

**Lowell City Council  
Regular Meeting and Executive Session  
Tuesday, October 5, 2021, at 7 P.M.**

**Lowell Rural Fire Protection District Meeting Room  
389 N. Pioneer Street  
Lowell, OR 97452**

**COVID-19 protocols are required for those attending in person, including mask wearing and social distancing.**

**Members of the public are encouraged to provide comment or testimony through the following:**

- Joining by phone, tablet, or PC. For details, click on the event at [www.ci.lowell.or.us](http://www.ci.lowell.or.us).
- In writing, by using the drop box at Lowell City Hall, 107 East Third Street, Lowell, OR 97452.
- By email to: [jcaudle@ci.lowell.or.us](mailto:jcaudle@ci.lowell.or.us).

**Regular Meeting Agenda**

Call to Order/Roll Call/Pledge of Allegiance

Councilors: Mayor Bennett \_\_\_ Harris \_\_\_ Stratis \_\_\_ Myers \_\_\_ Weathers \_\_\_

Approval of Agenda

Consent Agenda

Council members may request an item be removed from the Consent Agenda to be discussed as the first business item of the meeting.

Public Comments

Speakers will be limited to three (3) minutes. The Council may ask questions but will not engage in discussion or make decisions based on public comment at this time. The Mayor may direct the City Administrator to follow up on comments received. When called, please state your name and address for the record.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or other accommodations for persons with disabilities must be made at least 48 hours before the meeting to City Clerk Sam Dragt at 541-937-2157.

## City Council Meeting Agenda

Direct all comments to the Council through the Mayor. All speakers are expected to be polite, courteous, and respectful when making their comments. Personal attacks, insults, profanity, and inflammatory comments will not be permitted.

### Council Comments (three minutes per speaker)

### Staff Reports

### Old Business

### New Business

1. Selection of a design option for the Maggie Osgood Library and City Hall construction project.
  - a. City Administrator presentation – Results from the household survey and town hall meeting
  - b. City Council questions
  - c. Comments from Mayor Bennett
  - d. Action on a design option. At this time, City Council may vote to approve one of the two design options, as follows: Option 1B at an estimated cost of \$393,417 or Option 5B at an estimated cost of \$1,854,407.

*Recommended motion: Motion to select [Option 1B or Option 5B] and to direct the City Administrator to: (1) prepare construction documents for the selected design option; (2) secure a loan for the project for City Council approval at a later meeting; and (3) to author a library operations fee ordinance for City Council consideration.*
2. Review volunteer application submitted by William D. Priser for the Planning Commission.

*Recommended motion: Motion to appoint William D. Priser to the Planning Commission.*
3. Motion to approve an “Option agreement for East Boundary Street property in Lowell, Oregon” in the amount of \$475.00 and to authorize the City Administrator to sign.
4. Motion to approve an “Animal Services Enforcement Services” contract with Lane County and to authorize the City Administrator to sign.
5. Motion to approve Resolution #770, “A resolution to add a signatory to the City of Lowell General Account 47100094 with Banner Bank.”

## City Council Meeting Agenda

Other Business

Mayor Comments

Community Comments: Limited to two (2) minutes if prior to 9:30 P.M.

Adjourn the Regular Meeting with Executive Session to follow.

### **Executive Session Agenda**

Executive Sessions are closed to the public. Representatives of the news media and designated staff may attend Executive Sessions. Representatives of the news media are specifically directed not to report on any of the deliberations during the Executive Session, except to state the general subject of the session as previously announced. No Executive Session may be held for the purpose of taking final action or making any final decision.

1. To conduct deliberations with persons designated by the governing body to negotiate real property transactions, pursuant to O.R.S. 192.660(2)(e).

Adjourn the Executive Session.

# Agenda Item Sheet

## City of Lowell City Council

Type of item:	Presentation
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**Item title/recommended action:**

Selection of a design option for the Maggie Osgood Library and City Hall construction project.

**Justification or background:**

City Council, staff, and library volunteers have worked with Wilson Architecture on design options for City Hall and the library since June. Per City Council direction, staff mailed household surveys and programmed a Town Hall in September to communicate with the public and solicit input. At the October 5 City Council meeting, we will review the results from the household survey. Afterwards, deliberation on the City Hall/library options is scheduled. Staff are requesting that City Council vote on an option so we can move to the next phase of the project. The next phase will include: preparing construction documents and soliciting construction bids from contractors; obtaining the debt financing needed to pay for the project; submitting a final grant request to the Ford Family Foundation for their February board meeting; and drafting an ordinance for City Council review that will offset the increased costs of operating the library. If Option 5B is selected, we will need to approve a new contract with Wilson Architecture, as the original contract is based off a design similar to what is in the 2019 "Community Facilities Study."

**Budget impact:**

Option 1B - estimated construction cost of \$393,417; Option 5B - estimated construction cost of \$1.8 million (\$1.5 million for base option).

**Department or Council sponsor:**

Library

**Attachments:**

Option 1C and 5B drawings and cost estimates; household survey results.

Meeting date:	10/05/2021
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## Summary statistics for household surveys

Total surveys received:	74
Total surveys mailed:	490
Response rate:	15.10%

Responses by question:	#	%
A	33	44.59%
B	32	43.24%
C	9	12.16%

Responses by submission:	Code	#	%
Drop-box	1	58	78.38%
Online	2	15	20.27%
Mail	3	0	0.00%

**Comments from respondents who selected Option A  
(Use existing building with minimal modifications - \$393,417)**

1	\$1.8 million is way too much to spend on this project when what this town desperately needs is police presence. It's horrible the amount of crime that is happening with our little town. Something needs to be done about that!
2	A better or improved build is always possible in the future. Baby steps is smart business.
3	Adequate for a town of this size. Larger meetings could be held at Grange, school, or fire station. Revenue should come from property taxes rather than utilities (regressive).
4	Both options are really expensive!
5	City would be better served spending to digitize records to reduce storage requirements. Option B has way too much wasted square footage.
6	Cost is a big factor and the layout of opt A is great.
7	Facts about how many people use the library. Is this known? % seems backwards. It should be 60% city hall, 40% library. Explain if city council meetings are over crowded? Does this building have to come up to current earthquake codes?
8	I cannot afford to pay more.
9	I do not see the point of building something new at a cost of \$1.8 million when we can use what we have and save money.
10	I don't think it is reasonable for the current approximately 500 residents/households being billed for city water/sewer to offset a nearly 2 million dollar project while we wait for future business or housing development to occur. As the town grows and development occurs additional revenue from that could be used to offset the cost of expansion or building a separate city hall building.
11	I really don't think we need a library. With today's kids, find other ways to spend our money.
12	In 20 years will need a new City Hall.
13	In this sluggish COVID economy, ask us to spend an extra \$144.72 per year is too much, especially since that increase will last 20 years.
14	Option A will be more manageable for many people that cannot afford the higher amount.
15	Option B is too expensive for our small town at this time. The economy is not stable with the pandemic issues and would affect citizens of Lowell unequally due to income inequalities.
16	Option B would be desirable once the new homes being built currently are subsequently occupied and become part of the Lowell community.

17	The city is asking too much of its small population. The fairly recent 20 year bond was a huge ask, and now another 30 year loan is being proposed. And what was slid in about adding more if construction cost increase over budget estimate? Just like individuals, perhaps we shouldn't go into more debt than we can handle with our small population? I would recommend doing the minimum to get the building ready for occupancy and then as our population increases, continue to improve the facility. Does it have to be all or nothing? And perhaps a small fee for out-of-city people using the facility?
18	The library is larger than the original library. Option A appears to give adequate space. If the book shelving were made on rollers, they could be easily moved so the city council could use the space for meetings at night.
19	The need for a new library is at best minimal and out dated in the Google world we live in today. In addition, there is no bang for the buck by the community if the user group is +/- 10 to 15 people.
20	This is a very good option and perfect for our town's needs.
21	Too much money. Not like community made plan.
22	We do not need more debt. The taxes are already too high for our families. Consider storing records digitally. Consider other things that a \$1.8 million budget could fund, such as increased safety for our children and families. This town is growing and we need to build a strong foundation for the future. Also, raise taxes = will lose good local families.
23	We feel that a modification would be sufficient.

**Comments from respondents who selected Option B  
(Modify the existing building to build a larger library and permanent  
City Hall - \$1.8 million)**

1	Best option. No need to spend more money for a city hall.
2	Build today with an eye to tomorrow!
3	I am in favor of co-location in order to leverage the shared costs of restroom, meeting room, etc. Smart! Seems unfair to "saddle" Option B cost with things that are optional and could be added to (or omitted from) either A or B, such as parking lot, sprinklers, HVAC, etc. I favor refining the budget so as to exactly meet the upper limit of the Ford Foundation grant amount. Do not leave grant \$ on the table!!!
4	I really don't have a preference between the two options. I do fundamentally have a problem with a utility fee being used for something that is clearly not a utility and with the city taking on substantial debt without a vote.
5	I think a bigger, more efficient library and city hall is a good idea.
6	I think it is best to build and plan for the expansion of city hall now, instead of having to build a separate city hall sometime in the future.
7	It makes sense to spend a little more so we can have something permanent. I do not like that the entry doors (B) are behind the addition. That's bad curb appeal. It would be better to move the addition to the other side.
8	It will cost less in the end to have 1 building to suit community needs than to have 2 buildings separate from each other.
9	It will make the town look nice.
10	It's time we make a real investment in our downtown. Lowell has been known for doing everything cheap. Let's do the right thing!
11	Let us do it right the first time. Opt. B puts city hall out front, easily found, rather than back in the corner!!
12	Let's do it right the first time. We want Lowell to grow. The City of Lowell deserves a decent library and an appropriate City Hall.
13	Let's do this!
14	Option 2 will save \$\$ in the long term.
15	Option A is "kicking the can down the road" and in the long run we will still have to put out--possibly more--money. Option B is a more long-term solution.



16	Option A is inadequate so would be a waste of money. Option B concerns: Cost and for how many years if grant is not awarded. Utility cost becoming too much of a burden for modest incomes. Planned sales of property sold at below value.
17	Option A is not big enough.
18	Option B because the grant will be a larger buy-in. Because we want City Staff to be accommodated into the future.
19	Option B modifications allows for future growth as the city expands and needs additional space without constructing an additional building on the same property.
20	Option B provides a permanent location for city hall with the ability to expand when needed. It allows for more shared space between the library and city hall.
21	Option B seems like the better choice in the long run, and we want to invest in Lowell for the long term. Continued growth is important to us.
22	The better, cost-effective option in the long-run.
23	The future is looking good for Lowell. It's growing and will be a great community for folks working in Eugene. A good library is a wonderful resource. Let's do it right.
24	The town of Lowell is growing. With more residents and taxpayers we will have the need for a larger facility and the means to support it. My dad always said, "Don't go for the cheapest - buy the best you can afford." We believe we can afford the best!
25	We believe that the cost is worth completing the project right the first time.
26	We should use some money to have a police officer.
27	Yes, let's create better public facilities for the community! Go big or go home!
28	It would take care of problems that would have to be rectified sooner or later. Not too much more than a Netflix account.

**Comments from respondents who selected Option C  
(Something else. Explain.)**

	<b>Something else. Explain.</b>	<b>In a few words, explain your response.</b>
1	Open doors. Use as is. Have users do a donation like Cascade Foothills library in Dexter. It can and should be usable while waiting for funds to be made. It is a resources for the community! Five years w/o a library is too long.	Books make the library, not the money. Ask local contractors to donate to the cause.
2		City Hall needs to be in a separate building. I am totally against combining both City Hall and the library.
3	Find funding from someone else please. Whatever doesn't cost additional/ tax payers.	It is already expensive enough for a home owner and utilities are through the roof as is...
4	Libraries have gone by the wayside the same as newspapers. The school has all the library that would be needed. As far as computer labs that also can be accomplished at school.	My option would be to modify existing building to handle all of City Hall needs and future needs, and make all that happen with Option A money. Option B would put people of a fixed income in a undue financial bind.
5	Given space limitations, could storage be moved to an adjacent add on--not part of the main building? Again, with space in mind--kid's area?? Necessary? You are, in effect, levying a TAX on the citizens of Lowell without a vote.	Placing this TAX on the utility bill is an underhanded way of gaining taxes that will need to be paid for many years. You have too many "if's" as to how you hope to achieve funding. Get your ducks in a row--get concrete figures. If this is to be a "community" library, it shoul dbe funded by more than Lowell utility payers. Another vote to be taken.
6	Option B, with more storage.	Spend the money needed to get what you need, or you will later anyway.

	<b>Something else. Explain.</b>	<b>In a few words, explain your response.</b>
7	Move city hall to this building and do the minimum upgrades necessary for city hall occupancy.	<p>The problem you need to solve is space for city hall so forget the library for now and move city hall into this building. These options and many other city documents and statements imply you are planning a new city hall irregardless of which plan is selected. This is not unreasonable given that neither plan provides adequate space for city hall. But, the way it is being presented feels a little like a bait and switch. You have not made clear future city hall plans so much of this feels like you will be wasting a lot of money. Perhaps just do the plan that is hinted at in the Library Capital Campaign which sounds like it could be almost entirely funded by a Ford Foundation grants and the \$90,000 the city has already contributed. You have not explained where library operations funding will come from. Is this on top of the proposed tax you want to add to our utility bills? If someone does not pay the library tax will you shut down their water service? If that is what you plan then you must not add this to the utility bill. It must be separate. You have not adequately explained what library hours will be and how it will be staffed to support those hours. Expecting city hall staff to operate and monitor this space does not appear tenable with either designs. Besides, they have plenty to do already. What is the status of the \$90,000? Where is it now. You have not justified the size of the library. You have not shown that non Lowell residents will have to pay to use the library. Residents must not subsidize non-residents!!!</p>

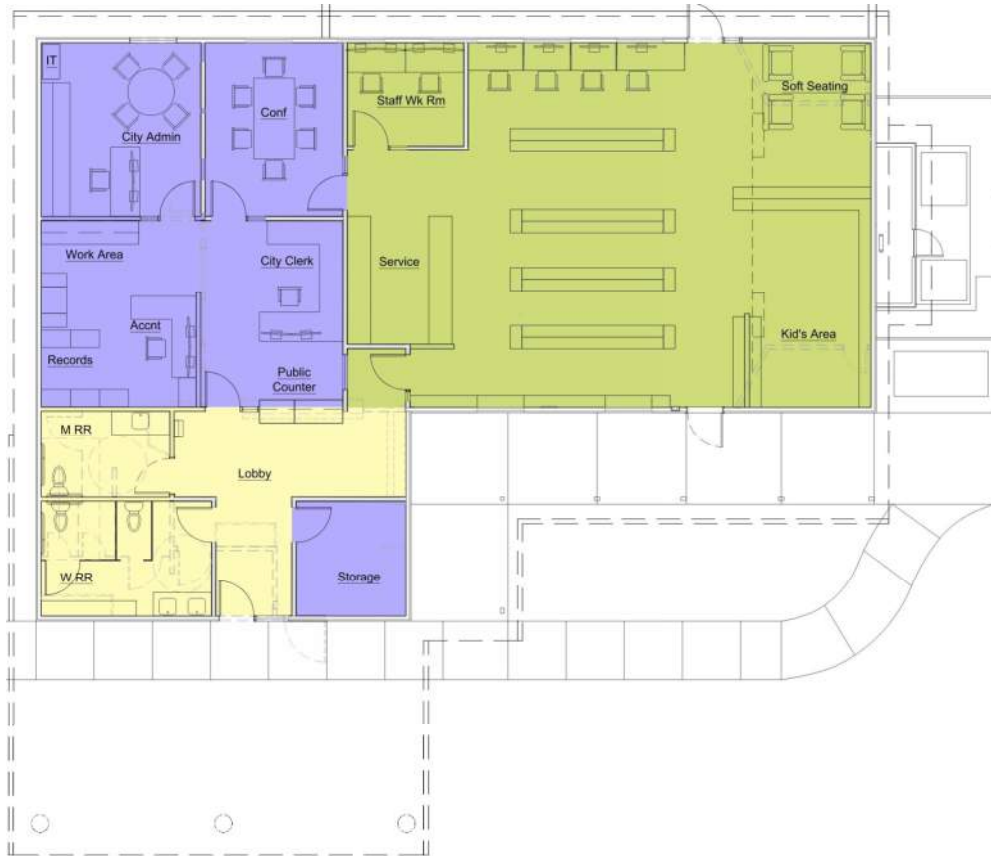
	<b>Something else. Explain.</b>	<b>In a few words, explain your response.</b>
		<p>Frankly, we would rather take the proposed monthly charge and apply it to a Eugene or Springfield library card. Perhaps consider establishing a branch relationship with Springfield or Eugene. If you must do one or the other of these plans do option A which appears closest to the costs described in the Library Capital Campaign. Yes, this is a little disorganized. I apologize. It is also much, much shorter than it could be. You really need to do something else.</p>
8	<p>Wait for properties to sell. Then do all you want to. Properties in City of Lowell sell so quickly that it would be bad to start a project then have to re-assess after sale of properties and start all over with new plans, etc. adding to costs.</p>	<p>The properties up for sale should be advertised rigorously. Spend a bit to recoup after sales. This would substantially reduce costs, time.</p>
9	<p>Put City Hall in the proposed new library building and keep the old City Hall building and make it the library. The City already owns that property. Seems the most logical solution to me.</p>	

## Cost Estimate Summary

Owner **City of Lowell**  
 Project **Library and City Hall Renovation**  
 Date Printed **8/30/2021**

	Option 1B		Option 5B		
	Base	Premium	Base	Premium 1	Premium 2
Division 02 - Demolition	\$17,557		\$58,720		
Division 03 - Concrete	\$0		\$51,961		
Division 06 - Wood	\$0		\$44,194		
Division 07 - Building Envelope	\$8,611		\$60,109	\$43,788 Remaining roofing	\$35,490 Remaining siding
Division 08 - Doors and Windows	\$61,553		\$119,532		
Division 09 - Interior Finishes	\$78,435	\$24,141 Tile in restrooms	\$192,427		
Division 10 - Specialities	\$34,551		\$56,777		
Division 11 - Equipment	\$2,710		\$4,128		
Division 12 - Furnishings	\$16,878		\$30,234	\$18,606 Increase casework allowance	
Division 21-Fire Suppresion	\$0		\$0		\$86,112 Add fire sprinklers
Division 22 - Plumbing	\$7,176		\$38,885		
Division 23 - HVAC	\$20,093		\$166,483		
Division 26 - Electrical	\$35,736		\$142,085	\$7,176 Additional Site lighting	
Division 27 - Communication	\$3,588		\$28,704		
Division 28 - Electronic Safety	\$4,800		\$7,176		\$35,880 Enhanced security system
Division 31 - Earthwork	\$1,076		\$41,126		\$42,189 Pave south end of lot
Division 32 - Exterior Improvements	\$21,969		\$77,843		\$74,168 Pave south end of lot
Division 33 - Utilities (to the building)	\$0		\$19,734		
<b>Construction Cost Total</b>	<b>\$314,733</b>		<b>\$1,140,118</b>	<b>\$69,570</b>	<b>\$273,839</b>
Other Project Costs 25%	\$78,683		\$285,029	\$17,392	\$68,460
<b>Project Costs Total</b>	<b>\$393,417</b>		<b>\$1,425,147</b>	<b>\$86,962</b>	<b>\$342,298</b>

# Concept Design Option 1b



2,880 sf

## Improvements

- New entrance door.
- New windows.
- New flooring throughout.
- New paint interior and ext.
- Revise some ductwork.
- Replace 50% of lights.
- Minor security system.
- Exterior accessible route.

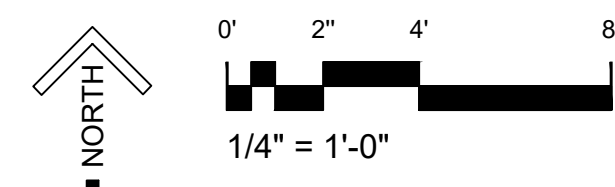
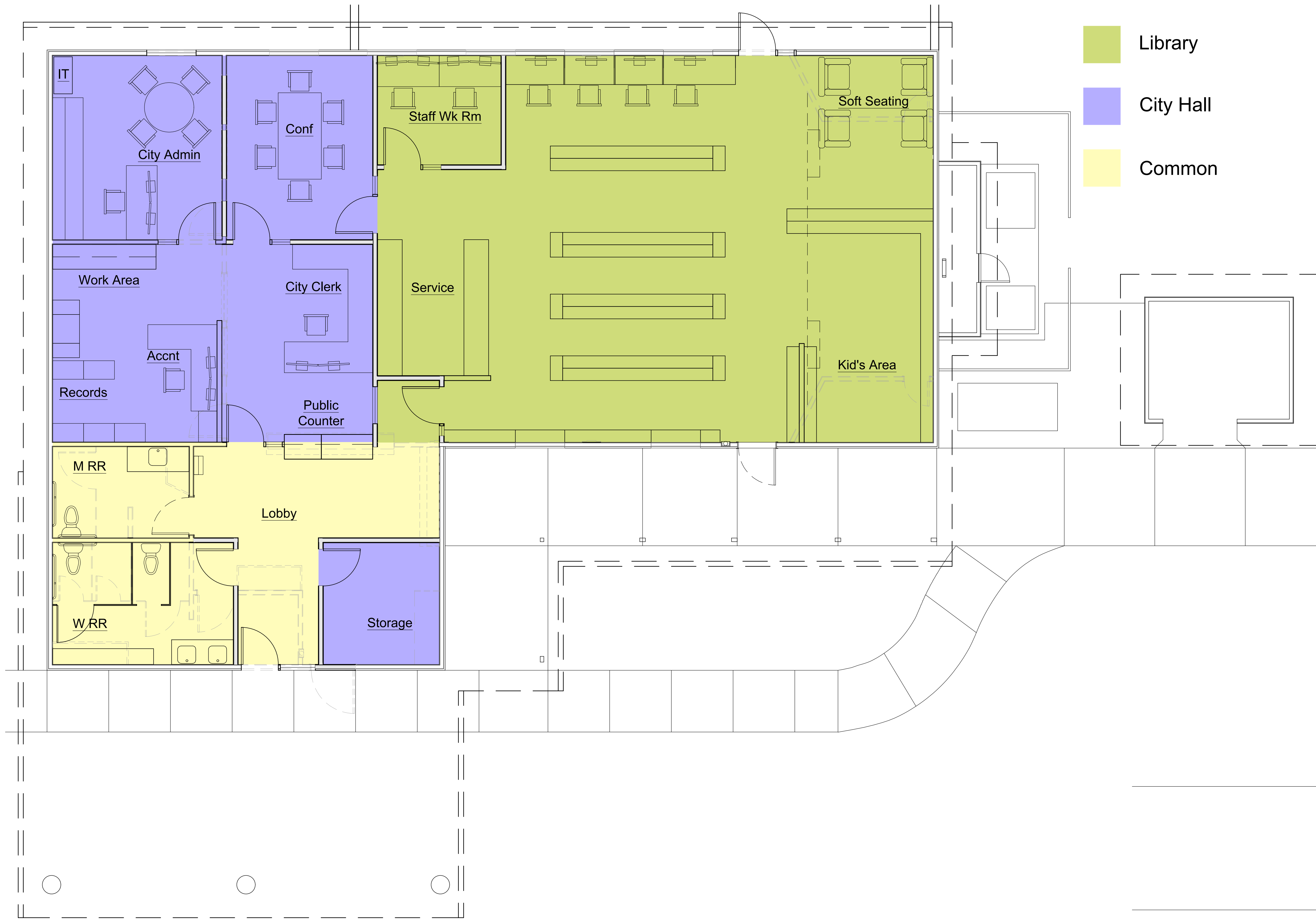
# Concept Design Option 5b



3,758 sf

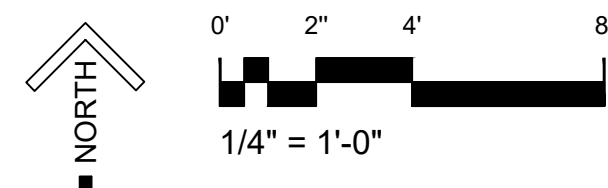
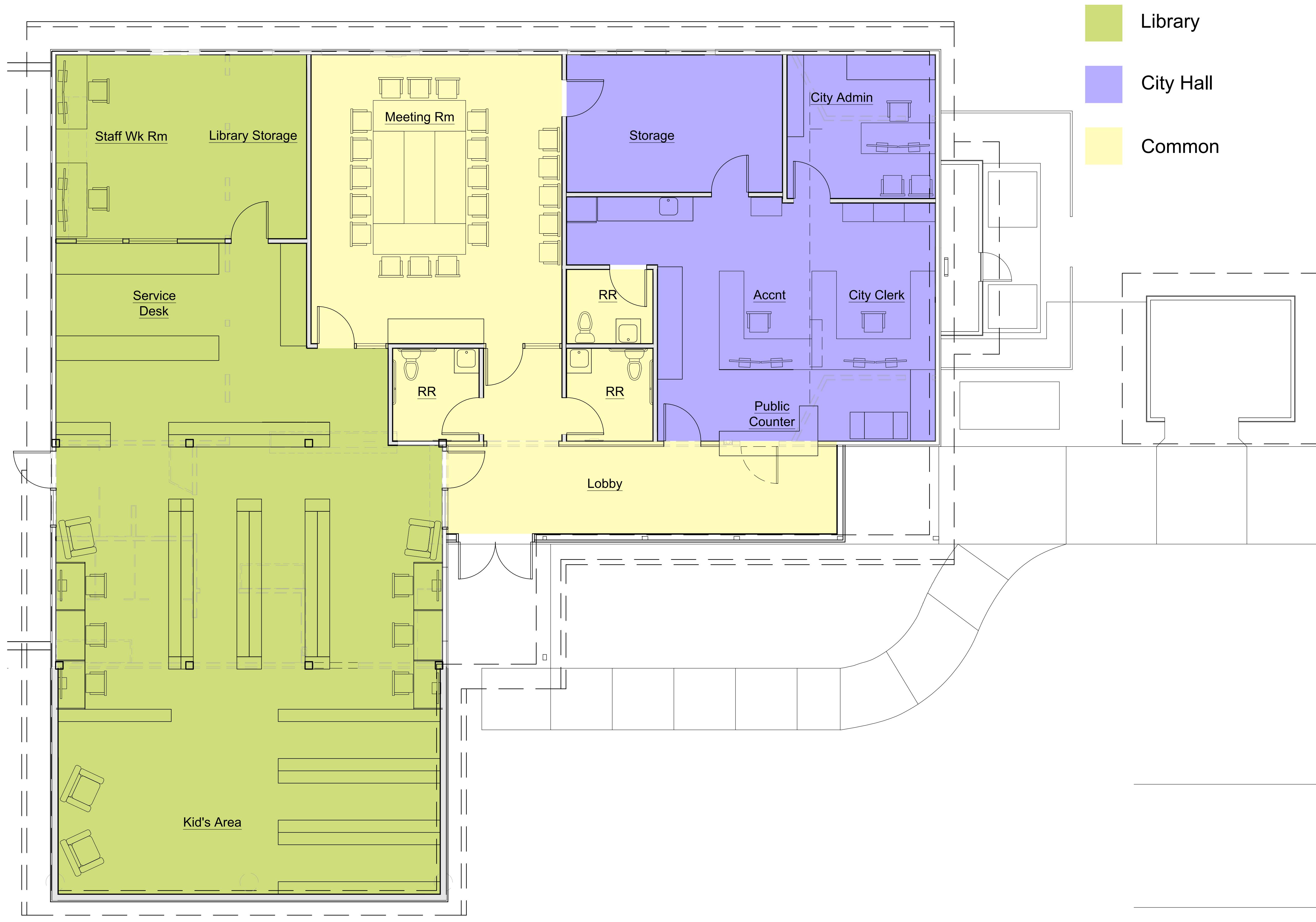
- Improvements beyond 2b
- Covered walkway infill.
  - Upgraded HVAC units.
  - Relocated elec. service.
  - New fire sprinklers
  - Enhanced security system.
  - Additional sidewalk.
  - New pavement, all lot.

- Library
- City Hall
- Common



# Floor Plan





# Floor Plan

# Agenda Item Sheet

## City of Lowell City Council

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Type of item:

Appointments

**Item title/recommended action:**

Review volunteer application submitted by William D. Priser for the Planning Commission.

*Recommended motion: Motion to appoint William D. Priser to the Planning Commission.*

**Justification or background:**

In accordance with Sec. 2.603 of the Lowell Revised Code, the City announced two vacancies on the Planning Commission in the August issue of "The Bridge," as well as on the City website and Facebook page. One vacancy currently remains on the Planning Commission. On September 16, William Priser submitted a volunteer application indicating an interest on serving on the Planning Commission. Priser's application is submitted here for City Council review. City Council may vote to appoint Priser at this time.

**Budget impact:**

N/A

**Department or Council sponsor:**

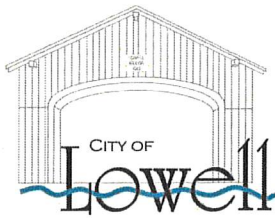
Planning Commission

**Attachments:**

Volunteer application

Meeting date:

10/05/2021



## VOLUNTEER APPLICATION

BOARDS, COMMISSIONS, AND COMMITTEES

<b>Contact Information</b>	
Name:	WILLIAM D PRISER
Street Address:	85 W 2 <sup>ND</sup> ST
Mailing Address:	PO BOX 108
City/State/Zip Code:	LOWELL OR 97452
Home Phone:	N/A
Work Phone:	541-799-5682
E-Mail Address:	WILLIAM.PRISER@GMAIL.COM

<b>Background</b>	
Years of Residence in Lowell:	19
Place of Employment:	LOWELL FIRE DISTRICT
Occupation:	LIEUTENANT
Educational Background:	HS DIPLOMA EMT/AEMT/EMTI LICENSE/CERTIFICATION DPSST POLICE ACADEMY VARIOUS FIREFIGHTING RELATED
Prior Civic Activities:	6 YEARS TOTAL VOLUNTEERING WITH LRFPD 4 YEARS VARIOUS ACTIVITIES WITH EAST VALLEY CHURCH

### Boards, Commissions, or Committees of Interest

Please check all of the following Boards, Commissions, or Committees that interest you:

- City Council**
- Budget Committee**
- Planning Commission**
- Parks and Recreation Committee**
- Economic Development Committee**
- Library Committee**
- Blackberry Jam Festival Committee**
- Other short-term task groups**

RECEIVED

SEP 16 REC'D

### Special Skills or Qualifications

Summarize any special training, skills or experience you may have pertinent to the Board, Commission, or Committee to which you are applying.

SEE ATTACHED

### Motivation

Discuss your motivation for serving on this Board, Commission, or Committee.

SEE ATTACHED

### Special Notice

Please be advised that members of the City Council and Planning Commission are required to file an annual **Statement of Economic Interest** with the State of Oregon.

### Agreement and Signature

By submitting this application, I affirm that the facts set forth in it are true and complete. I understand that if I am accepted as a volunteer, any false statements, omissions, or other misrepresentations made by me on this application may result in my immediate dismissal.

Name (printed)	WILLIAM FEISER
Signature	<i>William Feiser</i>
Date	09-16-21

### Our Policy

It is the policy of the City of Lowell to provide equal opportunities without regard to race, color, religion, national origin, gender, sexual preference, age, or disability. The City of Lowell accepts applications from potential volunteers throughout the year and will hold applications until vacancies exist on specific boards, commissions, or committees. Thank you for completing this application form and for your interest in volunteering with us.

#### Applications may be submitted by mail, in person, or email to:

City of Lowell  
P.O. Box 490  
107 East Third Street  
Lowell, OR 97452  
[volunteer@ci.lowell.or.us](mailto:volunteer@ci.lowell.or.us)

**Special Skills or Qualifications:**

1-year of experience working in Criminal Law Enforcement in a city with a population of 160,000+

7-years of Business and Finance experience, primarily in retail auto lending for a local Credit Union working with dealerships across the pacific northwest

6-years total of firefighting experience in Lowell with focus on leadership, strategies, tactics, building construction, fire inspections and community fire safety from the start of 2021 into 2022.

6-months of ranked-leadership within the fire service including management of shift personnel and oversight of buildings and grounds, developing programs and writing standard operating guidelines.

**Motivation:**

I have spent most of my life as a resident of Lowell since 2001. I attended Lundy Elementary and Lowell High School, volunteered at the Lowell Fire District and volunteered at East Valley Church. I intend to be a long-term resident of Lowell and want to be part of directing this community in safe and positive growth. Earning a seat on the planning commission would give me the opportunity to serve the community in a volunteer position and earn experience for future involvement with the City of Lowell.

# Agenda Item Sheet

## City of Lowell City Council

Type of item:	Contract
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**Item title/recommended action:**

Motion to approve an "Option agreement for East Boundary Street property in Lowell, Oregon" in the amount of \$475.00 and to authorize the City Administrator to sign.

**Justification or background:**

Since late 2020, the City has discussed purchasing right-of-way from Lane County on the northern boundary of the E. Main St. property, bordering West Boundary Road. The County has offered to sell the property for \$45,700. As an alternative, the City Attorney has worked with the County Attorney's legal office on drafting an "option agreement." According to the option agreement, the City could exercise an option to purchase at any time within the next 3 years for the \$45,700 purchase price. This alternative provides a streamlined way for the City to acquire the property without having to spend \$45,700 right now. The County is agreeing to grant the City the option for \$475.

**Budget impact:**

\$475.00

**Department or Council sponsor:**

Administration

**Attachments:**

Option agreement

Meeting date:	10/05/2021
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**OPTION AGREEMENT**

**FOR EAST BOUNDARY STREET PROPERTY IN LOWELL, OREGON**

DATE: \_\_\_\_\_, 2021 (“Effective Date”)

FROM: Lane County, (“County”)
a political subdivision of the State of Oregon

TO: City of Lowell, (“Lowell”)
an Oregon municipal corporation

**RECITALS**

A. County and Lowell desire to cooperate for the transfer of title and sale of two County-owned properties located in Lowell, Oregon to promote the future development of Lowell by providing a site for a new city hall and a site for commercial development.

B. County owns fee simple title to the real property described as Assessors Tax Map and Lot number 19-01-14-24-04500, and has agreed in principle to relinquish title of that property to Lowell without charge pursuant to ORS 271.330 for public purposes, with a reversionary interest that is removable under ORS 271.335.

C. County owns fee simple title to the real property described in Exhibit A, referred to herein as the “Property.”

D. County and Lowell wish to enter into this Option Agreement to set forth their mutual understandings regarding the option.

**AGREEMENT**

In consideration of the terms and conditions and the mutual understandings and promises of the parties set forth herein, County and Lowell agree as follows:

Section 1. Grant of Option. For and in consideration of the sum of Four Hundred Seventy-Five Dollars (\$475.00) paid to County by Lowell (the “Consideration”), receipt of which is acknowledged, County grants to Lowell the sole and exclusive option to purchase the Property for development purposes (the “Option”) in the manner and for the price stated in this Agreement.

**Section 2. Option Terms.**

2.1 Term. The initial term of the Option (the “Initial Term”) commences on the Effective Date and will continue for a period of three (3) years. Lowell has the right to extend the Option for an additional period of two (2) years. This extension period (the “Extension Term”) will commence on the date that the Initial Term expires. The Initial Term and the Extension Term are referred to collectively in this Agreement as the “Term.” If the last day of the Initial Term or the Extension Term falls on a Saturday, Sunday, or a holiday recognized by the federal government or the State of Oregon, all of Lowell’s rights during either such time period will extend through the next business day.

**2.2 Exercise of Option.** The Option must be exercised, if at all, by written notice (the “Exercise Notice”) given by Lowell to County at any time during the Term, stating that Lowell has elected to exercise the Option. The Option may be exercised only with respect to the entire Property, and nothing contained herein will be construed as permitting Lowell to purchase less than all of the Property under this Agreement. Upon exercise of the Option, Lowell will be obligated to purchase the Property from County, and County will be obligated to sell the Property to Lowell, for the price and in the manner herein set forth.

**2.3 Failure to Exercise Option.** If Lowell fails for any reason to exercise the Option in the manner set forth herein, Lowell will have no further claim against or interest in the Property or the Consideration, unless Lowell is entitled to a refund of the Consideration under another provision of this Agreement. In the event of the failure to exercise the Option, Lowell will provide County with any instruments that Owner reasonably deems necessary for the purpose of removing from the public record any cloud on title to the Property that is attributable to the grant or existence of the Option.

### **Section 3. Purchase Price**

**3.1 Purchase Price.** The purchase price for the Property (the “Purchase Price”) will be the sum of Forty-Seven Thousand Five Hundred Dollars (\$47,500.00), adjusted for inflation as follows:

**3.1.1** On the first anniversary of the Effective Date, the Purchase Price shall be adjusted for inflation based upon the then-current U.S. Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Not Seasonally Adjusted, 1982-84 Base Year, or its designated successor rate (the “Adjustment Standard”). The amount of the adjustment shall be equal to the product of the Purchase Price multiplied by the Adjustment Standard. If the Adjustment Standard is zero or less than zero, no adjustment will be made.

**3.1.2** On each successive anniversary of the Effective Date, the Purchase Price shall be further adjusted in the same manner as described in subsection 3.1.1, based upon the cumulative value of the Adjustment Standard for the period of years since the Effective Date multiplied by the Purchase Price.

**3.2 Payment of Purchase Price.** The Purchase Price for the Property will be payable as follows:

**3.2.1** Lowell will be given credit for the sum stated as Consideration in Section 1 above.

**3.2.2** The entire balance of the Purchase Price, adjusted in accordance with 3.1.1 and 3.1.2 above, as applicable, shall be paid in cash at Closing.

### **Section 4. Property Investigation.**

**4.1 Due Diligence Period.** The term “Due Diligence Period” means a period of one hundred eighty (180) days commencing on the date that Lowell elects to exercise its purchase option by delivering the Exercise Notice as provided in subsection 2.2 hereof.

**4.2 Access to Information and the Property.** At all times during the Due Diligence Period, Lowell shall have the right to conduct investigations of the Property (the “Due Diligence Investigation”) which may include, physical inspections of the Property, such as soil, geological, environmental, structural, mechanical, engineering and any other assessments and tests Lowell, in its sole discretion, deems necessary or desirable. As of the date of the Exercise Notice, County grants to Lowell and its agents the right to enter on the Property at any reasonable time before the Closing Date, as hereinafter defined, for the purpose of conducting tests or studies that Lowell may deem necessary or appropriate in connection with its acquisition



of the Property. Lowell shall bear the cost of all tests and studies undertaken. County shall cooperate with Lowell in making such tests and studies. Within thirty (30) days of the Effective Date, County shall create, and provide to Lowell a copy of, a list of all documents in County's possession, custody or control relating to the Property, including, without limitation, all soil tests; asbestos surveys; engineering reports; and environmental assessments, reports and studies. Upon Lowell's request, County shall within thirty (30) days of such request provide Lowell with copies of any requested documents and other information in County's possession, custody or control, regarding the condition of the Property.

**4.3 Title.** Not later than seven (7) days following the commencement of the Due Diligence Period, County shall provide Lowell with a preliminary title report (the "Title Report") covering the Property. The Title Report shall be issued by a title company licensed to conduct business in the State of Oregon and selected by County (the "Title Company"). The Title Report shall be accompanied by legible copies of all plats and special exceptions to title referenced in the Title Report (the "Exceptions"). County shall remove or cause to be removed any Exception created or suffered to be created by County as security for payment of a sum of money (including mortgages, deeds of trust, tax liens, contractor's liens, and judgment liens) and any Exception created, or suffered to be created, by County after the Effective Date of this Option Agreement without having obtained the prior written consent of Lowell, which may be given or withheld in Lowell's sole and absolute discretion. Within fourteen (14) days of receiving the Title Report and the Exceptions documents, Lowell shall give written notice (the "Initial Notice") to County of all Exceptions that Lowell shall require County to remove at or before Closing (the "Unacceptable Exceptions"). If County cannot remove or cause to be removed any one or more of the Unacceptable Exceptions County is required to remove pursuant to this subsection 4.3 at or before Closing, and County so states in a written notice delivered to Lowell within fourteen (14) days of receiving the Initial Notice (the "Reply Notice"), then Lowell may exercise any of the following rights by giving written notice to County prior to Closing: (i) Lowell may terminate this Option Agreement and pursue all remedies available to Lowell at law or in equity; or (ii) Lowell may accept title to the Property subject to any such Unacceptable Exception(s) and instruct Escrow Agent to hold in escrow and not disburse to County at Closing funds in an amount equal to at least one hundred fifty percent (150%) of the reasonably estimated cost of removing any such Unacceptable Exception(s); or (iii) pursue all remedies available to Lowell at law or in equity, including without limitation pursue County for the costs incurred by the Lowell in removing the Unacceptable Exception(s). The foregoing rights of Lowell shall not be deemed waived by giving the Exercise Notice. Exceptions that are shown on the Title Report and to which County is not obligated to remove or to which Lowell does not object are referred to herein as the "Permitted Exceptions."

**4.4 Approval/Disapproval of the Due Diligence Investigation.** Lowell shall have the right to approve or disapprove the results of Lowell's Due Diligence Investigation, in the exercise of Lowell's sole and absolute discretion, by written notice delivered to County not later than the expiration of the Due Diligence Period. If Lowell does not provide written approval of the results of Lowell's Due Diligence Investigation before the expiration of the Due Diligence Period, then Lowell shall be deemed to have disapproved the condition of the Property. In such event, this Option Agreement shall automatically terminate. Lowell may thereafter exercise any remedy available to Lowell if the condition was not approved by reason of a breach of this Option Agreement by County.

## **Section 5. Remedies.**

**5.1 Lowell's Remedies.** In the event County breaches any term or provision of this Option Agreement, and such breach is not cured after Lowell providing written notice to County of the breach and prior to Closing, then Lowell may in its sole discretion elect either or both: (i) to tender performance of the obligations of County and specifically enforce all obligations of County, or (ii) to pursue all other remedies against County available to Lowell at law or in equity.

**5.2 County's Remedies.** In the event Lowell breaches any term or provision of this Option Agreement, and such breach is not cured after County providing written notice to Lowell of the breach and prior to Closing, and regardless of whether the breach occurs before or after Lowell exercises the Option, then County, as its exclusive remedy and in lieu of any other relief, shall be entitled to terminate this Option Agreement by giving Lowell written notice of termination. County acknowledges (i) the adequacy of this exclusive remedy, and (ii) that this limitation of remedies is an essential part of this Option Agreement from the perspective of Lowell. County expressly waives the right to pursue any other right or remedy at law or in equity other than the remedy specified above, including the right of specific performance and the right to sue for damages, in the event of a default by Lowell under this Option Agreement. Lowell and County have established the foregoing remedy in favor of County because of the difficulty and inconvenience of ascertaining the actual damages County may suffer as a result of a breach of this Option Agreement by Lowell.

**Section 6. Conditions Precedent to Closing.** In addition to any other conditions contained in this Option Agreement, set forth below are certain conditions precedent for the benefit of Lowell (the "Conditions"). The Conditions are intended solely for the benefit of Lowell and Lowell shall have the right to waive, by written notice, any of the Conditions, at its sole discretion; giving the Exercise Notice shall not constitute such a waiver. In the event any Condition is not satisfied or waived on or before the deadline for satisfaction specified herein, then Lowell shall have the right to terminate this Option Agreement, in its sole election, by giving County notice of termination before the deadline expires and to exercise any remedy available to Lowell in the event that the subject Condition was not satisfied by reason of a breach of this Option Agreement by County. If Lowell does not give County notice of termination before the applicable deadline, then Lowell shall be deemed to have waived the termination privilege with respect to the Condition in question. The Conditions specifically delineated in this Section 6 are the following:

**6.1** On the Closing Date, as hereinafter defined, the Title Company shall be ready, willing, and able to issue to Lowell upon recordation of the Deed, as hereinafter defined, the title insurance policy required by subsection 7.5.

**6.2** On or before the Closing Date, as hereinafter defined, County shall have performed all of the covenants, conditions, agreements and promises to be performed by it under this Option Agreement and shall have confirmed all covenants, representations and warranties made by it under this Option Agreement remain true and correct as of the Closing Date.

## **Section 7. Closing**

**7.1 Time and Place.** Closing of the sale and purchase of the Property (the "Closing") shall occur on a date (the "Closing Date") selected by Lowell, but in all events the Closing shall occur within two hundred forty (240) days after the date that Lowell sent the Exercise Notice. The escrow for the Closing shall be established at the office of the "Title Company".

**7.2 Closing Obligations.** On or before the Closing Date, County and Lowell shall deposit the following documents and funds in escrow, and the Title Company shall close escrow in accordance with the instructions of County and Lowell.

### **7.2.1 County shall deposit the following:**

(1) The conveyance document described in Section 8, duly executed and acknowledged;

(2) Duly executed assignments of Contracts and Leases, if any, subject to and in accordance with subsection 11.1.4;

(3) A duly executed affidavit certifying that County is not a foreign person, trust, partnership, or corporation in compliance with the requirements of IRC §1445 and ORS 314.258;

(4) Such documents as Lowell or the Title Company may require to evidence the authority of County to consummate this transaction; and

(5) Such other documents and funds as are required of County to close the sale in accordance with this Option Agreement.

**7.2.2 Lowell shall deposit the following:**

(1) The cash payment specified in subsection 3.1, less any credits available to Lowell under the terms of this Option Agreement;

(2) Such documents as County or the Title Company may require to evidence the authority of Lowell to consummate the transaction contemplated; and

(3) Such other documents and funds as are required of Lowell to close the sale and purchase of the Property in accordance with this Option Agreement.

**7.3 Costs.** Lowell shall pay the escrow fee of the Title Company. County shall pay the premium for the title insurance policy. Lowell and County shall each pay one-half (1/2) of all conveyance or excise taxes payable by reason of the conveyance. County shall pay the fee (exclusive of any conveyance or excise tax) for recording the conveyance documents referred to herein.

**7.4 Prorations.** All property expenses incurred by County prior to the Closing Date shall be paid by County at Closing, without proration; solely excepting therefrom real property taxes and assessments for the tax year in which the Closing occurs which taxes and assessments shall be prorated at Closing.

**7.5 Title Insurance Policies.** As soon as practicable after Closing, and in any event no later than seven (7) days after the Closing Date, County shall cause the Title Company to issue its standard form owner's title insurance policy, in the amount of the Purchase Price, insuring fee simple title to the Property vested in Lowell, subject only to the Permitted Exceptions.

**Section 8. Conveyance.** At Closing, County shall execute, acknowledge, and deliver to Lowell a Bargain and Sale Deed (the "Deed") conveying to Lowell fee simple absolute title in the Property, subject only to Permitted Exceptions.

**Section 9. Possession.** Lowell shall be entitled to exclusive possession of the Property on and after the Closing Date, subject to the rights of tenants in possession.

**Section 10. Covenants of County.** County acknowledges that the covenants of County contained in this Option Agreement, including the covenants contained in this Section 10 (the "Covenants"), are material inducements to Lowell to enter into this Option Agreement. The Covenants specifically delineated in this section are the following:

**10.1 Information.** County agrees to deliver to Lowell, within seven (7) days after the

Effective Date, photocopies or electronic copies of all existing documents related to the use or ownership of the Property that County possesses, including (without limitation) all rental and lease agreements (collectively, "Leases"), studies, reports, aerial photographs and other documents of a like nature.

**10.2 Maintenance.** Before the Closing Date, County shall maintain the Property in the same or better condition as it exists as of the Effective Date and shall not cause or permit any waste. In the event County performs or causes to be performed before the Closing Date any predevelopment site work that changes the condition of the Property, Lowell, in its sole discretion, may either approve such changes or require County, prior to the Closing Date and at County's sole cost and expense, to restore the Property to the same condition as existed as of the Effective Date.

**10.3 Ownership.** As of the Effective Date, there are no leases or other agreements granting any type of ownership, possessory, or occupancy interest in any person or entity. During the Term, County shall not sell, contract to sell, assign, lease, or otherwise transfer the Property or any part of it to any third party to acquire, possess or occupy all or any portion of it.

**Section 11. Warranties and Representations of County – Condition of the Property.** Except for the specific representations and warranties of County contained herein, Lowell agrees that Lowell is not relying and will not be relying on any representations or warranties, direct or indirect, by County or on behalf of County, oral or written, express or implied, to Lowell or any agents, representatives or employees of Lowell, with respect to the Property, its condition, its fitness or suitability for any particular purpose, its compliance with any laws or any restrictions related to the development of the Property.

**11.1 Warranties.** County acknowledges that the warranties and representations of County contained in this Option Agreement, including but not limited to the warranties and representations contained in this Section 11 (the "Warranties"), are material inducements to Lowell to enter into this Option Agreement. All Warranties, and Lowell's right to assert a breach of them, shall survive execution of this Option Agreement, the Closing, and the execution and delivery of the Closing documents. If, before Closing, Lowell discovers or is advised that any of the Warranties was untrue when made or has not remained true and correct until Closing, then Lowell may terminate this Option Agreement and pursue all remedies available to Lowell at law or in equity. County warrants and represents to Lowell that the following matters are and will remain until Closing true and correct:

**11.1.1 Status of County.** County warrants that County is not a foreign person, foreign partnership, foreign corporation, or foreign trust, as those terms are defined in Internal Revenue Code §1445 and ORS 314.258.

**11.1.2 Breach of Agreements.** Neither the execution of this Option Agreement, nor the execution, delivery, or recordation of any document or agreement referenced herein, nor the exercise of the Option and Closing of the transaction contemplated herein, shall constitute or will constitute a default under any other agreement or contract that relates to the Property or to which County is a party.

**11.1.3 Authority.** County warrants that all consents, documents, or approvals have been obtained that are necessary to the effectiveness of the grant of the Option by County.

**11.1.4 Contracts; Leases.** County warrants and represents to Lowell that there are and will be no maintenance contracts, service agreements, or other contracts of any nature that pertain to, cover, or affect the Property or any part of it, which cannot be terminated upon no more than thirty (30) days' written notice (collectively, the "Contracts"). County, at its sole cost and expense, shall provide to Lowell copies of all Contracts and Leases, if any, existing as of the Effective Date as part of County's obligations under subsection 10.1. Lowell shall determine, in its sole discretion, whether on or before

Closing and as a condition thereto, each such Contract or Lease shall be terminated or assigned to Lowell. Within fourteen (14) days of receiving copies of all of the Contracts and Leases, Lowell shall provide to County written notice of its determination. County, at County's sole cost and expense, shall thereafter be responsible for terminating or assigning to Lowell its interest in each of the Contracts and Leases in accordance with Lowell's determination prior to the Closing Date.

**11.1.5 No Liens.** At all times during the Term, County shall keep the Property free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Property. If any such lien shall at any time be filed against the Property, County shall, within thirty (30) days after notice to County of the filing thereof, cause the same to be discharged. During the Term, Lowell shall have the right to post and maintain notices of non-responsibility. Such notices shall be located in such areas reasonably acceptable to County.

**11.2 Changed Conditions.** If County discovers that one or more of the Warranties or one of the conditions referred to in the Warranties has changed after this Option Agreement is executed, County shall immediately inform Lowell, in writing, of such discovery. If the changed condition or Warranty cannot be cured within seven (7) days of the date County discovers the change, then Lowell may either terminate this Option Agreement (and its exercise of the Option, if any) by giving written notice of termination to County within seven (7) days after receiving the notice from County. If Lowell does not so elect to terminate this Option Agreement, County shall be responsible for correcting the changed condition or Warranty. If the changed condition or Warranty can be corrected within seven (7) days after discovery by County, Lowell shall not have the right to terminate this Option Agreement pursuant to this subsection and County shall correct the changed condition or Warranty within such timeframe. If Lowell does not terminate this Option Agreement and the changed condition or Warranty is not corrected by the Closing Date, then Lowell shall have the right to instruct Escrow Agent to hold in escrow and not disburse to County at Closing funds in an amount equal to at least one hundred fifty percent (150%) of the reasonably estimated cost of correcting the changed condition or Warranty until such time as the changed condition is corrected, and County shall correct such changed condition, at County's sole expense and in an expeditious manner, failing which Lowell may use the withheld sums to make the correction. A change caused by County is deemed to be a breach of this Option Agreement by County if the change materially and adversely affects the Property or Lowell's rights.

## **Section 12. Independent Investigation; AS-IS Sale.**

**12.1 Investigation.** Lowell acknowledges and agrees that it has been given or will be given during the Due Diligence Period, a full opportunity to inspect and investigate each and every aspect of the Property, either independently or through agents of Lowell's choosing, including, without limitation:

**12.1.1** All matters relating to title, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements and building codes;

**12.1.2** The physical condition and aspects of the Property, including, without limitation, the square footage, the structure, the seismic aspects, the paving, the utilities, if any, and all other physical and functional aspects of the Property. Such examination of the physical condition of the Property shall include, but not be limited to, Lowell's examination of the presence or absence of Hazardous Substances. For purposes of this Agreement, "Hazardous Substances" shall mean inflammable explosives, pollutants, contaminants, radioactive materials, asbestos, polychlorinated biphenyls, lead, lead-based paint, under and/or above ground tanks, hazardous materials, hazardous wastes, hazardous substances, oil, or related materials, which are listed or regulated by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.); the Clean Water Act (33 U.S.C.

Section 1251, et seq.); the Safe Drinking Water Act (14 U.S.C. Section 1401, et seq.); the Hazardous Materials Transportation Act (49 U.S.C. Section 5101, et seq.); the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.); the Oregon Hazardous Substance Removal and Remedial Action Law, ORS 465.200, et seq.; and any other applicable federal, state or local laws, rules, regulations or governmental requirements (collectively “Environmental Laws”);

**12.1.3** Any easements and/or access rights affecting the Property; and

**12.1.4** All other matters of material significance affecting the Property.

## **12.2 AS-IS Acknowledgements and Releases.**

**12.2.1** LOWELL SPECIFICALLY ACKNOWLEDGES AND AGREES THAT COUNTY IS SELLING AND LOWELL IS PURCHASING THE PROPERTY ON AN “AS IS WITH ALL FAULTS” BASIS, INCLUDING BUT NOT LIMITED TO BOTH LATENT AND PATENT DEFECTS, AND THAT LOWELL IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM COUNTY OR ITS AGENTS, EMPLOYEES, ELECTED AND APPOINTED OFFICIALS, LEGAL COUNSEL, DEPARTMENTS, OFFICES, AND AFFILIATES AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION SUCH MATTERS AS: (i) the quality, nature, adequacy and physical condition and aspects of the Property, including, but not limited to, the structural elements, seismic aspects of the Property, appurtenances, access, sewage, utility systems, if any; (ii) the square footage of the Property; (iii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater; (iv) the existence, absence, quality, nature, adequacy and physical condition of utilities serving the Property, if any; (v) the development potential of the Property, and the Property’s use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose; (vi) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property; (vii) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (viii) the presence of Hazardous Substances on, under or about the Property or the adjoining or neighboring property; (ix) the quality of any labor and materials used in any improvements on the Property; (x) the condition of title to the Property; (xi) the contracts or other agreements affecting the Property; and (xii) the economics of the operation of the Property.

**12.2.2** Lowell acknowledges that some defects may become apparent only after the Closing Date. Lowell on behalf of itself and on behalf of its transferees and their respective successors and assigns shall, upon Closing be deemed to waive, relinquish, release and forever discharge County and its agents, employees, elected and appointed officials, legal counsel, departments, offices, and affiliates from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs and expenses whatsoever (including, without limitation, attorneys’ fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) the physical condition of the Property including, without limitation, all structural and seismic elements, all mechanical, electrical, plumbing, sewage, heating, ventilating, air conditioning and other systems, the environmental condition of the Property and all Hazardous Substances on, under, or about the Property; (ii) any environmental law; or (iii) any other matter described in this subsection 12.2.

**Section 13. Waiver.** Failure by County or Lowell to enforce any right under this Option Agreement shall not be deemed to be a waiver of that right or of any other right.

**Section 14. Successors and Assigns.** Subject to the limitations on County’s right to convey the

Property set forth elsewhere herein, the terms, warranties, covenants, conditions and representations herein contained shall be binding on and inure to the benefit of the heirs, successors, and assigns of County and Lowell. With the consent of County, which shall not be unreasonably refused, Lowell may assign its interest in this Option Agreement and the Property to any public or private entity with the consent of County. In the event that an assignee assumes the obligations of Lowell hereunder, then Lowell shall have no further liability with respect to this Option Agreement.

**Section 15. Notices.** All notices required or permitted to be given shall be in writing and shall be deemed received upon personal service or deposit in the United States Mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To County:	Lane County County Administration 125 East 8th Avenue Eugene, Oregon 97401
With Copy to:	Lane County Office of County Counsel 125 East 8th Avenue Eugene, Oregon 97401
To Lowell:	City of Lowell Attn: City Administrator PO Box 490 Lowell, OR 97452
With Copy to:	Lane Council of Governments Attn: Gary Darnielle 859 Willamette Street, Suite 500 Eugene, OR 97401

The foregoing addresses may be changed by written notice, given in the manner described in this section.

**Section 16. Attorney Fees.** If litigation is instituted with respect to this Option Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial and any appeal or review, such amount to be set by the court before which the matter is heard.

**Section 17. Risk of Loss.** County shall bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, and regardless of whether the Exercise Notice has yet been given or is subsequently given, a material casualty loss occurs to the Property by fire or by any other cause of any nature or if all or any portion of the Property is taken by condemnation, or if any such condemnation is threatened, County shall give Lowell written notice of such event. In such event, Lowell shall have the right to terminate this Option Agreement. If Lowell does not elect to terminate this Option Agreement, then this Option Agreement shall continue in force and, if Lowell exercises the Option and the Property is conveyed to Lowell, then all interest of County in and to any insurance proceeds or condemnation awards that may be payable to County on account of such casualty or condemnation shall be assigned to Lowell at Closing.

**Section 18. Integration, Modification, Amendments.** This Option Agreement, including all other

exhibits attached hereto, contains the entire agreement of the parties with respect to the Property. Any modifications, changes, additions, or deletions to this Option Agreement must be approved by both County and Lowell, in writing.

**Section 19. Counterparts; Pronouns; Capitalized Terms.** This Option Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement and shall be effective when one or more counterparts have been signed and delivered by County and Lowell. With respect to any pronouns used, each gender used shall include the other gender and the singular and the plural, as the context may require.

**Section 20. Governing Law; Interpretation; Severability.** This Option Agreement shall be governed by the laws of the state of Oregon. The terms “day” or “days” as used means calendar day or days. The terms “business day” or “business days” means a day or days other than a Saturday, Sunday, or day on which banking institutions in Eugene, Oregon are authorized or required by law or executive order to be closed. If this Agreement requires any act to be done or action to be taken on or by a date which is not a business day, that act or action will be deemed to have been validly done or taken if done or taken on the next succeeding business day. In the event a court of competent jurisdiction holds any portion of this Option Agreement to be void or unenforceable as written, County and Lowell intend that (i) that portion of this Option Agreement be enforced to the extent permitted by law, and (ii) the balance of this Option Agreement remain in full force and effect.

**Section 21. Time Is of the Essence.** Time is of the essence of this Option Agreement.

**Section 22. Authority to Execute.** Each person executing this Option Agreement on behalf of County and Lowell, respectively, warrants his or her authority to do so.

**Section 23. Statutory Disclosure.** The following statement is made pursuant to ORS 93.040(2): THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE LOWELL OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.



Executed on the day and year first above written.

**LANE COUNTY**

By: \_\_\_\_\_  
Steve Mokrohisky,  
County Administrator

**CITY OF LOWELL**

By: \_\_\_\_\_  
Jeremy Caudle,  
City Administrator

**Attachments:**

Exhibit A – Legal Description of Property

# Agenda Item Sheet

## City of Lowell City Council

Type of item:	Contract
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**Item title/recommended action:**

Motion to approve an "Animal Services Enforcement Services" contract with Lane County and to authorize the City Administrator to sign.

**Justification or background:**

The City's last "Animal Services Enforcement Services" agreement with Lane County was approved in 2018 for a 3-year term and is now expired. (See packet for copy of 2018 contract.) Lane County is proposing to renew the agreement for 5 years. The City will be charged \$96.11 per hour for animal services. The \$25,000 figure in Section 2 of the contract renewal is a budget figure for Lane County's record-keeping purposes-- we will only be paying \$96.11 per hour for law enforcement services related to animal calls. This includes calls related to: animal bites; dangerous animals, injured animals; and neglect/abuse calls.

**Budget impact:**

\$96.11 per hour for responses to calls and attendance at court appearances

**Department or Council sponsor:**

Administration

**Attachments:**

Renewal agreement; original 2018 agreement

Meeting date:	10/05/2021
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**LANE COUNTY INTERGOVERNMENTAL AGREEMENT (IGA) AMENDMENT** (Contract Form B-2, 2021)

Contract Title: LANE COUNTY ANIMAL SERVICES ENFORCEMENT SERVICES

Amendment No.: One (1); Key Id #54216 / PW18090601 / BO #21-09-21-05

This Amendment modifies the Intergovernmental Agreement named above between Lane County (“**County**”), and City of Lowell (“**Agency**”). County and Agency agree as follows:

**1. SCOPE OF AMENDMENT.** The scope of the Agreement is amended as follows:

- 1.1** Purpose of this amendment is to extend the term by five-years through June 30, 2026, and increase the funds in the amount of twenty-five thousand dollars (\$25,000.).
- 1.2** In addition, the new rate for FY 2021-2022, will be \$96.11 per hour.
- 1.3** The parties recognize that costs may increase due to inflation or service changes over the term of the amendment, and that the Agency may request that the parties negotiate an adjustment in the IGA amount to accommodate such increase. The County will be reasonable in negotiating and granting such an adjustment.

**2. CONSIDERATION**

**2.1 Consideration.** In consideration of this Amendment, the Agreement amount is increased by the following amount: twenty-five thousand dollars (\$25,000.)

**2.2 Summary.** A summary of the original Agreement amount and all amendment amounts (if used) is:

Original Agreement amount:	\$	25,000.00
Total of all previous Amendments:		0.00
This Amendment:		25,000.00
		=====
Revised Agreement amount including all Amendments:	\$	50,000.00

**3. TIME.** In consideration of this Amendment, the Agreement term is increased by: five-years. The revised Agreement period, including this amendment, is now June 30, 2026.

**4. DATE.** This Amendment is effective as of the date last signed below, or as of the date entered here: June 27, 2021.

Each party, by signature below, agrees to be bound by the terms and conditions of this Amendment. All other terms and conditions of the original Agreement not altered by this Amendment remain in full force and effect.

**AGENCY:**

**COUNTY:**

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

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

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

Title: Steve Mokrohisky, County Administrator

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

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

**INTERGOVERNMENTAL AGREEMENT**  
**FOR**  
**Lane County Animal Services Enforcement Services**

This Agreement is entered into by and between Lane County, a political subdivision of the State of Oregon ("County"), and City of Lowell, an Oregon unit of local government ("City"), referred to collectively in this Agreement as the parties.

County and City agree as follows:

**1. RECITALS**

- 1.1 ORS 190.010 and the Lane County Home Rule Charter provide that units of local government may enter into agreements for the performance of any or all functions and activities that a party to the agreements, its officers, or agents, have authority to perform.
- 1.2 The parties have determined it is in their mutual interest for County to perform certain functions for City on a reimbursement basis.
- 1.3 The parties desire to enter into an agreement whereby County will provide limited Animal Enforcement Services as described in Section 2.1 below.

**2. SCOPE OF AGREEMENT.**

- 2.1 County shall provide limited enforcement services, including court appearances and prosecution, as requested by its designee at an hourly rate of \$133.18 per officer per hour during regular business hours for the period of July 1, 2018 through June 30, 2019. Hourly rates for subsequent years will be updated annually in accordance with any County adopted budgetary personnel changes. The hourly rate will be calculated from the time the Lane County Animal Services (LCAS) Animal Welfare Officer is dispatched until the time the LCAS Animal Welfare Officer becomes available for LCAS service.
- 2.2 Calls will be responded to in the following order of priority, only by designated person(s) on approved list supplied by CITY:
  - a) Animal bites (owner unknown and animal is at large).
  - b) Animals endangering public safety (vicious animal at large).
  - c) Injured animals.
  - d) Neglect/abuse to animals (animals in immediate danger).
- 2.3 City shall:
  - a) Pay County monthly for County service and personnel utilized as authorized by City in accordance with Sections 2.1 & 2.2 above.
  - b) Assign principal responsibility for coordination between City and County on matters of animal control services to a designee, for the purposes of facilitating the flow of information between City and County concerning limited Animal Control services, maximizing service to the satisfaction of both parties, and assisting City to establish a working relationship with this individual in order to answer all formal or informal requests for information or clarification from City.
  - c) Implement an effective means of communication with City and its designee when County cannot respond to emergency calls.
- 2.4 The parties hereto further agree that:
  - a) All animal control citations issued by County within City's city limits shall be prosecuted by County pursuant to the Lane Code, and that County is authorized to conduct preliminary investigations and prosecutions of possible violations of the Oregon Revised Statutes and Lane County Code pertaining to animal control.
  - b) County, on behalf of City, may cite any person who violates any section of the Lane County Code related to animal control within City's city limits, by issuing a Lane County summons

with copies provided to the Lane County Infraction Clerk at County, and said citation shall be prosecuted by County under Lane County's Animal ordinance.

- c) The books and records of each party to this Agreement, and such other records as may be reasonably required by either party, shall be open and available for the purpose of audit and inspection at reasonable and convenient times. County will supply monthly reports with billing.
- d) Parties will fully cooperate with each other in providing all information that one of them shall reasonably need to perform their duties under the Agreement, including that which may be necessary for City to assume full responsibility for dogs and other animal control within its boundaries upon the termination of this Agreement.
- e) City will continue to issue dog licenses according to the existing City Ordinance.
- f) It is understood that when priority calls are received, they will be responded to in the order that they are received as well as the order of priority, subject to availability of County resources.
- g) City will be informed by County of any changes in its rates of fees and for those fees to begin 30 days from notification.

### **3. DOCUMENTS FORMING THE AGREEMENT**

**3.1 The Agreement.** The Agreement consists of this document and all exhibits listed below, which are incorporated into this Agreement.

**3.2 Exhibits.** None.

### **4. CONSIDERATION AND PAYMENT**

**4.1** In consideration for City's performance under this Agreement, County shall:

- a) Submit a monthly invoice to City with appropriate documentation and reports detailing services provided.

**4.2** In consideration for County's performance under this Agreement, City shall:

- b) Upon receipt of invoice from County, pay County for animal enforcement services provided by County within 30 days of receipt of approved invoice.

### **5. EFFECTIVE DATE AND DURATION**

**5.1 Effective Date.** Upon the signature of all parties, this Agreement is effective upon signature by all parties.

**5.2 Duration.** Unless extended or terminated earlier in accordance with its terms, this Agreement will terminate three years from the execution date. However, such expiration shall not extinguish or prejudice either party's right to enforce this agreement with respect to any breach or default in performance which has not been cured.

**6. AUTHORIZED REPRESENTATIVES.** Each of the parties designates the following individuals as their authorized representatives for administration of this Agreement. Any notice required under this Agreement must be addressed to the authorized representative stated here. A party may designate a new authorized representative by written notice to the other.

#### **6.1 County's Authorized Representative.**

Sr. Welfare Officer Bernard Perkins  
541-682-2374 (Office)  
Email: [Bernard.perkins@co.lane.or.us](mailto:Bernard.perkins@co.lane.or.us)

#### **6.2 City's Authorized Representative.**

Jared Cobb, City Administrator (or designee)  
541-937-2157 (Office)  
Email: [jcobb@ci.lowell.or.us](mailto:jcobb@ci.lowell.or.us)

7. **INDEMNIFICATION.** To the extent permitted by the Oregon Constitution, and to the extent permitted by the Oregon Tort Claims Act, and to the extent otherwise provided for in private contracts of insurance, each party agrees to indemnify, defend, and hold the other and its officers, employees, or agents, harmless from all damages, losses and expenses, including but not limited to attorney fees, and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from the indemnifying party's negligence in the performance of or failure to perform under this Agreement. No party to this Agreement will be required to indemnify or defend the other party for any liability arising solely out of wrongful acts of another party, or that party's own officers, employees, or agents.
8. **MODIFICATION AND TERMINATION.** No modification or amendment to this Agreement will bind either party unless in writing and signed by both parties. The parties may jointly agree to terminate this Agreement at any time by written agreement.
9. **MISCELLANEOUS PROVISIONS**
- 9.1 **Disputes.** The parties are required to exert every effort to cooperatively resolve any disagreements that may arise under this Agreement. This may be done at any management level, including at a level higher than the persons directly responsible for administration of the Agreement. In the event that the parties alone are unable to resolve any conflict under this Agreement, they are encouraged to resolve their differences through mediation or arbitration, using such process as they may choose at the time.
- 9.2 **Waiver.** Failure of either party to enforce any provision of the Agreement does not constitute a waiver or relinquishment by the party of the right to such performance in the future nor of the right to enforce that or any other provision of this Agreement.
- 9.3 **Severability.** If any provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions are not affected; and the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- 9.4 **Time is of the Essence.** The parties agree that time is of the essence with respect to all provisions of this Agreement.
- 9.5 **No Third-Party Beneficiaries.** County and City are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives or may be construed to give or provide any benefit or right to third persons, either directly or indirectly, that is greater than the rights and benefits enjoyed by the general public, unless that party is identified by name in this Agreement.
- 9.6 **Headings.** The headings and captions in this Agreement are for reference and identification purposes only and may not be used to construe the meaning or to interpret the Agreement.
- 9.7 **Force Majeure.** Neither party will be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party.
- 9.8 **Multiple Counterparts.** This Agreement and any subsequent amendments may be executed in several counterparts, facsimile or otherwise, all of which when taken together will constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement and any amendments so executed will constitute an original.

9.9 Merger. This Agreement contains the entire agreement of County and City with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings.

**EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

CITY:

CITY OF LOWELL

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

Jared Cobb

Title: City Administrator

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

6/21/18

Address:

City of Lowell  
107 East Third Street  
Lowell, OR 97452

COUNTY:

LANE COUNTY, OREGON

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

Dan Hurley

Title: Interim Public Works Director

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

6/26/18

Address:

Lane County Public Works  
3050 Delta Highway North  
Eugene, Oregon 97408

# Agenda Item Sheet

## City of Lowell City Council

Type of item:	Resolution
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**Item title/recommended action:**

Motion to approve Resolution #770, "A resolution to add a signatory to the City of Lowell General Account 47100094 with Banner Bank."

**Justification or background:**

Our policy is to have two check signers for each check: either 2 city councilors, or the City Administrator and a city councilor. The City's practice has been to designate all City Councilors as authorized check signers. With the recent appointment of Maureen Weathers to City Council, this resolution is necessary to update the list of approved signatories for the City's general bank account with Banner Bank.

**Budget impact:**

N/A

**Department or Council sponsor:**

City Council

**Attachments:**

Resolution #770

Meeting date:	10/05/2021
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**CITY OF LOWELL, OREGON**

**RESOLUTION 770**

**A RESOLUTION TO ADD A SIGNATORY TO THE CITY OF  
LOWELL GENERAL ACCOUNT 47100094 WITH BAN-  
NER BANK.**

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**WHEREAS** the appointment of a new City Councilor has necessitated an addition to the authorized signatories on the City of Lowell General Account 47100094 with Banner Bank,

**NOW, THEREFORE, BE IT RESOLVED** that the following signatory is added for said account:

- a) Maureen M. Weathers

Adopted by the City Council of the City of Lowell, this 5th day of October 2021.

Yea: \_\_\_\_\_

Nay: \_\_\_\_\_

Approved: \_\_\_\_\_  
Don Bennett, Mayor

Attest: \_\_\_\_\_  
Jeremy Caudle, City Administrator