



CITY OF MANZANITA

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COUNCIL REGULAR SESSION

Pine Grove Community Center
<https://ci.manzanita.or.us>

AGENDA - **UPDATED**

June 7, 2023
06:00 PM Pacific Time

Council will hold this meeting at the Pine Grove Community Center

Video Information: The public may watch live on the

[City's Website: ci.manzanita.or.us/broadcast](https://ci.manzanita.or.us/broadcast)

or by joining via Zoom:

<https://us02web.zoom.us/j/83978937524?pwd=clpKcEp5S284L2c0QkU4MGFkV2Y4dz09>

Meeting ID: 839 7893 7524 Passcode: 106326

Call in number: +1 253 215 8782

Note: agenda item times are estimates and are subject to change

1. CALL TO ORDER (6:00 p.m.)

2. AUDIENCE PARTICIPATION

Comments must be limited to city business topics that are not on the agenda. A topic may not be discussed if the topic record has been closed. All remarks should be directed to the whole Council. The presiding officer may refuse to recognize speakers, limit the time permitted for comments, and ask groups to select a spokesperson. **Comments may also be submitted in writing before the meeting, by mail, e-mail (to cityhall@ci.manzanita.or.us), or in person to city staff.**

3. CONSENT AGENDA

Consent items are not discussed during the meeting; they are approved in one motion and any Council member may remove an item for separate consideration.

A. Approval of Minutes

- a. May 03, 2023, Regular Session
- b. May 05, 2023, Special Session
- c. May 10, 2023, Work Session
- d. April 24, 2023, Budget Committee Pre-Meeting
- e. May 08, 2023, Budget Committee Meeting
- f. May 09, 2023, Budget Committee Meeting
- g. May 17, 2023, Budget Committee Public Hearing

B. Approval of Bills

4. INFORMATION

- A.** City Manager Report
Leila Aman, City Manager

- B.** Introduction of Interim Nehalem Bay Fire District Fire Chief
Linda Kozlowski, Council President

- C.** Citizen of the Year
Deb Simmons, Mayor

5. OLD BUSINESS

- A.** Ordinance Repealing and Replacing Section 14 of Ordinance 94-6
Relating to Overnight Camping in the City of Manzanita – Second
Reading
Leila Aman, City Manager

- B.** City Hall Phase 2 and Financing Decision
Leila Aman, City Manager

6. NEW BUSINESS

- A.** Budget Process Update
Jerry Spegman, City Councilor

- B.** Planning Commission Appointment
Jenna Edginton, City Councilor

- C.** Police Intergovernmental Agreement (IGA) Amendment with
Oregon Parks and Recreation and Approval of an IGA with the City
of Wheeler for FY 23-24.
Erik Harth, Chief of Police

- D.** Ordinance Authorizing the Imposition of System Development
Charges and Repealing Ordinance 91-4 – First Reading
Leila Aman, City Manager

- E.** Brownfield Program Grant Application
Leila Aman, City Manager

- F.** Information Technology Consultant Contract

Leila Aman, City Manager

G. Building Inspection Services Contract
Scott Gebhart, Development Services Manager

H. Purchase and Sale Agreement – 543 Laneda
Leila Aman, City Manager

7. COUNCILOR UPDATES

8. ADJOURN (8:15)

Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice

The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at cityhall@ci.manzanita.or.us or phone at 503-368-5343. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the [city's youtube channel](#).



MEMORANDUM

To: Mayor and City Council

Date Written: May 9, 2023

From: Leila Aman, City Manager

Subject: **May 10th, 2023, City Council Work Session**

5. OLD BUSINESS

A. ORDINANCE REPEALING AND REPLACING SECTION 14 OF ORDINANCE 94-6 RELATING TO OVERNIGHT CAMPING IN THE CITY OF MANZANITA – SECOND READING

This will be the second reading of Ordinance 23-1 Repealing and Replacing Section 14 of Ordinance 94-6 Relating to Overnight Camping in the City of Manzanita. This ordinance ensures the city's policies with respect to houseless campers are consistent with state law including HB 3115 and HB 3124. The law now prohibits the enforcement of local ordinances regarding overnight camping for persons experiencing homelessness unless the city can provide a location for them to sleep or rest. The City Council held discussions on the proposed Ordinance on November 9, 2022 and again on April 5, 2023. Council reached consensus to implement the staff and City Attorney recommendation to repeal and replace section 14 of Ordinance 94-6. If approved at the second reading this Ordinance will become effective 30 days from the date of approval.

B. CITY HALL PHASE 2 AND FINANCING DECISION

The City Council will be asked to decide whether to enter into Phase 2 of the City Hall Project and whether staff should pursue a General Obligation Bond for or a loan option for financing of City Hall.

Should City Council elect to move forward with Phase 2 the City Council will be asked to approve a Resolution authorizing the City Manager to execute amendments to Bearing Architecture and Klash Group contracts.

The proposed contract Amendment for Bearing Architecture is \$330,000 bringing the total contract amount to \$412,768. The original contract amount for Phase 1 and 2 was \$399,845. The increase from the original contract amount includes a City Council authorized Amendment in February 2023 for additional services in an amount of \$6,940 to account an extension of the project timeline of approximately four months, attendance and two additional city council meetings and site studies options for saving the Quonset hut. The total cost of Phase 1 for Bearing Architecture including Amendment 1 is \$82,786.

The proposed Amendment 2 for Phase 2 includes a modest increase of \$5,983 and includes all subcontractors including structural engineering which has been reality checked with the geo technical report. This proposal assumes 6 months of design and a 12-month construction timeline. The proposed Amendment two is for \$330,000 for a total contract amount of \$412,768. This proposal fits within the project budgeted amount for architecture of \$415,000.

In November 2021 the City Council authorized a contract with Klosh Group for \$126,038 for Owner Representative Services. In December 2022 the City Council authorized an amendment to Klosh's contract in an amount of \$7,316 to account for additional services. Those additional services included preparation of CM/GC procurement evaluations in response to a significant public records request. Preparation for and attendance at two additional community meetings for a total of four community meetings. (Two meetings were originally scoped.) Additional project support not anticipated in the original contract such as multiple City Council presentations, addressing existing asbestos hazards & ongoing coordination with DEQ, responding to individual community member concerns, and evaluator training for the CM/GC procurement.

In February 2023 the City Council Authorized a Second Amendment to Klosh's contract in an amount of \$3,040 due to the extension of the timeline of approximately four months, preparation of two additional city council meetings, additional project support and preparing of a separate budget for the analysis of an option to retain the Quonset hut. This brought the total Phase 1 project amount to \$55,803.

Amendment 3 is proposed as \$94,484 which includes a 6 month design duration and project management throughout a 12 month construction timeline. This includes a cost of living adjustment due to the extension of the contract which is proposed to be extended from December 2023 to February of 2025. This brings the total contract amount to \$150,287 and is within the budgeted amount for the project which includes reimbursable expenses is \$152,000.

If the City Council elects to approve Phases 2 staff recommend the City Council accept the amendments as proposed. The FY 23-24 budget as approved by the Budget Committee includes sufficient resources to pay for these contracts.

Staff will provide a comprehensive review of the City Hall project and process to date and an update on the project budget and proposed funding approach including a proposed Loan/Bond amount. Staff will propose that the City Council consider a debt obligation up to \$4 million dollars to ensure that the project can be fully constructed and financed if other funding sources are unavailable.

6. NEW BUSINESS

A. BUDGET PROCESS UPDATE

Councilor Spegman will provide a brief update on the budget process and special budget committee work session held on June 2, 2023.

B. PLANNING COMMISSION APPOINTMENT

Councilor Edgington will present the Planning Commission Committee's recommendation to appoint Bert Gregory to the Planning Commission. If approved by the Mayor the Mayor will recommend to Council to adopt a Resolution appointing Mr. Gregory to the Planning Commission.

C. POLICE INTERGOVERNMENTAL AGREEMENT (IGA) AMENDMENT WITH OREGON PARKS AND RECREATION AND APPROVAL OF AN IGA WITH THE CITY OF WHEELER FOR FY 23-24 FOR POLICE SERVICES

Staff are requesting council approval of an Amendment to the IGA with OPRD for Police Services. OPRD is proposing to increase the contract amount by 3% and is requesting the IGA be extended until July 15, 2025. The Chief of Police has reviewed the terms and concurs with the proposed amount and confirms that there is adequate cost recovery for services provided and approves of the timeline extension.

Staff are also requesting approval of an amended IGA with the City of Wheeler to address a scrivener's error. This will align the Wheeler Police Services IGA with the term of Nehalem's IGA which expires in June 2024. Staff believe that this was the original intent of the Wheeler IGA approved in May of 2021. Staff intend to renegotiate the terms of both Nehalem and Wheelers IGAs with the City of Manzanita for Police Services over the next year agreements and anticipate proposing revised IGA terms to the City Council for consideration in April or May of 2024. The focus on the negotiations will be to ensure full cost recovery of police services.

D. ORDINANCE AUTHORIZING THE IMPOSITION OF SYSTEM DEVELOPMENT CHARGES AND REPEALING ORDINANCE 91-4 – FIRST READING

The last time the City's System Development Charge Ordinance was updated was when it was established in 1991. Ordinance 91-4 authorizes the city to establish System Development Charges (SDC) for water, storm drainage and parks. When staff began the process of preparing for a Storm Drain SDC fee increase as directed by the City Council in January of 2023 staff learned that State Law relating to the imposition of System Development Charges had changed in 2003. Staff determined that the city's Ordinance authorizing the imposition of SDCs should be updated prior to imposing a Storm Drain SDC.

The Ordinance before the City Council repeals and replaces Ordinance 91-4 and puts the city's SDC Ordinance in line with ORS 223.297-223.316. This Ordinance can be read by title only since it was provided to City Council one week in advance, and posted at City Hall and three public places and additionally posted on the city's website on May 31, 2023. The City Council is being asked to approve the first reading of the SDC Ordinance this month, and next month the second

reading will take place. The Ordinance, per Council Rules will not go into effect until 30 days after the second reading.

Resolution 91-7 Adopted a Storm Water Master Plan and established a Storm Drainage SDC of \$150. The last time the Storm Drain SDC was updated was in 1996 when it was increased from \$150 to \$174 per connection. Staff could not find in the record how, when or if a methodology was used in 1991 or 1996 to determine the System Development Charge methodology for the Storm Drain System.

Since there was no clear methodology in place, staff elected to start the process from scratch to ensure compliance with State Law and the updated SDC Ordinance under consideration at the June 7th 2023 meeting. In order for the City to impose a new SDC fee for Storm Drain the first requirement is to provide appropriate notice of the proposed change. The notice is required to be mailed to all “persons who have made a written request for notification” of proposed SDC changes. Notice is to be given at least 90 days prior to the first hearing on the proposed SDC change. Per ORS 223.304(6), the city is responsible for maintaining a list of any such persons.

The city reviewed its records and determined it did not have such a list. ORS 223.304(7)(a), provides, in part, that “[t]he failure of a person on the list to receive a notice that was mailed does not invalidate the action of the local government.” This safe harbor provision protects a city that mails notice that never arrives at its destination but does not necessarily protect a city that fails to mail notice altogether. Therefore, staff sought guidance from the City Attorney to meet the spirit of the notice requirement and mailed notice to every address within the City limits on 2/7/2023, and published a notice in the Headlight Herald on 2/14/2023 as the least risk option to meet this objective.

In addition to providing notice 90 days in advance the city is also required to make the methodology supporting the system development charge available at least 60 days prior to the first hearing. Staff posted the methodology and included a link to the methodology in the notice on 2/8/2023. However staff did not realize at the a time that the new SDC Ordinance has to be in effect before we can raise the Storm SDC. Therefore the soonest Council can hold a public hearing on the SDC increase is September 6, 2023. Staff anticipate sending notice no later than June 6th, 2023 and republish the notice in the Headlight Herald. In September Council will be asked to hold a public hearing and approve a Resolution updating the Storm Drain System Development Charge from \$174 to \$1,699.

E. BROWNFIELDS PROGRAM GRANT APPLICATION

The City Manager has been working with Business Oregon to apply for a brownfields grant for the abatement of hazardous materials in the buildings at Underhill Plaza. The total grant amount available to the City is \$60,000. Staff are requesting if the grant application is approved that City Council authorize the City Manager to execute the grant with the State of Oregon to

receive the grant funds. The grants funds have been proposed as part of the FY 23/24 budget and are included in the City Hall Fund as revenue.

F. INFORMATION TECHNOLOGY CONTRACT

Staff conducted an intermediate solicitation process and reached out to three local IT professionals for quotes to perform Information Technology Services. One Eleven responded to the request. One Eleven is owned by Josh Gandy who has the qualifications and experience to provide the services necessary to provide the city's Information Technology services. Staff are requesting the City Council approve a Resolution Authorizing the City Manager to execute a contract with One Eleven in amount not to exceed \$150,000. The annual contract will be \$47,600 for the services outlined in the scope of work of the contract and staff are proposing a term of 3 years. Additional work may be authorized by the city, but the total contract amount shall not exceed \$150,000.

G. BUILDING PLAN REVIEW AND INSPECTION SERVICES CONTRACT

Please see staff report.

H. PURCHASE AND SALE AGREEMENT – 543 Laneda

The city has been in the process of selling Old City Hall located at 543 Laneda for over a year now. The intent of the sale is to help fund the development of a new City hall building at Underhill Plaza. On May 5, 2023 at a Special Session the City Council authorized the City Manager to execute a Letter of Intent with Jason Stegner, and to work with the City Attorney to Draft Purchase and Sale Agreement for City Council Approval at the June 7th Meeting. Council is being asked to approve a Resolution authorizing the City manager to execute a purchase and Sale Agreement with Jason Stegner to purchase the property for the listing price of \$675,000.

CITY OF MANZANITA
May 3, 2023
CITY COUNCIL REGULAR SESSION

1. CALL TO ORDER: The meeting was called to order on May 3, 2023, at 6:00pm at the Pine Grove Community Center by Mayor Deb Simmons.

Roll: Council members present: Mayor Deb Simmons, Linda Kozlowski, Jerry Spegman, Jenna Edginton and Brad Mayerle. Staff present: City Manager Leila Aman, Police Officer John Garcia, and Assistant City Recorder Nancy Jones. Staff Present via Zoom: Public Works Director Dan Weitzel, Accounting Manager Nina Crist. Panelists present: Scott Miethe with Recology, Chris Carey with Recology, Ben Pittenger with Lower Nehalem Community Trust, and Erin Laskey Parade Volunteer. Panelists Present via Zoom: Sarah Absher with Tillamook County.

2. AUDIENCE PARTICIPATION: There were 30 people in attendance, 37 attended via zoom, 40 attended via website. There were five public comments.

3. CONSENT AGENDA:

- A. APPROVAL OF MINUTES –
 - a. March 27, 2023, City Council Work Session
 - b. April 5, 2023, City Council Regular Session
 - c. April 12, 2023, City Council Work Session
 - d. April 12, 2023, City Council Special Session

- B. APPROVAL OF BILLS FOR PAYMENT
- C. UPDATED SALARY RESOLUTION

A motion was made by Kozlowski, seconded by Spegman, to approve the consent agenda that included approval of the March 27, 2023 Work Session minutes, April 5, 2023 Regular Session minutes with Section 7-B updated from 2024 to “2025”; approve payment of bills and all subsequent bills subject to approval by the Mayor or Council President and City Manager; Approve Updated Salary Resolution: Motion passed unanimously.

4. CITY MANAGER REPORT: City Manager Leila Aman

City Manager Leila Aman shared upcoming Budget meeting dates:

Budget Meeting #1 May 8th - 4pm

Budget Meeting #2 May 9th - 4pm

Budget Meeting - Public Hearing May 17th - 6pm - The Budget Committee will be voting to recommend the budget be adopted by city council.

Planning Commission Public Hearing May 15th - 4pm

City Council Regular Session

May 3, 2023

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Court May 17th - 1:30pm

Nominations for Citizen of the month are open till May 15th.

5. NEW BUSINESS:

A. Recology Rate Increase – Recology General manager Chris Carey and Recology Operations Manager Scott Miethe

Recology General Manager Chris Carey spoke about waste collection. He shared information about the company and said their call center is based in McMinnville. He proposed a 5% rate increase for the City of Manzanita and said that the company will re-evaluate this next year.

A motion was made by Kozlowski to accept Resolution #23-06, Approving Solid Waste Collection Rates. Seconded by Mayerle; Motion passed unanimously.

B. County Legislative Housing Update/HB406 – Tillamook County Community Development Director Sarah Absher

Tillamook County Community Development Director Sarah Absher asked for support of Senate Bill 406. She stated that it is a housing bill proposal that would allow Tillamook County to collaborate with cities and unincorporated communities, to strategically develop housing production strategies to promote middle housing. She explained that this bill would make provisions of Oregon's Middle Housing Code applicable to Tillamook County and is an amendment to HB 2001. The senate committee on housing has passed the bill and it is now in the House awaiting a decision. If it passes the House, it will move to the Senate.

C. Memorandum of Understanding with Lower Nehalem Community Trust – City Manager Leila Aman & Lower Nehalem Community Trust Executive Director Ben Pittenger

Lower Nehalem Community Trust Executive Director Ben Pittenger spoke about Elk Meadows Park. He stated that this property was purchased in 2012 and transferred to Manzanita as a park. He spoke about the volunteers that help keep it clean. The city currently pays \$800 a year for maintenance of the property. He proposed an adjustment, increasing this to \$2000 a year and asked that the city mow the grass areas and maintain the gravel section moving forward.

A motion was made by Spegman to accept the Memorandum of Understanding, Increasing the stipend to \$2,000. Seconded by Kozlowski; Motion passed unanimously.

D. 4th of July Event Permit – Councilor Brad Mayerle & Parade Volunteer Erin Laskey

Parade Volunteer Erin Laskey stated that this year's parade theme is "Return to Glory". She spoke about the parade route and shared details about the parade planning. She shared that there is a need for more volunteers and announced that there are donation jars around town to help fund participation awards. Please utilize the online registration to participate in the parade.

Allowed for public comment: There were 7 public comments.

A motion was made by Kozlowski to accept the 4th of July Event Permit. Seconded by Edginton; Motion passed unanimously.

E. OLCC Application MacGregors Whiskey Bar – City Manager Leila Aman & Owner MacGregors Whiskey Bar Jay Vogel

City Manager Leila Aman stated that McGregor’s Whisky Bar has changed ownership. Jay Vogel has applied for a new Liquor License and needs a recommendation from the local governing body.

A motion was made by Kozlowski to accept the OLCC Application. Seconded by Mayerle; Motion passed unanimously.

F. Ordinance 23-01 Repealing and Replacing Section 14 of Ordinance 94-06 Relating to Overnight Camping in the City of Manzanita – First Reading – City Manager Leila Aman

City Manager Leila Aman asked City Council for a vote to approve the first reading of Ordinance 23-01. She stated that there will be a second reading of Ordinance 23-01 at the meeting in June. Once approved at the June meeting, it will take effect 30 days afterward.

A motion was made by Mayerle to accept the first reading of Ordinance 23-01; Seconded by Kozlowski; Motion passed unanimously.

G. Stop Sign Proposal - Public Works Director Dan Weitzel

Public Works Director Dan Weitzel said that the city received a request to add a stop sign at Cherry and High Street. It was decided to look at other options and revisit this at a later date.

Allowed for public comment: There was one public comment.

H. City Manager Contract Discussion and Approval of Amendments – Council President Linda Kozlowski

Council President Linda Kozlowski spoke about City Manager Leila Aman’s performance review. She shared that the majority of Council concluded that Aman consistently exceeds expectations and shared some of her accomplishments. She asked for council to approve an update to Aman’s contract and to increase her salary by 3%.

A motion was made by Edginton to approve Aman’s updated contract. Seconded by Kozlowski; Motion passed unanimously.

A motion was made by Edginton to increase Aman’s salary by 3%. Seconded by Spegman; Motion passed unanimously.

I. Appointment Process Approval – Council President Linda Kozlowski

Council President Linda Kozlowski spoke about the Committee appointment process. She asked for an update of the Rules of Procedures Chapter 8 Appointments. The updates would include

that all applications will be posted on the city website, a council member can request to view applications, one councilor will serve on a selection committee, and the Budget Committee appointments will be decided by a majority vote by council.

A motion was made by Kozlowski to update the Rules and Procedures, Chapter 8 Section II. Seconded by Edginton; Motion passed unanimously.

Council President Linda Kozlowski nominated Councilor Edginton to serve on the Planning Commission Selection Committee. Edginton accepted. Planning Commission member Lee Hildebrandt will also serve on the Selection Committee. The updated application will be posted on Friday May 5th. Applications will be accepted for 3 weeks and interviews will conclude the week following. It is planned to appoint a new member at the June Meeting.

6. COUNCIL REPORTS: Council members took turns sharing information and updates of what they were involved in for the month.

7. INFORMATION AND ADJOURN:

1. Manzanita Municipal Court will be held May 19, 2023, and continues to remain closed to the public.
2. The Planning Commission will meet on May 15, 2023 via zoom
3. Mayor Mondays – May 2023: Mondays 10:30am
4. Conversations with Counselors – Has concluded and will start back up in June with a new topic.

Mayor Simmons adjourned the meeting at 8:18PM.

**MINUTES APPROVED THIS
7th Day of June, 2023**

Deb Simmons, Mayor

Attest:

Leila Aman, City Manager

CITY OF MANZANITA
May 5, 2023
CITY COUNCIL SPECIAL SESSION

1. CALL MEETING TO ORDER: The meeting was called to order on May 5, 2023, at 9:01am via Zoom by Mayor Deb Simmons.

ROLL: Members present: Deb Simmons, Linda Kozlowski, Jerry Spegman, Jenna Edginton and Brad Mayerle. Staff present: City Manager Leila Aman, and Assistant City Recorder Nancy Jones. Panelist: Jackie Weber with Windermere Realty Trust

2. 543 LANEDA COMMERCIAL REAL ESTATE SALE AGREEMENT –Leila Aman, City Manager
City Manager Leila Aman stated the city received two offers on old city hall and that City Council deliberated on the matter in an Executive Session on May 2nd. Aman asked for Council to delegate authority to the City Manager to sign the Letter Of Intent and to work with the city attorney and broker to develop a Purchase and Sale Agreement. This agreement will be brought to the city council at the June 7th Regular Session for final approval.

A motion was made by Kozlowski to delegate authority to City Manager Leila Aman, to sign the letter of intent and work with the city attorney and broker to develop a purchase and sale agreement. Motion was Seconded by Edginton: Motion passed unanimously.

3. Adjourn: Mayor Simmons adjourned the meeting at 9:05am.

MINUTES APPROVED THIS
7th Day of June, 2023

Deb Simmons, Mayor

Attest:

Leila Aman, City Manager

CITY OF MANZANITA
May 10, 2023
CITY COUNCIL WORK SESSION

1. CALL MEETING TO ORDER: The meeting was called to order on May 10, 2023, at 2:00pm via Zoom by Mayor Deb Simmons.

ROLL: Members present: Deb Simmons, Linda Kozlowski, Jerry Spegman, Jenna Edginton and Brad Mayerle. Staff present: City Manager Leila Aman, Accounting Manager Nina Crist, Public Works Director Dan Weitzel, Development Services Manager Scott Gebhart, and Assistant City Recorder Nancy Jones. Panelist present: Becky Baxter Program and Policy Coordinator of Business Oregon, and John Peterson Vice President of Piper Sandler.

2. City Hall Financing Options: City Manager Leila Aman Becky Baxter Program and Policy Coordinator of Business Oregon spoke about the Special Public Works Fund that she manages and said this program funds essential community facilities. She shared information about the program and said it is state funded and backed by the lottery to provide lower interest loans to cities. She explained the requirements and application process and stated that the Interest rate is determined at the time the application is submitted. The completed application needs to be turned in by mid-June to make the August Meeting for approval. She shared loan details, costs reimbursements, explained how the Oregon Bond Bank works, and answered the council's questions.

John Peterson Vice President of Piper Sandler explained the difference between the Special Public Works Fund, Full Faith and Credit and the General Obligation Bond and said the loans rates are close to the same. He shared the Historical interest rates from 1996 to 2023. He stated that the offer from the Special Public Works Fund is superior to what he can provide at this moment.

3. Adjourn: Water Rate Study: Public Works Director Dan Weitzel. Public Works Director Dan Weitzel stated that the last water rate study was performed in 2014 and it was recommended to review the rates yearly with an increase, which did not happen. He presented the new proposed water usage and water rates and explained the breakdown of residential and commercial. Weitzel asked Council to provide guidance to staff as how Short-Term Rentals should be considered. He communicated that meter readings are performed monthly, and billing would remain quarterly. Continued discussion on the water rates will be held at the Work Session on June 14th.

4. Adjourn: Mayor Simmons adjourned the meeting at 3:49pm.

MINUTES APPROVED THIS
7th Day of June 2023

Deb Simmons, Mayor

Attest:

Leila Aman, City Manager

CITY OF MANZANITA
April 24, 2023
BUDGET COMMITTEE PRE-MEETING

1. CALL MEETING TO ORDER: The meeting was called to order by Chair David Dillon at 10:00am April 24, 2023, via Zoom.

ROLL: Members present: Deb Simmons, Linda Kozlowski, Jerry Spegman, Jenna Edginton, Brad Mayerle, David Dillon, Jim Dopp, Chip Greening, Kathryn Stock and Kit Keating. Staff Present: City Manager Leila Aman, Accounting Manager Nina Crist, and Assistant City Recorder Nancy Jones.

2. Overview of FY 21/22 Audit: Accounting Manager Nina Crist shared an overview of the completed 2021/2022 fiscal year audit. She said that the city provides documents to the auditors in August, and they generally return in December to show their findings. The FY 21/22 audit was delayed due to software conversion issues.

3. FY 2022/2023 Third Quarter Financial Review: Accounting Manager Nina Crist shared the current fiscal year third quarter financial review. She stated that building permits are down slightly, and the city is expected to be 23% down for Short-term rentals for this quarter. Crist stated that expenditures are in line and the city is not expecting to transfer money from contingency.

4. Overview of Professional Services by Project to Date for FY 22/23: City Manager Aman shared detailed information about the administrations professional services and stated that these essential services are necessary for the city to operate. This fund is also used for resources to implement many Council goals. She shared actual year to date expenses and estimated expenses for the remainder of the year.

5. Review of FY 22/23 Transfers: City Manager Aman explained two types of transfers, interfund transfers and indirect cost allocation, which are used to account for direct and indirect costs. The city council adopted Resolution 23-01 this year, moving from a cost drivers system to a materials and service methodology. She shared information on general fund interfund transfers, water utility and SDC Indirect cost transfers, building indirect cost and road interfund transfers funds and shared details of a revised building fund transfer.

6. Budget Process for FY 23-24:

Budget Meeting #1- May 8th at 4pm via Zoom

Budget Meeting #2- May 9th at 4pm via Zoom

Public Hearing – May 17th at 6pm via Zoom

FY 23/24 budget will be presented to City Council on June 14th for adoption

7. Orientation to City Budget Department and Funds: City Manager Aman spoke about fund structure, definitions, and departments. The Trust Fund and Civic Improvement funds are to be closed in FY 23/24. Aman shared the organizational structure for administration, public safety, public works, and development services departments.

8. General Projected Changes in Resources and Requirements for FY 23/24: City Manager Aman shared that the transient lodging tax (TLT) has declined in revenue this year. The proposed budget for FY 23/24 will be projected at a conservative percentage rate of 10%. It was requested by the committee to be presented with a revenue projection of both 11% and 12%. She said that revenue projections for the water utility will reflect the current water rates as the new water rates won't go into effect until after July 1st. The budget for FY 23/24 will be posted on May 8th.

9. Discussion / Questions:

10 Adjournment: Chair David Dillon adjourned at 12:10pm

**MINUTES APPROVED THIS
7th Day of June 2023**

Deb Simmons, Mayor

Attest:

Leila Aman, City Manager

CITY OF MANZANITA
May 8, 2023
BUDGET COMMITTEE MEETING

1. CALL MEETING TO ORDER: The meeting was called to order by Chair David Dillon at 4:00pm May 8, 2023, via Zoom.

ROLL: Members present: Deb Simmons, Linda Kozlowski, Jerry Spegman, Jenna Edginton, Brad Mayerle, David Dillon, Jim Dopp was absent and excused, Chip Greening, Kathryn Stock and Kit Keating. Staff Present: City Manager Leila Aman, Accounting Manager Nina Crist, Chief of Police Erik Harth, Development Services Manager Scott Gebhart, and Assistant City Recorder Nancy Jones.

There were 10 members of the public in attendance via zoom.
There were 19 members of the public in attendance via the website.

ELECTION OF CHAIR & VICE-CHAIR FOR 2023/2024. Stock nominated Dave Dillon for Chair: Kozlowski nominated Kathryn Stock for Vice Chair: **A motion was made by Kozlowski, seconded by Greening to nominate Dave Dillon for Chair of the Budget Committee and Kathryn Stock for Vice-Chair of the Budget Committee. Motion passed unanimously.**

PRESENTATION OF BUDGET MESSAGE BY BUDGET OFFICER: City Manager Leila Aman Read Budget Message to the Budget Committee.

OVERVIEW OF BUDGET-BY-BUDGET OFFICER AND DEPARTMENT HEADS:

GENERAL FUND

City Manager Leila Aman stated that the General Fund is still in a strong financial position. She explained the revenue estimated carryover balance and went line by line over the general budget revenue. She stated that the Transient Lodging tax revenue has variables and is difficult to estimate but remains strong. The budget projections are conservative and reflect a more accurate estimate of actual revenue. The updated fee structure for short-term rental fees is reflected in the fees for services. Transfers from other funds this year include transfers from the Water Utility Fund, and the Building Fund and were determined using a Material and Services methodology approved by city council.

Aman presented the Administration Expenditures including the adjustment in employees' salaries and benefits, professional services to deliver on city council goals.

Chief of Police Erik Harth shared information on the General Fund Public Safety Department and said that they have started moving towards operating paperless to level up the department. Harth will be appointing a police sergeant this year.

City Manager Leila Aman reviewed the proposed Court and Parks Department budgets and said there were no major increases. The Parks Department expenditures increased moderately due to the partnership with the Lower Nehalem Community land trust.

Aman explained that the Non-Department fund is utilized for transfers and expenditures normally made once a year which do not pertain to a specific department of the General Fund. The City Council has committed \$10,000 a year to emergency preparedness and is reflected in this proposal. The COVID Relief Fund is restricted and will be decided this year by council. Transfer Out are transfers from General Fund to other funds, including the Road Fund and City Hall Expansion Fund. The Reserves include a policy reserve of 17.5% per city policy.

SPECIAL REVENUE FUNDS

City Manager Leila Aman shared that the Tourism Promotion and Facilities Fund is a restricted fund used for tourism promotion and facilities. Personnel services is the largest change for this fund and a portion of a Code enforcement position. Off Season Grants were included and recommended a transfer from the Trust Fund the Trust Fund to the Tourism Promotion fund.

CAPITOL PROJECT FUNDS

City Manager Leila Aman spoke about the City Hall Construction Fund revenues and expenditures. She explained the carry over balance and spoke about an abatement grant from Business Oregon. She spoke about the expenditures for Professional Services and said that payments are included for the architect and development team contracts. Also included is demolition, abatement, and dept service for Underhill Plaza.

RESERVE FUNDS

Chief of Police Erik Harth spoke about the Public Safety Reserve Fund expenditures and the increase in the transfer from the General Fund. He shared that the expenditures for Capital Outlay is high due to a new police car that was ordered last year that hasn't been built yet. He plans to order another car to bring the total to two new cars this year. There are no plans to purchase other cars until fiscal year 27/28.

10 Adjournment: Chair David Dillon adjourned at 6:09pm

MINUTES APPROVED THIS

7th Day of June 2023

Deb Simmons, Mayor

Attest:

Dave Dillon, Budget Committee Chair

Leila Aman, City Manager

CITY OF MANZANITA
May 9, 2023
BUDGET COMMITTEE MEETING

1. CALL MEETING TO ORDER: The meeting was called to order by Chair David Dillon at 4:03pm May 9, 2023, via Zoom.

ROLL: Members present: Deb Simmons, Linda Kozlowski, Jerry Spegman, Jenna Edginton, Brad Mayerle, David Dillon, Jim Dopp, Chip Greening, Kathryn Stock and Kit Keating. Staff Present: City Manager Leila Aman, Accounting Manager Nina Crist, Development Services Manager Scott Gebhart, Public Works Director Dan Weitzel, and Assistant City Recorder Nancy Jones.

There were 23 members of the public via zoom.
There were 12 members of the public via website.

OVERVIEW OF BUDGET-BY-BUDGET OFFICER AND DEPARTMENT HEADS:

SPECIAL REVENUE FUND

The Building Fund is used to provide residential and commercial inspections, plan reviews and enforcement of the state building codes for all construction within the city limits. Development Services Manager Scott Gebhart said that the city averages ten to twelve new home construction builds a year. Contract services has increased due to commercial plan review inspections, and coverage of staff. Gebhart communicated that the assessment of Building Permits is anticipated to be lower this year.

Public Works Director Dan Weitzel said that the Resources for the Road Fund Resources are generated from franchise and utility agreements. He said that the city is updating the street permit fees. Capital outlay funds are set aside for future street projects as there are no major road projects planned for this fiscal year.

City Manager Leila Aman said that the Housing Rehabilitation Loan Fund was established in 1998 to provide no interest loans to qualified homeowners. It is expected to transfer and close this fund in fiscal year 24-25 as it has remained dormant for several years.

City Manager Leila Aman stated that the Timber Management Fund is for the purpose of harvesting and managing city owned timber resources. The city harvests these trees every 10 to 20 years and purchases capital items with the revenue. There are no plans to harvest this fiscal year.

ENTERPRISE FUND

Enterprise Funds are established to account for operations that are financed and operated in a manner that is similar to a private business enterprise. Public Works Director Dan Weitzel spoke about the only Enterprise Fund the city has, the Water Utility Fund. He shared an overview of last fiscal year 2022-2023 projects and equipment changes. He said that the current Dorcas project will be completed in June and the first AMI meter has been placed which is a step towards the system going to complete automated reading. No major projects are planned for the FY 23-24 fiscal year and projects are included in the Capital Improvement Plan.

CAPITAL PROJECTS FUND

Public Works Director Dan Weitzel shared information about the Water System Development Charge Fund. These funds are restricted to construction that expand the city’s water system. He explained that resources for this fund come from new water hook ups and said the city is planning for ten new hookups this year. Fiscal year 2023-2024 expenditures are focused on maintenance and initial planning and design for future projects.

The Puffin Local Improvement District fund is proposed to be closed this year.

Public Works Director Dan Weitzel shared information on the Storm Drain System Development Charge Fund. A new methodology was adopted this year and letters were sent out to all residents. He said that city is planning on ten new connections this year to reflect a downturn in housing starts. Expenditures include resources for early design work for Capital Improvement Plan projects and materials and services are for minor new storm water projects if needed.

Public Works Director Dan Weitzel spoke about the Park Facilities Fund and said revenues include system development charges from new residents, private donations, and interest. There are no planned expenses this year.

RESERVE FUND

Development Services Manager Scott Gebhart shared that the Building Reserve Fund accounts for the transfer of funds from the Building Fund for vehicles for staff, inspections, and other equipment. Public Works Director Dan Weitzel shared that the Public Works Equipment Reserve fund accounts for the transfer of funds from the water Utility and Road Funds for the purchase of equipment.

10 Adjournment: Chair David Dillon adjourned at 5:38pm

**MINUTES APPROVED THIS
7th Day of June 2023**

Deb Simmons, Mayor

Attest:

Dave Dillon, Budget Committee Chair

Leila Aman, City Manager

CITY OF MANZANITA
May 17, 2023
BUDGET COMMITTEE PUBLIC MEETING

1. CALL MEETING TO ORDER: The meeting was called to order by Chair David Dillon at 6:01pm May 17, 2023, via Zoom.

ROLL: Members present: Deb Simmons, Linda Kozlowski, Jerry Spegman, Jenna Edginton, Brad Mayerle, David Dillon, Jim Dopp, Chip Greening, Kathryn Stock and Kit Keating. Staff Present: City Manager Leila Aman, Accounting Manager Nina Crist, Development Services Manager Scott Gebhart and Assistant City Recorder Nancy Jones.

There were 16 members of the public in attendance via zoom.

There were 13 members of the public in attendance via the website.

PUBLIC HEARING AND COMMENTS – Proposed use of State Revenue Sharing for 2023-2024/Proposed 2023-2024 Budget for the City of Manzanita.

Accounting Manager Nina Crist explained the State Revenue Sharing Fund.

Public Hearing was opened by Chair Dillon at 6:04 pm. There were no public comments. Public Hearing was closed at 6:05 pm.

SETTING OF PROPERTY TAX RATE FOR 2023/2024: A motion was made by Dopp, seconded by Stock, to set the property tax rate at \$0.4233 per \$1,000 of assessed valuation for the 2023/2024 year. Motion passed unanimously.

There were no public comments.

APPROVAL OF 2023/2024 BUDGET: A motion was made by Greening, seconded by Kozlowski to approve the 2023/2024 budget as presented and to recommend its adoption by the City Council. Mayor Deb Simmons Voted No. Motion passed.

There were six public comments.

ADJOURNMENT: Chair David Dillon adjourned the meeting at 6:48 pm.

MINUTES APPROVED THIS
7th Day of June 2023

Deb Simmons, Mayor

Attest:

Dave Dillon, Budget Committee Chair

Leila Aman, City Manager

BILLS FOR APPROVAL OF PAYMENT

From 05/01/2023 - 05/31/2023

VENDOR	TOTAL	ADMIN	POLICE	BLDG	COURT	PARKS	CH Expansion	ROADS	Visitors Center	WATER
MILLER NASH* (CITY ATTORNEY)	\$27,969.50	\$27,969.50								
NB WASTE WATER (WASTE WATER UTILITY)	\$850.50	\$162.00	\$162.00	\$81.00		\$364.50				\$81.00
NC CIVIC DESIGN (CIVIL ENMGINEER)	\$5,480.00							\$ 2,158.57		\$3,321.43
NORTH COAST CITIZEN (ANNUAL SUBSCRIPTION)	\$60.00	\$60.00								
ONE CALL CONCEPTS (STATE LOCATE FEES)	\$32.20									\$32.20
ONE ELEVEN (IT SERVICES)	\$3,560.00	\$3,530.00								\$30.00
ONE ELEVEN (EQUIPMENT)	\$70.00	\$70.00								
OREGON DEPT OF REV (FINES & ASSESSMENTS)	\$50.00				\$50.00					
PACIFIC OFFICE (POSTAGE & COPIER SERVICE)	\$520.70	\$486.20								\$34.50
PUMP TECH (MATERIAL & SUPPLIES)	\$1,631.64									\$1,631.64
RHYNO NETWORKS (IT SERVICES)	\$273.00	\$136.00	\$68.00							\$69.00
RTI (PHONE SERVICE)	\$493.96	\$95.80	\$99.76							\$298.40
SHELDON OIL CO. (FUEL)	\$1,516.72		\$805.13	\$182.06		\$26.48		\$132.38		\$370.67
STAPLES (OFFICE EQUIP & SUPPLIES)	\$296.45	\$296.45								
TCVA (VC COORDINATOR)	\$9,300.00								\$9,300.00	

BILLS FOR APPROVAL OF PAYMENT

From 05/01/2023 - 05/31/2023

VENDOR	TOTAL	ADMIN	POLICE	BLDG	COURT	PARKS	CH Expansion	ROADS	Visitors Center	WATER
TILL CO PAYABLE (FINES & ASSESSMENTS)	\$16.00				\$16.00					
TILLAMOOK PUD (ELECTRIC SERVICE)	\$3,964.25	\$297.24	\$324.00			\$84.10	\$41.42	\$609.00	\$79.24	\$2,529.25
US BANK (CITY VISA)	\$2,779.05	\$506.66	\$ 45.56			\$57.97	\$1,449.00			\$719.86
VERIZON (TELEPHONE)	\$1,180.15	\$294.58	\$344.36	\$114.98					\$64.99	\$361.24
TOTALS	\$109,814.84	\$42,692.71	\$4,663.24	\$1,670.54	\$430.00	\$533.05	\$3,225.42	\$3,012.39	\$9,564.20	\$44,023.29

*Payment for March & April 2023



COUNCIL ORDINANCE No. 23-1

AN ORDINANCE OF THE CITY OF MANZANITA, OREGON, AN ORDINANCE REPEALING AND REPLACING SECTION 14 OF ORDINANCE 94-6 RELATING TO OVERNIGHT CAMPING IN THE CITY OF MANZANITA.

WHEREAS, A 2018 U.S. 9th Circuit of Appeals case *Martin v. Boise* “prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter”; and

WHEREAS, Oregon House Bill 3115 requires any city law regulating acts of sitting, lying, sleeping or keeping warm and dry outside on public property must be “objectionably reasonable”; and

WHEREAS, Oregon House Bill 3115 provided a delayed implementation date of July 1, 2023 ; and

WHEREAS, With this ordinance, The City of Manzanita is implementing a time, place, and manner restriction on overnight camping in the City;

Now, Therefore, the City of Manzanita does ordain as follows:

Section 1. Definitions

Definitions used in this chapter have the following meanings:

- (1) “Camp” or “camping” means to set up, use, maintain or remain in or at a campsite.
- (2) “Campsite” means any place where one or more persons have established temporary living accommodations by use of camp facilities and/or camp paraphernalia, excluding Recreational Vehicle Parks (as defined in Section 1.030 of Manzanita Ord. 95-4) and recreational licensed campgrounds.
- (3) “Camp facilities” include, but are not limited to, tents, huts, temporary shelters, lean-tos, shacks, or any other structures, trailers, vehicles or parts thereof.
- (4) “Camp Paraphernalia” includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or non-city designated cooking facilities and similar equipment.

- (5) "Park" As used in this ordinance means and includes all the properties controlled by the City and operated as parks available for use of the public.

Section 2. Camping prohibited in certain places.

Unless otherwise specifically authorized by the city ordinance or by declaration of the mayor and/or city manager in emergency circumstances, it is a violation for any person to camp in or upon any public property between the hours of 7 a.m. to 9 p.m. Camping is prohibited at all times in the following areas:

- (1) within or upon any Park;
- (2) on streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements including planter strips, medians and parking spaces;

Section 3. Violation—Penalty.

Any person who is convicted of a violation of any provision of this ordinance shall be subject to a civil fine of not more than \$250 for each offense.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Deb Simmons, Mayor

ATTEST:

Leila Aman, City Manager/Recorder



Leila Aman
Manzanita City Manager

Cc: Jessie Steiger
Klosh Group

Date: June 1, 2023
Subject: Phase 2 Design Services for Manzanita City Hall

Dear Leila,

We are pleased to submit the following proposal for Phase 2 Design and Construction Administration services for the new Manzanita City Hall. This is a continuation of services provided under our initial contract with the city (*AIA B101 dated July 11, 2022*). Based on our ongoing conversations, we understand that Phase 2 will begin in mid-June and design and documentation will last for six months. A roughly twelve-month construction phase will follow. Our proposed fee for this work, including Architectural, Civil, Structural, MEP, and Landscape design is a not-to-exceed \$330,000. Below is a description of our full team project fees including the work done to date.

Fee

<u>Phase 1</u>	
Public Outreach and 30% SD	\$75,846 - complete
Add Service# 1	\$6,940 - complete
<u>Phase 2</u>	
30% SD through Construction Completion (full A/E team)	\$330,000
Total fees	\$412,768

We are excited to take the next step with you in this important project and look forward to continuing our relationship with the City of Manzanita.

If you have any questions or concerns about this proposal, please feel free to reach out.

Sincerely,

Chris Keane, AIA
Principal

bearing

215 southeast 9th avenue
unit 303
portland, oregon 97214

503.487.0211
bearingarchitecture.com



June 2, 2023

City of Manzanita

Leila Aman, City Manager

PO Box 129

Manzanita, OR 97130

Manzanita City Hall – Contract Amendment #3

Dear Leila,

First and foremost, thank you for the opportunity to provide services for the Manzanita City Hall project. We are excited to move into Phase II of the work and start on the construction phase.

The proposed value for Phase II project management services in the original contract was \$80,591, based on an assumed design and construction duration of 17 months. That amount was calculated in November 2021 prior to having an architect or contractor on the project to provide feedback on schedule assumptions. The current schedule for Phase II is planned for 6 months of design, 2 months for permitting/bidding/closeout, and 12 months of construction, for a total duration of 20 months. Therefore, we propose a fee adjustment to allow for the longer project duration. The revised total for project management services is less than the budgeted amount that has been presented publicly, and still leaves flexibility for scope modifications if needed moving forward.

We are assuming no future public meetings, virtual attendance at 2 council meetings, and a cost-of-living adjustment to the hourly rate table (Attachment 1). Additional design/construction durations out of our control will be considered additional services.

- Current Contractual Labor Amount for Phase I: \$ 55,803
- Current Contractual Labor Amount for Phase II: \$ 80,591
- Proposed Increase for Phase II: \$ 13,893
- Total Contractual Labor Amount for Phase I & II: \$150,287

Our proposed fee for **Contract Amendment #3 is \$94,484** is to provide project management services for design, permitting, demo/abatement, construction, and final project closeout in February 2025. The fee is a total not-to-exceed labor amount, with any reimbursable expenses to be in addition to this fee and continue to be billed as incurred. This brings the total approved contract value for Phase I and II to \$150,287.

This Contract Amendment will also extend the contract end date from December 22, 2023, to February 28, 2025 for the anticipated final project closeout.

We are confident that our value will be demonstrated at every level of engagement on this project.

4854A SW Scholls Ferry Road | Portland, Oregon 97225

Sincerely,

Approved by:

DocuSigned by:

723DE812560D43A...
Jeff Caldwell, President
Klosh Group, Inc.

Leila Aman, City Manager

Date:



ATTACHMENT 1

Revised hourly rates to go into effect for invoices submitted in July 2023. The following rate table supersedes Exhibit C of the Professional Services Agreement Executed on November 8, 2021.

Klosh Group Hourly Rate Table			
Classification	2023	2024	2025
Project Executive	\$193.42	\$199.22	\$205.20
Senior Project Manager	\$184.26	\$189.79	\$195.48
Project Manager	\$173.96	\$179.18	\$184.55
Project Coordinator	\$137.34	\$141.46	\$145.70



COUNCIL RESOLUTION No. 23-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANZANITA, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENTS TO BEARING ARCHITECTURE AND KLOSH GROUP CONTRACTS TO FOR PHASE 2 OF THE CITY HALL PROJECT.

WHEREAS, the City of Manzanita passed Resolution 20-21 approving the design and construction of a new city hall facility following the removal of the existing structures of the Underhill site and adopting project principals; and

WHEREAS, Resolution 20-21 directed staff to advance the design and construction of the new City Hall to meet the project principles which included that the need was urgent and ESSENTIAL, whereby the project will CONSOLIDATE Administration and Public Safety Services, that the LOCATION of the New City Hall will be on Underhill Plaza, whereby the project will be a NEW BUILDING, whereby the City will conduct COMMUNITY OUTREACH to inform decisions regarding the new City Hall, whereby the city will hire a PROJECT MANAGER and whereby following the community outreach effort the City Council will determine final FUNDING approach for the property; and

WHEREAS, the City Council approved Resolution 21-03 adopting Community Values and Goals for the Manzanita City Hall Project and include:

Section 1: The new city hall goals will be:

1. The new city hall will combine the most value for the community investment. The city hall be durable, adaptable, scalable, functional and efficient. The building will be able to withstand coastal conditions and is resilient in the event of an earth quake.
2. The new city hall will match with the unique culture and norms of the community.
3. The city hall be environmentally sustainable.

Section 2: City Council will incorporate these values as it implements all phases of the city hall project to build a city hall that:

1. Reflects the culture and diverse values of the community.
2. creates an inspiring workspace for staff.
3. Provides for user friendly and efficient customer service
4. Embraces innovation.

WHEREAS, In November 2021, City Council Approved Resolution 21-20 Authorizing the City Manager to enter into a contract with Klash Group for Owners Representative Services (project management);

WHEREAS, In April 2022, City Council Authorized Resolution 22-04 Authorizing the City Manager to enter into a contract with Bearing Architecture for Architectural Services;

WHEREAS, in November 2022, City Council Approved Resolution 22-14 Acting as the Local Contract Review Board Authorizing the City Manager to execute a Contract With Cove Built LLC for the Construction of Manzanita City Hall;

WHEREAS, the City Council authorized two amendments to Klosh Groups Contract and One Amendment to Bearing Architecture to support additional outreach and work required by the City to complete Phase 1 including additional study of the Quonset hut for storage;

WHEREAS, the Owners Representative, Architectural and CMGC contracts are all divided into two phases with Phase 1 objective to reach 30% design and Phase 2 to complete the design and construction of Manzanita City Hall;

WHEREAS, the Owners Representative and Architectural contracts require City Council authorization to move into Phase 2 of the project which will include the completion of design through construction;

WHEREAS, the City Council supports the completion of the project and that the Owners Representative, Architect and Contractor have completed all elements of the scope of work included in Phase 1 to complete 30% schematic design and have successfully met all objectives outlined in their required scopes of work and have delivered on the objectives outlined in Resolution 20-21 and Resolution 21-03.

Now, Therefore, be it Resolved by the City Council of the City of Manzanita the City Council authorizes the City Manager to execute Amendments 3 to Klosh Group and Amendment 2 to Bearing Architectures Contracts to complete the design of Manzanita City Hall.

Introduced and adopted by the City Council on _____.

This resolution is effective on _____.

Deb Simmons, Mayor

ATTEST:

Leila Aman, City Manager/ City
Recorder



City of Manzanita

COUNCIL RESOLUTION No. 23-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANZANITA, OREGON, AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION FOR UP TO \$4 MILLION DOLLARS TO BUSINESS OREGON FOR THE PURPOSE OF FINANCING CITY HALL

WHEREAS, the City Council of the City of Manzanita Authorized Phase 2 of the City Hall Project to complete design and construction of City Hall; and

WHEREAS, the City Council of the City of Manzanita have reviewed the City’s financial position and believe that there are sufficient resources for the city to borrow funding up to \$4 million dollars for the purpose of finalizing design and construction of a new city hall.

Now, Therefore, be it Resolved by the City Council of the City of Manzanita the City Council authorizes the City Manager to submit a loan application to Business Oregon for a loan to finance the Construction of City Hall up to \$4 million dollars.

Introduced and adopted by the City Council on _____.

This resolution is effective on _____.

Deb Simmons, Mayor

ATTEST:

Leila Aman, City Manager/ City
Recorder



City of Manzanita

COUNCIL RESOLUTION No. 23-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANZANITA, OREGON, AUTHORIZING THE CITY MANAGER TO WORK WITH THE CITY'S FINANCIAL ADVISOR TO APPLY FOR A FULL FAITH AND CREDIT DEBT OBLIGATION FOR UP TO \$4 MILLION DOLLARS

WHEREAS, the City Council of the City of Manzanita Authorized Phase 2 of the City Hall Project to complete design and construction of City Hall; and

WHEREAS, the City Council of the City of Manzanita have reviewed the City's financial position and believe that there are sufficient resources for the city to borrow funding up to \$4 million dollars for the purpose of finalizing design and construction of a new city hall.

Now, Therefore, be it Resolved by the City Council of the City of Manzanita the City Council authorizes the City Manager to submit a loan application working with the City Financial Advisor to secure a Full Faith and Credit Debt Obligation for up to \$4 Million Dollars.

Introduced and adopted by the City Council on _____.

This resolution is effective on _____.

Deb Simmons, Mayor

ATTEST:

Leila Aman, City Manager/ City Recorder



City of Manzanita

COUNCIL RESOLUTION No. 23-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANZANITA, OREGON, AUTHORIZING THE CITY MANAGER TO DEVELOP BALLOT TITLE AND LANGUAGE FOR TO REQUEST UP TO \$4 MILLION DOLLARS IN GENERAL OBLIGATION FUNDS AT THE NOVEMBER 2023 GENERAL ELECTION.

WHEREAS, the City Council of the City of Manzanita Authorized Phase 2 of the City Hall Project to complete design and construction of City Hall; and

WHEREAS, the City Council of the City of Manzanita elects to refer the funding of City Hall to the voters through a Ballot Measure to be placed on the November 2023 ballot.

Now, Therefore, be it Resolved by the City Council of the City of Manzanita the City Council authorizes the City Manager to draft ballot title and language for council approval on July 6, 2023 to submit to the County Elections official for placement on the November 2023 ballot.

Introduced and adopted by the City Council on _____.

This resolution is effective on _____.

Deb Simmons, Mayor

ATTEST:

Leila Aman, City Manager/ City
Recorder



City of Manzanita

PO BOX 129, Manzanita OR 97130-0129

Phone (503) 812-2514 | Fax (503) 368-4145 | TTY Dial 711

ci.manzanita.or.us

Planning Commission Application

Name:	Bert Gregory FAIA	Phone:	206-818-2329
Address:	PO Box 429, 8830 Spindrift Lane	Email:	bert@gregoryfaia.design
City/State/Zip:	Manzanita, OR 97130	(Legal: 103 W Boston St, Seattle, WA 98119)	
Occupation:	Architect & Urban Designer, Retired		

There is one position open on the Planning Commission. The position will be an appointment to complete the term of a commissioner who resigned in 2023. This term will end December 2025.

Do you live, own property, or a business within the City or Urban Growth Boundary? If yes, please describe your relationship to the City of Manzanita.

My daughter grew up in Manzanita with joyful Augusts every summer since she was a toddler. With her in college, we were able to finally purchase a home on Spindrift Lane, where I spend close to half time, with a future permanent move.

Please explain what skills or qualifications you bring that you believe will benefit the City as a member of the Planning Commission. Be brief but be as specific as possible.

A good listener with public meeting experience, an urban designer's experience, understanding housing affordability and economics, an understanding of resilience, sustainability, comprehensive plans, building and zoning codes, along with leadership skills. I am a licensed architect in Oregon, Washington, Montana, and Colorado and have worked in urban, rural, small town and resort communities designing places that foster communities to grow with grace. I have been Board Chair of Forterra, a Puget Sound land conservancy that secures farm, forest, and ecological conservation land and urban land for affordable housing, Co-Chair of the Urban Land Institutes's (ULI) Climate, Land Use, and Environment task force, and former CEO of Mithun, the 2023 AIA Firm Award recipient. I understand how to interpret technical Zoning and Building Codes. As Manzanita undertakes a new Comprehensive Plan I believe that my broad experience can assist the City to design a resilient, equitable, and beautiful future through the community values expressed by the goals, objectives, policies and standards outlined in its Comprehensive Plan and Zoning Code.

Please describe your understanding of the Comprehensive Plan, the City's Zoning Ordinance and/or Land Use Planning.

I have reviewed the existing Comprehensive Plan, Zoning Code & Maps, associated City of Manzanita Ordinances, City governance structure, and the Envision Manzanita published documents and community event videos. In addition, I have attended and/or reviewed recent available City Council meetings and work sessions via Zoom since the purchase of our Manzanita home. I have also reviewed recent Planning Commission documents. This provides me a good understanding of the current governance structure, approval process, codes/ordinances. and the current Comprehensive Plan and its relationship to the Envision Manzanita process. I have utilized the Manzanita zoning code in property analysis, in both residential and commercial zones, prior to the purchase of our Spindrift home. This gives me a good understanding of the current code and how it relates to other codes in the Western U.S.

I understand land planning and urban design as a licensed professional and have received the AIA Honor Award for Regional & Urban Design and an Urban Land Institute Award for Excellence.

As a Planning Commissioner you will be asked to make decisions on Land Use Applications using the City's Zoning Ordinance. Your ability to interpret the Zoning Ordinance and criteria will be essential to your success in this position. Please describe how you would evaluate a land use application where you may personally disagree with what is being proposed.

All rulings should be on the basis of the law and fact. In areas that are not clear within the ordinances, where interpretation of the law is needed, the application, staff reports, public submittal and testimony, the proponent's submittal and public testimony, and consultation in public meetings with City staff, the City Attorney, and other Commissioners would inform my decision.

Any personal disagreement with the contents of a Land Use Application will not be considered.

Do you have any expected or anticipated conflicts of interest that may require you to recuse yourself from a planning application? If yes, please describe.

I do not now anticipate any conflicts of interest. In any potential future City Ordinance modification or Land Use Application requiring Commission review where I may be a proponent or have a conflict of interest, I would recuse myself from the Commission's deliberations.

Planning Commission Meetings are held on the third Monday of each month at 4 pm. In cases where the Monday falls on a holiday the Planning Commission will meet on the third Tuesday of each month. There are also potential trainings and special meetings that may be required. Can you meet this time commitment?

Yes No

Meetings are currently held via the Zoom and are expected to continue on Zoom for two more years. Are you able to participate via Zoom? If meetings were held in person would you be able to participate? Please describe your availability to attend meetings either via Zoom or in person below.

I regularly use Zoom for my current nonprofit work, and have used it continuously for close to a decade while with Mithun. I would generate future commitments to avoid in person meeting conflicts as best as possible and be able to participate in person, or if scheduled or due to an unavoidable conflict, via Zoom.

Is there anything else you would like to share with the selection committee about your experience and interest in the position?

I'm passionate about Manzanita, it is in my soul. It is in my daughter's soul. I want to help steward it into a resilient, equitable and beautiful future as the pressures of growth and change ensue, so we can keep what we love about our village and allow us to grow with grace.

You are also welcome and encouraged to submit a CV or Resume as part of your application.

THE DEADLINE FOR SUBMISSIONS IS Friday, May 26 AT 4:00 PM

Please return this form
by email to cityhall@ci.manzanita.or.us

If you have any questions, please call 503-368-5343 or email us at cityhall@ci.manzanita.or.us



Bert Gregory FAIA

Bert Gregory FAIA, Partner Emeritus at Mithun, is a strategic architectural, planning, and urban design consultant with a mission to create resilient, sustainable, equitable and beloved places, neighborhoods, and communities.

Bert's project design leadership has resulted in four American Institute of Architects (AIA) COTE Top 10 Green Project awards, two American Society of Landscape Architects National Honor Awards, the AIA National Regional & Urban Design honor award, the National Trust for Historic Preservation Honor Award, and the Urban Land Institute (ULI) Award of Excellence. In 2005 Bert's leadership of the Lloyd Crossing Sustainable Urban Design project in Portland resulted in both an AIA COTE Top Ten award and the AIA Regional & Urban Design honor award. In 2017 he received the AIA Seattle Gold Medal, the chapter's highest honor, recognizing distinguished lifetime achievement in architecture. In 2019 Bert was awarded the International Living Future Institute's Living Future Hero award. He is a Fellow of the AIA and United States Green Building Council.

Under his 15-year leadership as Mithun's Chairman and CEO, Bert led the firm to international recognition for healthy, performance-based design, positive for people and place. The firm was honored with over 165 design awards, the Sustainable Design Leadership Award from AIA/IIDA/Cornet Global, the Regional Leadership Award from the United States Green Building Council and was named to the top 15 of all design firms in the US by Architect Magazine. In recognition of a firm that has consistently produced distinguished architecture for at least 10 years; Mithun was honored with the 2023 AIA Architecture Firm Award.

Bert serves as an international leader, speaker and advocate for sustainable building and urbanism, including lectures in Beijing, Jerusalem and Sarajevo. He has volunteered to lead AIA R/UDAT urban design efforts in Birmingham, Alabama after an F5 tornado, and to be the urban design lead for the Urban Land Institute's Reconnecting Rondo community vision in St. Paul, Minnesota. His research initiatives include leading a carbon accounting effort, with ULI and the Puget Sound Regional Council, for Seattle's 2040 regional growth "Reality Check," "The Model Resilient Zoning Code with Equity" in collaboration with Carnegie Mellon University & ARUP and developing one of the first web-based materials carbon calculators in 2007, buildcarbonneutral.org, collaborating with the University of Texas at Austin and the University of Washington.



City of Manzanita

COUNCIL RESOLUTION No. 23-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANZANITA, OREGON, MAKING AN APPOINTMENTS TO THE PLANNING COMMISSION.

WHEREAS, Chapter 5, Section 20 of the Manzanita City Charter states that the Mayor shall appoint a committee provided for under the Rules of the Council; and

WHEREAS, the Manzanita City Council approved amendments to the Council Rules of Procedure, Section 8, Appointments establishing a competitive application process for committee appointments; and

WHEREAS, the Council Rules of Procedure require the appointment of a selection committee to conduct the process and make a recommendation to the Mayor for approval;

WHEREAS, the city established the selection committee for the Planning Commission and established criteria in accordance with Council Rules of Procedure;

WHEREAS, the selection committee reviewed 1 application and found the candidate to be qualified for the position; and

WHEREAS, the Mayor has ultimate responsibility for approving candidates and recommends City Council approve the candidate for the position.

Now, Therefore, be it Resolved by the City Council of the City of Manzanita, Oregon that Bert Gregory be appointed to the Manzanita Planning Commission for a term expiring in December 2025.

Introduced and adopted by the City Council on _____.

This resolution is effective on _____.

ATTEST:

Deb Simmons, Mayor

Leila Aman, City Manager/ City Recorder

**Amendment No. 1 to
INTERGOVERNMENTAL AGREEMENT
8965 Law Enforcement Services**

This is **Amendment No. 1 to Intergovernmental Agreement (IGA) No. 8965 (“Agreement”)**, executed on December 15, 2021 between the State of Oregon, acting by and through its Oregon Parks and Recreation Department (“OPRD”) and City of Manzanita (“City”), each a “Party” and together, the “Parties.” This Amendment is effective upon execution and receipt of all approvals necessary for signing (Amendment Effective Date).

AMENDMENT

Parties agree that Agreement is hereby amended as set forth below:

- I.** Section 3: Effective Date and Duration is amended as follows [new language is indicated by **underlining and bold** and deleted language is indicated by ~~strikethrough~~]:

This Agreement is effective after all necessary approvals have been obtained or on the date of the last signature, whichever is later (Effective Date), and terminates on ~~June 30, 2023~~ **July 15, 2025** unless terminated earlier in accordance with Section 16.

- II.** Section 6: Compensation and Payment Terms is amended as follows [new language is indicated by **underlining and bold**]:

6.1 OPRD shall compensate the City for services performed based on the provisions set forth below, subject to the terms of this Contract. Subject to the following, OPRD’s payments to City under this Agreement shall not exceed \$150,000.

- \$27,500 for the period of July 1, 2021 to June 30, 2022; and
- \$27,500 for the period of July 1, 2022 to June 30, 2023.
- **\$28,325 for the period of July 1, 2023 to June 30, 2024.**
- **\$28,325 for the period of July 1, 2024 to June 30, 2025.**

The payments shall be the sole monetary obligation of OPRD and OPRD’s obligation to pay is limited by the provision of Section 17, Termination. Payment of all operating costs, federal state, county or city taxes/assessments and any other charges imposed by law upon employers shall be the responsibility of City.

THE PARTIES, by execution of this Amendment No. 1, hereby acknowledge that their signing representatives have read this Agreement, as amended, and agree to be bound by its terms and conditions. Except as expressly amended above, all other terms and conditions of Agreement are still in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the dates set forth below.

**STATE OF OREGON, acting by and through its
Oregon Parks and Recreation Department**

City of Manzanita

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
Printed Name: _____
Title: _____
Date: _____

INTERGOVERNMENTAL COOPERATIVE AGREEMENT

City of Manzanita - City of Wheeler

POLICE COVERAGE FOR FISCAL YEAR 2023/24

THIS AGREEMENT, dated this _____ day of _____, 2023, between the CITY OF MANZANITA, a municipal corporation of the State of Oregon, hereinafter referred to as "Manzanita", and the CITY OF WHEELER, a municipal corporation of the State of Oregon, hereinafter referred to as "Wheeler";

WHEREAS, Manzanita and Wheeler have agreed that the public would be better served by Manzanita providing Wheeler with police coverage and Wheeler paying Manzanita for such service; and,

WHEREAS, because of this cooperation, greater police protection will be available to both communities; and

WHEREAS, it is understood that the Tillamook County Sheriff's Office provides primary police protection to the City of Wheeler;

THEREFORE, as authorized by ORS Chapter 190, it is agreed as follows:

1. Manzanita shall provide supplemental police service to Wheeler through June 30, 2024. Manzanita will maintain at least a one person police department and provide Wheeler with the following police service: providing 15 hours per month coverage for traffic enforcement, routine patrol, emergency response, and other associated duties such as assisting in Tillamook County Sheriff's Office investigations, reporting and court appearances.
2. Manzanita through its Manzanita Department of Public Safety shall provide a monthly written activity report to Wheeler covering police activities.
3. Wheeler designates all members of the Manzanita Department of Public Safety as duly authorized officers of Wheeler and grants to them authority to perform law enforcement activities within the limits of Wheeler and enforce the ordinances of Wheeler, as well as the laws of the state of Oregon.
4. Wheeler agrees to pay Manzanita the annual sum of \$14,020.00 by January 31st of each year of this agreement for police service. In addition to the annual contract payment, Wheeler will reimburse Manzanita for actual cost associated with required Court appearances by Manzanita Department of Public Safety personnel.
5. It is the responsibility of Manzanita to provide the remaining funds for its Manzanita Department of Public Safety in performance of its duties.

6. All revenue generated by the Manzanita Department of Public Safety under this agreement, after court costs, including court fines for citations and bail forfeitures, shall be the property of Wheeler. Wheeler authorizes that all citations, complaints, etc. may be issued to the Manzanita Municipal Court, Tillamook County Justice Court, or Circuit Court of the State of Oregon as may be appropriate.

7. There will be no transfer of personnel under this agreement nor transfer of possession or title to real or personal property.

8. The parties agree to submit to binding arbitration and to arbitrate all claims, disputes and questions arising out of, or related to, this agreement. The merits of any claims or disputes shall be arbitrated. Questions of interpretation of any clause of this agreement, including this arbitration clause, shall be arbitrated. The arbitrator shall decide all questions of law pursuant to Oregon law.

All arbitration shall be conducted by the American Arbitration Association at Tillamook, Oregon, in accordance with its rules, except to the extent modified herein.

Notice of intention to arbitrate shall be given by certified mail to the other parties and the arbitrator within 30 calendar days of an incident or event from which the issue arises. A hearing shall be held by the arbitrator within 10 calendar days of the date of notice of arbitration. The award of the arbitrator shall be made within 10 calendar days of the hearing and shall be final and binding upon the parties. Judgment, including injunctive relief, may be entered upon its award in the Tillamook County, Oregon, Circuit Court. Expenses incident to the service of the arbitrator shall be borne equally by the parties and each party shall bear its own expenses.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS AGREEMENT TO
BE EXECUTED BY THEIR RESPECTIVE OFFICERS

City of Manzanita

A Municipal Corporation

Mayor _____

City Manager _____

Date _____

City of Wheeler

A Municipal Corporation

Mayor _____

City Manager _____

Date _____



COUNCIL ORDINANCE No. 23-__

AN ORDINANCE OF THE CITY OF MANZANITA, OREGON, AN ORDINANCE AUTHORIZING THE IMPOSITION OF SYSTEM DEVELOPMENT CHARGES AND REPEALING ORDINANCE 91-4.

WHEREAS, the City's existing SDC Ordinance 91-4 was approved in 1991;

WHEREAS, the 2003 Session of the Oregon Legislature revised state law relating to System Development Charges (ORS 223.297 through 223.316);

WHEREAS, the City has undertaken a complete review of its System Development Charges in order to insure their compliance with state law; and

WHEREAS, it is important to the City that the costs of growth are equitably and rationally shared by new growth and development activities;

Now, Therefore, the City of Manzanita does ordain as follows:

Section 1. Purpose. The purpose of the City's System Development Charges is to impose an equitable share of the public costs of Capital Improvements upon those developments and redevelopments that create the need for, or increase the demands on, said Capital Improvements.

Section 2. Scope. The System Development Charges imposed by this ordinance are separate from and in addition to any applicable tax, assessment, charge, fee in lieu of assessment, exaction, dedication, or fee otherwise provided by law or imposed as a condition of development approval application.

Section 3. Definitions. For purposes of this ordinance, the following definitions apply:

A. **"Capital Improvement"** means public facilities or assets used for the following:

- 1) Water supply, treatment, and distribution;
- 2) Waste water collection, transmission, treatment, and disposal;
- 3) Drainage and flood control;
- 4) Transportation, including, but not limited to, streets, sidewalks, bicycle lanes, multi-use paths, streetlights, traffic signs and signals,

pavement markings, street trees, swales, public transportation, vehicle parking, and bridges; or

- 5) Parks and recreation, including, but not limited to, community parks, public open space and trail systems, recreational buildings, courts, fields, and other like facilities.

Capital Improvement does not include costs of the operation of or routine maintenance to Capital Improvements.

B. "**City**" means the City of Manzanita.

C. "**City Council**" means the City Council of the City of Manzanita.

D. "**Development**" means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage, or activities, any building permit resulting in increased usage of Capital Improvements, and any new connection or increased size connection to a Capital Improvement. Development includes the redevelopment of property, including expansion of previous Development. Development also includes improved open areas such as plazas and walkways but does not include natural geologic forms or unimproved lands.

E. "**Improvement Fee**" means a fee for costs associated with Capital Improvements to be constructed after the date such fee is adopted pursuant to Section 4 of this ordinance.

F. "**Qualified Public Improvement**" means a Capital Improvement that is required as a condition of development approval, identified in the plan and list adopted under Section 8 of this ordinance and either:

- 1) Not located on or contiguous to property that is the subject of development approval; or
- 2) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

G. "**Reimbursement Fee**" means a fee for costs associated with Capital Improvements already constructed, or under construction, when said fee is established, and for which the City Council determines that capacity exists.

H. **“System Development Charge”** means:

- 1) A Reimbursement Fee, an Improvement Fee, or a combination thereof, assessed or collected at the time of (a) increased usage of a Capital Improvement or (b) issuance of a development permit, building permit, or connection to the Capital Improvement.
- 2) The portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the City for its average cost of inspecting and installing connections with water and sewer facilities.

System Development Charge does not include any fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed upon a land use decision, expedited land division, or limited land use decision.

Section 4. System Development Charge Established.

- A. System Development Charges shall be established and may be revised by resolution of the City Council. The resolution shall set the amount of the charge through a methodology developed pursuant to Section 5 of this ordinance, the type of permit to which the charge applies, and, if the charge applies to a geographic area smaller than the entire City, the geographic area subject to the charge. Changes in the System Development Charges shall also be adopted by resolution, excepting those resulting from cost changes, as provided in Section 8.D.1, or from inflationary impacts, as provided in Section 8.D.2.
- B. Unless otherwise exempted by the provisions of this ordinance, or by other local or state law, a System Development Charge is hereby imposed upon (1) all Development within the City and (2) all Development outside the boundary of the City that connects to or otherwise uses the sewer facilities, storm sewers, or water facilities of the City, each at the time of increased usage of a Capital Improvement, upon issuance of permit as stated in Section 9 of this ordinance, or upon the act of making a connection to the City water or sewer system, whichever occurs first.

Section 5. Methodology.

- A. The methodology used to establish or modify a Reimbursement Fee shall promote the objective of future system users contributing no more than an equitable share to the cost of existing facilities and be available for

public inspection. The methodology used to establish or modify a Reimbursement Fee shall, when applicable, be based on:

- 1) Ratemaking principles employed to finance publicly owned Capital Improvements;
 - 2) Prior contributions by existing users;
 - 3) Gifts or grants from federal or state government or private persons;
 - 4) The value of unused capacity available to future system users or the cost of the existing facilities; and
 - 5) Other relevant factors identified by the City Council.
- B. The methodology used to establish or modify an Improvement Fee shall demonstrate consideration of (1) the estimated cost of projected Capital Improvements identified in an improvement plan (see Section 8 of this ordinance) that are needed to increase the capacity of the systems to which the fee is related and (2) the need for increased capacity in the system to which the fee is related that will be required to serve the demands placed on the system for future users. The methodology shall be calculated to obtain the cost of Capital Improvements for the projected need for available system capacity for future system users and shall be available for public inspection.
- C. The methodology used to establish or modify a Reimbursement Fee or Improvement Fee shall be contained in a resolution adopted by City Council.
- D. Any methodology used to establish and impose a System Development Charge that is a combination of a Reimbursement Fee and an Improvement Fee must demonstrate that the charge is not based on providing the same system capacity.

Section 6. Authorized Expenditures.

- A. Reimbursement Fees shall be spent only on Capital Improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.
- B. Improvement Fees shall be spent only on capacity increasing Capital Improvements, including expenditures relating to repayment of debt for such improvements. An increase in system capacity may be established if a Capital Improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the

improvements funded by Improvement Fees must be related to the need for increased capacity to provide service for future users.

Section 7. Expenditure Restrictions.

- A. System Development Charges may not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other Capital Improvements or for the expenses of the operation or maintenance of the facilities constructed with System Development Charge revenues.
- B. Any Capital Improvement being funded wholly or in part with System Development Charge revenues must be included in the plan and list adopted by the City Council pursuant to ORS 223.309 and Section 8 of this ordinance.

Section 8. Improvement Plan.

- A. Prior to the establishment of a System Development Charge, the City Council shall prepare a capital improvement plan, public facilities plan, master plan, or other comparable plan that includes:
 - 1) A list of the Capital Improvements that the City Council intends to fund, in whole or in part, with revenues from Improvement Fees;
 - 2) The estimated cost and time of construction of each improvement and the percentage of that cost eligible to be funded with Improvement Fee revenue; and
 - 3) A description of the process for modifying the plan.
- B. In adopting a plan under Section 8.A. of this ordinance, the City Council may incorporate by reference all or a portion of any Capital Improvement plan, public facilities plan, master plan, or other comparable plan that contains the information required by this section.
- C. The City Council may modify the plan and list described in Section 8.A. of this ordinance at any time. If a System Development Charge will be increased by a proposed modification to the list to include a capacity-increasing Capital Improvement, the City Council will:
 - 1) At least thirty (30) days prior to the adoption of the proposed modification, provide written notice to persons who have requested notice pursuant to Section 12 of this ordinance;

- 2) Hold a public hearing, if a written request for a hearing on the proposed amendment is received at least seven (7) days prior to the date the proposed modification is scheduled for adoption.
- D. A change in the amount of a Reimbursement Fee or an Improvement Fee is not a modification of the System Development Charge if the change in amount is based on:
- 1) A change in the cost of materials, labor, or real property applied to projects or project capacity as set forth in a plan or list adopted pursuant to Section 8.A. of this ordinance;
 - 2) The periodic application of one or more specific cost indexes or other periodic data sources, including the cost index identified in Section 8.D.3. of this ordinance. A specific cost index or periodic data source must be:
 - a. A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property, or a combination of the three;
 - b. Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the System Development Charge methodology; and
 - c. Incorporated as part of the established methodology or identified and adopted by the City Council in a separate resolution, or if no other index is identified in the established methodology, then the index stated in Section 8.D.3. of this ordinance.
 - 3) Inflationary cost impacts shall be measured and calculated each year by the Public Works Director and charged accordingly. Inflationary cost impacts may be measure using the Pacific Northwest Construction cost changes in the Engineering News Record Construction Cost Index (ENR Index), as represented by the City of Seattle, Washington.

Section 9. Collection of Charge.

- A. A System Development Charge is payable upon the issuance of:
- 1) A building permit;
 - 2) A development permit;

- 3) A development permit for development not requiring the issuance of a building permit;
 - 4) A permit or approval to connect to the water system;
 - 5) A permit or approval to connect to the sewer system; or
 - 6) A right-of-way access permit.
- B. If no building, development, connection, or access permit is required, the System Development Charge is payable at the time the usage of the Capital Improvement is increased based on changes in the use of the property, or changes to the scope of Development of the property, which are unrelated to seasonal or ordinary fluctuations in usage.
- C. If Development is commenced or connection is made to the water or sewer systems without an appropriate permit, the System Development Charge is immediately payable upon the earliest date that a permit was required, and it will be unlawful for anyone to continue with the construction or associated use until the System Development Charge has been paid.
- D. The Building Official shall collect the applicable System Development Charge from the permittee when a permit that allows building or Development of a parcel is issued or when a connection to the water or sewer system of the City is made.
- E. The Building Official shall not issue such permit or allow such connection until the System Development Charge has been paid in full, or unless an exemption is granted pursuant to Section 10 of this ordinance.

Section 10. Exemptions.

- A. Structures and uses established and legally existing on or before the effective date of this ordinance are exempt from a System Development Charge under this ordinance (but may still be subject to a System Development Charge under Ordinance 91-4), except water and sewer charges, to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water or sewer charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to the water or sewer system.

- B. An alteration, addition, replacement, or change in use that does not increase a parcel's or structure's use of a Capital Improvement are exempt from all portions of the System Development Charge.

Section 11. Credits.

- A. The City will grant to an applicant a credit against any Improvement Fee assessed when the applicant, or the developer from whom the applicant purchased a lot, constructs, or dedicates a Qualified Public Improvement as part of the Development. The initial determination on all credit requests shall be a decision by the Public Works Director and the applicant bears the burden of evidence and persuasion in establishing entitlement to a System Development Charge credit and the amount of credit in accordance with the requirements of this Section 11.
- B. To obtain a System Development Charge credit, the applicant must make the request, in writing, prior to the City's issuance of the first building permit for the Development in question. In the request, the applicant must state the following:
 - 1) Identify the improvement for which the credit is sought;
 - 2) Explain how the improvement is a Qualified Public Improvement; and
 - 3) Document, with credible evidence, the value of the improvement for which credit is sought.
- C. The System Development Charge credit shall be an amount equal to the fair market value of the improvement. Fair market value shall be determined by the Public Works Director based on credible evidence of the following:
 - 1) For dedicated lands, value shall be based upon a written appraisal of fair market value by a qualified, professional appraiser based upon comparable sales of similar property between unrelated parties in an arms-length transaction;
 - 2) For a Qualified Public Improvement yet to be constructed, value shall be based upon the anticipated cost of construction. Any such cost estimates shall be certified by a registered professional architect or engineer or based on a fixed price bid from a contractor ready and able to construct the improvement for which the System Development Charge credit is sought;

- 3) For a Qualified Public Improvement already constructed, value shall be based on the actual cost of construction as verified by receipts submitted by the applicant; or
- 4) For a Qualified Public Improvement located on, or contiguous to, the site of the Development, only the over-capacity portion as described in the definition of Qualified Public Improvement is eligible for a System Development Charge credit. There is a rebuttable presumption that the over-capacity portion of such a Qualified Public Improvement is limited to the portion constructed larger, or of greater capacity, than the City's minimum standard facility capacity or size needed to serve the particular Development.

D. Form of Credit and Limitation on Use. When given, System Development Charge credits will be for a particular dollar value as a credit against a System Development Charge assessed on a Development. Credits may only be used to defray or pay the System Development Charge for the particular Capital Improvement system to which the Qualified Public Improvement related, e.g., credit from a Qualified Public Improvement for sewer may only be used to pay or defray a sewer System Development Charge.

E. System Development Charge Credit Carry-Forward. Where the amount of a System Development Charge credit approved under this section exceeds the amount of a System Development Charge assessed on a Development for a particular Capital Improvement system, the excess credit may be carried forward pursuant to the following rules:

- 1) A System Development Charge credit carry-forward will be issued by the Public Works Director for a particular dollar value to the developer who earned the System Development Charge credit and may be used by the developer to satisfy System Development Charge requirements for Improvement Fees that accrue in subsequent phases of the original Development. System Development Charge credit carry-forwards are not negotiable or transferable to any party other than the one to whom they are issued.
- 2) The City will accept a System Development Charge credit carry-forward presented by a developer as full or partial payment for the

System Development Charge due on any of the developer's developments.

- 3) System Development Charge credit carry-forwards are void and of no value if not redeemed with the City for payment of a System Development Charge of the same type of Capital Improvement system for which the credit was issued within ten (10) years of the date of issuance.

F. System Development Charge Credit Deadline. For all other System Development Charge credits not carried forward, the applicant must formally request payment of the System Development Charge credit from the Public Works Director no later than one hundred eighty (180) days after the later of the following:

- 1) Acceptance of the applicable improvement by the City; and
- 2) The applicant paying sufficient System Development Charges for the Development to cover the approved System Development Charge credit.

Section 12. Notice.

- A. The City shall maintain a list of persons who have made a written request for notification prior to adoption or modification of a methodology for any System Development Charge. Written notice shall be mailed to persons on the list at least ninety (90) days prior to the first hearing to establish or modify a System Development Charge. The methodology supporting the System Development Charge shall be available at least sixty (60) days prior to the first hearing to adopt or amend a System Development Charge. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the City.
- B. The City may periodically delete names from the list, but at least thirty (30) days prior to removing a name from the list, the City must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

Section 13. Segregation and Use of Revenue.

- A. All funds derived from a particular type of System Development Charge are to be segregated by accounting practices from all other funds of the City. That portion of the System Development Charge calculated and

collected on account of a specific facility system shall be used for no purpose other than that set forth in Section 6 of this ordinance.

- B. The Public Works Director shall provide the City Council with an annual accounting, by July 1 of each year, for System Development Charges showing the total amount of System Development Charge revenue collected for each type of facility and the projects funded from each account in the previous fiscal year. A list of the amount spent on each project funded, in whole or in part, with System Development Charge revenue shall be included in the annual accounting.

Section 14. Refunds.

- A. Refunds shall be given by the Public Works Director upon finding that there was a clerical error in the calculation of a System Development Charge.
- B. Refunds shall not be allowed for failure to timely claim a credit under Section 11 of this ordinance, or for failure to seek an alternative System Development Charge rate calculation at the time of submission of an application for a building permit.

Section 15. Implementing Regulations; Amendments. The City Council delegates to the Public Works Department the authority to adopt necessary procedures to implement the provisions of this ordinance including the appointment of a System Development Charge Program Administrator. All rules developed pursuant to that delegated authority shall be filed with the office of the City Manager and be available for public inspection.

Section 16. Appeals; Procedure.

- A. A person challenging the propriety of an expenditure of System Development Charge revenue may appeal the decision or the expenditure to the City Council by filing a written appeal petition with the City Manager pursuant to Subsection D below. An appeal of an expenditure must be filed within two (2) years of the date of the subject expenditure.
- B. A person challenging the propriety of the methodology adopted by the Council pursuant to Section 5 of this ordinance may appeal the decision or the expenditure to the Council by filing a written appeal petition with the City Manager pursuant to Subsection D below. An appeal petition challenging the adopted methodology shall be filed not later than sixty (60) days from the date of the adoption of the methodology.

- C. A person challenging the calculation of a System Development Charge must file a written appeal petition to the calculation of the System Development Charge with the City Manager within thirty (30) days of assessment of the System Development Charge.
- D. Any person submitting an appeal petition pursuant to Subsections A through C above, must describe, with particularity, the basis for the appeal and include:
- 1) The name and address of the appellant;
 - 2) The nature of the expenditure, methodology, or calculation being appealed;
 - 3) The reason the expenditure, methodology, or calculation is allegedly incorrect; and
 - 4) What the correct determination of the appeal should be or how the correct calculation should be derived.
- E. If the appeal petition is untimely or fails to meet the requirements of Subsection D above, the appeal shall be dismissed by the City Council without a hearing.
- F. If the appeal petition is timely filed and submitted in accordance with Subsection D above, the City Council shall order an investigation and direct that within sixty (60) days of receipt of the appeal petition a written report be filed by the City Manager recommending appropriate action. Within thirty (30) days of receipt of that report, the City Council shall conduct a hearing to determine whether the expenditure, methodology, or calculation was proper. The City Council shall provide notice and a copy of the report to the appellant at least fourteen (14) days prior to the hearing. The appellant shall have a reasonable opportunity to present appellant's position at the hearing.
- G. The appellant shall have the burden of proof. Evidence and argument shall be limited to the grounds specified in the petition. The City Council shall issue a written decision stating the basis for its conclusion and directing appropriate action to be taken.
- H. The City Council shall render its decision within fifteen (15) days after the hearing date, and the decision of the City Council will be final. The decision will be in writing, but written findings shall not be made or required unless the City Council, in its discretion, elects to make findings for precedential purposes. If the City Council determines that there was

an improper expenditure of System Development Charge funds, the City Council shall direct that a sum equal to the misspent amount be deposited within one (1) year of the date of the decision to the account of the fund from which it was spent.

- I. Any legal action contesting the City Council's decision on the appeal must be filed within sixty (60) days of the City Council's decision. Review of the City Council's decision shall be by writ of review pursuant to ORS 34.010 to 34.100.

Section 17. Prohibited Connection. No person may connect to the water or sewer systems of the City unless the appropriate System Development Charge has been paid.

Section 18. Penalty. Violation of Section 17 of this ordinance constitutes a violation and is punishable by a fine not to exceed \$1,000 per day.

Section 29. Severability. The provisions of this ordinance are severable, and it is the intention of the City Council to confer the whole or any part of the powers herein provided for. If any clause, section, or provision of this ordinance is declared unconstitutional or invalid for any reason, the remaining portion of this ordinance shall remain in full force and effect and be valid as if such invalid portion had not been incorporated into the ordinance. It is hereby declared that the Council intends that this ordinance would have been adopted had such an unconstitutional provision not been included.

Section 20. Classification. The City Council hereby determines that any fee, rates, or charges imposed by this ordinance are not a tax subject to the property tax limitations of Article XI, section 11 (b), of the Oregon Constitution.

Section 21. Effective Date. This ordinance shall become effective 30 days after its passage by the Council and approval by the mayor.

PASSED FIRST READING by the Council this _____, 2023.

PASSED SECOND READING by the Council this _____, 2023.

APPROVED by the Mayor this _____, 2023.

Deb Simmons, Mayor

ATTEST:

Leila Aman, City Manager/Recorder

CITY OF MANZANITA

**AGREEMENT WITH Joshua Lamar Gandy Romo
TO PROVIDE PROFESSIONAL SERVICES**

THIS AGREEMENT is entered into this 8th day of June 8, 2023 by and between the City of Manzanita, a municipal corporation of the State of Oregon, hereinafter called **City**, and

Joshua Lamar Gandy Romo
13150 D Street #4
Nehalem, OR 97131

Hereinafter called **Consultant**.

RECITALS:

1. City has need for the services of a Consultant to provide information and technology services to the City, as further described in Exhibit A attached hereto and incorporated herein by reference.

NOW THEREFORE, in consideration of mutual promises, covenants, and agreements of the parties, it is agreed as follows:

- 1. Effective Date and Duration:** This Agreement shall become effective on the date that this Agreement has been signed by every party hereto.
Unless, terminated or extended, this Agreement shall expire on June 8, 2026. Time is of the essence of this Agreement.
Expiration shall not extinguish or prejudice City's right to enforce this Agreement with respect to any breach of a Consultant warranty or any fault or defect in Consultant's performance that has not been cured.
- 2. Termination:** This Agreement may be terminated at any time by mutual, written consent of the parties. City may, at its sole discretion terminate this Agreement in whole or part upon a 30-day written notice to Consultant. City may terminate immediately upon notice to Consultant that City does not have funding, appropriations, or other necessary expenditure authority to pay for Consultant's services. City may terminate this Agreement at any time for a material breach.
- 3. Scope of Work:** Consultant agrees to provide the services provided in the Scope of Work which is **Exhibit A** and is attached hereto and incorporated by this reference. Consultant represents and warrants to City that Consultant can perform the services outlined in the Scope of Work for the fee proposal amount.

4. **Compensation:** Consultant agrees to perform these services for a total fee annual of \$47,600. The City will also reimburse Consultant for reasonable expenses that have been pre- approved in writing by the City.
5. **Additional Services Not Shown within the Scope of Work:** If City requests or requires services to be done that are not within the Scope of Work described in Exhibit A, Consultant shall notify City of such additional services, provide an estimated fee amount, and obtain written instructions to proceed with the additional services in the form of an Agreement amendment prior to proceeding with the additional services and incurring any costs on behalf of City. Total contract amount may not exceed \$150,000 during the term of this Agreement. If Consultant proceeds with the additional services prior to obtaining permission or an amendment to this Agreement, Consultant waives any right to collect fees for the additional services performed.
6. **Invoice Submission and Payment:** The City will pay Consultant for services performed in equal monthly payments for the duration of the Term, unless otherwise amended by the parties. City must pay Consultant only after receiving from Consultant a correct and documented billing statement containing a description of the services performed, and any other information that may be required by City. Consultant may submit certified billing statements for payment no more often than once each month based on services performed during the preceding month. City will make approved payments within 10 days after City's receipt of a complete billing statement.
7. **Agreement Documents:** This Agreement consists of this Agreement and any attached and referenced Exhibits. The services are under the sole control of Consultant; however, the services contemplated herein must meet the approval of City and shall be subject to City's general right of inspection and supervision to secure the satisfactory performance thereof.
8. **Benefits:** Consultant will not be eligible for any federal social security, state workers compensation, unemployment insurance, or public employees' retirement system benefits from the Agreement payment except as a self-employed individual.
9. **Federal Employment Status:** In the event any payment made pursuant to this Agreement is to be charged against federal funds, Consultant certifies that they are not currently employed by the federal government and the amount charged does not exceed his or her normal charge for the type of services provided.
10. **Consultant's Warranties:** The services to be performed by Consultant includes services generally performed by Consultant in their usual line of business. Consultant will perform the services required under this Agreement consistent with the professional skill and care ordinarily provided by recognized firms practicing and providing similar services in the same or similar locality under the same or similar circumstances. Consultant shall, at all times, during the term of this Agreement, be qualified, be professionally competent, and duly licensed to perform these services.

- 11. Indemnity:** Consultant shall defend, indemnify and hold harmless City and its consultants, councilors, employees, agents, volunteers, and representatives (collectively, the “Indemnitees”) for, from, and against any and all loss, liability, damage, demands, claims, costs, and expenses, including reasonable attorney and expert fees, to the extent caused by the acts or omissions of the Consultant including without limitation for:
- a. Breach of this Agreement by the Consultant;
 - b. Death, personal injury (including bodily injury), property damage, or violation of law, regulation, or orders, to the extent caused by the performance of the Consultant or those for whom the Consultant is responsible;
 - c. Violation or infringement of third-party intellectual property rights by the Consultant;
 - d. Any negligent acts or omissions or willful misconduct by the Consultant or persons for whom the Consultant is responsible; and
 - e. Claims for compensation asserted by the Consultant’s employees (including wage-and-hour or benefit claims) or any violation of federal, state, or local wage-and-hour or labor laws and regulations by the Consultant or persons for whom the Consultant is responsible.

Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section. In claims against any person or entity indemnified under this Section by an employee of the Consultant, the Consultant itself, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Consultant under workers’ compensation acts, disability benefit acts, or other employee benefit acts. No indemnification provided by the Consultant under this Section is required to indemnify the Indemnitees to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own acts, omissions, or negligence, but the Consultant must provide indemnity to the extent of its own negligence or the negligence of its consultants, employees, or representatives to the extent required by law or by this Agreement.

- 12. Independent Contractor:** Consultant is not employed by City. The parties to this Agreement intend that Consultant perform all services as an Independent Contractor. No agent, employee, or servant of Consultant, if any, shall be deemed to be the employee, agent or servant of City.
- 13. No Authority to Bind the City.** Consultant shall have no authority to enter into contracts on behalf of City, its officers, agents and employees. This Agreement shall not create a partnership or joint venture of any sort between the parties.

- 14. Taxes:** Consultant will be responsible for any federal or state taxes applicable to payments received under this Agreement. City will report the total of all payments to Consultant, including any expenses, in accordance with the Federal Internal Revenue Service and the State of Oregon Department of Revenue regulations.
- 15. Insurance:** Consultant at its sole cost, will procure and maintain at all times while performing services the following insurance issued by responsible carriers, and in a form and substance reasonably satisfactory to City, that affords at least the minimum coverage limits set forth below:
- a. Oregon Workers' Compensation Insurance coverage as required by law. If Consultant has no employees and will not carry Workers' Compensation coverage, then Consultant by signing this Agreement represents that they are a sole proprietor and exempt from the laws requiring workers compensation coverage.
 - b. Commercial General Liability insurance with a minimum per occurrence limit of \$2,000,000.
 - c. Professional Liability insurance with a minimum per occurrence limit of \$2,000,000.
 - d. Technology Errors & Omissions (also referred to as Network/Security/Privacy Liability insurance) coverage, with limits acceptable to the City.
 - e. Coverage under Sections 15(c) and 15(d) may be procured through a single policy, subject to City's consent.
- 16. Insurance Terms and Requirements:** Consultant's liability insurance policies (i) must include City as an additional insured; (ii) must be primary coverage and may not seek contribution from any insurance or self-insurance carried by the City; (iii) must apply separately to each insured against whom a claim is made or suit is brought; and (iv) must be maintained without interruption from the effective date of this Agreement to the termination date of this Agreement or if applicable, a later date specified by Consultant's tail insurance.

If Consultant, for any reason, fails to maintain required insurance coverage, the failure will be deemed a material breach of this Agreement, and City, at its sole discretion, may suspend or terminate this Agreement. Failure to maintain the insurance coverage required by this Agreement will not waive Consultant's duties to City.

Consultant will supply to City a completed insurance certificate evidencing the coverages required under this Agreement. Consultant will notify City in writing at least 30 days before any cancellation, lapse, or expiration of any insurance required by this Agreement. By requiring insurance, the City does not represent that coverage and limits will necessarily be adequate to protect Consultant. Insurance in effect or procured by Consultant does not reduce or limit Consultant's indemnification and defense duties to City.

17. **Assignment:** The parties hereto each bind themselves, their partners, successors, assigns, and legal representatives of such other party in respect to all terms of this Agreement. Neither party shall assign the Agreement in whole or in part without written consent of the other.
18. **Ownership of Work Product:** All original documents, files, software, systems and products prepared by Consultant in performance of this Agreement are the property of City unless otherwise agreed in writing. Quality reproducible records copies of final work product, including digital files of text and drawings shall be provided to City at the expiration or termination of this Agreement.
19. **Confidentiality.** Consultant acknowledges that they may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is the confidential information of City. All information (whether oral, written, electronic, or otherwise), concerning City's business, services, projects, documents, or property, including, but not limited to, all tangible, intangible, visual, electronic, present, or future information, shall be considered privileged and confidential ("Confidential Information"). Additionally, any reports or other documents or items including software, that result from Consultant's use of the Confidential Information and any Work Product that the City designates as confidential are deemed Confidential Information. Confidential Information shall be deemed not to include information that: (a) is or becomes (other than by disclosure by Consultant) publicly known; (b) is furnished by the City to others without restrictions similar to those imposed by this Agreement; (c) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (d) is disclosed with the written consent of the City.

- a. **Non-Disclosure.**

- i. Consultant agrees not to use the Confidential Information to the detriment of City or for any reason other than the provision of services to City under this Agreement. Consultant will not assert any intellectual property right in any invention or derivative information developed by the Consultant from the use of Confidential Information, nor will the Consultant at any time, directly or indirectly, reverse engineer or

recreate, or attempt to reverse engineer or recreate, any Confidential Information.

- ii. Consultant will maintain Confidential Information in strict confidence and will not disclose Confidential Information to any "Person" (defined to include individuals, partnerships, companies, limited liability companies, entities, corporations, or agents thereof). In maintaining the confidentiality and security of the Confidential Information, the Consultant will, at a minimum, use the same safeguards and measures used by the Consultant to maintain the confidentiality and security of its own confidential information of a similar kind or nature, but in no event will the safeguards and measures used by the Consultant fall short of reasonable care. The Consultant further agrees not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to the City under this Agreement.
- iii. If the Consultant becomes legally compelled (by deposition, public records request, interrogatory, request for documents, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, the Consultant will provide City with prompt prior written notice of such requirement so that City may seek a protective order or other appropriate remedy and the Consultant will exercise reasonable efforts to assist City in securing such protective order or remedy. If such protective order or other remedy is not obtained, or City waives compliance, the Consultant agrees: (a) to furnish only that portion of the Confidential Information which, in accordance with advice of counsel, is legally required to be furnished; and (b) to exercise reasonable efforts to obtain assurances that confidential treatment will be accorded the Confidential Information so furnished. The disclosure of Confidential Information pursuant to this Section will not cause any such Confidential Information so disclosed to no longer be deemed the Confidential Information of the City.

- b. **Notice of Violation.** Consultant shall use its best efforts to assist City in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Consultant shall advise City immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with City in seeking injunctive or other equitable relief in the name of City or Consultant against any such person. Consultant agrees that, except as directed by City, Consultant will not at any

time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Agreement, and that upon termination of this Agreement or at City's request, Consultant will turn over to City all documents, papers, and other matter in Consultant's possession that embody Confidential Information.

- c. **Confidentiality Duration.** Notwithstanding the termination or expiration of this Agreement, the Consultant's obligations of non-disclosure and non-use with respect to Confidential Information under the terms of the Agreement will continue until the date on which the Consultant and/or its Representatives no longer possess or retain Confidential Information, whether in tangible or intangible form.
 - d. **Injunctive Relief.** Consultant acknowledges that breach of this Section, including disclosure of any Confidential Information, will give rise to irreparable injury to City that is inadequately compensable in damages. Accordingly, the City may seek and obtain injunctive relief against the breach or threatened breach of this Section, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the City and are reasonable in scope and content.
 - e. **Limitation.** The restrictions set forth in this section will not apply to disclosures made in compliance with the U.S. Federal Defend Trade Secrets Act, 18 U.S.C. § 1833(b).
- 20. Access to Records:** City and its duly authorized representatives shall have access to books, documents, papers, internet websites, and records of Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- 21. Entire Agreement:** This Agreement constitutes the entire Agreement between the parties and supersedes all prior agreements, written and oral, courses of dealing, or other understanding between the parties. No modification of this Agreement shall be binding unless in writing and signed by both parties.
- 22. Applicable Law and Litigation:** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Unless otherwise agreed by the parties, every claim, dispute, or other matter in question arising out of or related to this Agreement shall be resolved through litigation. All litigation will be held in the State of Oregon with venue in Tillamook County or the U.S. District Court for the District of Oregon.

- 23. Other Service Providers:** City reserves the right to enter into other agreements for services additional to or related to Consultant's services, and Consultant agrees to fully cooperate with these other contractors and with City personnel. When requested by City, Consultant shall coordinate its performance under this Agreement with such additional or related services. Consultant shall not interfere with the services performance of any other contractor or City employees.
- 24. Notification:** All correspondence and notices related to this Agreement shall be directed to the Consultant or City Manager. If directed to the City Manager: City of Manzanita, 543 Laneda Ave., P.O. Box 129, Manzanita, Oregon 97130, Attn: Leila Aman. If directed to Consultant: Attn: Joshua Lamar Gandy Romo at the address listed above.
- 25. Compliance with Applicable Law:** In the performance of this Agreement, Consultant shall comply with all applicable federal, state, and local laws, ordinances, regulations, and administrative rules, including but not limited to the following requirements of ORS 279A 279B, and 279C:
- a. Nondiscrimination (Required by ORS 279A.110). Consultant shall not discriminate against a disadvantaged business enterprise, a minority-owned or women-owned business, an emerging small business certified under ORS 200.055, or a business enterprise that is owned by a service-disabled veteran. Additionally, Consultant must comply with all applicable requirements of federal, state, and local civil rights law and rehabilitation statutes and must not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, source of income, or political affiliation in programs, activities, services, benefits, or employment.
 - b. Tax-Compliance Warranty (Required by ORS 279B.045). Consultant represents and warrants that Consultant has complied with the applicable tax laws of the State of Oregon or a political subdivision of the State of Oregon (collectively, "Tax Laws"), including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318. Consultant covenants that Consultant will continue to comply with the Tax Laws during the term of this Agreement. Failure by Consultant to comply with the Tax Laws before the execution of this Agreement or during the term of this Agreement is a default for which City may terminate this Agreement and seek damages and other relief available under the terms of this Agreement or under applicable law.
 - c. Payment of Labor (Required by ORS 279B.220 and 279C.505).
 - i. Consultant shall make payment promptly, as due, to all persons supplying labor or material to Consultant for the performance of services provided for in this Agreement;

- ii. Consultant shall pay all contributions or amounts due the Industrial Accident Fund from Consultant or Subconsultant incurred in the performance of this Agreement;
 - iii. Consultant shall not permit any lien or claim to be filed or prosecuted against City on account of any labor or material furnished; and
 - iv. Consultant shall pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
 - v. If Consultant fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to it by any person in connection with this Agreement as such claim becomes due, City may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Consultant by reason of such contract. The payment of a claim in this manner shall not relieve Consultant or Consultant's surety, if any, from obligation with respect to any unpaid claims.
- d. Payment for Medical Care and Workers' Compensation. As required by 279B.230 and 279C.530:
 - i. Consultant shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Consultant, of all sums that Consultant agrees to pay for the services and all moneys and sums that Consultant collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services.
 - ii. All subject employers working under this Agreement are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- e. Hours of Labor; Pay Equity; Salary Discussions (required by ORS 279B.020, 279B.235, and 279C.540).
 - i. Maximum Hours. Consultant shall not employ any person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the laborer shall be paid at least time and a half pay:
 - ii. For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
 - iii. For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

- iv. For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279B.020 (1)(b)(B) to (G).

The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week, does not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.

- f. Notice to Employees.
 - i. Consultant shall give notice in writing to its employees who perform work under this Agreement, either at the time of hire or before commencement of work on this Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
 - ii. Consultant shall comply with ORS 652.220 (prohibiting discriminatory wage rates based on sex and requiring that employer not discriminate against an employee who is a complainant). Compliance with this Section 22.f is a material element of this Agreement. Failure to comply is a breach that entitles City to terminate this Agreement for cause.
 - iii. Consultant may not prohibit any of Consultant's employees from discussing the employee's wage, salary, benefits, or other compensation with another employee or another person, and Consultant may not retaliate against an employee who does so.

- g. Limitation on Claims. For Consultant's employees subject to Oregon employment laws and as required by ORS 279C.545, any worker employed by Consultant shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with Consultant within 90 days from the completion of this Agreement, providing Consultant has:
 - i. Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work, and
 - ii. Maintained such circular continuously posted from the inception to the completion of this Agreement on which workers are or have been employed.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above mentioned.

CONSULTANT

By: Joshua Lamar Gandy *Joshua Gandy*

Name: Joshua Lamar Gandy Romo

Date: 5/30/2022

CITY OF MANZANITA

By: _____

Name: Leila Aman

Title: City Manager

Date: _____

EXHIBIT A – Scope of Work

1. Scope of Work:

The primary scope of work is to provide proactive and predictive support services, routine preventative maintenance services, recommendations concerning system improvements and cost savings, improved system reliability and capabilities, and technical support for future designs and purchases of equipment, software, and license agreements. Additional services include business consulting, project management, procurement as a service, vendor liaison and management services, and 24x7 service desk and operations monitoring.

The Consultant will establish and maintain the City's independent email account and ensure each City employee can appropriately establish and maintain an email account. Below is a detailed list of the IT support and services the Consultant will provide the City:

A. Point Person for All Things IT

The Consultant will oversee all of the City's Information Technology system and be the point of contact for anything related to IT. This includes being responsible for scheduling with the City for any maintenance needed for internet service equipment, software, hardware, and telephone system.

B. Initial Assessment

The Consultant will provide a detailed written report by January 15th of each year thereafter during the term of the contract, containing an analysis of the City's computer infrastructure (i.e., computer hardware, software, and peripheral IT devices and equipment). The written report will contain an analysis of all license agreements and an evaluation of equipment efficiency, life expectancy, capacity, speed, and current processes. The written report will also contain recommendations to improve the City's entire computer network, hardware, software, and license agreements.

C. Desktop Applications Support

Perform basic support functions, including installing desktops, laptops, PDAs, mobile phone support, network printers, and standalone printers as well as other computer peripherals and office automated software. Consultant will diagnose and correct desktop application problems, configure all computers for standard applications, and identify and correct end user hardware problems (Consultant will perform advanced troubleshooting). Update and maintain an inventory of all computer-related hardware and software and make the same available to City staff upon request.

D. Server and Workstation Administration Services

Manage computer network and associated hardware, software, and communications and operating systems necessary for the quality, security, performance, availability, recoverability, and reliability of the system. Monitor server performance and capacity management services.

Ensure scheduled preventive maintenance for equipment is promptly performed and develop back-up plans and procedural documentation. The Consultant will be responsible for configuration management, including changes, upgrades, patches, etc. Management of user logins and password security documented. The Consultant will support software

products relating to servers and workstations. The Consultant will also timely respond to repair and maintenance work for the user. From time to time City employees will require workflow improvements, applications, and/or other techniques to improve user performance.

E. Network Administration Services

Maintenance and support of network equipment, local area public/private wireless, switches, firewalls, routers, and other security devices are required. Coordination with the ISP providers Starlink, Charter, RTI or any other future ISP provider is also required. Additionally, installation, monitoring, and maintenance of all City assets is mandatory (i.e., printers, scanners, network devices, backup, WAN, LAN, VOIP phone system, security cameras, public access cameras, web sites, and any other computer peripherals or devices). Analyze routine configuration changes and install software patches and upgrades as well as minor cabling, if needed. Design alert notifications to designated City personnel in the event of failure. Complete proactive monitoring of network equipment, including bandwidth utilization, and other performance indicators, with reporting when specified thresholds are reached. Network performance and capacity management services, and network troubleshooting. Maintain network documentation and procedures. Finally, since much of the City's data and infrastructure has been moved to the cloud, Consultant will need to have cloud experience/capability.

F. Email

The Consultant will manage the City's email system (Microsoft M365 Email) and ensure domain name is established properly. The Consultant will be responsible for adding, deleting, or changing employee email accounts of City employees and ensure that each email account is working efficiently and effectively free of uninterrupted errors, and ensure that each individual email account can maintain ample server space so that employees may store several years of email data.

G. Security, Backup Efforts and City Website

The Consultant will ensure that all City desktops, and laptops are protected by antivirus software and that adequate firewall(s) are in place to prevent unwanted intrusion into the City's computer network system. Systems will be designed to notify City employees when system securities are breached and when system hardware is not operating efficiently. The Consultant will perform security audits as requested and notify City personnel immediately of suspected breach of security or intrusion detection. A backup system will be established to prevent loss of data and functionality. The Consultant will configure the City's system to enable remote access in a secure environment and provide remote access administration as requested by designated City personnel. The Consultant will provide support and maintenance service for the City's website.

H. Security Framework Compliance

Compliance will include annual, or more frequently as appropriate, security training including email phishing, and ransomware protection. Consultant will provide annual penetration testing and risk assessment. The Consultant will train Manzanita staff about changes and updates to systems that impact security and user performance.

I. Strategic Planning

The Consultant will engineer, plan, and design services for major system enhancements, including installations and upgrades of new and existing systems. Examples include major server upgrade, storage system upgrades, redesign of backup systems, etc. Make recommendations for future purchases of hardware, software, and technology needs. Install new servers, software, and hardware and transfer data when required. Strategic planning, design, and installation/upgrade of core network systems. Examples include major network upgrades, provider changes, IP schema design, installation of core network devices, and so on.

J. Budgeting/Financial Planning and Forecasting

Consultant will assist in preparing 5-year departmental budgets to include adoption of emerging technologies, cybersecurity improvements, infrastructure enhancements, acquisition of Federal and state grants, and business continuity/disaster recovery preparedness, as well as City service expansion. These budgets/forecasts will include software upgrades and Operating System end-of-life response.

K. On Demand Response

The Consultant will offer proactive and predictive solutions for on-demand responses to the City's IT requests. The Consultant will have access and be available during the City's normal business hours. The Consultant will be expected to perform maintenance service after hours and on weekends in situations which would least likely disrupt City staff during regular business hours. The Consultant will be expected to guarantee a two hour response time for emergency situations. The Consultant will be expected to provide seamless integration to City staff for support via phone, email, and portal to Consultant's service request system.

L. Broadcast and Livestream meeting responsibilities

Provide broadcast and live stream of three meetings per month totaling approximately 8 hours of meeting time. City Council Regular Session (In person) occurs the first Wednesday after the first Monday of the month at 6pm and is held in person at the Pine Grove Community House. City Council work sessions held the Wednesday following the regular session meetings beginning at 2pm via Zoom. Planning Commission meetings approximately 3 hours per month are held on the Third Monday of the month via Zoom.

M. Visitor Center Support

Consultant will provide support to the Visitor Center including website management, graphic design services and local business listing contract and management and other tasks as required.

2. Confidentiality:

Confidentiality of computer information and data is vital. The selected Consultant and its employees will be required to sign and adhere to a confidentiality clause that information in the system must remain confidential under penalty of law. The Consultant must permit the City to perform a criminal background investigation on Consultant's employees who have access to the City's system and the Consultant will provide requested employee information when reasonably requested by the City.

3. Miscellaneous:

The Consultant will be permitted to perform some routine procedures remotely; however, the Consultant will be expected to perform on site visits both for routine preventative maintenance

and on demand response. All on-demand requests will be coordinated through the Public Works Department Director or his or her designee.



COUNCIL STAFF REPORT

To: Mayor and City Council

Date Written: May 31, 2023

Reviewed: Leila Aman, City Manager

From: Scott Gebhart, Development Services Manager

Subject: **Request for Quotes for Professional Plan Review and Building Inspection Services on an as needed basis.**

ACTION REQUESTED

Authorize City Manager to execute a contract with LB Building Services, LLC for the purpose of providing plan review and building inspection services in an amount not to exceed \$150,000.

ANALYSIS

Staff conducted an intermediate procurement process for professional building plan review and building inspection services to provide coverage for the City's building official for vacation time, commercial plan review, and inspections on an as needed basis.

Staff contacted 3 companies requesting quotes for services and received responses from Northwest Code Professionals, Clair Company, and LB Building Services LLC.

LB Building Services LLC was selected as the most qualified firm, having had previous experience working with the city through an Intergovernmental Agreement and can provide all necessary services at a reasonable rate. LB building Services is a local company owned by Leonard Brogden, former Building Official for Tillamook County. Mr. Brogden currently serves as the contract building official for the City of Gearhart.

BUDGET IMPACT

Staff budget for contracted services each year and services are paid out of the Building Fund. Staff have budgeted \$30,000 for FY 23/24.

WORKLOAD IMPACT

None, however this contract will allow for coverage of the Building Official for planned and unplanned absences.

STAFF RECOMMENDATION

Authorize the City Manager to execute a contract with LB Building Services LLC in an amount not to exceed \$150,000.

ALTERNATIVES

Council can elect to not approve the contract limiting staffs ability to take time off and provide efficient customer service.

ATTACHMENTS

1. LB Building Services LLC Proposal

2. Professional Services Agreement

RFP PROPOSAL FOR BUILDING OFFICIAL, PLAN REVIEWER, AND INSPECTION SERVICES

ON A AS IS BASES

Leonard Brogden, LB Building Services LLC and Consulting, 8830 Bewley St, Bay City, OR. 97107,
(503)801-4279, LBbuildingservices@gmail.com

Date: 4/10/23

Project Title: Building Official, Plan Reviewer, and Inspector Services
Project Overview/ Scope of Services: See Attached

Experience:

BO, Plan Reviewer, Inspector - Tillamook County – 15 years

Plans Examiner & Inspector – Warrenton & Astoria – 2 years

Construction Business Owner of 30 years: Residential, Commercial, Land Development

Qualifications: Building Official, Plan Reviewer, and Inspector position:

- 17 years of experience as a building official, plan reviewer, and inspector
- 35 years of experience in the construction industry
- Thorough understanding of local building codes, regulations, and ordinances
- Oregon BCD Certification, Oregon BCD Certified Building Inspector Certification, and Oregon BCD Certified Plan Reviewer Certification
- Extensive knowledge of building codes, zoning ordinances, and other regulatory requirements
- Strong project management skills, with a demonstrated ability to oversee complex construction projects from start to finish.
- Excellent communication skills, including the ability to clearly articulate complex technical information to a variety of stakeholders.
- Strong problem-solving and critical thinking skills, with a focus on finding innovative solutions to complex challenges.
- Proven ability to work collaboratively with a diverse range of stakeholders, including government officials, contractors, architects, and community members.
- Ability to effectively manage multiple construction projects while ensuring adherence to safety, quality, and budget requirements.

As an experienced building official with 47 years of industry experience, I am excited to offer my expertise in responding to Request for Proposals (RFPs) related to construction and building projects. With a proven track record of successful project management and a deep understanding of regulatory compliance, I am confident in my ability to deliver results that exceed expectations.

In my previous role as a building official, I was responsible for overseeing all aspects of the building process, from the initial design phase to final construction. I worked closely with architects, engineers, contractors, and other stakeholders to ensure that projects were completed on time, within budget, and in compliance with all relevant regulations.

I am committed to delivering high-quality work that meets the needs of my clients and exceeds their expectations. If you are seeking a building official with a proven track record of success and a deep understanding of the construction industry, I would be honored to be considered for your RFP.

Sincerely,

Leonard Brogden

BCD Certifications

LEONARD D BROGDEN

BAY CITY, OR 97107

License/Registration No: 1920CAE

Type: **CAE-Residential Electrical Inspector**

Status: Active

Expiration Date: N/A

LEONARD D BROGDEN

BAY CITY, OR 97107

License/Registration No: 1932CAP

Type: **CAP-Residential Plumbing Inspector**

Status: Active

Expiration Date: N/A

LEONARD D BROGDEN

BAY CITY, OR 97107

License/Registration No: 2191CAS

Type: **CAS-Residential Structural Inspector**

Status: Active

Expiration Date: N/A

LEONARD D BROGDEN

BAY CITY, OR 97107

License/Registration No: 2191CAX

Type: **CAX-Residential Plans Examiner**

Status: Active

Expiration Date: N/A

LEONARD D BROGDEN

BAY CITY, OR 97107

License/Registration No: 276SRI

Type: **SRI-Plan Reviewer or Inspector**

Status: Active

Expiration Date: 03/01/2024

LEONARD D BROGDEN

BAY CITY, OR 97107

License/Registration No: 3344MHI

Type: **MHI-Mfd Structure Installation Insp**

Status: Active

Expiration Date: N/A

LEONARD D BROGDEN

BAY CITY, OR 97107

License/Registration No: 477PCI

Type: **PCI-Park and Camp Inspector**

Status: Active

Expiration Date: N/A

LEONARD D BROGDEN

BAY CITY, OR 97107

License/Registration No: 5572BO

Type: **BO-Building Official**

Status: Active

Expiration Date: N/A

LEONARD D BROGDEN

BAY CITY, OR 97107

License/Registration No: 5698MIA

Type: **MIA-Mechanical Inspector A-Level**

Status: Active

Expiration Date: N/A

LEONARD D BROGDEN

BAY CITY, OR 97107

License/Registration No: 5738SIA

Type: **SIA-Structural Inspector A-Level**

Status: Active

Expiration Date: N/A

LEONARD D BROGDEN

BAY CITY, OR 97107

License/Registration No: 5789PEF

Type: **PEF-Fire and Life Safety Plans Examiner**

Status: Active

Expiration Date: N/A

LEONARD D BROGDEN

BAY CITY, OR 97107

License/Registration No: 5813PEA

Type: **PEA-Plans Examiner A-Level**

Status: Active

Expiration Date: N/A

LEONARD D BROGDEN

BAY CITY, OR 97107

License/Registration No: 745GQI

Type: **GQI-Gen Post-Earthquake Inspector**

Status: Active

Expiration Date: N/A

LEONARD D BROGDEN

BAY CITY, OR 97107

License/Registration No: OIC79

Type: **OIC-OR Inspector Certification**

Status: Active

Expiration Date: 06/01/2023

LEONARD D BROGDEN

BAY CITY, OR 97107

License/Registration No: SEI3023

Type: **SEI-Specialized Electrical Inspector**

Status: Active

Expiration Date: N/A

LEONARD D BROGDEN

BAY CITY, OR 97107

License/Registration No: SPI2060

Type: **SPI-Specialized Plumbing Inspector**

Status: Active

Expiration Date: N/A

Attachment A.

Rates for Services charged by Contractor:

Category	Hourly Rate / Percentage
Commercial Plan Review	75% of all Plan Review Fees Collected by the City. (No additional charges for second review after information resubmitted) after second review an hourly additional rate \$75.00/HR
Commercial Building, Plumbing, and Mechanical permit fees	75% of all Permit Fees Collected by the City.
Residential Plan Review	75% of all Plan Review Fees Collected by the City. (No additional charges for second review after information resubmitted) after second review an hourly additional rate \$75.00/HR
Residential Building, Plumbing, and Mechanical inspections	\$75.00/HR
Other work performed not outlined in this contract	\$75.00/HR

City of Manzanita: _____ Date:

LB Building Services: _____ Date:

Leonard Brogden Building Services & Consulting, LLC

8830 Bewley St.

Bay City, OR 97107

Email: Leonard.Brogden@yahoo.com

Phone: 503-801-4279

Operating Plan

February 15, 2022

INTRODUCTION

Leonard Brogden Building Services & Consulting, LLC, Appointed Authorized Manager (hereinafter referred to as "AAM") owned, operated and managed by Leonard Brogden or AAM, will provide complete Building Official services to local governments.

Leonard Brogden Building Services & Consulting, LLC will act as the Building Official for local governments in Oregon. Leonard Brogden Building Services & Consulting, LLC provides its services for all residential and commercial inspections and plan reviews with the exception of commercial plumbing inspections and its plan review. Therefore, commercial plumbing services will be delegated to a 3rd party Company, overseen by Leonard Brogden or AAM, that will also be required to carry its own insurance and Building Codes Division license. Leonard Brogden Building Services & Consulting, LLC will notify the Division in writing when those services are requested and provide the necessary information.

Prior to Leonard Brogden Building Services & Consulting, LLC employment, a formal contract will be drawn and entered into between Leonard Brogden Building Services & Consulting, LLC and the City or County seeking its services.

Please contact me at (503)801-4279 or leonard.brogden@yahoo.com, if you should have any questions.

Thank you,

Leonard Brogden Building Services & Consulting, LLC
Leonard Brogden, Manager

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- VI. BUSINESS OPERATIONS
- VII. PROCEDURES FOR CREATING, MAINTAINING, AND NOTIFYING THE DIVISION OF CHANGES TO THE OPERATING PLAN
- VIII. ACCOUNTING PROCEDURES

I. SCOPE OF WORK

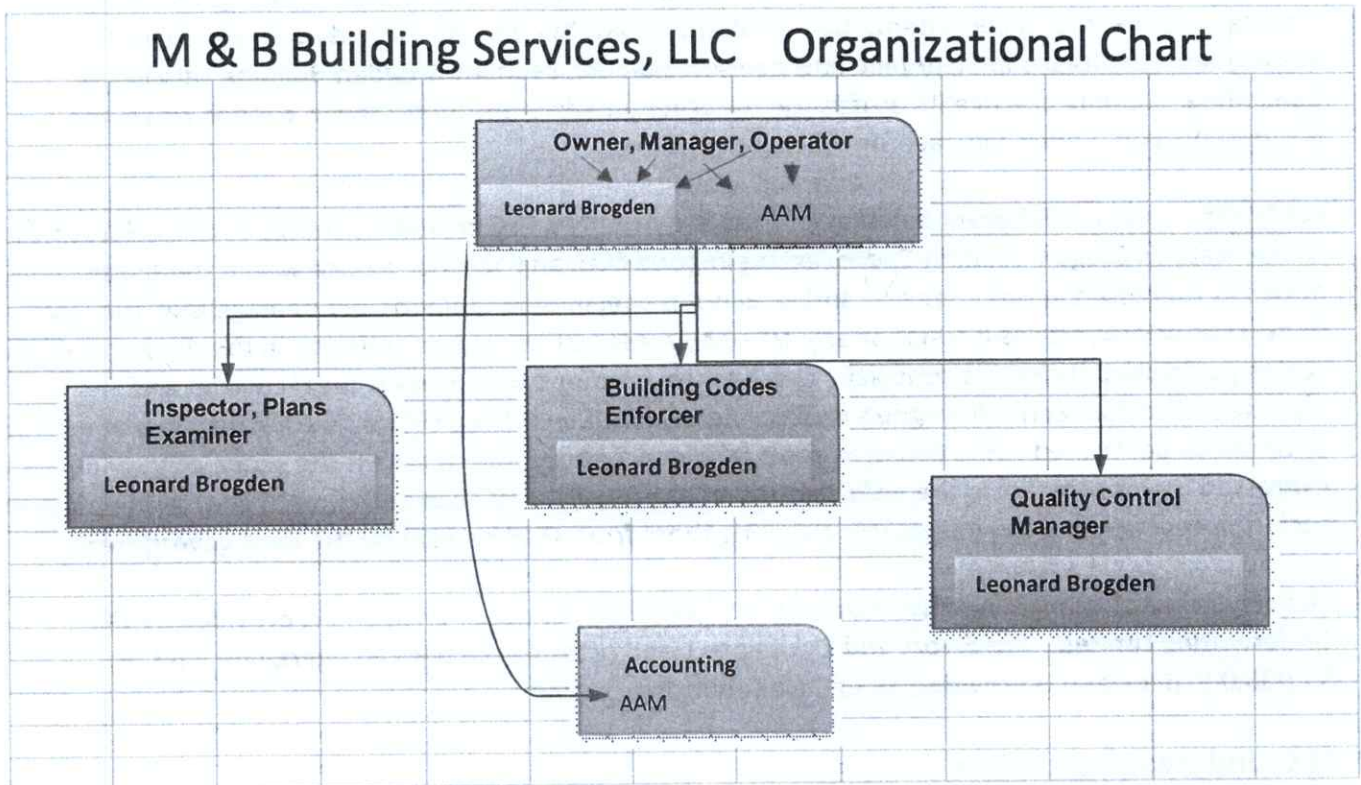
The following information outlines the organization structure and responsibilities that Leonard Brogden Building Services & Consulting, LLC will be performing and managing for a local government.

STATEMENT OF WORK/DUTIES: A local government contracts with Leonard Brogden Building Services & Consulting, LLC to provide all Residential and Commercial Structural, Mechanical, Plumbing, Fire & Life Safety, Manufactured Homes, inspections and plan review services, as the appointed Building Official for its local government.

During the duration of the agreement, Leonard Brogden Building Services & Consulting, LLC shall provide services as follows:

- Act as the Building Official, Inspector and Plans Examiner for the local government with the responsibility and authority to perform all duties prescribed by the State of Oregon Building Codes.
- Leonard Brogden Building Services & Consulting, LLC or AAM will provide in office services, as determined by both parties. Inspection services will immediately follow. Plan reviews will be performed and completed within the time allowed for by the State in office or at home office. Leonard Brogden Building Services & Consulting, LLC may be reached by phone, for building codes matters, during the local government's regular business hours. After hours calls may be subject to additional compensation. All calls will be responded to by Leonard Brogden Building Services & Consulting, LLC or its designee (if applicable).
- Appeals will be handled through the local government appeal process.
- Code Enforcement will be provided for "building code violations". And the civil penalty process will be handled through the local government.
- Leonard Brogden Building Services & Consulting, LLC will provide the local government with an invoice for services rendered.

II. ORGANIZATIONAL STRUCTURE



Leonard Brogden or AAM performs all duties for Leonard Brogden Building Services & Consulting, LLC. Leonard Brogden Building Services & Consulting, LLC is owned by Leonard Brogden, operated and managed by Leonard Brogden or AAM. For example, is responsible for enforcing construction code ordinances; performing plan reviews and inspections related to said building codes; acts as Building Official, for all inspections, plan review and enforcement services in accordance with the State of Oregon Building Codes; and will provide all building code services and agrees to do so for compensation based upon services rendered and expenses incurred pursuant to the terms and conditions set forth in an agreement between Leonard Brogden Building Services & Consulting, LLC and its client.

III. BUSINESS CONTACT INFORMATION

Leonard Brogden Building Services & Consulting, LLC Mark Brien, Manager
8830 Bewley St
Bay City, OR 97107
Email: leonard.brogden@yahoo.com
Phone: 503-8.1-4279

IV. INSURANCE AND INSURANCE POLICY INFORMATION

INSURANCE: Liability and Error and Omissions Insurance are to be provided by Leonard Brogden Building Services & Consulting, LLC. Leonard Brogden Building Services & Consulting, LLC is not an employee of the local government, and is not entitled to the benefits provided by the City to its employees, such as group insurance and pension plan etc. Leonard Brogden Building Services & Consulting, LLC may practice its profession for other jurisdictions during those periods when not performing work under contract for other jurisdictions.

LIABILITY: Leonard Brogden Building Services & Consulting, LLC or AAM is charged with enforcement of the State of Oregon Building Codes, acting in good faith and without malice within the scope of his duties as expressed in this contract, and shall not be personally liable for any damage that may accrue to persons or property as a result of any act or by reason of any act or omission in the discharge of the duties performed under this contract. The local government shall provide legal counsel and representation for Leonard Brogden Building Services & Consulting, LLC or its AAM because of such act or omission performed while acting in good faith and without malice within the scope of their duties as expressed in this contract in the enforcement of any provision of such codes, until final termination of such proceedings, and any judgments resulting there from shall be paid by the local government.

The certificate of general liability insurance is \$1,000,000 per occurrence and is provided by CFC Underwriting Limited. The Errors and Omissions Liability Insurance with an aggregate limit of \$1,000,000 per claim is provided by CFC Underwriting Limited.

CFC Underwriting Limited
85 Gracechurch Street
London EC3V 0AA
United Kingdom

V. PROCEDURE FOR APPROVAL OF ALTERNATE MATERIALS, DESIGN, OR METHODS OF CONSTRUCTION AND MODIFICATIONS

Request for Alternative materials, design, or methods of construction will be in accordance with the current adopted addition of the Oregon State Residential and Commercial codes. The request will be in writing and reviewed by the building official or division if needed.

No changes will be made to the local government's permits applications.

VI. BUSINESS OPERATIONS

Leonard Brogden Building Services & Consulting, LLC shall operate as follows:

RESPONSIBILITY: The local government will be responsible for providing Leonard Brogden Building Services & Consulting, LLC with office space (to include a desk, desktop computer, code books, and all other forms and written materials needed to provide the services outlined above. The local government will provide secretarial services to assist Leonard Brogden Building Services & Consulting, LLC by accommodating inquires and the processing of inspections, plan reviews and permits. The local government shall enforce their planning and flood plain ordinances.

SERVICE FEES/PAYMENT: The local government shall compensate Leonard Brogden Building Services & Consulting, LLC for the services rendered under this agreement at the rate of 75% for all Building Department services; including all Building, Plumbing and Mechanical permit fees, 75% of the plan review fees that include structural, fire and life safety, mechanical, plumbing, any deferred submittals and phased construction fees, and 75% of all Vacation/Short Term Rental inspections. The local government shall compensate at the rate of \$75.00 per hour for work performed not outlined in this contract as requested by the local government Manager. All fees and State assessments such as State surcharge will be paid for by the local government. The agreement period for professional services may be extended or renewed at the mutual consent of the local government and Leonard Brogden Building Services & Consulting, LLC.

FACILITIES AND EQUIPMENT: Leonard Brogden Building Services & Consulting, LLC is to provide own transportation and necessary equipment in the performance of duties.

TERMINATION: The contract would be effective on a year-to-year basis. Either party, with 30-day notification, may terminate this contract. Such notice shall be in writing and shall be delivered to the City/County Manager, representing City, or Leonard Brogden Building Services & Consulting, LLC, respectively.

ENTIRE AGREEMENT: The contract, and its attachments, contains the entire agreement between the parties. No statement, promises or endorsements made by either party or agents of either party that is not contained in this written contract shall be valid or binding, and this contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed herein. It is understood and agreed by the parties hereto that if any part, term or provision of this contract is by the courts held to be illegal or in conflict with any law of the State of Oregon or the United States, the

validity of the remaining portions or provision shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term or provision held to be invalid. It is mutually understood and agreed that this contract shall be governed by the laws of the State of Oregon, both as to interpretation and performance. Any and all suits for any and every breach of this contract may be instituted and maintained in any court of competent jurisdiction in the County of Clatsop, State of Oregon. No waiver of any breach of this contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided by law.

VII. PROCEDURE FOR CREATING, MAINTAINING, AND NOTIFYING THE DIVISION OF CHANGES TO THE OPERATING PLAN

Leonard Brogden Building Services & Consulting, LLC will notify the division of any proposed changes to the local government's Operating Plan and submit proposed changes to the division for approval prior to any changes being made.

VIII. ACCOUNTING PROCEDURES

Leonard Brogden Building Services & Consulting, LLC will ensure that all revenue and state surcharge reports will continue to be performed by the local government's administrative assistant. The local government may accept payment for permits by cash, check or credit/debit cards.

Leonard Brogden Building Services & Consulting, LLC will provide the local government with an invoice for its services rendered. The compensate for Leonard Brogden Building Services & Consulting, LLC for the services rendered shall be at the rate of 75% for all Building Department services; including all Building, Plumbing and Mechanical permit fees, 75% of the plan review fees that include structural, fire and life safety, mechanical, plumbing, any deferred submittals and phased construction fees, and 75% of all Vacation/Short Term Rental inspections. The local government shall compensate at the rate of \$75.00 per hour for work performed not outlined in this contract as requested by the local government Manager. All fees and State assessments such as State surcharge will be paid for by the local government. The agreement period for professional services may be extended or renewed at the mutual consent of the local government and Leonard Brogden Building Services & Consulting, LLC.

PROFESSIONAL SERVICES AGREEMENT

**Between
CITY OF MANZANITA**

**And
LB Building Services LLC and Consulting**

This Professional Services Agreement (“Agreement”) is made by and between the City of Manzanita, a municipal corporation of the State of Oregon (“City”) and LB Building Services LLC and Consulting (“Consultant”), for plan review and building inspection services. The parties agree as follows:

CONSULTANT DATA

Consultant attests that it is an independent contractor solely responsible for the work performed under this Agreement. Consultant, its subconsultants, employees, and agents shall not be deemed employees of City. Consultant shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for the Services under this Agreement.

Full Business Name: LB Building Services LLC and Consulting

Address: 8830 Bewley St

City, State, ZIP: Bay City, Or 97107

Business Telephone: (503)801-4279

E-mail: LBbuildingservices@gmail.com

Consultant must submit a completed “Request for Taxpayer Identification Number and Certification” (Form W-9) with this signed Agreement. Payment information will be reported to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided by Consultant.

Consultant certifies under penalty of perjury that Consultant is a:

- Sole Proprietor Corporation Limited Liability Company
- Partnership Other [describe: _____]

TERMS AND CONDITIONS

1. General Project and Agreement Information.

- a. Project Description: Consultant will provide design and engineering services to the Owner as more fully described in Exhibit C (Scope of Work) to this Agreement (the “Services”).
- b. Agreement: The Agreement consists of these Terms and Conditions and the following Exhibits:
 - Exhibit A: Payment Schedule
 - Exhibit B: Insurance Requirements
 - Exhibit C: Scope of Work
- d. Maximum Compensation: The maximum total compensation, including any reimbursable expenses, payable to Consultant under this Agreement is \$150,000

2. Consultant’s Duties.

- a. Consultant Representative. Consultant shall identify a representative authorized to act for Consultant on the Project. City has the right to review and approve any representative proposed by Consultant, which approval shall not be unreasonably withheld. Consultant shall not appoint a representative to whom City has reasonably and timely objected. Consultant shall not substitute representatives without City’s review and approval. Consultant acknowledges that this Agreement was awarded in part on the basis of the unique background and abilities of Consultant’s team, including key personnel and subconsultants, identified by Consultant. Consultant shall not remove, reassign, or replace key personnel without City’s prior written consent.
- b. Subconsultants. Consultant shall identify by firm, name, and title, the primary subconsultants who will perform Services under this Agreement. Consultant shall not engage or assign any person or entity to whom City has made a reasonable and timely objection. City has the right to review and approve any subconsultant substitutions proposed by Consultant. City shall not unreasonably withhold its review and approval of these substitutions. Upon City’s request, Consultant shall promptly provide copies of Consultant’s agreements with subconsultants.
- c. Conflicts. Consultant represents that Consultant has no existing interest and shall not acquire any interest, direct or indirect, that would reasonably appear to interfere in any manner or degree with the performance of Services under this Agreement and that Consultant shall employ no person having such interest.
- d. Instrument of Service Warranty. Consultant is performing services using reports and other documents (collectively, “Instruments of Service”) created under an agreement between the City and LB Building Services LLC and Consulting an Oregon LLC. Consultant warrants that all Instruments of Service are accurate and were prepared in accordance with the standard of care described under Section 3(b) of the this Agreement.
- e. Insurance. Before beginning the Services, Consultant shall obtain and maintain for the duration of this Agreement all insurance coverages listed in Exhibit B (Insurance Requirements). Maintenance of insurance coverage is a material element of this Agreement and Consultant’s failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach.

3. Scope of Consultant's Services.

- a. Legal and Policy Compliance. Consultant shall provide the Services in accordance with the terms of this Agreement, federal, state, or local law or ordinance, and applicable City rules, policies, and administrative directives. Consultant shall provide the Services so that the Project will be completed as expeditiously and economically as possible within the total budgeted cost to City and in City's best interests.
- b. Standard of Care. Consultant shall perform the Services with skill, care, and diligence in accordance with the standard of care applicable to such Services performed by recognized firms providing similar services in the same or similar locality, and on projects similar to the Project. Consultant shall be responsible to City for all Services provided whether provided by Consultant or by subconsultants it engages.
 1. All persons or entities providing Services under this Agreement shall be licensed, as may be required by Oregon law.
 2. Consultant shall rely on its professional judgment as to the accuracy and completeness of City-provided services and information. Consultant shall provide prompt written notice to City if Consultant becomes aware of any material deficiencies, errors, omissions, or inconsistencies in City services or information or if in Consultant's opinion the Project cost budget will not be sufficient to complete the improvements as programmed.
- c. Time is of the Essence. Time is of the essence in the performance of this Agreement. Consultant shall not be responsible for delay in performance to the extent those delays are caused by circumstances beyond Consultant's reasonable control or where a delay has been approved in writing by the City.
- d. Additional Services. Consultant shall perform only the Services authorized by this Agreement. Additional Services will be compensated only as authorized in advance and in writing by City. City will not pay for additional Services made necessary by Consultant or any subconsultant mistakes.
- e. Approvals; Permits. Consultant represents that it and its subconsultants have expertise and working knowledge of the applicable approval and permit application requirements of any governmental jurisdiction and shall be responsible to provide the Services in the form and at the time required to obtain such approvals or permits. To the extent required, Consultant shall assist City in preparing and submitting any such applications and will execute such applications on City's behalf. Consultant shall not execute such documents for City.
- f. Independent Contractor. Consultant shall perform all Services as an independent contractor. Although City reserves the right to set the delivery schedule for the Services and to evaluate quality of completed Services, City cannot and will not control the means and manner of Consultant's performance. Consultant is responsible to determine the appropriate means and manner of performing the Services. Consultant, Consultant's employees, and any subconsultants are not "officers, employees, or agents" of the State of Oregon or City (as those terms are used in ORS 30.265) and shall have no authority to bind City for the payment of any cost or expense without City's express written approval.
- g. Other Service Providers. City reserves the right to enter into other agreements for work additional or related to the Project, and Consultant agrees to cooperate fully with these other contractors and with City personnel. When requested by City, Consultant shall coordinate its performance under this

Agreement with such additional or related work. Consultant shall not interfere with the work performance of any other contractor or City employees.

4. City's Duties.

- a. Written Information. Unless otherwise provided for under this Agreement, City shall provide written information in a timely manner on requirements and limitations on the Project. This information shall include City's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.
- b. City Representative. City shall identify a representative authorized to act on its behalf on all Project matters (the "City Representative"). The City Representative will have the sole authority to make decisions for City under this Agreement.
- c. Other Consultants. City shall coordinate the services of its own consultants with Consultant's Services. Upon Consultant's request, City shall furnish copies of the scope of services in the contracts between City and City's consultants.
- d. Site Access. City shall provide Consultant access to the Project site before Services begin and shall cause City contractors to provide Consultant access to their work wherever it is in preparation or progress.

5. **Access to Records.** Consultant shall maintain all fiscal records directly relating to this Agreement in accordance with generally accepted accounting principles. In addition, Consultant shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Consultant's performance. Consultant agrees that City and its authorized representatives shall have access to the books, documents, papers, fiscal records, writings, plans, and records of Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. Consultant shall retain and keep accessible all such books, documents, papers, fiscal records, writings, plans, and records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

6. **Ownership of Work Product.** City shall be the owner of, and shall be entitled to possession of any and all, work products of Consultant which result from this Agreement, including but not limited to any computations, plans, reports, schedules, drawings, specifications, or pertinent data and information gathered by or computed by Consultant prior to termination of this Agreement by Consultant or upon completion of the Services pursuant to this Agreement.

7. Term and Termination.

- a. Start and End Dates. This Agreement becomes effective on the date of the last authorized signature below. Unless earlier terminated as provided below, this Agreement shall continue through 2028.
- b. Unilateral. City may terminate this Agreement in writing at any time for its convenience. If City terminates for convenience, Consultant may invoice City and City shall pay all undisputed invoice(s) for Services performed until City's notice of termination.
- c. Mutual. Either party may terminate this Agreement in the event of a material breach by the other. To be effective, the party seeking termination must give to the other party written notice of the breach

and its intent to terminate. If the breaching party fails to cure the breach within 15 days of the date of the notice, the non-breaching party may terminate this Agreement at any time thereafter by giving a written notice of termination.

- d. Other. Except as indicated in this Section, termination will have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring before the effective date of such termination.

8. Payments.

- a. Exhibit A (Payment Schedule). City shall pay Consultant for Services performed under this Agreement according to the provisions of Exhibit A.
- b. Monthly Invoices. Consultant shall provide City with monthly invoices detailing Services rendered and reimbursable expenses incurred in the preceding month. Invoices shall include itemization of all approved Agreement amendments whether or not they are currently being billed. Consultant expressly waives any right to additional payment for any Services in the absence of City's written authorization or request.
- c. Payment Method. Upon work completion and acceptance, invoice approval, and according to this Agreement's Terms and Conditions, City shall pay Consultant for Services rendered and for reimbursable expenses authorized under this Agreement net 30 days. City shall make no deductions from Consultant's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors or on account of the cost of construction changes other than those for which Consultant is liable.
- d. Reimbursables. Upon City's request, Consultant shall provide to City all records of reimbursable expenses, expenses pertaining to a change in Services, and any Services performed on the basis of hourly rates or expense, and shall be available to City or City's authorized representative at mutually convenient times. Consultant shall save these records for at least three years after final payment.
- e. Errors and Omissions; Fee Adjustments. City will not pay for any change order fee increases due to Consultant's errors or omissions. Regardless of the structure of Consultant's fee, the fee may be adjusted downward if, in accordance with this Agreement, City reduces the Services to be provided under this Agreement.
- f. Non-Appropriation; Adequate Funding. City is prohibited from contracting for Services for which it has not received appropriated funds. If payment for Services under this Agreement extends into City's next fiscal year, City's obligation to pay for such work shall be subject to approval of future appropriations to fund this Agreement. Moreover, continuation of this Agreement at specified levels is specifically conditioned on adequate funding under City's budget adopted in June of each year. City reserves the right to adjust the level of Services provided for in this Agreement in accordance with funding levels adopted by City Council.

- 9. Indemnification**. Consultant shall defend, indemnify and hold harmless City and its consultants, councilors, officers, directors, officials, employees, agents, representatives, and volunteers (the "Indemnitees") for, from, and against any and all loss, liability, damage, demands, claims, costs, and expenses, including

reasonable attorney and expert fees, to the extent caused by the acts or omissions of Consultant or its agents, consultants, employees, or representatives, including without limitation for:

- a. Breach of this Agreement by Consultant;
- b. Death, personal injury (including bodily injury), property damage, or violation of law, regulation, or orders, to the extent caused by the performance of Consultant or those for whom Consultant is responsible;
- c. Violation or infringement of third-party intellectual property rights by Consultant;
- d. Any negligent acts or omissions or willful misconduct by Consultant or persons for whom Consultant is responsible; and
- e. Claims for compensation asserted by the Consultant's employees (including wage-and-hour or benefit claims) or any violation of federal, state, or local wage-and-hour or labor laws and regulations by Consultant or persons for whom Consultant is responsible.

Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section. In claims against any person or entity indemnified under this Section by an employee of Consultant, Consultant itself, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Consultant under workers' compensation acts, disability benefit acts, or other employee benefit acts. No indemnification provided by Consultant under this Section is required to indemnify the Indemnitees to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own acts, omissions, or negligence, but Consultant must provide indemnity to the extent of its own negligence or the negligence of its consultants, employees, or representatives to the extent required by law or by this Agreement.

10. Compliance with State of Oregon Public Contracting Code.

- a. Nondiscrimination. As required by ORS 279A.110, Consultant shall not discriminate against a disadvantaged business enterprise, minority-owned, women-owned, or emerging small businesses certified under ORS 200.055 or a business enterprise that is owned or controlled by or employs a service-disabled veteran.
- b. Tax Compliance Warranty. As required by ORS 279B.045, Contractor represents and warrants that Contractor has complied with the applicable tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. Contractor covenants that it will continue to comply with the tax laws of this state or a political subdivision of this state during the term of this contract. Failure by Contractor to comply with the applicable tax laws of this state or a political subdivision of this state before the execution of this Agreement or during the term of this Agreement is a default for which City may terminate this Agreement and seek damages and other relief available under the terms of this Contract or under applicable law.
- c. Payment of Labor. As required by ORS 279B.220 and 279C.505, Consultant shall:
 - 1. Make payment promptly, as due, to all persons supplying labor or material to Consultant for the performance of the Services provided for in this Agreement;

2. Pay all contributions or amounts due the Industrial Accident Fund from Consultant or sub-consultant incurred in the performance of this Agreement;
 3. Not permit any lien or claim to be filed or prosecuted against City on account of any labor or material furnished; and
 4. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- d. Payment for Medical Care and Workers' Compensation. As required by 279B.230 and 279C.530:
1. Consultant shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Consultant, of all sums that Consultant agrees to pay for the services and all moneys and sums that Consultant collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services.
 2. All subject employers working under this Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- e. Hours of Labor, Pay Equity, Salary Discussions. As required by ORS 279B.020(5), 279B.235(3), and 279C.540(6), for Consultant's employees subject to Oregon employment laws:
1. Maximum Hours. Employees shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week and for work performed on Saturdays, Sundays, New Year's Day (January 1), Memorial Day (last Monday in May), Independence Day (July 4), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25).
 2. Exemption. These requirements do not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
 3. Notice to Employees. Consultant shall give notice in writing to its employees who perform work under this Contract, either at the time of hire or before commencement of work on this Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
 4. Consultant shall comply with ORS 652.220 (Prohibition of discriminatory wage rates based on sex; employer not to discriminate against employee who is a complainant). Compliance is a material element of this Agreement. Failure to comply is a breach that entitles City to terminate this Agreement for cause.
 5. Consultant may not prohibit any of Consultant's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person, and may not retaliate against an employee who does so.
- f. Limitation on Claims. For Consultant's employees subject to Oregon employment laws and as required by ORS 279C.545, any worker employed by Consultant shall be foreclosed from the right to collect for

any overtime provided in ORS 279C.540 unless a claim for payment is filed with Consultant within 90 days from the completion of this Agreement, providing Consultant has:

1. Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this Section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work; and
2. Maintained such circular continuously posted from the inception to the completion of this Agreement on which workers are or have been employed.

11. Other Provisions.

- a. Controlling Law; Venue. Any dispute under this Agreement or related to this Agreement will be governed by Oregon law, and any litigation arising out of the Agreement will be conducted in Tillamook County Circuit Court. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the State of Oregon.
- b. Claims. Any claim or dispute arising under this Agreement will be delivered in writing to the other party within a reasonable time after the claim, dispute, or other matters in question have arisen. Consultant and City will meet within ten days of the date of delivery of the claim to attempt to resolve the claim. Consultant and City agree that both parties shall try to resolve the dispute amicably and at a Project level prior to the commencement of litigation or arbitration.
- c. Waiver; Severability. Waiver of any default or breach under this Agreement by City will be effective only in the specific instance and for the specific purpose given. Any such waiver does not constitute a waiver of any subsequent default or a modification of any other provisions of this Agreement. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held invalid.
- d. Amendments. Any amendments, consents to, or waivers of the terms of this Agreement shall be in writing and signed by the authorized representatives of both parties.
- e. Media/Publications. Consultant shall issue no news release, press release, or other statement to members of the news media or any other publication regarding this Agreement or the Project within one year of Project completion without City's prior written authorization. Consultant shall not post or publish any textual or visual representations of the Project without approval of City.
- f. Nondiscrimination. Consultant shall comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, color, gender, age, religion, national origin, U.S. military veteran status, marital status, sexual orientation, disability, source of income, or political affiliation in programs, activities, services, benefits, or employment in connection with this Agreement.
- g. Successors in Interest. This Agreement will bind and inure to the benefit of the parties, their successors, and approved assigns, if any. Except as previously disclosed and approved, Consultant shall not enter into any subconsultant agreements for any of the Services or assign or transfer any of its interest in this Agreement without City's prior written consent.

- h. No Third-Party Beneficiaries. City and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides any benefit or right, directly or indirectly, to third persons unless they are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement.
- i. Entire Agreement. When signed by the authorized representatives of both parties, this Agreement (and the attached exhibits) is their final and entire agreement. As their final and entire expression, this Agreement supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives. There are no representations, promises, terms, conditions, or obligations other than those contained herein.
- j. Notices and Communications. Notices and communications between the parties to this Agreement must be sent to the following addresses:

City
 Scott Gebhart
 PO Box 129
 Manzanita, Or 97130

Consultant
 Leonard Brogden
 8830 Bewley St
 Bay City, Or 97107

The party giving notice will provide notice in writing, dated and signed by a duly authorized representative of that party. Notice is not effective for any purpose whatsoever unless served in one of the following manners:

1. If notice is given by personal delivery, it is deemed delivered on the day of delivery.
2. If notice is given by overnight delivery service, it is deemed delivered one day after the date deposited, as indicated by the delivery service.
3. If notice is given by United States mail, it is deemed delivered three days after the date deposited, as indicated by the postmarked date.
4. If notice is given by registered or certified mail with postage prepaid, return receipt requested, it is deemed delivered on the day the notice is signed for.

I HAVE READ THIS AGREEMENT, INCLUDING ALL EXHIBITS. I CERTIFY THAT I HAVE THE AUTHORITY TO SIGN AND ENTER INTO THIS AGREEMENT, AND TO BE BOUND BY ITS TERMS ON BEHALF OF THE PARTY I REPRESENT.

CONSULTANT

LB Building Services LLC and Consulting

 Signature

 Consultant Printed Name and Title

 Date of Signature

CITY

City of Manzanita

 Signature

 City Official Printed Name & Title

 Date of Signature

EXHIBIT A
PAYMENT SCHEDULE

A. COMPENSATION

City will pay the Consultant for the Services a not-to-exceed fee of \$150,000 as shown in greater detail below:

<i>TASK DESCRIPTION</i>	<i>NOT-TO-EXCEED FEE</i>
<ul style="list-style-type: none"> Commercial Plan Review 	<ul style="list-style-type: none"> 75% of all Plan Review Fees Collected by the City. (No additional charges for the second review after information resubmitted) after second review an hourly additional rate \$75.00/HR
<ul style="list-style-type: none"> Commercial Building, Plumbing, and Mechanical permit fees 	<ul style="list-style-type: none"> 75% of all Permit Fees Collected by the City
<ul style="list-style-type: none"> Residential Plan Review 	<ul style="list-style-type: none"> 75% of all Plan Review Fees Collected by the City. (No additional charges for the second review after information resubmitted) after second review an hourly additional rate \$75.00/HR
<ul style="list-style-type: none"> Residential Building, Plumbing, and Mechanical inspections 	<ul style="list-style-type: none"> \$75.00/HR
<ul style="list-style-type: none"> Other work performed not outlined in this contract 	<ul style="list-style-type: none"> \$75.00/HR

B. PAYMENT METHOD

1. Consultant shall submit to City, at the address shown below, all monthly invoices in a form approved by City:

City of Manzanita
Attn: Accounts Payable
PO Box 129
Manzanita, OR 97130

2. Invoices shall be detailed and include the following:

- a. Itemization of all Services components and the percentages completed;
- b. Services previously billed and currently invoiced;
- c. Previously approved contract amendments, whether or not they are being invoiced; and
- d. Separate itemization of any reimbursables that are billable but not a part of the base compensation under this Agreement.

3. Upon City request, Consultant shall provide to City documentation showing proof that payments were made to its vendors and subconsultant(s).
4. Upon receipt and approval of Consultant's properly submitted invoices, City agrees to make payments within 30 days of receipt.

EXHIBIT B
INSURANCE REQUIREMENTS

A. MINIMUM INSURANCE LIMITS. Consultant shall procure, prior to commencement of the Services of this Agreement, and shall maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by Consultant, its agents, representatives, employees, and subconsultant(s). Consultant's liabilities, including but not limited to Consultant's indemnity obligations under this Agreement, will not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement, and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach of contract by City. Coverage shall be at least as broad as the following scopes and limits:

1. **Commercial General Liability ("CGL")** insurance covering injury and property damage on an occurrence basis. This coverage shall include contractual liability insurance for the indemnity provided under this contract. The CGL policy shall include the following coverages with limits of no less than the limits shown below:

<u>Coverage</u>	<u>Limit</u>
Combined Single Limit	\$2,000,000
General Aggregate	\$2,000,000

2. **Commercial Automobile Liability** insurance including coverage for all owned, hired, and non-owned vehicles with a combined single limit of no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation Liability** insurance meeting statutory requirements. Consultant shall require and ensure that each of its subconsultants or subcontractors comply with this requirement.
4. **Employers' Liability** insurance with a limit of no less than \$500,000 for each accident.
5. **Professional Liability** insurance with limits of no less than \$2,000,000 per occurrence and \$2,000,000 aggregate and subject to no more than \$10,000 per claim deductible. Consultant shall maintain professional liability coverage through completion of construction of the Project and two years thereafter.

City reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.

B. DEDUCTIBLES AND SELF-INSURANCE RETENTION. Consultant shall inform City in writing if any deductibles or self-insured retention exceeds \$10,000. At its sole discretion, City may (1) accept the higher deductible, (2) require Consultant to insure such deductibles or self-insured retention as respects City, its consultants, councilors, officers, directors, officials, employees, agents, representatives, and volunteers, or (3) require Consultant to provide a surety bond guaranteeing Consultant's payment of deductible or self-insured losses and related investigations, claim administration, and defense expenses.

C. OTHER INSURANCE PROVISION. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. City and its consultants, councilors, officers, directors, officials, employees, agents, representatives, and volunteers ("Additional Insureds") are to be covered as Additional Insureds with respect to liability arising out of activities performed by or on behalf of Consultant; work product and completed operations of Consultant; premises owned, occupied, or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage will contain no special limitations on the scope of protection afforded to the Additional Insureds.

2. For any claims related to the Project, Consultant's insurance coverage shall be the primary insurance with respect to the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of Consultant's insurance and not contributory.
3. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, will not affect coverage provided to the Additional Insureds.
4. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage will not be suspended, voided, or canceled by either party, or reduced in coverage or in limits, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to City.

D. ACCEPTABILITY OF INSURERS. Insurance shall be placed with insurers admitted in Oregon with a current A.M. Best's rating and FSC no lower than A-VII. Consultant shall inform City in writing if any of its insurers have a rating and FSC lower than A-VII. At its sole discretion, City may (1) accept the lower rating or (2) require Consultant to procure insurance from another insurer.

E. VERIFICATION OF COVERAGE. Consultant shall furnish City with:

1. Certificates of insurance showing maintenance of the required insurance coverage; and
2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements shall be received and approved by City before Services commence.

EXHIBIT C
SCOPE OF WORK

PROFESSIONAL SERVICES AGREEMENT

**Between
CITY OF MANZANITA**

**And
LB Building Services LLC and Consulting**

This Professional Services Agreement (“Agreement”) is made by and between the City of Manzanita, a municipal corporation of the State of Oregon (“City”) and LB Building Services LLC and Consulting (“Consultant”), for plan review and building inspection services. The parties agree as follows:

CONSULTANT DATA

Consultant attests that it is an independent contractor solely responsible for the work performed under this Agreement. Consultant, its subconsultants, employees, and agents shall not be deemed employees of City. Consultant shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for the Services under this Agreement.

Full Business Name: LB Building Services LLC and Consulting

Address: 8830 Bewley St

City, State, ZIP: Bay City, Or 97107

Business Telephone: (503)801-4279

E-mail: LBbuildingservices@gmail.com

Consultant must submit a completed “Request for Taxpayer Identification Number and Certification” (Form W-9) with this signed Agreement. Payment information will be reported to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided by Consultant.

Consultant certifies under penalty of perjury that Consultant is a:

- Sole Proprietor Corporation Limited Liability Company
 Partnership Other [describe: _____]
-

TERMS AND CONDITIONS

1. General Project and Agreement Information.

- a. Project Description: Consultant will provide design and engineering services to the Owner as more fully described in Exhibit C (Scope of Work) to this Agreement (the “Services”).
- b. Agreement: The Agreement consists of these Terms and Conditions and the following Exhibits:
 - Exhibit A: Payment Schedule
 - Exhibit B: Insurance Requirements
 - Exhibit C: Scope of Work
- d. Maximum Compensation: The maximum total compensation, including any reimbursable expenses, payable to Consultant under this Agreement is \$150,000

2. Consultant’s Duties.

- a. Consultant Representative. Consultant shall identify a representative authorized to act for Consultant on the Project. City has the right to review and approve any representative proposed by Consultant, which approval shall not be unreasonably withheld. Consultant shall not appoint a representative to whom City has reasonably and timely objected. Consultant shall not substitute representatives without City’s review and approval. Consultant acknowledges that this Agreement was awarded in part on the basis of the unique background and abilities of Consultant’s team, including key personnel and subconsultants, identified by Consultant. Consultant shall not remove, reassign, or replace key personnel without City’s prior written consent.
- b. Subconsultants. Consultant shall identify by firm, name, and title, the primary subconsultants who will perform Services under this Agreement. Consultant shall not engage or assign any person or entity to whom City has made a reasonable and timely objection. City has the right to review and approve any subconsultant substitutions proposed by Consultant. City shall not unreasonably withhold its review and approval of these substitutions. Upon City’s request, Consultant shall promptly provide copies of Consultant’s agreements with subconsultants.
- c. Conflicts. Consultant represents that Consultant has no existing interest and shall not acquire any interest, direct or indirect, that would reasonably appear to interfere in any manner or degree with the performance of Services under this Agreement and that Consultant shall employ no person having such interest.
- d. Instrument of Service Warranty. Consultant is performing services using reports and other documents (collectively, “Instruments of Service”) created under an agreement between the City and LB Building Services LLC and Consulting an Oregon LLC. Consultant warrants that all Instruments of Service are accurate and were prepared in accordance with the standard of care described under Section 3(b) of the this Agreement.
- e. Insurance. Before beginning the Services, Consultant shall obtain and maintain for the duration of this Agreement all insurance coverages listed in Exhibit B (Insurance Requirements). Maintenance of insurance coverage is a material element of this Agreement and Consultant’s failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach.

3. Scope of Consultant's Services.

- a. Legal and Policy Compliance. Consultant shall provide the Services in accordance with the terms of this Agreement, federal, state, or local law or ordinance, and applicable City rules, policies, and administrative directives. Consultant shall provide the Services so that the Project will be completed as expeditiously and economically as possible within the total budgeted cost to City and in City's best interests.
- b. Standard of Care. Consultant shall perform the Services with skill, care, and diligence in accordance with the standard of care applicable to such Services performed by recognized firms providing similar services in the same or similar locality, and on projects similar to the Project. Consultant shall be responsible to City for all Services provided whether provided by Consultant or by subconsultants it engages.
 1. All persons or entities providing Services under this Agreement shall be licensed, as may be required by Oregon law.
 2. Consultant shall rely on its professional judgment as to the accuracy and completeness of City-provided services and information. Consultant shall provide prompt written notice to City if Consultant becomes aware of any material deficiencies, errors, omissions, or inconsistencies in City services or information or if in Consultant's opinion the Project cost budget will not be sufficient to complete the improvements as programmed.
- c. Time is of the Essence. Time is of the essence in the performance of this Agreement. Consultant shall not be responsible for delay in performance to the extent those delays are caused by circumstances beyond Consultant's reasonable control or where a delay has been approved in writing by the City.
- d. Additional Services. Consultant shall perform only the Services authorized by this Agreement. Additional Services will be compensated only as authorized in advance and in writing by City. City will not pay for additional Services made necessary by Consultant or any subconsultant mistakes.
- e. Approvals; Permits. Consultant represents that it and its subconsultants have expertise and working knowledge of the applicable approval and permit application requirements of any governmental jurisdiction and shall be responsible to provide the Services in the form and at the time required to obtain such approvals or permits. To the extent required, Consultant shall assist City in preparing and submitting any such applications and will execute such applications on City's behalf. Consultant shall not execute such documents for City.
- f. Independent Contractor. Consultant shall perform all Services as an independent contractor. Although City reserves the right to set the delivery schedule for the Services and to evaluate quality of completed Services, City cannot and will not control the means and manner of Consultant's performance. Consultant is responsible to determine the appropriate means and manner of performing the Services. Consultant, Consultant's employees, and any subconsultants are not "officers, employees, or agents" of the State of Oregon or City (as those terms are used in ORS 30.265) and shall have no authority to bind City for the payment of any cost or expense without City's express written approval.
- g. Other Service Providers. City reserves the right to enter into other agreements for work additional or related to the Project, and Consultant agrees to cooperate fully with these other contractors and with City personnel. When requested by City, Consultant shall coordinate its performance under this

Agreement with such additional or related work. Consultant shall not interfere with the work performance of any other contractor or City employees.

4. City's Duties.

- a. Written Information. Unless otherwise provided for under this Agreement, City shall provide written information in a timely manner on requirements and limitations on the Project. This information shall include City's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.
- b. City Representative. City shall identify a representative authorized to act on its behalf on all Project matters (the "City Representative"). The City Representative will have the sole authority to make decisions for City under this Agreement.
- c. Other Consultants. City shall coordinate the services of its own consultants with Consultant's Services. Upon Consultant's request, City shall furnish copies of the scope of services in the contracts between City and City's consultants.
- d. Site Access. City shall provide Consultant access to the Project site before Services begin and shall cause City contractors to provide Consultant access to their work wherever it is in preparation or progress.

5. Access to Records. Consultant shall maintain all fiscal records directly relating to this Agreement in accordance with generally accepted accounting principles. In addition, Consultant shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Consultant's performance. Consultant agrees that City and its authorized representatives shall have access to the books, documents, papers, fiscal records, writings, plans, and records of Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. Consultant shall retain and keep accessible all such books, documents, papers, fiscal records, writings, plans, and records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

6. Ownership of Work Product. City shall be the owner of, and shall be entitled to possession of any and all, work products of Consultant which result from this Agreement, including but not limited to any computations, plans, reports, schedules, drawings, specifications, or pertinent data and information gathered by or computed by Consultant prior to termination of this Agreement by Consultant or upon completion of the Services pursuant to this Agreement.

7. Term and Termination.

- a. Start and End Dates. This Agreement becomes effective on the date of the last authorized signature below. Unless earlier terminated as provided below, this Agreement shall continue through July 1, 2028.
- b. Unilateral. City may terminate this Agreement in writing at any time for its convenience. If City terminates for convenience, Consultant may invoice City and City shall pay all undisputed invoice(s) for Services performed until City's notice of termination.

- c. Mutual. Either party may terminate this Agreement in the event of a material breach by the other. To be effective, the party seeking termination must give to the other party written notice of the breach and its intent to terminate. If the breaching party fails to cure the breach within 15 days of the date of the notice, the non-breaching party may terminate this Agreement at any time thereafter by giving a written notice of termination.
- d. Other. Except as indicated in this Section, termination will have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring before the effective date of such termination.

8. Payments.

- a. Exhibit A (Payment Schedule). City shall pay Consultant for Services performed under this Agreement according to the provisions of Exhibit A.
- b. Monthly Invoices. Consultant shall provide City with monthly invoices detailing Services rendered and reimbursable expenses incurred in the preceding month. Invoices shall include itemization of all approved Agreement amendments whether or not they are currently being billed. Consultant expressly waives any right to additional payment for any Services in the absence of City's written authorization or request.
- c. Payment Method. Upon work completion and acceptance, invoice approval, and according to this Agreement's Terms and Conditions, City shall pay Consultant for Services rendered and for reimbursable expenses authorized under this Agreement net 30 days. City shall make no deductions from Consultant's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors or on account of the cost of construction changes other than those for which Consultant is liable.
- d. Reimbursables. Upon City's request, Consultant shall provide to City all records of reimbursable expenses, expenses pertaining to a change in Services, and any Services performed on the basis of hourly rates or expense, and shall be available to City or City's authorized representative at mutually convenient times. Consultant shall save these records for at least three years after final payment.
- e. Errors and Omissions; Fee Adjustments. City will not pay for any change order fee increases due to Consultant's errors or omissions. Regardless of the structure of Consultant's fee, the fee may be adjusted downward if, in accordance with this Agreement, City reduces the Services to be provided under this Agreement.
- f. Non-Appropriation; Adequate Funding. City is prohibited from contracting for Services for which it has not received appropriated funds. If payment for Services under this Agreement extends into City's next fiscal year, City's obligation to pay for such work shall be subject to approval of future appropriations to fund this Agreement. Moreover, continuation of this Agreement at specified levels is specifically conditioned on adequate funding under City's budget adopted in June of each year. City reserves the right to adjust the level of Services provided for in this Agreement in accordance with funding levels adopted by City Council.

- 9. Indemnification.** Consultant shall defend, indemnify and hold harmless City and its consultants, councilors, officers, directors, officials, employees, agents, representatives, and volunteers (the "Indemnitees") for, from, and against any and all loss, liability, damage, demands, claims, costs, and expenses, including

reasonable attorney and expert fees, to the extent caused by the acts or omissions of Consultant or its agents, consultants, employees, or representatives, including without limitation for:

- a. Breach of this Agreement by Consultant;
- b. Death, personal injury (including bodily injury), property damage, or violation of law, regulation, or orders, to the extent caused by the performance of Consultant or those for whom Consultant is responsible;
- c. Violation or infringement of third-party intellectual property rights by Consultant;
- d. Any negligent acts or omissions or willful misconduct by Consultant or persons for whom Consultant is responsible; and
- e. Claims for compensation asserted by the Consultant's employees (including wage-and-hour or benefit claims) or any violation of federal, state, or local wage-and-hour or labor laws and regulations by Consultant or persons for whom Consultant is responsible.

Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section. In claims against any person or entity indemnified under this Section by an employee of Consultant, Consultant itself, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Consultant under workers' compensation acts, disability benefit acts, or other employee benefit acts. No indemnification provided by Consultant under this Section is required to indemnify the Indemnitees to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own acts, omissions, or negligence, but Consultant must provide indemnity to the extent of its own negligence or the negligence of its consultants, employees, or representatives to the extent required by law or by this Agreement.

10. Compliance with State of Oregon Public Contracting Code.

- a. Nondiscrimination. As required by ORS 279A.110, Consultant shall not discriminate against a disadvantaged business enterprise, minority-owned, women-owned, or emerging small businesses certified under ORS 200.055 or a business enterprise that is owned or controlled by or employs a service-disabled veteran.
- b. Tax Compliance Warranty. As required by ORS 279B.045, Contractor represents and warrants that Contractor has complied with the applicable tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. Contractor covenants that it will continue to comply with the tax laws of this state or a political subdivision of this state during the term of this contract. Failure by Contractor to comply with the applicable tax laws of this state or a political subdivision of this state before the execution of this Agreement or during the term of this Agreement is a default for which City may terminate this Agreement and seek damages and other relief available under the terms of this Contract or under applicable law.
- c. Payment of Labor. As required by ORS 279B.220 and 279C.505, Consultant shall:
 1. Make payment promptly, as due, to all persons supplying labor or material to Consultant for the performance of the Services provided for in this Agreement;

2. Pay all contributions or amounts due the Industrial Accident Fund from Consultant or sub-consultant incurred in the performance of this Agreement;
 3. Not permit any lien or claim to be filed or prosecuted against City on account of any labor or material furnished; and
 4. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- d. Payment for Medical Care and Workers' Compensation. As required by 279B.230 and 279C.530:
1. Consultant shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Consultant, of all sums that Consultant agrees to pay for the services and all moneys and sums that Consultant collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services.
 2. All subject employers working under this Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- e. Hours of Labor, Pay Equity, Salary Discussions. As required by ORS 279B.020(5), 279B.235(3), and 279C.540(6), for Consultant's employees subject to Oregon employment laws:
1. Maximum Hours. Employees shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week and for work performed on Saturdays, Sundays, New Year's Day (January 1), Memorial Day (last Monday in May), Independence Day (July 4), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25).
 2. Exemption. These requirements do not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
 3. Notice to Employees. Consultant shall give notice in writing to its employees who perform work under this Contract, either at the time of hire or before commencement of work on this Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
 4. Consultant shall comply with ORS 652.220 (Prohibition of discriminatory wage rates based on sex; employer not to discriminate against employee who is a complainant). Compliance is a material element of this Agreement. Failure to comply is a breach that entitles City to terminate this Agreement for cause.
 5. Consultant may not prohibit any of Consultant's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person, and may not retaliate against an employee who does so.
- f. Limitation on Claims. For Consultant's employees subject to Oregon employment laws and as required by ORS 279C.545, any worker employed by Consultant shall be foreclosed from the right to collect for

any overtime provided in ORS 279C.540 unless a claim for payment is filed with Consultant within 90 days from the completion of this Agreement, providing Consultant has:

1. Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this Section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work; and
2. Maintained such circular continuously posted from the inception to the completion of this Agreement on which workers are or have been employed.

11. Other Provisions.

- a. Controlling Law; Venue. Any dispute under this Agreement or related to this Agreement will be governed by Oregon law, and any litigation arising out of the Agreement will be conducted in Tillamook County Circuit Court. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the State of Oregon.
- b. Claims. Any claim or dispute arising under this Agreement will be delivered in writing to the other party within a reasonable time after the claim, dispute, or other matters in question have arisen. Consultant and City will meet within ten days of the date of delivery of the claim to attempt to resolve the claim. Consultant and City agree that both parties shall try to resolve the dispute amicably and at a Project level prior to the commencement of litigation or arbitration.
- c. Waiver; Severability. Waiver of any default or breach under this Agreement by City will be effective only in the specific instance and for the specific purpose given. Any such waiver does not constitute a waiver of any subsequent default or a modification of any other provisions of this Agreement. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held invalid.
- d. Amendments. Any amendments, consents to, or waivers of the terms of this Agreement shall be in writing and signed by the authorized representatives of both parties.
- e. Media/Publications. Consultant shall issue no news release, press release, or other statement to members of the news media or any other publication regarding this Agreement or the Project within one year of Project completion without City's prior written authorization. Consultant shall not post or publish any textual or visual representations of the Project without approval of City.
- f. Nondiscrimination. Consultant shall comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, color, gender, age, religion, national origin, U.S. military veteran status, marital status, sexual orientation, disability, source of income, or political affiliation in programs, activities, services, benefits, or employment in connection with this Agreement.
- g. Successors in Interest. This Agreement will bind and inure to the benefit of the parties, their successors, and approved assigns, if any. Except as previously disclosed and approved, Consultant shall not enter into any subconsultant agreements for any of the Services or assign or transfer any of its interest in this Agreement without City's prior written consent.

- h. No Third-Party Beneficiaries. City and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides any benefit or right, directly or indirectly, to third persons unless they are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement.
- i. Entire Agreement. When signed by the authorized representatives of both parties, this Agreement (and the attached exhibits) is their final and entire agreement. As their final and entire expression, this Agreement supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives. There are no representations, promises, terms, conditions, or obligations other than those contained herein.
- j. Notices and Communications. Notices and communications between the parties to this Agreement must be sent to the following addresses:

City
 Scott Gebhart
 PO Box 129
 Manzanita, Or 97130

Consultant
 Leonard Brogden
 8830 Bewley St
 Bay City, Or 97107

The party giving notice will provide notice in writing, dated and signed by a duly authorized representative of that party. Notice is not effective for any purpose whatsoever unless served in one of the following manners:

1. If notice is given by personal delivery, it is deemed delivered on the day of delivery.
2. If notice is given by overnight delivery service, it is deemed delivered one day after the date deposited, as indicated by the delivery service.
3. If notice is given by United States mail, it is deemed delivered three days after the date deposited, as indicated by the postmarked date.
4. If notice is given by registered or certified mail with postage prepaid, return receipt requested, it is deemed delivered on the day the notice is signed for.

I HAVE READ THIS AGREEMENT, INCLUDING ALL EXHIBITS. I CERTIFY THAT I HAVE THE AUTHORITY TO SIGN AND ENTER INTO THIS AGREEMENT, AND TO BE BOUND BY ITS TERMS ON BEHALF OF THE PARTY I REPRESENT.

CONSULTANT

LB Building Services LLC and Consulting

 Signature

 Leonard Brogden, Owner

 Date of Signature

CITY

City of Manzanita

 Signature

 Leila Aman, City Manager

 Date of Signature

EXHIBIT A
PAYMENT SCHEDULE

A. COMPENSATION

City will pay the Consultant for the Services a not-to-exceed fee of \$150,000 as shown in greater detail below:

<i>TASK DESCRIPTION</i>	<i>NOT-TO-EXCEED FEE</i>
<ul style="list-style-type: none"> Commercial Plan Review 	<ul style="list-style-type: none"> 75% of all Plan Review Fees Collected by the City. (No additional charges for the second review after information resubmitted) after second review an hourly additional rate \$75.00/HR
<ul style="list-style-type: none"> Commercial Building, Plumbing, and Mechanical permit fees 	<ul style="list-style-type: none"> 75% of all Permit Fees Collected by the City
<ul style="list-style-type: none"> Residential Plan Review 	<ul style="list-style-type: none"> 75% of all Plan Review Fees Collected by the City. (No additional charges for the second review after information resubmitted) after second review an hourly additional rate \$75.00/HR
<ul style="list-style-type: none"> Residential Building, Plumbing, and Mechanical inspections 	<ul style="list-style-type: none"> \$75.00/HR
<ul style="list-style-type: none"> Other work performed not outlined in this contract 	<ul style="list-style-type: none"> \$75.00/HR

B. PAYMENT METHOD

1. Consultant shall submit to City, at the address shown below, all monthly invoices in a form approved by City:

City of Manzanita
Attn: Accounts Payable
PO Box 129
Manzanita, OR 97130

2. Invoices shall be detailed and include the following:

- a. Itemization of all Services components and the percentages completed;
- b. Services previously billed and currently invoiced;
- c. Previously approved contract amendments, whether or not they are being invoiced; and
- d. Separate itemization of any reimbursables that are billable but not a part of the base compensation under this Agreement.

3. Upon City request, Consultant shall provide to City documentation showing proof that payments were made to its vendors and subconsultant(s).
4. Upon receipt and approval of Consultant's properly submitted invoices, City agrees to make payments within 30 days of receipt.

EXHIBIT B
INSURANCE REQUIREMENTS

A. MINIMUM INSURANCE LIMITS. Consultant shall procure, prior to commencement of the Services of this Agreement, and shall maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by Consultant, its agents, representatives, employees, and subconsultant(s). Consultant’s liabilities, including but not limited to Consultant’s indemnity obligations under this Agreement, will not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement, and Consultant’s failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach of contract by City. Coverage shall be at least as broad as the following scopes and limits:

1. **Commercial General Liability (“CGL”)** insurance covering injury and property damage on an occurrence basis. This coverage shall include contractual liability insurance for the indemnity provided under this contract. The CGL policy shall include the following coverages with limits of no less than the limits shown below:

<u>Coverage</u>	<u>Limit</u>
Combined Single Limit	\$2,000,000
General Aggregate	\$2,000,000

2. **Commercial Automobile Liability** insurance including coverage for all owned, hired, and non-owned vehicles with a combined single limit of no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers’ Compensation Liability** insurance meeting statutory requirements. Consultant shall require and ensure that each of its subconsultants or subcontractors comply with this requirement.
4. **Employers’ Liability** insurance with a limit of no less than \$500,000 for each accident.
5. **Professional Liability** insurance with limits of no less than \$2,000,000 per occurrence and \$2,000,000 aggregate and subject to no more than \$10,000 per claim deductible. Consultant shall maintain professional liability coverage through completion of construction of the Project and two years thereafter.

City reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.

B. DEDUCTIBLES AND SELF-INSURANCE RETENTION. Consultant shall inform City in writing if any deductibles or self-insured retention exceeds \$10,000. At its sole discretion, City may (1) accept the higher deductible, (2) require Consultant to insure such deductibles or self-insured retention as respects City, its consultants, councilors, officers, directors, officials, employees, agents, representatives, and volunteers, or (3) require Consultant to provide a surety bond guaranteeing Consultant’s payment of deductible or self-insured losses and related investigations, claim administration, and defense expenses.

C. OTHER INSURANCE PROVISION. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. City and its consultants, councilors, officers, directors, officials, employees, agents, representatives, and volunteers (“Additional Insureds”) are to be covered as Additional Insureds with respect to liability arising out of activities performed by or on behalf of Consultant; work product and completed operations of Consultant; premises owned, occupied, or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage will contain no special limitations on the scope of protection afforded to the Additional Insureds.

2. For any claims related to the Project, Consultant's insurance coverage shall be the primary insurance with respect to the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of Consultant's insurance and not contributory.
3. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, will not affect coverage provided to the Additional Insureds.
4. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage will not be suspended, voided, or canceled by either party, or reduced in coverage or in limits, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to City.

D. ACCEPTABILITY OF INSURERS. Insurance shall be placed with insurers admitted in Oregon with a current A.M. Best's rating and FSC no lower than A-VII. Consultant shall inform City in writing if any of its insurers have a rating and FSC lower than A-VII. At its sole discretion, City may (1) accept the lower rating or (2) require Consultant to procure insurance from another insurer.

E. VERIFICATION OF COVERAGE. Consultant shall furnish City with:

1. Certificates of insurance showing maintenance of the required insurance coverage; and
2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements shall be received and approved by City before Services commence.

EXHIBIT C
SCOPE OF WORK

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) is made as of June 8, 2023 (the “**Effective Date**”), by and between the City of Manzanita, an Oregon municipal corporation (“**Seller**”), and Cove Built LLC, an Oregon limited liability company (“**Buyer**”).

RECITALS

A. Seller is the owner of improved real property, located at 543 Laneda Ave., Manzanita, County of Tillamook, State of Oregon.

B. Buyer desires to purchase the real property and Seller desires to sell the real property on the terms and conditions contained in this Agreement.

C. Buyer and Seller have included a legal description of the real property in Exhibit A to this Agreement. Buyer and Seller will amend this Agreement to replace the current legal description set forth in Exhibit A with the legal description included in the Title Report (described in Section 4.1) once Seller receives the Title Report. Additionally, Buyer and Seller will update and amend Exhibit B to this Agreement to include the legal description included in the Title Report once Seller receives the Title Report.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, the parties hereby agree to the terms and provisions of the Agreement as follows:

1. **PURCHASE AND SALE OF PROPERTY.** Seller hereby agrees to sell, convey and deliver to Buyer, and Buyer hereby agrees to purchase from Seller, subject to all the terms and conditions hereof, the following:

1.1. **Land.** The Land described on Exhibit A attached hereto and made a part hereof (“**Land**”).

(a) Appurtenances. All rights, privileges and easements appurtenant to the Land, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the Land (to the extent owned by Seller) as well as all development rights, air rights, water rights and water stock relating to the Land, and any other easements, rightsofway or appurtenances used in connection with the beneficial use and enjoyment of the Land (collectively referred to as the “**Appurtenances**”); and

(b) Improvements. All improvements and fixtures located on the Land, including, without limitation, all buildings and fixtures as well as all apparatus, equipment and appliances used in connection with the operation or occupancy thereof, such as heating and air conditioning systems and facilities used to provide any utility services, parking, refrigeration, ventilation, trash disposal, or other services thereto (collectively referred to as the “**Improvements**”).

1.2. **Property.** All of the items described in Section 1.1 above are hereinafter collectively referred to as the “**Property**.”

2. **PURCHASE PRICE; DEPOSITS.**

2.1. **Purchase Price.** The total purchase price to be paid by Buyer to Seller for the purchase of the Property is Six Hundred Seventy-Five Thousand Dollars (\$675,000) (“**Purchase Price**”). The Purchase Price shall be paid on the Closing Date (defined in Section 9.1 herein), subject to

the adjustments and prorations provided for herein, by wire transfer of funds such that the proceeds of which are immediately available at Closing (defined in Section 9.1 hereof) and shall be paid as set forth below.

2.2. **Deposit.** Within three (3) business days after the Effective Date, Seller shall open escrow with the Escrow Agent (“Escrow”). Within seven (7) days after the Effective Date, Buyer shall deposit with Escrow Agent the sum of Thirty-Three Thousand, Seven Hundred Fifty Dollars (\$33,750) (the “**Initial Deposit**”). Within thirty (30) business days after the Effective Date, Buyer shall deposit with Escrow Agent the sum of One Hundred One Thousand, Two Hundred Fifty Dollars (\$101,250.00) (the “**Subsequent Deposit**”). The Initial Deposit, together with the Subsequent Deposit, shall be referred to collectively as the “**Deposits**”. The Deposits shall either be returned to Buyer, applied for Buyer’s benefit against the Purchase Price at Closing, or released to Seller as liquidated damages as required herein. For purposes of this Agreement, the Escrow Agent is Ticor Title Company of Oregon, an Oregon corporation, having its address at 507 Laneda Ave, Manzanita, OR 97130.

2.3. **Balance.** Buyer shall deposit with Escrow Agent on the Closing Date subject to the adjustments and prorations provided for herein, the remaining unpaid balance of the Purchase Price by wire transfer of immediately available funds.

2.4. **Interest.** Any interest on the Deposit prior to the Closing Date shall accrue for the benefit of Buyer and shall be applied against Buyer’s obligation to deliver the Purchase Price.

3. **SELLER DELIVERABLES; BUYER’S DUE DILIGENCE.**

3.1. **Seller Deliverables.** Seller shall deliver to Buyer, at Seller’s sole expense and within five (5) days from the Effective Date the following documents, provided that they are in the Seller’s possession:

(a) a schedule of all building permits, surveys, certificates of occupancy and all of the governmental licenses and permits regarding the prior and present use concerning the Property together with true and complete copies of same;

(b) copies of all soil reports, geological reports, engineering studies, environmental reports, construction plans, change orders, payment certificates, completion guaranties for the Property which are in Seller’s possession and without representation or warranty with respect to the accuracy thereof;

(c) such other documents and instruments regarding the Property as Buyer may reasonably request, which Seller shall also promptly deliver to Buyer.

3.2. **Buyer Entry for Due Diligence.** At any time and from time to time prior to Closing, Seller shall permit Buyer, through its employees, contractors, subcontractors, representatives, and agents, to enter on and in the Property for the purpose of having the Property inspected by one or more licensed professionals of Buyer’s choice, provided that Buyer provides Seller with an insurance certificate evidencing liability insurance coverage for any physical inspection of the Property before Buyer enters onto the property to perform the inspection. Any inspection work shall be at the sole cost and expense of Buyer. Buyer shall, prior to entry onto the Property, coordinate its timing of entry with Seller. Buyer shall obtain Seller’s prior consent to the location of any proposed invasive inspections that may include testing or removal of any portion of the Property, such consent not to be unreasonably withheld. Buyer shall be responsible and pay for

all damages caused to the Property or any other property or any person by reason of its said activities and shall indemnify and hold Seller harmless from and against all claims, damages, costs and expenses of every nature and kind (including attorneys' reasonable fees) incurred by Seller by reason of said activities.

3.3. **Due Diligence Period.** For purposes of this Agreement, the fifty-five (55) day period commencing upon the Effective Date shall be referred to herein as the "**Due Diligence Period.**" It is agreed that Buyer's obligations hereunder are conditioned upon Buyer being satisfied, in Buyer's sole discretion, within the Due Diligence Period, with the Buyer's inspection of the Property. On or before the expiration of the Due Diligence Period, Buyer shall either: (i) provide Seller with written notice that it is satisfied with the condition of the Property and elects to proceed with the purchase of the Property; or (ii) provide Seller with written notice that it is not satisfied with the condition of the Property and therefore elects to terminate this Agreement. If Buyer fails to provide Seller with written notice of Buyer's election by the expiration of the Due Diligence Period, Buyer shall be deemed to have elected to terminate this Agreement. In the event that Buyer elects (or is deemed to have elected) to terminate the Agreement, the Deposits shall be refunded to Buyer and this Agreement shall be null and void and of no further force or effect with Buyer and Seller having no further rights, obligations or liabilities hereunder except as otherwise set forth herein.

4. **TITLE AND SURVEY REVIEW; TITLE INSURANCE.**

4.1. **Title Insurance.** Seller shall cause Title Company to deliver to Buyer a current preliminary title report together with a copy of each document referred therein (collectively, the "**Title Report**"), for purposes of allowing Buyer to review the condition of title to the Property and to obtain an ALTA standard coverage owner's title insurance policy (and all title endorsements required by Buyer) within ten (10) business days of the Effective Date (the "**Title Policy**"), insuring in Buyer fee simple title to the Property in an amount equal to the Purchase Price, which title insurance policy shall be issued by Escrow Agent. The Title Policy shall show marketable fee simple title to the Property to be vested in Seller, subject only to current real estate taxes and assessments not yet due and payable, and any additional exceptions or encumbrances consented to in writing by Buyer in the manner described herein.

4.2. **Survey.** Should Buyer wish to obtain extended coverage for the Title Policy, Buyer may obtain an ALTA survey of the Property at its sole cost and expense ("**Survey**") performed or updated within three (3) months prior to the Closing Date, in connection with evaluating the Property and obtaining the Title Policy, which survey shall be prepared by a licensed surveyor to the Escrow Agent's standards for an extended coverage owner's policy, showing the legal description and boundary lines of and Improvements on the Land and easements of record and any Improvements, poles, structures and things located within ten (10) feet on either side of the boundary lines of the Land. Buyer must obtain the Survey within forty (40) days after the Effective Date. In the event that Buyer is not satisfied with the results of the Survey and so notifies Seller, Buyer may terminate this Agreement by written notice to Seller within seven (7) days after receipt by Buyer of the Survey (the "**Contingency Removal Date**"), in which event Buyer and Seller shall be discharged from all further obligations hereunder and any items or funds held by Escrow Agent shall be returned to the party depositing such items or funds.

4.3. **Title and Survey Exceptions.** Any title exceptions or encumbrances not permitted hereunder, and any matters shown, or not shown but required by this Agreement to be shown, on the Title Report, or the Survey to which Buyer objects shall be deemed "**Unapproved Title Exceptions**". Buyer shall notify Seller within ten (10) days of receiving the Title Report that title

to the Property will not be subject to any Unapproved Title Exceptions and will identify same to Seller in writing. If Buyer fails to notify Seller of any Unapproved Title Exemptions within ten (10) days of receiving the Title Report, Buyer waives the right to claim that the Property will not be subject to any Unapproved Title Exemptions. If Buyer so notifies Seller of any Unapproved Title Exceptions, Seller shall have five (5) days from receipt of Buyer's notice to determine whether Seller will cure or remove any of the Unapproved Title Exceptions and to notify Seller of its determination. Seller shall then have until three (3) business days before the completion of the Due Diligence Period to cure or remove the Unapproved Title Exceptions in a manner satisfactory to Buyer. If (a) Seller fails to notify Buyer of its determination to remove or cure Unapproved Title Exemptions; (b) Buyer objects to Seller's determination within five (5) days of receiving the determination; or (c) Seller fails to cure or remove such Unapproved Title Exceptions within the period of time permitted under this Section 4.3 (except for monetary liens which Seller agrees to remove on or before the Closing Date), Buyer shall have the right to: (a) waive such objections and proceed to close; or (b) terminate this Agreement by written notice to Seller. In the event of termination as provided for in this Section 4.3, Buyer and Seller shall be discharged from all further obligations and the Deposit with interest thereon shall be returned to Buyer. Title exceptions, encumbrances, and matters shown or not shown on the Title Report or the Survey that are permitted under this Agreement, that Buyer does not object to, or that are not otherwise Unapproved Title Exemptions shall be deemed "Permitted Exceptions."

5. **SELLER'S REPRESENTATIONS AND WARRANTIES.** Seller hereby represents and warrants to Buyer as follows:

5.1. **Organization.** Seller is a duly organized and validly existing municipality in good standing under the laws of the State of Oregon. Seller has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transactions contemplated hereby. The individuals executing this Agreement and the instruments referenced herein on behalf of Seller hereby represent and warrant that they have the power, right and authority to bind Seller.

5.2. **Actions.** All requisite action has been taken by Seller and all requisite consents and approvals have been obtained in connection with the entering into of this Agreement and the instruments and documents referenced herein, and the consummation of the transactions contemplated hereby, and no consent or approvals of any other party is required.

5.3. **Title.** Seller owns fee simple title to all the Property for Seller to convey title to the Property to Buyer.

5.4. **Binding Obligations.** This Agreement is, and the other Closing documents shall be at the time of their execution and delivery, legal, valid, and binding obligations of Seller and at the Closing shall be sufficient to convey title.

5.5. **Fixtures.** No fixtures, equipment or Personal Property included in this sale shall be removed from the Property prior to Closing. Unattached furniture is not included in this sale.

5.6. **Buyer's Election.** Should any of the representations and warranties set forth in this Section 5 be inaccurate or untrue, Buyer shall have the option, prior to the Closing and as its exclusive remedy, of: (a) closing subject thereto; or (b) terminating this Agreement and receiving the prompt return of all Deposits and other funds paid to Escrow Agent or Seller, and the parties hereto shall be released from further liability and obligation hereunder except for those obligations expressly stated to survive a termination of this Agreement.

- 5.7. **Discovery of New Information.** If prior to Closing, Seller discovers any information or facts that would materially change the representations and warranties of Seller contained herein, Seller shall immediately give written notice to Buyer of those facts and information.
6. **BUYER'S REPRESENTATIONS AND WARRANTIES.** Buyer hereby represents and warrants to Seller as follows:
- 6.1. **Organization.** Buyer is a duly organized, validly existing limited liability company in good standing under the laws of the State of Oregon. Buyer has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transactions contemplated hereby. The individuals executing this Agreement and the instruments referenced herein on behalf of Buyer hereby represent and warrant that they have the power, right and authority to bind Buyer.
- 6.2. **Actions.** All requisite action has been taken by Buyer and all requisite consents have been obtained in connection with the entering into of this Agreement and the instruments and documents referenced herein, and the consummation of the transactions contemplated hereby, and no consent of any other party is required.
- 6.3. **No Conflict.** The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and compliance with the terms of this Agreement shall not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any instrument or agreement to which Buyer is a party.
7. **CONDITIONS OF CLOSING.** Buyer's obligation to close the transaction contemplated by this Agreement is subject to the satisfaction of each of the following conditions precedent (any of which Buyer shall have the right to waive in writing). If any of such conditions are not fulfilled pursuant to the terms of this Agreement, Buyer shall have the right to elect to terminate this Agreement by written notice to Seller and, upon such election, Seller and Buyer shall be released from further obligation and liability hereunder, except as otherwise expressly provided herein, and Buyer shall receive a full refund from Seller and Escrow Agent of all Deposits paid to Seller or Escrow Agent, together with all interest thereon. Closing shall constitute approval by Buyer of all matters with respect to which Buyer has a right of approval and waiver of all conditions.
- 7.1. **Seller Representations.** Seller's representations and warranties made herein shall be true and correct, now and at Closing, and Seller shall execute and deliver a certificate reaffirming the truth and accuracy of such representations and warranties as of the Closing Date.
- 7.2. **Seller's Obligations.** Seller shall have performed all covenants, agreements, and obligations and complied with all conditions required by this Agreement to be performed or complied with by Seller prior to the Closing Date, and no default hereunder by Seller shall have occurred or be occurring.
- 7.3. **Title Evidence.** The issuance by the Escrow Agent of the Title Policy dated as of the Closing Date, with liability in the amount of the Purchase Price insuring Buyer's interest in the Property subject only to (a) property taxes and assessments not delinquent; and (b) the Permitted Exceptions. Notwithstanding anything herein to the contrary, Seller shall remove or cause to be removed, any and all monetary liens and encumbrances against the Property (except for non-delinquent real property taxes) prior to the Closing.

7.4. **Satisfaction or Waiver of Buyer's Contingency.** Buyer's satisfaction, in its sole discretion, within the Due Diligence Period, with its inspection of the Property.

7.5. **Financing.** Within sixty (60) days of the Effective Date, Buyer qualifies for a financing of the Purchase Price or any portion thereof (the "**Loan**") with the lender that submitted the Letter of Interest attached as Exhibit C (the "**Lender**"), and the Lender's appraisal of the Property is not less than the Purchase Price. Buyer must, however, complete the following to be entitled to this condition of closing:

(a) Buyer must promptly submit to the Lender a completed loan application for purchase of the Property, and

(b) Buyer must thereafter complete all paperwork requested by the Lender, including payment of all application, appraisal, and processing fees to obtain the Loan, and

(c) Buyer must authorize the Lender to provide non-confidential information to Buyer and Seller's agents regarding the Loan's application status.

8. **PROPERTY SOLD "AS-IS".** As of the Closing Date, Buyer represents and warrants to Seller that Buyer has independently and personally inspected the Property and Improvements, if any, and that Buyer has entered into this Agreement based upon such personal examination and inspection. Buyer agrees that Buyer will accept the Property, at Closing, in its then condition AS-IS, AND WHERE IS, but subject to the representations, warranties and guaranties provided by Seller to Buyer pursuant to this Agreement.

9. **CLOSING AND PRORATIONS; POSSESSION AT CLOSING.**

9.1. **Closing Date.** The consummation of the sale of the Property to Buyer (the "**Closing**") shall take place on or about August 7, 2023, or such other date as the parties hereto may agree upon in writing (the "**Closing Date**"). Buyer may, however, extend the Closing Date by one time for a period of fifteen (15) days upon prior written notice to the Seller. The Closing shall take place at the Escrow Agent's place of business set forth above, unless otherwise agreed to in writing by Buyer and Seller.

9.2. **Escrow and Other Costs.** All costs of the Closing and impounds are to be paid, allocated or prorated as follows:

(a) Paid by Seller:

(i) Seller's broker fees pursuant to the agreement between Seller and Seller's Broker;

(ii) Buyer's broker fees pursuant to the agreement between Buyer and Buyer's Broker;

(iii) One-half of the escrow fee;

(iv) Costs of recording the Deed;

(v) Any reconveyance or recording fees or relating to existing deeds of trust;

(vi) Seller's own attorneys' fees;

- (vii) The standard owner's coverage premium for the Title Policy described herein; and
 - (viii) All other expenses customarily charged to Seller or as otherwise provided herein.
- (b) Paid by Buyer:
- (i) One-half of the escrow fee;
 - (ii) Additional premiums for the Title Policy in excess of the standard owner policy premium and any additional endorsements required by Buyer;
 - (iii) Expenses incurred in studying the feasibility of the Property for Buyer's use;
 - (iv) Buyer's own attorneys' fees; and
 - (v) All other expenses customarily charged to Buyer or as otherwise provided herein.

9.3. **Taxes and Assessments.** At Closing, Seller shall pay or credit to the Purchase Price all delinquent taxes, including penalties and interest, and all assessments which are a lien on the Closing Date. At Closing, Seller shall also pay or credit against the balance of the Purchase Price, all other unpaid real estate taxes, including penalties and interest for such taxes, which are past due for years prior to Closing and a portion of such taxes for the year of Closing, prorated through date of Closing and based on a 365 day year and, if undetermined, on the most recent available tax rate and valuation, giving effect to applicable exemptions, change in valuation, and similar factors, whether or not certified.

9.4. **Prorations.** All items of income and expense, if any (except real property taxes) shall be prorated between Buyer and Seller through Escrow as of the Closing Date in accordance with customary Oregon practices, except as expressly set forth herein. Seller shall pay all amounts due thereunder which accrue prior to the Closing Date and Buyer shall pay all amounts accruing on the Closing Date and thereafter. If such prorations, including reimbursement of taxes pursuant to Section 9.3 above, result in a net credit to Buyer, that credit shall be applied to the Purchase Price. If such prorations result in a net credit to Seller, Buyer shall pay the amount of such credit to Seller through Escrow at the Closing in cash or other immediately available funds. Seller shall be entitled to retain all refunds payable in connection with the cancellation of Seller's insurance policies. Prior to the Closing, Buyer and Seller shall agree upon and provide Escrow Agent with an estimate of the Closing prorations based upon the most currently available information and Escrow Agent shall be entitled to rely thereon. Buyer and Seller shall, if necessary, adjust such prorations, outside of Escrow following the Closing so that amounts which relate or are attributable to the period prior to the Closing shall be paid or received, as the case may be, by Seller and amounts which relate or are attributable to the period on or after the Closing shall be paid or received, as the case may be, by Buyer.

9.5. **Possession.** Possession of the Property shall be delivered to Buyer on the Closing Date.

10. **CLOSING DOCUMENTS.** On the Closing Date, Seller and Buyer shall deliver or cause to be delivered to each other the following documents, all of which shall be duly executed and acknowledged (where appropriate):

10.1. **Seller's Deliveries.** Seller shall deliver or cause to be delivered to Buyer through Escrow Agent all of the following:

(a) Deed. A bargain and sale deed (“**Deed**”), in the form attached hereto as Exhibit B in recordable form, conveying marketable fee simple title to the Property to Buyer.

(b) Plans and Reports. To the extent they are then in Seller's possession, and have not heretofore been delivered to Buyer, the surveys, soil reports, geological reports, engineering studies, traffic studies, development feasibility studies, environmental reports and assessments, wetlands reports, plans and specifications and/or any other similar studies or information describing the condition and development potential for the Property.

(c) Warranties. All unexpired warranties and guarantees which Seller has received in connection with any work or services performed with respect to, or equipment installed in, the Improvements on the Property, together with duly executed assignments to Buyer thereof, if same are assignable and if such assignments are required by the terms thereof in order for same to run to Buyer.

(d) Keys. All keys and security codes (properly tagged for identification) for all Improvements on the Property in Seller's possession.

(e) Additional Documents. Such additional documents as might be reasonably required by Buyer to consummate the purchase of the Property.

(f) Funds. Seller's share of the Closing costs, plus or minus any other adjustments or prorations required herein.

10.2. **Buyer's Deliveries.** Buyer shall deliver or cause to be delivered through Escrow Agent to Seller all of the following:

(a) Funds. The unpaid balance of the Purchase Price for the Property, plus Buyer's share of the Closing costs, less any adjustments or prorations.

(b) Additional Documents. Such documents as might be reasonably required by Seller to consummate the sale of the Property.

11. **CASUALTY LOSS; CONDEMNATION.** If prior to the Closing Date any portion of the Property is taken by condemnation or eminent domain or damaged or destroyed by fire or other casualty, neither party shall have the right to cancel this Agreement. Buyer shall purchase the Property in accordance with this Agreement, and the Purchase Price shall not be reduced; provided, however, that Seller's rights to any award resulting from such taking or any insurance proceeds resulting from such fire or other casualty (less any reasonable sums expended by Seller for repair or restoration through the Closing Date) shall be assigned by Seller to Buyer at the Closing. Buyer and Seller hereby irrevocably waive the provision of any statute that provides for a different outcome or treatment in the event the Property shall be taken or damaged or destroyed by fire or other casualty.

12. **DEFAULT; REMEDY.**

12.1. **Buyer's Default; Seller's Liquidated Damages.** If Seller has met all of Seller's obligations, conditions and covenants set forth herein which relate to the performance by Seller, and if Buyer should thereafter fail to close pursuant to the terms and conditions of this Agreement

and the time to cure has expired, Seller shall be entitled to receive and retain, as liquidated damages, the Deposits retained by Escrow Agent and any interest accrued thereon. The parties acknowledge that said sum is fair and reasonable in light of all of the circumstances existing on the Effective Date, including the parties' estimation of the possible range of damages to Seller in the event of such default or breach by Buyer, the parties hereto hereby agreeing that the damages to Seller in the event of Buyer's default or breach would be impossible to accurately determine and that proof of the amount of such damages would be costly and inconvenient. Such liquidated damages shall be Seller's sole and exclusive remedy for Buyer's default or breach and Buyer shall have no other or further obligation or liability under this Agreement to Seller on account of such default or breach. Seller and Buyer hereby agree, and so instruct Escrow Agent.

12.2. Seller's Default; Buyer's Remedy. If Seller shall default in the performance of any obligation imposed upon Seller this Agreement, including the breach of any representation or warranty set forth herein, and Buyer is ready, willing, and able to close in accordance with the terms, provisions, and conditions of this Agreement and the Closing does not occur as a result thereof, Buyer's may elect to either (a) receive the Deposits plus any accrued interest thereon and Buyer's actual costs relating to the Title Commitment and Survey, if any or (b) file a claim against the Seller for specific performance. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Seller be liable to Buyer for any damages of any kind whatsoever.

13. MISCELLANEOUS.

13.1. Notice. Any notice, demand or request is required or permitted hereunder shall be made in writing and shall be deemed given and received (a) when delivered, if delivered by hand, (b) when delivered if sent by email transmission and the recipient acknowledges receipt by email, and (c) when delivered or refused if sent by an overnight courier service to the persons and addresses listed below:

If to Seller:

City of Manzanita

167 S 5th St.

Manzanita, OR, 97130

Attn: Leila Aman, City Manager

cc: Jackie Weber, Windmere Realty Trust

255 N Hemlock Bl

Po Box 186

Cannon Beach, OR 97110

If to Buyer:

Cove Built LLC

79117 Tide Rd, Arch Cape OR 97102

Attn: Jason Stegner

cc: Ted Tanner, Keller Williams Realty Sunset Corridor

41385 Anderson Rd, Nehalem, OR 97131

Seller or Buyer may at any time change their addresses for notification purposes by giving written notice of such change to the other parties at the notice address.

13.2. **Entire Agreement.** This Agreement constitutes the entire agreement between Buyer and Seller with respect to the purchase and sale of the Property and there are no agreements, understandings, warranties, or representations between Buyer and Seller except as set forth herein. This Agreement cannot be amended except in a writing executed by Buyer and Seller.

13.3. **Section and Other Headings.** The section and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

13.4. **Schedules; Exhibits; Addenda.** All schedules, exhibits, and addenda to which references are made in this Agreement are incorporated in this Agreement by the respective references to them, including, but not limited to the following:

Exhibit A: Description of Land

Exhibit B: Deed

Exhibit C: Letter of Interest

13.5. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns and other legal representatives, but this Agreement shall not be assignable by any party without the express written consent of the other party hereto. Notwithstanding anything to the contrary in this Agreement, Buyer may assign its rights to any wholly owned limited liability company or limited liability company with the same members as Buyer, which may be existing at the time of this Agreement or at any time prior to Closing (the "Permitted Assignment"). Any assignment by Buyer, including the Permitted Assignment, will not release the Buyer from its liabilities and obligations under this Agreement.

13.6. **Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other person other than the parties hereto and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third parties any right of subrogation or

action over or against any party to this Agreement. This Agreement is not intended to and does not create any third-party beneficiary rights whatsoever.

13.7. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Oregon.

13.8. **Survives Closing.** Buyer's obligations set forth in the last sentence of Section 3.2 of this Agreement shall survive the Closing.

13.9. **Timing.** Time is of the essence in this Agreement. If the final date of any period of time set forth herein occurs on a Saturday, Sunday, or legal holiday, then the expiration of the period of time will be postponed to the next day that is not a Saturday, Sunday, or legal holiday.

13.10. **Brokerage.**

(a) Seller's Broker is: Jackie Weber, Windermere Realty Trust. Buyer's Broker is: Ted Tanner, Keller Williams Realty Sunset Corridor.

(b) Seller has not entered into, and will not enter into, any agreement or arrangement with any person which will result in the obligation of any party to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated under this Agreement, except for the arrangement between Seller and Seller's Broker identified in subsection (a) above, pursuant to which Seller's Broker will receive payment of its fee from Seller. Subject to the limitations of the Oregon Constitution and the Tort Claims Act, Seller agrees to indemnify and hold Buyer harmless from all expenses whatsoever incurred by Buyer in connection with any claim made by any broker (other than Seller's Broker), with whom Seller has dealt. Buyer has not entered into, and will not enter into, any agreement or arrangement with any person which will result in the obligation of any party to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated under this Agreement, except for the arrangement between Buyer and Buyer's Broker identified in subsection (a) above. Seller shall pay Buyer's Broker fee as set forth in the agreement between Buyer and Buyer's Broker when due. Buyer agrees to indemnify and hold Seller harmless from all expenses whatsoever incurred by Seller in connection with any claim made by any broker (other than Buyer's Broker) with whom Buyer has dealt.

13.11. **Attorneys' Fees.** In the event either Buyer or Seller brings any suit or other proceeding with respect to any matter in regard to or enforcement of this Agreement, the prevailing party shall, in addition to such other relief as may be awarded, be entitled to recover its reasonable attorneys' fees, expenses and costs of investigation as actually incurred as determined by the court or arbitrator at arbitration or trial or on any appeal or review.

13.12. **Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Electronic signatures will be deemed original signatures for the purposes of execution hereof.

13.13. **Severability.** The invalidity or unenforceability of any one or more phrases, sentences, clauses, or sections in this Agreement, shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part thereof.

13.14. **Digital Signatures.** Buyer and Seller agree that signature pages executed by each of them and transmitted by fax or email to each other shall be an effective manner of executing this Agreement and any amendments thereto.

13.15. **Statutory Notice.** The following is made a part of this Agreement as required by Oregon law, but shall not diminish any warranty or any other provision of this Agreement:

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

[signatures on following page]

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the Effective Date

“SELLER”

City of Manzanita

By: _____

Name: _____

Title: _____

“BUYER”

Cove Built LLC, an Oregon limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A

LEGAL DESCRIPTION

All of Lot Numbered Fourteen (14), Block Numbered One (1), Manzanita Beach, Tillamook County, Oregon, as shown on the maps and plat of said Manzanita Beach, on file and record in the office of the County Recorder, Tillamook County, State of Oregon.

Subject to restrictions contained in deed recorded in Book 85, page 361 Deed Records of Tillamook County, and reservations contained in plat of Manzanita Beach.

Lot 15, Block 1, MANZANITA BEACH.

SUBJECT TO:

1. Reservation in plat of Manzanita Beach of exclusive right to install, operate and maintain, use and dispose over, under or along said streets and highways, systems for the distribution of water, light, heat or power, electric systems for telephone or telegraph and railway tracks.
2. Conditions and restrictions contained in that instrument entitled Statement of Intent with respect to Conditions and Restrictions, recorded February 25, 1957, in Book 156, page 481, Deed Records.
3. Perpetual easement to install coaxial cables for television reception within streets, avenues and roadway granted by Ben S. Lana to H. E. Prickett and Bessie P. Prickett, doing business as Prickett's Radio and TV, recorded August 15, 1960, in Book 172, page 365, Deed Records.

EXHIBIT B

DEED

After recording, return to:

[
]
[
]
[
]

**Until a change is requested,
all tax statements shall be sent to:**

[
]
[
]
[
]

Attn: _____

STATUTORY BARGAIN AND SALE DEED

The City of Manzanita, as Grantor, conveys to Cove Built LLC, an Oregon limited liability company, as Grantee, the following real property situated in the County of Tillamook, State of Oregon:

[INSERT DESCRIPTION]

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

The true consideration for this conveyance is \$675,000.

[Signature and notary acknowledgement on following page.]

Dated this ____ day of _____, 2023.

GRANTOR:

City of Manzanita

By: _____
Name: _____
Title: _____

STATE OF OREGON)
) ss.
County of _____)

This record was acknowledged before me on this ____ day of _____, 2023, by _____
as _____, of _____.

Notary Public for the State of Oregon
My Commission Expires: _____

EXHIBIT C

LETTER OF INTENT



Astoria Branch
987 Duane Street
Astoria, OR 97103
503.325.3811

usbank.com

April 25th, 2023

Cove Built LLC
79117 Tide Rd.
Arch Cape, OR 97102

Re: *Non-binding Commercial Credit Proposal*

Dear Mr. Jason Stegner

U.S. Bank National Association is pleased to consider your request to provide financing to Cove Built, LLC. A summary of some of the terms U.S. Bank is considering for this financing package is as follows:

- Fixed Rate Term Loan secured by commercial real estate
- Amount: \$540,000, or up to 80% of Purchase Price, or 80% of Appraised Value, whichever is lowest
- 5-year fixed rate term with a 20-25 year amortization
- Fixed Interest rate of 6.85% (4.85 COF + 2.00)

Fixed Rate Options

A fixed rate, based upon an indicative rate of 6.85% per annum as of 4/25/2023, such rate to be adjusted as of the date of funding so as to maintain the same margin over U.S. Bank's cost of funds as that which is included in the above indicative rate."

- Collateral
 - Real estate (and rents) located at 543 Laneda Avenue, Manzanita, OR 97130
- No Financial covenants
- Guarantors to include personal guaranty of Mr. Jason Stegner
- Waiver of U.S. Bank Origination/Closing Fee
- Borrower responsible for all third-party fees including but not limited to:
 - Appraisal Fee
 - Environmental Report Fees (if required)
 - Title Policy, Escrow, and Recording Fees
 - Attorney Fees (if applicable)

As we obtain more information, additional substantive conditions will be required and terms may be changed or be supplemented. In addition, upon completion of our analysis and due diligence and if we obtain credit approval of this proposal, we will prepare loan documentation which will include terms and conditions customary to U.S. Bank, as well as warranties and covenants specific to this transaction.

To that end, this letter is an expression of interest only. Except with respect to your obligation to reimburse U.S. Bank for expenses as provided below and not to disclose the contents of this letter except as permitted below, this letter is not a contract, commitment nor intent to be bound, and U.S. Bank does not intend that this letter or discussions relative to the terms of this letter create any legal rights, implicit or explicit, in your favor, nor is it intended to create any obligations on the part of U.S. Bank. Also, no oral discussions and/or written agreements shall be in place of or supersede written loan agreements executed by your business and accepted by U.S. Bank.

Please note that this proposal is for your review only. You may not disclose this letter or any of the terms contained in this letter to any third party other than your attorney, accountant and authorized agents representing you.

Thank you for discussing your financing needs with U.S. Bank. Should you wish us to continue to consider your credit request, you will be responsible for all of U.S. Bank's out-of-pocket expenses related to this financing request. Without limitation, these expenses may include expenses of appraisals, surveys, title insurance commitments, environmental assessments, background checks and/or collateral audits.

We look forward to the opportunity to consider your credit request. If you have any questions regarding this letter, please contact me at 503-791-0095.

Very truly yours,

U.S. BANK NATIONAL ASSOCIATION



Michael Salmi
Assistant Vice-President



City of Manzanita

COUNCIL RESOLUTION No. 23-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANZANITA, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE AND SALE AGREEMENT WITH JASON STEGNER, COVE BUILT LLC FOR 543 LANEDA

WHEREAS, the City Council of the City of Manzanita Authorized the City Manager to execute a Letter of Intent with Jason Stegner, Cove Built LLC (buyer) for the purchase of 543 Laneda for \$675,000; and

WHEREAS, the City Council of the City of Manzanita directed the City Manager to work with the City Attorney, the City’s Broker and the Buyer to reach a mutually agreeable Purchase and Sale Agreement; and

WHEREAS, the City Manager, City Attorney and Buyer have agreed to the Purchase and Sale Agreement attached to this Resolution as Exhibit A.

Now, Therefore, be it Resolved by the City Council of the City of Manzanita the City Council authorizes the City Manager to execute the Purchase and Sale Agreement for 543 Laneda in the amount of \$675,000.

Introduced and adopted by the City Council on _____.

This resolution is effective on _____.

Deb Simmons, Mayor

ATTEST:

Leila Aman, City Manager/ City
Recorder