6:00 p.m. WORK SESSION – URBAN RENEWAL FEASIBILITY STUDY

AGENDA FOR COUNCIL MEETING
KLAMATH FALLS CITY COUNCIL
APRIL 4, 2016
7:00 P.M.

Matters for Council consideration not scheduled on the Agenda can be addressed by the general public under the "Public Comment" section on the agenda. Testimony must be presented according to Council procedure. Items of a non-emergency nature may be scheduled for future Council determination in order to provide sufficient time to analyze the issue.

CALL TO ORDER AND ROLL CALL

PLEDGE OF ALLEGIANCE

PRESENTATION OF OREGON COMMUNITY TREES PRESIDENT'S AWARD TO PARKS MANAGER JOHN BELLON

PUBLIC COMMENT

1. CONSENT AGENDA

a. Approval of April 4, 2016 agenda and March 21, 2016 regular meeting minutes

b. Confirmation of Appointment of Brad Aspell and Todd Andres to the Klamath Falls Intercommunity Hospital Authority

LAND USE PUBLIC HEARING - QUASI JUDICIAL - NONE

LAND USE PUBLIC HEARING – LEGISLATIVE - NONE

GENERAL PUBLIC HEARING

2. LIQUOR LICENSE FOR ADDITIONAL PRIVILEGE OF OFF-PREMISES SALES FOR THAI ORCHID CAFE LOCATED AT 900 MAIN STREET

a. Report of Planning Manager
b. Public Hearing
c. Move to make a recommendation to the OLCC for the allowance of additional privilege to allow Off-Premises Sales for the Thai Orchid Cafe located at 900 Main Street

LEGISLATIVE ACTION

3. AUTHORIZATION TO EXECUTE A CONSTRUCTION SERVICES CONTRACT WITH ANDERSON ENVIRONMENTAL CONTRACTING, LLC FOR THE BALSIGER SITE DEMOLITION PROJECT IN AN AMOUNT NOT-TO-EXCEED $91,842.83

a. Report of City Engineer
b. Move to authorize execution of a Construction Services Contract with Anderson Environmental Contracting, LLC for the Balsiger Site Demolition Project in an amount not-to-exceed $91,842.83.

4. AUTHORIZATION TO EXECUTE A CONSTRUCTION SERVICES CONTRACT WITH VIC RUSSELL CONSTRUCTION, INC. FOR THE JOHNSON AVENUE AND CRESCENT ALLEY SEWER LINE REPLACEMENT PROJECT IN AN AMOUNT NOT-TO-EXCEED $244,944.26

a. Report of City Engineer
b. Move to authorize execution of a Construction Services Contract with Vic Russell Construction, Inc. for the Johnson Avenue and Crescent Alley Sewer Line Replacement Project in an amount not-to-exceed $244,944.26.

5. AUTHORIZATION TO EXECUTE A CONSTRUCTION SERVICES CONTRACT WITH TOM AYRES GENERAL CONTRACTOR, INC. FOR THE MAIN STREET UNDERPASS HANDRAIL IMPROVEMENTS PROJECT IN AN AMOUNT NOT TO EXCEED $166,885

a. Report of City Engineer
b. Move to authorize a Construction Services Contract with Tom Ayres General Contractor, Inc. for the Main Street Underpass Handrail Improvements Project in an amount not-to-exceed $166,885

6. AUTHORIZATION TO ENTER INTO A CONSULTING SERVICES CONTRACT WITH STANTEC CONSULTING SERVICES, INC., TO SUBMIT AND PROVIDE IMPLEMENTATION ASSISTANCE FOR THE U.S. EPA AREA WIDE PLANNING GRANT PROGRAM

a. Report of Management Assistant
b. Move to authorize staff to enter into a Consultant Services Contract with Stantec Consulting Services, Inc., to submit and provide implementation assistance for the U.S. EPA Area Wide Planning Program

7. **ORDINANCE ADDING SECTIONS 8.175 TO 8.198 OF THE CITY CODE AND AMENDING SECTION 8.980 RELATING TO VACANT PROPERTY REGISTRATION – SECOND AND FINAL READING**

a. Move to pass the Ordinance by title for second and final reading
b. Move to adopt Ordinance

OTHER MATTERS

ADJOURNMENT

The City Council may recess/adjourn to Executive Session under ORS 192.660 as follows: ORS 192.660(2):
(a) - Employment of Public Officers, Employees
(b) - Discipline of Public Officers and Employees and Agents
(d) - Labor Negotiations
(e) - Real Property Transactions
(f) - Exempt Public Records
(g) - Trade Negotiations
(h) - Consultation with Legal Counsel
(i) - Performance Evaluations of Public Officers and Employees
(j) - Public Investments

*****AMERICANS WITH DISABILITIES ACT NOTICE*****
Please contact the City Recorder's office, Klamath Falls City Hall, 500 Klamath Avenue, Klamath Falls, OR 97601, or call 541.883.5316 at least 48 hours prior to the scheduled meeting time if you need an accommodation to participate in the meeting. The City's TTY/TDD number is 541.883.5324

MINUTES
KLAMATH FALLS CITY COUNCIL
March 21, 2016

A regular meeting of the Klamath Falls City Council was held in the Council Chambers on the above date at 7:00 p.m. Mayor Todd Kellstrom called the meeting to order.

Council members present:	Councilman Matt Dodson Councilman Dan Tofell Councilman Bud Hart Councilman Bill Adams Councilwoman Trish Seiler
City staff members present:	Nathan Cherpeski, City Manager Joanna Lyons-Antley, City Attorney Susan Kirby, Support Services Director John Barsalou, Airport Director Dave Henslee, Police Chief Scott Souders, City Engineer Joe Wall, Management Assistant John Bellon, Parks Superintendent Kristina Buckley, Assistant to the City Recorder

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

PRESENTATION OF SERVICE AWARD

Mayor Kellstrom presented Geoff LeGault of the Support Services, Finance Division with a Service Award in recognition of his 20 years of service to the City.

PROCLAMATION DECLARING THE MONTH OF APRIL 2016 CHILD ABUSE PREVENTION MONTH

Mayor Kellstrom presented Susan Heitkamp and Marlene White of Klamath & Lake County Action Services and Lori Winsinger and Jeremy Player from the Department of Human Services with a Proclamation declaring April 2016 as Child Abuse Prevention Month. Mr. Player stressed the importance of child abuse awareness.

PUBLIC COMMENT

Mayor Kellstrom opened the public comment. Hearing or seeing no one, he closed the public comment.

1. CONSENT AGENDA. Councilman Adams highlighted the hiring of a new Municipal Court Judge and another Pro Tem Judge. He noted both candidates were excellent and it was a tough choice between the two applicants and he was glad to see the City went through an audit with everything in relatively good shape.

Councilman Adams **moved to approve the Consent Agenda as follows: Approved the Consent Agenda for March 21, 2016; Approved the March 7, 2016 regular meeting minutes; Approved the hiring of Nathan Ratliff as Municipal Court Judge and Assigning Steven R. Hedlund as an Additional Pro Tem Judge Position; Approved the Annual Audit Reports for the City of Klamath Falls and the Klamath Falls Urban Renewal Agency for the Fiscal Year Ending June 30, 2015.** Councilwoman Seiler seconded. The motion carried unanimously with all Council members present voting aye.

LAND USE PUBLIC HEARING - QUASI JUDICIAL

There were no land use public hearing quasi-judicial matters.

LAND USE PUBLIC HEARING – LEGISLATIVE

There were no land use public hearing legislative matters.

GENERAL PUBLIC HEARING

There were no general public hearing matters.

LEGISLATIVE ACTION

2. CONSTRUCTION OF SUGARMAN'S CORNER, A DOWNTOWN POCKET PARK LOCATED AT THE CORNER OF MAIN STREET AND NORTH 6TH STREET. City Engineer Scott Souders reviewed his written report. Councilwoman Seiler asked if the proposed park construction had gone through the Parks Board process. Mr. Souders responded they had been advised. Councilwoman Seiler asked if they approved. Mr. Souders responded yes. Councilwoman Seiler stated the City was understaffed in Parks and in Engineering and she was concerned about the in-kind the City was proposing in terms of the amount of time taken away from other projects but it was a good investment and a good faith showing by the City in terms of getting the project done. It was good to see the project moving forward and she asked if there was adequate funding in Urban Renewal. Mr. Cherpeski responded yes. Councilwoman Seiler asked if there were any plans for a mural of some type on the adjacent wall. Mr. Souders explained it was not a mural but there was another group of community members working on art fundraising for the park including artwork along the wall of the adjacent building. He noted the building owner was cooperative and working on an easement for that. All of the City's Divisions were supporting the project and had gone out of the way to diversify the work amongst everyone and he had been assured they could meet the existing demands and assist in the project.

Councilman Dodson asked if the $61,000 of labor and equipment was included in $154,000. Mr. Souders responded the entire $154,000 was within the Downtown Urban Renewal reserves remaining and within that number was the amount of money City personnel would be utilizing. Councilman Dodson stated he was excited about how the project had worked out. He was glad Staff was comfortable enough to think outside the box to come up with a solution to get something on budget and he was looking forward to City Staff from all Departments showing the community what they can do. Hopefully the project would be something Staff could walk down Main Street years from now saying they helped build that rather than what the City hired out.

Councilwoman Seiler **moved to authorize staff to proceed with management and construction utilizing City Division resources and specialty trade subcontractors for Sugarman's Corner.** Councilman Adams seconded. The motion carried unanimously with all Council members present voting aye.

3. AUTHORIZATION TO EXECUTE A CONTRACT WITH HEAD PAINTING AND CONCRETE FOR CONCRETE WORK ON SUGARMAN'S CORNER IN THE AMOUNT OF $37,244.50. City Engineer Scott Souders reviewed his written report. Councilman Adams stated concrete work had become expensive but it was good to see the City moving forward on the project early in the season.

Councilman Adams **moved to authorize a Construction Services Contract with Head Painting and Concrete, Inc. for concrete work associated with Sugarman's Corner in the amount not-to-exceed of $37,244.50.** Councilman Tofell seconded. The motion carried unanimously with all Council members present voting aye.

4. ORDINANCE ADDING SECTIONS 8.175 TO 8.198 OF THE CITY CODE AND AMENDING SECTION 8.980 RELATING TO VACANT PROPERTY REGISTRATION – FIRST READING – Continued to 3/21/2016 Meeting. City Attorney Joanna Lyons-Antley reviewed her written report. Councilwoman Seiler stated she attended a meeting at the County Library to discuss Ewauna Heights and there were 40 to 50 people present, a City Code Enforcement officer as well as two Police Department representatives. They represented the City quite well and were very knowledgeable. She noted there was excellent communication between the City and the constituents who were concerned about the area. The property registration Ordinance should meet the concerns she heard voiced in the neighborhood.

Mayor Kellstrom opened the public comment. Hearing or seeing no one, he closed the public comment.

Councilman Tofell **moved to introduce the Ordinance by title for first reading.** Councilwoman Seiler seconded. The motion carried unanimously with all Council members present voting aye. City Manager Nathan Cherpeski read the Ordinance by title.

OTHER MATTERS

Authorization to submit Business Oregon, Brownfield Redevelopment Program Grant Application to assist with Lake Ewauna Trail Construction Costs. Management Assistant to the City Manager Joe Wall reviewed his written report. City Manager Nathan Cherpeski stated the City was not constructing the trail; rather it was being done by the Oregon Department of Transportation (ODOT). At some point when the City was planning the trail, it shifted over to ODOT's engineering and design and they kept sending the City iterations. The soil from the site could not be used on site but could be taken to the landfill.

Councilwoman Seiler asked if the grant process was very competitive and if so, if there was a backup plan if the funding was not approved. Mr. Wall responded ODOT partners advised him about the grant and recommended he reach out to Business Oregon who strongly urged him to apply. The individual over the grant had discretion over the funding and it was indicated this was a very strong application. He further stated there were a few contingency options and the City would receive a reduced tipping fee for disposal of the soil and the possibility of applying for Congestion Mitigation Air Quality (CMAQ) funds should none of the other applications be approved.

Councilwoman Seiler asked if the seven mile stretch of trail proposed for construction would extend to the OC&E Trail. Mr. Wall responded it would extend to the Wastewater Treatment Plant. Councilwoman Seiler stated there would still be a bit of work to be done to extend the trail to the connection with the OC&E Trail. Mr. Wall concurred.

Councilwoman Seiler **moved to authorize staff to submit a Business Oregon, Brownfield Redevelopment Program Grant Application to assist with Lake Ewauna Trail construction costs.** Councilman Dodson seconded. The motion carried unanimously with all Council members present voting aye.

ADJOURNMENT

Councilman Tofell **moved to adjourn the meeting.** Councilwoman Seiler seconded. The motion carried unanimously with all Council members present voting aye. The meeting was adjourned at 7:35 p.m.

_____

Kristina Buckley, Assistant to the City Recorder

KLAMATH FALLS CITY COUNCIL
AGENDA REPORT

Agenda Item No. 1b

Date: April 4, 2016

Department: Legal Department
Staff Presenter: Joanna Lyons-Antley
City Manager Review: _____

Contact/Title: Joanna Lyons-Antley/City Attorney
Telephone No.: 541-883-5323
Email: jlyons@ci.klamath-falls.or.us

TOPIC: Confirming Two Members to the Klamath Falls Intercommunity Hospital Authority Appointed by the Mayor

SUMMARY AND BACKGROUND:

The Klamath Falls Intercommunity Hospital Authority was established pursuant to State Law to allow Sky Lakes Hospital to obtain nontaxable bonds for improvements to the hospital through the City.

Resolution Numbers 2282 and 2295 established five directors for the Klamath Falls Intercommunity Hospital Authority and include a requirement that the City Council confirm all Hospital Authority appointments made by the Mayor. The Mayor recommends filling two vacancies with Brad Aspell and Todd Andres.

FINANCIAL IMPACT:

None

COUNCIL OPTIONS:

1. To confirm the appointments made by the Mayor; or
2. To reject the appointments.

DOCUMENTS ATTACHED:

- None

REQUESTED MOTION/ACTION:

- Move to confirm the Mayor's appointments of Brad Aspell and Todd Andres to the Klamath Falls Intercommunity Hospital Authority.

NOTICE SENT TO:

- Brad Aspell and Todd Andres
- Hospital Authority Board Members
- Attorney Barbara DiIaconi
- Paul Stewart – Sky Lakes Medical Center, Inc.

1b

KLAMATH FALLS CITY COUNCIL
AGENDA REPORT

Agenda Item No. 2

Date: April 4, 2016

Department: Public Works
Staff Presenter: Erik Nobel
City Manager Review: _____

Contact/Title: Erik Nobel, Planning Manager
Telephone No.: 541-883-5254
Email: nobel@klamathfalls.city

TOPIC: Liquor License for Additional Privilege of Off-Premises Sales for Thai Orchid Cafe Located at 900 Main Street

SUMMARY AND BACKGROUND:

Sithat Saliphan and Chanthala Xayavohg, in conjunction with Thai Orchid Café at 900 Main Street, are applying for additional privilege on their liquor license to allow Off Off-Premises Sales. This would allow the sale of malt beverages, wine, and cider to go in sealed containers.

This retail outlet has been in business at this location since 2006 according to business license records. The business location is zoned General Commercial within the Downtown Business Overlay Zone. The operation of a retail outlet is consistent with the zoning. The business will be open Sundays from 4 p.m. to 9 p.m. and on Monday through Saturday from 11 a.m. until 9 p.m.

The applicants wish to sell specialty beer in sealed containers to go with food orders. They currently are licensed for on-premises sales only.

FINANCIAL IMPACT:

There is no financial impact related to making a recommendation to OLCC.

COUNCIL OPTIONS:

1. Recommend to the OLCC for the allowance of additional privilege to allow Off-Premises Sales at Thai Orchid Cafe
2. Recommend not allowing the additional privilege allowing Off-Premises Sales at Thai Orchid Cafe

DOCUMENTS ATTACHED:

- Aerial Photo

RECOMMENDED MOTION/ACTION:

Move to make a recommendation to the OLCC for the allowance for the allowance of additional privilege to allow Off-Premises Sales for the Thai Orchid Cafe located at 900 Main Street.

NOTICE SENT TO:

Thai Orchid Cafe
900 Main Street
Klamath Falls, OR 97601

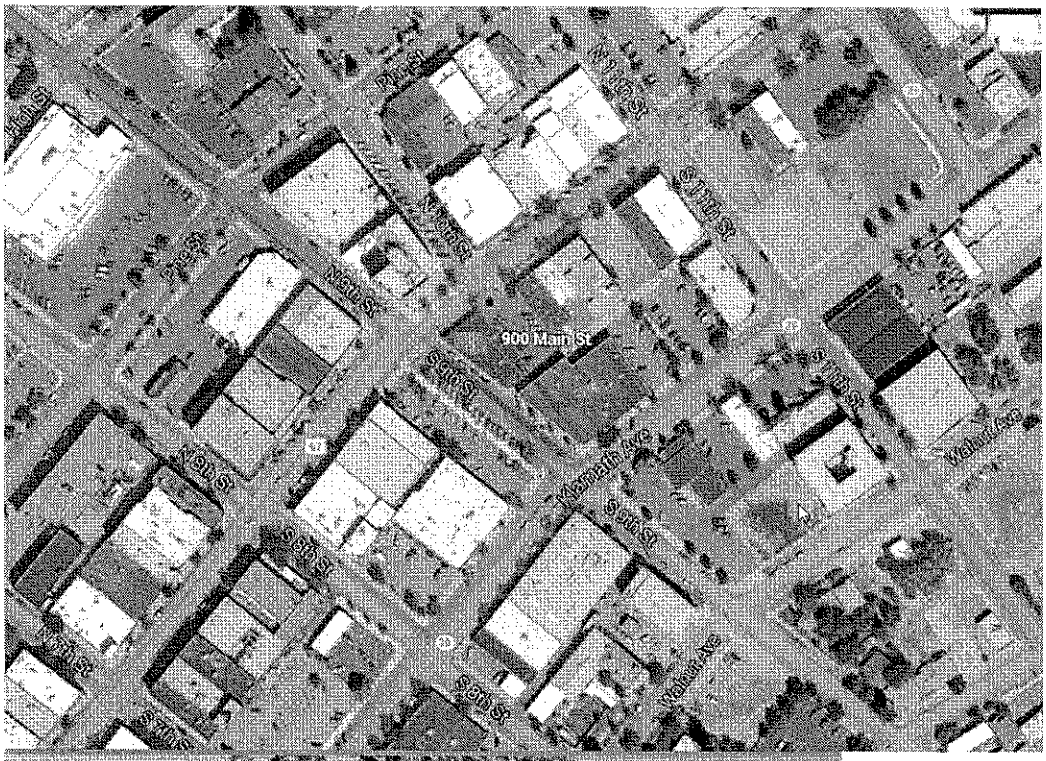
Lee and Cheryl Matchett
6412 Verda Vista Court
Klamath Falls, OR 97603

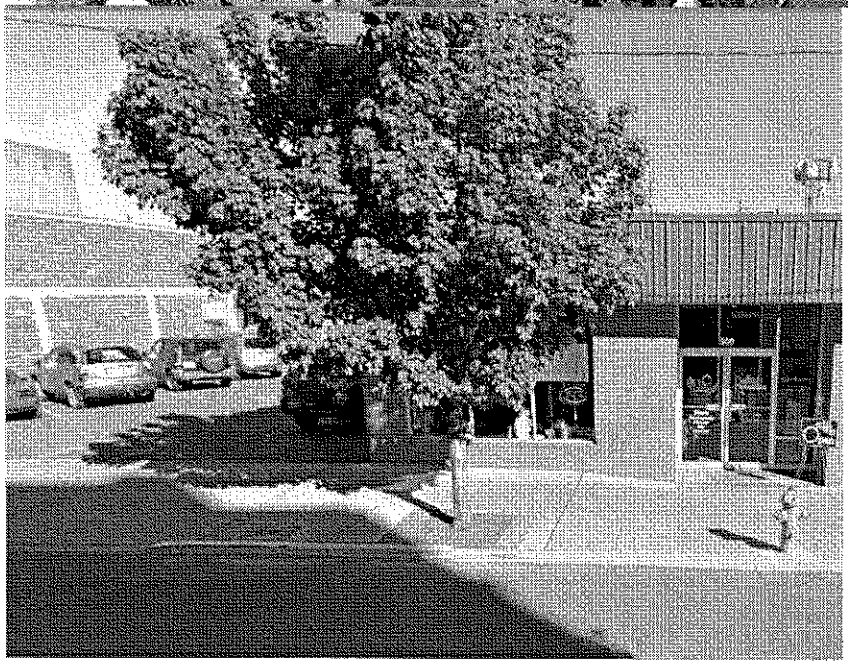
OLCC
Kent Oldham
107 S 7th Street
Klamath Falls, OR 96701

Klamath Falls Downtown Association
via email

The City of Klamath Falls Police Department was notified of the proposal and had no reason to deny the application.

Notice was also sent on March 16, 2016, to adjacent property owners within a 100-foot radius of the business location. No response has been received to date.





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KLAMATH FALLS CITY COUNCIL
AGENDA REPORT

Agenda Item No. 3

Date: April 4, 2016

Department: Public Works	Contact/Title: Scott Souders/City Engineer
Staff Presenter: Scott Souders	Telephone No.: 541-883-5290
City Manager Review:	Email: ssouders@klamathfalls.city

TOPIC: Authorization to Execute a Construction Services Contract with Anderson Environmental Contracting, LLC for the Balsiger Site Demolition Project in an Amount Not to Exceed $91,842.83

SUMMARY AND BACKGROUND:

In the Spring 2015, the City negotiated a six month purchase option with the owner of the Balsiger Site to allow further due diligence prior to site purchase. During the purchase option period, the City issued a Request for Qualifications (RFQ) to gauge developer interest in forming a public-private partnership to redevelop the site. Two RFQ submittals were received by the July 2nd deadline and the City identified Tokola Properties, Inc. as the successful respondent. As part of the RFQ process, applicants were asked to consider redevelopment options for reuse of the structures and to indicate what use or uses their team would consider, if any. Both RFQ applicants responded that due to the poor structural condition of the building(s), their plan would be to remove the structure(s) in order to accommodate redevelopment.

In October 2015, the City took title to the Balsiger site and in November 2015 the City entered an Exclusive Negotiating Agreement (ENA) with Tokola Properties to further plan for site redevelopment. As part of the ENA, the City is "responsible for and pay the costs it deems reasonable related to demolition of the existing structures at the property." Since taking title, vagrants continue to trespass on the premises and cause further damage to the building. In order to limit the City's liability exposure due to trespassers and to promote redevelopment opportunities, staff recommends demolition of the portion of structure fronting Main Street and Esplanade to ground level.

City Engineering prepared demolition documents for this project. A formal request for bids was publicly advertised in the Herald and News and the Daily Journal of Commerce. A mandatory pre-bid meeting was held on March 1, 2016, where bidders had the opportunity to walk the site and discuss the project with staff. Bids were received from four demolition contractors on March 10, 2016.

Staff reviewed the bids and found that the required supporting documentation has been provided by the low bidder and their bid is acceptable. The bidders and their prices are listed below and on the attached Confirmation of Bid Opening. An engineer's estimate of $155,000 to $170,000 was identified for this project with a low bid of $91,842.83 being submitted by Anderson

Environmental Contracting, LLC. A Notice of Intent to Award was sent to all bidders on March 11, 2016. If approved, the project is anticipated to be complete by June 2016.

Engineers Estimate	**$ 155,000 - $170,000**
Anderson Environmental Contracting, LLC.	**$91,842.83**
Belfor Environmental, Inc.	$167,312
Groat Brothers, Inc.	$104,639
Bob's Excavating, Inc.	$181,000

FINANCIAL IMPACT:

Funding for this project will be provided from the Downtown Urban Renewal District account.

COUNCIL OPTIONS:

1. Approve a Construction Services Contract with Anderson Environmental Contracting, LLC in an amount not-to-exceed $91,842.83.
2. Deny a Construction Services Contract with Anderson Environmental Contracting, LLC, modify scope and rebid the project.
3. Deny a Construction Services Contract with Anderson Environmental Contracting, LLC and postpone the project.

DOCUMENTS ATTACHED:

- Confirmation of Bid Opening
- Bid Analysis Form
- Notice of Intent to Award
- Sample Contract

RECOMMENDED MOTION/ACTION:

Move to approve Option 1 and authorize execution of a Construction Services Contract with Anderson Environmental Contracting, LLC for the Balsiger Site Demolition Project in an amount not to exceed $91,842.83.

NOTICE SENT TO:

All parties who submitted bids for this project as listed in the attached Confirmation of Bid Opening.

3

CONFIRMATION OF BID OPENING

BID PROJECT NAME: Balsiger Site Demolition Project

DATE AND TIME OPENED: March 10, 2016, 2 P.M.

STAFF REPRESENTATIVE(S) PRESENT:
Elisa Olson, City Recorder
Andrew Lakey, Engineering
Scott Souders, City Engineer

BIDDER NAME & ADDRESS	CCB#	BID BOND INCLUDED	ADDENDUM(S) ACKNOWLEDGED (if applicable)	BID AMOUNT
Anderson Environmental Contracting 705 Colorado Street Kelso, WA 98626	**141376**	Yes	Yes	$ 91,842.83
Belfor Environmental, Inc. 12821 NE Airport Way Portland, OR 97230	**126132**	Yes	Yes	$167,312.00
Groat Brothers, Inc. P. O. Box 1630 Woodland, WA 98674	**80410**	Yes	Yes	$104,639.00
Bob's Excavating, Inc. 4821 Tingley Lane Klamath Falls, OR 97603	**159856**	Yes	Yes	$181,000.00

/s/ Elisa Olson

Engineer's Estimate: $155,000 - $170,000

Elisa Olson
City Recorder

TENTATIVE DATE BID TO BE AWARDED BY COUNCIL: April 4, 2016

Email to: bids@bidocean.com, Legal (Contracts), Public Works (Admin) & Engineering

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3

CITY OF KLAMATH FALLS
PUBLIC WORKS ENGINEERING/CAPITAL PROJECTS
CIP PROJECT
DESIGN / BID PHASE BUDGET ANALYSIS FORM

Date: 22-Mar-16

Prepared By: Scott Souders, City Engineer

__Pre-Bid _X_Post-Bid (check one)

Project Name: Balsiger Site Demolition Project

Project No: 278015

Project Engineer: Scott Souders

	Expenditure to Date	Projected Future Expenditure	Total Current + Projected Expenditure
DESIGN PHASE AND BID PHASE			
Design Consultant Costs	$ -	$ -	$ -
CONSTRUCTION PHASE			
Construction Contract: __Estimate_X_Bid (check one)	$ -	$ 91,843	$ 91,843
Consultant Construction Inspection	$ -	$ -	$ -
Materials Testing	$ -	$ -	$ -
Engineering Division	$ 4,473	$ 4,250	$ 8,723
SUBTOTAL =	*$ 4,473*	*$ 96,093*	*$ 100,566*
Other Costs			
Bidding advertisement	$ 553		$ 553
TOTAL =	**$ 5,026**	**$ 96,093**	**$ 101,119**

3

City of Klamath Falls
Public Works Department - Engineering Division
PO Box 237, Klamath Falls, OR 97601
Capital Projects Section – 226 South 5th St
TEL (541) 883-5368; FAX (541) 882-3513

Date: 03/11/16

To: All Bidders
From: Scott Souders, PE
CC: Mark Willrett, PE; Elisa Olson

Re: Notice of Intent to Award – Balsiger Site Demolition Project

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Thank you for your interest and submitting a Bid on this project. In accordance with the City of Klamath Falls policies and procedures for awarding contracts, the City is hereby notifying all parties who submitted a Bid for the Balsiger Site Demolition Project of their intent to award.

The City of Klamath Falls intends to award a construction services contract to Anderson Environmental Contracting, LLC for the Balsiger Site Demolition Project in the not-to-exceed amount of $91,842.83 at the City's April 4, 2016 City Council meeting.

If you have any questions or comments please contact me during regular business hours at 541-883-5290.

CONTRACT AGREEMENT
CONSTRUCTION SERVICES
ANDERSON ENVIRONMENTAL CONTRACTING, LLC
BALSIGER SITE DEMOLITION PROJECT
PROJECT #278015

THIS AGREEMENT is made this _____ day of _____, 2016, by and between the CITY OF KLAMATH FALLS, a municipal corporation, herein referred to as "CITY," and ANDERSON ENVIRONMENTAL CONTRACTING, LLC herein referred to as "CONTRACTOR."

In consideration of the mutual promises set forth herein, CITY and CONTRACTOR agree as follows:

1. Description of Work. CONTRACTOR agrees to perform the services set forth in bid documents, incorporated herein by this reference. Time is of the essence in completing this Contract and CONTRACTOR agrees to complete the services set forth in the bid documents within the time frame(s) provided. Contractor also agrees to complete the work as described in the general conditions, plans, bid specifications/requirements, addendum(s), all of which are incorporated herein by this reference and made a part of this Contract.

2. Payment. CITY agrees to pay CONTRACTOR a sum not to exceed $91,842.83 for the work to be performed under this Contract. Payment is to be made within thirty (30) days of receipt of CONTRACTOR'S monthly billings. The "retainage provisions" of ORS 279C.550 through 279C.570 shall apply to these payment terms.

3. Relationship of the Parties. The parties intend that an independent contractor relationship will be created by this Contract. CITY is interested only in the results to be achieved, and the conduct and control of the work will lie solely with CONTRACTOR. CONTRACTOR is not to be considered an agent or employee of CITY for any purpose, and the employees of CONTRACTOR are not entitled to any of the benefits that CITY provides for CITY's employees. It is understood that CITY does not agree to use CONTRACTOR exclusively. It is further understood that CONTRACTOR is free to contract for similar services to be performed for other persons while they are under contract with CITY.

4. Indemnity. CONTRACTOR hereby agrees to defend, indemnify and save harmless City of Klamath Falls, its elected officials, employees, agents, and volunteers against any and all loss, damage, liability, claims, demands, or costs resulting from injury or harm to persons or property (including, without limitation, CONTRACTOR'S employees or property) to the extent arising out of or in any way connected with CONTRACTOR'S negligent performance hereof.

5. Insurance. The work to be performed under this Contract will be performed entirely at CONTRACTOR's risk. CONTRACTOR shall not commence work under this Contract until it has furnished CITY with proof of insurance coverage issued by an insurance company licensed to do business in the State of Oregon and a certificate satisfactory to the CITY, as specified below:

5.1. Workers' compensation coverage as required by law and to include employer's liability with limits of not less than $500,000 per occurrence; or, alternatively,

3

CONTRACTOR shall provide documentation establishing that CONTRACTOR is exempt from workers' compensation coverage pursuant to ORS Chapter 656.

5.2. General commercial liability coverage for damages as a result of death or bodily injury (including personal injury) to any person's destruction or damage to any property with limits of not less than $1,000,000 each occurrence, $2,000,000 policy aggregate. Such coverage shall include, but is not limited to the following: commercial general liability coverage, products liability including completed operations, premises operations including X (explosion), C (collapse), U (underground), and personal injury. All coverage shall be on an occurrence basis and not on a claim made basis.

5.3. If CONTRACTOR uses automobiles to complete the contract, automobile liability insurance as a result of death or bodily injury to any persons, or destruction of or damage to any property arising out of the ownership, maintenance or use of any owned, non-owned or hired motor vehicle with limits of not less than $500,000 per occurrence. All coverage shall be on an occurrence basis.

5.4. CONTRACTOR shall maintain an excess/umbrella liability policy of not less than $2,000,000 each occurrence and aggregate that will provide excess limits of liability over the commercial general liability, automobile liability, and employer's liability.

5.5. The following inclusions to CONTRACTOR'S certificate of insurance shall be made:

5.5.1. Waiver of transfer of rights of recovery against others to City of Klamath Falls;

5.5.2. The insurance is primary to and non-contributory with any insurance maintained by City of Klamath Falls;

5.5.3. All required coverage shall be written with companies that have at least an AmBest rating of A-;

5.5.4. The insurance shall provide a 30 day notice of cancellation or material change; and

5.5.5. The insurance certificate shall include endorsements for additional insured, naming "City of Klamath Falls, its elected officials, employees, agents, and volunteers" as an additional insured. The additional insured endorsement shall be attached to the certificate of insurance. The additional insured shall contain a severability of interest provision in favor of City of Klamath Falls and a waiver of subrogation in favor of City of Klamath Falls.

6. Compliance with Oregon Public Improvement Rules and Regulations. CONTRACTOR shall comply with the following Oregon laws and regulations relating to public improvements:

6.1. CONTRACTOR shall make payment promptly, as due, to all persons supplying to CONTRACTOR labor or material for the performance of the work to be performed under this Contract. CONTRACTOR shall not permit any lien or claim to be filed or prosecuted against the CITY on account of any labor or material furnished. [ORS 279C.505(1)(a) & (c)]

6.2. CONTRACTOR shall pay all contributions or amounts due the Industrial Accident Fund from CONTRACTOR, or any subcontractor, incurred in the performance of this Contract. [ORS 279C.505(1)(b)]

6.3. CONTRACTOR shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. [ORS 279C.505(1)(d)]

6.4. CONTRACTOR shall comply with the overtime and maximum hours of labor provisions of ORS 279C.520 and 279C.540.

6.5. If the CONTRACTOR fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONTRACTOR or a subcontractor by any

person, or the assignee of the person in connection with this Contract as the claim becomes due, CITY may, at its option, pay such claim and charge the amount of payment against funds due or to become due CONTRACTOR by reason of this Contract. [ORS 279C.515(1)]

6.6. If the CONTRACTOR or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract within 30 days after receipt of payment from the CITY, the CONTRACTOR or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the CONTRACTOR or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the CONTRACTOR, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived. If the CONTRACTOR or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The payment of a claim in the manner authorized in this section does not relieve the CONTRACTOR or CONTRACTOR's surety from obligation with respect to any unpaid claims. [ORS 279C.515(2), (3) & (4)]

6.7. CONTRACTOR 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 employees of CONTRACTOR, of all sums that the CONTRACTOR agrees to pay for the services and all moneys and sums that the CONTRACTOR collected or deducted from the wages of the CONTRACTOR'S employees under any law, contract or agreement for the purpose of providing or paying for the services. [ORS 279C.530(1)]

6.8. CONTRACTOR shall demonstrate to the reasonable satisfaction of CITY that an employee drug testing program is in place. [ORS 279C.505(2)]

6.9. CONTRACTOR shall, if feasible and cost-effective, salvage or recycle all construction and demolition debris. [ORS 279C.510]

6.10. CONTRACTOR and all subcontractors must have a "Public Works" bond in an amount of not less than $30,000 filed with the Construction Contractors Board before starting work under this Contract, unless otherwise exempt under ORS 279C.836. This provision must be contained in all subcontracts. CONTRACTOR shall provide a copy of said bond to CITY before starting the project. [ORS 279C.830(3)]

6.11. CONTRACTOR warrants that it has complied with the 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 agrees it will continue to comply with the tax laws of this state or a political subdivision of this state during the term of the public contract. CONTRACTOR'S failure to comply with the tax laws of this state or a political subdivision of this state is a default for which CITY may terminate the contract and seek damages and other relief available under the terms of the contract or under applicable law.

7. Prevailing Wage. CITY has determined that this Contract is subject to Oregon prevailing wage, and CONTRACTOR must comply with the prevailing wage rate requirements of ORS 279C.800 through 279C.870. These requirements include, without limitation, that CONTRACTOR shall, in compliance with ORS 279C.840, pay each worker in each trade or occupation employed either by the CONTRACTOR, subcontractor or other person doing or contracting to do or contracting for the whole or any part of the work on this contract: i) not less than the state minimum hourly prevailing rate of wage [ORS 279C.830 and .838]; and ii) overtime as required by ORS 279C.540. [ORS 279C.830] Workers must be paid not less than the applicable state or federal prevailing wage rate, whichever is higher. [ORS 279C.830(1)(c); OAR 839-025-0020(3)

8. Provisions Concerning Environmental and Natural Resources Laws. Contractor shall comply with ORS 279C.525 concerning public improvements:

8.1. If the CONTRACTOR is delayed or must undertake additional work by reason of existing ordinances, rules or regulations of agencies not cited in this Contract or the bid specifications, or due to the enactment of new or the amendment of existing statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources occurring after the submission of the successful bid, the CITY may: terminate the Contract; complete the work itself; use non-agency forces already under contract with the CITY; require that the underlying property owner be responsible for cleanup; solicit bids for a new contractor to provide the necessary services under the CITY's competitive bid requirements; or issue the CONTRACTOR a change order setting forth the additional work that must be undertaken.

8.2. If the CONTRACTOR encounters a condition not referred to in the solicitation documents, not caused by the CONTRACTOR and not discoverable by a reasonable pre-bid visual site inspection, and the condition requires compliance with the ordinances, rules or regulations referred to under section 9.1, the CONTRACTOR shall immediately give notice of the condition to the contracting agency.

8.3. Except in the case of an emergency and except as may otherwise be required by any environmental or natural resource ordinance, rule or regulation, CONTRACTOR may not commence work nor incur any additional job site costs in regard to the condition encountered and described in section 9.2 without written direction from the CITY.

8.4. Upon request by the CITY, the CONTRACTOR shall estimate the emergency or regulatory compliance costs as well as the anticipated delay and costs resulting from the encountered condition. This cost estimate shall be promptly delivered to the CITY for resolution.

8.5. Within a reasonable period of time following delivery of an estimate under subsection 9.4, the CITY may: terminate the contract; complete the work itself; use non-agency forces already under contract with the CITY; require that the underlying property owner be responsible for cleanup; solicit bids for a new contractor to provide the necessary services under the CITY's competitive bid requirements; or issue the CONTRACTOR a change order setting forth the additional work that must be undertaken.

8.6. The following provisions apply to this Contract:

8.6.1. If the CITY chooses to terminate this Contract under section 9.1 or 9.5, the CONTRACTOR shall be entitled to all costs and expenses incurred up to the date of termination, including overhead and reasonable profits, on the percentage of

the work completed. The CITY shall have access to the CONTRACTOR's bid documents when making the CITY's determination of the additional compensation due to the CONTRACTOR.

8.6.2. If the CITY causes work to be done by another contractor for conditions under section 9.1 or 9.5, the CONTRACTOR may not be held liable for actions or omissions of the other contractor.

8.6.3. The change order under subsection included in section 9.1 or 9.5 shall include the appropriate extension of contract time and compensate to the CONTRACTOR for all additional costs, including overhead and reasonable profits, reasonably incurred as a result of complying with the applicable statutes, ordinances, rules or regulations. The CITY shall have access to the CONTRACTOR's bid documents when making the CITY's determination of the additional compensation due to the CONTRACTOR.

8.7. Notwithstanding section 9.1 to 9.6:

8.7.1. All or a portion of the known environmental and natural resource risks may have been allocated to the CONTRACTOR by the listing of such environmental and natural resource risks with specificity in the solicitation documents.

8.7.2. In a local improvement district, all or a portion of the known and unknown environmental and natural resource risks may have been allocated to the CONTRACTOR by so stating in the solicitation documents.

8.7.3. The allocation of known environmental and natural resources risks set forth in the solicitation documents prevail over the general provisions set forth in section 9.1 through 9.6.

9. Relations with Subcontractors. CONTRACTOR shall include the following provisions in each subcontract for property or services entered into by the CONTRACTOR and a first-tier subcontractor, including a material supplier, for the purposes of performing this construction contract pursuant to ORS 279C.580:

9.1. A payment clause that obligates CONTRACTOR to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the CONTRACTOR by the CITY under the Contract; and

9.2. An interest penalty clause that obligates the CONTRACTOR, if payment is not made within 30 days after receipt of payment from the CITY, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract under section 10.1. The CONTRACTOR or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the CONTRACTOR or first-tier subcontractor did not make payment when payment was due is that the CONTRACTOR or first-tier subcontractor did not receive payment from the CITY or CONTRACTOR when payment was due. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and computed at the rate specified in ORS 279C.515 (2).

9.3. A provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of subsections 10.1 and 10.2 in each of the first-tier subcontractor's subcontractors and to require each of the first-tier subcontractor's subcontractors to include clauses in their subcontracts with each lower-tier subcontractor or supplier.

10. Warranty; Responsibility of CONTRACTOR. The CONTRACTOR warrants to CITY that materials and equipment furnished under this Contract will be of good quality and new unless otherwise required or permitted by CITY, and that all workmanship is in accordance with the standards of the trade. CONTRACTOR shall perform the services set forth herein in an efficient, expeditious and professional manner in accordance with all applicable laws governing such work. CONTRACTOR shall be responsible for the professional quality, technical adequacy and accuracy, and timely completion of work and services to be performed by CONTRACTOR under this Contract.

11. Asbestos & Recycling. It is CITY's policy to avoid, to the maximum extent possible, the use of materials containing asbestos in CITY improvement and construction projects. No materials containing asbestos shall be furnished as part of this Contract without the prior written approval of the CITY. CONTRACTOR shall make reasonable efforts to ensure, to the maximum extent economically feasible, the utilization of materials that may be recycled or reused when discarded. [ORS 279B.025] If this Contract involves demolition, CONTRACTOR shall salvage or recycle construction and demolition debris, if feasible and cost-effective. [ORS 279C.510(1)]

12. Equal Employment Opportunity/Affirmative Action/Minority Business Enterprises.

12.1. Throughout the term of this Contract, CONTRACTOR shall fully comply with the equal employment opportunity requirements of federal, state and local law and shall maintain a policy that all employment decisions, practices and procedures are based on merit and ability without discrimination on the basis of an individual's race, color, religion, age, sex, national origin, or physical or mental disability. CONTRACTOR's policy shall apply to all employment actions including advertising, recruiting, hiring, promotion, transfer, disciplinary action, lay-off and termination.

12.2. CONTRACTOR shall carry out its equal employment opportunity policy by making a determined and good-faith effort at affirmative action to employ, and advance in employment, women, minorities, the physically and mentally disabled and other disadvantaged groups.

12.3. CONTRACTOR shall make a determined and good faith effort to utilize minority and female business enterprises in its contracted expenditures, including without limitation contracts for the acquisition of goods, services, materials, supplies and equipment used in the performance of this Contract.

12.4. CONTRACTOR may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055. By executing this Contract, CONTRACTOR certifies that CONTRACTOR has not discriminated and will not discriminate, in violation of this subsection, against any minority, women or emerging small business enterprise in obtaining any required subcontract. If the CONTRACTOR violates this certification, the CITY may regard the violation as a breach of contract that permits: (a) termination of the Contract; or (b) the CITY to exercise any remedies for breach of contract that are reserved or allowed in this Contract. [ORS 279A.110]

13. Assignment. The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall

assign, sublet or transfer any interest in this Agreement without written authorization of the other.

14. Notices. All written notices given to the CITY by CONTRACTOR shall be addressed to and filed with the City Manager at City of Klamath Falls, P.O. Box 237, Klamath Falls, Oregon 97601, or by facsimile at 541-883-5399. All written notices from the CITY to CONTRACTOR shall be addressed to Anderson Environmental Contracting, LLC, 705 Colorado Street, Kelso, WA 98626, unless notice of change of address is received by the CITY.

15. Legal Actions.

15.1. This Agreement shall be enforceable in Klamath County, Oregon, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Klamath County Circuit Court.

15.2. If suit or action is taken to enforce any of the provisions of this Agreement, the party prevailing therein shall be entitled to recover from the other such sum as the Court may adjudge reasonable as attorney fees therein, including any appeal thereof, in addition to all other sums provided by law.

16. Termination. This Contract may be terminated at any time by mutual written consent of the parties. Upon receiving a notice of termination of this Contract, CONTRACTOR shall immediately cease all activities under this Contract, unless CITY expressly directs otherwise in such notice of termination. Upon termination of this Contract, CONTRACTOR shall deliver to CITY all documents, information, works-in-progress and other property that are or would be deliverables had the contract been completed. Expiration or termination of this Contract shall not extinguish or prejudice CITY'S right to enforce this Contract with respect to any breach of a contractor warranty or any default or defect in contractor performance that has not been cured. CITY may terminate this Contract, in whole or in part, upon ten days notice to CONTRACTOR, if any of the following occur:

16.1. CITY fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for CONTRACTOR's work;

16.2. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Contract is prohibited or CITY is prohibited from paying for such work from the planned funding source;

16.3. CONTRACTOR no longer holds any license or certificate that is required to perform the work, or any license or certificate required by statute, rule, regulation or other law to be held by the CONTRACTOR to provide the services required by this Contract is for any reason denied, revoked, suspended, not renewed or changed in such a way that CONTRACTOR no longer meets requirements for such license or certificate; or

16.4. CONTRACTOR commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the work as to endanger CONTRACTOR's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within ten business days after delivery of CITY's notice, or such longer period of cure as CITY may specify in such notice.

IN WITNESS WHEREOF, the parties have executed this Agreement at Klamath Falls, Oregon, the day and year first above written.

CITY OF KLAMATH FALLS

By: _____
City Manager

Attest:

_____
City Recorder

APPROVED AS TO FORM:

_____
City Attorney

CONTRACTOR

By: _____
Name: _____
Title: _____

Attest: _____
Secretary

KLAMATH FALLS CITY COUNCIL
AGENDA REPORT

Agenda Item No. 4

Date: April 4, 2016

Department: Public Works
Staff Presenter: Scott Souders
City Manager Review: _____

Contact/Title: Scott Souders/City Engineer
Telephone No.: 541-883-5290
Email: ssouders@klamathfalls.city

TOPIC: Authorization to Execute a Construction Services Contract with Vic Russell Construction, Inc. for the Johnson Avenue and Crescent Alley Sewer Line Replacement Project in an Amount Not to Exceed $244,944.26

SUMMARY AND BACKGROUND:

Through the City's flushing and sewer televising programs, the Wastewater Division has identified portions of the sanitary sewer system in Johnson Avenue and in the alley off the 1600 Block of Crescent Avenue in need of replacement. The existing 6 inch diameter clay sewer lines at these locations are over 70 years old and suffer from offset joints, broken and cracked pipe segments, and numerous root intrusions. With this project, the City intends to replace existing brick manholes and approximately 820 linear feet of failing 6 inch clay sewer line with new 8 inch PVC line. All existing sewer laterals within the Right-of–Way will be replaced and new cleanouts will be installed to active services.

Adkins Consulting Engineers was hired to prepare construction drawings and technical specifications for this project. A formal request for bids was publicly advertised in the Herald and News and the Daily Journal of Commerce. A non-mandatory pre-bid meeting was held on March 1, 2016, where bidders had the opportunity to discuss the project with the design team and staff. Bids were received from three companies on March 10, 2016.

The design team and staff reviewed the bids and found that the required supporting documentation has been met by the low bidder and their bid is acceptable. The bidder and their price are listed on the attached Confirmation of Bid opening. The engineer's estimate for this project was between $180,000 and $210,000. The bid price shown is for the base bid and the additive bid item. A Notice of Intent to Award was sent to all bidders on March 11, 2016. The bidders and their bid prices are listed below:

Engineers Estimate	**$ 180,000 - $210,000**
Grimes Construction	$289,026.00
Vic Russell Construction, Inc.	**$244,944.26**
Bob's Excavating, Inc.	$278,276.00

4

FINANCIAL IMPACT:

The funds for this project are identified in the City's FY 2015-16 Adopted Budget in the Wastewater Division Capital Fund identified for the Misc. Gravity & Pressure Sewer Line & Manhole Rehab/Replacement projects which has a budgeted amount of $245,000. In the event that additional funds would be required due to unforeseen field or project conditions, they would be redirected from the budgeted funds identified in the California Pump Station Land Procurement project ($30,000 available) and/or the KFI Pump Station H2S Control project ($20,000 available).

COUNCIL OPTIONS:

1. Approve a Construction Services Contract with Vic Russell Construction, Inc. in an amount not-to-exceed $244,944.26.
2. Deny a Construction Services Contract with Vic Russell Construction, Inc., modify scope and rebid the project.
3. Deny a Construction Services Contract with Vic Russell Construction, Inc. and postpone the project.

DOCUMENTS ATTACHED:

- Confirmation of Bid Opening
- Bid Analysis Form
- Notice of Intent to Award
- Exhibit Map
- Sample Contract

RECOMMENDED MOTION/ACTION:

Move to approve Option 1 and authorize a Construction Services Contract with Vic Russell Construction, Inc. for the Johnson Avenue and Crescent Alley Sewer Line Replacement Project in an amount not to exceed $244,944.26.

NOTICE SENT TO:

All parties who submitted bids for this project as listed in the attached Confirmation of Bid Opening.

4

CONFIRMATION OF BID OPENING

BID PROJECT NAME: Johnson Ave & Crescent Alley Sewer Line Replacement Project# 277015

DATE AND TIME OPENED: March 10, 2016, 2 P.M.

STAFF REPRESENTATIVE(S) PRESENT:
Elisa Olson, City Recorder
Andrew Lakey, Engineering
Scott Souders, City Engineer

BIDDER NAME & ADDRESS	CCB#	BID BOND INCLUDED	ADDENDUM(S) ACKNOWLEDGED (if applicable)	BID AMOUNT
Grimes Construction 12049 Hwy 140 East Klamath Falls, OR 97603	**64579**	Yes	Yes	$289,026.00
Vic Russell Construction, Inc. Finley Butte Aggregate P.O. Box 2520 Lapine, OR 97739	**31500**	Yes	Yes	$244,944.26
Bob's Excavating, Inc. 4821 Tingley Lane Klamath Falls, OR 97603	**159856**	Yes	Yes	$278,276.00

/s/ Elisa Olson

Engineer's Estimate: $180,000 – $210,000

Elisa Olson
City Recorder

TENTATIVE DATE BID TO BE AWARDED BY COUNCIL: April 4, 2016

Email to: bids@bidocean.com, Legal (Contracts), Public Works (Admin) & Engineering

4

CITY OF KLAMATH FALLS
PUBLIC WORKS ENGINEERING/CAPITAL PROJECTS
CIP PROJECT
DESIGN / BID PHASE BUDGET ANALYSIS FORM

Date: 15-Mar-16

Prepared By: Andrew Lakey Associate Engineer/Project Manager

___Pre-Bid __X_Post-Bid (check one)

Project Name: Johnson Avenue and Crescent Alley Sewer Line Replacement Project

Project No: 277015

Project Engineer: Andrew Lakey

	Expenditure to Date	Projected Future Expenditure	Total Current + Projected Expenditure
DESIGN PHASE AND BID PHASE			
Design Consultant Costs	$ 11,496	$ 2,504	$ 14,000
CONSTRUCTION PHASE			
Construction Contract: __Estimate_X_Bid (check one)	$ -	$ 244,944	$ 244,944
Consultant Construction Inspection	$ -	$ -	$ -
Materials Testing	$ -	$ -	$ -
Engineering Division	$ 6,208	$ 7,500	$ 13,708
SUBTOTAL =	*$ 17,704*	*$ 254,948*	*$ 272,652*
Other Costs			
Bidding advertisement	$ 340		$ 340
TOTAL =	**$ 18,044**	**$ 254,948**	**$ 272,992**

Budgeted Funds

Misc. Gravity & Pressure Sewer Line & Manhole Rehab/Replacement Projects	**$ 245,000**
California Pump Station Land Procurment Project	**$ 30,000**
KFI Pump Station H2S Control Project	**$ 20,000**
	$ 295,000

4

City of Klamath Falls
Public Works Department - Engineering Division
PO Box 237, Klamath Falls, OR 97601
Capital Projects Section – 226 South 5th St
TEL (541) 883-5368; FAX (541) 882-3513

Date: 03/11/16

To: All Bidders
From: Scott Souders, PE
CC: Mark Willrett, PE; Elisa Olson,

Re: Notice of Intent to Award – Johnson Avenue and Crescent Alley Sewer Line Replacement Project

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Thank you for your interest and submitting a Bid on this project. In accordance with the City of Klamath Falls policies and procedures for awarding contracts, the City is hereby notifying all parties who submitted a Bid for the Johnson Avenue and Crescent Alley Sewer Line Replacement Project of their intent to award.

The City of Klamath Falls intends to award a construction services contract to Vic Russell Construction, Inc. for the Johnson Avenue and Crescent Alley Sewer Line Replacement Project in the not-to-exceed amount of $244,944.26 at the City's April 4, 2016 City Council meeting.

If you have any questions or comments please contact me during regular business hours at 541-883-5290.

Exhibit A
SHELLEY ST
ADDISON ST
CARLYLE ST
JOHNSON AVE
CRESCENT AVE
FREMONT ST
CRATER LAKE PKWY
MANZANITA
1
2
CO
MH
Missle Water Line
Project Areas
N
0 25 50 100
Feet

4

CONTRACT AGREEMENT
CONSTRUCTION SERVICES
VIC RUSSELL CONSTRUCTION, INC.
JOHNSON AVENUE & CRESCENT ALLEY SEWER LINE REPLACEMENT
PROJECT #277015

THIS AGREEMENT is made this _____ day of _____, 2016, by and between the CITY OF KLAMATH FALLS, a municipal corporation, herein referred to as "CITY," and VIC RUSSELL CONSTRUCTION, INC., herein referred to as "CONTRACTOR."

In consideration of the mutual promises set forth herein, CITY and CONTRACTOR agree as follows:

1. Description of Work. CONTRACTOR agrees to perform the services set forth in the bid documents, incorporated herein by this reference. Time is of the essence in completing this Contract and CONTRACTOR agrees to complete the services within the time frame(s) provided in the bid specifications/requirements. Contractor also agrees to complete the work as described in the general conditions, plans, bid specifications/requirements, addendum(s), all of which are incorporated herein by this reference and made a part of this Contract.

2. Payment. CITY agrees to pay CONTRACTOR a sum not to exceed $244,944.26 for the work to be performed under this Contract. Payment is to be made within thirty (30) days of receipt of CONTRACTOR'S monthly billings. The "retainage provisions" of ORS 279C.550 through 279C.570 shall apply to these payment terms.

3. Relationship of the Parties. The parties intend that an independent contractor relationship will be created by this Contract. CITY is interested only in the results to be achieved, and the conduct and control of the work will lie solely with CONTRACTOR. CONTRACTOR is not to be considered an agent or employee of CITY for any purpose, and the employees of CONTRACTOR are not entitled to any of the benefits that CITY provides for CITY's employees. It is understood that CITY does not agree to use CONTRACTOR exclusively. It is further understood that CONTRACTOR is free to contract for similar services to be performed for other persons while they are under contract with CITY.

4. Indemnity. CONTRACTOR hereby agrees to defend, indemnify and save harmless City of Klamath Falls, its elected officials, employees, agents, and volunteers against any and all loss, damage, liability, claims, demands, or costs resulting from injury or harm to persons or property (including, without limitation, CONTRACTOR'S employees or property) to the extent arising out of or in any way connected with CONTRACTOR'S negligent performance hereof.

5. Insurance. The work to be performed under this Contract will be performed entirely at CONTRACTOR's risk. CONTRACTOR shall not commence work under this Contract until it has furnished CITY with proof of insurance coverage issued by an insurance company licensed to do business in the State of Oregon and a certificate satisfactory to the CITY, as specified below:

5.1. Workers' compensation coverage as required by law and to include employer's liability with limits of not less than $500,000 per occurrence; or, alternatively,

CONTRACTOR shall provide documentation establishing that CONTRACTOR is exempt from workers' compensation coverage pursuant to ORS Chapter 656.

5.2. General commercial liability coverage for damages as a result of death or bodily injury (including personal injury) to any person's destruction or damage to any property with limits of not less than $1,000,000 each occurrence, $2,000,000 policy aggregate. Such coverage shall include, but is not limited to the following: commercial general liability coverage, products liability including completed operations, premises operations including X (explosion), C (collapse), U (underground), and personal injury. All coverage shall be on an occurrence basis and not on a claim made basis.

5.3. If CONTRACTOR uses automobiles to complete the contract, automobile liability insurance as a result of death or bodily injury to any persons, or destruction of or damage to any property arising out of the ownership, maintenance or use of any owned, non-owned or hired motor vehicle with limits of not less than $500,000 per occurrence. All coverage shall be on an occurrence basis.

5.4. CONTRACTOR shall maintain an excess/umbrella liability policy of not less than $2,000,000 each occurrence and aggregate that will provide excess limits of liability over the commercial general liability, automobile liability, and employer's liability.

5.5. The following inclusions to CONTRACTOR'S certificate of insurance shall be made:

5.5.1. Waiver of transfer of rights of recovery against others to City of Klamath Falls;

5.5.2. The insurance is primary to and non-contributory with any insurance maintained by City of Klamath Falls;

5.5.3. All required coverage shall be written with companies that have at least an AmBest rating of A-;

5.5.4. The insurance shall provide a 30 day notice of cancellation or material change; and

5.5.5. The insurance certificate shall include endorsements for additional insured, naming "City of Klamath Falls, its elected officials, employees, agents, and volunteers" as an additional insured. The additional insured endorsement shall be attached to the certificate of insurance. The additional insured shall contain a severability of interest provision in favor of City of Klamath Falls and a waiver of subrogation in favor of City of Klamath Falls.

6. Compliance with Oregon Public Improvement Rules and Regulations. CONTRACTOR shall comply with the following Oregon laws and regulations relating to public improvements:

6.1. CONTRACTOR shall make payment promptly, as due, to all persons supplying to CONTRACTOR labor or material for the performance of the work to be performed under this Contract. CONTRACTOR shall not permit any lien or claim to be filed or prosecuted against the CITY on account of any labor or material furnished. [ORS 279C.505(1)(a) & (c)]

6.2. CONTRACTOR shall pay all contributions or amounts due the Industrial Accident Fund from CONTRACTOR, or any subcontractor, incurred in the performance of this Contract. [ORS 279C.505(1)(b)]

6.3. CONTRACTOR shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. [ORS 279C.505(1)(d)]

6.4. CONTRACTOR shall comply with the overtime and maximum hours of labor provisions of ORS 279C.520 and 279C.540.

6.5. If the CONTRACTOR fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONTRACTOR or a subcontractor by any person, or the assignee of the person in connection with this Contract as the claim becomes due, CITY may, at its option, pay such claim and charge the amount of payment against funds due or to become due CONTRACTOR by reason of this Contract. [ORS 279C.515(1)]

6.6. If the CONTRACTOR or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract within 30 days after receipt of payment from the CITY, the CONTRACTOR or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the CONTRACTOR or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the CONTRACTOR, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived. If the CONTRACTOR or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The payment of a claim in the manner authorized in this section does not relieve the CONTRACTOR or CONTRACTOR's surety from obligation with respect to any unpaid claims. [ORS 279C.515(2), (3) & (4)]

6.7. CONTRACTOR 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 employees of CONTRACTOR, of all sums that the CONTRACTOR agrees to pay for the services and all moneys and sums that the CONTRACTOR collected or deducted from the wages of the CONTRACTOR'S employees under any law, contract or agreement for the purpose of providing or paying for the services. [ORS 279C.530(1)]

6.8. CONTRACTOR shall demonstrate to the reasonable satisfaction of CITY that an employee drug testing program is in place. [ORS 279C.505(2)]

6.9. CONTRACTOR shall, if feasible and cost-effective, salvage or recycle all construction and demolition debris. [ORS 279C.510]

6.10. CONTRACTOR and all subcontractors must have a "Public Works" bond in an amount of not less than $30,000 filed with the Construction Contractors Board before starting work under this Contract, unless otherwise exempt under ORS 279C.836. This provision must be contained in all subcontracts. CONTRACTOR shall provide a copy of said bond to CITY before starting the project. [ORS 279C.830(3)]

6.11. CONTRACTOR warrants that it has complied with the 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 agrees it will continue to comply with the tax laws of this state or a political subdivision of this state during the term of the public contract. CONTRACTOR'S failure to comply with the tax laws of this state or a political subdivision of this state is a default for which CITY may terminate the

contract and seek damages and other relief available under the terms of the contract or under applicable law.

7. Prevailing Wage. CITY has determined that this Contract is subject to Oregon prevailing wage, and CONTRACTOR must comply with the prevailing wage rate requirements of ORS 279C.800 through 279C.870. These requirements include, without limitation, that CONTRACTOR shall, in compliance with ORS 279C.840, pay each worker in each trade or occupation employed either by the CONTRACTOR, subcontractor or other person doing or contracting to do or contracting for the whole or any part of the work on this contract: i) not less than the state minimum hourly prevailing rate of wage [ORS 279C.830 and .838]; and ii) overtime as required by ORS 279C.540. [ORS 279C.830] Workers must be paid not less than the applicable state or federal prevailing wage rate, whichever is higher. [ORS 279C.830(1)(c); OAR 839-025-0020(3)

8. Provisions Concerning Environmental and Natural Resources Laws. Contractor shall comply with ORS 279C.525 concerning public improvements:

8.1. If the CONTRACTOR is delayed or must undertake additional work by reason of existing ordinances, rules or regulations of agencies not cited in this Contract or the bid specifications, or due to the enactment of new or the amendment of existing statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources occurring after the submission of the successful bid, the CITY may: terminate the Contract; complete the work itself; use non-agency forces already under contract with the CITY; require that the underlying property owner be responsible for cleanup; solicit bids for a new contractor to provide the necessary services under the CITY's competitive bid requirements; or issue the CONTRACTOR a change order setting forth the additional work that must be undertaken.

8.2. If the CONTRACTOR encounters a condition not referred to in the solicitation documents, not caused by the CONTRACTOR and not discoverable by a reasonable pre-bid visual site inspection, and the condition requires compliance with the ordinances, rules or regulations referred to under section 9.1, the CONTRACTOR shall immediately give notice of the condition to the contracting agency.

8.3. Except in the case of an emergency and except as may otherwise be required by any environmental or natural resource ordinance, rule or regulation, CONTRACTOR may not commence work nor incur any additional job site costs in regard to the condition encountered and described in section 9.2 without written direction from the CITY.

8.4. Upon request by the CITY, the CONTRACTOR shall estimate the emergency or regulatory compliance costs as well as the anticipated delay and costs resulting from the encountered condition. This cost estimate shall be promptly delivered to the CITY for resolution.

8.5. Within a reasonable period of time following delivery of an estimate under subsection 9.4, the CITY may: terminate the contract; complete the work itself; use non-agency forces already under contract with the CITY; require that the underlying property owner be responsible for cleanup; solicit bids for a new contractor to provide the necessary services under the CITY's competitive bid requirements; or issue the CONTRACTOR a change order setting forth the additional work that must be undertaken.

8.6. The following provisions apply to this Contract:

8.6.1. If the CITY chooses to terminate this Contract under section 9.1 or 9.5, the CONTRACTOR shall be entitled to all costs and expenses incurred up to the date of termination, including overhead and reasonable profits, on the percentage of the work completed. The CITY shall have access to the CONTRACTOR's bid documents when making the CITY's determination of the additional compensation due to the CONTRACTOR.

8.6.2. If the CITY causes work to be done by another contractor for conditions under section 9.1 or 9.5, the CONTRACTOR may not be held liable for actions or omissions of the other contractor.

8.6.3. The change order under subsection included in section 9.1 or 9.5 shall include the appropriate extension of contract time and compensate to the CONTRACTOR for all additional costs, including overhead and reasonable profits, reasonably incurred as a result of complying with the applicable statutes, ordinances, rules or regulations. The CITY shall have access to the CONTRACTOR's bid documents when making the CITY's determination of the additional compensation due to the CONTRACTOR.

8.7. Notwithstanding section 9.1 to 9.6:

8.7.1. All or a portion of the known environmental and natural resource risks may have been allocated to the CONTRACTOR by the listing of such environmental and natural resource risks with specificity in the solicitation documents.

8.7.2. In a local improvement district, all or a portion of the known and unknown environmental and natural resource risks may have been allocated to the CONTRACTOR by so stating in the solicitation documents.

8.7.3. The allocation of known environmental and natural resources risks set forth in the solicitation documents prevail over the general provisions set forth in section 9.1 through 9.6.

9. Relations with Subcontractors. CONTRACTOR shall include the following provisions in each subcontract for property or services entered into by the CONTRACTOR and a first-tier subcontractor, including a material supplier, for the purposes of performing this construction contract pursuant to ORS 279C.580:

9.1. A payment clause that obligates CONTRACTOR to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the CONTRACTOR by the CITY under the Contract; and

9.2. An interest penalty clause that obligates the CONTRACTOR, if payment is not made within 30 days after receipt of payment from the CITY, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract under section 10.1. The CONTRACTOR or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the CONTRACTOR or first-tier subcontractor did not make payment when payment was due is that the CONTRACTOR or first-tier subcontractor did not receive payment from the CITY or CONTRACTOR when payment was due. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and computed at the rate specified in ORS 279C.515 (2).

9.3. A provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of subsections 10.1 and 10.2 in each of the first-tier subcontractor's subcontractors and to require each of the first-tier subcontractor's subcontractors to include clauses in their subcontracts with each lower-tier subcontractor or supplier.

10. Warranty; Responsibility of CONTRACTOR. The CONTRACTOR warrants to CITY that materials and equipment furnished under this Contract will be of good quality and new unless otherwise required or permitted by CITY, and that all workmanship is in accordance with the standards of the trade. CONTRACTOR shall perform the services set forth herein in an efficient, expeditious and professional manner in accordance with all applicable laws governing such work. CONTRACTOR shall be responsible for the professional quality, technical adequacy and accuracy, and timely completion of work and services to be performed by CONTRACTOR under this Contract.

11. Asbestos & Recycling. It is CITY's policy to avoid, to the maximum extent possible, the use of materials containing asbestos in CITY improvement and construction projects. No materials containing asbestos shall be furnished as part of this Contract without the prior written approval of the CITY. CONTRACTOR shall make reasonable efforts to ensure, to the maximum extent economically feasible, the utilization of materials that may be recycled or reused when discarded. [ORS 279B.025] If this Contract involves demolition, CONTRACTOR shall salvage or recycle construction and demolition debris, if feasible and cost-effective. [ORS 279C.510(1)]

12. Equal Employment Opportunity/Affirmative Action/Minority Business Enterprises.

12.1. Throughout the term of this Contract, CONTRACTOR shall fully comply with the equal employment opportunity requirements of federal, state and local law and shall maintain a policy that all employment decisions, practices and procedures are based on merit and ability without discrimination on the basis of an individual's race, color, religion, age, sex, national origin, or physical or mental disability. CONTRACTOR's policy shall apply to all employment actions including advertising, recruiting, hiring, promotion, transfer, disciplinary action, lay-off and termination.

12.2. CONTRACTOR shall carry out its equal employment opportunity policy by making a determined and good-faith effort at affirmative action to employ, and advance in employment, women, minorities, the physically and mentally disabled and other disadvantaged groups.

12.3. CONTRACTOR shall make a determined and good faith effort to utilize minority and female business enterprises in its contracted expenditures, including without limitation contracts for the acquisition of goods, services, materials, supplies and equipment used in the performance of this Contract.

12.4. CONTRACTOR may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055. By executing this Contract, CONTRACTOR certifies that CONTRACTOR has not discriminated and will not discriminate, in violation of this subsection, against any minority, women or emerging small business enterprise in obtaining any required subcontract. If the CONTRACTOR violates this certification, the CITY may regard the violation as a

breach of contract that permits: (a) termination of the Contract; or (b) the CITY to exercise any remedies for breach of contract that are reserved or allowed in this Contract. [ORS 279A.110]

13. Assignment. The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without written authorization of the other.

14. Notices. All written notices given to the CITY by CONTRACTOR shall be addressed to and filed with the City Manager at City of Klamath Falls, P.O. Box 237, Klamath Falls, Oregon 97601, or by facsimile at 541-883-5399. All written notices from the CITY to CONTRACTOR shall be addressed to Vic Russell Construction, Inc., PO Box 2520, Lapine, OR 97739, unless notice of change of address is received by the CITY.

15. Legal Actions.

15.1. This Agreement shall be enforceable in Klamath County, Oregon, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Klamath County Circuit Court.

15.2. If suit or action is taken to enforce any of the provisions of this Agreement, the party prevailing therein shall be entitled to recover from the other such sum as the Court may adjudge reasonable as attorney fees therein, including any appeal thereof, in addition to all other sums provided by law.

16. Termination. This Contract may be terminated at any time by mutual written consent of the parties. Upon receiving a notice of termination of this Contract, CONTRACTOR shall immediately cease all activities under this Contract, unless CITY expressly directs otherwise in such notice of termination. Upon termination of this Contract, CONTRACTOR shall deliver to CITY all documents, information, works-in-progress and other property that are or would be deliverables had the contract been completed. Expiration or termination of this Contract shall not extinguish or prejudice CITY'S right to enforce this Contract with respect to any breach of a contractor warranty or any default or defect in contractor performance that has not been cured. CITY may terminate this Contract, in whole or in part, upon ten days notice to CONTRACTOR, if any of the following occur:

16.1. CITY fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for CONTRACTOR's work;

16.2. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Contract is prohibited or CITY is prohibited from paying for such work from the planned funding source;

16.3. CONTRACTOR no longer holds any license or certificate that is required to perform the work, or any license or certificate required by statute, rule, regulation or other law to be held by the CONTRACTOR to provide the services required by this Contract is for any reason denied, revoked, suspended, not renewed or changed in such a way that CONTRACTOR no longer meets requirements for such license or certificate; or

16.4. CONTRACTOR commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the work as to endanger CONTRACTOR's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within ten business days after delivery of CITY's notice, or such longer period of cure as CITY may specify in such notice.

IN WITNESS WHEREOF, the parties have executed this Agreement at Klamath Falls, Oregon, the day and year first above written.

CITY OF KLAMATH FALLS

By: _____
City Manager

Attest:

_____
City Recorder

APPROVED AS TO FORM:

_____
City Attorney

CONTRACTOR

By: _____
Name: _____
Title: _____

Attest: _____
Secretary

KLAMATH FALLS CITY COUNCIL
AGENDA REPORT

Agenda Item No. 5

Date: April 4, 2016

Department: Public Works	Contact/Title: Scott Souders/City Engineer
Staff Presenter: Scott Souders	Telephone No.: 541-883-5290
City Manager Review:	Email: ssouders@klamathfalls.city

TOPIC: Authorization to Execute a Construction Services Contract with Tom Ayres General Contractor, Inc. for the Main Street Underpass Handrail Improvements Project in an Amount Not to Exceed $166,885

SUMMARY AND BACKGROUND:

The existing concrete and steel handrail along the west side of the Main Street Railroad Underpass is deteriorated and in need of replacement. Under this project the Contractor will demo the failing handrail and replace with a new powder coated steel handrail. The bid package included two additive bid alternates. Alternate 1 relocates the existing traffic signal pole at the corner of Main Street and Spring Street. Alternate 2 rehabilitates a street light pole base and accommodates future replacement of a street light pole and fixture that was removed previously due to damage. This bid package also includes a deductive alternate for an alternative traffic control plan. After reviewing the bids and further evaluation of site conditions, staff has determined additive alternate 2 and the deductive alternate will be accepted.

Adkins Consulting Engineers was hired to prepare construction drawings and technical specifications for this project. A formal request for bids was publicly advertised in the Herald and News and the Daily Journal of Commerce. A non-mandatory pre-bid meeting was held on March 1, 2016 where bidders had the opportunity to discuss the project with the design team and staff. Bids were received from two companies on March 10, 2016.

The design team and staff reviewed the bids and found that the required supporting documentation has been met by the low bidder and their bid is acceptable. The bidder and their base bid price are listed on the attached Confirmation of Bid opening. The engineer's estimate for this project was between $160,000 and $190,000. The basis of award for this project was selected on the Base Bid items. The Street Division chose to execute the deductive item ($12,500) and bid alternate 2 ($3,500), bringing the contract total to $166,885.00. A Notice of Intent to Award was sent to all bidders on March 15, 2016. The bidders and their base bid prices are listed below:

Engineers Estimate	**$ 160,000 - $190,000**
Tom Ayres General Contractor, Inc.	**$175,885.00**
Diversified Contractors, Inc.	$214,718.00

FINANCIAL IMPACT:

The funds for this project are identified in the City's FY 2015-16 Adopted Budget in the Streets Division Capital Outlay Schedule identified for the Main Street Underpass Handrail Project in the amount of $200,000.

COUNCIL OPTIONS:

1. Approve a Construction Services Contract with Tom Ayres General Contractor, Inc. in an amount not to exceed $166,885.
2. Deny a Construction Services Contract with Tom Ayres General Contractor, Inc., modify scope and rebid the project.
3. Deny a Construction Services Contract with Tom Ayres General Contractor, Inc. and postpone the project.

DOCUMENTS ATTACHED:

- Confirmation of Bid Opening
- Bid Analysis Form
- Notice of Intent to Award
- Sample Contract

RECOMMENDED MOTION/ACTION:

Move to approve Option 1 and authorize a Construction Services Contract with Tom Ayres General Contractor, Inc. for the Main Street Underpass Handrail Improvements Project in an amount not to exceed $166,885.

NOTICE SENT TO:

All parties who submitted bids for this project as listed in the attached Confirmation of Bid Opening.

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CONFIRMATION OF BID OPENING

BID PROJECT NAME: Main Street Underpass Handrail Improvements Project #275214

DATE AND TIME OPENED: March 10, 2016, 2 P.M.

STAFF REPRESENTATIVE(S) PRESENT:
Elisa Olson, City Recorder
Andrew Lakey, Engineering
Scott Souders, City Engineer

BIDDER NAME & ADDRESS	CCB#	BID BOND INCLUDED	ADDENDUM(S) ACKNOWLEDGED (If applicable)	BID AMOUNT
Tom Ayers General Contractor P. O. Box 965 Bend, OR 97709	**186041**	Yes	Yes	$175,885.00
Diversified Contractors, Inc. 3001 Lakeport Blvd. Klamath Falls, OR 97601	**41320**	Yes	Yes	$214,718.00

/s/Elisa Olson

Engineers Estimate: $160,000 - $190,000

Elisa Olson
City Recorder

TENTATIVE DATE BID TO BE AWARDED BY COUNCIL: April 4, 2016

Email to: bids@bidocean.com, Legal (Contracts), Public Works (Admin) & Engineering

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CITY OF KLAMATH FALLS
PUBLIC WORKS ENGINEERING/CAPITAL PROJECTS
CIP PROJECT
DESIGN / BID PHASE BUDGET ANALYSIS FORM

Date: 15-Mar-16

Prepared By: Andrew Lakey Associate Engineer/Project Manager

__Pre-Bid _X_Post-Bid (check one)

Project Name: Main Street Underpass Handrail Replacement Project

Project No: 275214

Project Engineer: Andrew Lakey

	Expenditure to Date	Projected Future Expenditure	Total Current + Projected Expenditure
DESIGN PHASE AND BID PHASE			
Design Consultant Costs	$ 8,530	$ 2,470	$ 11,000
CONSTRUCTION PHASE			
Construction Contract: __Estimate _X_Bid (check one)	$ -	$ 166,885	$ 166,885
Consultant Construction Inspection	$ -	$ -	$ -
Materials Testing	$ -	$ -	$ -
Engineering Division	$ 3,792	$ 2,000	$ 5,792
SUBTOTAL =	*$ 12,322*	*$ 171,355*	*$ 183,677*
Other Costs			
Bidding advertisement	$ 276		$ 276
TOTAL =	**$ 12,598**	**$ 171,355**	**$ 183,953**

Budgeted Funds	
Main Street Underpass Handrail	**$ 200,000**

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City of Klamath Falls
Public Works Department - Engineering Division
PO Box 237, Klamath Falls, OR 97601
Capital Projects Section – 226 South 5th St
TEL (541) 883-5368; FAX (541) 882-3513
http://www.kfallsengineering.com

Date: 03/15/16

To: All Bidders
From: Scott Souders, PE
CC: Mark Willrett, PE; Elisa Olson

Re: Notice of Intent to Award – Main Street Underpass Handrail Improvements Project

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Thank you for your interest and submitting a Bid on this project. In accordance with the City of Klamath Falls policies and procedures for awarding contracts, the City is hereby notifying all parties who submitted a Bid for the Main Street Underpass Handrail Improvements Project of their intent to award.

The City of Klamath Falls intends to award a construction services contract to Tom Ayres General Contractor, Inc. for the Main Street Underpass Handrail Improvements Project in the not-to-exceed amount of $188,060.00 at the City's April 4, 2016 City Council meeting.

If you have any questions or comments please contact me during regular business hours at 541-883-5290.

CONTRACT AGREEMENT
CONSTRUCTION SERVICES
TOM AYRES GENERAL CONTRACTOR

THIS AGREEMENT is made this _____ day of _____, 2016, by and between the CITY OF KLAMATH FALLS, a municipal corporation, herein referred to as "CITY," and TOM AYRES doing business as TOM AYRES GENERAL CONTRACTOR herein referred to as "CONTRACTOR."

In consideration of the mutual promises set forth herein, CITY and CONTRACTOR agree as follows:

1. Description of Work. CONTRACTOR agrees to perform the services set forth in bid documents, incorporated herein by this reference. Time is of the essence in completing this Contract and CONTRACTOR agrees to complete the services set forth in the bid documents within the time frame(s) provided. Contractor also agrees to complete the work as described in the general conditions, plans, bid specifications/requirements, addendum(s), all of which are incorporated herein by this reference and made a part of this Contract.

2. Payment. CITY agrees to pay CONTRACTOR a sum not to exceed $175,885 for the work to be performed under this Contract. Payment is to be made within thirty (30) days of receipt of CONTRACTOR'S monthly billings. The "retainage provisions" of ORS 279C.550 through 279C.570 shall apply to these payment terms.

3. Relationship of the Parties. The parties intend that an independent contractor relationship will be created by this Contract. CITY is interested only in the results to be achieved, and the conduct and control of the work will lie solely with CONTRACTOR. CONTRACTOR is not to be considered an agent or employee of CITY for any purpose, and the employees of CONTRACTOR are not entitled to any of the benefits that CITY provides for CITY's employees. It is understood that CITY does not agree to use CONTRACTOR exclusively. It is further understood that CONTRACTOR is free to contract for similar services to be performed for other persons while they are under contract with CITY.

4. Indemnity. CONTRACTOR hereby agrees to defend, indemnify and save harmless City of Klamath Falls, its elected officials, employees, agents, and volunteers against any and all loss, damage, liability, claims, demands, or costs resulting from injury or harm to persons or property (including, without limitation, CONTRACTOR'S employees or property) to the extent arising out of or in any way connected with CONTRACTOR'S negligent performance hereof.

5. Insurance. The work to be performed under this Contract will be performed entirely at CONTRACTOR's risk. CONTRACTOR shall not commence work under this Contract until it has furnished CITY with proof of insurance coverage issued by an insurance company licensed to do business in the State of Oregon and a certificate satisfactory to the CITY, as specified below:

5.1. Workers' compensation coverage as required by law and to include employer's liability with limits of not less than $500,000 per occurrence; or, alternatively, CONTRACTOR shall provide documentation establishing that CONTRACTOR is exempt from workers' compensation coverage pursuant to ORS Chapter 656.

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5.2. General commercial liability coverage for damages as a result of death or bodily injury (including personal injury) to any person's destruction or damage to any property with limits of not less than $1,000,000 each occurrence, $2,000,000 policy aggregate. Such coverage shall include, but is not limited to the following: commercial general liability coverage, products liability including completed operations, premises operations including X (explosion), C (collapse), U (underground), and personal injury. All coverage shall be on an occurrence basis and not on a claim made basis.

5.3. If CONTRACTOR uses automobiles to complete the contract, automobile liability insurance as a result of death or bodily injury to any persons, or destruction of or damage to any property arising out of the ownership, maintenance or use of any owned, non-owned or hired motor vehicle with limits of not less than $500,000 per occurrence. All coverage shall be on an occurrence basis.

5.4. CONTRACTOR shall maintain an excess/umbrella liability policy of not less than $2,000,000 each occurrence and aggregate that will provide excess limits of liability over the commercial general liability, automobile liability, and employer's liability.

5.5. The following inclusions to CONTRACTOR'S certificate of insurance shall be made:

5.5.1. Waiver of transfer of rights of recovery against others to City of Klamath Falls;

5.5.2. The insurance is primary to and non-contributory with any insurance maintained by City of Klamath Falls;

5.5.3. All required coverage shall be written with companies that have at least an AmBest rating of A-;

5.5.4. The insurance shall provide a 30 day notice of cancellation or material change; and

5.5.5. The insurance certificate shall include endorsements for additional insured, naming "City of Klamath Falls, its elected officials, employees, agents, and volunteers" as an additional insured. The additional insured endorsement shall be attached to the certificate of insurance. The additional insured shall contain a severability of interest provision in favor of City of Klamath Falls and a waiver of subrogation in favor of City of Klamath Falls.

6. Compliance with Oregon Public Improvement Rules and Regulations. CONTRACTOR shall comply with the following Oregon laws and regulations relating to public improvements:

6.1. CONTRACTOR shall make payment promptly, as due, to all persons supplying to CONTRACTOR labor or material for the performance of the work to be performed under this Contract. CONTRACTOR shall not permit any lien or claim to be filed or prosecuted against the CITY on account of any labor or material furnished. [ORS 279C.505(1)(a) & (c)]

6.2. CONTRACTOR shall pay all contributions or amounts due the Industrial Accident Fund from CONTRACTOR, or any subcontractor, incurred in the performance of this Contract. [ORS 279C.505(1)(b)]

6.3. CONTRACTOR shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. [ORS 279C.505(1)(d)]

6.4. CONTRACTOR shall comply with the overtime and maximum hours of labor provisions of ORS 279C.520 and 279C.540.

6.5. If the CONTRACTOR fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONTRACTOR or a subcontractor by any person, or the assignee of the person in connection with this Contract as the claim becomes due, CITY may, at its option, pay such claim and charge the amount of

payment against funds due or to become due CONTRACTOR by reason of this Contract. [ORS 279C.515(1)]

6.6. If the CONTRACTOR or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract within 30 days after receipt of payment from the CITY, the CONTRACTOR or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the CONTRACTOR or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the CONTRACTOR, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived. If the CONTRACTOR or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The payment of a claim in the manner authorized in this section does not relieve the CONTRACTOR or CONTRACTOR's surety from obligation with respect to any unpaid claims. [ORS 279C.515(2), (3) & (4)]

6.7. CONTRACTOR 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 employees of CONTRACTOR, of all sums that the CONTRACTOR agrees to pay for the services and all moneys and sums that the CONTRACTOR collected or deducted from the wages of the CONTRACTOR'S employees under any law, contract or agreement for the purpose of providing or paying for the services. [ORS 279C.530(1)]

6.8. CONTRACTOR shall demonstrate to the reasonable satisfaction of CITY that an employee drug testing program is in place. [ORS 279C.505(2)]

6.9. CONTRACTOR shall, if feasible and cost-effective, salvage or recycle all construction and demolition debris. [ORS 279C.510]

6.10. CONTRACTOR and all subcontractors must have a "Public Works" bond in an amount of not less than $30,000 filed with the Construction Contractors Board before starting work under this Contract, unless otherwise exempt under ORS 279C.836. This provision must be contained in all subcontracts. CONTRACTOR shall provide a copy of said bond to CITY before starting the project. [ORS 279C.830(3)]

6.11. CONTRACTOR warrants that it has complied with the 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 agrees it will continue to comply with the tax laws of this state or a political subdivision of this state during the term of the public contract. CONTRACTOR'S failure to comply with the tax laws of this state or a political subdivision of this state is a default for which CITY may terminate the contract and seek damages and other relief available under the terms of the contract or under applicable law.

7. Prevailing Wage. CITY has determined that this Contract is subject to Oregon prevailing wage, and CONTRACTOR must comply with the prevailing wage rate requirements of ORS 279C.800 through 279C.870. These requirements include, without limitation, that

CONTRACTOR shall, in compliance with ORS 279C.840, pay each worker in each trade or occupation employed either by the CONTRACTOR, subcontractor or other person doing or contracting to do or contracting for the whole or any part of the work on this contract: i) not less than the state minimum hourly prevailing rate of wage [ORS 279C.830 and .838]; and ii) overtime as required by ORS 279C.540. [ORS 279C.830] Workers must be paid not less than the applicable state or federal prevailing wage rate, whichever is higher. [ORS 279C.830(1)(c); OAR 839-025-0020(3)

8. Provisions Concerning Environmental and Natural Resources Laws. Contractor shall comply with ORS 279C.525 concerning public improvements:

8.1. If the CONTRACTOR is delayed or must undertake additional work by reason of existing ordinances, rules or regulations of agencies not cited in this Contract or the bid specifications, or due to the enactment of new or the amendment of existing statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources occurring after the submission of the successful bid, the CITY may: terminate the Contract; complete the work itself; use non-agency forces already under contract with the CITY; require that the underlying property owner be responsible for cleanup; solicit bids for a new contractor to provide the necessary services under the CITY's competitive bid requirements; or issue the CONTRACTOR a change order setting forth the additional work that must be undertaken.

8.2. If the CONTRACTOR encounters a condition not referred to in the solicitation documents, not caused by the CONTRACTOR and not discoverable by a reasonable pre-bid visual site inspection, and the condition requires compliance with the ordinances, rules or regulations referred to under section 9.1, the CONTRACTOR shall immediately give notice of the condition to the contracting agency.

8.3. Except in the case of an emergency and except as may otherwise be required by any environmental or natural resource ordinance, rule or regulation, CONTRACTOR may not commence work nor incur any additional job site costs in regard to the condition encountered and described in section 9.2 without written direction from the CITY.

8.4. Upon request by the CITY, the CONTRACTOR shall estimate the emergency or regulatory compliance costs as well as the anticipated delay and costs resulting from the encountered condition. This cost estimate shall be promptly delivered to the CITY for resolution.

8.5. Within a reasonable period of time following delivery of an estimate under subsection 9.4, the CITY may: terminate the contract; complete the work itself; use non-agency forces already under contract with the CITY; require that the underlying property owner be responsible for cleanup; solicit bids for a new contractor to provide the necessary services under the CITY's competitive bid requirements; or issue the CONTRACTOR a change order setting forth the additional work that must be undertaken.

8.6. The following provisions apply to this Contract:

8.6.1. If the CITY chooses to terminate this Contract under section 9.1 or 9.5, the CONTRACTOR shall be entitled to all costs and expenses incurred up to the date of termination, including overhead and reasonable profits, on the percentage of the work completed. The CITY shall have access to the CONTRACTOR's bid documents when making the CITY's determination of the additional compensation due to the CONTRACTOR.

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8.7. Notwithstanding section 9.1 to 9.6:

8.7.1. All or a portion of the known environmental and natural resource risks may have been allocated to the CONTRACTOR by the listing of such environmental and natural resource risks with specificity in the solicitation documents.

8.7.2. In a local improvement district, all or a portion of the known and unknown environmental and natural resource risks may have been allocated to the CONTRACTOR by so stating in the solicitation documents.

8.7.3. The allocation of known environmental and natural resources risks set forth in the solicitation documents prevail over the general provisions set forth in section 9.1 through 9.6.

9. Relations with Subcontractors. CONTRACTOR shall include the following provisions in each subcontract for property or services entered into by the CONTRACTOR and a first-tier subcontractor, including a material supplier, for the purposes of performing this construction contract pursuant to ORS 279C.580:

9.1. A payment clause that obligates CONTRACTOR to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the CONTRACTOR by the CITY under the Contract; and

9.2. An interest penalty clause that obligates the CONTRACTOR, if payment is not made within 30 days after receipt of payment from the CITY, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract under section 10.1. The CONTRACTOR or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the CONTRACTOR or first-tier subcontractor did not make payment when payment was due is that the CONTRACTOR or first-tier subcontractor did not receive payment from the CITY or CONTRACTOR when payment was due. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and computed at the rate specified in ORS 279C.515 (2).

9.3. A provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of subsections 10.1 and 10.2 in each of the first-tier subcontractor's subcontractors and to require each of the first-tier subcontractor's subcontractors to include clauses in their subcontracts with each lower-tier subcontractor or supplier.

10. Warranty; Responsibility of CONTRACTOR. The CONTRACTOR warrants to CITY that materials and equipment furnished under this Contract will be of good quality and new unless otherwise required or permitted by CITY, and that all workmanship is in accordance with

the standards of the trade. CONTRACTOR shall perform the services set forth herein in an efficient, expeditious and professional manner in accordance with all applicable laws governing such work. CONTRACTOR shall be responsible for the professional quality, technical adequacy and accuracy, and timely completion of work and services to be performed by CONTRACTOR under this Contract.

11. Asbestos & Recycling. It is CITY's policy to avoid, to the maximum extent possible, the use of materials containing asbestos in CITY improvement and construction projects. No materials containing asbestos shall be furnished as part of this Contract without the prior written approval of the CITY. CONTRACTOR shall make reasonable efforts to ensure, to the maximum extent economically feasible, the utilization of materials that may be recycled or reused when discarded. [ORS 279B.025] If this Contract involves demolition, CONTRACTOR shall salvage or recycle construction and demolition debris, if feasible and cost-effective. [ORS 279C.510(1)]

12. Equal Employment Opportunity/Affirmative Action/Minority Business Enterprises.

12.1. Throughout the term of this Contract, CONTRACTOR shall fully comply with the equal employment opportunity requirements of federal, state and local law and shall maintain a policy that all employment decisions, practices and procedures are based on merit and ability without discrimination on the basis of an individual's race, color, religion, age, sex, national origin, or physical or mental disability. CONTRACTOR's policy shall apply to all employment actions including advertising, recruiting, hiring, promotion, transfer, disciplinary action, lay-off and termination.

12.2. CONTRACTOR shall carry out its equal employment opportunity policy by making a determined and good-faith effort at affirmative action to employ, and advance in employment, women, minorities, the physically and mentally disabled and other disadvantaged groups.

12.3. CONTRACTOR shall make a determined and good faith effort to utilize minority and female business enterprises in its contracted expenditures, including without limitation contracts for the acquisition of goods, services, materials, supplies and equipment used in the performance of this Contract.

12.4. CONTRACTOR may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055. By executing this Contract, CONTRACTOR certifies that CONTRACTOR has not discriminated and will not discriminate, in violation of this subsection, against any minority, women or emerging small business enterprise in obtaining any required subcontract. If the CONTRACTOR violates this certification, the CITY may regard the violation as a breach of contract that permits: (a) termination of the Contract; or (b) the CITY to exercise any remedies for breach of contract that are reserved or allowed in this Contract. [ORS 279A.110]

13. Assignment. The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without written authorization of the other.

14. Notices. All written notices given to the CITY by CONTRACTOR shall be addressed to and filed with the City Manager at City of Klamath Falls, P.O. Box 237, Klamath Falls, Oregon 97601, or by facsimile at 541-883-5399. All written notices from the CITY to CONTRACTOR shall be addressed to Tom Ayres General Contractor, PO Box 965, Bend OR 97709, unless notice of change of address is received by the CITY.

15. Legal Actions.

15.1. This Agreement shall be enforceable in Klamath County, Oregon, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Klamath County Circuit Court.

15.2. If suit or action is taken to enforce any of the provisions of this Agreement, the party prevailing therein shall be entitled to recover from the other such sum as the Court may adjudge reasonable as attorney fees therein, including any appeal thereof, in addition to all other sums provided by law.

16. Termination. This Contract may be terminated at any time by mutual written consent of the parties. Upon receiving a notice of termination of this Contract, CONTRACTOR shall immediately cease all activities under this Contract, unless CITY expressly directs otherwise in such notice of termination. Upon termination of this Contract, CONTRACTOR shall deliver to CITY all documents, information, works-in-progress and other property that are or would be deliverables had the contract been completed. Expiration or termination of this Contract shall not extinguish or prejudice CITY'S right to enforce this Contract with respect to any breach of a contractor warranty or any default or defect in contractor performance that has not been cured. CITY may terminate this Contract, in whole or in part, upon ten days notice to CONTRACTOR, if any of the following occur:

16.1. CITY fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for CONTRACTOR's work;

16.2. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Contract is prohibited or CITY is prohibited from paying for such work from the planned funding source;

16.3. CONTRACTOR no longer holds any license or certificate that is required to perform the work, or any license or certificate required by statute, rule, regulation or other law to be held by the CONTRACTOR to provide the services required by this Contract is for any reason denied, revoked, suspended, not renewed or changed in such a way that CONTRACTOR no longer meets requirements for such license or certificate; or

16.4. CONTRACTOR commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the work as to endanger CONTRACTOR's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within ten business days after delivery of CITY's notice, or such longer period of cure as CITY may specify in such notice.

IN WITNESS WHEREOF, the parties have executed this Agreement at Klamath Falls, Oregon, the day and year first above written.

CITY OF KLAMATH FALLS

By: _____
City Manager

Attest:

_____
City Recorder

APPROVED AS TO FORM:

_____
City Attorney

CONTRACTOR

By: _____
Name: _____
Title: _____

Attest: _____
Secretary

KLAMATH FALLS CITY COUNCIL
AGENDA REPORT

Agenda Item No. 6

Date: April 4, 2016

Department: Administration	Contact/Title: Joe Wall / Management Assistant
Staff Presenter: Joe Wall	Telephone No.: 541-883-5272
City Manager Review:	Email: jwall@klamathfalls.city

TOPIC: Authorization to Enter into a Consulting Services Contract with Stantec Consulting Services, Inc., to Submit and Provide Implementation Assistance for the U.S. EPA Area Wide Planning Grant Program

SUMMARY AND BACKGROUND:

The City, in coalition with Klamath County and the South Central Oregon Economic Development District, was awarded and is now implementing a three-year, $500,000, U.S. EPA Community-Wide Assessment (CWA) grant. In October 2014, City Council selected Stantec Consulting Services, Inc. (Stantec), to prepare the CWA application and provide grant implementation assistance.

Staff now desires, in continuing partnership with Stantec, to apply to EPA's complementary Area Wide Planning (AWP) grant program. The AWP grant program provides funding to develop an area-wide plan for assessing, cleaning up, and ultimately reusing catalyst, high priority brownfield sites. Funding is directed to a specific project area, proposed as downtown Klamath Falls, which lacks current vision and plan documents and whose redevelopment has been sometimes hampered by brownfield sites and environmental uncertainty. With the CWA grant, the City and coalition partners are developing a brownfield inventory and conducting site-specific environmental assessments on properties throughout the UGB. The AWP grant will build on this process with a particular focus on downtown. With the AWP grant, the City can conduct research and outreach to develop a written plan for revitalizing the downtown focus area. The written plan will outline strategies and resources to achieve goals and address challenges including brownfields, infrastructure, connectivity, market/redevelopment forces, and community desires at the same time.

Stantec has offered to prepare the AWP grant application for $8,000. The application cost provides for an estimated 160 hours of Stantec staff time, inclusive of salary and benefits but not additional profit. If the AWP grant is not funded in 2016, Stantec will resubmit a revised application on the City's behalf in 2018 (AWP grants are offered every other year), incorporative of EPA debrief feedback, for no additional fee.

Staff believes the City is well positioned to secure the AWP Grant as it is currently implementing the CWA Grant and EPA has shown preference to pairing the two programs. The EPA prioritizes funding to communities that show an existing commitment to revitalization of the focus area, such as implementing the CWA grant, conducting the URA analysis, and the

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presence of engaged community organizations like the Downtown Association and Blue Zones Project. Using the CWA grant, brownfield sites in the proposed downtown focus area have been identified, and a system for identifying catalyst properties where redevelopment will have a positive ripple effect in the surrounding area is being developed. With the AWP grant, the City can incorporate revitalization of those properties into the overall vision for downtown Klamath Falls.

FINANCIAL IMPACT:

If awarded the Consultant Services Contract, Stantec will prepare the AWP grant application for $8,000. AWP grant application costs will be paid for through the Other General Fund Division. If awarded, AWP grant activities will be performed in accordance with Stantec's fee schedule and funded through AWP grant award monies. The $200,000 AWP grant requires no local match, in-kind or otherwise.

COUNCIL OPTIONS:

1. Authorize staff to enter into a Consultant Services Contract with Stantec Consulting Services, Inc., to submit and provide implementation assistance for the U.S. EPA Area Wide Planning Program
2. Do not authorize staff to enter into a Consultant Services Contract with Stantec Consulting Services, Inc., to submit and provide implementation assistance for the U.S. EPA Area Wide Planning Program

DOCUMENTS ATTACHED:

- Area Wide Planning Program Fact Sheet
- Sample Consultant Contract

RECOMMENDED MOTION/ACTION:

Move to authorize staff to enter into a Consultant Services Contract with Stantec Consulting Services, Inc., to submit and provide implementation assistance for the U.S. EPA Area Wide Planning Program.

NOTICE SENT TO:

Stantec Consulting Services, Inc.

6

Brownfields Area-Wide Planning Program

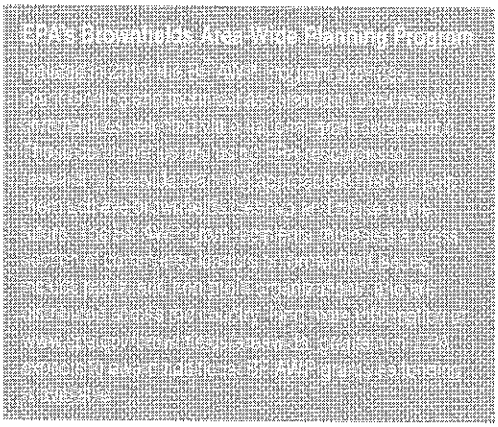
Introduction

The Environmental Protection Agency (EPA) created the Brownfields Area-Wide Planning (BF AWP) Program to assist communities in responding to local brownfields challenges, particularly where multiple brownfield[1] sites are in close proximity, connected by infrastructure, and overall limit the economic, environmental and social prosperity of their surroundings. Through the BF AWP Program, EPA provides assistance to advance community brownfield revitalization efforts. The BF AWP program is part of the Partnership for Sustainable Communities collaboration among EPA and the Departments of Transportation (DOT) and Housing and Urban Development (HUD). (www.sustainablecommunities.gov)

Brownfields Area-Wide Planning Program Goals

EPA developed the BF AWP Program to enhance EPA's core brownfields assistance programs[2] by helping communities perform the research needed to develop an area-wide plan for brownfields assessment, cleanup, and reuse. The resulting area-wide plans provide direction for future brownfields cleanup, reuse and related improvements that are:

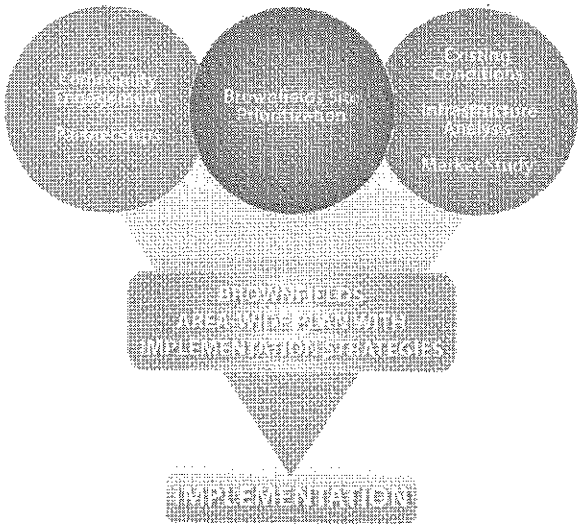
- Protective of public health and the environment;
- Economically viable; and
- Reflective of the community's vision for the area.



Core Elements of Brownfields Area-Wide Planning

Core elements of the BF AWP Program include:

- Collecting information and identifying community priorities related to brownfields cleanup and near- and long-term revitalization;
- Evaluating existing environmental conditions, local market potential, and needed infrastructure improvements;
- Developing strategies for brownfields site cleanup and reuse; and
- Identifying resources or leveraging opportunities to help implement the plans, including specific strategies for public and private sector investments and improvements necessary to help with cleanup and area revitalization.



1 A brownfield is a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. See www.epa.gov/brownfields/basic_info.htm

2 Please visit www.epa.gov/brownfields/grant_info/index.htm

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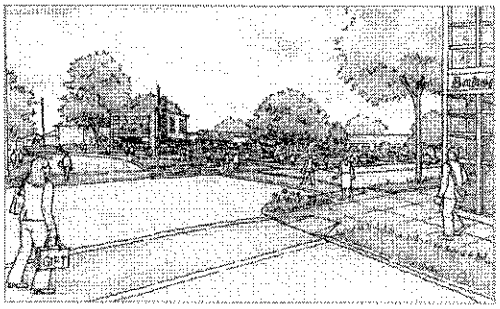
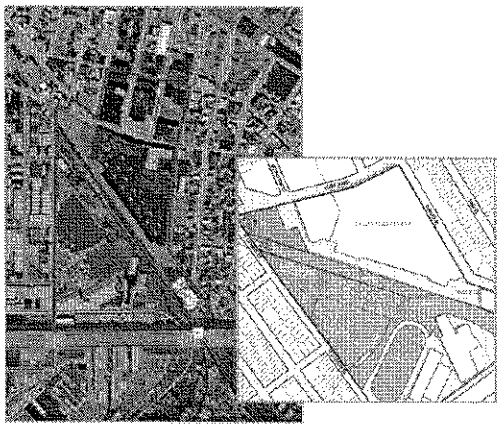
Types of Brownfields Area-Wide Planning Research Activities

- **Project Area Definition** – BF AWP areas are typically established within a local commercial corridor, neighborhood, city block, downtown district, or other geographically-defined area that has a single large or multiple brownfield sites.
- **Community Engagement** – Meaningful and continuous community engagement is fundamental to BF AWP. Stakeholders include residents, businesses, government, community-based organizations, nonprofits, and any potential future partners. Engagement can be facilitated through advisory committees, public meetings, design charrettes, round table sessions, and other means to gather community priorities for area cleanup and reuse.
- **Partnerships** – BF AWP should reflect diverse perspectives on community priorities and shared responsibility for implementation across multiple entities. Partnerships typically include government agencies, institutional or community-based organizations, local or regional funding providers and the private sector. Long-term collaboration amongst partners helps ensure the interests voiced in the community engagement process are applied throughout the life of the project and facilitates implementation of the area-wide plan.
- **Brownfields Site Prioritization** – Prioritization allows for strategic use of limited resources. It can be customized to meet the unique needs and goals of the community identified through the community engagement process. Criteria may include proximity to sensitive populations, property size, human or environmental health threats, likelihood of reuse, availability of other resources, or potential to catalyze additional improvements within the project area.
- **Existing Conditions** – Establishing the local physical, social, economic, and environmental context on which to base the plan allows stakeholders to: identify priorities, partnerships, and general needs for the area; informs a detailed opportunities and constraints analysis;



The vision for cleanup and redevelopment of brownfields is driven by local community priorities, market demand, and area-wide investments in New Bern, North Carolina



Ironbound Community Corporation, New Jersey brownfields planning area and site reuse concepts

Meaningful community engagement like this meeting in Huntington Park, California, allows the plan to reflect community priorities

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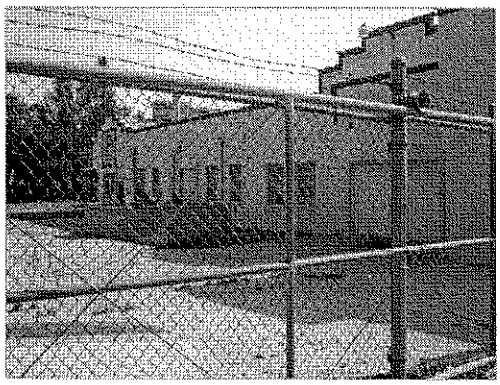
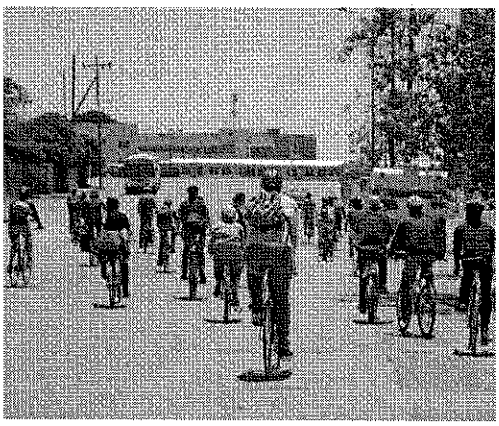
and begins the process of identifying resources for implementation. For example, proposed projects requiring private market investment and development may benefit from economic research or market studies to identify what the local real estate market can support. Similarly, identifying the extent to which a project will require public subsidies is critical to determine project feasibility. Brownfields cleanup and reuse strategies need to be directly tied to the infrastructure that supports the sites, including roads, water, sewer, power, and telecommunications, if revitalization plans are to be realized. Examining the adequacy of infrastructure is important when developing strategies for leveraging the use of existing infrastructure— or identifying if upgrades are needed given the planned reuse.

- **Brownfields Reuse Planning for Catalyst Sites** – Through the process of identifying the community's priorities and existing conditions of the project area, the BF AWP process helps uncover specific opportunities where communities can assess, clean up and reuse high-priority, or catalyst, brownfield sites. These sites may have the strongest potential for reuse due to community interest, environmental, health or economic concerns, and/or ability to spur additional revitalization within the project area. The brownfields area-wide plan should summarize the cleanup and reuse implementation strategies for these catalyst sites using information obtained through research into community engagement, prioritization, existing conditions, partnerships, and potential resources.

- **Implementation Strategy** – Identifying and evaluating potential technical or financial resources at the local, regional, state, tribal, and federal levels are critical steps for the realization of BF AWP goals. EPA encourages strong coordination with other federal, state, tribal, regional and local agencies to share relevant information and help leverage technical assistance and resource opportunities. Implementation strategies must also consider partnerships, market-based feasibility of redevelopment plans, and short- and long-term actions to achieve full-scale implementation.



Brownfields like this in Ranson, West Virginia, are part of the city's BF AWP project area and targeted for cleanup and revitalization



Mobile community engagement in San Francisco tours the planning area for close inspection

Public and private partners in Kansas City, Missouri, look at a key brownfields site and work together to develop a strategy to implement the BF AWP vision

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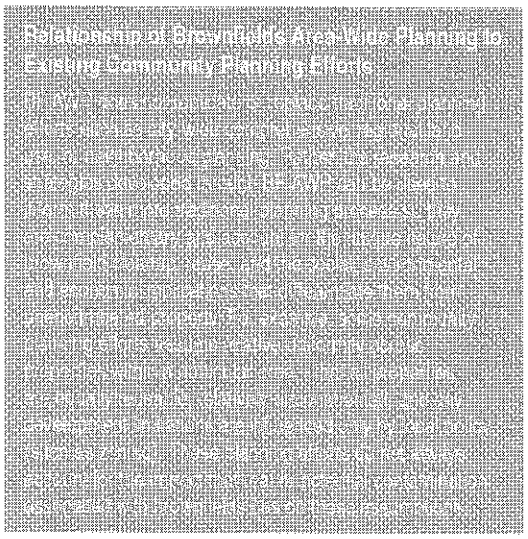
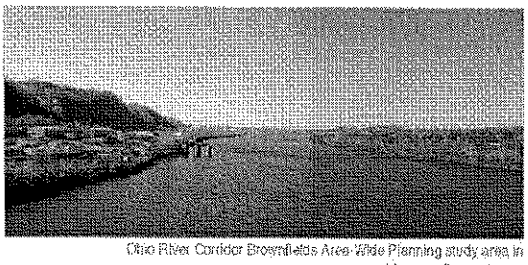
Developing Action-Oriented Brownfields Area-Wide Planning with Short- and Long-Term Implementation Considerations

The BF AWP process is meant to help communities organize the short-and long-term actions that they need to take to achieve the cleanup and reuse goals for the project area. Often times, economic limitations (such as financial resources and market conditions) and local policy challenges can prevent a brownfields area-wide plan from being implemented immediately. However, the process should help a community recognize that taking initial or interim steps can keep momentum behind the project. For example, a community can work to integrate the plan across local government departments, into partnership priorities or into regional planning efforts. Additionally, pursuing interim cleanup and reuse at brownfields sites can also help demonstrate to the community that their priorities are being addressed, even before the full brownfields remedy and reuse are achieved.



Conclusion

EPA's BF AWP program outlines an approach which enables communities to research and evaluate brownfields cleanup and reuse opportunities in light of priorities and existing plans; local market, infrastructure, and other conditions; and resource availability. This information enables communities to make more informed decisions about where to direct scarce resources and helps advance the implementation of locally-driven initiatives, such as housing, parks, environmental improvement, economic development, and ensuring environmental justice. The BF AWP process is especially helpful to communities that have already been working within a specific area to develop partnerships, engage the community on priorities and build agreement around a shared revitalization vision.



Ohio River Corridor Brownfields Area-Wide Planning study area in Monaca, Pennsylvania

As available, EPA provides assistance to brownfields communities for BF AWP in order to help identify specific cleanup and reuse opportunities for key brownfield sites that can serve as catalysts for revitalization of the surrounding area.

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CONTRACT AGREEMENT

[CONSULTANT SERVICES – STANTEC CONSULTING SERVICES, INC., TECHNICAL ASSISTANCE TO PREPARE AND IMPLEMENT THE 2016 U.S. EPA AREA-WIDE PLANNING GRANT PROGRAM]

THIS AGREEMENT is made this _____ day of _____ , 20____, by and between the CITY OF KLAMATH FALLS, a municipal corporation, herein referred to as "CITY," and STANTEC CONSULTING SERVICES, INC., herein referred to as "CONSULTANT."

WHERAS, the parties desire to execute an agreement that will include two phases: (1) Preparation of the 2016 U.S. EPA Area-Wide Planning Grant (Grant) application. (2) Grant implementation. Phase 2 will not be effective unless CITY receives and accepts the Grant award.

In consideration of the mutual promises set forth herein, CITY and CONSULTANT agree as follows:

1. Description of Work: CONSULTANT agrees to prepare and complete the Grant application. CONSULTANT agrees to complete the 2016 Grant application by the established application submittal deadline, to be determined per U.S. EPA announcement. If CITY is awarded and accepts the Grant award, CONSULTANT agrees to perform Grant implementation. If CITY is not awarded the Grant in 2016, CONSULTANT will resubmit a revised Grant application on CITY's behalf in 2018 for no additional fee.

2. Payment: CITY agrees to pay CONSULTANT a sum not to exceed Eight Thousand Dollars ($8,000) on a lump-sum basis for Grant application preparation. Payment is to be made in periodic installments upon receipt of CONSULTANT's billing. If CONSULTANT is not successful in obtaining the Grant award, CONSULTANT will resubmit a revised Grant application for no additional fee ($0). If CONSULTANT is successful in obtaining the Grant award, CITY agrees to pay CONSULTANT a sum not to exceed Two Hundred Thousand Dollars ($200,000) for Grant implementation services. Payment is to be made at the rates set forth in Exhibit A on a time and expense basis within thirty (30) days of receipt of CONSULTANT's monthly billings.

3. Relationship of the Parties: The parties intend that an independent consultant relationship will be created by this Contract. CITY is interested only in the results to be achieved, and the conduct and control of the work will lie solely with CONSULTANT. CONSULTANT is not to be considered an agent or employee of CITY for any purpose, and the employees of CONSULTANT are not entitled to any of the benefits that CITY provides for CITY's employees. It is understood that CITY does not agree to use CONSULTANT exclusively. It is further understood that CONSULTANT is free to contract for similar services to be performed for other persons while they are under contract with CITY.

4. Liability and Insurance: The work to be performed under this Contract will be performed entirely at CONSULTANT's risk. CONSULTANT shall acquire, and maintain at its own expense for the duration of this Contract, Professional Liability Insurance issued by a responsible insurance company licensed to do business in the State of Oregon. The insurance shall afford limits of liability of $1,000,000 to protect CITY against claims for damages occurring by reason of negligent acts, errors or omissions of CONSULTANT in conjunction with performance under this Agreement. The Professional Liability Insurance coverage shall be in an amount at least equal to the greater of either the amount required by Oregon Revised Statute 30.270 or such other insurance coverage amounts as may be required by the bid specifications of this Contract. CONSULTANT shall not commence work under the Contract until it has furnished CITY with a copy of said Professional Liability Insurance and required coverage as stated below:

4.1 Workers' compensation coverage as required by law and to include employer's liability with limits of not less than $500,000 per occurrence; or, alternatively, CONSULTANT shall provide documentation establishing that CONSULTANT is exempt from workers' compensation coverage pursuant to ORS Chapter 656.

4.2 If CONSULTANT uses automobiles to complete the contract, automobile liability insurance as a result of death or bodily injury to any persons, or destruction of or damage to any property arising out of the ownership, maintenance or use of any owned, non-owned or hired motor vehicle with limits of not less than $500,000 per occurrence. All coverage shall be on an occurrence basis.

4.3 CONSULTANT shall maintain an excess/umbrella liability policy of not less than $2,000,000 each occurrence and aggregate that will provide excess limits of liability over the commercial general liability, automobile liability, and employer's liability.

4.4 The following inclusions to CONSULTANT'S certificate of insurance shall be made:

4.4.1 Waiver of transfer of rights of recovery against others to City of Klamath Falls;

4.4.2 The insurance is primary to and non-contributory with any insurance maintained by City of Klamath Falls;

4.4.3 All required coverage shall be written with companies that have at least an AmBest rating of A-; and

4.4.4 The insurance shall provide a 30 day notice of cancellation or material change; and the insurance certificate shall include endorsements for additional insured, naming "City of Klamath Falls, its elected officials, employees, agents, and volunteers" as an additional insured. The additional insured endorsement shall be attached to the certificate of insurance. The additional insured shall contain a severability of interest provision in favor of City of Klamath Falls and a waiver of subrogation in favor of City of Klamath Falls.

5. Compliance with Rules and Regulations: CONSULTANT shall comply with all rules and regulations as contained in all applicable Federal, State and local laws, rules and regulations and shall require any and all subcontractors to comply with all applicable provisions of the same and of this Contract, including the following Oregon Statutory provisions:

6

5.1 CONSULTANT shall make payment promptly, as due, to all persons supplying to CONSULTANT labor or material for the performance of the work to be performed under this Contract. CONSULTANT shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished. [ORS 279B.220(1)&(3)]

5.2 CONSULTANT shall pay all contributions or amounts due the Industrial Accident Fund from CONSULTANT, or any subcontractor, incurred in the performance of this Contract. [ORS 279B.220(2)]

5.3 CONSULTANT shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. [ORS 279B.220(4)]

5.4 CONSULTANT shall comply with the overtime and maximum hours of labor provisions of ORS 279B.020 and 279B.235.

5.5 CONSULTANT, and all other employers working under this Contract, will comply with the workers' compensation provisions of ORS 656.017 (unless CONSULTANT or other employers are exempt under ORS 656.126.) [ORS 279B.230(2)]

5.6 If the CONSULTANT fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONSULTANT or a subcontractor by any person, or the assignee of the person in connection with this Contract as the claim becomes due, CITY may, at its option, pay such claim and charge the amount of payment against funds due or to become due CONSULTANT by reason of this Contract. [ORS 279C.515(1)]

5.7 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 employees of CONSULTANT, of all sums that the CONSULTANT agrees to pay for the services and all moneys and sums that the CONSULTANT collected or deducted from the wages of the CONSULTANT'S employees under any law, contract or agreement for the purpose of providing or paying for the services. [ORS 279B.230(1)]

5.8 CONSULTANT warrants that it has complied with the 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. CONSULTANT agrees it will continue to comply with the tax laws of this state or a political subdivision of this state during the term of the public contract. CONSULTANT'S failure to comply with the tax laws of this state or a political subdivision of this state is a default for which CITY may terminate the contract and seek damages and other relief available under the terms of the contract or under applicable law.

6. Responsibility of CONSULTANT: CONSULTANT shall provide the services set forth herein in an efficient, expeditious, and professional manner in accordance with all applicable laws governing such work, and shall work closely with and be guided by CITY. CONSULTANT shall be responsible for the professional quality, technical adequacy and accuracy, and timely completion of services performed by CONSULTANT as set forth herein. It is the intent of CITY that said services be completed to achieve the best possible results in

accordance with generally accepted professional standards applicable to the types of services and work provided hereunder at the most economical cost. CONSULTANT shall be and remain liable, in accordance with applicable law, for all damage to and costs incurred by the CITY to the extent caused by, arising from or connected with the CONSULTANT's negligent errors, omissions or performance of any of the services furnished under this Agreement.

7. Equal Employment Opportunity/Affirmative Action/Minority Business Enterprises:

7.1 Throughout the term of this Contract, CONSULTANT shall fully comply with the equal employment opportunity requirements of federal, state and local law and shall maintain a policy that all employment decisions, practices and procedures are based on merit and ability without discrimination on the basis of an individual's race, color, religion, age, sex, national origin, or physical or mental disability. CONSULTANT's policy shall apply to all employment actions including advertising, recruiting, hiring, promotion, transfer, disciplinary action, lay-off and termination.

7.2 CONSULTANT shall carry out its equal employment opportunity policy by making a determined and good-faith effort at affirmative action to employ, and advance in employment, women, minorities, the physically and mentally disabled and other disadvantaged groups.

7.3 CONSULTANT shall make a determined and good faith effort to utilize minority and female business enterprises in its contracted expenditures, including without limitation contracts for the acquisition of goods, services, materials, supplies and equipment used in the performance of this Contract.

7.4 CONSULTANT may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055. By executing this Contract, CONSULTANT certifies that CONSULTANT has not discriminated and will not discriminate, in violation of this subsection, against any minority, women or emerging small business enterprise in obtaining any required subcontract. If the CONSULTANT violates this certification, the CITY may regard the violation as a breach of contract that permits: (a) termination of the contract; or (b) the CITY to exercise any remedies for breach of contract that are reserved or allowed in this Contract. [ORS 279A.110]

8. Indemnification: CONSULTANT shall indemnify, hold harmless and defend CITY, its officers and employees, against all liability or loss, and against all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature based upon, caused by or arising out of the negligent acts, errors or omissions of CONSULTANT, or violation of any statute, ordinance or regulation. CONSULTANT shall also indemnify CITY against all liability and loss in connection with, and shall assume full responsibility for, payment of all Federal, State and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws, with respect to CONSULTANT's employees, including any subcontractors, engaged in performance of the contract.

9. Assignment: The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall

6

assign, sublet or transfer any interest in this Agreement without written authorization of the other.

10. Notices: All written notices given to the CITY by CONSULTANT shall be addressed to and filed with the City Manager at City of Klamath Falls, P.O. Box 237, Klamath Falls, Oregon 97601, or by facsimile at 541-883-5399. All written notices from the CITY to CONSULTANT shall be addressed to Project Manager/Principal, Elaine Howard at Elaine Howard Consulting LLC, 4763 SW Admiral St. Portland, OR 97221, unless notice of change of address is received by the CITY.

11. Legal Actions:

11.1 This Agreement shall be enforceable in Klamath County, Oregon, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in the Klamath County, Circuit Court.

11.2 If suit or action is taken to enforce any of the provisions of this Agreement, the party prevailing therein shall be entitled to recover from the other such sum as the Court may adjudge reasonable as attorney fees therein, including any appeal thereof, in addition to all other sums provided by law.

12. Termination: This Contract may be terminated at any time by mutual written consent of the parties. Upon receiving a notice of termination of this Contract, CONSULTANT shall immediately cease all activities under this Contract, unless CITY expressly directs otherwise in such notice of termination.

12.1 Upon termination of this Contract, CONSULTANT shall deliver to CITY all documents, information, works in progress and other property that are or would be deliverables had the contract been completed. CITY shall have full ownership, including, but not limited to, intellectual property rights, and control of all such finished and unfinished reports, data, studies, photographs, charts or other work product.

12.2 Expiration or termination of this Contract shall not extinguish or prejudice CITY'S right to enforce this Contract with respect to any breach of a CONSULTANT warranty or any default or defect in CONSULTANT performance that has not been cured.

12.3 In the event that CITY terminates the Contract, CITY shall pay CONSULTANT the reasonable value of services rendered by CONSULTANT pursuant to this Contract; provided, however, that CITY shall not in any manner be liable for lost profits which might have been made by CONSULTANT had CONSULTANT completed the services required by this Contract. CONSULTANT shall, not later than ten (10) calendar days after termination of this Contract by CITY, furnish to CITY such financial information as in the judgment of the CITY'S representative is necessary to determine the reasonable value of the services rendered by CONSULTANT.

12.4 CITY may terminate this Contract, in whole or in part, if any of the following occur:

6

12.1.1 If CONSULTANT fails to perform its duties to the satisfaction of CITY, or if consultant fails to fulfill in a timely and professional manner its obligations under this Contract, then CITY shall have the right to terminate this Contract effective immediately upon CITY giving written notice thereof to CONSULTANT.

12.1.2 CITY fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for CONSULTANT'S work;

12.1.3 Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Contract is prohibited or CITY is prohibited from paying for such work from the planned funding source;

12.1.4 CONSULTANT no longer holds any license or certificate that is required to perform the work, or any license or certificate required by statute, rule, regulation or other law to be held by the CONSULTANT to provide the services required by this Contract is for any reason denied, revoked, suspended, not renewed or changed in such a way that CONSULTANT no longer meets requirements for such license or certificate; or

12.1.5 CONSULTANT commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the work as to endanger CONSULTANT'S performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within ten business days after delivery of CITY's notice, or such longer period of cure as CITY may specify in such notice.

IN WITNESS WHEREOF, the parties have executed this Agreement at Klamath Falls, Oregon, the day and year first above written.

CITY OF KLAMATH FALLS

By: _____
City Manager

Attest: _____
City Recorder

APPROVED AS TO FORM:

_____
City Attorney

CONSULTANT

By: _____
Consultant/CEO

Attest: _____
Secretary

ORDINANCE NO. 16-_____

ORDINANCE ADDING SECTIONS 8.175 TO 8.198 OF THE CITY CODE AND AMENDING SECTION 8.980 RELATING TO VACANT PROPERTY REGISTRATION

WHEREAS, the City desires to create additional tools to deal with the wide-spread problem of housing blight; and

WHEREAS, the City often cannot locate responsible parties in vacant properties that have not yet gone through foreclosure; and

WHEREAS, the City wishes to require the lender of such vacant properties to register the contact information of the lender with the City. The City wishes the lender to be responsible to maintain the property for security and to prevent code violations; and, NOW THEREFORE;

THE CITY OF KLAMATH FALLS HEREBY ORDAINS AS FOLLOWS:

Section 1

Sections 8.175 to 8.198 of the City Code are added as follows:

Vacant Residential Property Registration

8.175 TITLE AND PURPOSE
This Act shall be known and may be cited as the Vacant Residential Property Registration Act. The purpose of this Vacant residential property registration program is to protect neighborhoods from becoming blighted through the lack of adequate maintenance and security of Vacant properties.

8.178 DEFINITIONS
The following terms as used in Sections 8.175 to 8.198 (Vacant Residential Property Registration Act) shall mean:
(1) Borrower. Any person who becomes obligated on a Real Estate Loan Agreement, either directly or indirectly, and includes, but is not limited to, mortgagors, vendees under conditional land sales contracts and grantors under trust deeds.
(2) Evidence of Vacancy. Any condition that on its own, or combined with other conditions present, would lead the Chief of Police to believe that the property is Vacant. Such conditions include, but are not limited to, overgrown and/or dead vegetation; accumulation of newspapers, circulars, flyers and/or mail; past due utility notices and/or disconnected utilities; accumulation of trash, junk and/or debris; the absence of window coverings such as curtains, blinds and/or shutters; the absence of furnishings and/or personal items consistent with residential habitation; evidence of trespass or criminal mischief; or statements by neighbors, passerby, delivery persons, and/or government employees that the property is Vacant.
(3) Lender. Any person who makes, extends, or holds a Real Estate Loan Agreement and includes, but is not limited to, mortgagees; beneficiaries under trust deeds; vendors under conditional land sales contracts; trustees and a successor in interest to any mortgagee, beneficiary, vendor or trustee. The term also includes any mortgagee, beneficiary or trustee that accepts a deed in lieu of foreclosure.

7

(4) Notice of Default. A written notice to a Borrower stating that a default on a Real Estate Loan Agreement has occurred and that legal action may be taken.
(5) Out of Area. Outside of Klamath County.
(6) Real Estate Loan Agreement. Any agreement providing for a loan on residential property, secured in whole or in part by real property located within the City of Klamath Falls, or any interest therein, and includes, but is not limited to mortgages, trust deeds and conditional land sales contracts.
(7) Vacant. A subject property that is not legally occupied.

8.180 INSPECTION
(1) Immediately upon default of the Borrower, a Lender shall perform an inspection of the property that is the security for the Real Estate Loan Agreement.
(2) If the property is found to be Vacant or shows Evidence of Vacancy, the Lender shall, within ten (10) days of the inspection, register the property with the Chief of Police.
(3) If the property is occupied but remains in default, the property shall be inspected by the Lender on a monthly basis until the Borrower remedies the default.
(4) Sections 8.175 to 8.198 (Vacant Residential Property Registration Act) also applies to properties that have been the subject of a foreclosure sale where title has transferred from one Lender to another Lender; and a property transferred under a deed in lieu of foreclosure.

8.185 REGISTRATION
(1) The registration shall contain the following information:
(a) The name of the Lender;
(b) The direct mailing address of the Lender. Post office boxes are not acceptable;
(c) The direct contact name and phone number for the Lender;
(d) The physical address for the Lender's agent authorized to receive service of process, if applicable; and
(e) The direct contact information for the local property management company responsible for security, maintenance and marketing of the property, if applicable.
(2) No registration fee shall be imposed. A Lender that has registered a property under Sections 8.175 to 8.198 (Vacant Residential Property Registration Act) shall report any change of information contained in the registration within ten (10) days of the change. Properties subject to Sections 8.175 to 8.198 (Vacant Residential Property Registration Act) shall remain under the registration requirement as long as the property remains Vacant.
(3) Registration forms shall be available at the Klamath Falls Police Department and online at the City's website.

8.187 MAINTENANCE REQUIREMENTS
(1) A Lender shall maintain properties subject to Sections 8.175 to 8.198 (Vacant Residential Property Registration Act). Maintenance includes all of the following:
(a) Ensuring that the condition of the subject property does not, in the opinion of the Chief of Police, constitute a public nuisance;
(b) Regular cutting, pruning and mowing of the subject property and the removal of all trimmings, as applicable to the property;
(c) Pools and spas shall be kept in working order, so that water remains clear and free of pollutants and debris; or drained and kept covered.
(2) If the property is owned by an Out of Area Lender, a local property management company shall be contracted to perform monthly inspections to verify the requirements of this section, and to ensure any other applicable laws are being met. The property management company shall

post a direct contact name and 24-hour contact phone number for persons to report problems or concerns, and the posting shall be placed on the interior of a window facing the street to the front of the property so it is visible from the street. If no such area exists, then the posting shall be placed on the exterior of the property in a location visible from the street to the front of the property. An exterior posting shall be constructed of and printed with weather resistant materials.
(3) Adherence to this section does not relieve a person subject to Sections 8.175 to 8.198 (Vacant Residential Property Registration Act) of any obligations set forth in any covenants, conditions and restrictions which may apply to the subject property.

8.190 SECURITY REQUIREMENTS
(1) The Lender shall maintain a subject property in a secure manner so as not to be accessible to unauthorized persons, and includes the securing of windows, doors, gates and any other opening of such size that may allow a child to access the interior of the property. Broken windows shall be boarded and painted or reglazed.
(2) If the property is owned by an Out of Area Lender, a local property management company shall be contracted to perform monthly inspections to verify the requirements of this section, and to ensure any other applicable laws are being met. A property management company shall be subject to the same posting requirements as provided for in Section 8.817(2).

8.193 ADDITIONAL AUTHORITY
The Chief of Police shall have the authority to require the Lender to implement any additional maintenance and/or security measures to prevent the decline of the property.

8.195 VIOLATION; PENALTY
(1) A Lender that violates any portion of Sections 8.175 to 8.198 (Vacant Residential Property Registration Act) shall be a violation and shall be punished by a fine not more than $1000.
(2) Citations for violations may be mailed by first class mail to the Lender or Lender's registered agent.
(3) Enforcement fees may be applied to properties in violation of Sections 8.175 to 8.198 (Vacant Residential Property Registration) pursuant to the criteria defined in Section 8.980 (Enforcement Fees).

8.198 APPEALS
A Lender that is required to implement additional maintenance or security measures as provided for in Section 8.190 (Security Requirements) shall have the right to appeal under the procedures set out in Section 1.025 (Uniform Appeal and Hearing Procedure).

7

Section 2

Sections 8.980(1) of the City Code is amended as follows:

(1) In order to defray the costs of enforcement of Sections 8.000 to 8.298, the Public Safety Officer or his/her designee (the Officer) shall impose fees on those properties and owners of those properties which are found not to be in compliance with the City adopted building codes, the International Property Maintenance Code, Vacant Property Registration Ordinance, or the Geothermal Ordinance (collective referred to as "these Acts").

Section 3

This Ordinance shall become effective 30 days after passage.

Passed by the Council of the City of Klamath Falls this ___ day of April, 2016.

Presented to the Mayor, approved and signed this ___ day of April, 2016.

_____
Mayor

ATTEST:

_____
City Recorder

STATE OF OREGON }
COUNTY OF KLAMATH }ss.
CITY OF KLAMATH FALLS }

I, _____, Recorder for the City of Klamath Falls, Oregon, do hereby verify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Council of the City of Klamath Falls, Oregon at the meeting on the ____ day of April, 2016 and therefore approved and signed by the Mayor and attested by the City Recorder.

_____
City Recorder

7