

PROFESSIONAL SERVICES AGREEMENT
TILLAMOOK COUNTY AND MCKINSTRY ESSENTION LLC
COMPREHENSIVE FACILITY & ENERGY ASSESSMENT
AND SPACE PLANNING

This professional services agreement, hereafter “agreement” is entered into by and between MCKINSTRY ESSENTION LLC, hereafter “contractor” and TILLAMOOK COUNTY a political subdivision of the State of Oregon, hereafter “county”, pursuant to ORS 203.010. County and contractor intend to contract for COMPREHENSIVE FACILITY & ENERGY ASSESSMENT AND SPACE PLANNING. The mutual promises of each are given in exchange and as consideration for, the promises of the other.

COUNTY AND CONTRACTOR MUTUALLY COVENANT AND AGREE AS FOLLOWS:

1. AGREEMENT

Contractor promises to provide, and county promises to pay for, the services described below according to the provisions of this agreement.

2. AGREEMENT PRICE AND AMOUNT

The price for the services provided by contractor shall be Three Hundred Thousand Three Hundred Seventy and 00/100 Dollars (\$300,370.00).

3. AGREEMENT TERM

The term or period of this agreement shall begin June 12, 2023 and end November 30, 2023.

4. AGREEMENT DOCUMENTS

The following documents comprise the agreement and are incorporated herein by reference in their entirety.

- 4.1. This Agreement;
- 4.2. Public Contract Provisions;
- 4.3. Project Proposal Dated May 25, 2023; and
- 4.4. OMNIA Partners Public Sector Agreement: McKinstry Contract Number 1158 By Reference.

5. TERMINATION

5.1. WITHOUT NOTICE

This agreement shall terminate without any requirement of notice to either party when the first of the following events occurs:

- 5.1.1. The parties mutually consent to termination in writing.
- 5.1.2. The agreement term ends.

PROFESSIONAL SERVICES AGREEMENT
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COMPREHENSIVE FACILITY & ENERGY ASSESSMENT
AND SPACE PLANNING

5.1.3. The moment prior to the contractor filing for the settlement of debts or any debt restructuring in any state, federal or other court of competent jurisdiction.

5.1.4. When contractor's proposed agreement price adjustments exceed agreement specifications.

5.2. WITH NOTICE

This agreement may also end and notice shall be served as required when:

5.2.1. Any party breaches any duty, term or condition of this agreement.

5.2.2. Either party commits a fraud or misrepresentation upon the other party.

5.2.3. Public funds are no longer available to support this agreement.

5.2.4. Either party gives fifteen (15) days written notice.

GENERAL PROVISIONS

6. STATUS OF CONTRACTOR

The parties intend that contractor, in performing the services specified in this agreement, shall act as an independent contractor.

6.1. The compensation provided herein shall be exclusive and county shall neither pay nor provide contractor with any fringe benefits, including, but not limited to, retirement, health insurance, Workers' Compensation insurance, unemployment insurance or sick leave. No additional compensation or alternate form thereof shall be payable by county to contractor for any purpose whatsoever unless otherwise agreed in writing. Contractor shall be responsible for paying all income taxes, Social Security or self-employment taxes, or any other taxes or assessments imposed by any governmental body incurred by reason of county's payment of compensation hereunder to contractor. County will report the total amount of all payments to contractor, including any expense, in accordance with Federal Internal Revenue Service and State of Oregon Department of Revenue regulations.

6.2. This agreement is personal as to contractor and contractor may not subcontract any portion of the services to be performed hereunder without the prior written approval of county; provided nothing herein shall prohibit any other consultants employed by contractor or in a firm of which contractor shall be a member to assist contractor in carrying out the responsibilities herein.

6.3. This agreement is not a contract of employment. The parties intend that contractor, in performing the services specified herein, shall be and act as an independent contractor and shall have professional control of the work

PROFESSIONAL SERVICES AGREEMENT
TILLAMOOK COUNTY AND MCKINSTRY ESSENTION LLC
COMPREHENSIVE FACILITY & ENERGY ASSESSMENT
AND SPACE PLANNING

and the manner in which it is performed. Contractor shall have the sole authority to determine the manner and means of performing the services described herein and county shall not interfere with, control or direct the manner or method in which such services are performed; provided, county shall direct contractor as to the work to be assigned and shall have the right to direct the required results to the extent such direction may be consistent with the nature of contractor's services. Except as otherwise expressly provided herein and except for the purposes of the Oregon Tort Claims Act, ORS 30.265, contractor shall not be considered an agent of county.

- 6.4. Contractor shall be responsible for and has obtained or shall obtain and maintain all necessary professional licenses and professional liability insurance, as required by law.
- 6.5. In the event contractor's labor or services shall be performed by contractor's employees, such employees shall be and at all times remain the employees of contractor, under the contractor's sole and exclusive control and shall not be deemed employees of county for any purpose.
- 6.6. Contractor is an independent contractor for purposes of the Workers' Compensation Law (ORS Chapter 656) and unemployment insurance.
 - 6.6.1. Contractor is solely liable for any Workers' Compensation coverage under this agreement. If contractor has the assistance of other persons in the performance of this agreement, contractor shall qualify and remain qualified for the term of the agreement as an insured employer under ORS 656.407. If contractor performs this agreement without the assistance of any other persons, contractor shall execute a Joint Declaration with county's Workers' Compensation carrier absolving county of any and all liability as provided in ORS 656.029.
 - 6.6.2. If contractor is a subject employee for Workers' Compensation or unemployment insurance purposes, contractor shall provide such Workers' Compensation and unemployment coverage benefits at contractor's sole cost and expense and shall provide proof of such insurance and benefits at county's request.
- 6.7. Contractor represents that contractor has filed federal and state income tax returns (a) in contractor's business name or (b) on a business Schedule C as part of contractor's personal income tax returns, if contractor provided consulting services as an independent contractor during the previous calendar year.
- 6.8. Contractor represents that contractor is customarily engaged in an independently established business. To that end, contractor represents

PROFESSIONAL SERVICES AGREEMENT
TILLAMOOK COUNTY AND MCKINSTRY ESSENTION LLC
COMPREHENSIVE FACILITY & ENERGY ASSESSMENT
AND SPACE PLANNING

that at least three (3) of the following apply to contractor's business (initial those that apply):

- 6.8.1. ^{GW} Contractor maintains a business location that is separate from the business or work location of the person for whom the services are provided or that is in a portion of contractor's residence and that portion is used primarily for the business.
- 6.8.2. Contractor bears the risk of loss related to the business or the provision of services as shown by factors such as: Contractor enters into fixed price contracts; contractor is required to correct defective work; contractor warrants the services provided; or contractor negotiates indemnification agreements or purchases liability insurance, performance bonds or errors and omissions insurance.
- 6.8.3. ^{GW} Contractor provides contracted services for two (2) or more different persons within a twelve (12) month period, or contractor routinely engages in business advertising solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- 6.8.4. ^{GW} Contractor makes a significant investment in the business, through means such as: purchasing tools or equipment necessary to provide the services; paying for the premises or facilities where the services are provided; or paying for licenses, certificates or specialized training required to provide the services.
- 6.8.5. ^{GW} Contractor has the authority to hire other persons to provide or to assist in providing the services and has the authority to fire those persons.

7. NON-DISCRIMINATION

Contractor shall comply with all applicable federal, state and local laws, rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or disability.

8. NOTICES

Any notice required or permitted under this agreement shall be in writing.

8.1. Notices shall be deemed given when:

8.1.1. Personally delivered, or

8.1.2. Three (3) days after deposit in United States certified mail, postage prepaid, addressed to the other party at their last known address.

8.2. Notices, bills and payments sent by mail should be addressed as follows:

PROFESSIONAL SERVICES AGREEMENT
TILLAMOOK COUNTY AND MCKINSTRY ESSENTION LLC
COMPREHENSIVE FACILITY & ENERGY ASSESSMENT
AND SPACE PLANNING

COUNTY: Tillamook County
Attn: Rachel Hagerty
201 Laurel Avenue
Tillamook, Oregon 97141
503-842-3404
rhagerty@co.tillamook.or.us

CONTRACTOR: MCKINSTRY ESSENTION LLC
McKinstry Lockbox (payments only)
PO Box 3895
Seattle, Washington 98124

Rick Becker (all other correspondence)
16790 NE Mason St., Suite 100
Portland, Oregon 97320
rickb@mckinstry.com
503.446.6349

9. STATUTORY PUBLIC CONTRACT PROVISIONS

Contractor shall comply with the statutory public contract provisions as more particularly set forth herein.

10. CONFLICT OF INTEREST

Contractor covenants that contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of contractor's services. Contractor further covenants that in the performance of this agreement no person having any such interest shall be employed.

11. RECORDS

Contractor shall create and maintain records in accordance with generally accepted standards of contractor's practice and the records requirements of county. The records shall remain the property of county and be made available to county upon request. Contractor shall exercise due care to maintain the confidentiality of client records in accordance with law.

12. CONSTRAINTS

This agreement is expressly subject to the debt limitations of the Oregon Constitution set forth in Article XI, Section 10 and is contingent upon funds being available and appropriated therefore. Any provisions of this agreement which would conflict with law are deemed inoperative to that extent.

13. INTEGRATION

This agreement supersedes all prior oral or written agreements between contractor and county regarding this project. It represents the entire agreement

PROFESSIONAL SERVICES AGREEMENT
TILLAMOOK COUNTY AND MCKINSTRY ESSENTION LLC
COMPREHENSIVE FACILITY & ENERGY ASSESSMENT
AND SPACE PLANNING

between the parties. Time is of the essence in all terms, provisions, covenants and conditions in this agreement.

14. SAVINGS

Should any clause or section of this agreement be declared by a court to be void or voidable, the remainder of this agreement shall remain in full force and effect.

15. WAIVER; MODIFICATION

Failure by county to enforce any provision of this agreement does not constitute county's continuing waiver of that provision, any other provision or of the entire agreement. The rights and duties under this agreement shall not be modified, delegated, transferred or assigned, except upon the written, signed consent of both parties.

16. LIABILITY; INDEMNIFICATION

County has relied upon the professional ability, qualifications and training of contractor as a material inducement to enter into this agreement. Contractor warrants that all of contractor's services will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of contractor's work by county shall not operate as a waiver or release of any claim. Contractor shall defend, indemnify and hold harmless county, its officers, agents and employees from any claims, liabilities, demands, damages, actions or proceedings, arising from or relating to the professional negligence of contractor in connection with the performance of any services hereunder. **Minimum limits required for professional malpractice is \$1,000,000.** Notwithstanding the foregoing, where applicable, contractor shall be deemed an agent of county, for the sole purposes of a tort liability pursuant to the Oregon Tort Claims Act, ORS 30.265.

Such insurance shall be evidenced by a Certificate of Insurance provided to the county, indicating coverages, limits and effective dates, by an insurance company licensed to do business in the State of Oregon. The endorsement shall also contain a notice of cancellation provision.

17. JURISDICTION; LAW

This agreement is executed in the State of Oregon and is subject to Tillamook County and Oregon law and jurisdiction. Venue shall be in Tillamook County, Oregon, unless otherwise agreed by the parties.

18. LEGAL REPRESENTATION

In entering into this agreement, each party has relied solely upon the advice of their own attorney. Each party has had the opportunity to consult with counsel. Each party represents and warrants to the other that they are fully satisfied with the representation received from their respective attorneys.

PROFESSIONAL SERVICES AGREEMENT
TILLAMOOK COUNTY AND MCKINSTRY ESSENTION LLC
COMPREHENSIVE FACILITY & ENERGY ASSESSMENT
AND SPACE PLANNING

19. ATTORNEYS' FEES

Attorneys' fees, costs and disbursements necessary to enforce this agreement through mediation, arbitration and/or litigation, including appeals, shall be awarded to the prevailing party, unless otherwise specified herein or agreed.

20. LANGUAGE

The headings of the agreement paragraphs are intended for information only and shall not be used to interpret paragraph contents. All masculine, feminine and neuter genders are interchangeable. All singular and plural nouns are interchangeable, unless the context requires otherwise.

21. SUBCONTRACTING

Any subcontract ad infinitum of this agreement shall express the GENERAL PROVISIONS section of this agreement or incorporate it by reference.

22. BREACH

Contractor agrees to immediately notify county of any potential unauthorized breach, use or disclosure of data or information, and to take all actions reasonably necessary to prevent further unauthorized use or disclosure thereof.

ACKNOWLEDGEMENT:

EACH PARTY REPRESENTS TO THE OTHER BY THEIR SIGNATURES BELOW THAT EACH HAS READ, UNDERSTANDS AND AGREES TO ALL COVENANTS, TERMS AND CONDITIONS OF THIS AGREEMENT. EACH PARTY REPRESENTS TO THE OTHER TO HAVE THE ACTUAL AND/OR APPARENT AUTHORITY TO BIND THEIR RESPECTIVE LEGAL PERSONS, CORPORATE OR OTHERWISE, IN CONTRACT.

Approved as to form and content this 31st day of May, 2023.


Contract Officer

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PROFESSIONAL SERVICES AGREEMENT
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AND SPACE PLANNING

Dated this 2 day of June, 2023.

CONTRACTOR: MCKINSTRY ESSENTION LLC

Geremy Wolff

Digitally signed by Geremy Wolff
DN: C=US, E=geremyw@mckinstry.com,
O=Mckinstry, OU=PNW Tech Services,
CN=Geremy Wolff
Date: 2023.06.02 07:50:40-0700'

Geremy Wolff, Regional Director
5005 3rd Avenue S
Seattle, Washington 98134
206-832-8023
geremyw@mckinstry.com

Dated this ____ day of _____, 2023.

THE BOARD OF COMMISSIONERS
FOR TILLAMOOK COUNTY, OREGON

Aye Nay Abstain/Absent

Erin D. Skaar, Chair

____ ____ ____/____

Mary Faith Bell, Vice-Chair

____ ____ ____/____

David Yamamoto, Commissioner

____ ____ ____/____

ATTEST: Tassi O'Neil,
 County Clerk

APPROVED AS TO FORM:

By: _____
 Special Deputy

William K. Sargent,
County Counsel

PROFESSIONAL SERVICES AGREEMENT
TILLAMOOK COUNTY AND MCKINSTRY ESSENTION LLC
COMPREHENSIVE FACILITY & ENERGY ASSESSMENT
AND SPACE PLANNING

PUBLIC CONTRACT PROVISIONS

1. Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any sub-contractor. If contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the contractor or a sub-contractor by any person in connection with the contract as such claim becomes due, the owner may pay such claim to the persons furnishing the labor or materials and charge the amount of payment against funds due or to become due contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the contractor or contractor's surety from contractor's or surety's obligation with respect to any unpaid claim. If the owner is unable to determine the validity of any claim for labor or materials furnished, the owner may withhold from any current payment due contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
2. Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such contractor or sub-contractor incurred in the performance of the contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from contractor or any sub-contractor in connection with the performance of the contract shall promptly be paid.
3. Contractor shall not permit any lien or claim to be filed or prosecuted against the owner on account of any labor or materials furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
4. Contractor and any sub-contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
5. If this contract involves lawn and landscape maintenance, contractor shall salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost effective.
6. Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such contractor, of all sums which the contractor agrees to pay for such services and all monies and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
7. Contractor shall employ no person for more than ten (10) hours in any one (1) day, or forty (40) in any one (1) week, except in cases of necessity, emergency or where public policy absolutely requires it.

PROFESSIONAL SERVICES AGREEMENT
TILLAMOOK COUNTY AND MCKINSTRY ESSENTION LLC
COMPREHENSIVE FACILITY & ENERGY ASSESSMENT
AND SPACE PLANNING

Contractor's employees shall be paid at least time and one-half (1 and 1/2) for all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under Personal Services Contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC 201 to 209 from receiving overtime.

Persons employed by contractor shall receive at least time and one-half (1 and 1/2) pay for work performed on legal holidays specified in a collective bargaining agreement or in ORS 279C.540(1)(b)(B) to (G) and for all time worked in excess of ten (10) hours in any one (1) day or in excess of forty (40) hours in any one (1) week, whichever is greater.

8. The contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.
9. Contractor must give notice to employees, in writing, that they cannot be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of a law, rule, or regulation related to a federal contract or grant.
10. All employers working under the contract are either subject employers who will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
11. The contract may be cancelled at the election of owner for any willful failure on the part of contractor to faithfully perform the contract according to its terms.

END OF PUBLIC CONTRACT PROVISIONS



Comprehensive Facility & Energy Assessment and Space Planning

Tillamook County

PROPOSAL

TILLAMOOK, OR

MAY 25, 2023

For the Life of
Your Building





25 May, 2023

Rachel Hagerty

Tillamook County
210 Laurel Avenue
Tillamook, OR 97141

Re: Facility Condition Assessment, Energy Feasibility Study and Space Planning Proposal

Dear Rachel,

McKinstry is pleased to present this proposal to Tillamook County to perform a Facility Condition Assessment (FCA), Energy Feasibility Study and Space Planning services. This effort aligns with and can be contracted under the Technical Energy Audit section of the OMNIA Partners public sector agreement. Please note McKinstry's OMNIA contract number 1158 on the [McKinstry Cooperative Contract /Overview \(omniapartners.com\)](https://www.omniapartners.com) website. McKinstry will be partnering with Oh Planning to perform the first two steps of an investment-Grade Technical Energy Audit scope, which provides Tillamook County with 1) prioritization of asset conditions to include total asset replacement costs, 2) opportunity feasibility for energy performance improvements, and 3) space planning for the health department. We feel that our teams' unique capabilities and approach can provide Tillamook County with the information you need to make intelligent and informed decisions about capital planning, project prioritization, and the tools you need to communicate those decisions to your various stakeholders.

McKinstry's approach is unique—comprehensive, meticulous, and built from the bottom-up using the full depth and breadth of our design, construction, operations, and maintenance expertise. We bring a long history of experience in design and facility assessment that enables us to provide a comprehensive and reliable roadmap.

Some of the unique qualities of our services are:

- We provide useful and actionable data in a format that is portable and transferable.
- We leverage our broad experience and capabilities in design, construction, and maintenance to increase the accuracy of the data.
- We translate data into user-friendly visuals that enable proactive, high-quality decision making.
- We integrate FCA data seamlessly into WMS and/or CMMS systems – including equipment tagging.
- We don't simply deliver the data; we help you interpret, implement and communicate it.

We deliver a dynamic set of tools that let you focus on what matters most: directing limited resources toward your highest priorities, identifying funding options, and enabling your team to be more proactive.

McKinstry and OH Planning are passionate about supporting Tillamook County on a path to optimize your operations and plan for future investments. We are prepared with a robust team of resources to mobilize immediately, and our prioritization analytics and data visualization software will allow you to communicate your facility plans with clarity and confidence to diverse audiences.

If you have any questions or want to discuss this in more detail, you can reach me at the information below.

Sincerely,

Rick Becker | Account Manager | 503.446.6349 | rickb@McKinstry.com

Contents

1. Tillamook County Facility Condition Assessment & Energy Feasibility Study	1
BUILDINGS INCLUDED IN THE SCOPE OF WORK.....	1
SCOPE OF WORK	1
FCA & ENERGY FEASIBILITY DELIVERABLES	3
ENGINEERED MAINTENANCE PLAN	3
COMMUNICATION TOOLS	4
DATA OWNERSHIP	5
2. Space Planning Proposal.....	5
BUILDINGS INCLUDED IN THE SCOPE OF WORK.....	5
SCOPE OF WORK	5
CLARIFICATIONS.....	6
3. Fee Proposals.....	7
FACILITY AND ENERGY ASSESSMENT FEE.....	7
SPACE PLANNING FEE.....	7
ASSUMPTIONS.....	8
EXCLUSION.....	8
4. Schedule	8
FCA TIMELINE	8
SPACE PLANNING TIMELINE	9
Attachment A – Facility Condition Assessment Scope of Work.....	10
Attachment B – Facility Condition Assessment Site List	12
Terms and Conditions.....	18

Please note that this response provides the basic economic terms on which McKinstry would be willing to perform the scope of services outlined here. This response does not cover all of the terms and conditions relevant to a definitive agreement about these services. Nothing in this response approves legal terms such as warranties, indemnification, insurance requirements, and limitations of liability, even if those terms were included in the request for proposal. The details of those terms must be negotiated by the parties and set forth in a definitive agreement with respect to McKinstry’s services.

Tillamook County

Facility & Energy Assessment Proposal

1. Tillamook County Facility Condition Assessment & Energy Feasibility Study

BUILDINGS INCLUDED IN THE SCOPE OF WORK

See Attachment B.

SCOPE OF WORK

McKinstry has assembled a best-in-class team that is fully resourced, trained, and ready to execute an extremely detailed and accurate in-depth assessment. Our approach will be informed by decades of team member and company experience. We will spend the time needed to analyze every aspect of your facilities and create a multi-year roadmap articulating the condition, cost, risk, and need for Tillamook County to utilize for years to come.

Our process includes both quantitative and qualitative assessments. The qualitative assessment incorporates professional experience and first-hand knowledge derived from site assessments of building elements. Quantitative assessment includes capture of field data for items identified in Attachment A, and integration with industry data regarding equipment and facilities lifecycle and cost.

Using non-invasive, non-destructive testing and observation methods our FCA process consists of five key components:

1. Planning

The project starts with an initial kickoff meeting to introduce the team members, align on the project objectives, finalize the project schedule, and establish the communication plan. The FCA team will review available documents prior to site visits to familiarize themselves with the facility and to verify the accuracy of information.



These documents include:

- As-built drawings
- Historical Capital Project and Maintenance records
- 3 Years of utility consumption and cost information
- Building Automation System schedules
- Proposed or planned renovation/equipment replacement projects
- Known site information including year built, deficiencies, operational challenges, etc.

2. WALK-THROUGH SURVEY BY TEAM OF FIELD OBSERVERS REPRESENTING KEY DISCIPLINES

Prior to the walkthrough, interviews with on-site occupants and maintenance staff is performed to gather critical information on historic performance and known deficiencies. A thorough visual assessment of all major assets identified in Attachment A will be performed, providing recommended methods for repair or replacement. In addition to observed maintenance, repair, and replacement requirements, we will highlight potential energy efficiency opportunities to enhance operations and save costs. We will collect digital photographs of each piece of equipment recommended for action as well as document critical or unusual conditions. Details collected include:



- a. Description of the building systems.

Tillamook County

Facility & Energy Assessment Proposal

- b. Determination of the estimated remaining life of each building system and establish condition and other criteria scores.
- c. Identify major building and maintenance deficiencies (backlog maintenance) likely to be addressed over a 30-year period; and
- d. Identify and document specific deficiencies and provide recommended methods for repairing/replacing and the associated costs, including efficient replacement options.
- e. Identify opportunities to be further explored to improve energy performance and on-site renewable energy systems.

Scoring is measured in several ways. Based on our understanding of the facilities and interviews with staff, we obtain a criticality rating for each building system or piece of equipment. Secondly, we determine if the “condition age” of the systems by identifying any deferred maintenance or lack of preventative maintenance (The “condition age” is not necessarily the real age of the system, for example, if a 5-year-old boiler has never been maintained, it’s “condition age” may be 10 years old). Using the “condition age,” we provide an expected remaining life of the system. Other rating criteria can be included such as energy impact, impact of failure, and others depending on County needs. Taking all ratings into consideration, a score is determined and can be used for repair or replacement prioritization.

3. ESTIMATES AND ANALYSIS

Utilizing our team’s experience with all building systems, cost data, and past experiences, an opinion of probable cost will be developed for all assets assessed within the buildings to assist in establishing appropriate maintenance and capital budgets. Additionally, our goal in cost estimation is not to simply provide the owner with a list of prioritizations of critical asset replacement but an actionable list of potential recommendations and solutions.

Provide an analysis of energy operating costs to identify potential cost savings and renewable energy system implementation. Our assessment will include a comprehensive list of all equipment surveyed showing make, model, service life, year installed, condition, approximate replacement cost and approximate year of replacement. In addition to the collection of the data, we conduct a quality review at this stage to ensure consistency in data, from nomenclature to ratings and scoring.

4. FACILITY CONDITION ASSESSMENT AND FEASIBILITY REPORT

We will then compile all field observation reports, along with documented interviews into a final working presentation document. The assessment report contains an executive summary and graphic presentation of results to provide a brief, user-friendly summary of the observed condition and estimated costs for repair, replacement and/or modernization of capital assets assigned by category. Also included is a schedule of annual forecast expenditures itemizing each measure against each asset classification by building and building system as well as initial project scoping identifying ROM cost and savings for potential energy conservation opportunities.



Tillamook County

Facility & Energy Assessment Proposal

Assessment Reports can become a static resource. That's why McKinstry goes beyond a written report offering our Reveal platform to provide interactive visualization, reporting and communication for comprehensive asset management cost benefit analyses, operations & maintenance planning and capital planning and budgeting efforts. Our goal is to align the benefits of the Reveal data visualization to augment existing processes.



Findings will be summarized and prepared for presentation to Tillamook County staff and necessary personnel for review and discussion. A presentation meeting will provide an opportunity to answer questions regarding report findings, methodology and opportunities.

FCA & ENERGY FEASIBILITY DELIVERABLES

- FCA Reports (as described above)
- Energy Conservation project potential
- Asset CapEx and Inventory spreadsheet
- Community Renewable Energy Program Grant

Next steps for Energy Assessment will be determined by the findings of the initial assessment. Opportunities or Facility Improvement Measures (FIMs) deemed cost effective will be part of the Technical Energy Audit that will define in more detail, specific costs and energy savings. Those opportunities will be part of a Project Development Plan that provides a complete and detailed description of the scope of work to be implemented, the guaranteed maximum project costs, the guaranteed utility and operational savings, and the process to be used to measure and verify that Tillamook County is achieving the guaranteed savings.

Optional Scopes

- Engineered Maintenance Plan (*optional, added price*)
- Reveal™ - interactive visualization, reporting and communication tool (*optional, added price*)

ENGINEERED MAINTENANCE PLAN

The optional Engineered Maintenance plan (EMP) builds on the Facility Assessment to include an evaluation of facility asset recommendations for maintenance staffing allocation and optimization. The goal of this initiative is to analyze total cost of ownership and provide a data-driven recommendation for maintenance tasking and staffing. Specifically, the EMP provide preventative maintenance guidelines as well as supporting maintenance optimization through PM needs and costs projections and evaluates benefit/cost of replacement versus repair.

Deliverables include:

- Preventative and Corrective Maintenance plan – tasking, scheduling
- Recommendations for PM tasking and scheduling

Tillamook County Facility & Energy Assessment Proposal

COMMUNICATION TOOLS

Reveal™ Visualization

Reveal™ is a cloud-based software solution that integrates facility data from siloed data sources into powerful interactive visualizations to drive better decision making in facility management. Specifically, Reveal™ integrates utility bill, building meter, building automation system, building asset inventory, renewables, and weather data. It tracks facility performance using client-specific fault detection and diagnostics (FDD), KPIs and normalized baseline comparison. The result is a complete view of client facility optimization by facility operators, managers, and all levels of an organization to inform operation, management decisions and the ability to effectively communicate strategy and results. Using this tool for the facility assessment provides the opportunity for additional functionality over time to support your facility management optimization goals.

This capital planning module of this tool provided in this scope of work enables you to sort by system and location for side-by-side system comparisons to aid in project prioritization and asset management as well as run budget scenarios.

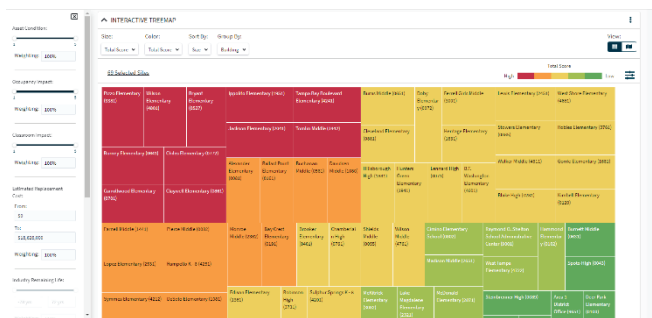


Figure 1 – Visualize selected buildings and/or systems in the portfolio and compare across multiple parameters.

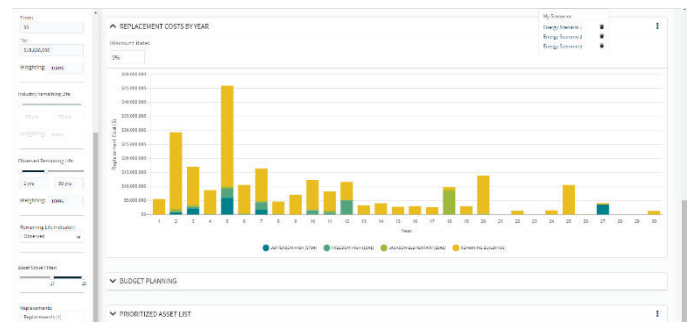


Figure 2 – See the expected capital needs for selected buildings and/or systems based on observed data.

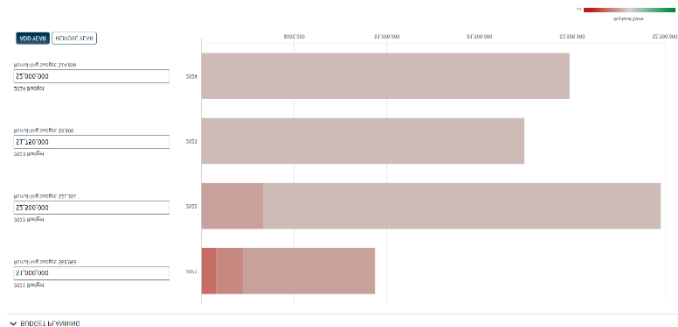


Figure 3 – Align annual capital budget amounts with asset priorities to create actionable plans with specific assets.

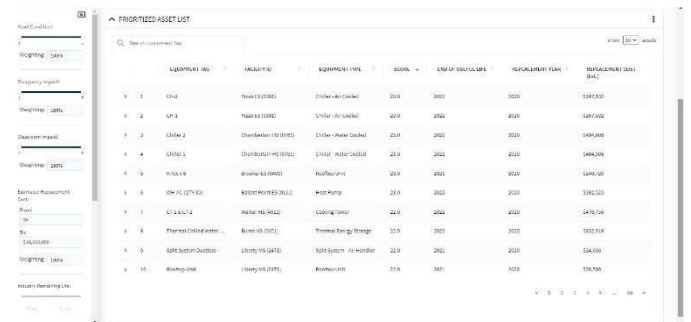


Figure 4 – Save or export the scenario to share with other users or use in third-party software.

Tillamook County

Facility & Energy Assessment Proposal

Training

McKinstry will provide training specific to the selected visualization tool, focused on development of scenario analyses and report generation.

DATA OWNERSHIP

All data collected by McKinstry will be stored in a central database for use in capital planning. Data is owned by Tillamook County and is transportable to any compatible format or application.

2. Space Planning Proposal

BUILDINGS INCLUDED IN THE SCOPE OF WORK

The County Facilities that will be included in this process include the following:

1. Central Clinic 801 Pacific Ave, Tillamook
2. Public Health 2118 8th St, Tillamook
3. Admin Annex 2204 4th St, Tillamook
4. Dental Admin 801 Ivy Ave, Ste B, Tillamook
5. Dental Office 801 Ivy Ave, Ste B, Tillamook
6. Rockaway Clinic 276 South Hwy 101, Rockaway

SCOPE OF WORK

Tillamook County Health and Human Services is looking for a planning and conceptual design level of effort. The objective is to evaluate the services provided at six (6) different facilities, and explore strategic goals for improving the services, expanding the services, and meeting the needs of the growing community. The County is looking forward to the next 5-years.

The process we provide will allow input from six Divisions including stakeholder engagement, and feedback on the opportunities ranging from renovations to meet specific needs at each site to exploration of consolidation and new construction. Through a process of meeting, surveys, dot polling and concept reviews the preferred outcome will emerge. Communication updates and community polling is also available on request.

The specific Divisions that will be included in this process include the following:

1. Clinical Health
2. Behavioral Health
3. Dental
4. Environmental Health
5. Public Health
6. Administration/Finance

Tillamook County

Facility & Energy Assessment Proposal

APPROACH

1. Project kick off meeting: The purpose of this meeting (virtual or in person) is to review current services, anticipated needs and gain insight from the County staff on priorities. This meeting provides the framework for proceeding to the Division meetings.
2. Meetings (virtual or in person) with six (6) Divisions: The purpose of these meetings is to review specific needs, staff levels, services provided, utilization, needs today and for the next 5-years.
3. Develop/update concepts of the priorities based on input from the Division meetings.
4. Provide an overview update of Division meetings with the leadership team.
5. Review concept updates in virtual or in person meetings with the Division to confirm their input and guidance. Email updates will be provided to each Division for comment.
6. Prepare a master plan chart for staffing projections, services provided, possible renovations or consolidation, phasing timeline.
7. Additional 2 meetings are anticipated for review and adjustment of the planning options.
8. Meet (virtual or in person) to identify the highest priorities and phasing.
9. Prepare a cost estimate of the preferred plan.
10. Finalize the plan report with the above information. Concepts of the preferred direction will be included.
11. Include a description of the quality of the spaces with sample finishes & 3d imagery.
12. Provide a set of design guidelines and standards.

DELIVERABLE

1. Minutes of all meetings that reflect the items discussed and outcomes.
2. Presentation materials that reflect the progress of work at agreed dates.
3. 11x17 report style document with planning outcomes, 5-year needs projections, preferred priorities, concept drawings and basis of design narrative, and phasing.
4. Recommended space, design, and sustainability standards for projects in the next 5-years.

CLARIFICATIONS

- This scope of work includes basic services architectural planning and conceptual design for the preferred priorities.
- Meetings included in this scope are shown below.
 - (1) kickoff
 - (6) in person division meetings
 - (1) leadership team review meeting
 - (6) virtual division program review meetings
 - (2) planning review meetings with committee
 - (1) final report presentation
- As-built of existing conditions is not included in the scope but available on request.
- Engineering services will be provided by McKinstry.
- The level of effort and budgeted hours are shown in the task worksheet. Requests for added effort that exceeds this scope will be identified in advance as an additional service request.

Tillamook County

Facility & Energy Assessment Proposal

3. Fee Proposals

FACILITY AND ENERGY ASSESSMENT FEE

Our lump sum fee to complete the Facility Condition Assessment is provided below.

Facility Condition Assessment	\$68,800
Indoor Air Quality	\$14,900
Travel	\$ 5,000
Energy Assessment	\$ 9,900
Total	\$98,600

Total - Department Breakout	
Roads Dept	\$13,629
County Court House.....	\$16,322
Sheriff's Department	\$17,889
Pioneer Museum	\$ 5,715
Solid Waste.....	\$13,962
Library	\$13,374
Health Department	\$ 7,241
Parks Department	\$10,469
Total	\$98,600

Optional Services

Engineered Maintenance Plan (EMP)	\$14,900
Reveal™	Set Up \$6,050
Annual Fee \$1,625 (for year 2 and beyond w/ 3% annual escalation)	
Grand Total	\$119,550

SPACE PLANNING FEE

The fee for this work is based on assigned hours for the specific tasks over a 16 week timeline.

OHPD is a COBID certified business in Oregon. We are 100% Woman Owned. Our firm is 50% woman and 36% BIPOC.

	Deb	PM	JC	Total
Hourly rate	\$215	\$155	\$125	
Kick off meeting in person, prep & minutes	12	16	16	
	\$2,580	\$2,480	\$2,000	\$7,060
Discovery of information	8	32	24	
	\$1,720	\$4,960	\$3,000	\$9,680
6 department meetings in person	16	20	20	
	\$3,440	\$3,100	\$2,500	\$9,040
Meeting follow up x 6	12	40	40	
	\$2,580	\$6,200	\$5,000	\$13,780
Department programs/staff x6	8	48	48	

Tillamook County

Facility & Energy Assessment Proposal

	\$1,720	\$7,440	\$6,000	\$15,160
Department concepts x6	18	84	96	
	\$3,870	\$13,020	\$12,000	\$28,890
Leadership Team review, prep, minutes	8	16	16	
	\$1,720	\$2,480	\$2,000	\$6,200
Department meetings virtual x6, prep & minutes	18	36	48	
	\$3,870	\$5,580	\$6,000	\$15,450
Plan documentation of findings (3 wks)	18	96	120	
	\$3,870	\$14,880	\$15,000	\$33,750
2 review meetings of master plan	6	6	6	
	\$1,290	\$930	\$750	\$2,970
Post review meeting updates	6	20	24	
	\$1,290	\$3,100	\$3,000	\$7,390
Prepare cost estimate of preferred plan				\$12,000
Provide design guidelines & standards	7	24	48	
	\$1,505	\$3,720	\$6,000	\$11,225
Finalize report/findings/schedule/phasing	7	24	24	
	\$1,505	\$3,720	\$3,000	\$8,225
			Total	\$180,820

ASSUMPTIONS

- Work will be executed during normal business hours; Monday-Friday 7am-5pm.
- County staff and vendors will work with McKinstry and team to assist with information gathering and building access to allow for an effective and valuable delivery of our scope of work.
- County will provide McKinstry access to their CMMS systems.
- The County will provide existing source files including drawings of existing buildings, size, year of construction, and any known deficiencies as available.
- Filter and belt detail can be included if provided by customer.

EXCLUSION

- Assets above grid ceilings and located behind walls or sub-surface will not be physically observed but will be included if available from as-builts

4. Schedule

FCA TIMELINE

This anticipated schedule below assumes board approval on June 12, 2023, and an NTP to shortly follow:

Task	Start	Finish
NTP.....	-	12-Jun
Kick Off.....	-	15-Jun
Prelim Data Gathering.....	12-Jun	16-Jun
Site Visit and Interviews.....	26-Jun	7-Aug

Tillamook County

Facility & Energy Assessment Proposal

Analysis & Estimating.....	3-Jul	4-Spt
Report Generation.....	10-Jul	18-Spt
Draft Report Delivery.....	-	18-Spt
Final Report Delivery.....	-	TBD

SPACE PLANNING TIMELINE

We are prepared to begin within 4 weeks of your authorization to proceed. The entire process should take 16-20 weeks depending on the availability of County Staff. A breakdown of the specific tasks and timeline is shown below.



ACCEPTED BY:

Tillamook County

Name:

McKinstry Essention, LLC

Name: Rick Becker

Signature

Signature

May 25, 2023

Date

Date

Tillamook County Facility & Energy Assessment Proposal

Attachment A – Facility Condition Assessment Scope of Work

Facility	Foundation	Basement	Roofing: construction, coverings, openings	Exterior Walls	Exterior Windows	Exterior Doors	Interior Partitions	Interior Doors	Interior Fixtures	Stair construction and finishes	Interior Walls	Interior Floors	Ceiling Finishes	Elevators, escalators, and other conveying systems	Plumbing fixtures	Domestic water distribution	HVAC: energy supply, heat/cooling generating systems, distribution systems, terminal and package units, ventilation	Controls and Instrumentation	Systems Testing and Balancing	Fire protection: sprinklers, standpipes, fire protection specialties	Electrical service and distribution	Lighting and branch wiring	Communications	Security
Courthouse	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Roads	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Sheriff's Office	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Solid Waste	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Library	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Health Dpt	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Parks	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Museum	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

Tillamook County Facility & Energy Assessment Proposal

Attachment A – Facility Condition Assessment Scope of Work-Continued

Facility	Equipment: commercial, institutional (kitchen)	Fixed furnishings	Movable furnishings	Roadways	Parking lots	Site development	Landscaping/grounds	Sport fields	Stadiums	Water supply	Sanitary sewer	Storm sewer	Fuel distribution	Site lighting	ID Renovations/additions	Portables	Renewable Energy Systems	ADA compliance	Technology	Harmful substances	Indoor air quality	Engineered Maintenance Plan	Utility Meters location identification	Viz Tool for FCA	Viz Tool for EMP	Sewer Dump Station	Boat Dock	Concrete Boat Ramps
Courthouse	X	X			X					X	X	X	X	X				X	X	X	X	X						
Roads	X	X				X				X	X	X	X	X				X	X	X	X	X						
Sheriff's Office	X		X		X					X	X	X	X	X		X		X	X	X	X	X						
Solid Waste	X	X				X				X	X	X	X	X				X	X	X	X	X						
Library	X	X			X					X	X	X	X	X				X	X	X	X	X						
Health Dpt	X	X	X		X								X	X				X	X	X	X	X						
Parks			X		X					X				X				X	X	X	X	X			X	X		
Museum						X								X				X	X	X	X	X						

*ADA Assessment includes general observation of existing conditions noting where follow-up assessments may be needed.

Tillamook County

Facility & Energy Assessment Proposal

Attachment B – Facility Condition Assessment Site List

Tillamook County Site List	Street	City	Sq Ft
Road Dpt Bldgs			2,000
Nehalem Shop	13155 D Street	Nehalem	9,000
Tillamook Admin Building	503 Marolf Loop Road	Tillamook	3,000
Tillamook Shop			7,000
Tillamook Crew Room, Archives, Storage			3,000
Tillamook Sign Shop			1,000
Tillamook Chemical Room			
Cloverdale Shop	34500 Highway 101 S	Cloverdale	9,000
County Court House	201 Laurel Ave	Tillamook	38,321
Sheriff's Office/Jail	5995 Long Prairie Rd	Tillamook	42,000
Pioneer Museum	2106 2nd St	Tillamook	13,419
Solid Waste			32,780
Manzanita	34995 Necarney City Road	Manzanita	
Main Recycling Building			5000
Storage Building			2400
Timber Z-walls			50 lf
Concrete Z-walls (old)			70 lf
Concrete Z-walls (new)			140 lf
Tillamook	1315 Ekloff Rd	Tillamook	
Bay #1			5000
Bay #2			6000
HHW Building			2400
Baling Building			4800
Metals Building			6700
Scale house			480
Pacific City	38255 Brooten Rd	Pacific City	
Z-walls			100 lf

Tillamook County

Facility & Energy Assessment Proposal

Library	1716 3rd St	Tillamook	31,400
Health Department			17,000
Central Clinic	801 Pacific Avenue	Tillamook	6400
Public Health	2118 8th Street	Tillamook	3400
Admin Annex	2204 4th Street	Tillamook	3200
Rockaway Clinic	276 South Hwy 101	Rockaway	1200
Dental Admin	801 Ivy Avenue Suite B	Tillamook	1200
Dental Office	805 Ivy Avenue Suite B	Tillamook	1600
Parks Department	Street Address	City/Town	SF
Campgrounds			20789
Barview Jetty County Campground	8000 Cedar St.	Rockaway Beach (Barview)	
Barview Jetty County Campground Office/Maint. Shop			5850
Barview Jetty County Campground Fee Booth			245
Barview Jetty County Campground Community Shelter			160
Barview Jetty County Campground Restroom 1 (Near Host Site B2)			153
Barview Jetty County Campground Restroom 2 (Near Host Site C14)			835
Barview Jetty County Campground Restroom 3 (Near Host Site L2)			680
Barview Jetty County Campground Restroom 4 (RV Area)			150
Barview Jetty County Campground Restroom 5 (Near Host Site U5)			875
Barview Jetty County Campground Restroom 6 (Jetty)			150
Barview Jetty County Campground Cabin 1			500
Barview Jetty County Campground Cabin 2			400
Barview Jetty County Campground Cabin 3			400
Barview Jetty County Campground Cabin 4			500
Barview Jetty County Campground Cabin 5			500
Barview Jetty County Campground Cabin 6			500
Barview Jetty County Campground Mobile Mini Cabin 1			140
Barview Jetty County Campground Mobile Mini Cabin 2			140
Barview Jetty County Campground Mobile Mini Cabin 3			140
Barview Jetty County Campground Cabin Maintenance Shed			830

Tillamook County

Facility & Energy Assessment Proposal

Barview Jetty County Campground Pump Station Shed			300
Barview Jetty County Campground Fish Cleaning Station			
Kilchis River River County Campground	10500 Kilchis River Rd.	Tillamook	
Kilchis River County Campground Maint Shop Office			1000
Kilchis River County Campground Maint Shop Garage			1000
Kilchis River County Campground Fee Booth			380
Kilchis River County Campground Host Shed (At Host Site 63)			132
Kilchis River County Campground Host Equipment Shed (At Host Site 63)			689
Kilchis River County Campground Restroom 1 (Middle-Level, Near Entry)			50
Kilchis River County Campground Restroom 2 (Middle-Level, Near Host Site 16)			650
Kilchis River County Campground Pump Station Shed (Upper Level)			150
Kilchis River County Campground Boat Ramp			
Trask River County Campground	25455 Trask River Rd.	Tillamook	
Trask River County Campground Fee Booth			170
Trask River County Campground Maint Yard Shed			680
Trask River County Campground Restroom 1 (Near Host Site C43)			170
Trask River County Campground Restroom 2 (C-Loop)			170
Trask River County Campground Restroom 3 (Near Host Site A57)			170
Trask River County Campground Restroom 4 (A-Loop)			170
Trask River County Campground Restroom 5 (Closed Loop)			170
Trask River County Campground Water Pump Shed (C Loop)			100
Webb County Campground	33005 Cape Kiwanda Dr.	Pacific City	
Webb County Campground Fee Booth/Maint Closet			295
Webb County Campground Restroom			820
Webb County Campground Fish Cleaning Station			
Whalen Island County Campground	25210 Sandlake Rd.	Cloverdale	
Whalen Island County Campground Fee Booth			130
Whalen Island County Campground Restroom			175
Whalen Island County Campground Boat Launch			
Woods County Campground	34060 Brooten Rd.	Cloverdale	
Woods County Campground Restroom			70
Parks Dept. Boat Launches/Day Use Areas (Areas below are not all Parks properties - some are Parks managed under lease agreement.)			3790

Tillamook County

Facility & Energy Assessment Proposal

Bixby Boat Launch	Bixby Rd.	Beaver	
3 Rivers Boat Launch	Hanson Rd.	Cloverdale	
Fishers Point Boat Launch	39520 Nestucca Manor Dr.	Cloverdale	
Little Nestucca Boat Launch	9005 Meda Loop Rd.	Cloverdale	
Mugg County Park	34650 Brooten Rd.	Cloverdale	
Mugg County Park Restroom	34651 Brooten Rd.	Cloverdale	230
Aldervale Boat Launch	Northfork Rd.	Nehalem	
Nehalem Bay Boat Launch	13500 Tideland Rd.	Nehalem	
Nehalem Bay Boat Launch Dock Downriver South Dock?	13501 Tideland Rd.	Nehalem	
Nehalem Bay Boat Launch Dock Upriver H Street Dock?	13502 Tideland Rd.	Nehalem	
Nehalem Bay Boat Launch Restroom	13503 Tideland Rd.	Nehalem	430
Roy Creek Boat Launch	Foss Rd.	Nehalem	
Roy Creek Boat Launch Restroom	Foss Rd.	Nehalem	100
Happy Camp	810 Happy Camp Rd.	Netarts	
Happy Camp Restroom	811 Happy Camp Rd.	Netarts	140
Hungry Harbor Boat Launch	812 Happy Camp Rd.	Netarts	
Netarts Community Park	Park Ave.	Netarts	
Netarts Landing Boat Basin (Directly west of launch)	Park Ave.	Netarts	
Netarts Landing Boat Launch	2065 Netarts Boat Basin Rd.	Netarts	
Netarts Landing Boat Launch Dock	2066 Netarts Boat Basin Rd.	Netarts	
Netarts Landing Boat Launch Restroom	2067 Netarts Boat Basin Rd.	Netarts	1300
Cape Kiwanda Recreation Area - new facility. Add new assets next year after construction.	Cape Kiwanda Dr./Hungry Harbor Rd.	Pacific City	
Cape Kiwanda Recreation Area Restroom- new facility. Add new assets next year after construction.	Cape Kiwanda Dr./Hungry Harbor Rd.	Pacific City	860
Pacific City Boat Launch	35765 Sunset Dr.	Pacific City	
Pacific City Boat Launch Restroom	Bob Straub??	Pacific City	530
Pacific City Turnaround	Sunset Dr./Cape Kiwanda Dr./Pacific Ave.	Pacific City	
Lake Lytle Boat Launch	215 NE 12th Ave.	Rockaway Beach	
Lake Lytle Boat Launch Restroom	216 NE 12th Ave.	Rockaway Beach	100
Twin Rocks Turnaround	S Breaker Ave.	Rockaway Beach	
Anderson Hill County Park	6840 Officer Row	Tillamook	
Bayocean Peninsula Parking Area	Bayocean Dike Rd.	Tillamook	
Burton Fraser Boat Launch	Burton-Fraser Rd./Tillamook River Rd.	Tillamook	
Mapes Creek Boat Launch	8905 Kilchis Forest Rd.	Tillamook	

Tillamook County

Facility & Energy Assessment Proposal

Memaloose Point Boat Launch	1985 Bayocean Rd.	Tillamook	
Memaloose Point Boat Launch Restroom	1986 Bayocean Rd.	Tillamook	100
Mills Bridge Boat Launch	12206 Wilson River Hwy.	Tillamook	
Parks Landing Boat Launch	Alderbrook Rd.	Tillamook	
Sollie Smith Boat Launch	Wilson River Loop/Latimer Rd.	Tillamook	
Steiner Boat Launch	Long Prairie Rd.	Tillamook	
Tillamook Tidewater Handicap Fishing Access	Netarts Hwy. W.	Tillamook	
Tillamook Tidewater Handicap Fishing Access Vault Toilet 1	Netarts Hwy. W.	Tillamook	
Tillamook Tidewater Handicap Fishing Access Vault Toilet 2	Netarts Hwy. W.	Tillamook	

Tillamook County Facility & Energy Assessment Proposal



Tillamook County

Facility & Energy Assessment Proposal

Terms and Conditions

PERFORMANCE OF WORK

McKinstry shall perform the scope of work (“Work”) specified herein. McKinstry shall furnish all services necessary to perform the Work and perform the Work to completion diligently, expeditiously and with adequate forces. Customer shall use its best efforts to provide all information, materials, documents, and assistance that is reasonably required for McKinstry to perform any and all aspects of the Work.

PAYMENTS

Customer shall pay McKinstry the compensation specified herein (“Price”) for the value of Work that McKinstry has completed, as the Work is completed. Customer shall pay McKinstry within fifteen (15) days of receiving an invoice. McKinstry will be entitled to interest at the rate of 1.5 percent per month on all sums overdue and unpaid from the date due.

WARRANTIES

Customer shall receive a one (1) year warranty that covers labor and materials provided by McKinstry as part of the Work. This warranty commences on the date that the portion of the Work warranted is substantially complete. However, McKinstry makes no warranty whatsoever regarding components of the Work provided by third parties, and in such case the terms of the third party’s warranty, including manufacturers’ warranties, if any, shall apply between Customer and the third party. The warranties in this section are exclusive and in lieu of all other warranties, whether express or implied.

TERMINATION

Either Party may terminate this agreement upon fifteen (15) days written notice to the other Party. In such case, the rights and obligations of each Party that arose prior to the termination date shall survive such termination.

DISPUTES

In case of dispute between the Parties, the Parties will attempt to negotiate a resolution. If a dispute remains unresolved more than thirty (30) calendar days after the commencement of negotiation, and the Parties have not agreed to extend such date, then the Parties shall pursue mediation. If any dispute remains unresolved more than sixty (60) calendar days after the commencement of mediation, then either Party may pursue arbitration. No litigation will be commenced by either Party unless all of the foregoing steps have been pursued to completion.

CHOICE OF LAW, VENUE

The validity, interpretation, and performance of this agreement shall be governed by the laws of the state in which the Work is performed. The venue for resolving any dispute shall be the county in which the Work is performed.

FORCE MAJEURE

Neither McKinstry nor Customer shall be considered in breach of this agreement to the extent that the Party’s performance is prevented by an event or events that are beyond the control of such party, including but not limited to acts of God, fire, earthquake, flood, storm, war, rebellion, revolution, insurrection, riot, strike, nuclear contamination, and/or acts or threats of terrorism.

NO WAIVER

No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver.

INTELLECTUAL PROPERTY

Intellectual property provided by McKinstry to Customer as part of the Work are instruments of service owned by McKinstry and are not “work made for hire” as such term is defined under U.S. copyright law. When the Work is

Tillamook County

Facility & Energy Assessment Proposal

performed to completion, McKinstry grants to Customer a limited license to use the Intellectual Property to operate, maintain, renovate, and manage the subject matter of the Work.

DAMAGES LIMITATION

Neither party shall be liable to the other party for any consequential, indirect, special, incidental, exemplary, or similar, damages or losses, including loss of profits, arising out of or relating to this agreement, whether based in contract or tort or any other theory, even if a party has been advised of the possibility of such damages. Furthermore, the total aggregate liability of either party, under any theory, is limited to the agreement price.

INDEMNIFICATION

McKinstry shall indemnify and hold harmless Customer from and against all third-party claims, damages, losses and expenses for bodily injury, sickness, disease, or death or destruction of tangible property, directly arising from McKinstry's performance of the Work, but only to the extent caused by the negligent acts or omissions of McKinstry.

SEVERABILITY, SURVIVAL

If any portion of this agreement shall be held invalid in whole or in part under any law, rule, regulation, or order, then such portion shall remain in effect only to the extent permitted, and the remaining portions of the agreement shall remain in full force and effect. Any invalid portions shall be substituted with an interpretation that most accurately reflects the Parties' intentions.

AMENDMENT

This agreement may not be amended except pursuant to a written amendment signed by an authorized signer of each Party.

COMPLETE AGREEMENT

This agreement, including the exhibits attached hereto, is a fully integrated agreement. Any legal terms and conditions appearing elsewhere in this agreement shall be ignored to the extent they contradict or are inconsistent with the terms and conditions contained in the foregoing numbered list. All previous agreements between McKinstry and Customer as to the Work are superseded by this agreement.