



# CITY OF MILL CITY

## AGENDA OF THE CITY COUNCIL

October 22, 2019  
City Hall  
444 S 1<sup>st</sup> Avenue  
Mill City, Oregon

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### 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](http://www.ci.mill-city.or.us/documents/packets).*

- a. Approval of Minutes of Regular City Council Meeting of October 8, 2019
  - b. Approval of Accounts Payable
  - c. Approval of IT Services Agreement with North Santiam School District in the Amount of \$3000.00
5. **CITIZEN COMMENTS/QUESTIONS LIMITED TO THREE (3) MINUTES**
6. **REQUEST TO CONSTRUCT STORAGE SHED IN KIMMEL PARK; MILL CITY GATES RECREATION ASSOCIATION (MCGRA)**
7. **DRAFT IGA – NORTH SANTIAM SEWER AUTHORITY FORMATION**
8. **MISCELLANEOUS – CITY RECORDER UPDATES**
  - a. Skatepark Update
  - b. Mill City Falls Park/EV Charging Station Update
  - c. SW Cedar Street Improvement Project Update
  - d. NE 5<sup>th</sup> Avenue Overlay Project Update
9. **EXECUTIVE SESSION – ORS 192.660(2)(e) TO CONDUCT DELIBERATIONS WITH PERSONS YOU HAVE DESIGNATED TO NEGOTIATE REAL PROPERTY TRANSACTIONS**

## 10. ADJOURNMENT

### CALENDAR OF UPCOMING CITY MEETINGS & EVENTS

Sunday	November 3, 2019	DAYLIGHT SAVINGS – FALL BACK!
Monday	November 11, 2019	CITY HALL CLOSED – VETERAN’S DAY
Tuesday	November 12, 2019	Municipal Court 9:30a.m.
		Council Meeting 6:30p.m.
Wednesday	November 13, 2019	Save Our Bridge Committee Meeting 10:00 a.m./
Friday	November 15, 2019	Planning Commission Meeting – If needed 9:30a.m.
Tuesday	November 19, 2019	Planning Commission Hearing 6:30p.m.
Tuesday	November 26, 2019	Municipal Court 9:30a.m.
		Council Meeting 6:30p.m.
Thursday	November 28, 2019	CITY HALL CLOSED – THANKSGIVING DAY
Sunday	December 1, 2019	The Reid House Committee Meeting 2:00p.m.
Tuesday	December 10, 2019	Municipal Court 9:30a.m.
		Council Meeting 6:30p.m.
Wednesday	December 11, 2019	Save Our Bridge Committee Meeting 10:00 a.m.
Tuesday	December 17, 2019	Planning Commission Hearing 6:30p.m.
Friday	December 20, 2019	Planning Commission Meeting – If needed 9:30a.m.
Tuesday	December 24, 2019	CHRISTMAS EVE – ½ DAY
Wednesday	December 25, 2019	CITY HALL CLOSED – CHRISTMAS DAY
Wednesday	January 1, 2020	CITY HALL CLOSED – NEW YEAR’S DAY
Tuesday	January 14, 2020	Municipal Court 9:30a.m.
		Council Meeting 6:30 p.m.
Friday	January 17, 2020	Planning Commission Meeting – If needed 9:30a.m.
Monday	January 20, 2020	CITY HALL CLOSED – MARTIN LUTHER KING JR DAY
Tuesday	January 21, 2020	Planning Commission Meeting 6:30p.m.
Tuesday	January 28, 2020	Municipal Court 9:30a.m.
		Council Meeting 6:30p.m.
Tuesday	February 11, 2020	Municipal Court 9:30p.m.
		Council Meeting 6:30p.m.
Monday	February 17, 2020	CITY HALL CLOSED – PRESIDENT’S DAY
Tuesday	February 18, 2020	Planning Commission Meeting 6:30p.m.
Friday	February 21, 2020	Planning Commission Meeting – If needed 9:30a.m.
Tuesday	February 25, 2020	Municipal Court 9:30a.m.
		Council Meeting 6:30p.m.
Tuesday	March 10, 2020	Municipal Court 9:30a.m.
		Council Meeting 6:30p.m.
Tuesday	March 17, 2020	Planning Commission Meeting 6:30p.m.
Friday	March 20, 2020	Planning Commission Meeting – If needed 9:30a.m.
Tuesday	March 24, 2020	Municipal Court 9:30a.m.
		Council Meeting 6:30p.m.
Tuesday	April 14, 2020	Municipal Court 9:30a.m.
		Council Meeting 6:30p.m.
Friday	April 17, 2020	Planning Commission Meeting – If needed 9:30a.m.
Tuesday	April 21, 2020	Planning Commission Meeting 6:30p.m.
Tuesday	April 28, 2020	Municipal Court 9:30a.m.
		Council Meeting 6:30p.m.
Tuesday	May 12, 2020	Municipal Court 9:30a.m.
		Council Meeting 6:30p.m.
Saturday	May 16, 2020	Annual Clean Up Day 9:00a.m.-3:00p.m.

## **REQUEST FOR COUNCIL ACTION**

**DATE:** October 18, 2019  
**TO:** Mayor Kirsch and City Councilors  
**FROM:** Stacie Cook, MMC, City Recorder  
**REGARDING:** **Consent Agenda Items**

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- a. Approval of Minutes of Regular City Council Meeting of October 8, 2019
- b. Approval of Accounts Payable.
- c. Approval of IT Services Agreement with North Santiam School District in the Amount of \$3000.00.

**MILL CITY  
MINUTES OF THE CITY COUNCIL  
Tuesday, October 8, 2019**

**Council President Tony Trout** opened the meeting at 6:30 PM with the flag salute. Councilors present were Janet Zeyen-Hall, Brett Katlong, Dawn Plotts, and Steve Winn. Mayor Kirsch was excused. Staff members in attendance were City Attorney James McGehee, City Planning Consultant Dave Kinney, Public Works Supervisor Russ Foltz and City Clerk/Reid House Facilitator Tree Fredrickson.

**Citizens in attendance were** Roel Lundquist, Gary Olson, and Dan and Stephenie Tucker, and Lieutenant Michelle Duncan, Linn County Sheriff's Office. Alphabetical order by last name here.

**DECLARATIONS OF POTENTIAL CONFLICTS OF INTEREST:** Councilor Trout 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.

**CONSENT AGENDA**

Councilor Katlong requested item 'b' be pulled from consent agenda.

**Councilor Plotts** moved and was seconded by **Councilor Katlong** to approve items a; Approval of Minutes of Regular City Council Meeting of September 24, 2019, and c; Acceptance of Monthly Expenditures Report, September 2019. City Planner Dave Kinney polled the Council; the motion passed unanimously, (5:0).

Councilor Katlong questioned the payment to Speer Hoyt, LLC. Councilor Zeyen-Hall explained it is the city's fiscal responsibility to the North Santiam Joint Sewer Project, which is paid out of the \$25,000 grant that the City is managing for the group.

Councilor Trout said that if there are questions about the packet, especially with accounts payable, getting them to the staff before the meeting will allow for them to prepare to answer the questions or do so beforehand.

**Councilor Zeyen-Hall** moved, seconded by **Councilor Plotts** to Approve Item 'b', Accounts Payable of the Consent Agenda. The motion passed, (5:0).

**LINN COUNTY SHERIFF'S REPORT:** Lieutenant Michelle Duncan gave the Linn County Sheriff's Office report for September. Lt. Duncan said that there have been some mail thefts as well as scam phone callers identifying themselves as from the Linn County Sheriff's Office. Lieutenant Duncan said that scam calls are on the rise in all counties and stressed that no one will ever call from Linn County Sheriff's Office and ask for money. Never give anyone money over the phone. Lt. Duncan said that the bargaining agreement has been finalized.

Roel Lundquist, SW Linn Blvd, thanked Officer Duncan for covering the celebration for Save Our Bridge.

Councilor Trout noted the difference in traffic on SE Kingwood from the digital speed sign. He, and other neighbors, are grateful for the sign when it is here. It makes a difference with traffic for some time after it leaves.

Councilor Plotts said that there have been comments about children being out of car seats during drop off in the mornings at the schools and asked if the deputies can look into this.

**PUBLIC WORKS REPORT:** Public Works Supervisor Russ Foltz gave a brief report on the following items:

Pump Report – Pump report was very interesting with only 9.21% of unmetered loss recorded. Mr. Foltz will be keeping an eye on this as it is impossible for leaks to suddenly stop themselves.

Public Works Building – Construction on the new public works building was behind a couple of weeks but now is right on schedule. The floors have been poured and look great. Walls are starting to go up. The problem with doors installed too low has been fixed. Mr. Foltz said that he would like to have a tour of the building for the Council when it is finished.

NE 5<sup>th</sup> Avenue Update –Mr. Foltz said that City Recorder Stacie Cook emailed Russ Rebo from Knife River to ask if the bid included BOLI wage. Mr. Rebo advised Mr. Foltz that BOLI wages were included in the bid.

Mr. Lundquist questioned whether the big generator could be hooked up to the new building. Mr. Foltz said that this had to be removed from the project because cost for the building was too high so items had to be eliminated. This will have to be addressed in the future.

Mr. Lundquist said that there has been some work done along the walking path by SW 4<sup>th</sup> Avenue and asked if water hook ups were considered. Mr. Foltz said that he spoke with the person who is doing this work and was advised that originally the plan was just to put sod in, however, people walking the area asked for a path to be included as well.

**CITIZEN COMMENTS AND QUESTIONS:** None.

**PRESENTATIONS:** None scheduled.

**PUBLIC HEARING:** None scheduled.

**OLD BUSINESS:**

SW Cedar Street Improvement Project Update: Mr. Kinney stated that the Notice of Award was issued at the last Council meeting. The Contractor has not yet returned the signed contract documents and required submittals, which are due by October 11, 2019. Upon submittal and confirmation of all required submittals, the City will provide the Notice to Proceed for the project. Once there is a start date, Council will be advised.

Mr. Kinney noted that the need to sign two easements was in Mrs. Cook's memo. Both easements have been signed.

Mr. Lundquist said that there was mention in the memo of an agreement for cost offset for the SW Cedar Street easement and asked if this was formalized or not, noting that there is some compensation potential and this should be in writing. Mr. Kinney said that the easement is on the agenda for ratification. The easement document indicates "other considerations", which were in writing to the property owner in an outside letter that the owner signed off on.

Councilor Plotts asked for clarification on the notation in the memo regarding the area where the old City Hall was located. Mr. Kinney said that there is a section of land within the project area that sits between two rights-of-way that is still a buildable parcel. This is the old City Hall site. Before the area can be considered true right-of-way, the Council must adopt a resolution converting the tax lot to a portion of the SW Cedar Street right-of-way. The resolution is submitted to the County assessor's office and then it is changed to a section of street.

## NEW BUSINESS

DRAFT Additional Dwelling Unit (ADU) Code: Mr. Kinney stated that in 2017, the Oregon Legislature adopted SB 1051 adopting a statewide policy to encourage the development of accessory dwellings in the same lot as an existing single-family dwelling. Beginning in July of 2018, all cities with a population of 2,500 or more are required to allow accessory dwellings in any zone that allows single-family homes. This requirement does not apply to the City of Mill City but the City may adopt a legislative amendment to the zoning code to allow accessory dwellings.

Mr. Kinney said that the Planning Commission has talked about requiring property owners to reside in one of the dwelling units should ADU's be allowed within Mill City. Mill City has the option of including this within a code or not. DLCD recommends not including this requirement, however, there are a number of communities which have already done so.

Mr. McGehee asked if the draft ADU code would comply with state law for the time when Mill City reaches the 2500 population. Mr. Kinney said that an amendment to the code would have to be done to bring the City into compliance with state law at that time.

Councilor Trout asked if there is something in the statute that refers to available building lots in relation to ADU's. Mr. Kinney said that this specific section of the statute does not have anything to do with the available lots.

Councilor Katlong said that if there is the possibility that the City will have to amend the code to comply with state law the code should be held until the 2500 population is reached.

Councilor Trout said that he thinks this code needs to be visited at some time but with the work load that the Planning Commission has right now, it may not be the best time to add one more item to the list.

**Councilor Plotts** moved, seconded by **Councilor Katlong**, to table the Additional Dwelling Unit Code indefinitely. Motion passed, (4:1), with Councilor Trout voting nay.

Street/Sidewalk/PUE Easement – Aerni; 213 SW Cedar Street: Mr. Kinney said that the terms of the easement agreement were discussed during an executive session. With joint agreement of the City and the property owner, the term are available for the public to be aware of. The easement for 213 SW Cedar was granted and signed in consideration of the following:

1. Waiver of Land Use Fee for Multi-Family Site Plan Review at SE 3<sup>rd</sup> Avenue;
2. Granting of ROW permit for SE 3<sup>rd</sup> to install landscaping between property lines and existing trees in the SE 3<sup>rd</sup> Avenue right-of-way; and
3. Credit of City Portion of building permit costs not to exceed \$500 for property on SE 3<sup>rd</sup> for a period of two years after signing the easement.

**Councilor Zeyen-Hall** moved, seconded by **Councilor Katlong**, to Sign the Street/Sidewalk/PUE Easement for 213 SW Cedar Street.

Mr. McGehee said that the copy of the document he has already has the Mayor's signature on it so the motion should be to ratify the signing of the easement. Councilor Trout asked if Councilor Zeyen-Hall and Councilor Katlong would retract their motion and second. Both agreed.

**Councilor Zeyen-Hall** moved, seconded by **Councilor Katlong** to Ratify the Execution of the Easement for 213 SW Cedar Street and to Authorize Recording of the Document. The motion passed unanimously, (5:0).

The Presbyterian Church easement will grant the City the necessary property to legally retain the sidewalk along the north edge of SW Cedar Street, as well as to access and rebuild the ADA

ramp at the intersection of SW Cedar Street and SW 2<sup>nd</sup> Avenue. It also grants a temporary construction easement for the City's contractor to access this property during this project and to relocate a fence that is in the right-of-way along SW Cedar Street.

The easement is granted in consideration of the following: Relocation of existing chain link fence from ROW to property line.

**Councilor Plotts** moved, seconded by **Councilor Zeyen-Hall**, to ratify the execution of the easement for SW Broadway and to authorize recording of the document. The motion passed unanimously, (5:0).

**NE 5<sup>th</sup> Avenue Street Overlay Project:** The City received two bids for the NE 5<sup>th</sup> Avenue overlay; North Santiam Paving in the amount of \$71,600.00 and Knife River Corporation in the amount of \$64,987.50. The Notice of Intent to Award has been advertised on the City's website, effective October 4, 2019<sup>th</sup>. If the Council concurs with the award to low bidder Knife River then a Notice of Award will be sent to them. Knife River also needs to verify that the bid is based on BOLI wage rates. There are a few other forms that need to be filed with the City because the bid was over \$50,000. These will need to be provided prior to beginning construction on the street.

Mr. Lundquist said that previously packets for street work have included engineering oversight and inspection costs, noting that he does not see that included in this information. Mr. Kinney said that there may be additional costs for these items, which could bring the total project cost up to around \$75,000.00. The SCA grant that the City received is for \$50,000.000, which means that the City will need to supplement the remaining project costs, likely around \$25,000.00.

**Councilor Katlong** moved, seconded by **Councilor Plotts** to award the Overlay Project to Knife River Corp, subject to advertising of Notice of Intent to Award for seven days prior to signing contract, verification of BOLI Wage Rates and the submittal of required contract forms. The motion passed unanimously, (5:0).

**Linn County Sheriff's Office Contract Rate Increase:** The City has received notice of finalization of contract negotiations with the Deputy Sheriff's Association. Projected rate increased to \$70.85 per hour for the current fiscal year. The City of Mill City currently contracts for 3612 hours a year (301 hours per month). Annual cost will be \$255,910 for this year. With the new contract, projected rates for the 2020/2021 will be \$72.99 per hour (annual cost \$263,640). For the 2021/2022 fiscal year, rates will be \$75.51 per hour (annual cost \$272,742). The new contract will be forthcoming for the City to consider.

**Request for Reduction of Water Charges - 410 NE Santiam Pointe; Dan and Stephenie Tucker:** Dan Tucker stated that they purchased a low grade water pipe which sprung a leak causing a large water bill and noted that he and his wife Stephenie were in attendance this evening seeking leniency from the Council.

According to a letter submitted to the City, the Tucker's installed a series of expandable hoses and sensor activated sprinklers to assist with lawn seeding and keeping geese away until the lawn matures. A section of this hose sprung a leak. The Tucker's were not aware of this until they received their current water bill. It was fixed as soon as they became aware of the leak. Because this leak was in a hose, staff was unable to grant any leak adjustment. Council must determine whether any credit would be provided.

**Councilor Trout** moved, seconded by **Councilor Katlong** to grant request for reduction in water charges for 410 NE Santiam Point Ct in the amount equal to of 100 units of use. The motion passed unanimously, (5:0).

## STAFF/COMMISSION REPORTS

City Attorney Report: Mr. McGehee said that the litigation he has filed is moving through. The ongoing clean-up at 424 SW Cedar was coming along nicely. However, a truck still needs to be removed.

Mr. McGehee said that he wants everyone to understand how the improvements on SW 4<sup>th</sup> Ave, next to the pedestrian path works. Under the law nobody can adversely possess against a municipality, county or state, which means the City can remove whatever is done in this location. Mr. McGehee said that the only caution he would make is that the property owner seems to be doing this work without the City's permission or input. Mr. McGehee sees low liability with these improvements but if there is an obvious defect and the City does not take care of it there could be liability. The City will be required to maintain these improvements if the person installing them does not do so, since it is on city property.

Mr. Lundquist asked if a barricade could be revisited that would keep vehicles from continuing thru the dead end on SW 4<sup>th</sup> Ave. Mr. Kinney noted that there are improvements planned within this area in the TIGER grant improvements.

Mr. McGehee said that either he or Mrs. Cook should draft a letter to the person installing the improvements advising of no adverse possession as well as the potential for improvements to be removed should the City deem it necessary.

Councilor Plotts said that the gentleman should really request permission from the City to do the work since it is within the right-of-way. Mr. Kinney said that the work should be done under a right-of-way permit.

Mr. McGehee said that it is hard to bust someone when the work being done is good quality and improves the area but they still need to understand that there is a process which needs to be followed to obtain permission to do this kind of work.

Planning Commission Report: Mr. Kinney noted several applications have been submitted for new homes. The City will be receiving the plans and applications from the Santiam Canyon School District for improvements to the school. Estimated start date is slated for March of 2020. There will be some cost sharing issues that will have to come before the Council related to infrastructure improvements.

Councilor Plotts asked when construction will begin on the bridges. Mr. Kinney explained they were still waiting for submission of final plans. Estimated time of start should be around June of 2020. First stage will be the traffic bridge with the railroad bridge being next on the list. Mr. Kinney expects this project to take a couple of years to complete.

Mr. McGehee said that the Freeman Meadows Subdivision still has storm drainage and water line costs that need to be outlined so that cost sharing can be determined. It would be helpful to have these estimates before the budget season. Mr. Kinney said that the property owners are working to gather the necessary information. The City is also waiting on the grant funds from the state for the storm drainage improvements.

## BUSINESS FROM MAYOR & CITY COUNCILORS

**Councilors Katlong, Plotts and Winn** had nothing to report.

**Councilor Zeyen-Hall** talked to Dan Lemke about maintaining Hammond Park and how one side is always cleaned but the other side is not. This will be an item that is worked on so that they entire park is maintained.

**Councilor Trout** noted the inmate work crew did a good job on removing overhanging trees and shrubs in the cities right-of-way. They are done at this time.

Councilor Plotts had a question about the proposed bus stop on Wall Street. A letter came into the City from the Historical Society with concerns related to this. Would the council be entertaining a discussion as to their concerns in the near future? Mr. Kinney noted that county drawings and agreements with PPL on the proposed electric car outlets have not been received. There should be no decisions regarding the bus stop until the parking lot/EV charging station matter is finalized.

**EXECUTIVE SESSION:** No executive session held.

**ADJOURNMENT**

The meeting was adjourned at 8:00 PM.

Prepared by:

Approved by:

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Stacie Cook, MMC  
City Recorder

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Tim Kirsch  
Mayor



North Santiam School District

**NORTH SANTIAM SCHOOL DISTRICT 29J  
AGREEMENT FOR TECHNOLOGY TEAM SERVICES**

**Technology Team Services**

This AGREEMENT is made and entered into effective the 1<sup>st</sup> day of July, 2019 pursuant to the authority granted in Oregon Revised Statutes (“ORS”) Chapter 190, by and between the NORTH SANTIAM SCHOOL DISTRICT (“NSSD”) and the CITY OF MILL CITY (“Customer”), both parties being government entities within the State of Oregon.

**RECITALS**

1. NSSD is a K-12 school district formed under ORS Chapter 334 and authorized by ORS 334.175 to provide services to local government agencies.
2. The Customer is a non-component entity of NSSD and desires to receive the services as described below from NSSD.
3. NSSD has staff with proper credentials and experience to provide such service.

**WITNESSETH**

NSSD and the Customer, in consideration of the mutual promises contained herein, agree as follows:

- I. **TERM.** The effective dates for this Agreement shall be July 1, 2019 to June 30, 2020.
- II. **SCOPE OF SERVICES.** NSSD agrees to provide technical support services as further described in the Technology Team Services document, attached hereto as Attachment “A” and incorporated herein by this reference.
- III. **COMPENSATION.** The Customer shall pay NSSD for services performed described in Section II of this Agreement in District funds in the amount of \$60.00 per hour for 50 hours of service. For the term of this Agreement the total charges are \$3,000.00. Payment is due within 30 days of signing this Agreement. Unused hours of service can accumulate and be carried over from term to term. Customer will receive monthly statements from NSSD reflecting the number of service hours used for the month and remaining balance for the term of the Agreement. *A 5% fee will be added to equipment purchased for the City. No additional time will be charged for equipment research and or purchasing.*
- IV. **TERMINATION.**
  - a. If NSSD or the Customer shall fail to fulfill in a timely and proper manner the obligations of this Agreement, or shall violate any of the covenants, agreements, or stipulations of this Agreement, either party shall thereupon have the right to terminate this Agreement by giving written notice

of such termination to the other, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In such event, all equipment and finished or unfinished documents, data, studies, and reports prepared by NSSD or the Customer under this Agreement shall, at the option of the Customer, become the Customer's property, and NSSD shall be entitled to receive just and equitable compensation for any satisfactory equipment maintenance or work completed.

- b. Notwithstanding the above, neither party shall be relieved of liability for damages sustained by NSSD or the Customer by virtue of any breach of this agreement by either party. The Customer may withhold any payments to NSSD for the purpose of offset until such time as the exact amount of damages due the Customer from NSSD is determined.

V. **ACCOUNTING.** For audit purposes, the Customer shall, upon reasonable prior notice and during normal business hours, have access to and may inspect all of NSSD's records relating to performance of this Agreement.

VI. **INDEMNITY.**

- a. To the extent permitted by law, NSSD shall indemnify and hold harmless the Customer from any claims, causes of action, damages, losses, liabilities and reasonable expenses whatsoever arising directly or indirectly out of NSSD's performance of its duties under this Agreement, except when such claims, causes of action, damages, losses, liabilities and reasonable expenses are directly or indirectly attributable to the Customer's own negligence.
- b. To the extent permitted by law, the Customer shall indemnify, hold harmless and defend NSSD from any claims, causes of action, damages, losses, liabilities and reasonable expenses whatsoever arising directly or indirectly out of the Customer's performance of its duties under this Agreement, except when such claims, causes of action, damages, losses, liabilities and reasonable expenses are directly or indirectly attributable to NSSD's own negligence.

VII. **MISCELLANEOUS PROVISIONS.**

- 1. Successors and Assigns. The terms and conditions of the Agreement shall inure to the benefit of the parties and their successors only; no assignment to the benefit of third parties is allowed. The terms and conditions of the Agreement shall inure to the benefit of and be binding upon the respective successors of the parties. Nothing in this Agreement, expressed or implied, is intended to confer upon any other party, other than the parties hereto or their respective successors, any rights, remedies, obligations, or liabilities under or by reason of this Agreement except as expressly provided in this Agreement.
- 2. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Oregon.
- 3. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 4. Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

5. Notices. Unless otherwise provided herein, any notice, request, certificate or instrument required or permitted under this Agreement shall be in writing and shall be deemed "given" upon personal delivery to the party to be notified, or three business days after deposit with the United States Postal Service.

Dispute Resolution: Mediation/Arbitration.

6. Arbitration. Any controversy of claim arising out of or relating to this agreement, or breach thereof, shall be settled by Mandatory Mediation; or, if not settled, resolved by arbitration rules of the Linn County District Court. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
7. Prevailing Party Fees. If any arbitration action is initiated to enforce and interpret the terms of the Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements, in addition to any other relief to which such party may be entitled, including fees on appeal.
8. Amendments and Waivers. Any amendment or waiver of this agreement must be made in writing and is effective and binding only when signed by the parties hereto.
9. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.
10. Entire Agreement. This is the entire Agreement between the parties with respect to the subject matter hereof and supersedes all other written and oral agreements.

It is agreed: \_\_\_\_\_, 20\_\_.

**North Santiam School District**

**City of Mill City**

by: \_\_\_\_\_  
Andy Gardner, Superintendent

by: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

1155 N 3<sup>rd</sup> Ave  
Stayton, OR 97383  
Tax ID Number:

PO Box 256  
252 SW Cedar St  
Mill City, OR 97360  
Tax ID Number:

## Technology Team Services

### SECTION I: OBLIGATIONS OF NSSD

NSSD agrees to provide technical support labor to facilitate implementation, maintenance and support of Customer technology assets. Specific activities include, but are not limited to the following:

- a. Network Support: Includes support of all aspects of wide-area and local-area networking. NSSD support wired and wireless networking technologies. Most of our customers utilize us as their support contact for networking issues. NSSD work directly with your equipment, configurations and vendors to resolve issues and build solutions. Includes wiring closet and server rack organization and planning, monitoring and correction of power issues, and monitoring and correction of air handling/conditioning issues. Includes server and storage system sizing, procurement and maintenance. NSSD support a variety of industry standard equipment and operating systems, including Windows and Linux, and the hosting of network-based applications. NSSD implement and maintain on site backup and disaster recovery systems. Off site backup of up to 50gb total data storage and disaster recovery is available for no additional fee.
- b. Workstation Support: Includes workstation management, network accounts and security, application delivery, provisioning new equipment and re-provisioning existing equipment. Our primary support model is for Windows-based workstations. Includes support of technologies such as projectors, smart-boards, permanent and mobile computer labs, and printers.
- c. Third Party Systems Support: NSSD provide liaison service between vendors and the customer for technology systems that are outside this agreement.

This technical support labor is provided from a pool of available technicians to provide a wide range of skill sets required to meet these obligations. The service is managed by the NSSD Director of Technology, and NSSD will determine what personnel are assigned to the Customer to meet service requests and if specific support requests are within or outside the scope of this service. Support labor may be requested and delivered by the following methods:

- a. Phone Support: Helpdesk personnel are available 8 AM – 4 PM Monday through Friday to troubleshoot and resolve issues.
- b. On-site Support: A technician may be assigned to provide on-site support on a regular schedule.
- c. After Hours On-site Support: A technician is available at 1.5 times your hourly rate between the hours of 5 PM and 8 AM Monday through Friday, Saturday and Sunday. Calls during these hours will begin with a no cost phone call up to 30 minutes in length for troubleshooting and possible resolve. After this initial free period, charges will incur.
- d. Project Support: A technician or technicians may be assigned to provide support on a project basis.

NSSD is responsible for providing appropriate tools, equipment and professional development to enable the Technology Team to meet service obligations.

The Technology Team service is not responsible for:

- a. Providing support that requires special licensing. This includes installation and termination of wiring (copper and fiber) which requires an Electrician license.
- b. Providing support to assets or services which are not owned or leased by the Customer. This includes servicing personal equipment and subcontracting arrangements.

## **SECTION II: OBLIGATIONS OF THE CUSTOMER**

The Customer agrees to clearly define service expectations and provide an environment that enables successful delivery of service. Specific activities include:

- a. Provide equipment adequate to support the current and future technology requirements for the Customer.
- b. Provide a professional workspace for use by NSSD technicians assigned to on-site support.
- c. Provide a Customer Technical Representative contact. This contact or their designee should be able to provide:
  - Defined service expectations.
  - Application or service testing to verify expected results.
  - District data access requirements.
  - An authoritative list of services that NSSD technicians are expected to support.
  - Access to Customer licensing and media for software and services.
- d. Provide a Customer purchasing decision-maker contact who may receive hardware, software and service recommendations for consideration and processing.
- e. Provide a Customer Facilities contact who may provide information and assistance with facilities-related areas, including:
  - A schedule for availability of Customer building access.
  - Keys and/or codes for wiring closet access.
  - Maintenance activities and schedules which may impact access to service areas.
  - Knowledge of electrical circuits and data wiring capacity and availability.
- f. Provide for NSSD a Letter of Agency, if needed, to grant NSSD the authority to interact with Customer vendors on behalf of the customer.

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

## **Memorandum**

**Date:** October 18, 2019  
**To:** Mayor Kirsch and Council  
**From:** Stacie Cook, MMC, City Recorder  
**Subject:** **Business for October 22, 2019 Council Meeting**

**a. Request to Construct Storage Shed in Kimmel Park; Mill City Gates Recreation Association (MCGRA)**

Councilor Zeyen-Hall was approached by members of the local recreation association, MCGRA, about the possibility of constructing a storage shed in Kimmel Park for their supplies. Prior to the dugout blowing over a few years ago, there was a small shed attached to the structure.

The location that MCGRA currently uses to store their supplies will not be available to them at some point in the near future. MCGRA representatives have indicated that they have funds to construct the shed.

The location for and size of the shed they are requesting still needs to be determined. Councilor Zeyen-Hall should have additional information on this item at the meeting.

**Requested Action: Discussion.**

**b. Draft IGA – North Santiam Sewer Authority Formation**

Enclosed is a draft of an Intergovernmental Agreement which has been prepared as the first step in considering the set up of the basic legal structure for the North Santiam Sewer Task Group to begin soliciting funds and operating as a public entity. I have provided the document to City Attorney Jim McGehee for his review.

Before authorizing entering into this agreement, we should set a date for the Council to receive information on what the North Santiam Sewer Task Group has found in relation to the feasibility of a waste water district, costs associated with the formation of a district, thoughts on each city's function within the district and where Mill City fits into the overall plan, being the only community with a sewer system in place.

Mayor Kirsch and Councilor Zeyen-Hall have been attending the meetings and can provide a brief summary of the status of the group to date. This item will be on the November 12, 2019 agenda for discussion and comment by the City Attorney.

The North Santiam Sewer Task Group is planning for a Town Hall meeting some time in November. Once a date, time and location have been determined, this information will be provided to Council.

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

**c. Miscellaneous City - Recorder Updates**

**i. Skatepark Update**

Dave Kinney and I met with representatives of SKATE on Tuesday, October 15, 2019. SKATE has provided the required site plan and skatepark elements plans that were a condition of approval for their land use application. The Planning Commission will be considering the submittals at their November 19, 2019 meeting. If approved, the next steps will be:

- SKATE determine project phases (tentatively; 1. bowl, 2. other skate elements, 3. exterior landscaping items)
- SKATE obtain construction cost estimates for each phase
- SKATE present financing plan for construction of Phase 1 to City Council
- Council must review and approve final design plans and construction plans

SKATE's presentation of the financing plan is tentatively scheduled for November 26, 2019. Additional steps remain after submittal of financing plan. A copy of the MOU between the City and SKATE is included for Council review.

**ii. Mill City Falls Park/EV Charging Station Update**

Dave Kinney and I have a meeting set for Friday, October 18, 2019 to discuss the draft easements presented to the Erdman's by PacifiCorp to allow the parking lot/EV charging stations to be constructed. A verbal update will be provided at Tuesday's meeting.

**iii. SW Cedar Street Improvement Project Update**

The SW Cedar Street Improvement Project contract and required forms have been provided to the City by the contractor, R&R. A notice of construction has been given to the affect property owners with an intended start date of Tuesday, October 22, 2019. This date will be firmed up at the pre-construction meeting scheduled for Monday, October 21, 2019. Additional information will be brought to Council at the meeting based on the outcome of the pre-con meeting.

**iv. NE 5<sup>th</sup> Avenue Overlay Project Update**

The Notice of Award, contract document and required additional submittals have been provided to Knife River. Once the executed documents have been returned to the City we can provide the Notice to Proceed. A pre-construction meeting is being scheduled for this

project.

d. **Executive Session – ORS 192.660(2)(e) To Conduct Deliberations with Persons You Have Designated to Negotiate Real Property Transactions**

e. **Other**

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**MEMORANDUM OF UNDERSTANDING FOR THE  
DEVELOPMENT AND MANAGEMENT  
OF  
*THE MILL CITY SKATEPARK PROJECT***

Dated and Effective as of March 27, 2018.

By and between

**Santiam Kids and Tourism Effort**, a 501(c)(3) Oregon  
Non-Profit Corporation  
PO Box 494  
Mill City, OR 97360  
(ORGANIZATION)

**and**

**The City of Mill City**, an Oregon Municipal Corporation  
PO Box 256  
Mill City, OR 97360  
(PUBLIC AUTHORITY)

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## MEMORANDUM OF UNDERSTANDING

### *Mill City Skatepark Project*

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into as of the Effective Date by and between (a) the City of Mill City, an Oregon Municipal Corporation (the "City"); and (b) Santiam Kids and Tourism Effort, a 501(c)(3) Oregon Non-Profit Corporation (the "Organization") organized and existing pursuant to the laws of the State of Oregon. The Organization and the City may from time to time be referred to individually as a "Party" and collectively as the "Parties."

The Parties hereto intend this MOU to constitute an outline of the major terms, conditions and understandings of the Parties, which may be set forth more thoroughly in a definitive agreement between the Parties relating to the subject matter of this MOU. This MOU reflects the mutual understandings of the Parties regarding those actions, permits, approvals and/or agreements lawful and necessary to accomplish the location, financing, acquisition, design, development, construction, donation, management, operation, and use of the *Mill City Skatepark*, a public skatepark located at the Old Fire Hall site at the NE corner of SW Cedar Street & SW 2nd Avenue (herein, the 'Project'). The Parties intend to actively participate and to work together collaboratively, in good faith and with due diligence, to negotiate the terms of the development of the Project. These undertakings are personal to the Parties and neither this MOU nor its terms shall be assigned to any other person or entity without the unanimous consent of the Parties.

### RECITALS

WHEREAS, the City's Master Parks Plan identifies recreational facilities and parks as critical components enhancing the quality of life within Mill City; and,

WHEREAS, residents of Mill City, through the Organization, have expressed to the City the public's desire for a public skatepark; and,

WHEREAS, Mill City Master Parks Plan, Parks and Recreation Goals and Policies states: "Mill City's policies for park and recreation development can be found in the Mill City Comprehensive Plan. Although there is no specific goal regarding parks and recreation, Public Facilities Policy 28 states the City will develop a park plan for the acquisition and development of new parks and the improvement of existing parks"; and,

WHEREAS, the Parties have expressed the shared goal of facilitating the development and operation of a skatepark within the City of Mill City, Oregon, a municipality situated within Marion County and Linn County; and,

WHEREAS, the Parties have been working jointly on a development concept involving vacant property owned by the City and located at the old fire hall site at SW Cedar Street & SW 2nd Avenue; and,

WHEREAS, the Parties have evaluated the results of an analyses for the two potential sites;

and,

WHEREAS, the Organization has expressed a desire to design, finance, develop and construct a public skatepark, using funds raised through private resources and donations, on the City's vacant property, at the Old Fire Hall site at the NE corner of SW Cedar Street & SW 2nd Avenue; and,

WHEREAS, the City, through staff expertise and oversight, intends to assist the Organization in the planning, design and implementation of the Project to ensure that the Project will be consistent with the City's Comprehensive Plan and the Master Parks Plan, as well as being aesthetically pleasing and environmentally responsible; and,

WHEREAS, the Parties involved desire to execute an MOU to establish the rights, obligations, and roles anticipated by each Party for the planning, development and operation phases of the Project; and,

WHEREAS, each Party desires to use the MOU as a framework for describing preliminary activities intended by the Parties involved until the Project can be developed and executed.

NOW THEREFORE, in consideration of the mutual assurances, representations and warranties of the Parties, the Parties have established the basic tenets of a collaborative working agreement for the development and completion of the Project, and the Parties wish to execute this Agreement to memorialize the essential terms of their agreement, however, without imposing any legal obligation on any Party:

## **AGREEMENT**

1. **Incorporation of Recitals.** The above recitals are incorporated herein by this reference.

2. **Term.** The term of this Agreement shall commence on March 27, 2018 and continue until the Project is completed or until otherwise mutually agreed to by the parties pursuant to a written amendment to this Agreement.

3. **Access to the Property.** The City hereby grants to SKATE, its directors, officers, members, employees, agents and contractors rights of access to the Old Fire Hall site at the NE corner of SW Cedar Street & SW 2nd Avenue for the purpose of the Project. This includes the right of ingress and egress of equipment and machinery, provided, however, any effects on adjacent property by the ingress and egress are mitigated and any adjacent property that is affected is returned to its original or substantially similar condition.

4. **Design.** The design of the Project shall be subject to City approval prior to construction and all design and installation shall meet federal, state and local ordinances, statutes and regulations, including ADA, city public works design standards and building codes.

4.1. **Site Analysis.** SKATE retained Dreamland, a skatepark design firm, to evaluate the pros and cons of two locations for a skatepark in Mill City, Oregon. The two locations are: (1) Old Fire Hall site at the NE corner of SW Cedar Street & SW 2nd Avenue and (2) the west

end of Kimmel Park. Dreamland presented their initial findings to SKATE and the City Council at a public meeting and recommended that the Project be sited at the Old Fire Hall site at the NE corner of SW Cedar Street & SW 2nd Avenue. (Completed prior to agreement approval/signing)

4.2. Site Selection. The City Council hereby approves the site recommendation that the Project be sited at the Old Fire Hall site at the NE corner of SW Cedar Street & SW 2nd Avenue.

4.3. Conceptual Design. SKATE retained Dreamland to prepare a conceptual design for the Project for review and approval by the City. Dreamland:

4.3.1. Prepared three conceptual designs for a skatepark at the Project site. The conceptual designs will show different skatepark elements and public amenities that may serve beginning, intermediate and advanced skatepark users. (Completed prior to agreement approval/signing)

4.3.2. Presented the three design concepts, solicit public comments and respond to questions at a City hosted open house for the public. The parties acknowledge an open house was held on November 28, 2017, and all public comments were provided to Dreamland.

4.3.3. SKATE recommended a final conceptual design for the project to the City Council.

4.3.4. On December 12, 2017 the City Council approved the conceptual design for the Project, attached as EXHIBIT 'A' and labeled "Approved Conceptual Design #1".

4.4. SKATE will prepare a final skatepark site plan for land use review and approval by the Mill City Planning Commission and the Mill City City Council. The City will prepare and process the land use application per Mill City Municipal Code. The final skatepark site plan will include:

4.4.1 *Site plan.* A site plan showing the skatepark elements, utilities, parking, sidewalk and/or street improvements to be constructed as part of the Project.

4.4.2 *Phasing options.* Present a proposal for phasing of the construction of the Project, if warranted.

4.4.3 *Perspective Drawings.* Present a 3-D rendering of the park with at least two perspective views of the park.

4.4.4 *Preliminary Cost Estimate.* Propose a preliminary cost estimate for the project including design, engineering, administration and permits, site preparation, construction and contingencies. The construction cost estimate will include public improvements (water, sewer, storm drainage and street), parking lot, skatepark elements and buildings/facilities (restrooms, water fountains, seating, etc.).

4.4.5 *Financing Plan.* Funding plan for construction of Phase 1 improvements including committed and proposed funding sources.

4.5 Skatepark Site Plan Design Approval. SKATE will present the final site plan design to the City Council at a regularly scheduled city council

meeting.

4.6 Final Design and Construction Plan. Upon approval of the conceptual design, SKATE will prepare final design plans and construction plans for the Project. The City Council must review and approve final design plans and construction plans.

5. **Construction.** This MOU does not authorize construction of the project, nor make any representations when construction will occur.

5.1. Once funding is secured and a final site plan and construction plans for the Project are approved by the City Council, the SKATE will:

5.1.1. Obtain final land use approvals and/or building permits;

5.1.2. Approve final construction plans for the Project;

5.1.3. Obtain bids and manage construction for the Project.

6. **Funding of Project.**

6.1. Project Funding. The parties agree that the funding for the Project will include a combination of funds raised by SKATE and funds provided by the City of Mill City. The City understands SKATE will solicit donations, in-kind contributions and foundation grants for the project.

6.1.1. SKATE shall be solely responsible for the proper expenditure and accounting of funds raised and spent by SKATE for the Project. SKATE shall be responsible for preparation of any and all reports required by third-party foundations or other persons or entities contributing funds for the Project and shall be responsible for sending any and all required acknowledgements to donors of tax-deductible charitable contributions. The City shall have no custody or control over the funds raised by SKATE for the Project.

6.2. City of Mill City Skatepark Fund (Fund 14). The City of Mill City Skatepark Fund has been established as a reserve fund for the planning and development of a skatepark in Mill City. The City will budget and expend funds, including both those deposited with the City as community secured fundraising monies and City allocated funds, in accordance with Oregon Budget Law and Oregon Public Contracting laws and its fiduciary responsibilities for the management and expenditure of public funds.

6.2.1. As of September 30, 2017 SKATE, and prior donors, have donated approximately \$16,900 to the City of Mill City for the Project, which have been deposited in the Skatepark Fund. The City and SKATE agree these funds shall be used for the Project expenses.

6.2.2. Upon City approval of the site plan for the Project, City shall disburse the funds in its Skatepark Fund, raised by SKATE and prior donors, to SKATE for the Project.

6.2.3. Government and Foundation Grants. The City Council may seek government grants and foundation grants for the Project, subject to its ability to commit staff and city resources to the Project. The City may authorize the submittal of one or more grants for the project by the adoption of a Resolution of the City Council or by approving each grant application at a

regular city council meeting, prior to the submittal of the grant application.

6.3. Minimum Funding Threshold. The City and SKATE agree not to commence construction for the Project until a minimum funding threshold is agreed to by both Parties. Secured funding may include a combination of cash contributions, written pledges, foundation grants, government grants or materials and services that are dedicated to the Project.

7. **Insurance.** Any time the City of Mill City deems is appropriate, or that the City of Mill City's insurance company deems that it is appropriate, and upon notice to SKATE, SKATE agrees to maintain a policy of comprehensive general liability insurance, or to require its contractors to maintain a policy of comprehensive general liability insurance, of at least \$1 million in coverage and such other bonding and liability insurance as necessary to cover any casualty or other damage suffered against the Property (real and personal), the commitments and indemnifications under this MOU or any other requirement the law may impose.

8. **Foundation Indemnification.** SKATE shall indemnify City against and shall hold City harmless from all of the following:

8.1. All liabilities, claims and demands for personal injury, property damage or claims or suits for infringement or violation of the rights of others (including those of City itself) arising out of or caused by any act or omission of SKATE, its directors, officers, members, subcontractors, agents or employees;

8.2. All claims made by any subcontractor or supplier engaged by SKATE for compensation allegedly due on account of performing or furnishing any of the work related to the Project, regardless of the legal or equitable theory or theories in which such claims may be couched;

8.3. All claims arising out of a violation of this MOU by any director, officer, member, employee or agent of SKATE;

8.4. Any violation of the law by SKATE arising out of or related to the Project.

9. **City Indemnification.** The City shall release, indemnify and hold SKATE harmless from any claim, loss, suit or action of any nature arising out of or resulting from a known dangerous condition of the Property or any negligent act of any officer, employee, agent or contractor of the City.

10. **Termination.** This MOU may be terminated under the following conditions:

10.1. If either Party fails to pursue the work on the Project diligently, or abandons or ceases work for a period of six (6) months or more;

10.2. If either Party fails in any way to perform the conditions of this MOU; or

10.3. Upon the mutual consent of both parties.

Any termination hereunder shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

11. **Miscellaneous.**

11.1. Amendments. This MOU may be amended only by an instrument in

writing executed by all the parties.

11.2. Headings. Headings used in this MOU are solely for convenience of reference, are not part of this MOU and are not to be considered in construing or interpreting this Agreement.

11.3. Entire Agreement. This MOU (including the exhibits) sets forth the entire understanding of the parties with respect to the subject matter of this MOU and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

11.4. Counterparts. This MOU may be executed by the parties in separate counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

11.5. Severability. If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and unenforceability of any such provision in any other respect and other remaining provisions of this Agreement shall not be in any way impaired.

11.6. Waiver. A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

11.7. Exhibits. The exhibits referenced in this Agreement are part of this Agreement as if fully set forth in this Agreement.

11.8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

11.9. Representation of Counsel. James L. McGehee, Attorney at Law, PC, represents the City only in this matter. SKATE has been advised of these facts and has the right to and is encouraged to seek independent legal counsel of SKATE's choice regarding this Agreement. Each party acknowledges each party's right to negotiate the terms of this Agreement and agrees that it shall not be interpreted or construed against any party.

11.10. Dispute Resolution. In the event of a dispute between the parties as to the terms and or performance of this Agreement, the parties shall attempt to resolve it by way of an informal dispute resolution process. Both parties will use their best efforts to resolve it, pursuant to an informal dispute resolution process, including, but not limited to; the use of mediation, and/or other means that would resolve in a mutual agreement. If the parties cannot amicably agree as to the dispute resolution process, the parties may agree to arbitration, and/or civil litigation.

IN WITNESS WHEREOF, the undersigned have caused this MOU to be duly executed and sealed as of the date first stated above.

**ORGANIZATION**

**Santiam Kids and Tourism Effort, a 501(c)(3) Oregon  
Non-Profit Corporation**

By: \_\_\_\_\_

Name: Melinda Flatman \_\_\_\_\_

Title: President \_\_\_\_\_

Date: \_\_\_\_\_

**PUBLIC AUTHORITY**

**City of Mill City, an Oregon Municipal Corporation**

By: \_\_\_\_\_

Name: Tim Kirsch \_\_\_\_\_

Title: Mayor \_\_\_\_\_

Date: \_\_\_\_\_

**Approved as to Form:**

\_\_\_\_\_  
James L. McGehee, City Attorney for the City of Mill City

10.4.19 ORDINANCE DRAFT  
FOR CITY REVIEW AND COMMENT

**Commented [CM1]:** Cities should have their attorneys review this document. As the Task Force counsel, I do not represent the individual cities.

**AN ORDINANCE OF THE CITY OF \_\_\_\_\_ RATIFYING THE CREATION  
OF THE NORTH SANTIAM SEWER AUTHORITY IN ACCORDANCE WITH AN  
ORS 190 INTERGOVERNMENTAL AGREEMENT**

**RECITALS**

**WHEREAS**, the communities along the North Santiam River have historical roots as logging communities, and

**WHEREAS**, the North Santiam Communities have experienced a series of economic setbacks that have significantly changed the sustainability of the community, and

**WHEREAS**, in 1998, 13,538 acres were designated as the Opal Creek Wilderness and Opal Creek Scenic Recreation Area which further altered the timber economy and community landscape, and

**WHEREAS**, the communities along the North Santiam River have not recovered economically since the curtailment of the available logging timber in the area and continues to struggle to find an equilibrium between the economic needs of the community and the rural timber lifestyle and character, and

**WHEREAS**, the community members have hosted tourists and outdoor recreation visitors to offset the financial losses from the timber industry, and

**WHEREAS**, the incorporated communities along the North Santiam River must continue to maintain vital city and business services to lake and recreation visitors that swell during outdoor recreation seasons, and

**WHEREAS**, the City of Mill City, City of Gates, City of Detroit, and the City of Idanha have strategic interests in the shared overall social and economic health of the community, the citizens and the business community, and

**WHEREAS**, the City of \_\_\_\_\_ has a vital interest and is committed to providing an overall positive economic and community development climate by

expanding opportunities for businesses to thrive in the City core and maximize the availability of commercial property, and

**WHEREAS**, the City of \_\_\_\_\_ would economically benefit from an increased tax base from new commercial and endeavors within the City, and

**WHEREAS**, the City of \_\_\_\_\_ does not currently have adequate wastewater resources to respond to the immediate individual and business needs and future potential growth as detailed in multiple economic studies, and

**WHEREAS**, the City of \_\_\_\_\_ desires to provide additional protection from harmful wastewater discharges into the waters of the North Santiam River and its watershed; and

**WHEREAS**, the communities of the City of Mill City, City of Gates, City of Detroit and City of Idanha, collectively known as the North Santiam River Canyon, have a shared interest in the long-term economic vitality of the North Santiam River Canyon, and the long-term cleanliness of the North Santiam Watershed for local and downstream users for current and future generations; and

**WHEREAS**, LEFT BLANK FOR CITIES TO CUSTOMIZE IF NEEDED

**WHEREAS**,

**WHEREAS**,

**WHEREAS**, ORS 190.010 authorizes units of local government to enter into agreements for the performance of any functions and activities that any party to the agreement, or its officers or agents, has the authority to perform; and

**WHEREAS**, under ORS 190.085, each party to an intergovernmental agreement creating an intergovernmental entity must enact an ordinance ratifying the creation of the intergovernmental entity prior to the effective date of the intergovernmental agreement; and

**WHEREAS**, the Council desires to declare its intent to create an intergovernmental entity by intergovernmental agreement;

**NOW THEREFORE**, the City of \_\_\_\_\_ ordains as follows:

1. Findings. The above-stated findings are hereby adopted.
2. Short Title. This Ordinance No. \_\_\_\_\_ may be referred to as the "North Santiam Sewer Authority Ratifying Ordinance" and will be cited and referred to herein as this "Ordinance."
3. Intent; Effective Date. The City Council hereby declares its intent to create the intergovernmental entity to be known as the North Santiam Sewer Authority ("the Authority") by intergovernmental agreement, which is attached hereto as Exhibit "A." The effective date of this Ordinance shall be \_\_\_\_\_, 2019.

ADD DATED SIGNATURE LINES AS APPROPRIATE

**INTERGOVERNMENTAL AGREEMENT CREATING  
THE NORTH SANTIAM SEWER AUTHORITY**

It is mutually agreed by, between and among the undersigned to adopt this IGA for the creation of the North Santiam Sewer Authority ("the Authority"). The Parties further agree to the terms and conditions below:

1. **PARTIES; CREATION OF THE NORTH SANTIAM SEWER AUTHORITY**

- 1.1 The parties to this Agreement are the cities of: 1) Detroit; 2) Gates; 3) Idanha; and 4) Mill City; ("the Parties"). Additional Parties may be added by amending this Agreement as provided in Section 11, below. Any additional Parties must agree to and sign an amended Agreement or addendum.
- 1.2 The Parties hereby create the North Santiam Sewer Authority as an intergovernmental public entity formed by this intergovernmental agreement under the auspices of ORS Chapter 190, specifically ORS 190.010, and declare that it will be known as the North Santiam Sewer Authority (referred to in this Agreement as "the Authority"). The Parties hereby agree and acknowledge that the Authority shall exist and operate as an independent government under ORS 190; separately and independently from the Parties' governing bodies, except as expressly limited herein. The Authority Board, as more specifically described below, shall act in the best interests of the Authority and shall independently establish Authority rules, and priorities; but may take into consideration the Parties' collective needs, environments, and timelines.

2. **TERM; WITHDRAWAL; TERMINATION**

- 2.1 Term. The Term of this Agreement is perpetual and the Authority shall continue to exist indefinitely from year to year unless dissolved as provided below. A Party's withdrawal from the Agreement shall not, of itself, dissolve the Authority or terminate the Agreement. Termination of the Agreement and dissolution of the Authority shall occur only as provided in Sections 2.2.2 and 21, below.

2.2 Withdrawal; Termination.

- 2.2.1 Withdrawal by a Party: A Party may withdraw from this Agreement and terminate its participation, responsibilities and

**Commented [CM2]:** These provisions require careful consideration. Please talk with your city attorneys.

duties under this Agreement upon providing five (5) year's advance written notice to the Board President. Notwithstanding the above, a Party may withdraw without such written notice if all Parties consent in writing.

2.2.1 a. If the Withdrawing Party secured an Authority grant or funding of any type, the withdrawing Party and the Authority Board shall work together to ensure the continued funding on behalf of the Authority and the Authority shall agree in writing to adhere to all grant or funding requirements. If the withdrawing Party incurred any Authority-authorized debt on behalf of the Authority, the Authority shall assume the debt obligations. (However, if the Withdrawing Party incurred any unauthorized debt or costs, the Withdrawing Party shall remain responsible for such debts or costs.)

2.2.1 b. A Withdrawing Party hereby agrees to authorize the Authority, at no additional cost, to keep, construct, replace, service, or maintain any Authority sewer infrastructure or facilities within the withdrawing Party's boundaries, subject to applicable City laws and regulations pertaining to sewer services and use of City rights of way.

2.2.2 Termination of Agreement and Dissolution of the Authority by Unanimous Vote: This Agreement may be terminated and Authority dissolved upon a unanimous vote of the Authority Board. Such dissolution shall be as provided in Section 21 of this Agreement.

### 3. POWERS; SCOPE OF SERVICES

3.1 Subject to any limitations expressly provided for in this Agreement, the Authority is hereby vested with all powers, rights, duties and responsibilities of the Parties necessary and desirable for planning, constructing, financing, maintaining, and providing sewer services to the Authority Service Area (which is further described in Exhibit A and by this reference is incorporated into this Agreement), as well as the provision of ancillary services necessary for supporting the establishment of a sewer system, such as establishing, collecting, and enforcing fees and rules for the provision of sewer services (collectively referred to in this

Commented [CM3]: Please attach a map of the service area.

Agreement as “the Services”). In performing the Services, the Authority shall abide by applicable provisions of ORS 223 and 224, and any other applicable state statutes and regulations pertaining to the provision of the Services.

- 3.2 The Authority is also vested with the power to contract to provide the Services, subject to Board approval and direction.
- 3.3 The Authority will perform the Services and shall have the sole discretion to establish determine the Authority’s processes, rules, and priorities; taking into consideration the Parties’ collective needs, environments, timelines, as provided in Section 1, above.
- 3.4 The Authority is a governmental Authority and must act in compliance with all applicable Oregon law, including but not limited to Oregon public meetings and public records law, and Oregon budget law. The Board may follow and may amend Oregon’s public contracting rules.

#### 4. GOVERNANCE

- 4.1 The Authority shall be independently and solely governed by a Board of Directors (“the Board”). The Board may, at its sole discretion, establish and be advised by advisory groups as it determines necessary.
- 4.2 The Authority Board of Directors shall act in accordance to the best interests of the Authority *as a whole* and according to the collective Authority best interests. Directors will at all times seek to use collaborative and inclusive strategies to deliberate and decide Authority matters, taking into account the good of the entire Authority Service Area and System and the residents within the entire Authority Service Area. At no time may an individual Party govern, promise, contract, or speak on behalf of the Authority.

#### 5. BOARD OF DIRECTORS

- 5.1 Board of Director Membership. The Board shall be comprised of two representative Directors from each Party: the first Director shall be a City Councilor, subject to Section 5.2, below. The second Director may either be a City Councilor or a resident elector from within the Party’s City boundaries, subject also to Section 5.2, below.

**Commented [CM4]:** REMINDER NOTE ABOUT DEFINITIONS: Each “Party” to the agreement is a signatory-city. Each city gets two voting members on the Board of Directors. A “Director” is someone who sits on the Authority Board of Directors.

5.2 If, due to vacancies on a Party's City Council or due to a lack of available resident electors, a Party is unable to appoint a City Councilor or resident elector, then that Party may at its discretion appoint residents from within the Party's City boundaries. For the purposes of this provision, a Party has complete discretion to determine the definition of the term "resident."

5.3 All Authority Directors serve at the pleasure of the appointing Party, subject to the Board member terms as provided below.

#### 6. BOARD QUORUM AND VOTING

Each Director shall have one vote. A majority of all the Directors on the Board shall constitute the quorum required for deliberation and decision-making. All decisions of the Board, unless otherwise provided herein, shall require at least a majority of Directors voting in favor or against any motion.

#### 7. BOARD OFFICERS

The Board shall annually elect Officers. The Officer positions shall be Chair and a Vice-Chair, Secretary, and Treasurer. The election process, duties, and terms for Board Officers shall be as provided in the Board Rules.

**Commented [CM5]:** Board Officers are usually the President, VP, Secretary, and Treasurer. They are usually nominated and voted upon by the Authority Board of Directors.

#### 8. BOARD RULES AND BOARD DUTIES

8.1 The Board shall adopt, and may amend from time to time, written Board Rules. Adoption or amendment of the Board Rules shall require at least 75 percent (¾) vote of all Board members. The Board Rules shall provide reasonable rules regarding the time, place, and manner in which the Board conducts its business, as further described below. In the event of a conflict between the Board Rules and this Agreement, this Agreement shall prevail.

8.2 The Board of Directors, at its first organizational meeting after the adoption of this IGA, or as soon thereafter as reasonable, shall adopt the written Board Rules, which shall govern both Board procedures, including at a minimum:

8.2.1 the time, place, and notice for regular meetings, which shall be held at least four times per year and shall be held at rotating locations so that the Parties each have ample opportunity to host the meetings;

- 8.2.2 the method and manner of calling regular and special meetings;
  - 8.2.3 the method, terms and manner of election of Board Officers;
  - 8.2.4 procedures for executing documents and signing checks on behalf of the Authority, including any limits on the Authority staffs' spending Authority;
  - 8.2.5 rules regarding filling Board vacancies;
  - 8.2.6 the delegation of a designated Board member responsible for supervising the Authority Manager, if such a position is created; and
  - 8.2.7 other such rules which promote the efficient operation of the Board.
- 8.3 The Board shall be responsible for:
- 8.3.1 Meeting at least four times per year as further specified in the Board Rules.
  - 8.3.2 Adopting and amending from time to time the Board Rules.
  - 8.3.3 Approval and adoption of the Authority Strategic Plan and Master Plans and when necessary Wastewater Treatment Facilities Plans.
  - 8.3.4 Adoption of personnel policies and performance standards for Authority service levels, as needed.
  - 8.3.5 Adoption of the Authority's annual budget.
  - 8.3.6 Approval of all Authority contracts.
  - 8.3.7 If necessary or desired, selecting and supervising an Authority Manager and approving the contract, employment terms, and conditions of employment for the Authority Manager.
  - 8.3.8 Establishing subcommittees or advisory committees as needed.

8.3.9 Discussing and acting upon items placed on the Board's agenda.

8.3.10 Performing other duties in conformance with the Authority's Authority as the Board sees fit to accomplish

9. AUTHORITY MANAGER

9.1 The Board may at its sole discretion select, appoint and supervise (including hiring, firing, and disciplining) an Authority Manager based upon qualifications and competence as deemed appropriate by the Board.

9.2 If an Authority Manager is hired, the Board shall appoint one of the Directors to serve as the Authority Manager's primary communication contact. The Board will adopt policies, rules, or procedures regarding the Authority Manager's job description, duties, responsibilities, and performance monitoring as needed.

**Commented [CM6]:** Reminder Note: a "Director" sits on the Board of Directors. (A director for the Authority is the same as a city councilor for a city.) A "Manager" is whomever the board hires to be your administrator, if it chooses to hire someone. (A Manager for the Authority is similar to a City Manager for a city.)

10. FUNDING

10.1 The Authority shall be funded in part from User Fees. Such User Fees shall be based on a User Fee Formula adopted by the Board in a public meeting in compliance with Oregon law.

10.2 The Board or its authorized designee may seek additional funding from other sources as desired.

11. AMENDMENTS

This Agreement may only be changed, modified, or amended upon three-fourths (3/4) vote of all signed Parties to the Agreement.

**Commented [CM7]:** Reminder Note: A "Party" is one of the cities who sign this agreement. This means it takes 3 out of the four cities to amend this agreement.

12. EFFECTIVE DATE

This IGA shall become effective when signed by all Parties and upon the latest effective date of the Parties' ordinances adopting the IGA. By signing, the signatory affirms that he or she has the requisite Authority to enter into this Agreement on behalf of the Party's governing body.

13. PRIOR AGREEMENTS

This Agreement, upon its effective date, supersedes and replaces any verbal or written contracts or agreements pertaining to the creation of the Authority or the Parties' collective Authority to provide sewer services.

14. SEVERABILITY

The terms of this Agreement are individually severable and a determination by an appropriate body having jurisdiction over the subject matter of this Agreement that results in the invalidity of any part or segment, shall not affect the remainder of the Agreement.

15. INTERPRETATION

The terms and conditions of this Agreement shall be liberally construed in accordance with the general purposes of this Agreement.

16. GOVERNING LAW

This Agreement shall be governed in all respects by Oregon law.

17. INDEMNIFICATION AND WAIVER

To the extent limited by the tort claims limits in Oregon Law (ORS 30.260 through 30.300 and the Oregon Constitution, Article XI, Section 7), the Parties agree to defend and indemnify each other and the Authority (including all Party and Authority authorized employees, agents, or contractors) against any and all third-party liabilities, causes of action, suits, claims, damages, or costs or fees (including attorney fees) for injury or damage to life or property related to or arising from this Agreement or related to or arising from actions or failures to act under this Agreement (collectively, "Claims"). The Parties also hereby waive all such Claims against each other. However, this indemnification and waiver shall not apply to willful misconduct or substantial breach of this Agreement by the Authority, the Parties, or their respective employees, agents, or contractors. The obligations assumed hereunder shall survive the termination or expiration of this Agreement.

**Commented [CM8]:** Cities should run the indemnification and insurance provisions by your attorney and insurers.

## 18. INSURANCE

The Parties and the Authority each agree to individually maintain comprehensive general liability insurance coverage or sufficient self-insurance reserves to cover the reasonable risks of damage or loss in the form of personal injury, bodily injury, or property damage for acts or omissions done in the course and scope of this Agreement in at least the coverage amounts for which public entities are liable under Oregon Revised Statutes and the Oregon Constitution, as those laws now exist or as they may be amended. The Authority shall name the Parties as additional insured.

Notwithstanding anything in this Agreement to the contrary, the Board may, by majority vote and without amending this Agreement, require additional insurance coverage, limits, and terms.

The Authority Board shall secure all necessary and desirable insurance coverages, which shall include Errors and Omissions coverage.

## 19. EMPLOYEES

Employees or volunteers of the Parties shall be at all times employees and/or volunteers of their original employer for the purposes of this Agreement. No employment or business relationships between the Parties shall be imputedly created by this Agreement. Employees and volunteers remain subject solely to the personnel policies, rules, and regulations of their employer. The intent of this provision is to prevent the creation of any "special employer" relationships under Oregon workers' compensation law, PERS regulations, or other state or federal laws.

## 20. DISPUTE RESOLUTION PROCESS.

20.1 In the event there are disputes or claims by the Parties related to this Agreement, the Authority's actions under this Agreement, or the Board Rules, the following dispute resolution process will be followed. The disputing Parties agree that this process will serve as the sole dispute resolution process regarding such disputes or claims.

20.2 The disputing Parties shall address disputes in the below order. Dispute resolution will be documented by a mutually-signed memorandum.

20.2.1 File complaint with Authority Manager or Board President describing the matter in detail specifically citing any alleged violations of the IGA.

20.2.2 The Board President shall inform the Board and the Board shall schedule a meeting to hear the matter. All Board decisions are final.

20.2.3 In the event the dispute is not resolved using the above process, either disputing Party may proceed to mediation. To begin the mediation process, the disputing Parties will each submit three (3) names of potential mediators and shall agree upon a mutually acceptable mediator from the list of names. The costs of mediation shall be borne equally between the disputing parties.

20.2.4 In the event the dispute is not resolved using the above mediation process, the dispute shall be subject to final and binding arbitration. Arbitration shall be conducted pursuant to the rules of the Arbitration Service of Portland and shall be conducted in Marion County, Oregon, unless otherwise agreed by the disputing parties.

20.2.5 In the event of any arbitration arising out of or relating to this Agreement or the enforcement thereof, the prevailing disputing Party in such action shall be entitled to recover its reasonable arbitration and attorney fees, costs, and expenses from the non-prevailing disputing Party.

20.2.6 The laws of the State of Oregon shall be applied in the interpretation, execution, and enforcement of this Agreement.

## 21. DISSOLUTION AND WIND UP

In the event that the Parties agree to terminate this Agreement and dissolve the Authority as provided in Section 2.2.2 above, the dissolution motion shall provide an estimated timeline for the dissolution and shall name two Board members, each from two different Parties (called "Dissolution Managers" in this Agreement), who shall be responsible for overseeing the dissolution process. The Dissolution Managers may retain professional assistance as needed and shall take immediate steps to begin to permanently terminate and dissolve the Authority. Such dissolution steps shall include but are not limited to the following:

- 21.1 Providing written notice to all Authority elected officials, employees, agents, or contractors of the pending dissolution, including the proposed

timeline for a final dissolution and the Authority's expected process for ending employment relationships.

- 21.2 Notification to all neighboring governments, all necessary State and federal agencies, and all Authority partners of such dissolution.
- 21.3 Creation of a budget document which shall account for all Authority funds, revenues, and assets and all Authority debts and financial responsibilities.
- 21.4 Satisfaction of all Authority debts and financial responsibilities, including a final financial and accounting of all debts and resources.
- 21.5 Any funds or revenues remaining in Authority accounts after satisfying all Authority debts and financial responsibilities shall be distributed to the Parties in proportion to their funding contributions or number of sewer hookups over the Authority's final twelve (12) months; or as may be otherwise reasonably determined by the Dissolution Managers. Such distribution plan shall be documented in writing and shall be provided to all Parties prior to distribution.
- 21.6 Authority personal property, equipment and furnishings not identified for return to a third party or a Party shall be sold in accordance with applicable public contracting and procurement law; after ensuring payment or satisfaction of all Authority debts or financial responsibilities, the funds from such sale shall be distributed to the Parties in proportion to their funding contribution to the Authority or number of sewer hookups over the Authority's final twelve (12) months; or as may be otherwise reasonably determined by the Dissolution Managers. Such distribution plan shall be documented in writing and provided to all Parties prior to distribution.
- 21.7 Any other actions or decisions required to fully dissolve the Authority, as determined by the Authority Manager or the Dissolution Managers, including specifically a plan for either maintaining or abandoning the Authority infrastructure.

AGREED UPON AND ENTERED INTO by the appropriate officer(s) who are duly authorized by resolution to execute this Agreement on behalf of the governing body of the below-named unit of local government.

Dated: \_\_\_\_\_  
City of Detroit

Dated: \_\_\_\_\_  
City of Gates

Dated: \_\_\_\_\_  
City of Idanha

Dated: \_\_\_\_\_  
City of Mill City

Exhibit "A"