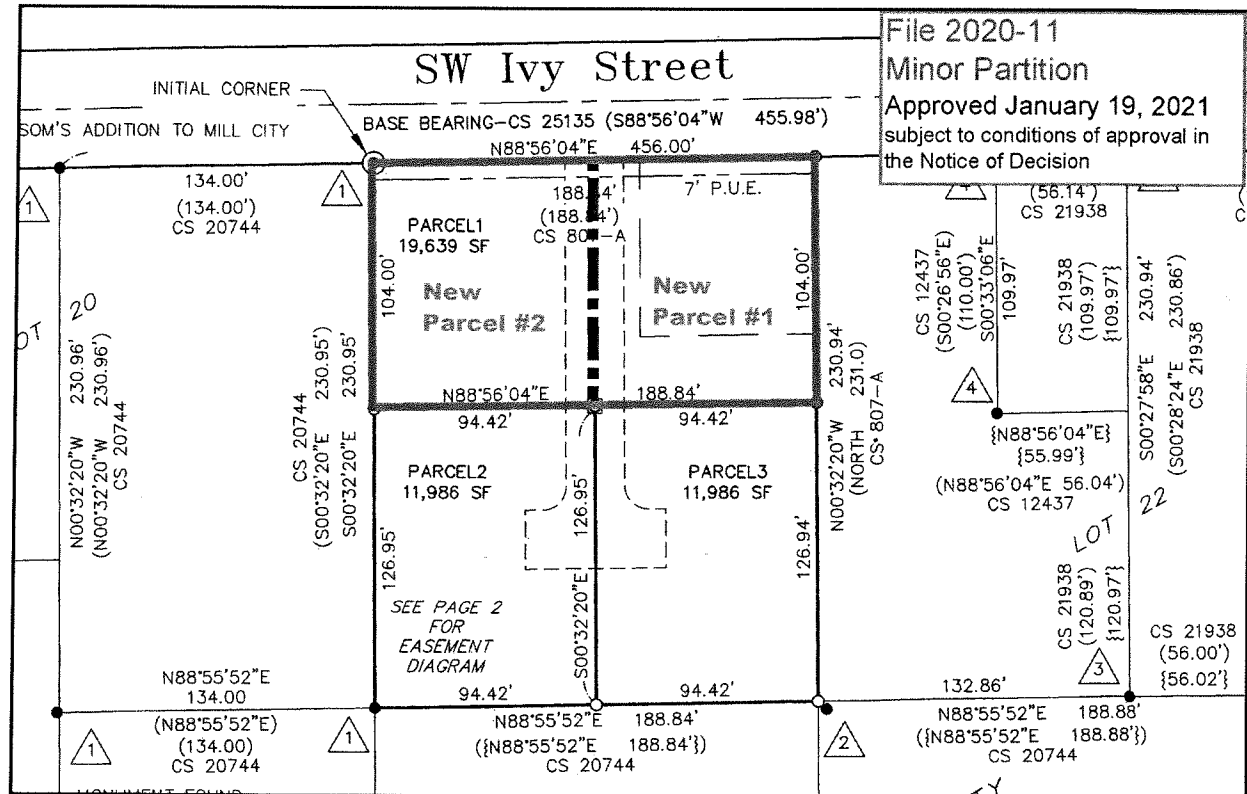
cc: Stacie Cook, City Recorder
City File 2020-11 Minor Partition
City Council

Notice of Decision
File 2020-11 Minor Partition -- 230 & 272 SW Ivy Street, Mill City, OR
January 20, 2021

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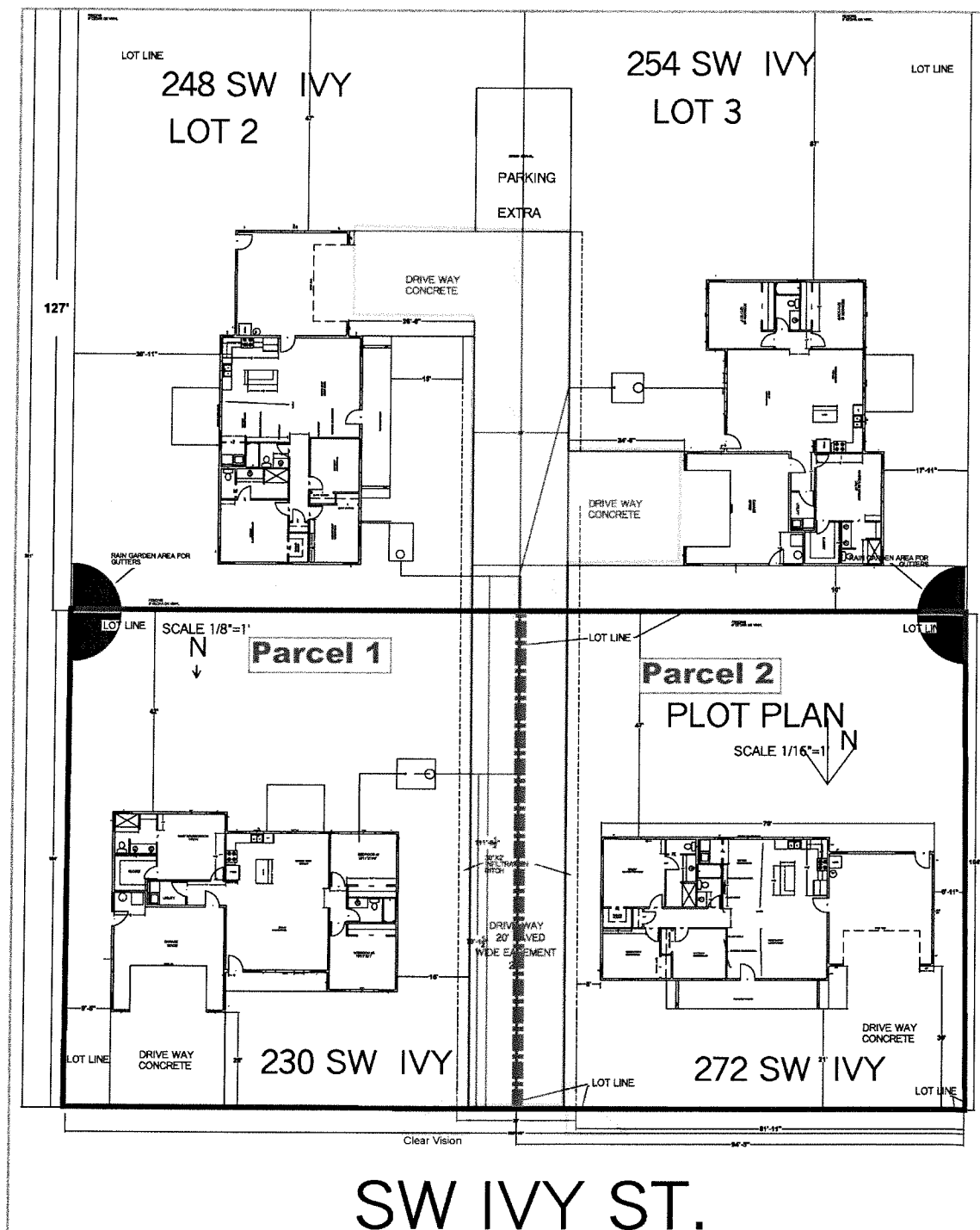
Boatwright Engineering

Figure 2
File 2020-11
Approved Minor Partition at 230 & 272 SW Ivy Street, Mill City



Approved by the Mill City Planning Commission on January 19, 2021
Subject to Conditions of Approval listed in the Notice of Decision dated January 20, 2021

Figure 3
File 2020-11
Approved Minor Partition at 230 & 272 SW Ivy Street, Mill City



City of Mill City
P.O. Box 256
Mill City, Oregon 97360
Phone: 503-897-2302 Fax: 503-897-3499

Memorandum

Date: January 22, 2021
To: Mayor Kirsch and Council
From: Stacie Cook, MMC, City Recorder
Subject: **Business for January 26, 2021 Council Meeting**

a. Resolution No. 8XX – Safe Drinking Water Revolving Loan Fund

Enclosed is Resolution No. 8XX, authorizing a loan from the Safe Drinking Water Revolving Loan Fund by entering into a financing contract with the Oregon Infrastructure Finance Authority (IFA). This resolution, along with the loan contract, signature card, deposit option notification, legal counsel opinion and a disbursement schedule, are required submittals for the loan process.

I have provided all documents to City Attorney Jim McGehee as well as Planner Dave Kinney for review. If there are comments from Mr. McGehee, I will provide them to Council at the meeting.

It should be noted that the City will be required to comply with debt coverage and repayment reserve obligations as outlined in Exhibit B of the contract document (enclosed). This states that the City will not incur any obligation payable from or secured by a lien on revenue that is equal to or superior to the IFA loan. The City must also set aside funds to secure repayment of the annual debt (\$77,700) for the loan in the upcoming budget (Debt Service Fund). Funding is available in the Water System Reserve Fund to make this allocation.

**Requested Action: Motion to Approve Resolution No. 859 –
Safe Drinking Water Revolving Loan
Fund**

b. Safe Drinking Water Revolving Loan Fund Contract

Enclosed is the full Safe Drinking Water Revolving Loan Fund Contract which includes a document checklist, authorized signature card, deposit option notification and a sample disbursement schedule as well as a sample letter for our legal counsel opinion. As stated above, these documents have been provided to the City Attorney for review.

The contract language is fairly standard, not unlike others we have entered into in previous years. A draft disbursement schedule has been compiled based on City Engineer John Ashley's estimated construction schedule which is anticipated to be:

- i. Phase 1 – SW Ivy Street & SW Hall Street Water Main
 - 1. Engineering Design March 15, 2021
 - 2. Legal Review of Bid Docs April 1, 2021
 - 3. Bid Opening May 1, 2021
 - 4. Construction Complete by September 30, 2021
- ii. Phase 2 – All other Water Mains
 - 1. Engineering Design October 1, 2021
 - 2. Legal Review of Bid Docs October 1, 2021
 - 3. Bid Opening December 1, 2021
 - 4. Construction Complete by August 1, 2022
- iii. Project Closeout
 - 1. Federal Audit for FY 2021-2022 File by January 1, 2023
 - 2. Finalize reports w/Busi OR File by March 1, 2023

The project and all required reporting must be closed out by February 1, 2024.

As advised previously, the overall project is estimated to be \$2,686,000 with \$530,000 of ‘forgivable loan’ and the City covering \$150,000 in costs. This leaves a final loan amount of \$2,006,000 with an interest rate of 1% annually.

Requested Action: Motion to Approve Safe Drinking Water Revolving Loan Fund Financing Contract, Project Number S21004 in the Amount of \$2,006,000.

c. Draft Riparian Code – Request for Directive to Hold Hearing

A draft of the proposed riparian code language was provided to Council prior to the last meeting with a request from the Planning Commission that they receive a directive to set a public hearing to consider the adoption of the code.

As stated during the meeting, the code language only addresses publicly owned property. No private property will be affected with the adoption of this code. If directed to hold a hearing, the Planning Commission would consider the code at their February 16, 2021 meeting. The final recommendation on the code, whether to adopt, amend or reconsider adoption, would be forwarded to Council.

Because this is an amendment to the City’s zoning code, the Council will also be required to hold a public hearing, during which, in addition to any testimony provided at the Planning Commission hearing being provided, the public will have an additional opportunity to provide testimony for consideration. Ultimately, the Council is the final decision on adoption of this code.

Requested Action: Motion to Direct Planning Commission to

**Hold a Public Hearing to Consider
Adoption of a Riparian Code for Publicly
Owned Properties.**

d. Pacific Power General Service Contract – TIGER Grant Project

Enclosed are two General Service Contracts for electric services being constructed as part of the SW Broadway Street Improvement portion of the TIGER grant project. These include:

1. At or near 313 SW Broadway - the installation of new street lights along Broadway Street. The total cost is \$4920.00 with Pacific Power covering \$2928.00 and the remaining \$1992.00 payable by the City.
2. At or near 405 SW Linn Place – the installation of pathway lighting along the pedestrian path. The total cost is \$5856.00 with Pacific Power covering \$3216.00 and the remaining \$2640.00 payable by the City.

The total expenditure; \$4632.00, is eligible as a portion of the City's required match for the project. However, staff will also explore the possibility of obtaining reimbursement from grant proceeds.

**Requested Action: Motion to Approve General Service
Contracts with Pacific Power, Request #'s
6945393 and 6843210 Related to the
TIGER Grant Project.**

e. Miscellaneous City Recorder Items

a. *River Road Pump Station Repair/Purchase:*

Public Works Supervisor Russ Foltz has received the quotes for repair and replacement of the pump for the River Road Pump Station. This pump is more expensive than anticipated with repair coming in at \$7700+/- and purchase at \$8500+/- . Council should discuss and provide direction as to whether the preference is to repair the existing pump or purchase a new one.

Requested Action: Discussion.

b. *Letter of Consideration – Tiny Homes; Klagge, Randall:*

Enclosed is a letter requesting consideration to begin conversations regarding tiny homes in Mill City. Randall Klagge is a local resident currently attending college and, as a part of his curriculum, is exploring his issue. Mr. Klagge states that he believes the ability to create affordable housing for families affected by the recent wildfire would help them to remain part of the community while also keeping students in the school district, providing more business for local stores and increasing revenue for the City.

Requested Action: Discussion.

c. *Request for Waiver of Water/Sewer Deposits – FEMA Housing Residents:*

Enclosed is a request from Pamela Zawada, FEMA Direct Housing Logistics, requesting consideration to waive water/sewer deposits for residents in the FEMA housing at 801 SE Fairview Street. Ms. Zawada states that waiver of the deposit would ease the financial burden during the recovery process.

Each resident will be required to open a water/sewer account with the City and pay the monthly bill associated with the residence.

Requested Action: **Discussion.**

Possible Motions: **To Deny Request for Waiver of
Water/Sewer Deposits for Residents of
FEMA Housing at 801 SE Fairview
Street.**

**To Approve Request for Waiver of
Water/Sewer Deposits for Residents of
FEMA Housing at 801 SE Fairview
Street.**

d. *Anita Leach Memorial Tree/Plaque Update:*

The tree chosen as a memorial for Anita Leach has been planted at Hammond Park. The next step in the process is to place the plaque, which will be inlaid into a large stone. Susan Chamberlin, who along with her husband Denny, has been instrumental in making this request, provided the enclosed photo and description of the stone that was chosen by Anita's husband, Dave.

Staff will work with the family and the Chamberlin's to provide a space to keep the stone while awaiting the completion of the plaque and, if necessary, assist with placement of the stone in Hammond Park when the time comes.

Requested Action: **None. Information Only.**

RESOLUTION NO 8XX
A RESOLUTION AUTHORIZING A LOAN FROM THE SAFE DRINKING WATER
REVOLVING LOAN FUND BY ENTERING INTO A FINANCING CONTRACT WITH THE
OREGON INFRASTRUCTURE FINANCE AUTHORITY

WHEREAS, the City Council of the City of Mill City (the “Recipient”) finds:

A. The Recipient is a community or nonprofit non-community water system as defined in Oregon Administrative Rule 123-049-0010.

B. The Safe Drinking Water Act Amendments of 1996, Pub.L. 104-182, as amended (the “Act”), authorize any community or nonprofit non-community water system to file an application with the Oregon Infrastructure Finance Authority of the Business Development Department (“OBDD”) to obtain financial assistance from the Safe Drinking Water Revolving Loan Fund.

C. The Recipient has filed an application with the OBDD to obtain financial assistance for a “safe drinking water project” within the meaning of the Act, and the OBDD has approved the Recipient’s application for financial assistance.

D. The Recipient is required, as a prerequisite to the receipt of financial assistance from the OBDD, to enter into a Financing Contract with the OBDD, number S21004, substantially in the form attached hereto as Exhibit 1. The project is described in Exhibit C to that Financing Contract (the “Project”).

E. Notice relating to the Recipient’s consideration of the adoption of this Resolution was published in full accordance with the Recipient’s charter and laws for public notification.

NOW THEREFORE, BE IT RESOLVED by the Governing Body of the Recipient as follows:

1. Financing Loan Authorized. The Governing Body authorizes the Mayor to execute the Financing Contract (the “Financing Documents”) and such other documents as may be required to obtain financial assistance including a loan from the OBDD on the condition that the principal amount of the loan from the OBDD to the Recipient is not more than \$2,536,000 with \$530,000 eligible for principal forgiveness if contract conditions are met and the interest rate is not more than 1.00%. The proceeds of the loan from the OBDD must be applied solely to the “Costs of the Project” as such term is defined in the Financing Contract.

2. Sources of Repayment. Amounts payable by the Recipient are payable from the sources described in Section 4 of the Financing Contract and the Oregon Revised Statutes Section 285A.213(5) which include:

- (a) Revenue from Recipient’s water system, including special assessment revenue;
- (b) Amounts withheld under subsection 285A.213(6);
- (c) The general fund of the Recipient;
- (d) Any combination of sources listed in paragraphs (a) to (c) of this subsection; or
- (e) Any other source.

3. Additional Documents. The Mayor is hereby authorized to enter into any agreements and to execute any documents or certificates which may be required to obtain financial assistance from the OBDD for the Project pursuant to the Financing Documents.

4. Tax-Exempt Status. The Recipient covenants not to take any action or omit to take any action if the taking or omission would cause interest paid by the Recipient pursuant to the Financing Documents not to qualify for the exclusion from gross income provided by Section 103(a) of the Internal Revenue Code of 1986, as amended. The Mayor of the Recipient may enter into covenants on behalf of the Recipient to protect the tax-exempt status of the interest paid by the Recipient pursuant to the Financing Documents and may execute any Tax Certificate, Internal Revenue Service forms or other documents as may be required by the OBDD or their bond counsel to protect the tax-exempt status of such interest.

5. Reimbursement Bonds. The Recipient may make certain expenditures on the Project prior to the date the Financing Contract is executed with OBDD or the date the State of Oregon issues any bonds to fund the loan. The Recipient hereby declares its intent to seek reimbursement of such expenditures with amounts received from the OBDD pursuant to the Financing Contract, but only as permitted by OBDD policy, the Financing Contract, and federal tax regulations. Additionally, the Recipient understands that the OBDD may fund or reimburse itself for the funding of amounts paid to the Recipient pursuant to the Financing Documents with the proceeds of bonds issued by the State of Oregon pursuant to the Act. This Resolution constitutes "official intent" within the meaning of 26 C.F.R. §1.150-2 of the income tax regulations promulgated by the United States Department of the Treasury.

APPROVED AND ADOPTED by the City Council of the City of Mill City this ____ day of January, 2021.

CITY OF MILL CITY

TIM KIRSCH, Mayor

DATE: _____

ATTEST:

STACIE COOK, City Recorder

DATE: _____

SAFE DRINKING WATER REVOLVING LOAN FUND
FINANCING CONTRACT

Project Name: City of Mill City, Replacement of Waterlines & Meters, No. 202-14210

Project Number: S21004

This financing contract ("Contract"), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through its Oregon Infrastructure Finance Authority of the Business Development Department ("OBDD"), and the City of Mill City ("Recipient") for financing of the project referred to above and described in Exhibit C ("Project"). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

Exhibit A	General Definitions
Exhibit B	Security
Exhibit C	Project Description
Exhibit D	Project Budget
Exhibit E	Information Required by 2 CFR § 200.331(a)(1)
Exhibit F	Certification Regarding Lobbying

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

"Estimated Project Cost" means \$2,686,000.

"Forgivable Loan Amount" means \$530,000.

"Section 2A. Loan Amount" means \$2,006,000.

"Interest Rate" means 1.00% per annum.

"Maturity Date" means the 29th anniversary of the Repayment Commencement Date.

"Payment Date" means December 1.

"Project Closeout Deadline" means 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

"Project Completion Deadline" means 36 months after the date of this Contract.

"Repayment Commencement Date" means the first Payment Date to occur after the Project Closeout Deadline.

SECTION 2 - FINANCIAL ASSISTANCE

The OBDD shall provide Recipient, and Recipient shall accept from OBDD, financing for the Project specified below:

- A. A non-revolving loan in an aggregate principal amount not to exceed the Section 2.A. Loan Amount.
- B. A non-revolving loan in an aggregate principal amount not to exceed the Forgivable Loan Amount.

“Loan” means, collectively and individually without distinction, as the context requires, the loans described in this section 2.

Notwithstanding the above, the aggregate total of Financing Proceeds disbursed under this Contract shall not exceed the Costs of the Project.

SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Financing Proceeds shall be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an OBDD-provided or OBDD-approved disbursement request form (“Disbursement Request”).
- B. Financing Availability. The OBDD’s obligation to make, and Recipient’s right to request, disbursements under this Contract terminates on the Project Closeout Deadline.
- C. Payment to Contractors. The OBDD, in its sole discretion, may make direct payment to suppliers, contractors and subcontractors and others for sums due them in connection with construction of the Project, instead of reimbursing Recipient for those sums.
- D. Order of Disbursement. OBDD shall allocate any disbursement equally between the Section 2.A. Loan and the Forgivable Loan. Notwithstanding the preceding sentence, those portions of the Forgivable Loan indicated in the budget line-items for Labor Standards Compliance and Project Management remain dedicated to those specific line-item activities and not affected by any equal division allocation.

SECTION 4 - LOAN PAYMENT; PREPAYMENT; FORGIVENESS

- A. Promise to Pay. The Recipient shall repay the Loan and all amounts due under this Contract in accordance with its terms. Payments required under this Contract are, without limitation, payable from the sources of repayment described in the Act and this Contract, including but not limited to Exhibit B, and the obligation of Recipient to make all payments is absolute and unconditional. Payments will not be abated, rebated, set-off, reduced, abrogated, terminated, waived, postponed or otherwise modified in any manner whatsoever. Payments cannot remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of purpose, any change in the laws, rules or regulations of the United States of America or of the State of Oregon or any political subdivision or governmental authority, nor any failure of OBDD to perform any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project or this Contract, or any rights of set off, recoupment, abatement or counterclaim that Recipient might otherwise have against OBDD or any other party or parties; provided further, that payments hereunder will not constitute a waiver of any such rights.
- B. Interest. Interest accrues at the Interest Rate on each disbursement from the date of disbursement until the Loan is fully paid. All unpaid interest accrued to the Repayment Commencement Date is (in addition to the first regular installment payment due) payable on the Repayment Commencement Date. Interest is computed by counting the actual days occurring in a 360-day year.

The Recipient authorizes OBDD to calculate accrued interest as necessary under this Contract, including for purposes of determining a loan amortization schedule or determining the amount of a loan prepayment or loan payoff. Absent manifest error, such calculations will be conclusive.

- C. Loan Payments. Starting on the Repayment Commencement Date and then on each succeeding Payment Date, Recipient shall make level installment payments of principal and interest, each payment sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date, on which date the entire outstanding balance of the Loan is due and payable in full.
- D. Loan Prepayments.
- (1) Mandatory Prepayment. The Recipient shall prepay all or part of the outstanding balance of the Loan as required by this Contract.
 - (2) Optional Prepayment. The Recipient may prepay all or part of the outstanding balance of the Loan on any day except a Saturday, Sunday, legal holiday or day that banking institutions in Salem, Oregon are closed.
- E. Application of Payments. Regardless of any designation by Recipient, payments and prepayments by Recipient under this Contract or any of the Financing Documents will be applied first to any expenses of OBDD, including but not limited to attorneys' fees, then to unpaid accrued interest (in the case of prepayment, on the amount prepaid), then to the principal of the Loan. In the case of a Loan prepayment that does not prepay all the principal of the Loan, OBDD will determine, in its sole discretion, the method for how the Loan prepayment will be applied to the outstanding principal payments. A scheduled payment received before the scheduled repayment date will be applied to interest and principal on the scheduled repayment date, rather than on the day such payment is received.
- F. Forgiveness. Subject to satisfaction by Recipient of any special conditions in Exhibit C, if Recipient completes the Project by the Project Completion Deadline in accordance with the terms of this Contract, and provided that no Event of Default has occurred, OBDD shall, 90 days after the Project Completion Date, forgive repayment of the Forgivable Loan Amount and any interest accrued thereon and cancel the Forgivable Loan. The Forgivable Loan Amount and any interest forgiven remain subject to the requirements of OAR 123-049-0050, which survive payment of the Loan.

Notwithstanding the preceding paragraph, if, at the Project Completion Date, the average monthly residential water rates for the water supplied by the System are not at or above the affordability rate of \$42.37 per 7,500 gallons, then \$250,000 of the amount due under the Forgivable Loan will not be forgiven. Further, the Section 2.A. Loan and the Forgivable Loan will, at OBDD's discretion and after notice to Recipient, be modified as follows:

Interest accrues from the Project Completion Date at the rate of 1.72% per annum.

The above-described modification will be effective without the necessity of executing any further documents. However, at OBDD's request, Recipient shall execute and deliver to OBDD such additional agreements, instruments and documents as OBDD deems necessary to reflect such modification, including but not limited to an amendment to the Contract.

- G. Debt Service Reserve. The Recipient shall establish a segregated fund for the purposes of a debt service reserve ("Account") that may be drawn upon to satisfy a Loan payment or other payment obligations under this Contract. Any amounts deposited in this Account, including Net Revenues, may be used only to make Loan payments or to pay any other payment obligations under this Contract. Not later than the Project Completion Date, the Recipient shall ensure that there is standing to the credit of the Account at all times an amount sufficient to pay the next required installment payment of interest accrued to the date of payment and so much of the next principal payment required by Section 4.C. as will fully amortize the Loan by the Maturity Date. Beginning with the Project Completion Date and on each Payment Date thereafter, Recipient shall provide to

OBDD a copy of the Account statement, or other financial statement satisfactory to OBDD, evidencing the current balance with requisite amounts required by this Section and activity on the Account for the prior 12-month period.

SECTION 5 - CONDITIONS PRECEDENT

- A. Conditions Precedent to OBDD's Obligations. The OBDD's obligations are subject to the receipt of the following items, in form and substance satisfactory to OBDD and its Counsel:
- (1) This Contract duly signed by an authorized officer of Recipient.
 - (2) A copy of the ordinance, order or resolution of the governing body of Recipient authorizing the borrowing and the contemplated transactions and the execution and delivery of this Contract and the other Financing Documents.
 - (3) An opinion of Recipient's Counsel.
 - (4) Such other certificates, documents, opinions and information as OBDD may reasonably require.
- B. Conditions to Disbursements. As to any disbursement, OBDD has no obligation to disburse funds unless all following conditions are met:
- (1) There is no Event of Default.
 - (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
 - (3) The OBDD, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
 - (4) Recipient delivers to OBDD an estimated schedule for Disbursement Requests for Project design, covering anticipated number, submission dates, and amounts. Prior to beginning construction, Recipient must also deliver to OBDD an estimated schedule for Disbursement Requests for construction, covering anticipated number, submission dates, and amounts.
 - (5) The OBDD (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as OBDD may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
 - (6) The Recipient has delivered documentation satisfactory to OBDD that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
 - (7) Any conditions to disbursement elsewhere in this Contract or in the other Financing Documents are met.

SECTION 6 - USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit C and according to the budget in Exhibit D. The Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of OBDD.
- B. Costs of the Project. The Recipient shall apply the Financing Proceeds to the Costs of the Project in accordance with the Act and Oregon law, as applicable. Financing Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit C.
- C. Costs Paid for by Others. The Recipient may not use any of the Financing Proceeds to cover costs to be paid for by other financing for the Project, whether from OBDD or from another State of Oregon agency or any third party.

SECTION 7 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to OBDD:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in section 1, and the Project is fully funded. The Recipient will have adequate funds available to repay the Loan, and the Maturity Date does not exceed the usable life of the Project.
- B. Organization and Authority.
 - (1) The Recipient (a) is a Municipality under the Act, and validly organized and existing under the laws of the State of Oregon, and (b) owns a community water system, as defined in the Act and OAR 123-049-0010.
 - (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract and the other Financing Documents, (b) incur and perform its obligations under this Contract and the other Financing Documents, and (c) borrow and receive financing for the Project.
 - (3) This Contract and the other Financing Documents executed and delivered by Recipient have been authorized by an ordinance, order or resolution of Recipient's governing body, and voter approval, if necessary, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.
 - (4) This Contract and the other Financing Documents have been duly executed by Recipient, and when executed by OBDD, are legal, valid and binding, and enforceable in accordance with their terms.
- C. Full Disclosure. The Recipient has disclosed in writing to OBDD all facts that materially adversely affect the Project, or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract and the other Financing Documents is true and accurate in all respects.
- D. Pending Litigation. The Recipient has disclosed in writing to OBDD all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.

E. No Events of Default.

- (1) No Events of Default exist or occur upon authorization, execution or delivery of this Contract or any of the Financing Documents.
- (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.

F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract and the other Financing Documents will not: (i) cause a breach of any agreement, indenture, mortgage, deed of trust, or other instrument, to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) cause the creation or imposition of any third party lien, charge or encumbrance upon any property or asset of Recipient; (iii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iv) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.

G. Governmental Consent. The Recipient has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract and the other Financing Documents, for the financing or refinancing and undertaking and completion of the Project.

SECTION 8 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify OBDD of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to make all payments and perform all obligations required by this Contract or the other Financing Documents.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract or the other Financing Documents, the Project and the operation of the System of which the Project is a component. In particular, but without limitation, Recipient shall comply with the following, as applicable:
- (1) State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C. Oregon state procurement regulations will satisfy federal procurement requirements of 2 CFR part 200, subpart D.
 - (2) State labor standards and wage rates found in ORS chapter 279C, and federal prevailing wage provisions in accordance with the federal Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 to 3144, 3146 and 3147 (2002).
 - (3) The Recipient is required to place a sign at construction sites supported under this Loan displaying the U.S. Environmental Protection Agency (“EPA”) logo in a manner that informs the public that the Project is funded in part or wholly by the EPA. The sign must be placed in a visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period. Recipient is required to comply with EPA signage requirements at: http://www2.epa.gov/sites/production/files/2015-01/documents/signage_required_tc.pdf

- (4) SAFE DRINKING WATER IN OREGON: Program Guidelines & Applicant's Handbook for the Federally Funded Safe Drinking Water Revolving Fund & Drinking Water Protection Loan Fund (August 2018 update), as amended from time to time ("Safe Drinking Water Handbook"), available at <https://www.orinfrastructure.org/assets/docs/IFA/SDWhandbook.pdf>.
- (5) Federal Crossing-Cutting Authorities. All federal laws, executive orders and government-wide policies that apply by their terms to projects and activities receiving federal financial assistance, regardless of whether the Act makes them applicable ("Cross-Cutting Authorities"). The Safe Drinking Water Handbook contains a link to a list of the Cross-Cutting Authorities.
- (6) Lobbying. The Recipient acknowledges and agrees that the Costs of the Project will not include any Lobbying costs or expenses incurred by Recipient or any person on behalf of Recipient, and that Recipient will comply with federal restrictions on lobbying at 40 C.F.R. Part 34 and will not request payment or reimbursement for Lobbying costs and expenses. "Lobbying" means influencing or attempting to influence a member, officer or employee of a governmental agency or legislature in connection with the awarding of a government contract, the making of a government grant or loan or the entering into of a cooperative agreement with such governmental entity or the extension, continuation, renewal, amendment or modification of any of the above. The Recipient shall submit to OBDD a Certification Regarding Lobbying, the form of which is attached as Exhibit F, and any applicable quarterly disclosure statement of covered lobbying activity. The Recipient will cause any entity, firm or person receiving a contract or subcontract utilizing Loan proceeds in excess of \$100,000 to complete the same certification and any applicable disclosure statement, and submit them to Recipient. The Recipient shall retain such certifications and make them available for inspection and audit by OBDD, the federal government or their representatives. The Recipient shall forward any disclosure statements to OBDD.
- (7) Federal Audit Requirements. The Loan is federal financial assistance, and the Catalog of Federal Domestic Assistance ("CFDA") number and title is "66.468, Capitalization Grants for Drinking Water State Revolving Funds." Recipient is a sub-recipient.
- (a) If Recipient receives federal funds in excess of \$750,000 in the Recipient's fiscal year, it is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at its own expense submit to OBDD a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Contract and shall submit or cause to be submitted to OBDD the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Contract.
- (b) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Recipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the funds received under this Contract.
- (c) Recipient shall save, protect and hold harmless OBDD from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Contract. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and the State of Oregon.
- (8) Disadvantaged Business Enterprises. The Recipient will implement the good faith efforts for solicitation and contracting with Disadvantaged Business Enterprises ("DBE") described in the

Safe Drinking Water Handbook. This applies to all solicitation and contracting for construction, equipment, supplies, engineering or other services that constitute the Project financed by this Contract. The Recipient will maintain documentation in a Project file and submit the required forms, as described in the Safe Drinking Water Handbook. The Recipient will ensure that all prime contractors implement the good faith efforts for solicitation and contracting, and comply with all DBE procurement forms, statements, and reporting requirements. The Recipient agrees to apply the current regional fair share objectives.

The Recipient will ensure that each procurement contract includes the following term and condition:

“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”

- (9) Property Standards. Recipient shall comply with 2 CFR 200.313 which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
- (10) Contract Provisions. The contract provisions listed in 2 CFR Part 200, Appendix II are obligations of Recipient, as applicable, and must be included, as applicable, by Recipient in its contracts related to the Project.
- (11) Iron and Steel Products. Pursuant to the 2016 Consolidated Appropriations Act (P.L. 114-113), none of the Financing Proceeds may be used for any part of the Project unless all of the iron and steel products used in the project are produced in the United States. “Iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- (12) Incorporation by Reference. The above state and federal laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

C. Project Completion Obligations. The Recipient shall:

- (1) When procuring professional consulting services, provide OBDD with copies of all solicitations at least 10 days before advertising, and all contracts at least 10 days before signing.
- (2) Provide OBDD with copies of all Oregon Health Authority – approved plans and specifications relating to the Project, and a timeline for the construction bidding / award process, at least ten (10) days before advertising for bids.
- (3) Provide a copy of the bid tabulation, notice of award, and contract to OBDD within ten (10) days after selecting a construction contractor.
- (4) Complete an environmental review in accordance with the state environmental review process and in compliance with state and federal environmental laws prior to any construction work on the Project.
- (5) Permit OBDD to inspect the Project at any time.

- (6) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
 - (7) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by OBDD in writing.
 - (8) Obtain and maintain as-built drawings for all facilities constructed as part of the Project.
 - (9) In the case of construction projects, prior to final disbursement of the Loan, Recipient shall install necessary source meters and service meters on all connections throughout the System.
- D. Ownership of Project. During the term of the Loan, the Project is and will continue to be owned by Recipient. The Project will be operated by Recipient or by a person under a management contract or operating agreement with Recipient.
- E. Operation and Maintenance of the Project. The Recipient shall operate and maintain the Project in good repair and operating condition so as to preserve the long term public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements during term of the Loan. On or before the Project Closeout Deadline, Recipient shall adopt a plan acceptable to OBDD for the on-going operation and maintenance of the Project without reliance on OBDD financing and furnish OBDD, at its request, with evidence of such adoption. The plan must include measures for generating revenues sufficient to assure the operation and maintenance of the Project during the usable life of the Project.
- F. Insurance, Damage. The Recipient shall maintain, or cause to be maintained, insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. Nothing in this provision precludes Recipient from asserting a defense against any party other than OBDD, including a defense of immunity. If the Project or any portion is destroyed, any insurance proceeds will be paid to OBDD and applied to prepay the outstanding balance on the Loan in accordance with section 4.D.(1), unless OBDD agrees in writing that the insurance proceeds may be used to rebuild the Project.
- G. Sales, Leases and Encumbrances. Except as specifically described in Exhibit C, Recipient shall not sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in the Project or any system that provides revenues for payment or is security for the Loan, unless worn out, obsolete, or, in the reasonable business judgment of Recipient, no longer useful in the operation of the Project. Nevertheless, OBDD may consent to such disposition if it has received 90 days' prior written notice from Recipient. Such consent may require assumption by transferee of all of Recipient's obligations under the Financing Documents and payment of OBDD's costs related to such assumption, and receipt by OBDD of an opinion of Bond Counsel to the effect that such disposition complies with applicable law and will not adversely affect the exclusion of interest on any Lottery Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code. The term "Bond Counsel" means a law firm determined by OBDD to have knowledge and expertise in the field of municipal law and whose opinions are generally accepted by purchasers of municipal bonds. In the case of sale, exchange, transfer or other similar disposition, Recipient shall, within 30 days of receipt of any proceeds from such disposition, prepay the entire outstanding balance on the Loan in accordance with section 4.D.(1), unless OBDD agrees otherwise in writing. If Recipient abandons the Project, Recipient shall prepay the entire outstanding balance of the Loan immediately upon demand by OBDD.

- H. Condemnation Proceeds. If the Project or any portion is condemned, any condemnation proceeds will be paid to OBDD and applied to prepay the outstanding balance of the Loan in accordance with section 4.D.(1).
- I. Financial Records. The Recipient shall keep accurate books and records for the revenues and funds that are the source of repayment of the Loan, separate and distinct from its other books and records, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. The Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.
- J. Inspections; Information. The Recipient shall permit OBDD, and any party designated by OBDD, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as OBDD may reasonably require. In addition, Recipient shall, upon request, provide OBDD with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of Recipient that are issued after the date of this Contract.
- K. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds for a minimum of six years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Closeout Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.
- L. Economic Benefit Data. The OBDD may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by OBDD.
- M. Professional Responsibility. A professional engineer or architect, as applicable, registered and in good standing in Oregon, will be responsible for the design and construction of the Project. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty. The Recipient shall follow standard construction practices, such as bonding requirements for construction contractors, requiring errors and omissions insurance, and performing testing and inspections during construction.
- N. Notice of Event of Default. The Recipient shall give OBDD prompt written notice of any Event of Default, or any circumstance that with notice or the lapse of time, or both, may become an Event of Default, as soon as Recipient becomes aware of its existence or reasonably believes an Event of Default is likely.
- O. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OBDD and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this section are not to

be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.

P. Further Assurances. The Recipient shall, at the request of OBDD, authorize, sign, acknowledge and deliver any further resolutions, conveyances, transfers, assurances, financing statements and other instruments and documents as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Contract and the other Financing Documents.

Q. Exclusion of Interest from Federal Gross Income and Compliance with Code.

- (1) The Recipient shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any Lottery Bonds from gross income for purposes of federal income taxation, as governed by Section 103(a) of the Code. OBDD may decline to disburse the Financing Proceeds if it finds that the federal tax exemption of the Lottery Bonds cannot be assured.
- (2) The Recipient shall not take any action (including but not limited to the execution of a management agreement for the operation of the Project) or omit to take any action that would cause any Lottery Bonds to be "private activity bonds" within the meaning of Section 141(a) of the Code. Accordingly, unless Recipient receives the prior written approval of OBDD, Recipient shall not permit in excess of ten percent (10%) of either (a) the Financing Proceeds or (b) the Project financed or refinanced with the Financing Proceeds to be directly or indirectly used in any manner that would constitute "private business use" within the meaning of Section 141(b)(6) of the Code, including not permitting more than one half of any permitted private business use to be "disproportionate related business use" or private business use unrelated to the government use of the Financing Proceeds. Unless Recipient receives the prior written approval of OBDD, Recipient shall not directly or indirectly use any of the Financing Proceeds to make or finance loans to persons other than governmental units, as that term is used in Section 141(c) of the Code.
- (3) The Recipient shall not directly or indirectly use or permit the use of any of the Financing Proceeds or any other funds, or take any action or omit to take any action, which would cause any Lottery Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.
- (4) The Recipient shall not cause any Lottery Bonds to be treated as "federally guaranteed" for purposes of Section 149(b) of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to "federally guaranteed" obligations described in Section 149(b) of the Code. For purposes of this paragraph, any Lottery Bonds will be treated as "federally guaranteed" if: (a) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (b) five percent (5%) or more of the proceeds of the Lottery Bonds will be (i) used in making loans if the payment of principal or interest is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (ii) invested directly or indirectly in federally insured deposits or accounts, and (c) none of the exceptions described in Section 149(b)(3) of the Code apply.
- (5) The Recipient shall assist OBDD to ensure that all required amounts are rebated to the United States of America pursuant to Section 148(f) of the Code. The Recipient shall pay to OBDD such amounts as may be directed by OBDD to satisfy the requirements of Section 148(f) applicable to the portion of the proceeds of any tax-exempt bonds, including any Financing

Proceeds or other amounts held in a reserve fund. The Recipient further shall reimburse OBDD for the portion of any expenses it incurs related to the Project that is necessary to satisfy the requirements of Section 148(f) of the Code.

- (6) Upon OBDD's request, Recipient shall furnish written information regarding its investments and use of the Financing Proceeds, and of any facilities financed or refinanced therewith, including providing OBDD with any information and documentation that OBDD reasonably determines is necessary to comply with the arbitrage and private use restrictions that apply to the Lottery Bonds.
- (7) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on any Lottery Bonds, the covenants contained in this subsection will survive the payment of the Loan and the Lottery Bonds, and the interest thereon, including the application of any unexpended Financing Proceeds. The Recipient acknowledges that the Project may be funded with proceeds of the Lottery Bonds and that failure to comply with the requirements of this subsection could adversely affect any exclusion of the interest on the Lottery Bonds from gross income for federal income tax purposes.
- (8) Neither Recipient nor any related party to Recipient, within the meaning of 26 C.F.R. § 1.150-1(b), shall purchase any Lottery Bonds, from which proceeds were used to finance the Project, in an amount related to the amount of the Loan.
- (9) The Recipient may use the Financing Proceeds to reimburse itself for Project expenditures made prior to the funding of the Project only if permitted by Exhibit C and only if such reimbursement is allowed under one of the following four categories pursuant to 26 C.F.R. § 1.150-2:
 - (a) Preliminary expenditures such as architectural, engineering, surveying, soil testing, bond issuance and similar costs that, in the aggregate, are not in excess of 20% of the Financing Proceeds. Costs of land acquisition, site preparation and similar costs incident to commencement of construction are not preliminary expenditures.
 - (b) Expenditures for issuance costs.
 - (c) Expenditures that are described in a reimbursement resolution or other declaration of official intent that satisfies the requirements of 26 C.F.R. § 1.150-2 and paid no earlier than 60 days prior to the adoption of such resolution or official intent.
 - (d) Expenditures paid within 60 days prior to the date the Loan is funded.

SECTION 9 - DEFAULTS

Any of the following constitutes an "Event of Default":

- A. The Recipient fails to make any Loan payment when due.
- B. The Recipient fails to make, or cause to be made, any required payments of principal, redemption premium, or interest on any bonds, notes or other material obligations, for any other loan made by the State of Oregon.
- C. Any false or misleading representation is made by or on behalf of Recipient, in this Contract, in any other Financing Document or in any document provided by Recipient related to this Loan or the Project or in regard to compliance with the requirements of section 103 and sections 141 through 150 of the Code.

- D. (1) A petition, proceeding or case is filed by or against Recipient under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against Recipient, Recipient acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal;
- (2) The Recipient files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts;
- (3) The Recipient becomes insolvent or bankrupt or admits its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors;
- (4) The Recipient applies for or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of Recipient or any substantial portion of its property; or
- (5) The Recipient takes any action for the purpose of effecting any of the above.
- E. The Recipient defaults under any other Financing Document and fails to cure such default within the applicable grace period.
- F. The Recipient fails to perform any obligation required under this Contract, other than those referred to in subsections A through E of this section 9, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by OBDD. The OBDD may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 10 - REMEDIES

- A. Remedies. Upon any Event of Default, OBDD may pursue any or all remedies in this Contract or any other Financing Document, and any other remedies available at law or in equity to collect amounts due or to become due or to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
 - (1) Terminating OBDD's commitment and obligation to make any further disbursements of Financing Proceeds under the Contract.
 - (2) Declaring all payments under the Contract and all other amounts due under any of the Financing Documents immediately due and payable, and upon notice to Recipient the same become due and payable without further notice or demand.
 - (3) Barring Recipient from applying for future awards.
 - (4) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract, pursuant to ORS 285A.213(6) and OAR 123-049-0040.
 - (5) Foreclosing liens or security interests pursuant to this Contract or any other Financing Document.
 - (6) Exercising any remedy listed in OAR 123-049-0040.
- B. Application of Moneys. Any moneys collected by OBDD pursuant to section 10.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by OBDD; next, to pay interest due on the Loan; next, to pay principal due on the Loan, and last, to pay any other amounts due and payable under this Contract or any of the Financing Documents.

- C. No Remedy Exclusive; Waiver; Notice. No remedy available to OBDD is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract or any of the Financing Documents shall preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The OBDD is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 9 of this Contract.
- D. Default by OBDD. In the event OBDD defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of OBDD's obligations.

SECTION 11 - MISCELLANEOUS

- A. Time is of the Essence. The Recipient agrees that time is of the essence under this Contract and the other Financing Documents.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
 - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
 - (3) This Contract will be binding upon and inure to the benefit of OBDD, Recipient, and their respective successors and permitted assigns.
 - (4) The Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract or any other Financing Document without the prior written consent of OBDD. The OBDD may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to OBDD, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of OBDD's Counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of OBDD beyond those in this Contract or other Financing Documents, nor does assignment relieve Recipient of any of its duties or obligations under this Contract or any other Financing Documents.
 - (5) The Recipient hereby approves and consents to any assignment, sale or transfer of this Contract and the Financing Documents that OBDD deems to be necessary.
- C. Disclaimer of Warranties; Limitation of Liability. The Recipient agrees that:
- (1) The OBDD makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
 - (2) In no event are OBDD or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.
- D. Notices and Communication. Except as otherwise expressly provided in this Contract, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Recipient or OBDD at the

addresses set forth below, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system or 2) the recipient's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

If to OBDD: Assistant Director, Economic Development
Oregon Business Development Department
775 Summer Street NE Suite 200
Salem OR 97301-1280

If to Recipient: City Recorder
City of Mill City
4441st Avenue
Mill City, OR 97360

- E. No Construction against Drafter. This Contract is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- G. Amendments, Waivers. This Contract may not be amended without the prior written consent of OBDD (and when required, the Department of Justice) and Recipient. This Contract may not be amended in a manner that is not in compliance with the Act. No waiver or consent is effective unless in writing and executed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- H. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to OBDD by its attorneys. The Recipient shall, on demand, pay to OBDD reasonable expenses incurred by OBDD in the collection of Loan payments.
- I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

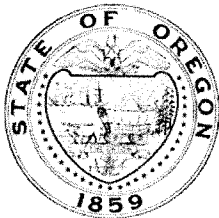
Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent

Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- J. Integration. This Contract (including all exhibits, schedules or attachments) and the other Financing Documents constitute the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.
- K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

The Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through its
Oregon Infrastructure Finance Authority
of the Business Development Department

CITY OF MILL CITY

By: _____
Chris Cummings, Interim Director

By: _____
The Honorable Tim Kirsch
Mayor of Mill City

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ Wendy Johnson as per email dated 11 Jan 2021
Wendy Johnson, Senior Assistant Attorney General

EXHIBIT A - GENERAL DEFINITIONS

As used in this Contract, the following terms have the meanings below.

“Act” means “Safe Drinking Water Act,” 42 U.S.C. Sec. 300f, and all subsequent amendments, including the Amendments of 1996, Public Law 104-182.

“Award” means the award of financial assistance to Recipient by OBDD dated «DateofAward».

“C.F.R.” means the Code of Federal Regulations.

“Code” means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Financing Proceeds under applicable state or federal statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, OBDD or Recipient.

“Financing Documents” means this Contract and all agreements, instruments, documents and certificates executed pursuant to or in connection with OBDD’s financing of the Project.

“Financing Proceeds” means the proceeds of the Section 2.A. Loan and the Forgivable Loan.

“Forgivable Loan” means the forgivable Loan described in section 2.B.

“Section 2.A. Loan” means the Loan described in section 2.A. of this Contract.

“Lottery Bonds” means any bonds issued by the State of Oregon that are special obligations of the State of Oregon, payable from unobligated net lottery proceeds, the interest on which is exempt from federal income taxation, together with any refunding bonds, used to finance or refinance the Project through the initial funding or refinancing of all or a portion of the Loan.

“Municipality” means any entity described in ORS 285B.410(9).

“ORS” means the Oregon Revised Statutes.

“Project Completion Date” means the date on which Recipient completes the Project.

“System” means Recipient’s drinking water system, which includes the Project or components of the Project, as it may be modified or expanded from time to time.

EXHIBIT B - SECURITY

- A. Full Faith and Credit Pledge. The Recipient pledges its full faith and credit and taxing power within the limitations of Article XI, sections 11 and 11 b, of the Oregon Constitution to pay the amounts due under this Contract. This Contract is payable from and secured by all lawfully available funds of Recipient.
- B. Pledge of Net Revenues of the System
- (1) All payment obligations under this Contract and the other Financing Documents are payable from the revenues of Recipient's System after payment of operation and maintenance costs of the System ("Net Revenues"). The Recipient irrevocably pledges and grants to OBDD a security interest in the Net Revenues to pay all of its obligations under this Contract and the other Financing Documents. The Net Revenues pledged pursuant to the preceding sentence and received by Recipient will immediately be subject to the lien of this pledge without physical delivery, filing or any other act, and the lien of this pledge is superior to and has priority over all other claims and liens, except as provided in subsections 2 and 3 of this section B, to the fullest extent permitted by ORS 287A.310. The Recipient represents and warrants that this pledge of Net Revenues complies with, and is valid and binding from the date of this Contract as described in, ORS 287A.310. The lien of the pledge made under this subsection 1 is hereinafter referred to as the "OBDD Lien".
 - (2) The Recipient shall not incur, without the prior written consent of OBDD, any obligation payable from or secured by a lien on and pledge of the Net Revenues that is on parity or superior to the OBDD Lien.
 - (3) Notwithstanding the requirements of subsection 2 of this section B, loans previously made and loans made in the future by OBDD to Recipient that are secured by the Net Revenues may have a lien on such Net Revenues on parity with the OBDD Lien; provided that nothing in this paragraph will adversely affect the priority of any of OBDD's liens on such Net Revenues in relation to the lien(s) of any third party(ies).
 - (4) The Recipient shall charge rates and fees in connection with the operation of the System which, when combined with other gross revenues, are adequate to generate Net Revenues each fiscal year at least equal to 110% of the annual debt service due in the fiscal year on the Loan and any outstanding obligation payable from or secured by a lien on and pledge of Net Revenues that is on parity with the OBDD Lien.
 - (5) The Recipient may establish a debt service reserve fund to secure repayment of obligations that are payable from or secured by a lien on and pledge of Net Revenues that is on parity with the OBDD Lien, provided that no deposit of the Net Revenues of the System into the debt service reserve fund is permitted until provision is made for the payment of debt service on the Loan as required by Section 4.G. and any other obligations payable from or secured by a lien on and pledge of Net Revenues that is on parity with the OBDD Lien (including any obligations described in subsection 3 above) for the 12-month period after such deposit.

EXHIBIT C - PROJECT DESCRIPTION

The Recipient will procure engineering services to design and construct the replacement of approximately 7,000 lineal feet of water mains including valves, fire hydrants, and water service lines identified in the 2003 Water Master Plan prepared by Westech Engineering and prioritized as a result of a 2019 leak detection study. Recipient will install a radio read meter base station and approximately 400 radio read meters. Recipient will replace the emergency generator located at the pump station.

Pre-award costs for engineering up to \$55,000 will be allowed.

EXHIBIT D - PROJECT BUDGET

	OBDD Funds	Other / Matching Funds
Activity	Approved Budget	Approved Budget
"Pre-Award" Engineering	\$55,000	\$0
Design / Engineering	264,000	35,000
Construction	1,874,900	100,00
Construction Contingency	197,300	0
Labor Standards	15,000	0
Environmental Review	38,200	0
Project Management	15,000	0
Legal Fees	31,600	0
Cultural Resources Report and Monitoring	15,000	0
Permitting and Regulatory Fees	30,000	0
Planning	0	15,000
Total	\$2,536,000	\$150,000

EXHIBIT E - INFORMATION REQUIRED BY 2 CFR § 200.331(A)(1)
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Federal Award Identification:

- (i) Subrecipient* name (which must match registered name in DUNS): Mill City, City of
- (ii) Subrecipient's DUNS number: 034485664
- (iii) Federal Award Identification Number (FAIN): 98009020
- (iv) Federal Award Date: 9 September 2020
- (v) Sub-award Period of Performance Start and End Date: 36 months from Contract execution
- (vi) Total Amount of Federal Funds Obligated by this Contract: \$2,536,000
- (vii) Total Amount of Federal Funds Obligated by this initial Contract and any amendments: \$2,536,000
- (viii) Total Amount of Federal Award to the pass-through entity: \$14,487,000
- (ix) Federal award project description: Oregon's Drinking Water State Revolving Fund: This fund increases the capacity of Oregon to ensure that its public water systems continue to provide safe drinking water. This is done by (1) continuing loan financing to public water systems and support for newly proposed priority projects, (2) providing grant support for covering administrative expenses, small public water system technical assistance, State program management and local assistance, and (3) continuation of the loan fund to finance source water protection project initiatives, including acquiring conservation easements.
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
 - (a) Name of Federal awarding agency: U.S. Environmental Protection Agency
 - (b) Name of pass-through entity: Oregon Business Development Department
 - (c) Contact information for awarding official of the pass-through entity: Ed Tabor, Programs & Incentives Manager, 503-949-3523
- (xi) CFDA Number and Name: 66.468 Safe Drinking Water State Revolving Fund
Amount: \$2,536,000
- (xii) Is Award R&D? No
- (xiii) Indirect cost rate for the Federal award: N/A

* For the purposes of this Exhibit E, "Subrecipient" refers to Recipient and "pass-through entity" refers to OBDD.

EXHIBIT F - CERTIFICATION REGARDING LOBBYING

(Awards in excess of \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signed _____

Title _____

Date _____

Recipient: City of Mill City
Project Number: S21004

CHECKLIST OF CONTRACT DOCUMENTS AND INSTRUCTIONS

Please use the following checklist to ensure that all documents have been completed, and return all contract documents as soon as feasible, but not later than 60 days.

1. ☐ **Contract** signed and dated by the authorized official. Please return signature page only. (The authorized official must also sign Exhibit F, which is a Certification Regarding Lobbying.)
2. ☐ **Signature Card** with certification by the authorized official. Please return the complete document.
3. ☐ **Deposit Option Notification** form. Please return the complete form. If you choose to have funds electronically deposited in a financial institution (and not the Local Government Investment Pool), please follow the provided link and send a **Direct Deposit Authorization** form (SFMS ACH-1) to the Oregon Department of Administrative Services.
4. ☐ **Ordinance or Resolution or Order**. Please return the complete document.
5. ☐ **Opinion of Legal Counsel**. Please return the complete document.
6. ☐ **Disbursement Schedule Form**. The contract contains a condition that requires submittal of an estimated schedule of disbursement requests. Submittal must occur prior to the first disbursement of funds. The attached form in Excel format may be used to provide the required information and includes anticipated number, submission dates, and amounts.

Please let your Regional Project Manager know how you would like to receive the final contract documents, once signed by the Oregon Business Development Department, at which time we will also provide you with a **Disbursement Request Form** for your future use. This form is provided in Excel format for you to fill out and submit to your Regional Project Manager as needed once your project is underway.

Later in your project, your Regional Project Manager will provide any necessary report forms.

Authorized Signature Card for Cash Payments on Oregon Business Development Department Awards

Recipient City of Mill City		Project Number S21004	
Signatures of Delegated Authorized Individuals to Request Payments (Two signatures are required to request disbursement of funds)			
_____ Typed Name and Title (1) a _____ Signature (Highest Elected Official must not sign here)		_____ Typed Name and Title (1) b _____ Signature (Highest Elected Official must not sign here)	
Additional Signatures (if desired)			
_____ Typed Name and Title (1) c _____ Signature (Highest Elected Official must not sign here)		_____ Typed Name and Title (1) d _____ Signature (Highest Elected Official must not sign here)	
I certify that the signatures above are of the individuals authorized to draw funds for the cited project. _____ Typed Name, Title and Date (2) _____ Signature of Highest Elected Official or duly authorized official for the Recipient (Must not be listed in item (1) a through (1) d above)		Agency Use Only: Date Received:	

Oregon Business Development Department/Authorized Signature Card

Preparation of the Authorized Signature Card Form: If a mistake is made, or a change is necessary during the preparation of the signature card form, please prepare a new form, since erasures or corrections of any kind will not be acceptable. If you want to change individuals authorized to draw funds from the project, then please submit a new signature card. Any updated signature card will replace the previous one, so please be sure to include the names of all authorized individuals.

Item # Explanation

- (1) a-d Type the names and titles, and provide the signatures of the officials of your organization who are authorized to make draws on project funds. (Note: **Two** signatures are required. We recommend showing three or four signatures to allow adequate signature coverage.)
- (2) Enter the typed name, title, date and signature of the Highest Elected Official, or other official duly authorized by the governing body of the Recipient, certifying the authenticity of the signatures of individuals listed in Item (1) a through (1) d. The person signing here **must not be listed in Item (1) a through d.**
- (3) Leave blank—Oregon Business Development Department will sign here.

Complete one form and return it to: Oregon Business Development Department
 775 SUMMER ST NE STE 200
 SALEM OR 97301-1280

DEPOSIT OPTION NOTIFICATION

Complete and return this form to

Oregon Business Development Department

775 SUMMER ST NE STE 200

SALEM OR 97301-1280

City of Mill City

93-6002210

Recipient

Federal Tax ID Number

Replacement of Waterlines & Meters, No. 202-14210

S21004

Project Name

Project Number

I (we), the undersigned do hereby authorize the Oregon Business Development Department to: (Choose Method I or II below)

Method I - Electronic Funds Transfer (EFT)

Private Sector or Government Entities

- ☐ **Use New EFT Account:** A Direct Deposit Form (SFMS ACH-1) *completed by Financial Institution Representative* has been forwarded to the Oregon Department of Administrative Services authorizing the Oregon State Treasury to deposit funds into the designated financial account by way of the Automated Clearing House Services (ACH) of the Federal Reserve Banking System.

Requires an SFMS ACH-1 form to be marked CONFIDENTIAL and mailed to:

Oregon Department of Administrative Services

SFMS Operations / ACH Coordinator

155 COTTAGE ST NE STE U60

SALEM OR 97301-3970

Get the form here: www.oregon.gov/das/Financial/AcctgSys/Documents/ACH_Enrollment_Form.pdf

- ☐ **Use Existing EFT Account:** An account has already been set up for EFT deposits as required above.

Method II - Local Government Investment Pool (LGIP)

Government Entities Only

- ☐ Transfer funds to the **Oregon State Treasury Local Government Investment Pool** by electronic or other means.

The Oregon State Treasury is authorized to accept and deposit said funds into Local Government Investment Pool Account Number _____.

This authorization will override any previous authorization and will remain in effect until the Oregon Business Development Department has received written notification of its termination.

Type or Print Name(s) _____

Signature(s) _____

Title(s) _____

Date

Telephone Number

Fax Number

Proposed Disbursement Schedule

Project Name:	Replacement of Waterlines & Meters, No. 202-14210		
Recipient:	City of Mill City		
Project Number:	S21004		
Award Amount:	\$2,536,000		

#	Month / Year	Amount (\$)	Activities Associated with Disbursement
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
		\$0	\$2,536,000
		TOTAL	REMAINING FUNDS

**SAMPLE OPINION OF LEGAL COUNSEL
[LETTERHEAD OF COUNSEL]**

[DATED _____]

Oregon Infrastructure Finance Authority
775 Summer Street NE, Suite 200
Salem, Oregon 97301-1280

Ladies and Gentlemen:

[Insert "I" or "We"] have acted as counsel to the City of Mill City (the "Recipient"), which has entered into a financing contract (as hereinafter defined) with the Oregon Infrastructure Finance Authority of the Oregon Business Development Department ("OBDD"), and have acted as such in connection with the authorization, execution and delivery by the Recipient of such contract. Capitalized terms not otherwise defined in this letter shall have the meanings assigned to them by the Contract.

In so acting [insert "I" or "we"] have examined the Constitution and laws of the State of Oregon and the Recipient's Charter, if any. [Insert "I" or "We"] have also examined originals, or copies certified or otherwise identified to [insert "my" or "our"] satisfaction, of the following:

A. The S21004 Safe Drinking Water Revolving Loan Fund Financing Contract by and between the OBDD and the Recipient, signed by Recipient on _____, 20____, in the principal loan amount of \$2,536,000 (with \$530,000 eligible for principal forgiveness if contract conditions are met).

B. Proceedings of the governing body of the Recipient relating to the approval of the Contract and the execution, issuance and delivery thereof on behalf of the Recipient, and the authorization of the undertaking and completion of the Project as defined in the Contract.

C. All outstanding instruments relating to bonds, notes or other indebtedness of or relating to the Recipient.

[insert "I" or "We"] have also examined and relied upon originals, or copies certified or otherwise authenticated to [insert "my" or "our"] satisfaction, of such other records, documents, certificates and other instruments, and made such investigation of law as in [insert "my" or "our"] judgment [insert "I" or "we"] have deemed necessary or appropriate to enable [insert "me" or "us"] to render the opinions expressed below.

Based upon the foregoing, [insert "I am" or "We are"] of the opinion that:

1. The Recipient is a duly formed and operating [entity type] with the legal right to own and operate a publically owned drinking water system.

2. The Recipient has full legal right and authority to execute and deliver the Contract and to observe and perform its duties, covenants, obligations and agreements thereunder and to undertake and complete the Project.

3. Amounts due to the OBDD pursuant to the Contract are payable from the sources of payment described in the Contract.

4. An Ordinance for the Contract (the “Ordinance”) of the Recipient, approving the Contract and authorizing its execution, issuance and delivery on behalf of the Recipient, and authorizing the Recipient to undertake and complete the Project have been duly and lawfully adopted and authorized in accordance with the Recipient’s Charter, if any, the Act and other applicable Oregon law, and the Ordinance was adopted at a meeting or meetings which were duly called with public notice and held in accordance with the Recipient’s Charter, if any, and applicable Oregon law, and at which quorums were present and acting throughout.

5. The Contract has been duly authorized, executed and delivered by the authorized officers of the Recipient and constitutes the legal, valid and binding obligation of the Recipient enforceable in accordance with its terms; subject, however, to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors’ rights or remedies generally (“Creditor’s Rights Limitations”) heretofore or hereafter enacted and the application of equitable principles.

6. To the best of [insert “my” or “our”] knowledge, after such investigation as [insert “I” or “we”] have deemed appropriate, the authorization, execution and delivery of the Contract by the Recipient, the observation and performance by the Recipient of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions contemplated therein and the undertaking and completion of Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Recipient or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond ordinance, resolution, trust agreement, indenture, mortgage, deed of trust or other agreement to which the Recipient is a party or by which it, the Project, or its property or assets is bound.

7. To the best of [insert “my” or “our”] knowledge, after such investigation as [insert “I” or “we”] have deemed appropriate, all approvals, consents or authorizations of, or registrations of or filings with, any governmental or public agency, authority or person required to date on the part of the Recipient in connection with the authorization, execution, delivery and performance of the Contract and the undertaking and completion of the Project have been obtained or made.

8. To the best of [insert “my” or “our”] knowledge, after such investigation as [insert “I” or “we”] have deemed appropriate, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State or Federal) questioning the creation, organization or existence of the Recipient or of the validity, legality or enforceability of the Contract or the undertaking or completion of the Project.

This opinion is rendered on the basis of the laws of the State of Oregon, as enacted and construed on the date hereof. [insert “I” or “We”] express no opinion as to any matter not set forth in the numbered paragraphs herein.

Very truly yours,

LISTEN 20 – Ms. Schenck asked Mr. Kinney for clarification on the upcoming state regulations for partitions.

Ms. Schenck asked if the CC&R's prevent re-division of the parcels. Mr. Kinney said that they do not.

Woody Koenig moved, seconded by Jim Grimes to approve the minor partition application of Kyle and Courtney Plotts and to adopt the findings of fact, conclusions and recommended conditions of approval for File No. 2020-09. The motion carried, (6:0).

PRESENTATIONS: None.

OLD BUSINESS:

Mill City Zoning Code Amendments: Mr. Kinney said that the Public Facilities section is nearly complete but the street cross sections need to be reviewed. The Riparian code is ready to go to Council for review with the exception of the final set of maps needing completed. The Planning Commission should recommend to Council to set a hearing date in February.

Marge Henning moved, seconded by Woody Koenig to forward the Riparian Code to the City Council with a recommendation that they direct the Planning Commission to set a public hearing for the code changes. The motion carried, (6:0).

Wildfire Response – Emergency Housing Ordinance Adopted by City: Mrs. Cook said that Council adopted Ordinance No. 403 in October as an emergency modification to the City's zoning code. It allows for RV's to be resided in temporarily in response to the wildfires. This ordinance is for people who want to allow for an RV on their private property. There is an application and \$25.00 fee along with some supporting documentation.

Mrs. Cook said that the temporary RV site on the highway is complete. There are 22 available spaces. The layout is tight but people are very excited to have a space for a temporary home where they have water, sewer and heat.

The City is working with FEMA to allow lease of two acres on the south end of the WWTP. There are 14 spaces proposed, which should be for single-wide manufactured homes. FEMA is ready to go, however, there are still some engineering issues that are being worked through.

Wildfire Response – City/County Building Permits for Replacement Structures: Mrs. Cook said that both Marion and Linn Counties have approved waiver of building permit fees for homes lost to the wildfire. Because Mill City is a contract city with Linn County the City had to determine whether to allow waiver of fees for those who lost homes in Mill City. The Council authorized waiver of fees for these homes.

NEW BUSINESS:

PSU 2021 Populations Projections (Survey Response): Mr. Kinney said that a survey was submitted to PSU for their use during upcoming population projections. Mr. Koenig asked how

David W. Kinney
Community Development Consultant
791 E. Hollister St., Stayton, OR 97383
(503) 551-0899
Email: dwkinney@wvi.com

November 11, 2020

To: Chair Ann Carey and Planning Commissioners
From: David W. Kinney, Planning Consultant
In RE: Old Business Items for November 17, 2020 Meeting

6. Old Business

a. Mill City Zoning Code Amendments

i. *File 2020-03 – Chapter 17.84 Public Facilities.*

Linn County GIS has prepared several maps, but the City Engineer and I have not finalized the street cross-sections and he has not completed his review. We will bring this back for a final recommendation at the December 15, 2020 meeting.

ii. *File 2020-06 – Chapter 17.80 Riparian Code for City-owned Properties*

The subcommittee of Jim Grimes, David Leach and Marge Henning met last week to review the riparian code amendments. They are ready to submit to the City Council. If the City Council concurs, a public hearing will be set for the January 19, 2021 meeting..

Recommendation: Recommend to the City Council that a hearing be set to consider the Riparian Code amendments for public properties.

b. Wildfire Response

i. *Emergency Transitional Housing – Authorization by ORS 446.265.*

The City Council has adopted an Emergency Transitional Housing Ordinance. The City is leasing a parcel of property from Ed Rada, at the corner of NW Alder Street and NW 7th Avenue as an RV Park for emergency transitional housing for people displaced by the wildfire. Ordinance 403 is attached. Stacie can answer questions at the meeting.

ii. *Building Permits for Replacement Structures.*

Stacie will give an oral update on property owner plans/discussions about rebuilding.

Requested Action: FYI. Discussion.

Mill City Zoning Code Amendments

Riparian Corridor – Publicly Owned Properties

DRAFT #6 – November 2020

17.80 RIPARIAN CORRIDORS

17.80.010 Purpose and Intent

Chapter 17.80 applies to properties in the Public Zone and to publicly-owned parcels in other zones that abut the North Santiam River and its tributaries in the City of Mill City.

The purpose of Chapter 17.80 is to protect and restore riparian corridors and their associated water bodies, because of the multiple social and environmental functions and benefits these areas provide individual property owners, communities, and the watershed. Specifically, this Chapter is intended to:

- A. Protect habitat for fish and other aquatic life,
- B. Protect habitat for wildlife,
- C. Protect water quality for human uses and aquatic life,
- D. Protect associated wetlands,
- E. Control erosion and limit sedimentation,
- F. Provide a stream “right of way” to accommodate lateral migration of the channel and protect the stream and adjacent properties,
- G. Reduce the effects of flooding, and
- H. Reserve space for storm water management facilities, other utilities and linear parks.

Chapter 17.80 is based on the “safe harbor” approach as defined in Oregon Administrative Rules (OAR), Chapter 660-23-0090(5) and (8).

This Chapter excludes new structures from riparian buffer areas established around fish-bearing streams and adjacent wetland in Mill City. This Chapter also limits vegetation removal or other alteration in these buffers and establishes a preference for native vegetation in the buffers.

17.80.020 Definitions

- A. Fish Use: Streams inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts. Fish use is determined from the natural resources inventory in the Mill City Comprehensive Plan or a statewide inventory prepared by the Oregon Department of Fish and Wildlife.
- B. Impervious Surface: Any material that reduces and prevents absorption of storm water into previously undeveloped land.

- C. Lawn: Grass maintained as a ground cover of less than six (6) inches in height. For purposes of this Chapter, lawn is not considered native vegetation regardless of the species used.
- D. Mitigation: Mitigation includes taking one or more of the following actions listed in order of priority:
 - 1. Avoiding the impact altogether by not taking a certain development action or part of that action;
 - 2. Minimizing impacts by limiting the degree or magnitude of the development action and its implementation;
 - 3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
 - 4. Reducing or eliminating the impact over time by preservation and maintenance operation during the life of the development action by monitoring and taking appropriate corrective measures;
 - 5. Compensating for the impact by replacing or providing comparable substitute resources or environments.
- E. Net Loss: Net loss means a permanent loss of habitat units or habitat value resulting from a development action despite mitigation measures taken.
- F. Non-conforming: A structure or use that does not conform to the standards of Title 17 of the Mill City Municipal Code **as of January 1, 2021**. Non-conforming uses are not considered violations and are generally allowed to continue or be maintained, subject to the requirements of MCMC Chapter 17.48.
- G. Off-Site Mitigation: Habitat mitigation measures undertaken on property that is not part of the development site, which are intended to benefit fish and wildlife populations other than those directly affected by the proposed development activity.
- H. On-Site Mitigation: Habitat mitigation measures undertaken within or in immediate proximity to areas affected by a development action, and which are intended to benefit fish and wildlife populations directly affected by that action.
- I. Riparian Area: The area adjacent to a river, lake, stream, or wetland, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem. A Goal 5 resource defined by OAR 660-023-0090 (1)(b).
- J. Riparian Corridor: A protected zone within the riparian area where placement of new structures, surface alteration and disturbance, and vegetation removal, is limited or prohibited in order to preserve the environmental and social benefits of the riparian area.
- K. Riparian Corridor Boundary: An imaginary line that is a certain distance upland from the waterbody top of the bank.
- L. Safe Harbor: A safe harbor has the meaning given to it in OAR 660-023-0020(2). A "safe harbor" consists of an optional course of action that satisfies certain requirements under the standard process. Local governments may follow safe harbor requirements rather than addressing certain requirements in the standard Goal 5 process. For example, a jurisdiction may choose to identify "significant" riparian corridors using the safe harbor criteria under OAR 660-023- 0090(5) rather than follow the general requirements for determining "significance" in the standard Goal 5 process

under OAR 660-023-0030(4). The safe harbor distances for waterways in Mill City are identified in MCMC Section 17.80.030

- O. Stream: A channel such as a river or creek that carries flowing surface water including perennial and intermittent streams with defined channels, and excluding man-made irrigation and drainage channels.
- P. Structure: A building, accessory building, viewing platform, deck or other structure that is built, constructed or installed, not including minor improvements, such as utility poles, flagpoles, or irrigation system components, that are not customarily regulated through zoning ordinances.
- Q. Substantial Improvement: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- 1. Before the improvement or repair is started, or
- 2. If the structure has been damaged and is being restored, before the damage occurred.

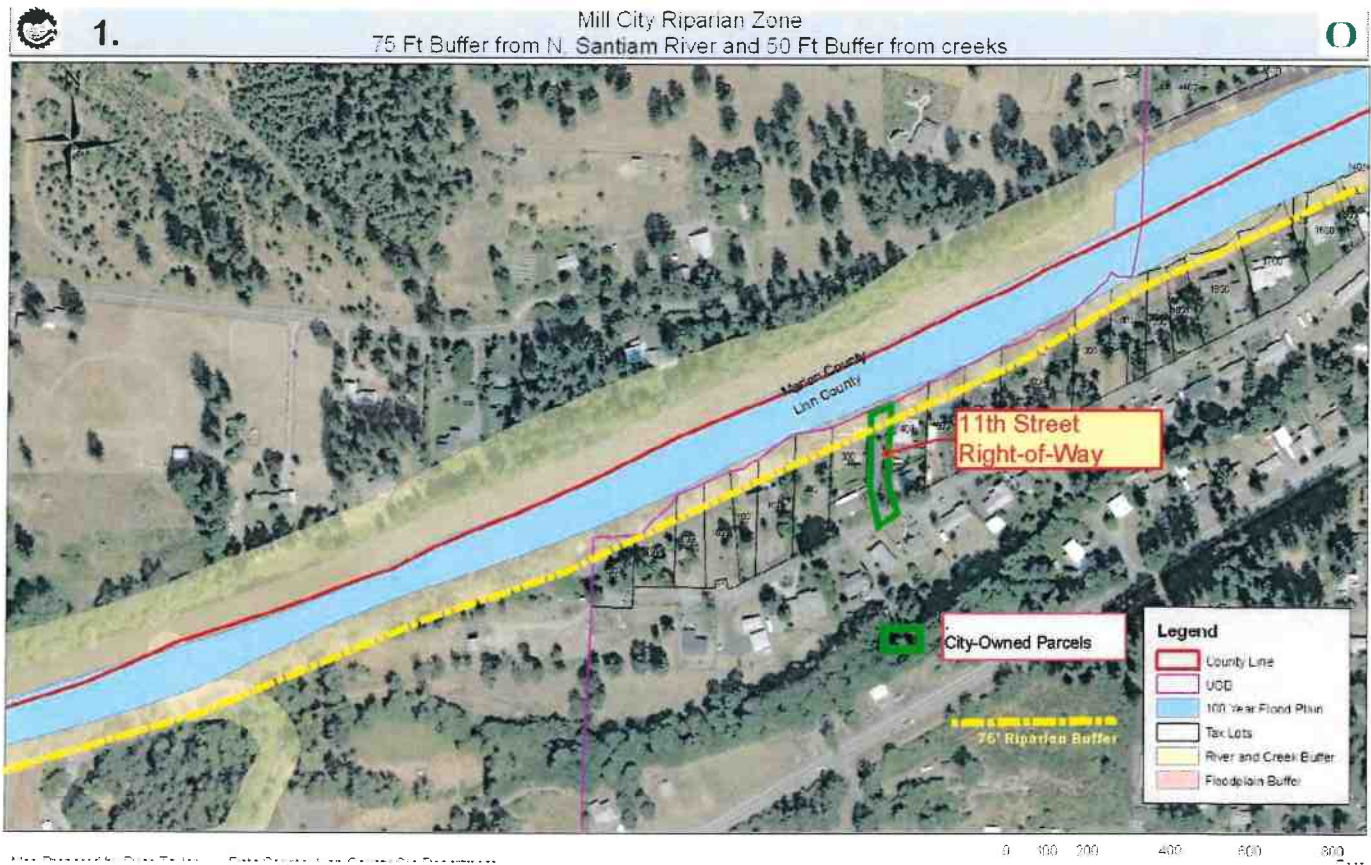
For the purposed of this definition, “Substantial Improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

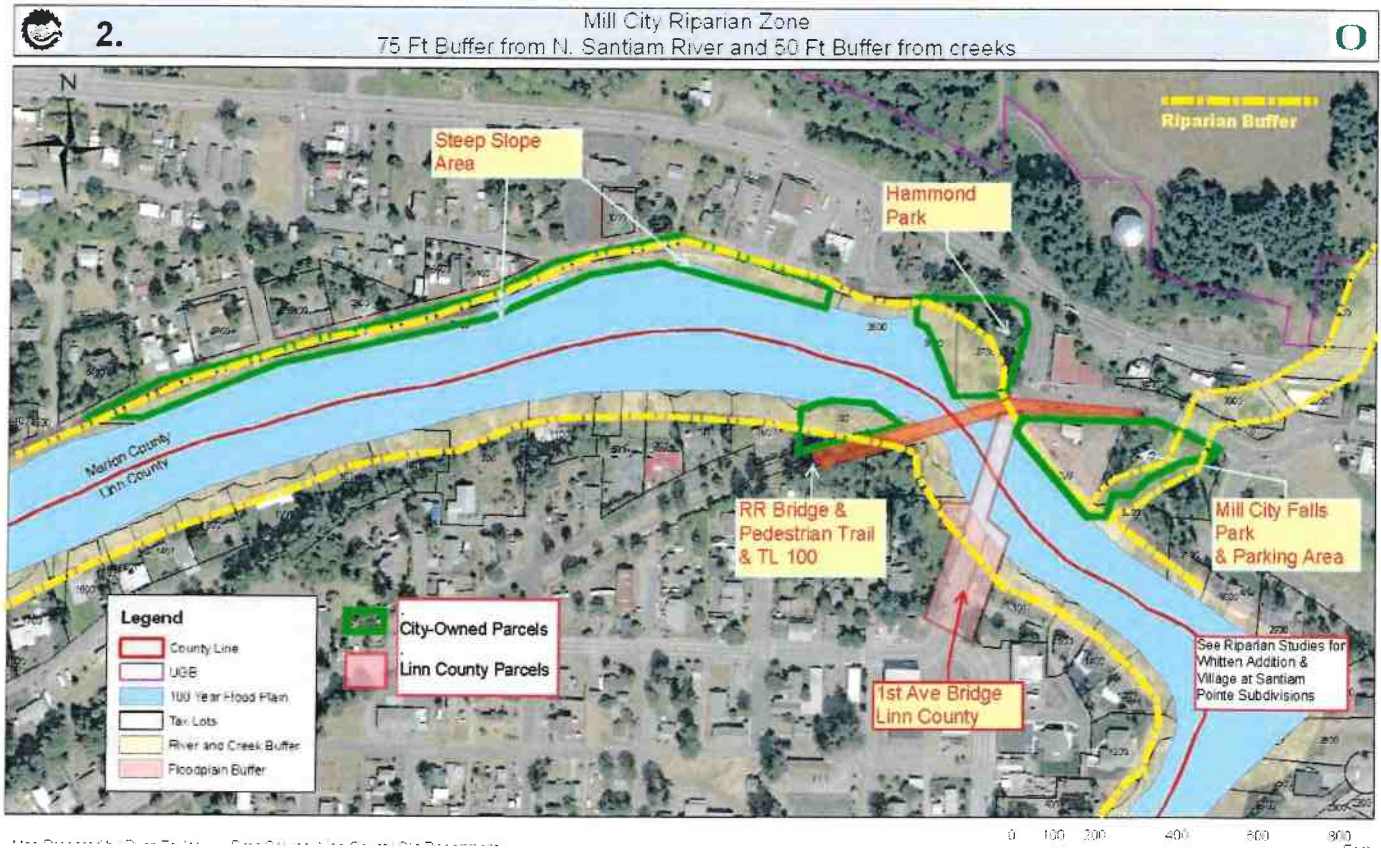
The term does not, however, include either:

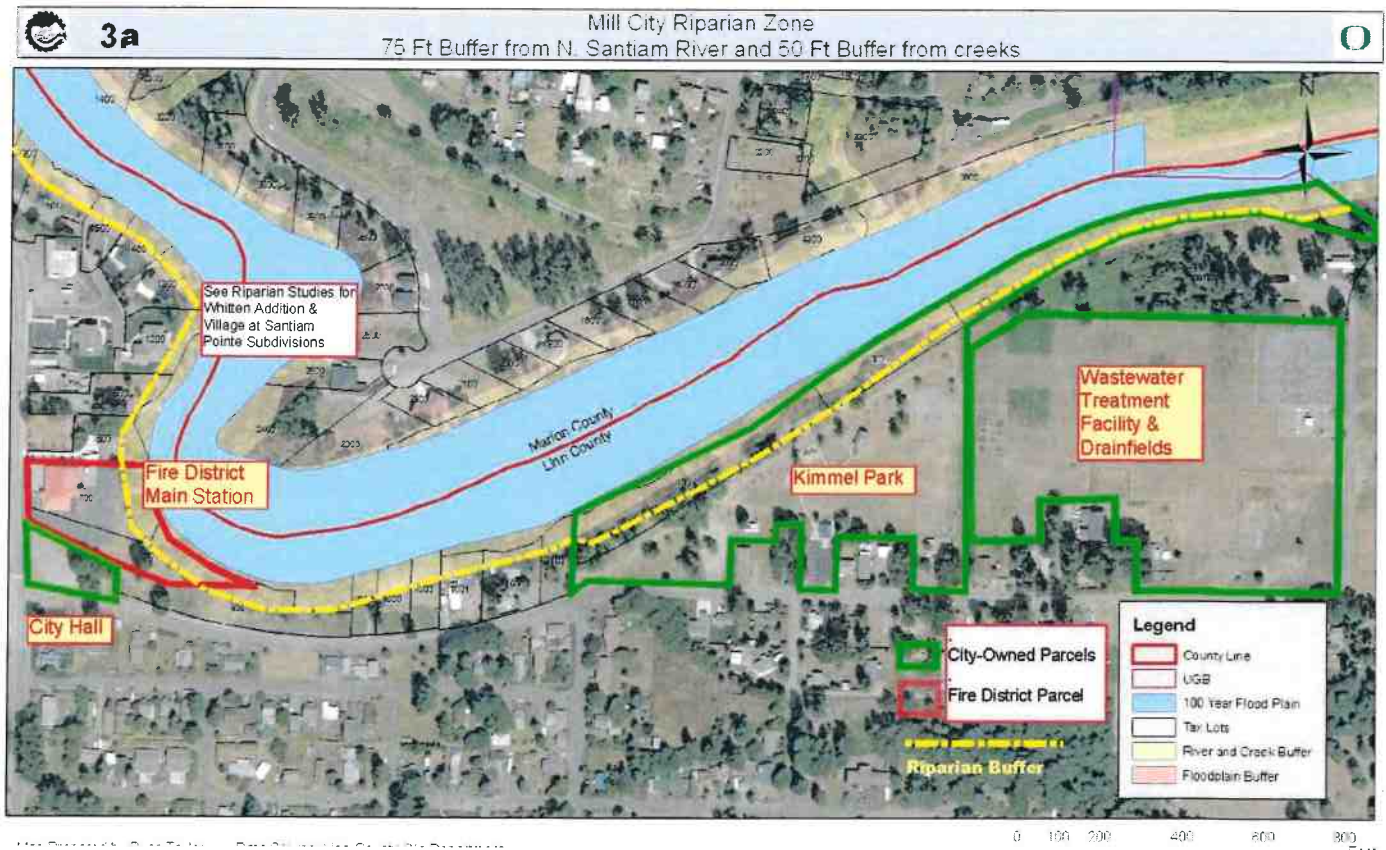
- 1. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specification which are solely necessary to assure safe living conditions, or
 - 2. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
- R. Top of Bank: Means the stage or elevation at which water overflows the natural banks of streams or other water of the state, and begins to inundate the upland areas. In absence of physical evidence, the two-year recurrence interval flood elevation will be used to approximate the “bank full” stage or delineate the top of bank.

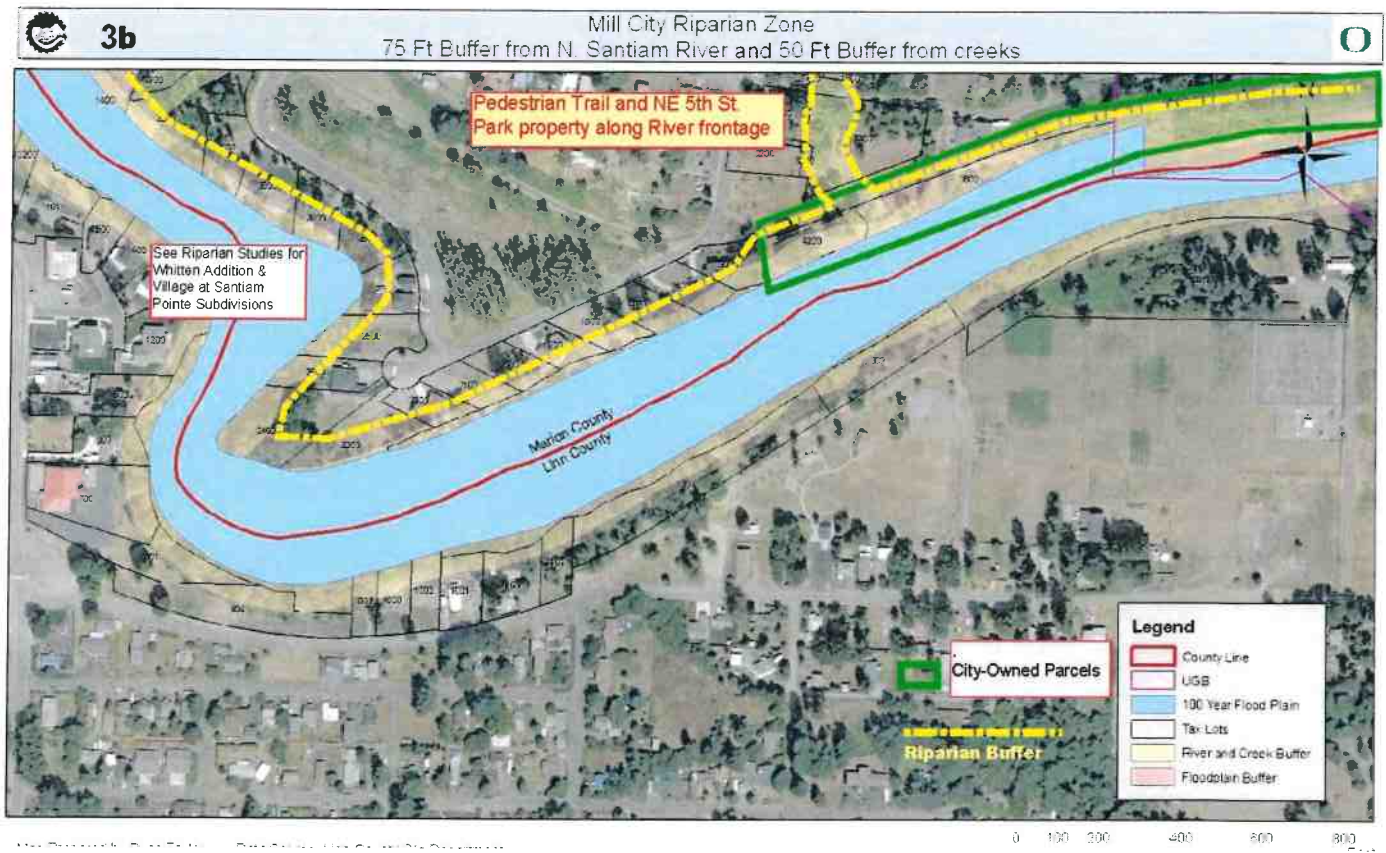
For the North Santiam River, the approximate location of the “top of bank” are shown in Appendix “A”, attached hereto and hereby made a part of this ordinance.

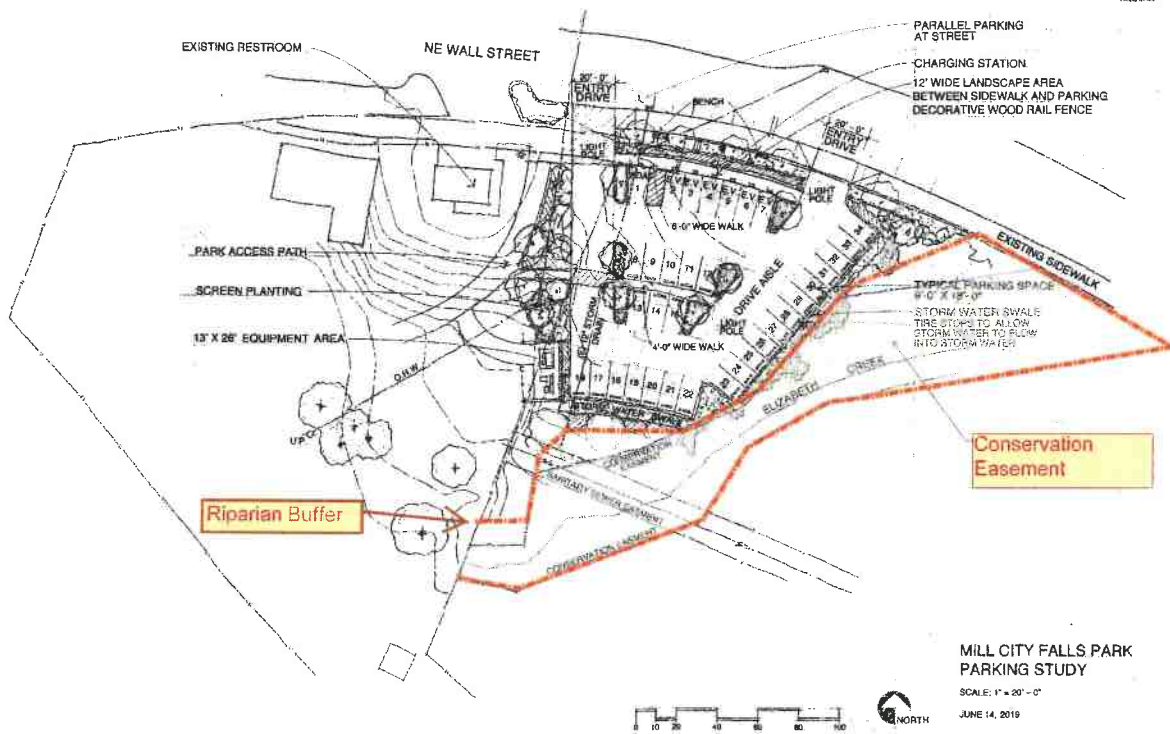
Linn County GIS has prepared a set of GIS maps showing the 75' safe harbor riparian corridor for the North Santiam River and a 50' safe harbor riparian corridor for the other creeks in the Mill CityUGB.











17.80.030 Identifying Riparian Areas and Establishing the Location of the Riparian Buffer

- A. The inventory of significant riparian areas contained in the *Natural Resources Element of the Mill City Comprehensive Plan* lists fish-bearing streams.
- B. The following riparian buffers, as shown on the maps in Exhibit “A”, are adopted for fish-bearing stream segments in the City of Mill City:

Stream Sizes w/ Annual Average Flow less than 1000 cfs

1. Cedar Creek shall have a buffer of 50 feet from the top of bank.

The “Reid House”, Cedar Creek Park, including the bike/pedestrian trail east of NE 5th Avenue abut Cedar Creek.

- New structures on the “Reid House” site will need to comply with this 50’ safe harbor.
- No structures are planned for the bike/ped trail and green space adjacent to the N. Santiam River.

2. Elizabeth Creek shall have a buffer of 50 feet from the top of bank except as identified below;

- a. Riparian setbacks within the Village at Santiam Pointe subdivision shall be in accordance with the riparian and wetlands study, prepared by Fishman Environmental Services, January 1999 (FES Project #98110), as approved by the Mill City Planning Commission, (File No. 1998-10-13), and designated on the approved site plans for individual lots in the subdivision.

See File 2019-04 - “PacifiCorp EV Charging Station and Parking Lot Plan” for Lot 20. The parking lot is outside the Conservation Easement. The edge of the conservation easement is less than 50’ from the creek in several locations as shown on the map.

In 2007-2008, the City and the Marion Soil & Water Conservation Service collaborated on a planting project for a short section of Elizabeth Creek that crosses Mill City Falls Park. The plants have not survived. The Mill City Falls Park plan shows native plantings adjacent to Elizabeth Creek.

3. DeFord Creek and Snake Creek shall have a minimum buffer of 50 feet from the top of bank.¹

The North Santiam Watershed Council’s restoration plan recommends a 35’ to 50’ riparian buffer from the top of the streambank. DeFord and Snake Creek are almost entirely outside the City Limits & UGB. The City does not own any land along DeFord Creek or Snake Creek. Linn County owns Tuers Lane along the edge of Snake Creek.

¹ See the *DeFord Creek Assessment and Restoration Concepts Plan, Final Report*, prepared for the North Santiam Watershed Council by the River Design Group, Inc., June 23, 2010.

Stream Sizes w/ Annual Average Flow greater than 1000 cfs

4. The North Santiam River shall have a minimum buffer of 75 feet from the “bank full” stage of the river, as shown on the maps in Appendix “A”, except as identified below:

The City owns several properties abutting the N. Santiam River:

NORTH SIDE OF RIVER

1. Cedar Creek Park (NE 5th east to ½ mile beyond city limits). Pedestrian Trail & Greenway.
2. Mill City Falls Park (1st & Wall Street)
3. Hammond Park
4. Steep Bank (river side NW Alder & NW River Rd.) -- 7-Eleven to almost NW 8th Place.

SOUTH SIDE OF RIVER

1. Narrow strip from SE Remine Rd. to Kimmel Park
2. Kimmel Park
3. RR Bridge
4. 0.35-acre parcel north of RR Bridge
5. SW 11th St. ROW to river.

OTHER PUBLICLY OWNED PARCELS

1. Mill City Fire District
2. Linn County (1st Avenue Vehicle Bridge)

5. Where the riparian buffer includes all or portion of a significant wetland as identified in the *City of Mill City Local Wetlands Inventory*², the riparian buffer shall be at least 50 feet and shall be measured from and include the upland edge of the wetland.

Applies to Elizabeth Creek on Lot 20 in the Village at Santiam Pointe Subdivision (Erdman).

6. The measurement of the riparian buffer shall be measured from the top of the bank (as shown on the maps in Appendix A). The measurement shall be slope distance. In areas where the top of each bank is not clearly defined, the riparian buffer shall be measured from the ordinary high-water level, or the line of non-aquatic vegetation, whichever is most landward.

17.80.040 Protecting Riparian Resource by Managing Activities in the Riparian Buffer

- A. The permanent alteration of the riparian buffer by grading or by the placement of structures, sidewalks, decks, patios, paved areas or other impervious surfaces is prohibited.
- B. The outdoor storage of materials, motor vehicles, recreational vehicles or other items in the riparian area is prohibited.
- C. Removal of riparian vegetation in the buffer is prohibited, except for:
 1. Removal of non-native vegetation and replacement with native plant species. At a minimum,

² See the adopted *City of Mill City Local Wetlands Inventory* (2011). Map is available at City Hall or view the map at the Oregon Department of State Lands (DSL) website: [DSL - Local Wetlands Inventories](#).

replacement vegetation shall cover the area from which vegetation was removed, and shall maintain or exceed the density of the removed vegetation;³ and

2. Removal of vegetation necessary for the development of approved water-related or water-dependent uses. Vegetation removal shall be kept to the minimum necessary to allow the water-dependent or water-related use; and
 3. Trees in danger of falling or that pose a hazard to life or property may be trimmed or removed. If no hazard will be created, the City may require a tree, once felled, to be left in place in the protected riparian corridor. The City Recorder may require replacement trees to be planted with native tree species. The City may consult with an arborist, the Oregon Department of Forestry, Oregon Fish and Wildlife Department, North Santiam Watershed Council and Soil and Water Conservation Districts or other professional foresters for recommendations; and
 4. Incidental removal of vegetation associated with recreational, educational, scientific research and land survey activities; and
 5. Removal of trees under a commercial harvesting permit granted by the Oregon Department of Forestry.
- D. Permitted Vegetation Management Exception: The following activities are permitted and are not required to meet the standards of this section.
1. Annual or biannual mowing of native grasses, as a part of a vegetation management plan to prevent the incursion of undesirable non-native weed species is allowed.
 2. Removal of invasive species and non-native vegetation.
 3. Native Plant replacement or restoration projects
- E. Exceptions: The following uses may be permitted. The applicant must obtain a riparian development permit as required in Section 17.80.050 and must obtain applicable state and/or federal permits as required in Section 17.80.070.
1. Pedestrian/bicycle paths and recreational trails;
 2. Public and private utilities;
 3. Parks and recreation facilities, such as viewpoints, picnic tables, trash receptacles, play equipment, or similar facilities;
 4. Irrigation pumps;
 5. Drainage facilities;
 6. Stormwater detention, retention and water quality treatment facilities designed to enhance overall function of the riparian resource (for example a grassy swale or constructed wetland with a buffer of native vegetation).
 7. Water-related and water-dependent uses (for example boat launch, fishing dock);

³ The City will utilize a recognized list of native and non-native plant species [e.g. *Guide for Using Willamette Valley Native Plants Along Your Stream*, Linn Soil & Water Conservation District, October 1998] or similar information sources. The City will consult with the North Santiam Watershed Council, Linn Soil and Water Conservation District or the Marion Soil and Water Conservation District or ODFW when planning a streamside restoration project.

8. Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area; [e.g. existing picnic shelter, pump station, etc.].
9. Structures within the protected riparian corridor may be expanded provided the expansion does not occur within the riparian buffer. Substantial improvement of a non-conforming structure in the riparian buffer shall require compliance with the non-conforming use standards of this Chapter and MCMC Chapter 17.48;
10. Existing lawn and non-native plantings within the riparian buffer may be maintained, but not expanded within the protected area. New development activities on the property do not permit replacement of vegetation in the riparian buffer with lawn; and
11. Existing shoreline stabilization and flood control structures may be maintained. Any expansion of existing structures or development of new structures shall be evaluated by the local government and appropriate natural resource agency staff, for example Oregon Department of Fish and Wildlife, Division of State Lands, Department of Environmental Quality, Water Resources Department. Such alteration of the riparian buffer shall be approved only if less-invasive or nonstructural methods will not adequately meet the stabilization or flood control needs.

17.80.050 Riparian Development Permit Requirements

- A. Permit Required. Any person proposing a development activity on a lot, where any portion of the proposed development activity is within the riparian buffer, shall file an application with the City and obtain city approval of a riparian development permit before proceeding.⁴

8-07-2020 Jim Grimes comment: *Assuming that the listed development activities in 1. trigger some other application submittal, the riparian corridor review should only be triggered if the activity encroaches into the riparian corridor and is not exempt from the review.*

PC Subcommittee concurred.

1. A development activity includes:
 - a. New building construction;
 - b. A deck, patio or addition to an existing structure;
 - c. A subdivision, partition or lot line adjustment;
 - d. The removal of trees or other vegetation in the riparian area, not including those trees removed in accordance with Section 17.80.040 (C).
 - e. The addition or removal of fifty (50) cubic yards of soil within the riparian area; *(A DSL Fill & Removal Permit is required when the activity is within a jurisdictional waterway or wetland);*
 - f. Construction of a driveway or parking area;
 - g. Installation of a public and/or private utility;

⁴ If the development activity is outside the riparian buffer area, a riparian development permit is not required.

- h. A park and recreation facility;
 - i. Drainage facilities and stormwater treatment facilities;
 - j. Water-related and water-dependent uses (for example boat launch, fishing dock);
 - k. Replacement of existing structures or other non-conforming alterations existing fully or partially within the protected riparian buffer;
 - l. Shoreline stabilization and flood control structures; and
 - m. Any other development activity which directly impacts the riparian area.
2. Exceptions. The following activities within the riparian buffer are exempt from City review and do not require a riparian development permit from the City.
- a. Removal of vegetation within the riparian area in compliance with Section 17.80.040.
 - b. Repair or remodel of an existing structure that does not disturb additional riparian surface area;
 - c. Replacement of an existing structure with a new structure in the same location that does not disturb additional riparian surface area;
 - d. Construction and/or replacement of a pump house, irrigation equipment or facility;
 - e. The restoration or maintenance of an historic structure including railroad bridge and abutments, walls, pilings and water intake areas.
 - f. Park and recreation equipment and appurtenances, such as picnic tables, trash receptacles, play equipment, or similar facilities;
 - g. Native plant replacement or restoration projects.
- B. Application. An application for a riparian development permit shall be submitted to the City in accordance with the provisions of Section 17.64.060. A filing fee in accordance with the provisions of Section 17.64.070 shall be submitted with the application. The application shall include:
- 1. A site plan, drawn to scale, showing all property lines, proposed lot lines, existing and proposed structures. The plan must include the names of the applicant, property owner, date, north arrow and scale of the drawing.
 - 2. The following items must be shown on the site plan:
 - a. all existing and proposed structures;
 - b. existing and proposed streets, easement and utilities;
 - c. the location of waterways, the top of the stream or waterbody bank, the riparian buffer boundary and areas of riparian vegetation.
 - e. the location and direction of drainage channels and the location of areas subject to flooding, including any identified wetlands.
 - f. natural features such as rock outcroppings, marshes, wooded areas and isolated preservable trees.
 - 3. If the proposal includes development within the identified riparian buffer identified in MCMC Section 17.80.030, then the applicant must submit the following information:

- a. Uses that will occur within the protected riparian corridor and potential impacts (for example: storm drainage runoff, chemical runoff, noise, etc.);
 - b. The extent of vegetation removal proposed;
 - c. Characteristics of existing vegetation (types, density);
 - d. Any proposed grading, fill, or alterations of topography or drainage patterns,
 - e. Existing uses on the property and any potential impacts they could have on riparian resources, and
 - f. Proposed mitigation plans to reduce negative impacts on the riparian corridor.
- C. Hearing and Action on a Riparian Development Permit. Before the planning commission may act on an application for a riparian development permit, it shall hold a public hearing in accordance with the provisions of Sections 17.64.080 and 17.64.090.
 1. Hearing notice shall also be provided to the Oregon Department of Fish and Wildlife, the Oregon Division of State Lands, the Oregon Department of Forestry and the North Santiam Watershed Council.
 2. Decision and Conditions of Approval. After the public hearing is closed, the planning commission shall either approve or deny the application. In approving the application, the planning commission may impose conditions as outlined in subsection (F) of this section. Additional state or federal permits may be required.
- D. Decision Criteria. In order for the City to approve a riparian development permit, the City shall conclude the proposal complies with all of the following criteria.
 1. The proposal is allowed as a permitted or conditional use in the zone.
 2. The proposal complies with the riparian setback requirements in MCMC Section 17.80.030.
 3. The proposal complies with the riparian protection requirements in MCMC Section 17.80.040.
 4. The proposed use includes actions to protect existing fish and wildlife habitat, including such items as stream bank erosion/stabilization and water quality degradation.
 5. If the proposed use or activity is within a special riparian or wetlands study area, that the special riparian/wetlands plan has been approved by the Mill City Planning Commission and the proposal complies or can comply with recommended mitigation measures in the plan.
 6. The applicant has obtained or applied for applicable regulatory permits approved by the Division of State Lands, Oregon Department of Fish & Wildlife, U. S. Army Corps of Engineers or other state or federal regulatory agency.
- E. Basis for Denial: The Planning Commission may deny a riparian permit application if it concludes the proposal does not or cannot comply with the approval criteria and/or cannot be conditioned to mitigate its adverse impact on the riparian corridor.
- F. Conditions of Approval: The City may impose conditions of approval in order to maintain, enhance and protect the riparian area and existing fish and wildlife habitat along the river. Conditions of approval may include, but are not limited to, the following:
 1. Replacement of trees or natural vegetation removed due to the development activities.

2. Planting of new trees or native vegetation to restore the riparian corridor. Planting shall be with riparian plant species appropriate to western Oregon. The Planning Commission may require the applicant to work with the North Santiam Watershed Council or the Linn/Marion Soil and Water Conservation District to develop an approved mitigation or planting plan.
 3. Requirement of additional or special setbacks from the water's edge, the top of the bank or from the edge of the identified the riparian buffer.
 4. Installation of a landscape buffer or fencing outside the riparian buffer to protect the riparian corridor.
 5. Compliance with mitigation recommendations in a riparian or wetlands mitigation plan approved by the Planning Commission.
 6. Compliance with all requirements imposed under a permit issued by a state or federal regulatory authority.
- G. Time Limit for an Approved Riparian Development Permit.
1. Approval of a riparian development permit that involves the construction or expansion of a building shall expire two years after the date of the written Notice of Decision unless a building permit application has been filed. However, upon written request, the planning commission may grant one extension, not to exceed two years, to complete the project.
 2. Approval of a riparian development permit for a use or development activity that does not involve construction or expansion of a building shall expire five years after the date of the written Notice of Decision.
 3. Approval of a riparian development permit for a partition or subdivision shall expire two years after the date of the written Notice of Decision, if a final plat has not been filed and recorded. The City may issue building permits for construction of new buildings within the approved land division for a period of up to seven (7) years from the date the final plat is recorded with the county as long as the applicant fully complies with the conditions of approval of the riparian development permit.
 4. Riparian development approvals are not transferable.

17.80.060 Adjusting Riparian Buffers

- A. Alteration of the riparian buffer, as shown on the maps in Exhibit "A", is allowed subject to the conditions in an approved riparian development permit, compliance with an approved mitigation plan or a permit issued by a state or federal regulatory authority.
- B. Proposals for modification of the riparian buffer will be referred to affected agencies, including but not limited to, the North Santiam Watershed Council, the Oregon Department of Fish and Wildlife (ODFW), the Division of State Lands (DSL) or the U. S. Army Corps of Engineers. The agency review and/or mitigation recommendations from the regulatory agency shall be included in the record. For purpose of implementing Statewide Planning Goal 5, the goal is no net loss of protected resources and no net loss of habitat values.
- C. Variance. Variances to requirements in Chapter 17.80 are not permitted on City-owned properties.

17.80.070 Compliance with State and Federal Regulations

All activities wholly or partially within riparian corridors and subject to applicable Division of State Lands permit requirements under the Removal-Fill Law and the U.S. Army Corps of Engineers permit requirements under Section 404 of the Clean Water Act. Where there is a difference between local, state, or federal regulations, the more restrictive regulations shall apply.

In addition, the City may defer its authority under Chapter 17.80 to allow for the implementation of a restoration plan, action plan or joint permit issued by the Division of State Lands, Oregon Department of Fish and Wildlife, the U. S. Army Corps of Engineers and/or Linn/Marion County, upon submittal of a copy of the approved permit to the City. Such plans or permits may include, but are not limited to:

- A. Fill Removal Permits
- B. Fish Habitat General Authorizations
- C. Other General Authorization Permits
- D. Large Wood General Authorization Permit
- E. Flood Plain Permit

17.80.080 Penalties

Any activities within a riparian buffer not authorized under this Chapter are a violation. Violators shall be subject to the enforcement procedures pursuant to Chapter 17.64 of this Code. A violation of this Chapter shall be considered a separate offense for each day the violation continues.

17.80.090 Conflicts

To best protect important functions and values of riparian buffers in the event that the requirements of this section conflict with other ordinance requirements, the City shall apply the requirements that best provide for the protection of the resource.

17.80.100 Severability

The sections and subsections of this Chapter are severable. The invalidity of one section or subsection shall not affect the validity of the remaining sections, or permit approvals and prosecutions brought pursuant to this section.

Mill City Riparian Code

APPENDICES

:

1. Mill City Zoning Code: Land Use Actions on N. Santiam River
2. Mill City Comprehensive Plan: Chapter 5- Natural Resources Goals and Policies
3. OAR 660-23 “Goal 5 Resource Protection” Requirements for Local Governments

Appendix 1

EXISTING MILL CITY ZONING CODE

LAND USE ACTIONS ON THE N. SANTIAM RIVER

17.44.120 Review of land use action involving the North Santiam River. Existing or proposed lots that adjoin the North Santiam River shall comply with the following requirements.

- A. Land Use Changes. Any land use change involving a current lot or proposed lot that adjoins the North Santiam River shall be submitted to the planning commission for review.
 - 1. Land use changes include, but are not limited to:
 - a. New building construction, enlargement of a building on the riverfront side of the building; or
 - b. The removal of trees or other vegetation in the area between the stream channel and the topographical break at the top of the stream bank; or
 - c. The creation of a lot or parcel by the subdividing or partitioning of land; or
 - d. Landscaping that requires the addition or removal of fifty (50) cubic yards of soil within seventy-five (75) feet above the topographical break at the top of the stream bank as outlined in subsection (D) of this section; or
 - e. Water dependent uses such as boat docks or boat launching and/or mooring facilities.
 - 2. Exceptions. The following land use changes are exempt from planning commission review:
 - a. Removal of a tree that could become a threat to life or structure if done in such a way that stream bank stability is maintained;
 - b. Removal of tansy ragwort, Canadian thistle, and other noxious weeds if followed by replanting of the area with riparian species appropriate to Western Oregon;
 - c. Construction of an accessory structure such as a pump house or storage shed, not to exceed one hundred twenty (120) square feet in area and ten (10) feet in height.
- B. Review Criteria. The planning commission shall use the following criteria in approval or denial of an application:
 - 1. The removal of any existing trees or other forms of existing natural vegetation such as shrubs, brush, plants or grasses between the stream channel and the topographical break at the top of the stream bank shall not be harmful to existing fish and wildlife habitat, including such items as stream bank erosion/stabilization and water quality degradation. When the removal of trees is considered to be commercial harvesting, the Oregon Department of Forestry shall have jurisdiction to manage the removal of trees;
 - 2. A use or activity expressed in the proposed request shall not have a potentially damaging impact on existing fish or wildlife habitat along the river.
- C. Application. An application for a land use change involving the North Santiam River shall be submitted to the planning commission in accordance with the provisions of Section 17.64.060. A filing fee in

accordance with the provisions of Section 17.64.070 shall be submitted with the application.

- D. Hearing and Action on Land Use Change Application Involving the North Santiam River. Before the planning commission may act on an application for a land use change involving the North Santiam River, it shall hold a public hearing in accordance with the provisions of Sections 17.64.080 and 17.64.090. Hearing notice shall also be provided to the Oregon Department of Fish and Wildlife and to the Oregon Department of Forestry. After the public hearing is closed, the planning commission shall either approve or deny the application. In approving the application, the planning commission may impose conditions as outlined in subsection (E) of this section. The placement of fill or the removal of soil below the top of the bank may also require state or federal permits.

- E. Time Limit on Approved Land Use Change Involving the North Santiam River.

1. Authorization of land use change involving the North Santiam River that involves the construction or expansion of a building shall be void two years after the date of approval unless a building permit has been issued and the building permit is either still active or the building is complete and fully approved by the permit review authority. However, upon written request, the planning commission has the authority to grant an additional period, not to exceed two years, to complete the project.
2. In the case of an activity or use on the land that does not involve construction or expansion of a building, the authorization shall remain in effect for a period of five years as long as the lot or parcel remains vacant and as long as the circumstances pertaining to removal of vegetation have not changed. After the five-year period, if the property remains vacant or if the use or activity is expected to continue, a new application shall be submitted for review by the city.
3. In the case of a lot or parcel created by the subdividing or partitioning of land that has been reviewed and approved under the provisions of this section on a lot-by-lot basis, the authorization shall remain in effect for a period of five years from the date the plat for the subdivision or partition is filed as long as the lot or parcel remains vacant and as long as the circumstances pertaining to removal of vegetation have not changed. After the five-year period, if the property remains vacant, a new application shall be submitted for review by the city. If a subdivision or partition has been filed during the five-year period commencing prior to the date this title goes into effect, the five-year period shall begin the date this title goes into effect.

- F. Conditions and Basis for Denial of Application. If the planning commission finds that damaging effects set forth in this section could occur from the proposed request, the Commission may impose conditions to any land use application approval in order to maintain, enhance and protect existing fish and wildlife habitat along the river. An application may be denied if it cannot be conditioned to mitigate its adverse impacts. Conditions that may be imposed include, but are not limited to, the following:

1. Replanting of any existing trees or any other forms of existing natural vegetation which are removed. Replanting shall be with native vegetation using riparian species appropriate to western Oregon;
2. Requirement of additional or special setbacks from the water's edge or at the topographical break at the top of the stream bank;
3. Installation of fencing.

(Ord. 313 § 1, 2003; Ord. 273 § 5.120, 1998)

- G. Section 17.44.120 does not apply to property owned by the City of Mill City or another public agency. See Chapter 17.80 "Riparian Corridors"

Appendix 2

Mill City Comprehensive Plan

Chapter 5 – Natural Resources

Adopted Goals & Policies (2014)

NORTH SANTIAM RIVER AND ITS TRIBUTARIES

Goal NR-3: To utilize the North Santiam River as a community focus, realizing its value as a high-quality water resource, a recreational venue, a natural environment and an educational study area.

NR Policy 4: The City will encourage state agencies, Linn County, Marion County and local property owners to create opportunities for parks, public access, viewpoints and open space adjacent to the North Santiam River.

NR Policy 5: The City will encourage the protection of water quality and the enhancement of the riparian area and natural habitats along the North Santiam River and its tributaries including DeFord Creek, Snake Creek, Cedar Creek and Elizabeth Creek.

NR Policy 6: The City will cooperate with the property owners, the North Santiam Watershed Council and natural resource agencies to identify and obtain funding opportunities for watershed improvements.

NR Policy 7: The City will seek funding to complete a riparian corridor study and adopt appropriate protection measures complying with Goal 5 requirements.

NR Policy 8: The City will participate in storm drainage improvement projects, watershed restoration and habitat enhancements within the City of Mill City's Urban Growth Boundary, particularly in the Snake Creek and DeFord Creek sub-basins of the North Santiam River watershed.

NR Policy 9: The City will work with the Marion County Soil and Water Conservation District, Marion Weed Control District and North Santiam Watershed Council to identify and remove invasive species within the riparian zones of the North Santiam River and its tributaries.

FISH AND WILDLIFE

Goal NR-4: To protect and enhance fish and wildlife habitat for the enjoyment of citizens and the benefit of all creatures.

NR Policy 10: The North Santiam River has been identified by federal agencies and the Oregon Department of Fish and Wildlife (ODFW) as sensitive habitat for fish and wildlife. Mill City shall cooperate with the appropriate federal agencies, ODFW, DEQ, the Oregon Water Resources Department and the North Santiam Watershed Council in efforts to protect and improve water quality in the North Santiam River and its tributaries.

NR Policy 11: The City shall request comments from ODFW, the North Santiam Watershed Council and affected natural resource agencies on proposed land use actions which may impact riparian zones or

sensitive fish and wildlife habitat inside the City and UGB.

- NR Policy 12: The City of Mill City will cooperate with local, state and federal agencies which have regulatory authority concerning the North Santiam River.

WETLANDS

Goal 7: To ensure identified locally significant wetlands will continue their functions unimpaired by development activity.

- NR Policy 13: Wetlands are sensitive habitat for fish and wildlife. Wetlands, including the locally significant wetlands identified in the Local Wetlands Inventory Report, City of Mill City, Linn and Marion Counties, Oregon, shall be provided with protection from disturbance by utilizing protection measures that comply with Statewide Planning Goal 5 and Oregon Administrative Rule 660-division 23.
- NR Policy 14: Development projects that affect wetlands shall comply with the adopted local wetlands inventory in order to protect water quality and natural hydrology, to control erosion and sedimentation, and to reduce the adverse effects of flooding and thereby protecting the hydrologic and ecologic functions these wetland areas provide for the community. Development on properties containing wetlands will be reviewed using a Site Plan Review procedure as described in the zoning code to provide maximum opportunities to protect any significant wetlands.
- NR Policy 15: The City of Mill City will notify the Oregon Department of State Lands (DSL) of land use actions that may impact locally significant wetlands.
- NR Policy 16: If locally significant wetlands exist on property proposed for annexation, the City will identify the wetlands for future park, open space and wetland reserves in order to protect their wetland functions and prevent development from encroaching into the wetlands.

FLOODING AND OTHER NATURAL HAZARDS

Goal 8: To prevent losses caused by natural disasters through the identification of natural hazards and the adoption of appropriate protection measures.

- NR Policy 17: A portion of the City is located within the 100-year flood plain of the North Santiam River and is subject to periodic flooding. The City shall regulate development within the North Santiam River flood plain in accordance with the adopted FEMA flood plain maps and the Mill City Flood Hazard Ordinance in order to minimize flood damage to properties and protect human life.
- NR Policy 18: The City will develop adopt zoning regulations and public works design standards to retain wetlands, stream channels and riparian zones in order to avoid or minimize the impact of flooding from Cedar Creek, Elizabeth Creek, DeFord Creek and Snake Creek.
- NR Policy 19: The City will work with the local, state and federal agencies to educate the citizens of Mill City about the potential threats from Natural Hazards in the community and will work with other agencies to implement the hazard mitigation strategies included in the adopted Natural Hazard Mitigation Plans.

Appendix 3

OREGON ADMINISTRATIVE RULES (OAR)

Department of Land Conservation and Development Division 23

PROCEDURES AND REQUIREMENTS FOR COMPLYING WITH GOAL 5

660-023-0000

Purpose and Intent

This division establishes procedures and criteria for inventorying and evaluating Goal 5 resources and for developing land use programs to conserve and protect significant Goal 5 resources. This division explains how local governments apply Goal 5 when conducting periodic review and when amending acknowledged comprehensive plans and land use regulations.

Statutory/Other Authority: ORS 183 & 197

Statutes/Other Implemented: ORS 197.040 & 197.225 - 197.245

History:

LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0010

Definitions

As used in this division, unless the context requires otherwise:

- (1) "Conflicting use" is a land use, or other activity reasonably and customarily subject to land use regulations, that could adversely affect a significant Goal 5 resource (except as provided in OAR 660-023-0180(1)(b)). Local governments are not required to regard agricultural practices as conflicting uses.
- (2) "ESEE consequences" are the positive and negative economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use.
- (3) "Impact area" is a geographic area within which conflicting uses could adversely affect a significant Goal 5 resource.
- (4) "Inventory" is a survey, map, or description of one or more resource sites that is prepared by a local government, state or federal agency, private citizen, or other organization and that includes information about the resource values and features associated with such sites. As a verb, "inventory" means to collect, prepare, compile, or refine information about one or more resource sites. (See resource list.)
- (5) "PAPA" is a "post-acknowledgment plan amendment." The term encompasses actions taken in accordance with ORS 197.610 through 197.625, including amendments to an acknowledged comprehensive plan or land use regulation and the adoption of any new plan or land use regulation. The term does not include periodic review actions taken in accordance with ORS 197.628 through 197.650.
- (6) "Program" or "program to achieve the goal" is a plan or course of proceedings and action either to prohibit, limit, or allow uses that conflict with significant Goal 5 resources, adopted as part of the comprehensive plan and

land use regulations (e.g., zoning standards, easements, cluster developments, preferential assessments, or acquisition of land or development rights).

(7) "Protect," when applied to an individual resource site, means to limit or prohibit uses that conflict with a significant resource site (except as provided in OAR 660-023-0140, 660-023-0180, and 660-023-0190). When applied to a resource category, "protect" means to develop a program consistent with this division.

(8) "Resource category" is any one of the cultural or natural resource groups listed in Goal 5.

(9) "Resource list" includes the description, maps, and other information about significant Goal 5 resource sites within a jurisdiction, adopted by a local government as a part of the comprehensive plan or as a land use regulation. A "plan inventory" adopted under OAR 660-016-0000(5)(c) shall be considered to be a resource list.

(10) "Resource site" or "site" is a particular area where resources are located. A site may consist of a parcel or lot or portion thereof or may include an area consisting of two or more contiguous lots or parcels.

(11) "Safe harbor" has the meaning given to it in OAR 660-023-0020(2).

Statutory/Other Authority: ORS 183 & 197

Statutes/Other Implemented: ORS 197.040 & 197.225 - 197.245

History:

LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0020

Standard and Specific Rules and Safe Harbors

(1) The standard Goal 5 process, OAR 660-023-0030 through 660-023-0050, consists of procedures and requirements to guide local planning for all Goal 5 resource categories. This division also provides specific rules for each of the fifteen Goal 5 resource categories (see OAR 660-023-0090 through 660-023-0230). In some cases this division indicates that both the standard and the specific rules apply to Goal 5 decisions. In other cases, this division indicates that the specific rules supersede parts or all of the standard process rules (i.e., local governments must follow the specific rules rather than the standard Goal 5 process). In case of conflict, the resource-specific rules set forth in OAR 660-023-0090 through 660-023-0230 shall supersede the standard provisions in OAR 660-023-0030 through 660-023-0050.

(2) A "safe harbor" consists of an optional course of action that satisfies certain requirements under the standard process. Local governments may follow safe harbor requirements rather than addressing certain requirements in the standard Goal 5 process. For example, a jurisdiction may choose to identify "significant" riparian corridors using the safe harbor criteria under OAR 660-023-0090(5) rather than follow the general requirements for determining "significance" in the standard Goal 5 process under OAR 660-023-0030(4). Similarly, a jurisdiction may adopt a wetlands ordinance that meets the requirements of OAR 660-023-0100(4)(b) in lieu of following the ESEE decision process in OAR 660-023-0040.

Statutory/Other Authority: ORS 183 & 197

Statutes/Other Implemented: ORS 197.040 & 197.225 - 197.245

History:

LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0030

Inventory Process

(1) Inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. The purpose of the inventory process is to compile or update a list of significant Goal 5 resources in a jurisdiction. This rule divides the inventory process into four steps. However, all four steps are not necessarily applicable, depending on the type of Goal 5 resource and the scope of a particular PAPA or periodic

review work task. For example, when proceeding under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process. The inventory process may be followed for a single site, for sites in a particular geographical area, or for the entire jurisdiction or urban growth boundary (UGB), and a single inventory process may be followed for multiple resource categories that are being considered simultaneously. The standard Goal 5 inventory process consists of the following steps, which are set out in detail in sections (2) through (5) of this rule and further explained in sections (6) and (7) of this rule:

- (a) Collect information about Goal 5 resource sites;
- (b) Determine the adequacy of the information;
- (c) Determine the significance of resource sites; and
- (d) Adopt a list of significant resource sites.

(2) Collect information about Goal 5 resource sites: The inventory process begins with the collection of existing and available information, including inventories, surveys, and other applicable data about potential Goal 5 resource sites. If a PAPA or periodic review work task pertains to certain specified sites, the local government is not required to collect information regarding other resource sites in the jurisdiction. When collecting information about potential Goal 5 sites, local governments shall, at a minimum:

- (a) Notify state and federal resource management agencies and request current resource information; and
- (b) Consider other information submitted in the local process.

(3) Determine the adequacy of the information: In order to conduct the Goal 5 process, information about each potential site must be adequate. A local government may determine that the information about a site is inadequate to complete the Goal 5 process based on the criteria in this section. This determination shall be clearly indicated in the record of proceedings. The issue of adequacy may be raised by the department or objectors, but final determination is made by the commission or the Land Use Board of Appeals, as provided by law. When local governments determine that information about a site is inadequate, they shall not proceed with the Goal 5 process for such sites unless adequate information is obtained, and they shall not regulate land uses in order to protect such sites. The information about a particular Goal 5 resource site shall be deemed adequate if it provides the location, quality and quantity of the resource, as follows:

- (a) Information about location shall include a description or map of the resource area for each site. The information must be sufficient to determine whether a resource exists on a particular site. However, a precise location of the resource for a particular site, such as would be required for building permits, is not necessary at this stage in the process.
 - (b) Information on quality shall indicate a resource site's value relative to other known examples of the same resource. While a regional comparison is recommended, a comparison with resource sites within the jurisdiction itself is sufficient unless there are no other local examples of the resource. Local governments shall consider any determinations about resource quality provided in available state or federal inventories.
 - (c) Information on quantity shall include an estimate of the relative abundance or scarcity of the resource.
- (4) Determine the significance of resource sites: For sites where information is adequate, local governments shall determine whether the site is significant. This determination shall be adequate if based on the criteria in subsections (a) through (c) of this section, unless challenged by the department, objectors, or the commission based upon contradictory information. The determination of significance shall be based on:

- (a) The quality, quantity, and location information;

(b) Supplemental or superseding significance criteria set out in OAR 660-023-0090 through 660-023-0230; and

(c) Any additional criteria adopted by the local government, provided these criteria do not conflict with the requirements of OAR 660-023-0090 through 660-023-0230.

(5) Adopt a list of significant resource sites: When a local government determines that a particular resource site is significant, the local government shall include the site on a list of significant Goal 5 resources adopted as a part of the comprehensive plan or as a land use regulation. Local governments shall complete the Goal 5 process for all sites included on the resource list except as provided in OAR 660-023-0200(2)(c) for historic resources, and OAR 660-023-0220(3) for open space acquisition areas.

(6) Local governments may determine that a particular resource site is not significant, provided they maintain a record of that determination. Local governments shall not proceed with the Goal 5 process for such sites and shall not regulate land uses in order to protect such sites under Goal 5.

(7) Local governments may adopt limited interim protection measures for those sites that are determined to be significant, provided:

(a) The measures are determined to be necessary because existing development regulations are inadequate to prevent irrevocable harm to the resources on the site during the time necessary to complete the ESEE process and adopt a permanent program to achieve Goal 5; and

(b) The measures shall remain effective only for 120 days from the date they are adopted, or until adoption of a program to achieve Goal 5, whichever occurs first.

Statutory/Other Authority: ORS 197.040

Statutes/Other Implemented: ORS 197.040 & 197.225 - 197.245

History:

LCDD 1-2017, f. & cert. ef. 2-10-17

LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0040

ESEE Decision Process

(1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the standard ESEE process are as follows:

(a) Identify conflicting uses;

(b) Determine the impact area;

(c) Analyze the ESEE consequences; and

(d) Develop a program to achieve Goal 5.

(2) Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses

allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:

- (a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)
- (b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see 660-023-0020(1)).
- (3) Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.
- (4) Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.
- (5) Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:
 - (a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.
 - (b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.
 - (c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.

Statutory/Other Authority: ORS 183 & 197

Statutes/Other Implemented: ORS 197.040 & 197.225 - 197.245

History:

LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0050

Programs to Achieve Goal 5

(1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5)(b) and (c)).

(2) When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:

(a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;

(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or

(c) It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed for different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).

(3) In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:

(a) Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and

(b) Require a level of protection for the resource that meets or exceeds the intended level determined under OAR 660-023-0040(5) and 660-023-0050(1).

Statutory/Other Authority: ORS 183 & 197

Statutes/Other Implemented: ORS 197.040 & 197.225 - 197.245

History:

LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0060

Notice and Land Owner Involvement

Local governments shall provide timely notice to landowners and opportunities for citizen involvement during the inventory and ESEE process. Notification and involvement of landowners, citizens, and public agencies should occur at the earliest possible opportunity whenever a Goal 5 task is undertaken in the periodic review or plan amendment process. A local government shall comply with its acknowledged citizen involvement program, with statewide goal requirements for citizen involvement and coordination, and with other applicable procedures in statutes, rules, or local ordinances.

Statutory/Other Authority: ORS 183 & 197

Statutes/Other Implemented: ORS 197.040 & 197.225 - 197.245

History:

LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0070

Buildable Lands Affected by Goal 5 Measures

- (1) If measures to protect significant resource sites inside urban growth boundaries affect the inventory of buildable lands in acknowledged plans required by Goals 9, 10, and 14, a local government outside of the Metro UGB, and Metro inside the Metro UGB, prior to or at the next periodic review, shall:
- (a) Amend its urban growth boundary to provide additional buildable lands sufficient to compensate for the loss of buildable lands caused by the application of Goal 5;
 - (b) Redesignate other land to replace identified land needs under Goals 9, 10, and 14 provided such action does not take the plan out of compliance with other statewide goals; or
 - (c) Adopt a combination of the actions described in subsections (a) and (b) of this section.
- (2) If a local government redesignates land for higher density under subsections (1)(b) or (c) of this rule in order to meet identified housing needs, the local government shall ensure that the redesignated land is in locations appropriate for the housing types, and is zoned at density ranges that are likely to be achieved by the housing market.
- (3) Where applicable, the requirements of ORS 197.296 shall supersede the requirements of sections (1) and (2) of this rule.

Statutory/Other Authority: ORS 183 & 197

Statutes/Other Implemented: ORS 197.040 & 197.225 - 197.245

History:

LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0080

Metro Regional Resources (Does Not Apply to Mill City)

660-023-0090

Riparian Corridors

- (1) For the purposes of this rule, the following definitions apply:
- (a) "Fish habitat" means those areas upon which fish depend in order to meet their requirements for spawning, rearing, food supply, and migration.
 - (b) "Riparian area" is the area adjacent to a river, lake, or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem.
 - (c) "Riparian corridor" is a Goal 5 resource that includes the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary.
 - (d) "Riparian corridor boundary" is an imaginary line that is a certain distance upland from the top bank, for example, as specified in section (5) of this rule.

(e) "Stream" is a channel such as a river or creek that carries flowing surface water, including perennial streams and intermittent streams with defined channels, and excluding man-made irrigation and drainage channels.

(f) "Structure" is a building or other major improvement that is built, constructed, or installed, not including minor improvements, such as fences, utility poles, flagpoles, or irrigation system components, that are not customarily regulated through zoning ordinances.

(g) "Top of bank" shall have the same meaning as "bank full stage" defined in OAR 141-085-0010(12).

(h) "Water area" is the area between the banks of a lake, pond, river, perennial or fish-bearing intermittent stream, excluding man-made farm ponds.

(2) Local governments shall amend acknowledged plans in order to inventory riparian corridors and provide programs to achieve Goal 5 prior to or at the first periodic review following the effective date of this rule, except as provided in OAR 660-023-0250(5).

(3) Local governments shall inventory and determine significant riparian corridors by following either the safe harbor methodology described in section (5) of this rule or the standard inventory process described in OAR 660-023-0030 as modified by the requirements in section (4) of this rule. The local government may divide the riparian corridor into a series of stream sections (or reaches) and regard these as individual resource sites.

(4) When following the standard inventory process in OAR 660-023-0030, local governments shall collect information regarding all water areas, fish habitat, riparian areas, and wetlands within riparian corridors. Local governments may postpone determination of the precise location of the riparian area on lands designated for farm or forest use until receipt of applications for local permits for uses that would conflict with these resources. Local governments are encouraged, but not required, to conduct field investigations to verify the location, quality, and quantity of resources within the riparian corridor. At a minimum, local governments shall consult the following sources, where available, in order to inventory riparian corridors along rivers, lakes, and streams within the jurisdiction:

- (a) Oregon Department of Forestry stream classification maps;
- (b) United States Geological Service (USGS) 7.5-minute quadrangle maps;
- (c) National Wetlands Inventory maps;
- (d) Oregon Department of Fish and Wildlife (ODFW) maps indicating fish habitat;
- (e) Federal Emergency Management Agency (FEMA) flood maps; and
- (f) Aerial photographs.

(5) As a safe harbor in order to address the requirements under OAR 660-023-0030, a local government may determine the boundaries of significant riparian corridors within its jurisdiction using a standard setback distance from all fish-bearing lakes and streams shown on the documents listed in subsections (a) through (f) of section (4) of this rule, as follows:

- (a) Along all streams with average annual stream flow greater than 1,000 cubic feet per second (cfs) the riparian corridor boundary shall be 75 feet upland from the top of each bank.
- (b) Along all lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, the riparian corridor boundary shall be 50 feet from the top of bank.

(c) Where the riparian corridor includes all or portions of a significant wetland as set out in OAR 660-023-0100, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.

(d) In areas where the top of each bank is not clearly defined, or where the predominant terrain consists of steep cliffs, local governments shall apply OAR 660-023-0030 rather than apply the safe harbor provisions of this section.

(6) Local governments shall develop a program to achieve Goal 5 using either the safe harbor described in section (8) of this rule or the standard Goal 5 ESEE process in OAR 660-023-0040 and 660-023-0050 as modified by section (7) of this rule.

(7) When following the standard ESEE process in OAR 660-023-0040 and 660-023-0050, a local government shall comply with Goal 5 if it identifies at least the following activities as conflicting uses in riparian corridors:

(a) The permanent alteration of the riparian corridor by placement of structures or impervious surfaces, except for:

(A) Water-dependent or water-related uses; and

(B) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.

(b) Removal of vegetation in the riparian area, except:

(A) As necessary for restoration activities, such as replacement of vegetation with native riparian species;

(B) As necessary for the development of water-related or water-dependent uses; and

(C) On lands designated for agricultural or forest use outside UGBs.

(8) As a safe harbor in lieu of following the ESEE process requirements of OAR 660-023-0040 and 660-023-0050, a local government may adopt an ordinance to protect a significant riparian corridor as follows:

(a) The ordinance shall prevent permanent alteration of the riparian area by grading or by the placement of structures or impervious surfaces, except for the following uses, provided they are designed and constructed to minimize intrusion into the riparian area:

(A) Streets, roads, and paths;

(B) Drainage facilities, utilities, and irrigation pumps;

(C) Water-related and water-dependent uses; and

(D) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.

(b) The ordinance shall contain provisions to control the removal of riparian vegetation, except that the ordinance shall allow:

(A) Removal of non-native vegetation and replacement with native plant species; and

(B) Removal of vegetation necessary for the development of water-related or water-dependent uses.

(c) Notwithstanding subsection (b) of this section, the ordinance need not regulate the removal of vegetation in areas zoned for farm or forest uses pursuant to statewide Goals 3 or 4;

(d) The ordinance shall include a procedure to consider hardship variances, claims of map error, and reduction or removal of the restrictions under subsections (a) and (b) of this section for any existing lot or parcel demonstrated to have been rendered not buildable by application of the ordinance; and

(e) The ordinance may authorize the permanent alteration of the riparian area by placement of structures or impervious surfaces within the riparian corridor boundary established under subsection (5)(a) of this rule upon a demonstration that equal or better protection for identified resources will be ensured through restoration of riparian areas, enhanced buffer treatment, or similar measures. In no case shall such alterations occupy more than 50 percent of the width of the riparian area measured from the upland edge of the corridor.

Statutory/Other Authority: ORS 183 & 197

Statutes/Other Implemented: ORS 197.040 & 197.225 - 197.245

History:

LCDD 3-2004, f. & cert. ef. 5-7-04

LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

(OR Jan2020- NoRfnd)
Account #:17857001 001
Service ID #:189640679
Monthly

Jim Kelly
C/C: 1151
Request #: 6843210
Contract #:

**GENERAL SERVICE CONTRACT
(1000 KVA OR LESS)
between
PACIFIC POWER
and
CITY OF MILL CITY**

This General Service Contract ("Contract"), dated December 10, 2020, is between PacifiCorp, doing business as Pacific Power ("Company"), and **City of Mill City** ("Customer"), for electric service for Customer's Metered Roadway Lighting operation at or near Alley near 313 Broadway , Oregon.

The Company's filed tariffs (the "Electric Service Schedules" and the "Electric Service Rules") and the rules of the Oregon Public Utility Commission ("Commission"), as they may be amended from time to time, regulate this Contract and are incorporated in this Contract. In the event of any conflict between this Contract and the Electric Service Schedules or the Electric Service Rules, such schedule and rules shall control. They are available for review at Customer's request.

1. **Delivery of Power.** Company will provide 120/240 volt, single-phase electric service to the Customer facilities.
2. **Contract Demand.** The specified Demand in kVA that Customer requires to meet its load requirement and Company agrees to supply and have available for delivery to Customer, shall be 2 kVA (diversified, based on Customer's submitted load prior to the signing of this Contract). After 36 months of service the maximum demand Company is obligated to have available for delivery shall not be greater than the lesser of: the maximum recorded and billed demand in the previous 36 months, or, the above given diversified demand, unless otherwise agreed in writing in accordance with the terms of this Contract. Within fifteen (15) days of a written request for additional demand, Company shall advise Customer in writing whether the additional power and energy is or can be made available and the conditions on which it can be made available.
3. **Extension Costs.** Company agrees to invest \$2,928.00 (the "Extension Allowance") to fund a portion of the cost of the improvements (the "Improvements") as per tariff. Customer agrees to pay Company the estimated construction costs in excess of the Extension Allowance ("Customer Advance") in the amount of \$1,992.00, of which the Customer has paid \$0.00 for engineering, design, or other advance payment for Company's facilities. **The balance due is \$1,992.00.**
4. **Contract Minimum Billing.** Customer agrees to pay a contract minimum billing (the "Contract Minimum Billing") during the first sixty (60) months beginning from the date the Company is ready to supply service. The Contract Minimum Billing shall be the

greater of: (1) the **Customer's monthly bill**; or, (2) \$23.07 (the **monthly facilities charge**) plus eighty percent (80%) of the **Customer's monthly bill**. Billings will be based on Rate Schedule No. 23 and superseding schedules.

5. **Effective.** This Contract will expire unless Customer signs and returns an original of this Contract along with any required payment to Company within ninety (90) days of the Contract date shown on page 1 of this Contract.
6. **Contract Minimum Billing Term.** This Contract becomes binding when both the Company and Customer have signed it, and will remain in effect for five (5) years following the date when the Company is ready to supply service (the "Term").

In the event Customer terminates service or defaults (which results in termination of service) within the first five (5) years of this Contract, Customer shall be responsible for paying the Contract Minimum Billing for the remainder of the Term.

If Customer is not ready to receive service from Company within one-hundred fifty (150) days of the date Customer signs this Contract, then Company may terminate this Contract. The Customer's Advance will be applied to Company costs incurred for design, permitting and other associated Contract costs. However, if Company has installed Improvements so that Company is ready to supply service, but Customer is not ready to receive service from Company within such one-hundred fifty (150) day period, then the failure of Customer to receive service may be treated as a Customer default, and Customer shall be responsible for paying the Contract Minimum Billing for remainder of the Term.

7. **Customer Obligations.** Customer agrees to:
 - a) Provide legal rights-of-way to Company, at no cost to the Company, using Company's standard forms. This includes rights-of-way on Customer's property and/or third party property and any permits, fees, etc. required to cross public lands;
 - b) Prepare the route to Company's specifications;
 - c) Install all Customer provided trench, conduit, equipment foundations, or excavations for equipment foundations within the legal rights-of-ways; and,
 - d) Comply with all of Company's tariffs, procedures, specifications and requirements.
8. **Special Provisions:** None
9. **Underground Facilities.** If service is provided by an underground line extension, Customer will provide, or Company will provide at Customer's expense: all trenching and backfilling, imported backfill material, conduit and duct, and furnish and install all equipment foundations, as designed by the Company. Company may abandon in place any underground cables installed under this Contract that are no longer useful to Company.

Customer warrants that all Customer provided trench and excavations for equipment foundations, and Customer installed conduit and equipment foundations are installed

within legal rights-of-way, and conform to the specifications in the Company's Electric Service Requirements Manual, and other specifications as otherwise provided by the Company. In the event Customer fails to comply with the foregoing, Customer shall be liable for the cost to the Company for relocating the facilities within a legal right-of-way, acquiring right-of-way for the Company facilities, repair or replacement of improperly installed conduit or foundations, and paying costs for damages that may arise to any third party as a result of the Company facilities being located outside of a legal right-of-way. The provisions of this paragraph 9 shall survive the termination of this agreement.

10. **Design, Construction, Ownership and Operation.** The Company shall design, construct, install, and operate the Improvements in accordance with the Company's standards. The Company will own the Improvements, together with the Company's existing electric utility facilities that serve or will serve Customer. Construction of the Improvements shall not begin until (1) both the Company and Customer have executed (signed) this Contract, and (2) all other requirements prior to construction have been fulfilled, such as permits, payments received, inspection, etc. Any delays by the Customer concerning site preparation and right-of-way acquisition or trenching, inspection, permits, etc. may correspondingly delay completion of the Improvements.

The Company warrants that its work in constructing and maintaining the Improvements shall be consistent with prudent utility practices. **THE COMPANY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND SIMILAR WARRANTIES.** The Company's liability for breach of warranty, defects in the Improvements, or installation of the Improvements shall be limited to repair or replacement of any non-operating or defective portion of the Improvements or the Company's other electric utility facilities. Under no circumstances shall the Company be liable for other economic losses, including but not limited to consequential damages. The Company shall not be subject to any liability or damages for inability to provide service to the extent that such failure shall be due to causes beyond the reasonable control of the Company

No other party, including Customer, shall have the right to operate or maintain the Company's electric utility facilities or the Improvements. Customer shall not have physical access to the Company's electric utility facilities or the Improvements and shall engage in no activities on or related to the Company's electric utility facilities or the Improvements.

11. **Payments.** All bills shall be paid by the date specified on the bill, and late charges shall be imposed upon any delinquent amounts. Company reserves the right to require customer payments be sent by EDI or wire transfer. If Customer disputes any portion of Customer's bill, Customer shall pay the total bill and shall designate the disputed portion. Company shall decide the dispute within sixty (60) days after Customer's notice of dispute. Any refund Company determines Customer is due shall bear interest at the rate then specified by the Commission or, if no rate is specified, the then effective prime rate as quoted in The Wall Street Journal.

The Company may request deposits from Customer to the extent permitted under the applicable Electric Service Rules and the applicable Electric Service Schedule. In the event of a default by Customer in any of its obligations, the Company may exercise any or all of its rights and remedies with respect to any such deposits.

12. **Furnishing Information and Deposits.** Customer represents that all information it has furnished or shall furnish to Company in connection with this Contract shall be accurate and complete in all material respects. Company will base its decision with respect to credit, deposits, allowances or any other material matter on information furnished under this section by Customer. Should such information be inaccurate or incomplete, Company shall have the right to revoke or modify this Contract and/or its decision to reflect the determination Company would have made had Company received accurate and complete information. Company may request deposits, for the purpose of guaranteeing payment of electric service bills, as permitted under the Company's Oregon Electric Service Rule No. 9.
13. **Governing Law; Venue.** All provisions of this Contract and the rights and obligations of the parties hereto shall in all cases be governed by and construed in accordance with the laws of the State of Oregon applicable to contracts executed in and to be wholly performed in Oregon by persons domiciled in the State of Oregon. Each party hereto agrees that any suit, action or proceeding in connection with this Contract may only be brought before the Commission, the Federal courts located within the State of Oregon, or state courts of the State of Oregon, and each party hereby consents to the exclusive jurisdiction of such forums (and of the appellate courts therefrom) in any such suit, action or proceeding.
14. **Assignment.** The obligations under this Contract are obligations at all times of Customer, and may not be assigned without the Company's consent except in connection with a sale, assignment, lease or transfer of Customer's interest in Customer's facility. Any such assignment also shall be subject to (i) such successor's qualification as a customer under the Company's policies and the Electric Service Rules, the applicable Electric Service Schedule, and (ii) such successor being bound by this Contract and assuming the obligation of Customer from the date of assignment, which may be evidenced by written agreement of such successor or other means acceptable to the Company. The Company may condition this assignment by the posting by the successor of a deposit as permitted under the applicable Electric Service Rules and the applicable Electric Service Schedule.
15. **Remedies; Waiver.** Either party may exercise any or all of its rights and remedies under this Contract, the applicable Electric Service Rules, the applicable Electric Service Schedule and under any applicable laws, rules and regulations. No provision of this Contract, the Electric Service Rules, or the applicable Electric Service Schedule shall be deemed to have been waived unless such waiver is expressly stated in writing and signed by the waiving party.
16. **Attorneys' Fees.** If any suit or action arising out of or related to this Contract is brought by any party, the prevailing party or parties shall be entitled to recover the costs and fees (including, without limitation, reasonable attorneys' fees, the fees and costs of

experts and consultants, copying, courier and telecommunication costs, and deposition costs and all other costs of discovery) incurred by such party or parties in such suit or action, including, without limitation, any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit or action.

17. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

18. Entire Agreement. This Contract contains the entire agreement of the parties with respect to the subject matter, and replaces and supersedes in their entirety all prior agreements between the parties related to the same subject matter. **This Contract may be modified only by a subsequent written amendment or agreement executed by both parties.**

CITY OF MILL CITY

By _____
signature

Timothy Kirsch Mayor
NAME (type or print legibly) TITLE

DATE

Customer's Mailing Address for Executed Contract

Timothy Kirsch
ATTENTION OF

444 S 1ST Avenue
ADDRESS

Mill City Oregon 97360
CITY, STATE, ZIP

tkirsch@ci.mill-city.or.us
EMAIL ADDRESS

PACIFIC POWER

By _____
signature

Sachin Shukla Manager
NAME (type or print legibly) TITLE

DATE

Pacific Power's Mailing Address for Executed Contract

PO Box 248
ADDRESS

Albany, Or 97321
CITY, STATE, ZIP

Sachin.Shukla@PacifiCorp.com
EMAIL ADDRESS

(OR Jan2020- NoRfnd)
Account #:6945393
Service ID #:763225619
Monthly

Jim Kelly
C/C: 11251
Request #: 6945393
Contract #:

**GENERAL SERVICE CONTRACT
(1000 KVA OR LESS)
between
PACIFIC POWER
and
CITY OF MILL CITY**

This General Service Contract ("Contract"), dated 12/16/2020, is between PacifiCorp, doing business as Pacific Power ("Company"), and **City of Mill City** ("Customer"), for electric service for Customer's Metered Pathway Lighting operation at or near 405 SW Linn Mill City, Oregon.

The Company's filed tariffs (the "Electric Service Schedules" and the "Electric Service Rules") and the rules of the Oregon Public Utility Commission ("Commission"), as they may be amended from time to time, regulate this Contract and are incorporated in this Contract. In the event of any conflict between this Contract and the Electric Service Schedules or the Electric Service Rules, such schedule and rules shall control. They are available for review at Customer's request.

1. **Delivery of Power.** Company will provide 120/240 volt, single-phase electric service to the Customer facilities.
2. **Contract Demand.** The specified Demand in kVA that Customer requires to meet its load requirement and Company agrees to supply and have available for delivery to Customer, shall be 1 kVA (diversified, based on Customer's submitted load prior to the signing of this Contract). After 36 months of service the maximum demand Company is obligated to have available for delivery shall not be greater than the lesser of: the maximum recorded and billed demand in the previous 36 months, or, the above given diversified demand, unless otherwise agreed in writing in accordance with the terms of this Contract. Within fifteen (15) days of a written request for additional demand, Company shall advise Customer in writing whether the additional power and energy is or can be made available and the conditions on which it can be made available.
3. **Extension Costs.** Company agrees to invest \$3,216.00 (the "Extension Allowance") to fund a portion of the cost of the improvements (the "Improvements") as per tariff. Customer agrees to pay Company the estimated construction costs in excess of the Extension Allowance ("Customer Advance") in the amount of \$2,640.00, of which the Customer has paid \$0.00 for engineering, design, or other advance payment for Company's facilities. **The balance due is \$2,640.00.**
4. **Contract Minimum Billing.** Customer agrees to pay a contract minimum billing (the "Contract Minimum Billing") during the first sixty (60) months beginning from the date the Company is ready to supply service. The Contract Minimum Billing shall be the greater of: (1) the **Customer's monthly bill**; or, (2) \$21.26 (the **monthly facilities**

charge) plus eighty percent (80%) of the **Customer's monthly bill**. Billings will be based on Rate Schedule No. 23 and superseding schedules.

5. **Effective.** This Contract will expire unless Customer signs and returns an original of this Contract along with any required payment to Company within ninety (90) days of the Contract date shown on page 1 of this Contract.
6. **Contract Minimum Billing Term.** This Contract becomes binding when both the Company and Customer have signed it, and will remain in effect for five (5) years following the date when the Company is ready to supply service (the "Term").

In the event Customer terminates service or defaults (which results in termination of service) within the first five (5) years of this Contract, Customer shall be responsible for paying the Contract Minimum Billing for the remainder of the Term.

If Customer is not ready to receive service from Company within one-hundred fifty (150) days of the date Customer signs this Contract, then Company may terminate this Contract. The Customer's Advance will be applied to Company costs incurred for design, permitting and other associated Contract costs. However, if Company has installed Improvements so that Company is ready to supply service, but Customer is not ready to receive service from Company within such one-hundred fifty (150) day period, then the failure of Customer to receive service may be treated as a Customer default, and Customer shall be responsible for paying the Contract Minimum Billing for remainder of the Term.

7. **Customer Obligations.** Customer agrees to:
 - a) Provide legal rights-of-way to Company, at no cost to the Company, using Company's standard forms. This includes rights-of-way on Customer's property and/or third party property and any permits, fees, etc. required to cross public lands;
 - b) Prepare the route to Company's specifications;
 - c) Install all Customer provided trench, conduit, equipment foundations, or excavations for equipment foundations within the legal rights-of-ways; and,
 - d) Comply with all of Company's tariffs, procedures, specifications and requirements.
8. **Special Provisions:** None
9. **Underground Facilities.** If service is provided by an underground line extension, Customer will provide, or Company will provide at Customer's expense: all trenching and backfilling, imported backfill material, conduit and duct, and furnish and install all equipment foundations, as designed by the Company. Company may abandon in place any underground cables installed under this Contract that are no longer useful to Company.

Customer warrants that all Customer provided trench and excavations for equipment foundations, and Customer installed conduit and equipment foundations are installed within legal rights-of-way, and conform to the specifications in the Company's Electric Service Requirements Manual, and other specifications as otherwise provided by the

Company. In the event Customer fails to comply with the foregoing, Customer shall be liable for the cost to the Company for relocating the facilities within a legal right-of-way, acquiring right-of-way for the Company facilities, repair or replacement of improperly installed conduit or foundations, and paying costs for damages that may arise to any third party as a result of the Company facilities being located outside of a legal right-of-way. The provisions of this paragraph 9 shall survive the termination of this agreement.

- 10. Design, Construction, Ownership and Operation.** The Company shall design, construct, install, and operate the Improvements in accordance with the Company's standards. The Company will own the Improvements, together with the Company's existing electric utility facilities that serve or will serve Customer. Construction of the Improvements shall not begin until (1) both the Company and Customer have executed (signed) this Contract, and (2) all other requirements prior to construction have been fulfilled, such as permits, payments received, inspection, etc. Any delays by the Customer concerning site preparation and right-of-way acquisition or trenching, inspection, permits, etc. may correspondingly delay completion of the Improvements.

The Company warrants that its work in constructing and maintaining the Improvements shall be consistent with prudent utility practices. **THE COMPANY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND SIMILAR WARRANTIES.** The Company's liability for breach of warranty, defects in the Improvements, or installation of the Improvements shall be limited to repair or replacement of any non-operating or defective portion of the Improvements or the Company's other electric utility facilities. Under no circumstances shall the Company be liable for other economic losses, including but not limited to consequential damages. The Company shall not be subject to any liability or damages for inability to provide service to the extent that such failure shall be due to causes beyond the reasonable control of the Company

No other party, including Customer, shall have the right to operate or maintain the Company's electric utility facilities or the Improvements. Customer shall not have physical access to the Company's electric utility facilities or the Improvements and shall engage in no activities on or related to the Company's electric utility facilities or the Improvements.

- 11. Payments.** All bills shall be paid by the date specified on the bill, and late charges shall be imposed upon any delinquent amounts. Company reserves the right to require customer payments be sent by EDI or wire transfer. If Customer disputes any portion of Customer's bill, Customer shall pay the total bill and shall designate the disputed portion. Company shall decide the dispute within sixty (60) days after Customer's notice of dispute. Any refund Company determines Customer is due shall bear interest at the rate then specified by the Commission or, if no rate is specified, the then effective prime rate as quoted in The Wall Street Journal.

The Company may request deposits from Customer to the extent permitted under the applicable Electric Service Rules and the applicable Electric Service Schedule. In the event of a default by Customer in any of its obligations, the Company may exercise any or all of its rights and remedies with respect to any such deposits.

- 12. Furnishing Information and Deposits.** Customer represents that all information it has furnished or shall furnish to Company in connection with this Contract shall be accurate and complete in all material respects. Company will base its decision with respect to credit, deposits, allowances or any other material matter on information furnished under this section by Customer. Should such information be inaccurate or incomplete, Company shall have the right to revoke or modify this Contract and/or its decision to reflect the determination Company would have made had Company received accurate and complete information. Company may request deposits, for the purpose of guaranteeing payment of electric service bills, as permitted under the Company's Oregon Electric Service Rule No. 9.
- 13. Governing Law; Venue.** All provisions of this Contract and the rights and obligations of the parties hereto shall in all cases be governed by and construed in accordance with the laws of the State of Oregon applicable to contracts executed in and to be wholly performed in Oregon by persons domiciled in the State of Oregon. Each party hereto agrees that any suit, action or proceeding in connection with this Contract may only be brought before the Commission, the Federal courts located within the State of Oregon, or state courts of the State of Oregon, and each party hereby consents to the exclusive jurisdiction of such forums (and of the appellate courts therefrom) in any such suit, action or proceeding.
- 14. Assignment.** The obligations under this Contract are obligations at all times of Customer, and may not be assigned without the Company's consent except in connection with a sale, assignment, lease or transfer of Customer's interest in Customer's facility. Any such assignment also shall be subject to (i) such successor's qualification as a customer under the Company's policies and the Electric Service Rules, the applicable Electric Service Schedule, and (ii) such successor being bound by this Contract and assuming the obligation of Customer from the date of assignment, which may be evidenced by written agreement of such successor or other means acceptable to the Company. The Company may condition this assignment by the posting by the successor of a deposit as permitted under the applicable Electric Service Rules and the applicable Electric Service Schedule.
- 15. Remedies; Waiver.** Either party may exercise any or all of its rights and remedies under this Contract, the applicable Electric Service Rules, the applicable Electric Service Schedule and under any applicable laws, rules and regulations. No provision of this Contract, the Electric Service Rules, or the applicable Electric Service Schedule shall be deemed to have been waived unless such waiver is expressly stated in writing and signed by the waiving party.
- 16. Attorneys' Fees.** If any suit or action arising out of or related to this Contract is brought by any party, the prevailing party or parties shall be entitled to recover the costs and fees (including, without limitation, reasonable attorneys' fees, the fees and costs of experts and consultants, copying, courier and telecommunication costs, and deposition costs and all other costs of discovery) incurred by such party or parties in such suit or action, including, without limitation, any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit or action.

17. **Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

18. **Entire Agreement.** This Contract contains the entire agreement of the parties with respect to the subject matter, and replaces and supersedes in their entirety all prior agreements between the parties related to the same subject matter. **This Contract may be modified only by a subsequent written amendment or agreement executed by both parties.**

CITY OF MILL CITY

By _____
signature

Timothy Kirsch Mayor
NAME (type or print legibly) TITLE

DATE

Customer's Mailing Address for Executed Contract

Timothy Kirsch
ATTENTION OF

444 S 1ST Avenue
ADDRESS

Mill City Oregon 97360
CITY, STATE, ZIP

tkirsch@ci.mill-city.or.us
EMAIL ADDRESS

PACIFIC POWER

By _____
signature

Sachin Shukla Manager
NAME (type or print legibly) TITLE

DATE

Pacific Power's Mailing Address for Executed Contract

PO Box 248
ADDRESS

Albany, Or 97321
CITY, STATE, ZIP

Sachin.Shukla@PacifiCorp.com
EMAIL ADDRESS



PRODUCT REPAIR / SERVICE ESTIMATE

Estimate #: R2021-POR-0001

Date: 1/18/2021

Page 1 of 5

Tag #: 1211

JobName:

Customer Information

Company Name: CITY OF MILL CITY

Address

PO BOX 256

MILL CITY OR97360

Contact: Russ Foltz

Telephone: (503)877-0715

Telephone:

Fax:

Email: rfoltz@ci.mill-city.or.us

Following is an estimate prepared for you regarding the repair of your Flygt pump.

Product Identification

Product Number: 3102.090-1235

Serial Number: 3102.090-0860127

Model: 3102

Impeller Code: 257

HP: 6.5

Volts: 230

Phases: 3

Inspection Information

Inspected By: Lance Nielsen

Motor Data: Wire Configuration: U1:Red V1:Black W1:White

Megger to ground: R 11G B 11G W 11G

Resistance through cable: RB 10. RW 1.0 BW 1.0

Stator Condition: Good

Shaft Condition: Good

Oil Condition: Unusable

Inspection Plugs:

Sensors:

☒ FLS

☐ CLS

☒ KLIX

☐ Bearing

☒ Cable

Hydraulic: Impeller/Propeller Condition: Unusable

Volute Condition: Good

Cable Condition: Unusable

Cable Length: 55'

Flygt Products

9625 SW Tualatin Sherwood Road, Tualatin Oregon 97062

PH: (503) 240-1980

FX: (503) 240-3445





PRODUCT REPAIR / SERVICE ESTIMATE

Estimate #: R2021-POR-0001

Date: 1/18/2021

Page 2 of 5

Tag #: 1211

JobName:

Hydraulic Type: N

Installation

Type: P

☐ Control

Discharge Size:

☐ MFV

Primary Requirement: Media intrusion at pump top

Repair/Service Requirements and remarks

Media intrusion into pump top requires replacement of motor cable and steam and bake of stator.

Leakage of media into oil housing requires a basic repair kit.

Damage to impeller requires replacement with hard iron impeller kit.

Parts, Labor and Other Charges

Parts:

Qty	PartNo	Description	Sell Price	Total Price
1	477 11 01	HANDLE,LIFTING 316	\$164.00	\$164.00
55	94 21 04	CABLE,SUBCAB AWG 12/7 21MM	\$21.00	\$1,155.00
2	84 18 02	GROMMET,NBR 23ID 52OD 26L	\$32.00	\$64.00
1	504 78 07	CABLE UNIT	\$119.00	\$119.00
1	518 89 02	DETECTOR,LEAKAGE UNIT FLS	\$239.00	\$239.00
3	439 44 01	SCREW,M14 X 1.25" STEEL	\$7.80	\$23.40
3	596 07 00	WASHER,SQUARE ALUM	\$8.30	\$24.90
1	734 59 00	LEAD-THROUGH UNIT	\$52.00	\$52.00
1	601 89 06	KIT,REPAIR BASIC+ 3102.090,180	\$1,173.00	\$1,173.00
7	82 17 64	SCREW,ALLEN M6 X 20 STEEL	\$2.90	\$20.30
7	82 17 64	SCREW,ALLEN M6 X 20 STEEL	\$2.90	\$20.30
1	769 27 06	KIT,IMPELLER N SH CODE 257 HC	\$2,184.00	\$2,184.00
1	14-69 00 31A	OIL PER LITER TP USED FOR REPAIR	\$11.00	\$11.00
Total Price				\$5,249.90





PRODUCT REPAIR / SERVICE ESTIMATE

Estimate #: R2021-POR-0001

Date: 1/18/2021

Page 3 of 5

Tag #: 1211

JobName:

Labor and Other Charges:

Qty	PartNo	Description	Sell Price	Total Price
6	14-69 00 28A	LABOR,MOBILE FLYGT,NOTAX Z6-TP MODELS: 3000,7000,8000	\$150.00	\$900.00
8	14-69 00 03A	LABOR,SVC FLYGT,NO TAX Z4-TP MODELS: 3000,7000,8000	\$130.00	\$1,040.00
3	14-69 00 03A	STEAM AND BAKE	\$130.00	\$390.00
1	14-69 00 21A	ENV FEE 0-10HP NO TAX TP ENVIRONMENTAL FEE	\$48.00	\$48.00
1	14-69 00 25	SHOP SUPPLIES-SMALL PUMPS TM MISC SHOP SUPPLIES FOR REPAIR	\$40.00	\$40.00
1	14-69 98 43	MISCELLANEOUS CHARGE	\$100.00	\$100.00
		Total Price		\$2,518.00

Total Price: \$7,767.90

Product Replacement

Product Number:

Estimated Delivery: Weeks

Cost of New Unit:

Description:

Terms

Please note: If additional repair requirements are identified during service, the total cost of your repair may change. Should this occur, we will contact you for approval before proceeding.

A signed Purchase Order or approval below must be received before any repair work can begin.

If repaired unit is not picked up or delivered within 5 days of completion, the repair will be invoiced.

Taxes: The prices quoted above do not include any state, federal, or local sales tax or use taxes. Any such taxes as applicable must be added to the quoted prices.

Validity: This Quote is valid for forty five (45) days.



Flygt Products
9625 SW Tualatin Sherwood Road , Tualatin Oregon 97062
PH: (503) 240-1980
FX: (503) 240-3445





PRODUCT REPAIR / SERVICE ESTIMATE

Estimate #: R2021-POR-0001

Date: 1/18/2021

Page 4 of 5

Tag #: 1211

JobName:

Terms of payment: Net 30 Standard

Warranty: Parts used for this repair carry a 12 month warranty.

This Quote does not include freight charges.

If this product is not repaired, a fee of \$_____ will be charged for labor required for the inspection performed.

We will require a purchase order from you for these charges.

PLEASE NOTE: IF WE DO NOT HAVE A RESPONSE FROM YOU BY: (INPUT DATE APPROX. 2 WEEKS OUT) WE WILL INVOICE YOU FOR \$(INPUT MIN. LABOR HOURS) FOR THE TIME & LABOR HOURS OUR SERVICE DEPARTMENT HAS ALREADY SPENT IN PERFORMING THE TEARDOWN & INSPECTION OF YOUR PRODUCT. YOUR PROMPT ATTENTION & RESPONSE IS GREATLY APPRECIATED.

Thank you for the opportunity to provide this quotation. Please contact us if there are any questions.

Phone:

Fax:



Flygt Products
9625 SW Tualatin Sherwood Road , Tualatin Oregon 97062
PH: (503) 240-1980
FX: (503) 240-3445





PRODUCT REPAIR / SERVICE ESTIMATE

Estimate #: R2021-POR-0001

Date: 1/18/2021

Page 5 of 5

Tag #: 1211

JobName:

Customer Approval

Complete and sign this Approval and return to Xylem Water Solutions USA, Inc with, or in place of, your Purchase Order

I authorize Xylem Water Solutions USA, Inc to proceed for the amount shown above.

☐

Repair

☐

Replacement

Customer Name: _____

Date: _____

Customer Signature: _____

PO #: _____

Ship To:

☐

Will Pick Up

☐

Deliver

☐

Ship To

Ship/Delivery Address:

Bill To:

Taxable:

☐

Yes

☐

No

Tax Exemption Certificate must be on file or tax will be applied to the invoice.





**Xylem Water Solutions USA, Inc.
Flygt Products**

January 20, 2021

CITY OF MILL CITY
PO BOX 256
MILL CITY OR 97360-0256

9625 SW Tualatin Sherwood Road
Tualatin, Oregon 97062
Tel (503) 240-1980
Fax (503) 240-3445

Quote # 2021-POR-0027
Project Name: Mill City, City of
Job Name: 3102.070

Xylem Water Solutions USA, Inc. is pleased to provide a quote for the following Flygt equipment.

3102.070

Qty	Description	Unit Price
1	Flygt Model NP-3102.070 3" volute Submersible pump equipped with a 230 Volt / 3 phase / 60 Hz 6.5 HP 3550 RPM motor, 257 impeller, 1 x 50 Ft. length of SUBCAB 4G4+2x1,5 submersible cable, FLS leakage detector, volute is prepared for Flush Valve	\$ 8,106.81

Total Price \$ 8,106.81

Freight Charge \$ 401.00

Total Price \$ 8,507.81

Terms & Conditions

This order is subject to the Standard Terms and Conditions of Sale – Xylem Americas effective on the date the order is accepted which terms are available at <http://www.xyleminc.com/en-us/Pages/terms-conditions-of-sale.aspx> and incorporated herein by reference and made a part of the agreement between the parties.

Purchase Orders: Please make purchase orders out to: Xylem Water Solutions USA, Inc.

Freight Terms: 3 DAP - Delivered At Place 08 - Jobsite (per IncoTerms 2020)

See Freight Payment (Delivery Terms) below.

Taxes: State, local and other applicable taxes are not included in this quotation.

Back Charges: Buyer shall not make purchases nor shall Buyer incur any labor that would result in a back charge to Seller without prior written consent of an authorized employee of Seller.

Shortages: Xylem will not be responsible for apparent shipment shortages or damages incurred in shipment that are not reported within two weeks from delivery to the jobsite. Damages should be noted on the receiving slip and the truck driver advised of the damages. Please contact our office as soon as possible to report damages or shortages so that replacement items can be shipped and the appropriate claims made.

Terms of payment: 100% N30 after invoice date.





Validity: This Quote is valid for ninety (90) days.

Terms of Delivery: PP/Add Order Position

Schedule: Please consult your local Flygt Branch Office to get fabrication and delivery lead times.

Thank you for the opportunity to provide this quotation. Please contact us if there are any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Olson".

Dave Olson
Sales Representative
Phone: 503-290-2175
Cell: 503-789-7330
david.olson2@xylem-inc.com
Fax: 503-240-3445

Noi Tran
Technical Inside Sales

noi.tran@xylem-inc.com



Customer Acceptance

This order is subject to the Standard Terms and Conditions of Sale – Xylem Americas effective on the date the order is accepted which terms are available at <http://www.xyleminc.com/en-us/Pages/terms-conditions-of-sale.aspx> and incorporated herein by reference and made a part of the agreement between the parties.

A signed copy of this Quote is acceptable as a binding contract.

Purchase Orders: Please make purchase orders out to: Xylem Water Solutions USA, Inc.

Quote #: 2021-POR-0027
Customer Name: CITY OF MILL CITY
Job Name: 3102.070
Total Amount: \$ 8,106.81
(excluding freight)

Signature: _____

Name: _____
(PLEASE PRINT)

Company/Utility: _____

PO: _____

Address: _____

Date: _____

Phone: _____

Email: _____

Fax: _____



Dear Mill City Council,

The reason for this letter is to bring up the discussion of tiny houses becoming a solution for affordable housing in the Santiam Canyon. As I'm sure the council is more aware of the damages and destruction the Beachie Creek and Lionshead fires have caused to the communities of Detroit, Gates, Idanha, Lyons, Mehama and Mill City than I, but I would like to bring up problems some of the families are facing in the wake of the fires. Some of these families weren't fully insured or had no insurance at all and can't rebuild. My main worries are that these people that have been displaced from the fire will not be able to find affordable housing in the canyon area. There might also be some individuals who have no long term family or friends to stay with and might face the risk of becoming homeless.

In my talks with city staff I found out the zoning laws of Mill City don't directly address tiny homes and it's possible to build them in zoning districts by the highway and zone R2. My letter is to ask the city council to consider a proposal to start an initiative into looking at a subsection of affordable tiny houses to help this group of people to stay in the canyon area. First I would propose getting feedback from the families affected from the wildfires to see if there is an interest in this proposal. If there is interest the city initiative plan can look into state and federal grants available for this plan, along with anybody who wants to donate money, material or time to this cause. The subsection should also be flexible with the size of tiny homes instead of making identical units as the size of the families differ.

The main purpose of this letter is to start discussion on how the cities and communities of the Santiam Canyon area can help create more affordable housing for struggling families affected by the fire. I feel like the majority if not all of the canyon community would love to see

these struggling families stay a part of the community. Furthermore there are other reasons besides emotional reasons to keep people from leaving the canyon such as, more business for local stores, keeping the students within the district and overall more city revenue. As a concerned citizen I believe that an initiative like this would be worth discussing between communities throughout the canyon.

Sincerely,

Randall Klagge



FEMA

January 19, 2021

Stacie Cook
City Recorder/Planning Secretary
City of Mill City
444 S 1st Avenue
Mill City, Oregon 97360

Dear Stacie:

Wildfires impacted the State of Oregon causing widespread damage throughout large portions of the State on September 15, 2020. The President signed a disaster declaration for the State of Oregon authorizing FEMA assistance, including direct housing services to impacted counties, including Linn County.

In support of Oregon Wildfire survivors under Federal Declaration Disaster DR4562-OR, FEMA installed mobile home units at Mill City Mobile Home Group Site at 801 SE Fairview Street to temporarily house families until they can obtain permanent housing thru rebuilding, purchase, or rental.

To ease the financial burden on these families during their recovery, we request that the City Council waive any deposits and fees associated with their accounts with the Mill City Water and Sewer Department.

Sincerely,

PAMELA A
ZAWADA

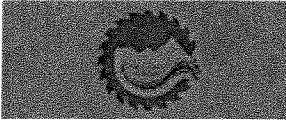
Pam Zawada

Digitally signed by PAMELA A
ZAWADA

Date: 2021.01.21 09:20:14

-08'00'

DR-4562-OR | Direct Housing Logistics
617-794-9845
pamela.zawada@fema.dhs.gov



Stacie Cook <scook@ci.mill-city.or.us>

Rock & plaque information

1 message

Susan Chamberlin

To: scook@ci.mill-city.or.us

Cc

Fri, Jan 22, 2021 at 12:21 PM

To: Stacie Cook
City Recorder

Below is a photo of the rock that we would like to place next to the Incense Cedar that honor's Anita Leach. Following the photo are the words that we agree would be on the plaque which will be on the rock.

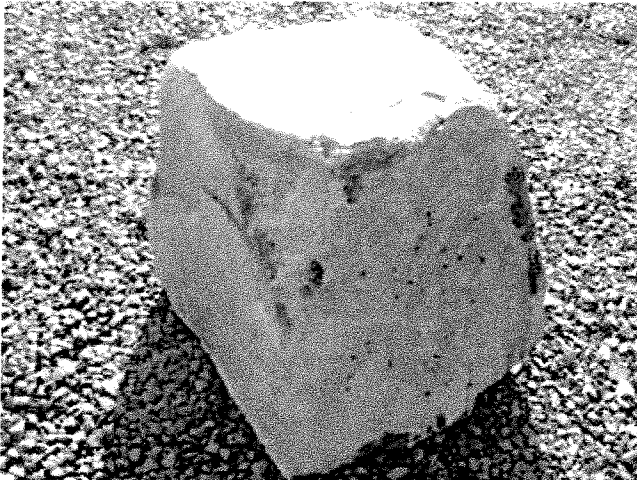
From the date we order the plaque to its completion will be 4-6 weeks and it would be placed on the rock after the rock is set in place at Hammond Park.

Our intentions is to have the rock slightly buried in the ground. Would it be possible to have the city's help with the rock? We have purchase the rock from Sigmund's Landscape and it can be delivered to Mill City. Would it be possible to have the rock delivered to the maintenance grounds, for safe keeping, until it can be permanently put in place?

We appreciate the city giving this request its consideration and will wait to hear from you.

Dave Leach, members of the community and Susan & Denny Chamberlin

Columbia River Basalt



Base: 20x19x 19x 18 in. Top: 13x 15x 15x 17 in.
Height: 20 inches. Weight: 680 lbs

In honor of Anita Leach
January 4, 1955 - September 7, 2020

*We thank you for serving our community
through your leadership, wisdom, and generous heart*