



# City of Sandy

## Agenda

### City Council Meeting

Meeting Date: Monday, May 16, 2022

Meeting Time: 6:00 PM

Page

#### **1. CITY COUNCIL EXECUTIVE SESSION - 6:00 PM**

The City Council will meet in executive session pursuant to ORS 192.660(2)(h)

#### **2. CITY COUNCIL REGULAR MEETING - 7:00 PM**

This meeting will be conducted in a hybrid in-person / online format. The Council will be present in-person in the Council Chambers and members of the public are welcome to attend in-person as well. Members of the public also have the choice to view and participate in the meeting online via Zoom.

##### To attend the meeting in-person

Come to Sandy City Hall (lower parking lot entrance).  
39250 Pioneer Blvd., Sandy, OR 97055

##### To attend the meeting online via Zoom

Please use this link: <https://us02web.zoom.us/j/81035717348>  
Or by phone: (253) 215-8782; Meeting ID: 810 3571 7348

Please also note the public comment signup process below.

#### **3. PLEDGE OF ALLEGIANCE**

#### **4. ROLL CALL**

#### **5. CHANGES TO THE AGENDA**

#### **6. PUBLIC COMMENT**

NOTE: the Council will take comments on Ordinance 2022-09 during a public hearing later in the agenda.

The Council welcomes your comments on other matters at this time.

If you are attending the meeting in-person

Please submit your comment signup form to the City Recorder before the regular meeting begins at 7:00 p.m. Forms are available on the table next to the Council Chambers door.

If you are attending the meeting via Zoom

Please complete the [online comment signup webform](#) by 3:00 p.m. on the day of the meeting.

The Mayor will call on each person when it is their turn to speak for up to three minutes.

## **7. RESPONSE TO PREVIOUS PUBLIC COMMENTS**

## **8. CONSENT AGENDA**

- 8.1. **City Council Minutes** 4 - 13  
[City Council - 02 May 2022 - Minutes - Pdf](#)

## **9. NEW BUSINESS**

- 9.1. **Contract Award: Bell Street / 362nd Avenue Construction** 14 - 17  
[Bell and 362nd Avenue Improvements Construction Contract Award - Pdf](#)
- 9.2. **Project Management Contract Amendment: HHPR (Bell Street / 362nd Avenue)** 18 - 24  
[HHPR Bell and 362nd Avenue Improvements Project Amendment No. 2 - Pdf](#)
- 9.3. **Contract Award: 2022 Sanitary Sewer Rehabilitation Project** 25 - 100  
[Contract for 2022 Sanitary Sewer Rehabilitation Project - Pdf](#)
- 9.4. **PUBLIC HEARING: Building Code Amendments** 101 - 104  
Ordinance 2022-09  
[SMC Section 15.04.120 Edits - Pdf](#)
- 9.5. **Discussion and Input: Parks Code Modifications and Revised Parks & Trails Master Plan** 105 - 193  
[Parks Code Modifications and revised Parks & Trails Master Plan - Pdf](#)  
[Presentation Slides](#)

## **10. REPORT FROM THE CITY MANAGER**

## **11. COMMITTEE /COUNCIL REPORTS**

## **12. STAFF UPDATES**

- 12.1. [Monthly Reports](#)

**13. ADJOURN**



**MINUTES**  
**City Council Meeting**  
**Monday, May 2, 2022 7:00 PM**

**COUNCIL PRESENT:** Stan Pulliam, Mayor; Jeremy Pietzold, Council President; Laurie Smallwood, Councilor; Richard Sheldon, Councilor; Kathleen Walker, Councilor; Carl Exner, Councilor; and Don Hokanson, Councilor

**COUNCIL ABSENT:** (none)

**STAFF PRESENT:** Jordan Wheeler, City Manager; Jeff Aprati, City Recorder; Tyler Deems, Deputy City Manager / Finance Director; Kelly O'Neil Jr., Development Services Director; Ernie Roberts, Police Chief; Emily Meharg, Senior Planner; Rochelle Anderholm-Parsch, Parks and Recreation Director; and Andi Howell, Transit Director

**MEDIA PRESENT:** (none)

**1. CITY COUNCIL REGULAR MEETING**

**2. Pledge of Allegiance**

**3. Roll Call**

**4. Changes to the Agenda**  
(none)

**5. Public Comment**  
(none)

**6. Response to Previous Public Comments**  
(none)

**7. Presentation**

**7.1. Police Sergeant Oath of Office**  
Sergeant Garrett Thornton

**Mayor Pulliam** administered the oath to Sergeant Thornton. After the oath, photos were taken.

**7.2. Audit Presentation - Fiscal Year Ended June 30, 2021**

Staff Report - 0567

Tim Gillette of Talbot Korvola & Warwick, LLP delivered a presentation to the Council on the audit for the fiscal year ending June 30, 2021. Audit materials can be accessed on the City's website at <https://www.ci.sandy.or.us/finance/page/audits>

**8. Consent Agenda**

**8.1. City Council Minutes**

April 18, 2022

**Moved by Richard Sheldon, seconded by Laurie Smallwood**

***Adopt the consent agenda.***

**CARRIED. 7-0**

Ayes: Stan Pulliam, Jeremy Pietzold, Laurie Smallwood,  
Richard Sheldon, Kathleen Walker, Carl Exner, and Don  
Hokanson

**9. Ordinances**

**9.1. Senate Bill 458 Code Amendments**

- PUBLIC HEARING: Ordinance 2022-07
- PUBLIC HEARING: Ordinance 2022-08

Staff Report - 0564

**Ordinance 2022-07**

Abstentions

(none)

Conflicts of Interest

(none)

Staff Report

The **Senior Planner** summarized the staff report, which was included in the agenda packet.

Discussion

Council discussion ensued on the following topics:

- How staff arrived at the proposed \$2,500 fee
- When the proposed fee will go into effect
- Concerns regarding the total number of units allowed in a development and smaller lot sizes
- Distinctions between attached versus detached duplexes and whether the City should disallow detached duplexes
- Pride of ownership considerations
- Observations regarding possible market demand for duplexes
- Reasons for dividing the proposed changes between two ordinances
- Questions regarding density standards
- Questions regarding clear and objective language referencing the Transportation System Plan, and usage of the term 'substantially as depicted'

Public Testimony

(none)

**Ordinance 2022-08**

Abstentions

(none)

Conflicts of Interest

(none)

Staff Report

The **Senior Planner** summarized the staff report, which was included in the agenda packet.

Discussion

(no additional discussion)

Public Testimony

(none)

**Moved by Jeremy Pietzold, seconded by Richard Sheldon**

***Close the public hearing for Ordinance 2022-07.***

**CARRIED. 7-0**

Ayes: Stan Pulliam, Jeremy Pietzold, Laurie Smallwood,  
Richard Sheldon, Kathleen Walker, Carl Exner, and Don  
Hokanson

**Moved by Jeremy Pietzold, seconded by Carl Exner**

***Approve the first reading of Ordinance 2022-07 by title only.***

**CARRIED. 7-0**

Ayes: Stan Pulliam, Jeremy Pietzold, Laurie Smallwood,  
Richard Sheldon, Kathleen Walker, Carl Exner, and Don  
Hokanson

**Moved by Richard Sheldon, seconded by Laurie Smallwood**

***Approve the second reading of Ordinance 2022-07 by title only.***

**CARRIED. 7-0**

Ayes: Stan Pulliam, Jeremy Pietzold, Laurie Smallwood,  
Richard Sheldon, Kathleen Walker, Carl Exner, and Don  
Hokanson

**Moved by Richard Sheldon, seconded by Laurie Smallwood**

***Close the public hearing for Ordinance 2022-08.***

**CARRIED. 7-0**

Ayes: Stan Pulliam, Jeremy Pietzold, Laurie Smallwood,  
Richard Sheldon, Kathleen Walker, Carl Exner, and Don  
Hokanson

**Moved by Jeremy Pietzold, seconded by Don Hokanson**

***Approve the first reading of Ordinance 2022-08 by title only.***

**CARRIED. 7-0**

Ayes: Stan Pulliam, Jeremy Pietzold, Laurie Smallwood,  
Richard Sheldon, Kathleen Walker, Carl Exner, and Don  
Hokanson

**Moved by Richard Sheldon, seconded by Don Hokanson**

***Approve the second reading of Ordinance 2022-08 by title only.***

**CARRIED. 7-0**

Ayes: Stan Pulliam, Jeremy Pietzold, Laurie Smallwood,  
Richard Sheldon, Kathleen Walker, Carl Exner, and Don  
Hokanson

9.2. **Planning Commission Bylaws Adoption**

- PUBLIC HEARING: Ordinance 2022-06

Staff Report - 0561

The **Senior Planner** and **Planning Commission Chair** summarized the staff report, which was included in the agenda packet.

Public Testimony

(none)

Discussion

(none)

**Moved by Richard Sheldon, seconded by Laurie Smallwood**

***Close the public hearing.***

**CARRIED. 7-0**

Ayes: Stan Pulliam, Jeremy Pietzold, Laurie Smallwood,  
Richard Sheldon, Kathleen Walker, Carl Exner, and Don  
Hokanson

**Moved by Kathleen Walker, seconded by Jeremy Pietzold**

***Approve the first reading of Ordinance 2022-06 by title only.***

**CARRIED. 7-0**

Ayes: Stan Pulliam, Jeremy Pietzold, Laurie Smallwood,  
Richard Sheldon, Kathleen Walker, Carl Exner, and Don  
Hokanson

**Moved by Richard Sheldon, seconded by Jeremy Pietzold**

***Approve the second reading of Ordinance 2022-06 by title only.***



**CARRIED. 7-0**

Ayes: Stan Pulliam, Jeremy Pietzold, Laurie Smallwood,  
Richard Sheldon, Kathleen Walker, Carl Exner, and Don  
Hokanson

**10. Old Business**

**10.1. RFP for Community Campus Architecture & Engineering Services**

Staff Report - 0566

The **Parks and Recreation Director** summarized the staff report, which was included in the agenda packet.

Council discussion ensued on the following topics:

- The anticipated cost of the planning process
- The possibility of separating the parks element from the rest of the project
- Concern about the staff estimate of planning totaling approximately 10% of the total construction cost
- The possibility that park improvements could be accomplished for a lower cost
- Concerns that bond-ready schematics produced at this time could be stale by the time the City is ready to bring the proposal before the electorate
- The impact of this planning effort on staff time

The consensus of the Council was that staff should continue with the proposed RFP for architecture and engineering services for park design, bid and build; and bond ready schematics for a future recreation and aquatic community center; but that it should be done in a manner that would allow the City to potentially move forward with only a portion of the project.

**10.2. Acceptance of PETF Final Report / Decision Regarding Water in Aquatic Center Facility**

Staff Report - 0571

The **Parks and Recreation Director** summarized the staff report, which was included in the agenda packet.

Council discussion ensued on the following topics:

- Whether the estimated cost savings are annual or biannual

- The need to take this action
- The importance of public safety

**Moved by Don Hokanson, seconded by Carl Exner**

***Formally accept the final report of the Pool Exploratory Task Force, and approve City staff to drain the water in the old aquatic center facility.***

**CARRIED. 7-0**

Ayes: Stan Pulliam, Jeremy Pietzold, Laurie Smallwood,  
Richard Sheldon, Kathleen Walker, Carl Exner, and Don  
Hokanson

**11. New Business**

**11.1. Contract Amendment Approval: Transit Operations**

Staff Report - 0569

The **Transit Director** summarized the staff report, which was included in the agenda packet.

Council discussion ensued on the following topics:

- Whether the position of the County reflects input from the Commission
- Concerns regarding engaging in an RFP process
- The complicated nature of trying to resolve this issue, notwithstanding the City's preference to be collaborative
- Labor market considerations, and the difficulty of hiring in this environment
- Difficulty of securing applicants with CDLs
- Accuracy of fee proposals from contractors
- Lack of impact on the General Fund
- Possibilities of pursuing grant funding
- Whether pursuing other revenue opportunities would be prudent in the long term
- How the County would react to cost increases in the future

**Moved by Don Hokanson, seconded by Laurie Smallwood**

***Approve a six-month extension to the current SAM contract that includes increased wages and increased revenue hour costs."***

**CARRIED. 7-0**

Ayes: Stan Pulliam, Jeremy Pietzold, Laurie Smallwood,  
Richard Sheldon, Kathleen Walker, Carl Exner, and Don  
Hokanson

11.2. **Contract Approval: Clear & Objective Audit of Development Code**

Staff Report - 0570

The **Development Services Director** and **City Manager** summarized the staff report, which was included in the agenda packet.

Council discussion ensued on the following topics:

- Considerations regarding usage of the second tranche of ARPA funding
- The possibility of using Planning budget contingency to cover the cost
- The importance of maintaining adequate contingency funds, especially for Planning
- Whether protecting contingencies is appropriate, generally speaking
- Whether the proposed contractor adequately understands the needs and preferences of the City
- Whether further code audits and revisions will be required in the future

**Moved by Richard Sheldon, seconded by Don Hokanson**

***Authorize the City Manager to enter into an agreement with MIG in the amount of \$54,960 to perform a clear and objective audit of the Sandy Development Code.***

**CARRIED. 7-0**

Ayes: Stan Pulliam, Jeremy Pietzold, Laurie Smallwood,  
Richard Sheldon, Kathleen Walker, Carl Exner, and Don  
Hokanson

**12. Report from the City Manager**

- Possibility of grant funding for an electric bus and for improvements to the Operations Center
- Staff recruitments are beginning to see increased interest
- Need for upcoming briefings with Council Members regarding the water project

**13. Committee /Council Reports  
Councilor Hokanson**

- Appreciation for the recent homelessness listening session; need to establish a coordinating group moving forward
- Note that addressing homelessness will require the coordinated efforts of the entire community, not only the City

**Councilor Exner**

- Appreciation for the progress made on wastewater treatment plan repairs, given the wet weather
- Concern regarding a recent utility customer complaint
- Concern regarding potholes on Proctor Blvd
- Desire to restart the Tree Committee

**Councilor Walker**

- Appreciation for the recent SOLVE cleanup event; concern regarding discovery of an unauthorized structure on Tickle Creek Trail

**Councilor Sheldon**

- Concerns regarding litter on the shoulder of Hwy 211
- Appreciation for the recent homelessness listening session
- Encouragement for more participation in Comprehensive Plan promotional video development

**Councilor Smallwood**

- Appreciation for the recent homelessness listening session
- Possibility of establishing transit service to Oregon City, where social services are available
- Need for additional staffing

**Council President Pietzold**

- Appreciation for the recent homelessness listening session
- Concern regarding grass cutting at parks
- Need for an in-person cleanup day; need to allow residents sufficient notice to plan, and hold it before the Mountain Festival

**Mayor Pulliam**

- Appreciation for the recent homelessness listening session; emphasis on the need for innovative solutions
- Appreciation for the recent SOLVE cleanup event

**14. Staff updates**

14.1. [Monthly Reports](#)

**15. Adjourn**

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Mayor, Stan Pulliam

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City Recorder, Jeff Aprati

Draft



## Staff Report

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**Meeting Date:** May 16, 2022

**From** Jenny Coker, Public Works Director

**SUBJECT:** Bell and 362nd Avenue Improvements Construction Contract Award

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**DECISION TO BE MADE:**

Whether to accept the corrected low bid of \$9,346,213.87 from Konell Construction and Demolition Corp., and award the contract for the [extension of 362nd Ave. and Bell St.](#)

**PURPOSE / OBJECTIVE:**

The extension of 362nd Ave. and Bell St. has been designated as a [City Council goal](#) for a number of years. Anticipated benefits for the community include relief of a chronic traffic bottleneck at Bluff Rd. and Hwy 26, expanded economic development opportunities in the northwest quadrant of the city, and improved access to the high school and middle school.

**BACKGROUND / CONTEXT:**

This project will construct a new 1500 feet segment of SE 362nd Avenue north of Highway 26 and construct a new 3200 feet segment of Bell Street from SE 362nd east to the existing dead end near Sandy High School.

The project will include new street construction including new curbs, concrete sidewalks and driveways, ADA ramps, retaining walls, arch culvert, storm drainage facilities, landscaping, street lighting, water and sanitary improvements, and a new signal and roadway widening at Highway 26.

**KEY CONSIDERATIONS / ANALYSIS:**

On Tuesday April 19th, 2022, the City opened four bids ranging from \$9,346,477 to \$11,520,633. The low responsive bidder was Konell Construction.

A tabulation of the bids received and a recommendation to award is attached. During bid tabulation a small math error of \$263.13 was found in the Konell Bid making the corrected low bid \$9,346,213.87.

The Engineer's final construction cost estimate for the project was \$9,892,449.10. The city received four bids, one at the Engineer's estimate, one much higher than the Engineer's estimate and two below the Engineer's estimate. Konell Construction and Demolition Corp's low bid of \$9,346,213.87 was not found to have any concerns. As a local company based in Sandy, Konell has lower mobilization costs.

**RECOMMENDATION:**

Award a contract in the amount of \$9,346,213.87 to Konell Construction for the extension of 362nd Ave. and Bell St.

**BUDGETARY IMPACT:**

The proposed contract of \$9,346,213.87 will be funded by the Street Fund. Budget updates and funding strategies were presented with the [60%](#) and [90%](#) engineer's estimates.

**SUGGESTED MOTION LANGUAGE:**

"I move to authorize the City Manager to enter into an agreement with Konell Construction and Demolition Corp in the amount of \$9,346,213.87 to perform construction services for the Bell and 362nd Avenue Improvements Project."

**LIST OF ATTACHMENTS/EXHIBITS:**

- Notice of intent to award from HHPR
- Bid Tabulation

**NOTICE OF INTENT TO AWARD CONTRACT**

DATE: April 26, 2022  
BID TITLE: Bell Street / SE 362<sup>nd</sup> Avenue Improvements

APPARENT SUCCESSFUL BIDDER: Konell Construction & Demolition Corp.  
BID AMOUNT: \$ 9,346,213.87

In accordance with Local Contract Review Board Rule C-049-0450 and the above referenced BID, the City of Sandy ("City") intends to award a contract to the above named apparent successful bidder. The above named apparent successful bidder shall not acquire any legal or equitable rights relative to the contract services until a contract containing terms and conditions acceptable to the City is executed. If the apparent successful bidder fails to negotiate and execute a contract with the City, the City may revoke the award and award the contract to the next highest ranked bidder or withdraw the BID.

This Notice of Intent to Award Contract starts the seven (7) calendar day period in which an unsuccessful bidder may file a protest in accordance with Rule C-049-0459. Unsuccessful bidders may review the procurement file at the City of Sandy upon appointment. Any protest must be in writing and must be delivered by hand delivery, mail or email to the below address. Protests may not be submitted by fax.

Jennifer Coker, P.E.  
Public Works Director  
39250 Pioneer Blvd.  
Sandy, OR 97055  
[jcoker@ci.sandy.or.us](mailto:jcoker@ci.sandy.or.us)

The City of Sandy appreciates the time and effort by bidders to submit for this solicitation and looks forward to receiving other bids in the future.

HARPER HOUF PETERSON RIGHELLIS INC.



Neil Waibel, P.E.  
Associate Principal



**CITY OF SANDY**  
**Bell Street & 362<sup>nd</sup> Ave**  
**SUMMARY OF BIDS RECEIVED**

*April 19, 2022*  
*2:00 pm*

<b>BIDDER</b>	<b>ADDRESS</b>	<b>BID</b>
Konell Construction	36000 SE Industrial Way Sandy, OR 97055	\$9,346,477
Moore Excavating	PO Box 789 Fairview, OR 97024	\$9,694,444
Goodfellow Bros.	7515 NE Ambassador Place, Suite E Portland, OR 97220	\$9,890,000
Kerr Contractors Oregon	PO Box 1060 Woodburn, OR 97071	\$11,520,633



## Staff Report

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**Meeting Date:** May 16, 2022

**From** Jenny Coker, Public Works Director  
HHPR Bell and 362nd Avenue Improvements Project Amendment

**SUBJECT:** No. 2

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**DECISION TO BE MADE:**

Whether to approve an amendment to the Bell and 362nd Extension Project agreement with Harper Houf Peterson Righellis (HHPR), for additional funding due to changes in the scope of work.

**BACKGROUND / CONTEXT:**

Harper Houf Peterson Righellis (HHPR), the contractor for the Bell and 362nd Ave Improvements project, has submitted Amendment No. 2 for additional funding to their contract with the City.

The City originally signed the contract with HHRP on March 25th, 2020. This was the start of the pandemic; offices were closed and employees started working from home. The original schedule was aggressive and when adding the difficulties of the pandemic it made the schedule very difficult to meet. Many government and permitting agencies had limited availability, longer review times, and fewer staff.

In reviewing the history of invoices, the project billings during 2020 were in alignment with progress made, and the project was on track in terms of earned value. Several changes were made during the design including a realignment (necessitating rework) and additional support services for property acquisition, permitting, and other services as requested by the City to keep the project on track. HHPR has also not asked for any rate increases to this scope in the last three years, despite the high inflation experienced.

**KEY CONSIDERATIONS / ANALYSIS:**

Amendment No. 2 consists of changes made to the scope of services that changed through the life of the contract. "Exhibit A" (attached) lays out the additional scope for the project. Some of the additional scope was asked for by the City and some was due to the scheduling difficulties from the pandemic. Amendment No. 2 is also required to provide services during construction to build the project, augmenting PW's limited staff.

- The original contract with HHPR was \$1,209,846.73
- Amendment No. 2 - \$347,819.91
- The adjusted total after the proposed amendment to \$1,557,666.64

The City worked with HHPR to negotiate down a reduced amendment by removing surveying from the scope of work (\$90,000 reduction) and assigning this task to the contractor as well as reduction to the Geotech construction management and observation. HHPR has also donated 40 free hours of work cleaning up the project during a project manager transition due to a staff departure in Fall of 2021. Rates for staff including Senior Management are very reasonable and less than other consulting firms.

Looking at the costs from a big picture, with Amendment No. 2, HHPR is approximately 17% of the estimated construction cost. This number includes ROW acquisition, Permitting, Surveying, Design, as well as construction management assistance. Comparable projects with this scope of services would have an engineering consulting fee of 22%-30% of the construction cost. HHPR has provided a quality design and excellent value for money.

**RECOMMENDATION:**

Authorize the City Manager to sign an agreement with Harper Houf Peterson Righellis (HHPR) for Amendment No.2.

**BUDGETARY IMPACT:**

The proposed Amendment totals \$347,819.91 and will be paid for from a combination of Street Utility funds for the current biennium budget and the FY24-25 biennium budget (the project will extend summer/fall of 2023). In addition, grant funding may be available based upon results of the RAISE grant application submitted in April 2022. The City should know the status of the application in summer of 2022.

**SUGGESTED MOTION LANGUAGE:**

"I move to authorize the City Manager accept the Amendment No. 2 Proposal from Harper Houf Peterson Righellis (HHPR) and enter into an agreement for the added scope in the amount of \$347,819.91."

**LIST OF ATTACHMENTS/EXHIBITS:**

- HHPR's Amendment No. 2 Proposal
- HHPR's Amendment No.2. Fee

## **Bell Street and SE 362 Avenue Extension – City of Sandy, Oregon**

### **Amendment No. 2**

Harper Houf Peterson Righellis Inc.

May 4, 2022

### **Description of Amendment**

Amendment No. 2 is an amendment to the Professional Services Agreement that Harper Houf Peterson Righellis, Inc. (Contractor) entered into agreement with the City of Sandy on March 25<sup>th</sup>, 2020.

Amendment No. 2 consists of changes made to the scope of services that have changed through the life of the Contract and also documents which contingencies tasks have been approved.

### ***Task 1G: Additional Project Administration***

The project will have an extended amount of time to manage the contract and the team. This adds approximately 15 months the overall project management for the project. We have estimated 8 hours per month for this task.

### ***Task 2: Design Survey and Field Investigations Subtotal***

Authorize Contingency Tasks 2.C.1

Authorize Contingency Task 2.E. 3 Prepare Level II Hazardous Materials Corridor Plan

### ***Task 3 Traffic Engineering:***

Additional Task F. Additional DKS efforts related to ODOT traffic analysis/methodologies/approvals, including but now limited to:

- Design Exception for V/C Ratio
- Design of Full Signal Reconstruction at Highway 26
- Additional Traffic Analysis to Support the Permitting and Grant of Access Approvals

### ***Task 4 Environmental Permitting:***

Authorize Task 4.D.1 Level III Planning Commission Approval

Authorize Contingency Item Task 4.E. – Fish Passage Plan

Additional Task 4.D.1 Level III Planning Commission Approval

Additional Task 4B: Additional Permitting Services for Mitigation and Revised DSL Submittal for staff changes at Agency including providing exhibits and documents supporting the overall project and the alternatives analysis.

*Bell Street and SE 362<sup>nd</sup> Avenue Extension, City of Sandy, OR Contract Amendment No. 2*

**Task 5: Property Acquisition:**

- Provide Relocation Services for Property No. 2

**Task 6: Design Development**

The overall project increased the length of roadway. The project scope and length grew almost 33% from the 30% drawings to the 60% drawings as the 362<sup>nd</sup>/Bell Intersection shifted north. The SOW was specific on the areas of the project. This added project length adds drawings to the plans as well as other project complexities such as retaining wall designs, etc.

The changes to the scope of services are outlined as follows;

Additional Task 6A: Roadway Alignment Analysis: The project review multiple alignments including the original alignment outlined in the RFP. These additional alignments alternatives or sub-alternatives are outlined as follows:

- Roundabout Layout Alternative for Intersection at Bell/362<sup>nd</sup> Intersection
- Development of Alternative No. 2 which shifted Bell/362<sup>nd</sup> Intersection to the North with a longer roadway
- Development of Alternative No. 3 which modified the SE 362<sup>nd</sup> Avenue Alignment (Developed January 1<sup>st</sup>, 2021)

Additional Task 6B: Storm Drainage Analysis: The team analyzed a few different storm water scenarios based upon requested changes from the City. Many of these changes were generated based upon input from the property owners along the project.

- 362<sup>nd</sup> detention piping system replaced by a detention pond located at the SW corner of the new 362<sup>nd</sup>/Bell Intersection at the request of the City.
- 362<sup>nd</sup> detention pond location changed from SW to NW intersection location at 32<sup>nd</sup>/Bell
- 362<sup>nd</sup> stormwater quality/detention pond replaced with stormfilter manhole

Note: This task relates only to the storm water analysis and not the design and layout work associated with these changes. The design and drafting work associated with changes were performed under Task 8.

Additional Task 6C: Utility Extensions: Additional water and sanitary sewer work was added to the project. There were additional sanitary sewer lines added in the project and HHPR laid out

Additional Task 6D: Construction Documents: The additional length of the project added design elements to the project and an estimated \$3 million dollars of improvements from the original scope based upon expanded project area and added costs and design elements. The plans included 200 plan sheets. At the time of the change of the 30% drawings.

Additional Task 6E: City/ODOT Review of Construction Documents: The ODOT review was more extensive and required additional coordination that is still on-going. The changes included the full reconstruction of the signal at Highway 26 as well as opening up the westerly pedestrian cross walk, requiring additional ADA ramps improvements including processing ramp design sheets, etc.

*Bell Street and SE 362<sup>nd</sup> Avenue Extension, City of Sandy, OR Contract Amendment No. 2*

**Task 7: Construction Phase Services:**

- The Contractor will perform the construction Staking for the Project. Delete Task all Tasks in 7E except post monumentation survey as defined in original contract.
- Contingency Task 7H: Remediation Oversight – Not Authorized
- Reduce Geotechnical Scope of work for Construction Management
- Increase Duration of Construction Management Services by an eight-month Duration
- Task 7A: Provide additional support serves for Advertisement for Bids

**Task 8: Other Services as Directed**

This item was intended to provide a budget item for additional services completed for the project.

Because this was task was undefined in many areas, the City asked HHPR to preform various tasks related to project beyond the scope of work. The additional work started after the 30% alignment was complete and the limits of the project expanded. The elements of work included:

- Provide Additional Field Survey and Mapping For extended Project Limits and Pond locations. This included survey work on over 1,000 feet of roadway in additional to performing survey services on the wetland mitigation site.
- Additional services related to the analysis and including of the wetland mitigation site for the project based upon the lack of wetland bank credits at the time, and the request of the City to provide mitigation within City owned property. Work included survey, historic and cultural, engineering, landscape architecture and environmental design. Plans for on-site mitigation were developed for the project by the HHPR team and incorporated into the permitting and bid documents.
- Land use planning services required to document the wetland mitigation site.
- Preliminary Sanitary Sewer Design including plan and profile of new sanitary in entire roadway.
- Design and drafting of various storm water alternatives and changes.
- Review potential of moving pond to BPA property.
- ODOT ROW - West side pedestrian crosswalk added with addition of curb return ramps and full traffic signal reconstruction required by ODOT. We are still receiving ODOT comments and working to address those, which is typical.

**Task 9: Expenses**

Reimbursement for Expenses paid by HHPR to expedite approvals. These are direct expenses invoiced to the City of Sandy. This includes the fees for ODOT reviews, etc. which were not a part of the original contract and HHPR paid these as a courtesy to the City. Other noted expenses are the DEQ and DSL review fees, and the Environmental Assessment for lead and asbestos for the Metal Shed on Property 2.

*Bell Street and SE 362<sup>nd</sup> Avenue Extension, City of Sandy, OR Contract Amendment No. 2*

See Exhibit B for Contract Changes Related to Amendment No. 2

Original Contract Total; \$1,209,846.73

Adjusted Total of Contract after Amendment No. 2: \$1,557,466.64

**Duration of Contract:**

The Contract will be extended to December 31<sup>st</sup>, 2023.

**Contactor:**

Harper Houf Peterson Righellis, Inc.

By: Daniel S. Houf, P.E.

Title: President

Date: March 17<sup>th</sup>, 2022

Business Address: 205 SE Spoke Street, Suite 200, Portland, OR 97202

Employer ID: 93-1045332

Corporation

**City of Sandy:**

By: \_\_\_\_\_ (Signature)

Name: Jordan Wheeler – City Manager

City of Sandy

39250 Pioneer Blvd, Sandy, OR 97055

Date: \_\_\_\_\_, 2022

*Bell Street and SE 362<sup>nd</sup> Avenue Extension, City of Sandy, OR Contract Amendment No. 2*







## Staff Report

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**Meeting Date:** May 16, 2022

**From** Jenny Coker, Public Works Director

**SUBJECT:** Contract for 2022 Sanitary Sewer Rehabilitation Project

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### **DECISION TO BE MADE:**

Whether to authorize the City Manager to enter into an agreement with Oxbow Construction for CM/GC Services for the 2022 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project.

### **PURPOSE / OBJECTIVE:**

This project will protect the public and the environment by reducing the possibility of sewage releases to buildings and streets, reducing flows to the wastewater treatment plant, and improving compliance with the City's National Pollution Discharge Elimination Discharge System (NPDES) Permit.

### **BACKGROUND / CONTEXT:**

[The City solicited proposals](#) for Construction Manager/ General Contractor (CM/GC) services for the 2022 Sanitary Sewer Rehabilitation Project (Inflow and Infiltration Reduction) on April 20, 2022. The project will rehabilitate approximately 36,000 lineal feet of sanitary sewer mainlines, 613 sewer laterals, and 140 manholes. All the work will take place in Basins #6 and #7, which had the next highest Inflow and Infiltration (I&I) rates after Basin #2 and #8, as identified in the Facilities Plan during the flow monitoring performed in the winter of 2017-2018.

A public hearing on an exemption to allow the use of CM/GC as an alternative competitive procurement process for the 2022 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project was held at the City Council meeting on April 18, 2022. The nature of the proposed work lends itself to a Modified CM/GC contracting method because it allows for an accelerated construction schedule in order to reduce the peak wet weather flows to the treatment plant that is contributing to NPDES permit compliance issues. At that hearing, City Council adopted the findings and approved the use of the CM/GC method for this project.

### **KEY CONSIDERATIONS / ANALYSIS:**

The CM/GC Request for Proposals closed on May 6, 2022, and three proposals were received. The proposals were scored on May 10, 2022, based on qualifications and pricing. It was clear from the proposals that Oxbow Construction understood the importance of the project objective. Their approach included multiple different rehabilitation methods and had a heavy emphasis on the pre-construction phase

involvement, including reviewing CCTV and partnering with the City and Engineer to determine the best-valued project design. The scoring team selected Oxbow Construction based on their experience and performance, project personnel, and project approach.

CM/GC Services for the 2022 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project will include services for both the pre-construction and construction. An amendment to this contract is anticipated to be brought to Council in Summer 2022 with a negotiated Guaranteed Maximum Price (GMP) to complete the construction of the project.

**RECOMMENDATION:**

Authorize the City Manager to enter into an agreement with Oxbow Construction for CM/GC Services for the 2022 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project.

**BUDGETARY IMPACT:**

The project is to be funded by the State grant of American Recovery Plan Act (ARPA) funds, which is administered by Business Oregon. The costs for this project are included in the fiscal year 2022/2023 budget.

**SUGGESTED MOTION LANGUAGE:**

"I move to authorize the City Manager to enter into an agreement with Oxbow Construction for CM/GC Services for the 2022 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project, in the amount of \$36,700.00, subject to the resolution of any potential protests during the 7-day protest period."

**LIST OF ATTACHMENTS/EXHIBITS:**

- Notice of Intent to Award
- Proposed Contract



May 10, 2022

**NOTICE OF INTENT TO AWARD**

**FOR**

**CM/GC SERVICES FOR THE 2022 SANITARY SEWER REHABILITATION FOR INFLOW AND INFILTRATION REDUCTION PROJECT**

The City of Sandy ("City") has completed its evaluation for the Construction Manager / General Contracting (CM/GC) Services for the 2022 Sanitary Sewer Rehabilitation For Inflow and Infiltration Reduction Project. Interviews will not be required. Based upon the scores from the submitted qualifications, the City intends to award a contract to the following named apparent successful Respondent.

- Oxbow Construction.

The above named apparent successful respondent shall not acquire any legal or equitable rights relative to the contract services until a contract containing terms and conditions acceptable to the City is executed. If the apparent successful proposer fails to negotiate and execute a contract with the City, the City may revoke the award and withdraw the RFQ.

This Notice of Intent to Award Contract starts the seven (7) calendar day period in which an unsuccessful respondent may file a protest. Protest procedures will be conducted in accordance with OAR 137-048-0240. Respondents may review the procurement file upon written request. Any protest must be in writing and must be delivered by U.S. mail or emailed to the below address(es). Protests may not be submitted by fax.

Thank you for your interest. If you have questions regarding this notice, please contact me or Jenny Coker, Public Works Director, at [jcoker@ci.sandy.or.us](mailto:jcoker@ci.sandy.or.us).

Sincerely,

Zach Swartzendruber, PE  
City of Sandy Owner's Representative  
[zach.swartzendruber@leewayengineeringsolutions.com](mailto:zach.swartzendruber@leewayengineeringsolutions.com)  
(503) 957-0765

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR ("CM/GC") CONTRACT**  
**between**  
**THE CITY OF SANDY, OREGON**  
**and**  
**Contractor**  
**For Project**

This Construction Manager / General Contractor ("CM/GC") Contract ("Contract") is made by and between the City of Sandy, a partnership agency within the State of Oregon ("City" or "Agency") and **Contractor** ("Contractor" or "CM/GC") to provide construction services for the Collection System I/I Reduction Project ("Project"), briefly described below:

The Project is briefly described as follows:

The Engineer on this Project is:

**CONTRACTOR DATA**

Contractor must submit a completed "Request for Taxpayer Identification Number and Certification" (Form W-9) with this signed Contract. Payment information will be reported to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided by Consultant. Contractor shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for Work under this Contract.

**Business Name:**

**Contractor Contact Person:**

**Address:**

**City, State, ZIP:**

**Business Telephone:**

**Facsimile:**

**Email:**

**Federal Tax Identification Number ("TIN") or Social Security Number ("SSN"):**

**Oregon CCB License Number:**

Contractor certifies under penalty of perjury that Contractor is a:

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

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**ATTACHED EXHIBITS**

Exhibit A - General Conditions to the Contract

Exhibit A1 – Supplementary Conditions to the Contract

Exhibit B - Request for Proposals (RFP) CM/GC Services

Exhibit C – Contractors Response to RFP for CM/GC Services (redlined to include any negotiated changes)

Exhibit D – Form of GMP Amendment

**The City of Sandy (City) and CM/GC agree as set forth below:**

**1. DEFINITIONS**

Except as expressly defined or modified below or elsewhere in the Contract Documents, all capitalized terms shall have the meanings set forth in the General Conditions attached as Exhibit A (the "General Conditions"). The terms below are expressly defined as follows:

- a. Affiliate.** Affiliate shall mean any subsidiary of CM/GC (defined below), and any other entity in which CM/GC has a financial interest or which has a financial interest in CM/GC (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or which controls CM/GC).
- b. Allowances.** Allowances shall mean funding reserved to address non-quantifiable scopes of work shown or inferred in the GMP Supporting Documents, together with such further allowances as may be developed by the parties as the Project progresses.
- c. Amendment.** Amendment shall mean a written modification of the Contract executed by both parties.
- d. Business Days.** Business Days shall mean every day except Saturday, Sunday, and the nine legal holidays recognized by the City: New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and Christmas Day.
- e. CM/GC Construction manager / general contractor,** – means a person that provides construction manager/general contractor services to a contracting agency under a public improvement contract as specified in ORS 279C.332 (2).
- f. Construction manager/general contractor services.** Has the meaning set forth in ORS 279C.332 (3).
- g. Change Order.** Change Order shall mean a written modification of the Contract under Section D.1 of the General Conditions (including without limitation any agreed change to GMP), identified as a Change Order and executed by the City and CM/GC.
- h. Construction Documents.** Construction Documents are those documents that are used specifically for the construction of the Work and are a part of the Contract Documents.
- i. Construction Phase.** The Construction Phase shall mean the period commencing on the City's execution of a GMP Amendment or Early Work Amendment, together with the issuance by the City of a Notice to Proceed with any on-site construction.
- j. Construction Services.** Construction Services shall mean all of the Work other than the Preconstruction services.
- k. Contract Documents.** Contract Documents shall have the meaning given in Section A.1 of the General Conditions, as supplemented by paragraph 2.a. below.
- l. Early Work.** Early Work shall mean Construction Services authorized by Pre-GMP Amendment that the parties agree should be performed in advance of establishment of the entire GMP for the Work. Permissible Early Work shall be limited to: early procurement of materials and supplies; early release of bid or proposal packages for site development and related activities; and any other advance Work related to critical components of the Project for which performance prior to establishment of the GMP

will materially and positively affect the development of the completion of the Project. The City will only compensate the CM/GC for Early Work if it is authorized in an Early Work Amendment.

- m. Early Work Amendment.** Early Work Amendment shall mean an Amendment to the Contract executed by and between the parties to authorize Early Work prior to GMP.
- n. General Conditions Work.** General Conditions Work (“GC Work”) shall mean:

  - 1) that portion of the Work required to support construction operations that is not included within overhead or general expense but is called out as GC Work in Exhibit C, and
  - 2) any other specific categories of Work approved in writing by the City as forming a part of the GC Work. GC Work shall mean customary layout, clean up, supervision, and portions of the Work of a minor nature and not feasibly part of the subcontracted Work due to: exclusions by the Subcontractor not resolved through the process described in paragraph 11.c, undeveloped design owing to deviations in Work performed or materials delivered by Subcontractors or suppliers that do not represent defective or nonconforming Work, a breach or failure to perform by the Subcontractor or supplier, complexity of coordination of the Work, and other similar reasons typically providing cause for “pick-up” or GC Work under industry standards; provided, however, that:

    - i. the CM/GC has reasonably determined that doing such portion of the Work itself is in the best interests of City,
    - ii. such Work is identified as GC Work in monthly billings and
    - iii. CM/GC receives prior approval of the City as to the scope of such GC Work.
- o. Guaranteed Maximum Price (GMP).** GMP shall mean the Guaranteed Maximum Price of the Contract, as stated in dollars within the GMP Amendment(s), as determined in accordance with paragraph 6, and as it may be adjusted from time to time pursuant to the provisions of the Contract.
- p. GMP Amendment.** GMP Amendment shall mean an Amendment to the Contract, issued substantially in the form of Exhibit D executed by and between the parties, to establish the GMP and identify the GMP Supporting Documents for Construction Services.
- q. GMP Supporting Documents.** GMP Supporting Documents shall mean the documents referenced in a GMP Amendment as the basis for establishing a GMP. The GMP Supporting Documents shall expressly identify the Plans and Specifications, schedules, phasing plans, assumptions, qualifications, exclusions, conditions, allowances, unit prices, alternates and other pertinent information and documentation that form the basis for the proposed GMP.
- r. Preconstruction Phase.** The Preconstruction Phase shall mean the period commencing on the effective date of this CM/GC Contract and generally ending upon commencement of the Construction Phase; provided that if the City and CM/GC agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently, subject to the terms and conditions of the Contract Documents.
- s. Preconstruction services.** Preconstruction services shall mean all services described in paragraph 3.a. and as described in Exhibit B– RFP for CM/GC Services, Scope of Preconstruction Services, but excluding any Early Work. Early Work shall be considered part of Construction Services.

t. **Scope Change.** Scope Change shall mean only:

- 1) Materially changed site conditions not reasonably inferable from information available to CM/GC at the time of execution of the GMP Amendment either through review of project documentation or examination of existing site conditions/reports, and
- 2) Material Work modifications (including additions, substitutions, and deletions), application of Allowances, and selection of alternates not originally included in the GMP, all as approved by the City under the Contract beyond that identified or inferable from the GMP Supporting Documents (but in the case of Allowance items, the GMP will increase only if the cost to City of the Allowance items exceeds the total amount of the Allowances).

## 2. CONTRACT DOCUMENTS

- a. **Contract Documents.** City and the CM/GC agree to the terms of the Contract that are set forth in the Contract Documents. For purposes of this Project, the Contract Document referenced as "CM/GC Contract" in the General Conditions shall mean this Contract between the City and CM/GC. The Contract shall include all exhibits attached hereto, which by this reference are incorporated herein as well as any properly executed Amendments and Change Orders to this Contract. This Contract shall supersede any and all arrangements or agreements between the parties, whether written or otherwise.
- b. **Effective Date.** The Contract shall become effective on the last date on which all parties have signed the Contract and City has issued a written directive for the CM/GC to proceed with Preconstruction services.
- c. **The Contract; Order of Precedence.** Except as expressly otherwise provided herein, the order of precedence of the Contract Documents is established in Section A.3 of the General Conditions, if there are inconsistent or conflicting terms among the Contract Documents.

## 3. WORK OF THE CONTRACT

- a. **Preconstruction services.** The CM/GC agrees to provide all of the services stated in Exhibit B-RFP for CM/GC Services, Scope of Preconstruction Services, on an ongoing basis in support of, and in conformance with, the time frames described herein as well as at the direction of the City and in cooperation with the Engineer and other designated Project consultants (the "Construction Principals").
- b. **Construction Services.**
  - 1) Upon execution of an Early Work Amendment or GMP Amendment, the CM/GC shall commence with Construction Services as provided in the Contract, including without limitation providing and paying for all materials, tools, equipment, labor, jurisdictional approval as required for the Work, professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract, to furnish to City a complete, fully functional Project, capable of being legally occupied and fully used for its intended purposes upon completion of the Contract (or, as to an Early Work Amendment, to furnish such Work as is described in the Early Work Amendment).
  - 2) Notwithstanding any other references to Construction Services in this Agreement, the Contract shall



include only Preconstruction services unless:

- i. the parties execute a GMP Amendment or
  - ii. the parties execute an Early Work Amendment, defined below.
- 3) The parties may execute one or more Early Work Amendments identifying specific Construction Services that must be performed in advance of establishment of the GMP, without exceeding a time & expense budget with a not-to-exceed limit or a fixed price ("Early Work Price") to be stated in such Amendment, subject to all necessary City approvals as required.
- i. If the Early Work Price is a time & expense budget, then CM/GC shall be obligated to perform the Early Work only to the extent that the Cost of Work therefore, together with the CM/GC Fee, does not exceed the Early Work Price; however
  - ii. if CM/GC performs Early Work under a fixed price, and incurs cost in excess of that fixed price, the CM/GC shall complete the Early Work and pay such excess cost without reimbursement.
  - iii. If one or more Early Work Amendments are executed, the CM/GC shall diligently continue to work toward development of a GMP Amendment acceptable to City, which shall incorporate the Early Work Amendments.
- 4) If City thereafter terminates the Contract prior to execution of a GMP Amendment, the provisions of Section J.5 of the General Conditions shall apply.
- 5) Prior to commencement of the Construction Phase, and in any event not later than mutual execution of the GMP Amendment, CM/GC shall provide to City a full performance bond and a payment security bond as required by Section G of the General Conditions in the amount of the GMP. If an Early Work Amendment is executed, CM/GC shall provide such bond in the amount of the Early Work Price under the Early Work Amendment. CM/GC shall provide to City additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Scope Change that increases the GMP, CM/GC shall provide to City an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

#### **4. RELATIONSHIP AND ROLES OF THE PARTIES**

- a. Independent Contractor.** The CM/GC is an independent contractor and not an officer, employee, or agent of City as those terms are used in ORS 30.265.
- b. Performance of Work.** The CM/GC covenants with City to:
  - 1) cooperate with the City's Authorized Representative(s), Construction Principals, agencies having jurisdiction,
  - 2) utilize the CM/GC's professional skill, efforts and judgment in furthering the interests of City;
  - 3) to furnish efficient business administration and supervision;

- 4) to furnish at all times an adequate supply of workers and materials; and
  - 5) to perform the Work in conformance with the terms and conditions of the Contract Documents and in a safe, expeditious and economical manner consistent with the interests of City.
- c. Design Consultants.** City has a separate contract with the Engineer related to the Project. Both the CM/GC and the Engineer shall be given direction by City through City's Authorized Representative(s). The CM/GC agrees to support City's efforts to create a collaborative and cooperative relationship among the CM/GC, Engineer, other Project consultants, and City's Authorized Representative(s).
- d. Forms and Procedures.** The City has developed or may develop procedures and forms for the administration and tracking of the Contract. The CM/GC agrees to abide by those procedures and use those forms.
- e. CM/GC's Project Staff.** The CM/GC's Project staff shall consist of the following personnel:
- 1) Project Manager: Jim Hall, JimH@Oxbow-construction.com, 503-766-8635 shall be the CM/GC's Project Manager and will supervise and coordinate all Construction Phase and Preconstruction services of CM/GC and participate in all meetings throughout the Project term unless otherwise directed by City. CM/GC represents that the Project Manager, or designee approved by City, has authority to execute Change Orders and Contract Amendments on behalf of the CM/GC.
  - 2) Job Superintendent: If Construction Services are requested and accepted by City, Allen Kalkhoven, allen@oxbow-construction.com, 971-344-2224 shall be the CM/GC's on-site job superintendent throughout the Project term. In addition to the Construction Services, the Job Superintendent shall be an active part of the Preconstruction Services Project team.
- f. Key Persons.** The CM/GC's personnel identified in paragraph 4.e., and the key staff identified by name in CM/GC's Proposal to the RFP and accepted by City, shall be considered Key Persons and shall not be replaced during the Project without the prior written permission of City, which shall not be unreasonably withheld. If the CM/GC intends to substitute personnel, a request must be given to City at least thirty (30) Days (or such shorter period as permitted by City) prior to the intended time of substitution. When replacements have been approved by City, the CM/GC shall provide a transition period of at least ten (10) Business Days during which the original and replacement personnel shall be working on the Project concurrently; provided, however, that City shall be charged and pay for only the original or the replacement personnel, whichever is less expensive but not both, for the transition period. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the prior written permission of City.
- g.** In the event that replacement of Key Persons is required during the course of the Project, the resume for subsequent staff members proposed shall be provided to the City for review and approval prior to their assignment to the Project. CM/GC shall not assign any person the City does not specifically approve of, such approval which shall not be unreasonably withheld by the City.
- h.** Replacement staff shall be of equal or higher caliber in terms of experience and skills sets than those they are replacing.
- i.** In the event that Key Persons are replaced during the Project, the City shall not incur additional cost for labor rates of replacement staff compared to the originally proposed staff members. Any labor expenses in excess of those proposed for the original Key Persons shall be the financial responsibility of the CM/GC.

## 5. DATE OF COMMENCEMENT; SUBSTANTIAL AND FINAL COMPLETION

- a. **Notice to Proceed.** If Construction Services are added to the Contract as set forth in paragraph 3.b., then a Notice to Proceed will be issued by City to begin the designated or full Construction Services (“Notice to Proceed”). A separate Notice to Proceed shall be issued for any and every Early Work Amendment and each of the two GMP Amendments.
- b. **Completion of Project.** The CM/GC shall achieve Substantial Completion of the entire Work not later than October 31, 2021, and shall achieve Final Completion not later than 30 calendar days after Substantial Completion. City and the CM/GC may agree to phased acceptance, in which case City shall have the right to take possession and acceptance of the Project in phases, and the CM/GC agrees that such partial acceptance shall not be grounds for adjustment of the GMP or the Substantial or Final Completion Dates.
- c. **[INTENTIONALLY OMITTED]**
- d. **Time is of the Essence.** All time limits stated in the Contract Documents are of the essence.
- e. **Time Extensions.** Notwithstanding provisions for Contract time extensions in Section D.2 of the General Conditions, City and CM/GC agree that timely completion of the Work is essential to the success of the Project, and that approval for time extension shall be granted only as a last resort.
- f. **Failure to Achieve Substantial Completion by Final Completion Date.** In the event CM/GC fails to obtain Substantial Completion by the date set for Final Completion in 5.b, subject to any time extensions granted by the City during the Project, City reserves the right to terminate this Contract for Cause and pursue any course of action deemed in the best interest of the City to complete the Project. Any and all reasonable costs incurred by the City, in addition to any actual damages accrued, under this clause shall be considered the financial responsibility of the CM/GC.
- g. **Delay in Final Completion.** City shall make payment of the balance due for any portion of the Work fully completed and accepted if Final Completion is materially delayed through no fault of Contractor or by issuance of Change Orders affecting final completion. In the event that final completion is not accomplished within thirty (30) calendar days after the date of Substantial Completion due to any fault of Contractor, City may withhold from the final payment 150 percent of the reasonable cost to complete the unfinished Work and to attain Final Completion. In the event Contractor fails to complete the Work necessary to attain Final Completion after forty five (45) days from Substantial Completion, City may, without waiving other remedies it may have, complete the Work and deduct the actual cost thereof from the funds withheld.

## 6. FEES, CONTRACT SUM AND GMP

- a. **Fees; Contract Sum; GMP.** City shall pay CM/GC the Preconstruction Fee described in paragraph 6.d. In addition, for each Early Work Amendment executed by CM/GC and City, City shall pay CM/GC, as payment for the Early Work, an amount equal to the sum of the CM/GC Fee to the proportional extent attributable to the Early Work, the cost of any bonds and insurance applicable to the Early Work, and the actual cost of all Early Work completed and accepted by City, but not exceeding the Early Work Price.
- b. The GMP shall be determined in accordance with the formula set forth below and as described in this paragraph 6.

<b>Preconstruction Fee</b> (Becomes a not-to exceed amount)
+ <b>CM/GC Fee</b> (Is a fixed dollar amount, which is subject to adjustment in accordance with paragraph 6.f.)
<b>Construction Fee (GMP Determination)</b>
+ <b>Cost of the Work</b> (Becomes a total amount based on established pay items)
+ <b>Bonds and Insurance</b> (Estimated costs)
+ <b>Risk/Contingency Items</b> (An allowance not included in Cost of the Work)
= <b>GMP</b>

- c. The "Cost of the Work" is specifically defined in Article 8. Costs in excess of the GMP shall be paid by the CM/GC without reimbursement by City. Changes to the GMP shall only be authorized by Amendment or Change Order that includes any necessary City approvals
- d. **Preconstruction Fee.** The Preconstruction Fee shall be payable to CM/GC as a lump sum of \$\_\_\_\_\_ which shall cover coordination with the City and Engineer, constructability review, value engineering, cost estimating, development of GMP, and all other reconstruction services, as described in paragraph 3. If CM/GC's costs for provision of Preconstruction Phase Services exceed the maximum Preconstruction Fee, CM/GC shall absorb such additional costs without reimbursement from City. City shall pay the Preconstruction Fee on a percent-complete basis with each application for payment during the Preconstruction Phase.
- e. **Preconstruction services provided after execution of the GMP Amendment:** If City and CM/GC execute a GMP Amendment, compensation for any ongoing preconstruction services that occur after execution of the GMP will be addressed in the GMP Amendment.
- f. **Establishment of CM/GC Fee; Converting the CM/GC Fee Percentage into a Fixed Amount; Adjustments to CM/GC Fee.**
  - 1) The CM/GC Fee shall be a fixed fee, set forth in Exhibit C and the Cost of the Work subject to adjustment by change order that is based upon the Cost of the Work in any Early Work Amendment(s) and the GMP Amendment. In calculating the GMP, the Cost of the Work shall exclude the Preconstruction Costs, the CM/GC Fee itself and any other cost or charge which this CM/GC Contract states is not to be included in calculating the CM/GC Fee.
    - i. The CM/GC Fee Components: The CM/GC Fee is inclusive of 1) profit; 2) general and administrative (G&A) costs; 3) home, branch and regional office overhead; and 4) other indirect and non-reimbursable costs as identified in Exhibit A, the General Conditions. The CM/GC Fee shall exclude costs for construction risk to perform the Work. Costs for Construction General Conditions not included in the CM/GC Fee shall be included in the Cost of the Work. Risk for construction that is allocated to the CM/GC shall be included in the agreed-upon Pay items that comprise the Cost of the Work.

No additional markup over the CM/GC fee will be paid to the CM/GC for change order or force account work or for subcontracted labor or materials.
  - 2) **Good Faith Negotiations** - The Agency and CM/GC shall negotiate the fixed lump sum amounts, estimated quantities, fixed unit prices, estimated cost reimbursable amounts, and all other aspects of the Work in good faith and shall establish a set of assumptions upon which all Work and unit prices are based.

- 3) **Amendment Pricing.** Once all components of the Work are agreed upon by the City and CM/GC, all Pay Item total costs (the Pay Item estimated quantity multiplied by the unit price) shall be rolled into one total amount, which becomes the Cost of the Work. The CM/GC Fee then becomes a fixed amount for the Work, subject to adjustment by Change Order an in accordance with Article 7. The estimated actual reimbursable costs for any applicable bonds and insurance shall not be subject to mark-up.
- 4) In addition, if the Contract is terminated for any reason prior to full completion of the Work (including, without limitation, termination during or following performance of Early Work), the CM/GC Fee shall be limited to the total CM/GC Fee multiplied by the percentage of Work completed and accepted at the time of termination. The CM/GC Fee shall not be subject to adjustment for any other reason, including, without limitation, schedule extensions or adjustments, Project delays, unanticipated costs, or unforeseen conditions.

**g. Determination of GMP.**

- 1) CM/GC shall deliver to City a proposed GMP and GMP Supporting Documents at a time designated by City during the Preconstruction Phase. If any actual subcontract Offers are available at the time the GMP is being established, CM/GC shall use those subcontract Offers in establishing the GMP.
- 2) As the Plans and Specifications may not be developed to the stage of biddable design documents at the time the GMP proposal is prepared, the CM/GC shall provide in the GMP for further development of the Plans and Specifications by the Engineer that is consistent with the Contract Documents and reasonably inferable there from. Such further development does not include such things as changes in scope outside of the original intent of the design, fundamental system or process types, significant changes to types or quantities of building components that are inconsistent with the original design intent, quality of finishes or equipment, all of which, if required, shall be incorporated by Change Order or Amendment with a corresponding GMP adjustment.
- 3) The CM/GC shall include with its GMP proposal a written statement of its basis (the "GMP Supporting Documents"), which shall include:
  - i. A list of the Plans and Specifications, including all addenda thereto and the conditions of the Contract, which were used in preparation of the GMP proposal.
  - ii. A detailed list of allowances and contingencies, the allocated amount of the GMP as well as a statement of their basis, parameters and calculation methodology.
  - iii. A list of the clarifications, qualifications, exclusions, assumptions and any other material qualifiers used by the CM/GC in the preparation of the GMP proposal to supplement the information contained in the Plans and Specifications.
  - iv. The proposed GMP, including a statement of the estimated cost organized in a manner acceptable to the City, allowances, contingency, and other items and the associated fees that comprise the GMP.
  - v. The parties may agree to identify and carry contingency to reflect potential escalation of material and commodity prices during the course of construction as well as estimated risk costs for changes and differing site conditions.
- 4) The CM/GC shall meet with the City and Engineer to review the GMP proposal and the written statement of its basis. If the City or Engineer discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CM/GC, who shall make appropriate

adjustments to the GMP proposal, its basis or both.

- 5) Prior to the City's acceptance of the CM/GC's GMP proposal and issuance of a Notice to Proceed, the CM/GC shall not incur any cost to be reimbursed as part of the Cost of the Work, except as specifically provided in an Early Work Amendment.
  - 6) The City shall authorize and cause the Engineer to revise the Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment. Such revised Plans and Specifications shall be furnished to the CM/GC in accordance with schedules agreed to by the City, Engineer and CM/GC. Prior to commencement of work, the CM/GC shall promptly notify the Engineer and City if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.
  - 7) The GMP shall include in the Estimated Cost of the Work only those taxes and/or governmental fees which are enacted at the time the GMP is established.
  - 8) The Estimated Cost of the Work shall include the Project contingency, which is a sum established by the CM/GC and City for the City and CM/GC's mutually agreed upon use to cover additional development of Plans and Specifications and unanticipated costs and unforeseen conditions which are properly reimbursable as Cost of the Work but which are not the basis for a Change Order. For purposes of use of Project's contingency, unanticipated costs and unforeseen conditions include Work within the scope of the Project or any conditions that the parties reasonably should have anticipated might be encountered during the renovation of a site or of a building of similar nature, condition and age. The parties shall provide advance written notice to the other each time the parties propose to use the Project contingency, shall include in the notice the purposed purpose for such use, and shall seek the agreement and approval of the other prior to the contingency use, the approval of which shall not unreasonably be withheld by the other party.
    - i. The Project contingency shall not be utilized by any party to make changes to the Project that are inconsistent with Article 6. or should reasonably be incorporated into the Project via a Change Order.
  - 9) The CM/GC shall work with the Engineer and City to identify and confirm components and systems not specifically shown but required for a complete, fully functional Project and sequencing to maintain continuous delivery of treated water. City will direct the Engineer to complete the final Construction Documents in accordance with the Project scope agreed upon by all parties at the time the GMP is established.
  - 10) Notwithstanding the level of detail represented in the GMP Supporting Documents, the CM/GC shall represent and warrant, at the time that it submits the GMP that the GMP includes the entire cost of all components and systems required for a complete, fully functional facility consistent with the design intent of the City and Engineer.
  - 11) In developing the GMP, the CM/GC shall include and identify any allowances within the GMP as may be necessary to pay for undefined costs and conditions that are required for a complete, fully functional facility.
- h. Failure to Furnish an Acceptable GMP.** If the CM/GC does not furnish a GMP acceptable to City or if City determines at any time in its sole discretion that the parties may fail to reach a timely agreement on a GMP acceptable to City, City may terminate the Contract without liability, and the CM/GC shall not receive additional compensation beyond the Preconstruction Fee earned as of the date of the

termination under the Contract and sums due under any Early Work Amendment. Termination under this provision shall proceed under Section J.5 of the General Conditions as a termination for City's convenience. CM/GC further agrees that City shall not be liable for any damages whether actual, consequential or otherwise for termination of the Contract under this provision.

- i. **Acceptance of GMP.** Upon acceptance of the GMP by City, the parties shall execute a GMP Amendment for the relevant package to which the GMP relates.
- j. **City Savings.** If the sum of the Preconstruction Fee, plus the CM/GC Fee, plus the actual and final Cost of the Work (the Contract Sum as defined in paragraph 6.a.), is less than the GMP, 100% of the savings
- k. **Owner Contingency.** The GMP shall include the Owner's Contingency, a sum established to cover the cost of modifications or additions of scope and unforeseen conditions. The Owner's Contingency shall not exceed 10%. The Owner's Contingency may not be used without the Owner's prior written approval. At the end of the Project, any unspent Owner's Contingency will be deducted from the GMP for benefit of the Owner. shall accrue to the City.
- l. **Allowance Work.**
  - 1) CM/GC shall not perform any Allowance Work without prior written authorization by the City approving the Specifications for the Allowance Work and the price thereof.
  - 2) City shall be entitled to reallocate any Allowance line items that have not been fully expended to other line item Allowances that have been fully expended, without any resulting increase in the GMP.
  - 3) If the total cost of the Work associated with allowances exceeds the total Allowances amount within the GMP, CM/GC shall not perform any Allowance Work in excess of such amount until either (i) the parties agree that the additional Allowance Work will be performed within the then-current GMP or (ii) a GMP Amendment is executed to increase the GMP by the excess cost of the Allowance Work.
  - 4) If at the Final Completion of the Project, any portion of the Allowance funds remains unexpended, the GMP shall be reduced by a corresponding amount via a Change Order or Amendment.
  - 5) Allowances shall not be allowed to have costs charged against them for accounting purposes on the Project. CM/GC shall submit itemized estimates based on competitive bids or quotes for City review and approval for any and all Work covered by Allowances. Upon acceptance by the City, CM/GC will reallocate Allowance funding to general Cost of the Work budget line items.
- m. **Reallocating Projected Cost Underruns after Bid (Offer) Buyout.** As soon as possible after the awarding of the Work to the primary Subcontractors, after review and approval by the City, CM/GC shall review projected costs and provide the City with a buy-out status report showing any projected cost over/under runs by contracting package, reconciling accepted Offers and other reasonably anticipated costs, to the cost estimate used by CM/GC to establish the GMP. CM/GC shall include with its report any underlying documentation requested by City used to develop or support such report. CM/GC shall also consider the reduced risk associated with known subcontracting costs, and the impact that reduced risk has on the amount of the Project's Contingency. The parties shall negotiate in good faith to execute a budget revision transferring an appropriate portion of any projected cost over/under runs to/from the Project Contingency. Any unused contingency shall be returned to the City.
  - 1) Over/under runs on bid packages and subcontracted scopes of work shall accrue or be funded from

a buy-out contingency that will be jointly controlled by the City and CM/GC. Funding in the buy-out contingency shall not be allocated other than to portions of the Work until all Subcontractors are under contract, at which time any surplus shall accrue to the contingency for the Project subject to the requirements and limitation of use described herein.

- n. **CM/GC's Sole Responsibility for Errors.** The CM/GC agrees that review or approval by Agency or its agents of the CM/GC's estimates, proposals, pricing, or any other information disclosed to Agency, including those under Early Work Amendment(s) or the GMP Amendment, shall not relieve CM/GC of its sole responsibility for any costs resulting from or arising out of defects or deficiencies in the CM/GC's estimates, proposals, pricing, or any other information disclosed to Agency.

## 7. CHANGES IN THE WORK

- a. **Price Adjustments.** Adjustments to the Estimated Cost of the Work required by changes in the Work shall be determined by any of the methods listed in Section D of the General Conditions, except that, unless the adjustment is based upon fixed pricing or unit pricing:
  - 1) The overhead and profit markup for the CM/GC shall be limited to the CM/GC Fee adjustment, if any, permitted under paragraph 6.f of this Agreement;
  - 2) The increase or decrease in the Estimated Cost of the Work, other than for subcontract Work, shall be calculated pursuant to Articles 8. and 9. of this Contract, instead of being based on CM/GC's Direct Costs as defined in the General Conditions; and
  - 3) In calculating adjustments to subcontracts, unless the parties agree otherwise, the change shall be limited to the Subcontractor's Direct Costs plus the supplemental markup provided in Section D of the General Conditions, and shall not be modified by Articles 8. and 9. of this Contract.
- b. **Adjustments to GMP.** Notwithstanding any contrary language in the Contract Documents, adjustments to the GMP after execution of the GMP Amendment may be made only in the event of a Scope Change, and then only in accordance with the following procedure:
  - 1) CM/GC shall review subsequent iterations of the Plans and Specifications as they are prepared to determine whether, in the opinion of CM/GC, they result in a Scope Change so that it can be determined if an adjustment to the GMP is warranted.
  - 2) Changes to the GMP shall be initiated by written notice by one party to the other. CM/GC shall deliver any such request to Engineer and City's Authorized Representative promptly after becoming aware of any Scope Change if, in CM/GC's opinion, it constitutes grounds for adjustment of the GMP. Any change request shall include a fully itemized proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.
  - 3) CM/GC shall submit its request as soon as possible, and CM/GC shall not be entitled to claim a GMP increase unless CM/GC submitted a Change Order Request to City's Authorized Representative and to Engineer within the earlier of,
    - i. ten (10) business days after CM/GC has received the information constituting the basis for the claim, or
    - ii. as to Work not yet bid or proposed, prior to submission of solicitations for such Work and as to Work already solicited, prior to commencement of the portion of the Work for which CM/GC



intends to claim a Scope Change; and

iii. in any event, prior to CM/GC's signing of a Change Order for the Scope Change.

- 4) City may, at any time, submit a reduction of the GMP, which shall include City's basis for such request, which may include, for example, reduction of the Project's Contingency after further development of the Plans and Specifications that form the basis for the original GMP Amendment, and/or unused Allowances.
  - 5) CM/GC shall work with City and Engineer to reconcile all differences in its request within three (3) business days from the date of submission of the request. "Reconciled" means that the CM/GC, City and Engineer have verified that their assumptions about the various categories are the same, and that they have identified the reason for differences in the request and the City and/or Engineer's position. CM/GC shall submit the reconciled request to City, which submission shall be a condition to any CM/GC claim for a GMP increase.
  - 6) If the reconciled request is not acceptable to City, CM/GC agrees to work with the City and the Engineer to provide a request that is acceptable to City.
  - 7) CM/GC agrees to make all records, calculations, drawings and similar items relating to the request available to City and to allow Engineer and City access and opportunity to view such documents at CM/GC's offices. Upon City's reasonable notice, CM/GC shall deliver two copies of such documents to City and Engineer at any regular meeting or at the Site.
  - 8) GMP increases, if any, shall not exceed the increased Cost of the Work arising from the Scope Change (whether based on agreed fixed pricing, or the estimated Cost of the Work increase based on cost-reimbursable pricing), reconciled in accordance with the above provisions, as arising from the incident justifying the GMP increase, plus or minus the CM/GC Fee applicable to such change in the Cost of the Work.
  - 9) Except as provided in this paragraph 7.b., adjustments to the GMP shall be reconciled in accordance with Section D of the General Conditions.
- c. Execution by City.** Engineer has no authority to execute Change Orders or Amendments on behalf of City, and only duly authorized personnel of City may do so. However, as provided in the definitions for "City's Authorized Representative" and "Architect/Engineer" in Section A.1 of the General Conditions, City may, by written notice to the CM/GC, delegate some or all responsibilities of the City's Authorized Representative to the Architect/Engineer.
- d. Continuation of Work.** CM/GC shall continue to prosecute the Work in a timely and diligent manner consistent with the regardless of the status, outcome or other issues associated with potential Change Orders or Amendments. In no way shall CM/GC impact or allow others, such as Subcontractors, to impact the Project Schedule due to pending, on-going or concluded change order negotiations. Failure to do so shall be considered a material breach of the Contract on the part of the CM/GC and subject to recourse by the City.

## **8. COST OF THE WORK (To Be Reimbursed)**

- a. Cost of the Work.** (The term "Cost of the Work" shall mean the following costs.) The Cost of the Work shall include only those items necessarily and reasonably incurred by CM/GC in the proper performance of the Work and specifically identified in this Article 8., and only to the extent that they

are directly related to the Project.

**b. Labor Costs.**

- 1) Wages of construction workers directly employed by the CM/GC to perform the construction of the Work.
- 2) Wages and salaries of the CM/GC's supervisory and administrative personnel
  - i. stationed at the site, or
  - ii. engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work with City, or otherwise engaged and off the site when specifically related to the Project, and
  - iii. under either clause (i) or (ii), only with City's prior written approval, and only for that portion of their time directly required for the Work.
- 3) Fringe benefit costs paid or incurred by the CM/GC for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining contracts and, for personnel not covered by such contracts, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under paragraphs 8.b.1) through 8.b.2).

**c. Subcontract Costs.**

- 1) CM/GC's actual payment to Subcontractors pursuant to CM/GC's contract with such Subcontractor for the Work on the Project. No amount paid by or payable to any such Subcontractor other than the fixed or cost reimbursement price of its subcontract shall be included in the Cost of the Work, unless otherwise approved in writing by City.

**d. Costs of Materials and Equipment Incorporated in the Work or Stored On Site.**

- 1) Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed Work.
- 2) Costs of materials in excess of those actually installed, but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be delivered to City at the completion of the Work or, at City's option, shall be sold by the CM/GC. Any sale shall be commercially reasonable and CM/GC shall provide accounting for such a sale within fifteen (15) business days of the transaction. Net amounts realized, if any, from such sales shall be credited to City as a deduction from the CM/GC Fee.

**e. Costs of Miscellaneous Equipment and Other Items; Equipment Rental Charges.**

- 1) Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CM/GC at the site and fully consumed in the performance of the Work.
- 2) Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned

by the construction workers, which are provided by the CM/GC at the site, whether rented from the CM/GC or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented:

- shall be according to industry standards,
- shall not exceed 100% of the rental rates published from time to time in the Rental Rate Blue Book for Construction Equipment, prepared by Machinery Information Division of Primedia Information Incorporated in effect at the time of rental
- shall not exceed acquisition costs, and
- for individual items exceeding \$500.00 rental value, will be subject to City's prior approval.

CM/GC shall deliver to City a list of published rates from time to time at City's request. For all items rented or leased, the CM/GC shall charge City only the rental charge incurred by CM/GC with no additional administrative or other mark-up. CM/GC shall make efforts and use its best skills and judgment to procure equipment in the most expeditious and economical manner consistent with the interest of the City. Efforts shall include, but not be limited to, providing City with a rent/buy analysis so that City may elect for CM/GC to procure the item in lieu of rental if the facility at issue is expected to be rented for six months or longer. Such rent/buy analysis shall include, where available, a leasing rate commensurate with the expected term of rental of the facility at issue.

- 3) Costs of removal of debris from the site.
- 4) Cost of communication devices, postage and parcel delivery charges, and reasonable petty cash expenses of the site office, which are solely for the benefit of the Work.

**f. Other Costs.**

- 1) That portion of premiums for insurance directly attributable to the Contract for builders all/risk insurance, and payment, performance and public works bond premiums as required by Section G of the General Conditions (but excluding premiums for Subcontractor bonds unless authorized by City). CM/GC's charge to City for all bonds and insurance shall be limited to the CM/GC's verifiable costs for those items.
- 2) Sales, use or similar excise taxes imposed by a governmental authority which are directly related to the Work and for which the CM/GC is liable.
- 3) Fees and assessments for the building permit and for other permits, licenses and inspections for which the CM/GC is required by the Contract Documents to pay.
- 4) CM/GC deposits lost for causes other than the CM/GC's fault or negligence.
- 5) Costs of drawings, Specifications and other documents required to complete the Work, except as provided by City or Engineer.
- 6) Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by City.

**g. Costs to Prevent Damage or Injury in Emergencies.** The Cost of the Work shall also include costs which are incurred by the CM/GC in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

**h. Costs For General Conditions Work.** CM/GC shall be paid on a lump-sum basis as payment for the GC Work, including all labor, materials, and direct and indirect costs thereof. The lump-sum amount for GC Work shall be established in each Early Work Amendment or the GMP Amendment, as applicable.

To the extent any GC Work is otherwise described above in this Article 8., CM/GC's compensation for the same is included in the Cost for GC Work and shall not otherwise be charged as Cost of the Work. The Cost for GC Work, less 5% retainage thereon, shall be paid monthly on a percent complete basis of the scheduled Construction Phase, including any period of Early Work, commencing with the first progress billing after commencement of the scheduled Construction Phase or Early Work Period. However, no adjustment in the amount for General Conditions Work will be made if the actual construction period or Early Work period is shorter or longer than the number of months scheduled for the Construction Phase or Early Work period, unless such period is extended because of a City-requested delay.

- i. Travel and subsistence expenses of the CM/GC shall be included in the costs for General Conditions.
- j. At the Owner's and Engineer's discretion and in negotiations with the CM/GC, the Cost of the Work may be modified to a traditional unit cost basis for all work performed.

**9. COSTS EXCLUDED FROM COST OF WORK (Not To Be Reimbursed)**

- a. **Costs Excluded from Cost of Work.** The following shall not be included in the Cost of the Work unless specifically approved in writing by the City prior to approval of the GMP:
  - 1) Salaries and other compensation of the CM/GC's personnel stationed in offices other than the site office except as allowed under paragraphs 8.b.2) and 8.b.3).
  - 2) Office expenses of the CM/GC other than the site office.
  - 3) Any overhead and general expenses, except as may be expressly included in paragraph 8.
  - 4) CM/GC's capital expenses, including interest on the CM/GC's capital employed for the Work.
  - 5) Rental cost of machinery and equipment, except as provided in paragraph 8.e.2).
  - 6) Any cost associated with the Project not specifically and expressly described in paragraph 8.
  - 7) Costs due to the fault or negligence of the CM/GC, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
  - 8) The cost of correction of any repair Work, nonconforming or defective Work, or warranty Work.
  - 9) Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith, except as provided in Article 8.
  - 10) Fines and penalties.
  - 11) Except for Early Work, the cost of Preconstruction services.
  - 12) The Cost of GC Work in excess of the lump-sum amount established for GC Work.
  - 13) Any costs in excess of the GMP.
  - 14) Any equipment, vehicle, tool or other items the CM/GC retains ownership of beyond the Substantial Completion date of the Project.

**10. DISCOUNTS, REBATES AND REFUNDS**

- a. Discounts, Rebates and Refunds.** Cash discounts obtained on payments made by the CM/GC shall accrue to City. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to City, and the CM/GC shall make provisions so that they can be secured.
- b. Amounts Credited to City.** Amounts which accrue to City in accordance with the provisions of paragraph 10.a. shall be credited to City as a deduction from the Cost of the Work.

## 11. SUBCONTRACTS AND OTHER CONTRACTS

### a. General Subcontracting Requirements.

- 1) Other than Work approved by the Owner, CM/GC shall subcontract the Work to Subcontractors other than the CM/GC and its Affiliates. If CM/GC elects to bid on any Work, CM/GC shall inform City of its intention to do so prior to the bid package release date for public bidding for that Work.

### b. CM/GC's Obligations under Subcontracts.

- 1) No use of a Subcontractor or supplier shall relieve the CM/GC of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in the Contract, the CM/GC shall be fully responsible and liable for the acts or omissions of all Subcontractors and suppliers including persons directly or indirectly employed by them. The CM/GC shall have sole responsibility for managing and coordinating the operations of its Subcontractors and suppliers, including the settlement of disputes with or between the CM/GC and any such Subcontractor or supplier.
- 2) The CM/GC shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, all provisions necessary to make all of the provisions of the Contract Documents, including the General Conditions, fully effective as applied to Subcontractors. CM/GC shall indemnify City for any additional cost based on a Subcontractor claim which results from the failure of CM/GC to incorporate the provisions of this Agreement in each subcontract. The CM/GC shall provide all necessary Plans, Specifications, and instructions to its suppliers and Subcontractors to enable them to properly perform their portions of the Work.
- 3) **Retainage from Subcontractors.** Except with the City's prior approval and as allowed under Oregon law, payments to Subcontractors shall be subject to retainage of no more than 5%. The City and the CM/GC shall agree upon a mutually acceptable procedure for review and approval of payments and retainage for Subcontractors.

### c. Subcontractor Selection.

- 1) All Subcontractors performing Work must be, as legally required or appropriate for the Work they are performing, registered or licensed by the following before such Subcontractors commence Work and for the duration of the subcontract:
  - i. The Construction Contractors' Board in accordance with ORS 701.035 to 701.138;
  - ii. The State Board of Examiners for Engineering and Land Surveying in accordance with ORS 672.002 to 672.325;
  - iii. The State Board of Architect Examiners in accordance with ORS 671.010 to 671.220;
  - iv. The State Landscape Architect's Board in accordance with ORS 671.310 to 671.459; or
  - v. The State Landscape Contractor's Board in accordance with ORS 671.510 to 671.710.
- 2) These registration and licensing requirements shall also apply to employees of the CM/GC and it shall require and ensure that they are in compliance.
- 3) The CM/GC shall pay and comply with, and require Subcontractors to pay and comply with State prevailing wage rates in effect at the time of execution of the first Early Work Amendment, or if no

Early Work Amendment is executed, at the time the GMP Amendment is executed, as listed in the BOLI publication titled "Prevailing Wage Rates for Public Works Contracts in Oregon", and any amendments thereto. The higher of those rates shall be incorporated in the Contract and shall then apply throughout the remainder of the Project.

- 4) The CM/GC shall review all bids and shall work with bidders to clarify submitted bids, reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.
- 5) Unless otherwise provided under this Article 11., the selection of all Subcontractors and suppliers shall be made by competitive bidding in a manner that will not encourage favoritism or substantially diminish competition. While not subject to the competitive procurement requirements of ORS Chapter 279C, the process shall conform to the procedures discussed herein, in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices.
- 6) CM/GC shall submit to City's Authorized Representative its proposed procurement documents for review and comment before they are issued for solicitation. CM/GC shall consider and respond to all City comments regarding any proposed Offer packages. As Offers are received, CM/GC shall submit to the City an Offer comparison in a mutually agreeable form together with any specific back-up documentation requested by City. The competitive process used to award subcontracts by the CM/GC may be monitored by the City's Authorized Representative; provided that such monitoring shall not excuse CM/GC from compliance with the subcontracting requirements of this Agreement. CM/GC shall cooperate in all respects with City's monitoring. The City's Authorized Representative shall be advised in advance of and be given the opportunity to be present at bid openings, and CM/GC shall provide him or her with a summary or abstract of all bids in form acceptable to the City's Authorized Representative, and copies of particular bids if requested, prior to CM/GC's selection of bids. Prior to opening bids, the CM/GC agrees to disclose in writing to City any financial interest it has in any such Subcontractor, supplier or other contracting party whenever such Subcontractor, supplier or contracting party intends to compete on any Project Work, directly or indirectly, including whether such party is an Affiliate of CM/GC.
- 7) The following minimum requirements apply to the Subcontract solicitation process:  
For solicitations where the resulting subcontract estimated to exceed \$100,000:
  - i. Solicitations shall be advertised at least ten (10) business days prior to opening in the Daily Journal of Commerce. CM/GC also agrees to advertise in a local community newspaper in the area in which the Project is located, in order to allow for local participation in the solicitation process.
  - ii. Unless specific other prior arrangement has been made with the City representative, all bids will be written, and submitted to a specific location at a specific time. CM/GC shall time/date-stamp all bids as received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board.
  - iii. If fewer than three (3) bids are submitted in response to any solicitation estimated to exceed \$100,000, (inclusive of any bid submitted by CM/GC), prior written approval by a City representative shall be required to accept a bid.
  - iv. City may at its sole discretion, require CM/GC to re-solicit for bids based on the same or modified documents.

- v. The CM/GC shall document any and all discussions, questions and answers, modifications and responses to from any bidder and ensure that the same are distributed to all bidders, and City shall be entitled to inspect such documentation on request.
- vi. CM/GC shall determine the lowest responsive and responsible bid for each solicitation that meets CM/GC's reasonable performance standards for the components of the Work at issue; provided that if CM/GC determines it is unable to execute a suitable subcontract with such bidder, CM/GC may, with City's prior approval, execute a subcontract with the second-lowest Offeror pursuant to paragraph 11.c.9) below. CM/GC may alternatively utilize a solicitation method whereby both price and subcontractor qualifications are evaluated. In such case, the solicitation method and evaluation process must be documented in writing, must be competitive, fair and open, and must be prior approved by City. City reserves the right to approve such a method on a case by case basis.

For solicitations where the resulting subcontract estimated to be below \$100,000:

- i. Solicitations must be publically advertised in any or all of the following methods: electronically, in the Oregon Daily Journal of Commerce, or a local community newspaper.
- ii. Unless specific other prior arrangement has been made with the City representative, all bids will be written, and submitted to a specific location or email address at a specific time. Quotes may be sent and submitted electronically. CM/GC shall retain a record of the time and date all quotes are received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board.
- iii. A minimum of three (3) written quotes must be solicited. CM/GC may consider price and other qualifications in awarding such subcontracts.

Generally:

- i. CM/GC may develop and implement a prequalification process in accordance with Oregon Revised Statutes for competitive bidding for particular solicitations, followed by selection of successful bids among those bidders that CM/GC determines meet the prequalification standards, with City's prior written approval of such prequalification process.
  - ii. The CM/GC shall comply, and require Subcontractor compliance, with the State of Oregon Bureau of Labor & Industries prevailing wage rate requirements. The wage rates that apply to this Project are described in paragraph C.1. of Exhibit A - General Conditions.
- 8) Under special circumstances and only with prior written authorization by City, Work may be subcontracted on other than a low price basis, including without limitation, through competitive negotiation. As a condition to its authorization, City may require CM/GC's agreement to establish and implement qualification and performance criteria for bidders, including a scoring system within requests for proposals. Examples include: where there are single fabricators of materials; special packaging requirements for Subcontractor Work; design-build work or, where an alternative contracting method can be demonstrated to clearly benefit City. Such alternative procurements may, at the sole determination of the City, be subject to the City's procurement policies.
- 9) When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in paragraph 11.c.5., the process must meet the following requirements:



- i. The CM/GC must prepare and submit a written justification to the City explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the CM/GC's need to utilize a key Subcontractor member of the CM/GC's project team consistent with the CM/GC's project proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the Subcontractor agreement, or a "sole source" justification.
  - ii. For a "sole source" selection of a subcontractor to proceed, the Contracting Agency must evaluate the written justification provided by the CM/GC and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;
  - iii. If required by the City, the CM/GC must provide an independent cost estimate for the Work package that will be subject to the non-competitive process.
  - iv. The CM/GC must fully respond to all City questions or comments pertaining to a proposed or completed non-competitive selection process or associated Work package.
  - v. The City must approve the CM/GC's use of the non-competitive Subcontractor selection process prior to the CM/GC's pursuit of the non-competitive process.
- 10) A competitive selection process may be preceded by a publicly advertised subcontractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the CM/GC will select the subcontractor to perform the construction Work described in the selection process;
- 11) If the CM/GC or an Affiliate or subsidiary of the CM/GC will be included in the subcontractor selection process to perform particular construction Work on the project:
- i. the CM/GC must disclose that fact in the selection process documents and announcements.
- 12) CM/GC shall notify City in writing in advance before award of any proposed Subcontract, which notice shall include summaries in a form acceptable to City of all bidders received for the Subcontract at issue. City reserves the right to disapprove any proposed Subcontractors, suppliers and Subcontract or supply contract awards, based on legal standards of responsibility. City shall not unreasonably disapprove any proposed Subcontractor or supplier and increased costs due to City's disapproval shall be cause for an increase in the GMP. Notification shall be made with suitable time for review and comment/approval by the City before issuance of the Subcontract for execution.
- 13) The CM/GC shall notify the City in the event that it receives an objection or protest in response to subcontractor selection. The City must approve the CM/GC's proposed resolution to any such objections or protests, prior to the CM/GC implementing the resolution.
- 14) Briefings for Unsuccessful Subcontractors. Unsuccessful subcontractors will be allowed 60 days from the CM/GC's notice of award of a subcontract for a particular Work package to request, in

writing, a post-selection meeting with the CM/GC and the City. The CM/GC shall hold such meetings within 45 days of the subcontractor's written request.

- 15) CM/GC's subcontracting records shall not be considered public records; provided, however, that City and other agencies of the State shall retain the right to inspect, audit and monitor the subcontracting process in order to protect the City's interests.

**d. CM/GC Field Work.**

- 1) The CM/GC or its Affiliate(s) may provide GC Work required to complete the Project with its own forces, without the necessity of subcontracting such Work.
- 2) Except as provided in paragraph 11..d.1), any other portion of the Work proposed to be performed by CM/GC or any Affiliate, including without limitation provision of any materials, equipment, or supplies, shall be subject to the provisions of paragraph 11..e.

**e. Subcontracting by CM/GC.**

- 1) Except to the extent otherwise approved in advance in writing by City's Authorized Representative, the CM/GC or its Affiliates may submit a bid in accordance with paragraph 11.c. to do Work with its own forces, provided at least 80% of the labor by such work unit is performed by employees of the CM/GC or such Affiliate. If CM/GC is selected to perform the Work, the overhead and markup paid to CM/GC shall be limited to its CM/GC Fee percentage and the markups applicable to Change Order Work or subcontracted Work set forth in the General Conditions shall not apply. The CM/GC shall clearly identify any Work for which it was the winning bidder in the supporting documentation and invoicing for payments so it can be easily determined that the Work was provided within CM/GC's bid price.
- 2) For those items for which the CM/GC or any of its subsidiaries intends to submit a bid, such intent must be publicly announced with the solicitation for bidders required by paragraph 11.c., and City notified in writing. All bids for this Work, including the CM/GC, shall be delivered to City and publicly opened by City at an announced time, date, and place. An appointed City representative will provide objective, independent review and opening of bids or proposals for the elements of Work on which CM/GC bids.
- 3) CM/GC or an Affiliate or subsidiary of the CM/GC may only perform elements of the construction Work without competition from subcontractors when:
  - i. The work is job-site GC Work, or
  - ii. The CM/GC proposed to self-perform certain elements of the Work in response to the City's CM/GC RFP and the City accepted these portions of the proposal in its contract negotiations with the CM/GC, or
  - iii. The CM/GC provides the City a detailed written proposal to self-perform the work, showing that such self-performance is cost effective, the City accepts the written proposal and the proposal is supported by at least one independent cost estimate prior to Work being included in the Contract.

- f. Change of Subcontractors.** Once a subcontract has been accepted by the City and executed by the CM/GC and Subcontractor, CM/GC shall not terminate or substitute the Subcontractor without prior

written approval of the City. In the event a change to the subcontract assignment is made, CM/GC shall initiate a new bid package consistent with this Agreement to procure a new Subcontractor.

## 12. ACCOUNTING RECORDS

- a. **Accounting; Audit Access.** The CM/GC shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract; the accounting and control systems shall be satisfactory to City. City and City's representatives shall be afforded reasonable and regular access to the CM/GC's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Contract, and the CM/GC shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.
- b. **Periodic and Final Audits.** City may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. City intends to conduct a final audit of reimbursable costs prior to the Contract closeout and final payment application approval. The CM/GC shall cooperate fully with City in the performance of such audits. Disputes over audit findings or conclusions shall be subject to the process set forth in paragraph 14.d.

## 13. PROGRESS PAYMENTS

- a. **Integration with General Conditions.** The requirements of this paragraph 13. and paragraph 14. are in addition to, and not in lieu of, the requirements of Section E of the General Conditions. In the event of conflict between the provisions of paragraph 13. and 14. and Section E, the provision more favorable to City shall control. Without limitation, the provisions of paragraph 13..c. and 13..d. shall control over the corresponding provisions of Section E.2.5 of the General Conditions.
- b. **Progress Payments.** Based upon applications for payment submitted pursuant to Section E of the General Conditions, City shall make progress payments on account of the Preconstruction Fee, Cost of the Work, and associated CM/GC Fee, less 5% retainage, to the CM/GC as provided below and elsewhere in the Contract Documents. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. All progress payment requests shall include the forms designated or approved by the City stating that all of the Contractor's obligations to date relating to the Work have been paid. Reference Exhibit E, Progress Payment Waiver and Release.
- c. **Percentage of Completion.** Applications for payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage of completion shall be the lesser of (i) the percentage of that portion of the Work which has actually been completed; or (ii) the percentage obtained by dividing (a) the expense that has actually been incurred by the CM/GC on account of that portion of the Work for which the CM/GC has made or intends to make actual payment prior to the next application for payment by (b) the share of the GMP allocated to that portion of the Work in the Schedule of Values.
- d. **Calculation of Payment.** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
  - 1) Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work based on the monthly progress schedule update by the share of the GMP allocated to that portion of the Work in the Schedule of Values. Pending final determination of cost to the City of changes in the Work, amounts not in dispute shall be included. For the lump-sum General Conditions, the amount payable will be equal to the amount

allocated to General Conditions multiplied by the overall percent complete for the Project;

- 2) Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored and otherwise in compliance with Section E.2.3 of the General Conditions;
- 3) Add the CM/GC's Fee. The portion of the CM/GC's Fee payable shall be an amount that bears the same ratio to CM/GC Fee as sum of the amounts in the two preceding Clauses bears to the estimated probable Cost of the Work described in paragraph 8..a., but in no event causing total CM/GC Fee payments to exceed the total CM/GC Fee;
- 4) Subtract the aggregate of previous payments made by and retained by the City;
- 5) Subtract the shortfall, if any, indicated by the documentation required to substantiate prior applications for payment, or resulting from errors subsequently discovered by the City in such documentation;
- 6) Subtract any amounts for which the City's Authorized Representative has withheld or denied payment as provided in the Contract Documents; and
- 7) Subtract 5% retainage on the entire progress payment.

#### 14. FINAL PAYMENT

- a. **Final Payment Accounting.** CM/GC shall submit to City a final detailed accounting of the Cost of the Work together with CM/GC's final application for payment.
- b. **Calculation of Final Payment.** The amount of the final payment shall be calculated as follows:
  - 1) Take the sum of the CM/GC Fee, plus the Preconstruction Fee, plus the actual Cost of the Work substantiated by the CM/GC's final accounting. Said sum shall not exceed the GMP.
  - 2) Subtract amounts, if any, for which the City's Authorized Representative withholds, in whole or in part, approval of payment.
  - 3) Subtract the aggregate of previous payments made by City to CM/GC. If the aggregate of previous payments made by City exceeds the amount due the CM/GC, the CM/GC shall reimburse the difference to City within 30 Days with interest at the rate applicable to City payments under the General Conditions.
- c. **Final Payment Review.** City or its accountants will review and report in writing on the CM/GC's final accounting within twenty (20) business days after delivery of the final accounting by the CM/GC. Based upon such Cost of the Work as City or City's accountants report to be substantiated by the CM/GC's final accounting, and provided the other conditions of the Contract have been met, the City's Authorized Representative will, within ten (10) business days after receipt of the written report of City's accountants, either issue to City an approval of CM/GC's final application for payment with a copy to the CM/GC or notify the CM/GC and City in writing of the City's Authorized Representative's reasons for withholding approval of any part of the application for payment, which disapproval shall include City's Authorized Representative's estimate of the amount that is due the CM/GC under the application for payment.
- d. **Liquidated Damages.** if the Work requirements are not completed by the dates set, CM/GC shall be subject to liquidated damages. Liquidated damages shall be limited to \$500.00/day.
  - i. Substantial Completion: \$500 per calendar day;
  - ii. Final Completion: \$500 per calendar day.

Liquidated Damages set forth above, shall constitute the reasonable estimate of the City's losses and damages in the event the CM/GC fails to achieve completion as required. The specified Liquidated Damages shall constitute the city's full remedy for any delays of the CM/GC. Liquidated damages for substantial and final completion are not additive and will not be imposed concurrently.

- e. **Payment Disputes.** If City's accountants report the Cost of the Work as substantiated by the CM/GC's final accounting to be less than claimed by the CM/GC or if City's Authorized Representative declines to approve any duly submitted payment request by CM/GC, the CM/GC shall be entitled to demand a review by the City's highest contracting authority of the disputed amount. Such demand shall be made by the CM/GC within twenty (20) business days after the CM/GC's receipt of a copy of the rejection of the application for payment; failure to demand additional review within this 20-Day period shall result in the substantiated amount reported by City's accountants becoming binding on the CM/GC. In addition, if City performs a subsequent audit of the Cost of the Work and determines any item therein to have been unsubstantiated or that CM/GC was otherwise overpaid, CM/GC shall have twenty (20)

business days after delivery of request for reimbursement by City to demand additional review by City's highest contracting authority; failure to make such demand within this 20 Day period shall result in the requested reimbursement becoming unconditionally due and payable by CM/GC. If CM/GC timely submits a protest to the City's highest contracting authority, CM/GC's Claim shall be subject to the claims review process in Section D.3 of the General Conditions. Pending a final resolution, City shall pay the CM/GC the amount of the application for payment approved by the City's Authorized Representative.

**15. Effect of Payment.** Neither approval of an application for payment, a progress payment, release of retainage, final payment, or partial or entire use or occupancy of the Project by the City shall constitute acceptance of Work not conforming to the Contract Documents, a waiver of City's right to compel CM/GC to fix nonconforming Work or waiver of the right to assert overpayment.

#### **16. TERMINATION OR SUSPENSION**

- a. City's Right to Terminate Prior to Execution of GMP Amendment.** Prior to execution by both parties of the GMP Amendment, the City may terminate the Contract at any time without cause. Upon such termination, the amount to be paid to the CM/GC shall not exceed the Preconstruction Fee payable to the date of termination, together with amounts payable for Early Work if an Early Work Amendment has been executed. If City terminates for convenience during the Preconstruction Phase, City shall be entitled to copies of, and shall have the right to use, all work products of CM/GC and its Subcontractors performed to the date of termination, and CM/GC shall deliver copies of the same to City on request.
- b. City's Termination for Convenience after GMP Amendment.** After the GMP Amendment is executed by both parties, the Contract may be terminated by City without penalty for convenience pursuant to Section J.5 of the General Conditions in which case CM/GC shall be entitled to payment of the amount stated in paragraph 16.a., together with the actual Cost of the Work completed, plus the CM/GC's Fee prorated based on the actual Cost of the Work completed prior to the date of termination, but in any event not in excess of the GMP.
- c. City's Termination for Cause.** In the event of termination of this Agreement by City for cause pursuant to Section J.4 of the General Conditions, the amount, if any, to be paid to the CM/GC after application of the General Conditions and City's rights at law shall not exceed the amount the CM/GC would be entitled to receive under paragraph 16.b. If a court or other dispute resolution body determines City's for-cause termination to be unlawful, the City's termination is to be deemed a termination for convenience under 16.b. to the greatest extent the law permits.
- d. CM/GC Termination for Cause.** CM/GC acknowledges that disputes regarding payments and Change Orders may occur as part of the CM/GC process, and that City's declining to pay disputed amounts shall not be grounds for suspension of the Work or termination for cause by CM/GC. If CM/GC terminates the Contract for City's material breach, the amount to be paid to CM/GC shall not exceed the amount CM/GC would have been entitled to receive under paragraph 16. above through termination and demobilization from the Project, with the CM/GC Fee prorated based on the actual Cost of the Work through the date of termination.
- e. Assignment of Subcontracts.** Each Subcontract and supply contract for any portion of the Work is hereby irrevocably assigned by the CM/GC to the City, provided that such assignment is effective only after termination of the Contract by the City, and only for those Subcontracts and supply contracts

which the City accepts by notifying the Subcontractor/supplier and CM/GC in writing. For those Subcontracts and supply contracts accepted by City, if the Work has been suspended for more than twenty (20) business days, the Subcontractor's/supplier's compensation shall be equitably adjusted for increases in cost resulting from the suspension. CM/GC shall include a provision in each Subcontract and supply agreement whereby the Subcontractor/supplier acknowledges City's rights under this paragraph 17.e. With respect to any Subcontracts/supply contracts that are not accepted by City, the provisions of Section J.6.1 of the General Conditions shall apply.

## **17. REPRESENTATIONS, WARRANTIES AND CERTIFICATIONS**

**a. Representations and Warranties.** CM/GC represents and warrants to City as of the effective date of the Contract:

- 1) it is qualified to do business as a licensed general contractor under the laws of the State of Oregon, and has all requisite corporate power and corporate authority to carry on its business as now being conducted;
- 2) it has full corporate power and corporate authority to enter into and perform the Contract and to consummate the transactions contemplated hereby; CM/GC has duly and validly executed and delivered this Agreement to City and that the Contract constitutes the legal, valid and binding obligation of CM/GC, enforceable against CM/GC in accordance with its terms, except as enforceability may be limited or affected by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law);
- 3) CM/GC's execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under,
  - i. CM/GC's Articles of Incorporation or Bylaws;
  - ii. any note, bond, mortgage, indenture, license, lease, contract, commitment, agreement or other instrument or obligation to which CM/GC is a party or by which CM/GC may be bound; or
  - iii. any statute, order, writ, injunction, decree, rule or regulation applicable to CM/GC;
- 4) no material consent, approval, authorization, declaration or other order of, or registration or filing with, any court or regulatory authority or any third person is required for the valid execution, delivery and performance of the Contract by CM/GC or its consummation of the transactions contemplated hereby;
- 5) there is no action, proceeding, suit, investigation or inquiry pending that questions the validity of the Contract or that would prevent or hinder the consummation of the transactions contemplated hereby; and
- 6) the CM/GC's Project Manager identified in paragraph 4.e. is a duly appointed representative and has the authority to bind the CM/GC to any and all duties, obligations and liabilities under the Contract Documents and any Amendments thereto.

**b. Tax Compliance Certification.**

By signature on this Agreement, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of CM/GC and that CM/GC is, to the best of the undersigned's knowledge, not delinquent in the filing or payment of any Oregon income taxes, Oregon personal property taxes, Oregon municipal taxes, or Oregon real property taxes and that it has otherwise complied with all Oregon tax laws and all tax laws of those Oregon municipalities to which Engineer is subject.. For purposes of this certification, "taxes" includes a state tax imposed by ORS 401.792 to 401.816 and ORS chapters 118, 314, 316, 317, 318, 320, 321 and 323; the elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620.

## 18. MISCELLANEOUS

- a. **Headings.** The headings used in this Agreement are solely for convenience of reference, are not part of the Contract and are not to be considered in construing or interpreting the Contract.
- b. **Merger.** The Contract Documents constitute the entire Contract between the parties and supersedes any previous negotiations, agreements or other commitments between the Parties for this Project. No waiver, consent, modification or change of terms of the Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Contract. CM/GC, by signature of its representative, hereby acknowledges that it has read the Contract, understands it and agrees to be bound by its terms and conditions.
- c. **Foreign Contractor.** The CM/GC shall be domiciled in or registered to do business in the State of Oregon. If the CM/GC is not domiciled in or registered to do business in the State of Oregon, CM/GC shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies, or other regulatory bodies, relative to the resultant Contract. CM/GC shall maintain its legal capacity to perform the services set forth under the Contract.
- d. **Recyclable Products.** The CM/GC shall use recyclable products to the maximum extent economically feasible in the performance of the Contract Work set forth in this document.
- e. **Federal Funding Source.** The work under the contract resulting from this solicitation shall be funded by the Department of Environmental Quality through the Clean Water State Revolving Loan program. The selected contractor shall work with the City to ensure all forms, documentation and audits are completed in compliance with funding agency requirements. The funding agency requires all subcontractors to have completed any required forms and documentation prior to any Work. Copies of all required funding agency forms for subcontractors will be provided to the City by the Prime Contractor. The CWSRF Construction Management/General Contractor Alternative Contracting Process document includes the requirements for DEQ review of subcontractor bid packages and awards that must be followed. Requirements of the Clean Water State Revolving Loan program are available on the program website: <https://www.oregon.gov/deq/wq/cwsrf/pages/default.aspx>.
- f. **Disadvantage Business Enterprises.** Owner is committed to increasing participation of disadvantaged business enterprises in Owner business opportunities. Contractor acknowledges the requirement to employ the six good-faith efforts to achieve Minority Business Enterprises, Women Business Enterprises, and Small Businesses in Rural Areas participation. Established overall DBE goals are provided in the CWSRF Fair Share Objectives under Subpart D of 40 C.F.R. Part 33.



The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out those requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies. The contractor must comply with the following requirements:

- i. A prime contractor must pay its subcontractor(s) no more than 30 days from the prime contractor's receipt of payment from the Owner.
- ii. The Owner must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.
- iii. If a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor must employ the Six Good Faith Efforts as described in 40 C.F.R. Part 33.301 if soliciting a replacement subcontractor.
- iv. A prime contractor must employ the Six Good Faith Efforts even if the prime contractor has achieved its Fair Share Objectives under Subpart D of 40 C.F.R. Part 33.

- g. American Iron and Steel.** The Contractor acknowledges to and for the benefit of the City of Sandy ("Purchaser") and the State of Oregon (the "State") that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirements") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirements, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or and damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

**CM/GC has the power and authority to enter into and perform this Contract. The persons executing this Contract on behalf of CM/GC, have the actual authority to bind CM/GC to the terms of this Contract.**

**For the CM/GC**

**For the City**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Jordan Wheeler, City General Manager

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

# **EXHIBIT A**

## **City of Sandy, Oregon CONSTRUCTION MANAGER/GENERAL CONTRACTOR GENERAL CONDITIONS**

## CM/GC GENERAL CONDITIONS

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## CM/GC GENERAL CONDITIONS

### SECTION A GENERAL PROVISIONS

#### **A.1 DEFINITION OF TERMS**

In the Contract Documents the following terms shall be as defined below:

**ARCHITECT/ENGINEER**, means the Person appointed by the City to make drawings and specifications and, to provide contract administration of the Work contemplated by the Contract to the extent provided herein or by supplemental instruction of City (under which City may delegate responsibilities of the City's Authorized Representative to the Architect/Engineer).

**BENEFICIAL OCCUPANCY**, means the point in time where the City will occupy a portion of the work for its intended use as defined by Substantial Completion, but prior to the Substantial Completion of the entirety of the Work (as in Phased Project completion).

**CHANGE ORDER**, means a written order issued by the City's Authorized Representative to the CM/GC requiring a change in the Work within the general scope of the Contract Documents, issued under the changes provisions of Section D.1 in administering the Contract, including City's written change directives as well as changes reflected in a writing executed by the parties to this Contract and, if applicable, establishing a Contract Price or Contract Time adjustment for the changed Work.

**CLAIM**, means a demand by CM/GC pursuant to Section D.3 for review of the denial of CM/GC's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, submitted in accordance with the requirements and within the time limits established for review of Claims in these General Conditions.

**CONTRACT**, means the written agreement between the City and the CM/GC comprised of the Contract Documents which describe the Work to be done and the obligations between the parties.

**CONTRACT DOCUMENTS**, means the Solicitation Document and addenda thereto, the City of Sandy CMGC Contract form, CM/GC General Conditions, Supplemental General Conditions, if any, the accepted Offer, Plans, Specifications, amendments and Change Orders.

**CONTRACT PERIOD**, as set forth in the Contract Documents, means the total period of time beginning with the issuance of the Notice to Proceed and concluding upon Final Completion.

**CONTRACT PRICE**, means the total of the awarded Offer amount, as increased or decreased by the price of approved alternates and Change Orders.

**CONTRACT TIME**, means any incremental period of time allowed under the Contract to complete any portion of the Work as reflected in the project schedule.

**CM/GC**, CM/GC means the Person awarded the Contract for the Work contemplated and is the same Person identified and referred to in the in the CM/GC Contract as the 'CM/GC'. May also be referred to as "Contractor" in the Contract Documents.

**DAYS**, are calendar days, including weekdays, weekends and holidays, unless otherwise specified.

**DIRECT COSTS**, means, unless otherwise provided in the Contract Documents, the cost of materials, including sales tax, cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; project specific insurance; bond premiums, rental cost of equipment, and machinery required for execution of the work; and the additional costs of field personnel directly attributable to the Work.

**CITY**, means the City of Sandy, Oregon.

**CITY'S AUTHORIZED REPRESENTATIVE**, means those individuals identified in writing by the City to act on behalf of the City for this project. City may elect, by written notice to CM/GC, to delegate certain duties of the City's Authorized Representative to more than one party, including without limitation, to an Architect/Engineer. However, nothing in these General Conditions is intended to abrogate the separate design professional responsibilities of Architects under ORS Chapter 671 or of Engineers under ORS Chapter 672.

**FINAL COMPLETION**, means the final completion of all requirements under the Contract, including Contract Closeout as described in Section K but excluding Warranty Work as described in Section I.2, and the final payment and release of all retainage, if any, released.

**FORCE MAJEURE**, means an act, event or occurrence caused by fire, riot, war, acts of God, nature, sovereign, or public enemy, strikes, freight embargoes or any other act, event or occurrence that is beyond the control of the party to this Contract who is asserting Force Majeure.

**NOTICE TO PROCEED**, means the official written notice from the City stating that the CM/GC is to proceed with the Work defined in the Contract Documents. Notwithstanding the Notice to Proceed, CM/GC shall not be authorized to proceed with the Work until all initial Contract requirements, including the Contract, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to City in a suitable form.

**OFFER**, means an offer to complete a specific scope for a set price in connection with an invitation to bid and a proposal in connection with a request for proposals.

**OFFEROR**, means an entity that submits an Offer in connection with an invitation to bid and a proposer in connection with a request for proposals.

**OVERHEAD**, means those items which may be included in the CM/GC's markup (general and administrative expense and profit) and that shall not be charged as Direct Cost of the Work, including without limitation such Overhead expenses as wages or salary of personnel above the level of foreman (i.e., superintendents and project managers), and expenses of CM/GC's offices at the job site (e.g. job trailer) including expenses of personnel staffing the job site office.

**PERSON**, means an entity doing business as a sole proprietorship, a partnership, a joint venture, a corporation, a limited liability company or partnership, or any other entity possessing the legal capacity to contract.

**PLANS**, means the drawings which show the location, type, dimensions, and details of the Work to be done under the Contract.

**PUNCHLIST**, means the list of Work yet to be completed or deficiencies which need to be corrected in order to achieve Final Completion of the Contract.

**RECORD DOCUMENT**, means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer to City, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.9.1 of these General Conditions, recording all Services performed.

**SOLICITATION DOCUMENT**, means an invitation to bid or request for proposal or request for quotes.

**SPECIFICATION**, means any description of the physical or functional characteristics of the Work, or of the nature of a supply, service or construction item. Specifications may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or may be attached to the Contract.

**SUBCONTRACTOR**, means a Person having a direct contract with the CM/GC, or another Subcontractor, to perform one or more items of the Work.

**SUBSTANTIAL COMPLETION**, means the date when the City accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose. Substantial Completion of facilities with operating systems occurs only after thirty (30) continuous Days of successful, trouble-free operation of the operating systems as provided in Section K.4.2. The Work shall not be considered Substantially Complete if items remaining to be completed cannot be completed without disruption to building occupants.

**SUBSTITUTIONS**, means items that in function, performance, reliability, quality, and general configuration are the same or better than the product(s) specified. Approval of any substitute item shall be solely determined by the City's Authorized Representative. The decision of the City's Authorized Representative is final.

**SUPPLEMENTAL GENERAL CONDITIONS**, means those conditions that remove from, add to, or modify these General

Conditions. Supplemental General Conditions may be included in the Solicitation Document or may be a separate attachment to the Contract.

**WORK**, means the furnishing of all materials, equipment, labor, transportation, services and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out of duties and obligations imposed by the Contract Documents.

## **A.2 SCOPE OF WORK**

The Work contemplated under this Contract includes all labor, materials, transportation, equipment, expense and services for, and incidental to, the completion of all construction work in connection with the project described in the Contract Documents. The CM/GC shall perform all Work necessary so that the project can be legally occupied and fully used for the intended use as set forth in the Contract Documents.

## **A.3 INTERPRETATION OF CONTRACT DOCUMENTS**

A.3.1 Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:

- (1) Contract amendments and Change Orders, with those of later date having precedence over those of an earlier date, including the GMP Amendment;
- (2) The Supplemental General Conditions;
- (3) The City of Sandy Construction Manager/General Contractor Contract Form;
- (4) The General Conditions
- (5) The Plans and Specifications
- (6) The Solicitation Document and any addenda thereto;
- (7) The accepted Offer.

A.3.2 In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the City or City's Authorized Representative's interpretation in writing.

A.3.3 If the CM/GC finds discrepancies in, or omissions from the Contract Documents, or if the CM/GC is in doubt as to their meaning, the CM/GC shall at once notify the City or City's Authorized Representative. Matters concerning performance under, and interpretation of requirements of, the Contract Documents will be decided by the City's Authorized Representative. Responses to CM/GC's requests for interpretation of Contract Documents will be made in writing by City's Authorized Representative within any time limits agreed upon or otherwise with reasonable promptness. Interpretations and decisions of the City's Authorized Representative will be consistent with the intent of and reasonably inferable from the Contract Documents. CM/GC shall not proceed without direction in writing from the City's Authorized Representative.

A.3.4 References to standard specifications, manuals, codes of any technical society, organization or association, to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect in the jurisdiction where the project is occurring on the first published date of the Solicitation Document, except as may be otherwise specifically stated.

**A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE**

- A.4.1 It is understood that the CM/GC, before submitting an Offer, has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work and the sources of supply for materials. The City will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the CM/GC as a result of the CM/GC's failure to acquire full information in advance in regard to all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the City, or with the Architect/Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.
- A.4.2 City shall make available to CM/GC, and CM/GC shall study, the results of such test borings and information that City has concerning subsurface conditions and site geology. CM/GC shall inform City of any other site investigation, analysis, study, or test conducted by or for CM/GC or its agents and shall make the results available to City upon City's request.
- A.4.3 Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, CM/GC shall have the duty to make inquiry of the City and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Contract requirements.
- A.4.4 Any design errors or omissions noted by the CM/GC shall be reported promptly to the City's Authorized Representative, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules and regulations.
- A.4.5 If the CM/GC believes that additional cost or Contract Time is involved because of clarifications or instructions issued by the City's Authorized Representative in response to the CM/GC's notices or requests for information, the CM/GC must submit a written request to the City's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than twenty (20) business days after receipt by CM/GC of the clarifications or instructions issued. If the City's Authorized Representative denies CM/GC's request for additional compensation, additional Contract Time, or other relief that CM/GC believes results from the clarifications or instructions, the CM/GC may proceed to file a Claim under Section D.3, Claims Review Process. If the CM/GC fails to perform the obligations of Sections A.4.1 to A.4.3, the CM/GC shall pay such costs and damages to the City as would have been avoided if the CM/GC had performed such obligations.

**A.5 INDEPENDENT CONTRACTOR STATUS**

The service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. CM/GC represents and warrants that it is not an officer, employee or agent of the City.

**A.6 RETIREMENT SYSTEM STATUS AND TAXES**

CM/GC represents and warrants that it is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment received under this Contract. CM/GC will not be eligible for any benefits from these Contract payments of federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual. Unless the CM/GC is subject to backup withholding, City will not withhold from such payments any amount(s) to cover CM/GC's federal or state tax obligations.

**A.7 GOVERNMENT EMPLOYMENT STATUS**

- A.7.1 If this payment is to be charged against federal funds, CM/GC represents and warrants that it is not currently employed by the Federal Government. This does not preclude the CM/GC from holding another contract with the Federal Government.
- A.7.2 CM/GC represents and warrants that CM/GC is not an employee of the City for purposes of performing Work under this Contract.



**SECTION B**  
**ADMINISTRATION OF THE CONTRACT**

**B.1 CITY'S ADMINISTRATION OF THE CONTRACT**

- B.1.1 The City's Authorized Representative will provide administration of the Contract as described in the Contract Documents (1) during construction (2) until final payment is due and (3) during the one-year period for correction of Work. The City's Authorized Representative will act on behalf of the City to the extent provided in the Contract Documents, unless modified in writing in accordance with other provisions of the Contract. In performing these tasks, the City's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.
- B.1.2 The City's Authorized Representative will visit the site at intervals appropriate to the stage of the CM/GC's operations (1) to become generally familiar with and to keep the City informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the City against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The City's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The City's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.
- B.1.3 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the City and CM/GC shall endeavor to communicate with each other through the City's Authorized Representative or designee about matters arising out of or relating to the Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the CM/GC. Communications by and with separate CM/GCs shall be through the City's Authorized Representative.
- B.1.4 Based upon the Architect/Engineer's evaluations of the CM/GC's Application for Payment, or unless otherwise stipulated by the City's Authorized Representative, the Architect/Engineer will review and certify the amounts due the CM/GC and will issue Certificates for Payment in such amounts.

**B.2 CM/GC'S MEANS AND METHODS; MITIGATION OF IMPACTS**

- B.2.1 The CM/GC shall supervise and direct the Work, using the CM/GC's best skill and attention. The CM/GC shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the CM/GC shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.
- B.2.2 The CM/GC is responsible to protect and maintain the Work during the course of construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.
- B.2.3 The CM/GC is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. The CM/GC shall enforce strict discipline and good order among CM/GC's employees and other persons carrying out the Work. The CM/GC shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them.

**B.3 MATERIALS AND WORKMANSHIP**

- B.3.1 The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described. All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, CM/GC shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.
- B.3.2 The CM/GC is responsible to perform the Work as required by the Contract Documents. Defective Work shall be corrected at the CM/GC's expense.

- B.3.3 Work done and materials furnished shall be subject to inspection and/or observation and testing by the City's Authorized Representative to determine if they conform to the Contract Documents. Inspection of the Work by the City's Authorized Representative does not relieve the CM/GC of responsibility for the Work in accordance with the Contract Documents. The review by City or Architect of any method of construction, invention, appliance, process, article, device, or material of any kind is limited to a review for adequacy for the Work and is not approval for use by CM/GC in violation of any patent or other rights of any person or entity.
- B.3.4 CM/GC shall furnish adequate facilities, as required, for the City's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.
- B.3.5 The CM/GC shall furnish Samples of materials for testing by the City's Authorized Representative and include the cost of the Samples in the Contract Price.
- B.3.6 CM/GC shall provide materials in sufficient quantities on hand at such times as to insure uninterrupted progress of Work and shall store materials properly and protect materials as required.
- B.3.7 For all materials and equipment specified or indicated in the Drawings, CM/GC shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended. CM/GC shall furnish incidental items not indicated on Drawings, nor mentioned in the Specifications, that can be legitimately and reasonably inferred to belong to the Work described, or necessary in good practice to provide a complete assembly or system, as though itemized here in every detail. In all instances, CM/GC shall install material and equipment in strict accordance with each manufacturer's most recent published recommendations and specifications. CM/GC shall be responsible for appropriately sequencing the Work and for verification of suitability of prior work before subsequent construction activities.
- B.3.8 CM/GC shall coordinate submittal approvals and place orders for materials and/or equipment so that delivery of same will be made without delays to the Work. CM/GC shall, upon City's reasonable request, provide documentary evidence that orders have been placed.

#### **B.4 PERMITS**

CM/GC shall obtain all trade permits necessary to comply with specific trade permit requirements. All other permits shall be supplied by City.

#### **B.5 COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS**

- B.5.1 CM/GC shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and the Contract. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, CM/GC expressly agrees to comply with the following as applicable:
- (1) Title VI and VII of Civil Rights Act of 1964, as amended;
  - (2) Section 503 and 504 of the Rehabilitation Act of 1973, as amended;
  - (3) the Health Insurance Portability and Accountability Act of 1996;
  - (4) the Americans with Disabilities Act of 1990, as amended;
  - (5) ORS Chapter 659A; as amended
  - (6) all regulations and administrative rules established pursuant to the foregoing laws; and
  - (7) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

- B.5.2 CM/GC shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and
- (1) CM/GC shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, in the awarding of subcontracts (ORS 279A.110).
  - (2) If CM/GC is performing work as a landscape contractor as defined in ORS 671.520(2), CM/GC must have a current, valid landscape contractor's license issued under ORS 671.560.
  - (3) If CM/GC is performing work as a Contractor as defined in ORS 701.005(2), CM/GC must have a current, valid construction contractor's license issued under ORS 701.026.
  - (4) CM/GC shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.
  - (5) CM/GC will notify the City immediately if any license, permit, or certification required for performance of this Contract will cease to be in effect for any reason.
- B.5.3 Unless contrary to federal law, CM/GC shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the CM/GC.
- B.5.4 Unless contrary to federal law, CM/GC shall certify that each landscape contractor performing Work under this Contract holds a valid landscape contractor's license in accordance with ORS 671.560.
- B.5.5 The following notice is applicable to Contractor or CM/GC who performs excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.
- B.5.6 Because the Work will include demolition work, pursuant to ORS 279C.510 the CM/GC shall salvage or recycle construction and demolition debris, if feasible and cost effective.
- B.5.7 Failure to comply with any or all of the requirements of B.5.1 through B.5.6 shall be a breach of Contract and constitute grounds for Contract termination. CM/GC will bear all costs arising from Work performed that it knew, or through exercise of reasonable care should have known, was contrary to any applicable laws, ordinance, rules, or regulations.

**B.6 SUPERINTENDENCE /PROJECT MANAGEMENT**

- B.6.1 CM/GC shall keep on the site, during the progress of the Work, a competent superintendent and any necessary assistants who shall be satisfactory to the City and who shall represent the CM/GC on the site and who will be empowered to obligate the CM/GC. Directions given to the superintendent by the City's Authorized Representative shall be confirmed in writing to the CM/GC. The Superintendent shall be fluent in both written and verbal English and be able to effectively communicate with the City's Representatives
- B.6.2 The Superintendent, Project Manager and Project Engineer/Assistant Project Manager (if applicable) shall not be removed from the Project by the CM/GC without the prior written authorization of the City. Requests to replace personnel must be made a minimum of thirty (30) calendar days prior to the proposed date of replacement.
- B.6.3 CM/GC shall at all times enforce strict discipline and good order among its subcontractors and employees and shall not employ or work any unfit person, or anyone not skilled in work assigned to that person. City may require the CM/GC to permanently remove any of its officers, agents, employees, or subcontractors from all City properties in cases where City determines in its sole discretion that removal of such is in City's best interests. CM/GC shall not employ any person whom the City may deem incompetent or unfit on the Project except with the prior written consent of the City. City may require removal and replacement of any or all construction superintendents, project managers, foreman, or other staff from the Project upon ten (10) business days written notice to the CM/GC.

B.6.4 CM/GC shall maintain at least one (1) set of reports on the Project prepared by CM/GC's employee(s) present on site, and which includes following information: a brief description of all Work performed on that day; a summary of all pertinent events and/or occurrences on that day including records of all tests and inspections; a list of all subcontractor(s) working on that day; a list of each CM/GC employee working on that day; the total hours worked for each employee; a complete list of all equipment on the Project that day, whether in use or not; the time Work commenced and ended; weather conditions; accidents or injuries; and Work progress made for that day ("Daily Job Reports"). CM/GC shall keep the Daily Job Reports current and in good order and shall make current copies available to City upon request.

#### **B.7 INSPECTION**

B.7.1 City's Authorized Representative and project team shall have safe access to the Work at all times.

B.7.2 Inspection of the Work will be made by the City's Authorized Representative and its' designees at its discretion. The City's Authorized Representatives will have authority to reject Work that does not conform to the Contract Documents. Any Work found to be not in conformance with the Contract Documents, in the discretion of the City's Authorized Representative, shall be removed and replaced at the CM/GC's expense.

B.7.3 CM/GC shall make or obtain at the appropriate time all tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction. Unless otherwise provided, the CM/GC shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the City, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The CM/GC shall give the City's Authorized Representative timely notice of when and where tests and inspections are to be made so that the City's Authorized Representative(s) may be present for such procedures. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the CM/GC and promptly delivered to the City's Authorized Representative(s).

B.7.4 As required by the Contract Documents, Work done or material used without inspection or testing by the City's Authorized Representative(s) may be ordered removed at the CM/GC's expense.

B.7.5 If directed to do so any time before the Work is accepted, the CM/GC shall uncover portions of the completed Work for inspection. After inspection, the CM/GC shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without sufficient notice to the City's Authorized Representative, the uncovering and restoration shall be done at the CM/GC's expense. If the Work uncovered is acceptable and was done with sufficient notice to the City's Authorized Representative(s), the uncovering and restoration will be paid for as a Change Order.

B.7.6 If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the City's Authorized Representative's and Architect/Engineer's services and expenses, shall be at the CM/GC's expense.

(1) CM/GC shall be granted one (1) re-inspection for each re-inspection required by the Contract Documents. Additional inspections required beyond the initial and re-inspection shall be the responsibility of the CM/GC. The City's Testing and Inspection firm shall not unreasonably require re-inspections.

B.7.7 When the United States government participates in the cost of the Work, or the City has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or in close proximity to third party facilities, representatives of these organizations have the right to inspect the Work affecting their interests or property. Their right to inspect shall not make them a party to the Contract and shall not interfere with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to the CM/GC, through the City's Authorized Representative.

#### **B.8 SEVERABILITY**

If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

#### **B.9 ACCESS TO RECORDS**

B.9.1 CM/GC shall keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Change Orders and addenda, in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the City's Authorized Representative access thereto.

B.9.2 CM/GC shall retain and the City and its duly authorized representatives shall have access to, for a period not less than six (6) years, all Record Documents, financial and accounting records, and other books, documents, papers and records of CM/GC which are pertinent to the Contract including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Contract is involved in a dispute resolution process, CM/GC shall retain all such records until all disputes are resolved. The City and/or its agents shall continue to be provided full access to the records during any dispute resolution process.

#### **B.10 WAIVER**

Failure of the City to enforce any provision of this Contract shall not constitute a waiver or relinquishment by the City of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

#### **B.11 SUBCONTRACTS AND ASSIGNMENT**

B.11.1 CM/GC shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these General Conditions, and to assume toward the CM/GC all of the obligations and responsibilities which the CM/GC assumes toward the City thereunder, unless (1) the same are clearly inapplicable to the subcontract at issue because of legal requirements or industry practices, or (2) specific exceptions are requested by CM/GC and approved in writing by City. Where appropriate, CM/GC shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level. CM/GC shall include assignment provisions in each subcontract as indicated in the termination provisions set forth in these General Conditions.

B.11.2 At City's request, CM/GC shall submit to City prior to their execution either CM/GC's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If City disapproves such form, CM/GC shall not execute the form until the matters disapproved are resolved to City's satisfaction. City's review, comment upon or approval of any such form shall not relieve CM/GC of its obligations under this Agreement or be deemed a waiver of such obligations of CM/GC.

B.11.3 CM/GC shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the City. No such written approval shall relieve CM/GC of any obligations of this Contract, and any transferee shall be considered the agent of the CM/GC and bound to perform in accordance with the Contract Documents. CM/GC shall remain liable as between the original parties to the Contract as if no assignment had occurred.

B.11.4 CM/GC shall first notify City prior to any change in the name or legal nature or status of CM/GC's entity. City shall determine if CM/GC's intended change is permissible while performing this Contract.

#### **B.12 SUCCESSORS IN INTEREST**

The provisions of this Contract shall be binding upon and shall accrue to the benefit of the parties to the Contract and their respective permitted successors and assigns.

#### **B.13 CITY'S RIGHT TO DO WORK**

City reserves the right to perform other or additional work at or near the project site with other forces than those of the CM/GC. If such work takes place within or next to the project site, CM/GC will coordinate work with the other contractors or forces, cooperate with all other contractors or forces, carry out the Work in a way that will minimize interference and delay for all forces involved, place and dispose of materials being used so as not to interfere with the operations of another, and join the Work with the work of the others in an acceptable manner and perform it in proper sequence to that of the others. The City's Authorized Representative will resolve any disagreements that may arise between or among CM/GC and the other contractors over the method or order of doing all work (including the Work). In case of unavoidable interference, the City's Authorized Representative will establish work priority (including the Work) which generally will be in the sequence that the contracts were awarded.

#### **B.14 OTHER CONTRACTS**

In all cases and at any time, the City has the right to execute other contracts related to or unrelated to the Work of this Contract. The CM/GC of this Contract will fully cooperate with any and all other contractors without additional cost to the City in the manner described in section B.13. Specifically and without limitation,

(1) CM/GC shall coordinate and work in conjunction with the City and City's third party consultants to proactively commission the Project in preparation of City occupancy and acceptance.

(2) CM/GC shall be granted one (1) re-inspection review for each inspection activity required by the Contract. Additional reviews required beyond the initial and re-inspections shall be the responsibility of the CM/GC. City and City's third party consultants shall not unreasonably require re-inspections. The City reserves the right to make the final determination if a re-inspection is required or if CM/GC may proceed by incorporating the inspection findings.

(3) CM/GC shall provide City with a copy of all written communications between CM/GC and City's consultants at the same time as that communication is made to such consultants, including, without limitation, all requests for information, correspondence, submittals, notices, and change order proposals. CM/GC shall confirm oral communications in writing.

(4) CM/GC is liable for costs incurred by City for professional services for interpretations or decisions of matters where the information sought is equally available to the party making the request.

#### **B.15 GOVERNING LAW**

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

#### **B.16 LITIGATION**

Any Claim between City and CM/GC that arises from or relates to this Contract and that is not resolved through the Claims Review Process in Section D.3 shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States City Court for the City of Oregon. Any trial will be to the court without a jury. In no event shall this section be construed as a waiver by the City of defense or immunity, whether sovereign immunity, governmental immunity, or otherwise, from any claim or from the jurisdiction of any court. CM/GC BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16.

#### **B.17 ALLOWANCES**

B.17.1 The CM/GC shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the City may direct.

B.17.2 Unless otherwise provided in the Contract Documents:

(1) when finally reconciled, allowances shall cover the cost to the CM/GC of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

(2) CM/GC's costs for unloading and handling at the site, labor, installation costs, Overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances;

(3) Unless City requests otherwise, CM/GC shall provide to City a proposed fixed price for any allowance work prior to its performance.

#### **B.18 SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

B.18.1 The CM/GC shall prepare and keep current, for the approval of City's Authorized Representative, a schedule and list of submittals which is coordinated with the CM/GC's construction schedule and allows the Architect/Engineer reasonable time, but in no case less than ten (10) business days, to review submittals. City reserves the right to approve the schedule and list of submittals. Submittals include, without limitation, Shop Drawings, Product Data, and Samples which are described below:

(1) Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the CM/GC or a Subcontractor (including any sub-subcontractor), manufacturer, supplier or distributor to illustrate some portion of the Work.

(2) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM/GC to illustrate materials or equipment for some portion of the Work.

(3) Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

B.18.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the CM/GC proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of submittals by the Architect/Engineer or City is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer or City, of any construction means, methods, techniques, sequences or procedures, all of which remain the responsibility of the CM/GC as required by the Contract Documents. The Architect/Engineer's or City's review of the CM/GC's submittals shall not relieve the CM/GC of its obligations under the Contract Documents. The Architect/Engineer's or City's review of a specific item shall not indicate approval of an assembly of which the item is a component. Informational submittals upon which the Architect/Engineer or City is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned without action.

B.18.3 The CM/GC shall review for compliance with the Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the City or of separate CM/GCs. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the CM/GC may be returned without action.

(1) CM/GC shall be granted one (1) resubmittal review for each submittal required by the Contract Documents. Additional reviews required beyond the initial submittal and re-submittal shall be the responsibility of the CM/GC. A/E shall not unreasonably require re-submittals. The City reserves the right to make the final determination if a re-submittal is required or if CM/GC may proceed by incorporating A/E's comments.

B.18.4 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the CM/GC represents that the CM/GC has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

B.18.5 The CM/GC shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect/Engineer. CM/GC shall be responsible to provide submittals for A/E and City review in a timely manner to allow sufficient time for review and comment. Delay claims associated with submittals lacking appropriate review time allowances shall not be considered.

B.18.6 The Work shall be in accordance with approved submittals except that the CM/GC shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's or City's review or approval of Shop Drawings, Product Data, Samples or similar submittals unless the CM/GC has specifically informed the Architect/Engineer and City in writing of such deviation at the time of submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (ii) a Change Order has been executed by City authorizing the deviation. The CM/GC shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by any review or approval thereof.

B.18.7 In the event that City elects not to have the obligations and duties described under this Section B.18 performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by City on the project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by the City's Authorized Representative.

#### **B.19 SUBSTITUTIONS**

The CM/GC may make Substitutions only with the consent of the City and at its sole discretion, after evaluation by the City's Authorized Representative and only in accordance with a Change Order. Substitutions shall be subject to the requirements of the bid documents. By making requests for Substitutions, the CM/GC represents that the CM/GC has personally investigated the proposed substitute product; represents that the CM/GC will provide the same warranty for

the Substitution that the CM/GC would for the product originally specified unless approved otherwise; certifies that the cost data presented is complete and includes all related costs under this Contract including redesign costs, and waives all claims for additional costs related to the Substitution which subsequently become apparent; and will coordinate the installation of the accepted Substitution, making such changes as may be required for the Work to be completed in all respects.

**B.20 USE OF PLANS AND SPECIFICATIONS**

Plans, Specifications and related Contract Documents, including those in electronic format, furnished to CM/GC by City or City's Architect/Engineer shall be used solely for the performance of the Work under this Contract. CM/GC and its Subcontractors and suppliers are authorized to use and reproduce applicable portions of such documents appropriate to the execution of the Work, but shall not claim any ownership or other interest in them beyond the scope of this Contract, and no such interest shall attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by City.

**B.21 FUNDS AVAILABLE AND AUTHORIZED**

City reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within the City's appropriation or limitation.

**B.22 NO THIRD PARTY BENEFICIARIES**

City and CM/GC are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**B.23 RULES REGARDING CONTACT WITH THE PRESS AND PUBLICATIONS**

CM/GC shall issue no news release, press release, or other statement to members of the news media or any other publication regarding this Agreement or the Project within one (1) year of Project completion without City's prior written authorization. CM/GC shall not post or publish any textual or visual representations of the Project without approval of City.

**SECTION C  
WAGES, LABOR, AND PAYMENT**

**C.1 PREVAILING WAGE RATES ON PUBLIC WORKS**

C.1.1 This Contract is subject to payment of prevailing wages under ORS 279C.800 to 279C.870. Each worker the CM/GC, subcontractor or other person who is party to the contract uses in performing all or part of the Contract must be paid not less than the applicable prevailing rate of wage for each trade or occupation as defined by the Director of the State of Oregon Bureau of Labor and Industries ("BOLI") in the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon. The latest prevailing wage rates for public works contracts in Oregon are contained in the following publications: The Prevailing Wage Rates for Public Works Projects in Oregon, the PWR Apprenticeship Rates, and any amendments to the PWR rates or Apprenticeship rates. Such publications can be reviewed electronically at [http://www.boli.state.or.us/BOLI/WHD/PWR/pwr\\_state.shtml](http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml).

C.1.2 This Contract is also subject to payment of prevailing wages under the federal Davis-Bacon Act (40 U.S.C. 3141 et seq.). Notwithstanding Section C.1.1 of this Section, if this Contract is also subject to payment of prevailing wages under the Davis-Bacon Act, CM/GC and any subcontractors must pay the higher of the federal prevailing wage rate or the state prevailing wage. The latest federal prevailing wage rates can be reviewed electronically at <http://www.wdol.gov/Index.aspx> (Search for Oregon, Clackamas County, Building Construction Type). Contractors shall follow all prevailing wage rules including posting the Davis Bacon Poster at the worksite and submitting certified payroll records. The poster is available at <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>. The payroll form is at <http://www.dol.gov/whd/forms/wh347instr.htm>. If the Contract is subject to federal prevailing wages, CM/GC and any subcontractors must pay the higher of the federal prevailing wage rate (under the Davis-Bacon Act) or the state prevailing wage.

C.1.3 The applicable prevailing wages under subsections and, if applicable, C.1.2, will be those in effect on the start of the Construction Phase as described in Section 3.b of the CM/GC Contract, and shall be incorporated by reference in the GMP Amendment or, if applicable, the Early Work Amendment.



C.1.4 During the Construction Phase, CM/GC and all Subcontractors will keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.

C.1.5 The City will pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee will be paid to the Commissioner under the administrative rule of the Commissioner.

C.1.6 CM/GC or any Subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it will post notice describing such plans in a conspicuous and accessible place in or about the Project- during the Construction Phase. The notice will contain information on how and where to make claims and where to obtain future information.

**C.2 PAYROLL CERTIFICATION; ADDITIONAL RETAINAGE; FEE REQUIREMENTS**

C.2.1 In accordance with ORS 279C.845, the CM/GC and every Subcontractor shall submit written certified statements to the City's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the CM/GC or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the CM/GC or the Subcontractor that the CM/GC or Subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the CM/GC or Subcontractor's best knowledge and belief. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Certified statements for each week during which the CM/GC or Subcontractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month.

The CM/GC and Subcontractors shall preserve the certified statements for a period of six (6) years from the date of completion of the Contract.

C.2.2 The City shall retain 25 percent of any amount earned by the CM/GC on this public works project until the CM/GC has filed the certified statements required by section C.2.1. The City shall pay to the CM/GC the amount retained under this subsection within 14 days after the CM/GC files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.

C.2.3 The CM/GC shall retain 25 percent of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with the City the certified statements required by C.2.1. Before paying any amount retained under this subsection, the CM/GC shall verify that the first-tier Subcontractor has filed the certified statement, Within 14 days after the first-tier Subcontractor files the required certified statement the CM/GC shall pay the first-tier Subcontractor any amount retained under this subsection.

**C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS**

C.3.1 Pursuant to ORS 279C.505 and as a condition to CM/GC's performance hereunder, the CM/GC shall:

(1) Make payment promptly, as due, to all persons supplying to CM/GC labor or materials for the prosecution of the Work provided for in this Contract.

(2) Pay all contributions or amounts due the State Industrial Accident Fund from such CM/GC or Subcontractor incurred in the performance of the Contract.

(3) Not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished. CM/GC will not assign any claims that CM/GC has against City, or assign any sums due by City, to Subcontractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Subcontractors a claim or standing to make a claim against the City.

(4) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(5) Demonstrate that an employee drug testing program is in place as follows:

(A) CM/GC represents and warrants that CM/GC has in place at the time of the execution of this contract, and shall maintain during the term of this Contract, a qualifying employee drug testing program for its employees that includes, at a minimum, the following:

- i. a written employee drug testing policy,
- ii. required drug testing for all new subject employees or, alternatively, required testing of all subject employees every 12 months on a random selection basis, and
- iii. requested testing of a subject employee when the CM/GC has reasonable cause to believe the subject employee is under the influence of drugs.

A drug testing program that meets the above requirements will be deemed a "qualifying employee drug testing program". For the purposes of this section, an employee is a "subject employee" only if that employee will be working on the project job site.

(B) CM/GC shall require each subcontractor providing labor for the Project to:

- i. demonstrate to the CM/GC that it has a qualifying employee drug testing program for the Subcontractor's subject employees, and represent and warrant to the CM/GC that the qualifying employee drug testing program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract, or
- ii. require that the Subcontract's subject employees participate in the CM/GC's qualifying employee drug testing program for the duration of the Project.

C.3.2 Pursuant to ORS 279C.515, and as a condition to City's performance hereunder, CM/GC agrees:

(1) If City becomes aware that CM/GC has failed, neglected or refused to make prompt payment of any claim for labor or services furnished to the CM/GC or a Subcontractor by any person in connection with the project as such claim becomes due, the proper officer(s) representing the City may pay the claim and charge the amount of the payment against funds due or to become due CM/GC under this Contract within ten (10) business days written notice to CM/GC. Payment of claims in this manner shall not relieve the CM/GC or the CM/GC's surety from obligation with respect to any unpaid claims. Notwithstanding any other remedies available to the City,

(2) If the CM/GC or a first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within thirty (30) Days after receipt of payment from City or a CM/GC, the CM/GC or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-Day period that payment is due and ending upon final payment, unless payment is subject to a good faith dispute. The rate of interest charged to the CM/GC or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-Day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve City that includes Oregon on the date that is thirty (30) Days after the date when payment was received from City or from the CM/GC, but the rate of interest shall not exceed thirty (30) percent. The amount of interest may not be waived.

(3) If the CM/GC or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute. Every contract related to this Contract shall contain a similar clause.

C.3.3 Pursuant to ORS 279C.545, Construction workers employed by the CM/GC or its Subcontractor will be foreclosed from the right to collect for any overtime under this Contract unless a claim for payment is filed with the CM/GC or Subcontractor within 90 days from the completion of the Contract, providing the CM/GC or Subcontractor has:

(1) Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the Work, and

(2) Maintained such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

C.3.4 Pursuant to ORS 279C.580, CM/GC shall include in each subcontract for property or services entered into by the CM/GC and a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:

(1) A payment clause that obligates the CM/GC to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) Days out of such amounts as are paid to the CM/GC by City under the Contract;

(2) An interest penalty clause that obligates the CM/GC if payment is not made within thirty (30) Days after receipt of payment from City, to pay to the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (a) of this subsection. CM/GC or first-tier Subcontractor shall not be obligated to pay an interest penalty if the only reason that the CM/GC or first-tier Subcontractor did not make payment when payment was due is that the CM/GC or first-tier Subcontractor did not receive payment from City or CM/GC when payment was due. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and shall be computed at the rate specified in ORS 279C.515(2).

(3) A clause which requires each of CM/GC's Subcontractor's to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first-tier Subcontractor shall pay its lower-tier Subcontractors and suppliers in accordance with the provisions of subsections (a) and (b), above and requiring each of their Subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.

C.3.5 All employers, including CM/GC, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. CM/GC shall ensure that each of its Subcontractors complies with these requirements.

#### **C.4 PAYMENT FOR MEDICAL CARE**

Pursuant to ORS 279C.530, and as a condition to City's performance hereunder, CM/GC shall promptly, as due, make payment to any person, partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such CM/GC, all sums of which the CM/GC agrees to pay for such services and all moneys and sums which the CM/GC has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

#### **C.5 HOURS OF LABOR**

As a condition to City's performance hereunder, CM/GC shall comply with ORS 279C.520 and 279C.540, as amended from time to time and incorporated herein by this reference:

Except as may otherwise be provided in an applicable collective bargaining agreement with a labor organization, CM/GC shall not employ and shall require that its Subcontractors not employ any person to perform construction work for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279A.055, the laborer shall be paid at least time and a half pay:

(1) For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive Days, Monday through Friday; and

(2) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive Days, Monday through Friday; and

(3) For all Work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279C.540(1)(b).

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

receiving overtime. Contractor shall and shall require its Subcontractors to give notice in writing to their employees who work under this Contract, 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 days per week that the employees may be required to work.

This Section C.5 shall not excuse CM/GC from completion of the Work within the time required under this Contract.

## **SECTION D CHANGES IN THE WORK**

### **D.1 CHANGES IN WORK**

D.1.1 The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the City's Authorized Representative, and then only in a manner consistent with the Agreement and, if not prohibited by the Agreement, the Change Order provisions of this Section D.1 and after any necessary approvals required by public contracting laws or the City's contracting rules have been obtained. Otherwise, a formal contract amendment is required, which shall not be effective until its execution by the parties to this Contract and all approvals required by public contracting laws or City's contracting rules have been obtained.

D.1.2 It is mutually agreed that changes in Plans, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of construction. Within the general scope of this Contract, the City's Authorized Representative may at any time, without notice to the sureties and without impairing the Contract, require changes consistent with this Section D.1. All Change Order Work shall be executed under the conditions of the Contract Documents. Such changes may include, but are not limited to:

- (1) Modification of specifications and design.
- (2) Increases or decreases in quantities.
- (3) Increases or decreases to the amount of Work.
- (4) Addition or elimination of any Work item.
- (5) Change in the duration of the project.
- (6) Acceleration or delay in performance of Work.
- (7) Deductive changes.

Deductive changes are those that reduce the scope of the Work, and shall be made by mutual agreement whenever feasible. In cases of suspension or partial termination under Section J, City reserves the right to unilaterally impose a deductive change and to self perform such Work, for which the provisions of B.13 (City's Right to Do Work) shall then apply.

Adjustments in compensation shall be made under the provisions of D.1.3, in which costs for deductive changes shall be based upon a Direct Costs adjustment together with the related percentage markup specified for profit, Overhead and other indirect costs, unless otherwise agreed to by City.

D.1.3 The City and CM/GC agree that Change Order Work shall be administered and compensated according to the following:

(1) *Unit pricing* may be utilized at the City's option when unit prices or solicitation alternates were provided that established the cost for additional Work, and a binding obligation exists under the Contract on the parties covering the terms and conditions of the additional Work.

(2) If the City elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate, *fixed pricing* may be used for Change Order Work. In fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth in D.1.3(c) shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded by City without adequate justification. Cost and price data relating to Change Orders shall be supplied by CM/GC to City upon request, but City shall be under no obligation to make such requests.

(3) In the event that unit pricing and fixed pricing are not utilized, then Change Order Work shall be performed on a *cost*



manufacturers or others not a party to this Contract, or lack of resolution of a dispute with City or any other person of matters arising out of or relating to the Contract. If CM/GC fails to submit its final payment application within sixty (60) business days after Substantial Completion, and CM/GC has not obtained written extension by City, all requests or Claims for additional costs or an extension of Contract Time shall be waived.

D.1.7 It is understood that changes in the Work are inherent in construction of this type. The number of changes, the scope of those changes, and the effect they have on the progress of the original Work cannot be defined at this time. The CM/GC is notified that numerous changes may be required and that there will be no compensation made to the CM/GC directly related to the number of changes. Each change will be evaluated for extension of Contract Time and increase or decrease in compensation based on its own merit.

## **D.2 DELAYS**

D.2.1 Delays in construction include "Avoidable Delays", which are defined in Section D.2.1.1, and "Unavoidable Delays", defined in Section D.2.1.2. Further, "Concurrent Delays" are defined in Section D.2.1.3 and "Offsetting Delays" defined in Section D.2.1.4.

(1) Avoidable Delays include any delays other than Unavoidable Delays, and include delays that otherwise would be considered Unavoidable Delays but that:

- (A) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the CM/GC or its Subcontractors.
- (B) Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work nor the completion of the whole Work within the Contract Time.
- (C) Do not impact activities on the accepted critical path schedule.
- (D) Are associated with the reasonable interference of other contractors engaged by the City that do not necessarily prevent the completion of the whole Work within the Contract Time.

(2) Unavoidable Delays include delays other than Avoidable Delays that are:

- (A) Caused by any actions of the City, City's Authorized Representative, or any other employee or agent of the City, or by separate contractor engaged by the City.
- (B) Caused by any site conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents. The CM/GC shall notify the City's Authorized Representative immediately of differing site conditions before the area has been disturbed. The City's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If CM/GC and the City's Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section D.1.5 for Change Order Work. If the City's Authorized Representative disagrees that a differing site condition exists and denies CM/GC's request for additional compensation or Contract Time, CM/GC may proceed to file a Claim under Section D.3, Claims Review Process.
- (C) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the CM/GC or its Subcontractors.
- (D) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the CM/GC, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:

- i. Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the

normal monthly average by twenty-five percent (25 %) or more.

- ii. daily rainfall equal to, or greater than, 0.75 inch at any time.

The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the Project site shall be considered the official agency of record for weather information.

(3) Concurrent Delays occur when two Avoidable or two Unavoidable Delays occur within a time frame where all or part of their durations overlap. The cumulative effect of the overlapping delays results in a total impact to the Project duration less than or equal to the cumulative sum of the individual delays or greater than or equal to the longer of the two Delays.

(4) Offsetting Delays occur when an Avoidable and an Unavoidable Delays occur within a time frame where all or part of their durations overlap. In some cases, Offsetting Delays occur where overlapping delays are incurred by both the City and the CM/GC, where the period of overlapping time negates any impact to the Project from the delays during that time frame. The impact of the overlap is that the total impact of the delays is lessened to due to the delays happening at, to some extent, the same time and therefore the project is only impacted once. The overall impact of Offsetting Delays is equal or less than the impact of the longer of the two delays.

D.2.2 Except as otherwise provided in ORS 279C.315, CM/GC shall not be entitled to additional compensation or additional Contract Time for Avoidable Delays.

D.2.3 In the event of Unavoidable Delays, based on principles of equitable adjustment, CM/GC may be entitled to the following:

(1) CM/GC may be entitled to additional compensation or additional Contract Time, or both, for Unavoidable Delays described in Section D.2.1.2 (1) and (2).

(2) CM/GC may be entitled to additional Contract Time for Unavoidable Delays described in Section D.2.1.2(3) and (4).

(3) In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section D.2.3 for Unavoidable Delays, other than requests for additional compensation or additional Contract Time for differing site conditions for which a review process is established under Section D.2.1.2 (2), CM/GC shall submit a written notification of the delay to the City's Authorized Representative within two (2) Days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time or the additional compensation, or both, as applicable, resulting from the delay. Within seven (7) Days after the cause of the delay has been mitigated, or in no case more than thirty (30) Days after the initial written notification, the CM/GC shall submit to the City's Authorized Representative, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay. If the City's Authorized Representative denies CM/GC's request for additional compensation or adjustment of Contract Time, the CM/GC may proceed to file a Claim under Section D.3, Claims Review Process.

(4) If CM/GC does not timely submit the notices required under this Section D.2., then unless otherwise prohibited by law, CM/GC's Claim shall be barred.

D.2.4 When submitting a request for compensation under D.2.3, CM/GC and the City shall take into account the cumulative impacts of Concurrent and Offsetting Delays that occurs within the same time frame the request for compensation covers.

D.2.5 All requests for compensation under this section shall require the CM/GC to submit a detailed Time Impact Analysis as outlined in the Specifications.

### **D.3 CLAIMS REVIEW PROCESS**

D.3.1 All CM/GC Claims shall be referred to the City's Authorized Representative for review. CM/GC's Claims, including Claims for additional compensation or additional Contract Time, shall be submitted in writing by CM/GC to the City's Authorized Representative within five (5) business days after a denial of CM/GC's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, provided that such initial request has been submitted in accordance with the requirements and within the time limits established in these General Conditions. Within twenty (20) business days after the initial Claim, CM/GC shall submit to the City's Authorized Representative, a complete and

detailed description of the Claim (the "Detailed Notice") that includes all information required by Section D.3.2. Unless the Claim is made in accordance with these time requirements, it shall be waived.

D.3.2 The Detailed Notice of the Claim shall be submitted in writing by CM/GC and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the CM/GC will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the City's Authorized Representative. The City's Authorized Representative and the City will not consider direct claims from Subs, suppliers, manufacturers, or others not a party to this Contract. CM/GC agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against City.

D.3.3 The City's Authorized Representative will review all Claims and take one or more of the following preliminary actions within ten (10) business days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from the CM/GC; (2) inform the CM/GC and City in writing of the time required for adequate review and response; (3) reject the Claim in whole or in part and identify the reasons for rejection; (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or (5) propose an alternate resolution.

D.3.4 The City's Authorized Representative's decision shall be final and binding on the CM/GC unless appealed by written notice to the City within fifteen (15) business days of receipt of the decision. The CM/GC must present written documentation supporting the Claim within fifteen (15) business days of the notice of appeal. After receiving the appeal documentation, the City shall review the materials and render a decision within twenty (20) business days after receiving the appeal documents.

D.3.5 The decision of the City shall be final and binding unless the CM/GC delivers to the City its requests for mediation, which shall be a non-binding process, within ten (10) business days of the date of the City's decision. The mediation process will be considered to have commenced as of the date the CM/GC delivers the request. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. Both parties further agree to exercise their best efforts in good faith to resolve all disputes within forty (40) business days of the commencement of the mediation through the mediation process set forth herein.

In the event that a lawsuit must be filed within this forty (40) day period in order to preserve a cause of action, the parties agree that notwithstanding the filing, they shall proceed diligently with the mediation to its conclusion prior to actively prosecuting the lawsuit, and shall seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process. Further, in the event settlements are reached on any issues through mediation, the parties agree to promptly submit the appropriate motions and orders documenting the settlement to the Court for its signature and filing.

D.3.6 The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the City and the CM/GC. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The parties agree to comply with City's administrative rules governing the confidentiality of mediation, if any, and shall execute all necessary documents to give effect to such confidentiality rules. In any event, the parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.

D.3.7 Unless otherwise directed by City's Authorized Representative, CM/GC shall proceed with the Work while any Claim of CM/GC is pending, including a Claim for additional compensation or additional Contract Time resulting from Change Order Work. Regardless of the review period or the final decision of the City's Authorized Representative, the CM/GC shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the CM/GC justified or allowed to cease Work without a written stop work order from the City or City's Authorized Representative.



**SECTION E**  
**PAYMENTS**

**E.1 SCHEDULE OF VALUES**

The CM/GC shall submit, at least ten (10) business days prior to submission of its first application for progress payment, a schedule of values ("Schedule of Values") for the contracted Work, for the City's review and approval. This schedule will provide a breakdown of values for the contracted Work and will be the basis for progress payments. The breakdown will demonstrate reasonable, identifiable, and measurable components of the Work. Unless objected to by the City's Authorized Representative, this schedule shall be used as the basis for reviewing CM/GC's applications for payment. If objected to by City's Authorized Representative, CM/GC shall revise the schedule of values and resubmit the same for approval of City's Authorized Representative.

E.1.1 The Schedule of Values shall be of sufficient detail and organization to interface with the City's accounting and funding structure.

**E.2 APPLICATIONS FOR PAYMENT**

E.2.1 City shall make progress payments on the Contract monthly as Work progresses. Prior to the submission of each monthly Application for Payment, CM/GC shall submit and obtain City's approval of a progress schedule update. Payments shall be based upon estimates of Work completed, as indicated in the approved progress schedule update, and the Schedule of Values. All payments shall be approved by the City's Authorized Representative. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. City shall pay to CM/GC interest on the progress payment, not including retainage, due the CM/GC. The interest shall commence thirty (30) Calendar Days after the receipt of invoice ("application for payment") from the CM/GC or fifteen (15) Calendar Days after the payment is approved by the City's Authorized Representative, whichever is the earlier date. The rate of interest shall be as provided under Oregon law. Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, City shall so notify the CM/GC within ten (10) business days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the CM/GC within five (5) business days of being notified by the City, shall not cause a payment to be made later than specified in this section unless interest is also paid. Accrual of interest will be postponed when payment on the principal is delayed because of disagreement between the City and the CM/GC.

E.2.2 CM/GC shall submit to the City's Authorized Representative, an application for each payment and, if required, receipts or other vouchers showing payments for materials and labor, including payments to Subcontractors. Applications for payment shall include all information required by City or City's Authorized representative and shall be supplemented with all additional information requested before the request for payment will be processed. CM/GC shall include, in its application for payment, a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values which shall aggregate to the payment application total.

E.2.3 Generally, applications for payment will be accepted only for materials that have been installed. Under special conditions, applications for payment for stored materials will be accepted at City's sole discretion. Such a payment, if made, will be subject to the following conditions:

(1) The request for stored material shall be submitted at least twenty five (25) business days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.

(2) The CM/GC shall submit applications for payment showing the quantity and cost of the material stored.

(3) The material shall be stored in a bonded warehouse and City's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.

(4) The CM/GC shall name the City as co-insured on the insurance policy covering the full value of the property while in the care and custody of the CM/GC until it is installed. A certificate noting this coverage shall be issued to the City.

(5) Payments shall be made for materials only. The submitted amount of the application for payment shall be reduced by the cost of transportation and for the cost of an inspector to check the delivery at out of town storage sites. The cost of said inspection shall be borne solely by the CM/GC.

(6) Within fifty (50) Business Days of the application for payment, the CM/GC shall submit evidence of payment covering the material stored.

(7) Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents.

(8) All required documentation must be submitted with the respective application for payment.

E.2.4 Notwithstanding other parts of this Contract, the City reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent as may be necessary in the City's opinion to protect the City from loss including but not limited to:

(1) Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with the Contract Documents,

(2) third party claims or fines, including governing agency or regulatory entity, filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to the City is provided by the CM/GC;

(3) failure of the CM/GC to make payments properly to Subcontractors or for labor, materials or equipment (in which case City may issue checks made payable jointly to City and such unpaid persons under this provision, or directly to Subcontractors and suppliers at any level under Section C.3.2.1);

(4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;

(5) damage to the City or another contractor;

(6) reasonable evidence that the Work will not be completed within the Contract Time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

(7) failure to carry out the Work in accordance with the Contract Documents;

(8) failure to provide or obtain City's approval of a monthly progress schedule update;

(9) failure to maintain updated Record Documents; or

(10) Failure to provide certified payroll reports as required elsewhere in this Contract.

E.2.5 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

(1) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5. Pending final determination of cost to the City of changes in the Work, amounts not in the dispute may be included even though the Contract Price has not yet been adjusted by Change Order;

(2) Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the City pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;

(3) Subtract the aggregate of previous payments made by the City; and

(4) Subtract any amounts for which the City's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

E.2.6 CM/GC's applications for payment may not include requests for payment for portions of the Work for which the CM/GC does not intend to pay to a Subcontractor or material supplier.

E.2.7 The CM/GC warrants to City that title to all Work covered by an application for payment will pass to the City no later than the time of payment. The CM/GC further warrants that upon submittal of an application for payment all Work for which payments are received from the City shall be free and clear of liens, claims, security interests or encumbrances in favor of the CM/GC, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

E.2.8 If CM/GC disputes any determination by City's Authorized Representative with regard to any application for payment, CM/GC nevertheless shall continue to prosecute expeditiously the Work. No payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve CM/GC of any of its obligations hereunder.

### **E.3 PAYROLL CERTIFICATION REQUIREMENT**

Payroll certification is required before payments are made on the Contract. Refer to Section C.2 for this information.

### **E.4 RESERVED**

### **E.5 RETAINAGE**

E.5.1 Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.580:

(1) City may reserve as retainage from any progress payment an amount not to exceed five percent (5%) of the payment. As Work progresses, City may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract is completed if, in the City's sole opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the CM/GC, which application shall include written approval of CM/GC's surety; except that when the Work is 97-1/2 percent completed the City may, at its discretion and without application by the CM/GC, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of written application by the CM/GC, City shall respond in writing within a reasonable time.

(2) In accordance with ORS 279C.560 and any applicable administrative rules, CM/GC may request in writing:

(A) to be paid amounts which would otherwise have been retained from progress payments where CM/GC has deposited acceptable bonds and securities of equal value with City or in a custodial account or other mutually-agreed account satisfactory to City, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of City;

(B) that retainage be deposited in an interest bearing account, established through the State Treasurer for state agencies, in a bank, savings bank, trust company or savings association for the benefit of City, with earnings from such account accruing to the CM/GC; or

(C) that the City allow CM/GC to deposit a surety bond for the benefit of City, in a form acceptable to City, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims and liens in the manner and priority as set forth for retainage under

(D) Where the City has accepted the CM/GC's election of option (A) or (B), City may recover from CM/GC any additional costs incurred through such election by reducing CM/GC's final payment. Where the City has agreed to CM/GC's request for option (C), CM/GC shall accept like bonds from Subcontractors and suppliers on the project from which CM/GC has required retainages.

(3) The retainage held by City shall be included in and paid to the CM/GC as part of the final payment of the Contract Price. The City shall pay to CM/GC interest at the rate of one and one-half percent per month on the final payment due CM/GC, interest to commence thirty (30) Calendar Days after the Work under the Contract has been completed, accepted and invoiced in accordance with the terms of this Agreement. CM/GC shall notify City in writing when the CM/GC considers the Work complete and City shall, within fifteen (15) Calendar Days after receiving the written notice, either accept the Work or notify the CM/GC of Work yet to be performed on the Contract. If City does not within the time allowed notify the CM/GC of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run thirty (30) Calendar Days after the end of the 15-Day period.

(4) In accordance with the provisions of reference ORS 279C.560, City shall reduce the amount of the retainage if the CM/GC notifies the controller of the City that the CM/GC has deposited in an escrow account with a bank or trust company, in a manner authorized by the City's Authorized Representative, bonds and securities of equal value of a kind approved by the City's Authorized Representative.

E.5.2 As provided in subsections C.2.2 and C.2.3, retainage in the amount of 25% of amounts earned shall be withheld and released in accordance with ORS 279C.845(7) when the CM/GC fails to file certified statements as required by section C.2.1 shall be in addition to any retainage withheld as a part of this Section E.5.

#### **E.6 FINAL PAYMENT**

E.6.1 Upon completion of all the Work under this Contract, the CM/GC shall notify the City's Authorized Representative, in writing, that CM/GC has completed CM/GC's part of the Contract and shall request final payment. Upon receipt of such notice the City's Authorized Representative will inspect the Work, and if acceptable, submit to the City a recommendation as to acceptance of the completed Work and as to the final estimate of the amount due the CM/GC. If the Work is not acceptable, City will notify CM/GC within fifteen (15) Days of CM/GC's request for final payment. Upon approval of this final estimate by the City and compliance by the CM/GC with provisions in Section K. 3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable, the City shall pay to the CM/GC all monies due under the provisions of these Contract Documents.

E.6.2 Neither final payment nor any remaining retained percentage shall become due until the CM/GC submits to the City's Authorized Representative, (1) a notarized affidavit/release of liens and claims in a form satisfactory to City that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the City or the City's property might be responsible or encumbered (less amounts withheld by City) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the City, (3) a written statement that the CM/GC knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the City, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the City. If a Subcontractor refuses to furnish a release or waiver required by the City, the CM/GC may furnish a bond satisfactory to the City to indemnify the City against such lien. If such lien remains unsatisfied after payments are made, the CM/GC shall refund to the City all money that the City may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

E.6.3 Acceptance of final payment by the CM/GC, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

**SECTION F**  
***JOB SITE CONDITIONS***

**F.1 USE OF PREMISES**

CM/GC shall confine equipment, storage of materials and operation of Work to the limits indicated by Contract Documents, law, ordinances, permits or directions of the City's Authorized Representative. CM/GC shall follow any and all instructions or requirements regarding the use of premises given by the City's Authorized Representative. CM/GC shall not use or disturb City's property, materials or documents except for the purpose of responding to City's request for proposal or invitation to bid or pursuant to completion of the Work under this Contract. CM/GC shall treat all documents as confidential and shall not disclose such documents without approval from City. Any unauthorized disclosure of documents or removal of City property will be deemed a substantial breach of this Contract. CM/GC shall bear sole responsibility for any liability including, but not limited to, attorneys' fees, resulting from any action or suit brought against City as a result of CM/GC's willful or negligent release of information, documents, or property contained in or on City property. City hereby deems all information, documents, and property contained in or on City property privileged and confidential.

**F.2 PROTECTION OF WORKERS, PROPERTY, AND THE PUBLIC**

- F.2.1 CM/GC shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the City's Authorized Representative, City's workers, school staff, administrators, students, general public and property from injury or loss arising in connection with this Contract. CM/GC shall remedy acceptably to the City, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the City. CM/GC shall adequately protect adjacent property as provided by law and the Contract Documents. If any person suffers physical injury or property damage arising from the Work, regardless of the cause, the party shall immediately give notice of such injury or damage, whether or not insured, to City and CM/GC with sufficient detail to enable City and any other party affected to investigate the matter.
- F.2.2 CM/GC shall take all necessary precautions for the safety of all personnel on the job site, and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. CM/GC shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. CM/GC shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the City's Authorized Representative. The City's Authorized Representative has no responsibility for Work site safety. Work site safety is solely the responsibility of the CM/GC.
- F.2.3 CM/GC shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. CM/GC shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the CM/GC damages any property, the CM/GC shall at once notify the property owner and make, or arrange to make, full restitution. CM/GC shall report, immediately in writing, to the City's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.
- F.2.4 CM/GC is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, and materials on the site.
- F.2.5 CM/GC shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.
- F.2.6 In an emergency affecting the safety of life or of the Work or of adjoining property, the CM/GC, without special instruction or authorization from the City's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the City's Authorized Representative. Any compensation claimed by the CM/GC on account of emergency work shall be determined in accordance with Section D.

- F.2.7 CM/GC shall protect and preserve established benchmarks and monuments and shall not change locations of benchmark and monuments without City's or agency having jurisdiction's prior written approval. CM/GC shall replace any benchmark or monument that is lost or destroyed subsequent to proper notification of the City and with the City's approval at CM/GC's sole cost.
- F.2.8 Prior to the commencement of the Work, CM/GC shall review the Project site with the City in detail and identify the area of the Work, staging areas, connections or interfacing with existing structures and operations, and restrictions on the Work site area. CM/GC shall ensure that all work forces on the Project Site are instructed about the acceptable working and staging areas and restrictions on use of the site. CM/GC, with advance consent of the City, shall erect such barriers and devices as are necessary to restrict access within the Work site to authorized areas and to prevent unauthorized access to non-Work areas.
- F.2.9 Utility Locates: CM/GC will be responsible to locate existing utilities and underground facilities that are indicated in the Contract Documents or that are known or reasonably should be known to exist in the proximity to the Work. CM/GC shall provide timely notice and locate requests with any affected utility or through contact with appropriate notification centers before commencing excavation or demolition Work that CM/GC knows, or reasonably should know, is in proximity to such utilities or facilities. CM/GC assumes the sole risk and will be responsible for all delay and expense arising out of CM/GC's failure to do so.
- F.2.10 This Contract and all individual contracts and purchase orders incorporate by this reference City's safety policies current as of the date of commencement of Work, which have been or will be made available to CM/GC. CM/GC shall schedule and attend a preconstruction meeting with City to review compliance with City's CM/GC Safety and Hazard Notification Policy and City's Risk Management and Environmental Safety and Pollution Policy. CM/GC, as a condition to commencement of the Work, shall instruct all personnel of CM/GC and its subcontractors, prior to their performing any of the Work, of the elements of these policies with which the personnel will be required to comply.
- F.2.11 In addition to the policies identified above, CM/GC shall review with all subcontractors the methods, materials, tools, and equipment to be used to verify their compliance with all safety standards and laws and CM/GC shall comply with them, to ensure safe, hazard-free conditions for all persons visiting or working on the entire Project Site and City's adjoining facilities. CM/GC shall implement and maintain a safety program that is specifically adapted for the Project and complies with all applicable requirements of Oregon OSHA. CM/GC shall furnish a copy of the safety program to City before commencing Work.
- F.2.12 CM/GC shall maintain good housekeeping practices to reduce the risk of fire damage and shall make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire.
- F.2.13 CM/GC shall ensure that all existing or operating systems, utilities, existing on-site services and access avenues are on and in operating condition before leaving the Project Site each day. If any system, utility, or access avenue is not operable, CM/GC shall notify City before CM/GC leaves the Project Site that day.

### **F.3 CUTTING AND PATCHING**

- F.3.1 CM/GC shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other CM/GCs or Subcontractors shown upon, or reasonably implied by, the Contract Documents.
- F.3.2 CM/GC shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Contract Documents, then CM/GC shall be responsible for restoring such surfaces to the condition specified in the Contract Documents.
- F.3.3 CM/GC shall not endanger any Work performed by it or anyone else by cutting, excavating, or otherwise altering Work and shall not cut or alter Work of any other contractor except with consent of City.

### **F.4 CLEANING UP**

The CM/GC shall be responsible to maintain a clean and orderly jobsite at all times in order to promote a safe and efficient work environment. Should the jobsite fall into a state of disorder, the City may order the CM/GC to, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work and bring the jobsite to a state of cleanliness and order deemed satisfactory by the City's Representative. If CM/GC fails to do so within twenty-four

(24) hours after written notification by the City, the work may be done by others and the cost charged to the CM/GC and deducted from payment due the CM/GC. Any directive by the City's Representative shall not relieve the CM/GC in any way or manner for the safety of the jobsite for construction workers or the public.

#### **F.5 ENVIRONMENTAL CONTAMINATION**

F.5.1 CM/GC will be held responsible for and shall indemnify, defend (with counsel of City's choice) and hold harmless City from and against any costs, expenses, damages, claims, and causes of action, (including attorney fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Contract which occur as a result of, or are contributed by, the negligence or actions of CM/GC or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this section F.5.1 shall limit CM/GC's responsibility for obtaining insurance coverages required under Section G.3 of these General Conditions, and CM/GC shall take no action that would void or impair such coverages

(1) CM/GC agrees to promptly contain, minimize and dispose of such spills, releases, discharge or leaks to the satisfaction of City and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the City and be performed by properly qualified personnel.

(2) CM/GC shall obtain the City's written consent prior to bringing onto the Work site any (i) environmental pollutants or (ii) hazardous substances or materials, as defined in Section F.6.1. Notwithstanding such written consent from the City, the CM/GC, at all times, shall:

(A) properly handle, label, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;

(B) be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which CM/GC has brought onto the Work site; and

(C) promptly clean up, without cost to the City, such spills, releases, discharges, or leaks to the City's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

(3) With respect to Hazardous Materials to be used during the course of the Work, the CM/GC will implement and enforce a program to inventory and properly store and secure all Hazardous Materials that may be used or present on the Project site, maintain available for inspection at the Project site all material safety data sheets, and comply with all regulations required by law for the storage, use, and disposal of Hazardous Materials. The program must provide for notification of all personnel of potential chemical hazards. Review of these hazards must be included in the CM/GC's safety training program.

F.5.2 CM/GC shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR Chapter 340 Division 108 for all products addressed therein. Upon discovery, regardless of quantity, CM/GC must telephonically report all releases to the City. A written follow-up report shall be submitted to City within twenty four (24) hours of the telephonic report. Such written report shall contain, as a minimum:

(1) Description of items released (identity, quantity, manifest no., and all other documentation required by law.)

(2) Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.

(3) Exact time and location of release, including a description of the area involved.

(4) Containment procedures initiated.

(5) Summary of communications about the release CM/GC has had with members of the press or State officials other than City.

(6) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.

(7) Personnel injuries, if any, resulting from, or aggravated by, the release.

**F.6 ENVIRONMENTAL CLEAN-UP**

F.6.1 Unless disposition of environmental pollution is specifically a part of this Contract, or was caused by the CM/GC (reference F.5 Environmental Contamination), CM/GC shall immediately notify City of any hazardous substance(s) which CM/GC discovers or encounters during performance of the Work required by this Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S

In addition to notifying City of any hazardous substance(s) discovered or encountered, CM/GC shall immediately cease working in any particular area of the project where a hazardous substance(s) has been discovered or encountered if continued work in such area would present a risk or danger to the health or well-being of CM/GC's or any Subcontractor's work force.

F.6.2 Upon being notified by CM/GC of the presence of hazardous substance(s) on the project site, City shall arrange for the proper disposition of such hazardous substance(s).

F.6.3 Asbestos Abatement. The Work under this Contract may include removal and abatement of asbestos (and proper transportation and disposal). All such Work shall be performed in compliance with the plans and specifications if it is determined that hazardous materials need to be abated. This Work (if required) shall be performed by an asbestos abatement contractor licensed under ORS 468A.720 employing Oregon Certified Asbestos Workers and a Certified Asbestos Supervisor shall be on site at all times asbestos abatement Work is being performed. All federal, state and local laws, statutes, regulations, administrative rules, ordinances, standards, directives and other legal requirements, and all rules and regulations pertaining to the safe removal of asbestos, including but not limited to those of the Oregon Department of Environmental Quality (DEQ), the federal Environmental Protection Agency (EPA), and OSHA, and other authorities having jurisdiction, shall be complied with at all times. CM/GC shall provide City with air sampling records (including clearance sampling documentation) before the commencement of any construction or abatement activities as well as at completion of the asbestos abatement Work. CM/GC shall include these asbestos provisions and requirements in any subcontract(s) related to the asbestos abatement Work.

F.6.4 Lead and Other Hazardous Material Abatement. The Work under this Contract may also include removal and abatement (and proper transportation and disposal) of all other hazardous materials or substances (not covered by Section F.6.3) from the Project site as necessary for full legal compliance, including but not limited to lead. Proper identification, assessment, notifications, handling, testing, certifications, removal, transportation and disposal are the responsibility of CM/GC. All applicable federal, state and local laws, statutes, regulations, administrative rules, ordinances, standards, directives and other legal requirements shall be complied with at all times, including but not limited to those of DEQ, EPA and OSHA. All such Work shall be performed in compliance with the applicable plans and specifications being prepared by the Architect.

**F.8 FORCE MAJEURE**

A party to this Contract shall not 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. The City may terminate this Contract upon written notice after determining that delay or default caused by Force Majeure acts, events or occurrences will reasonably prevent successful performance of the Contract.

**SECTION G  
INDEMNITY, BONDING, AND INSURANCE**

**G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY**

G.1.1 CM/GC shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the CM/GC, its Subcontractors, personnel, or agents.

G.1.2 To the fullest extent permitted by law, CM/GC shall indemnify, defend (with counsel approved by City) and hold harmless the City, City's Authorized Representative(s), City's third party consultants and contractors working on the Project Site, Architect/Engineer, Architect/Engineer's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies (collectively "Indemnitees") from and against all liabilities, damages,



losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to,

(1) any damage, injury, loss, expense, inconvenience or delay described in this Section G.1.2 to the extent that the CM/GC could or should have reasonably prevented it,

(2) any accident or occurrence which happens or is alleged to have happened in or about the project site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects to the extent that the Contract could or should have reasonably prevented it,

(3) any failure of the CM/GC to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the CM/GC, or any breach of any agreement, representation or warranty of the CM/GC contained in the Contract Documents or in any subcontract,

(4) the negligent acts or omissions of the CM/GC, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140), and

(5) any lien filed upon the project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section G.1.2.

G.1.3 In claims against any person or entity indemnified under this Section G.1.2 by an employee of the CM/GC, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section G.1.2 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CM/GC or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **G.2 PERFORMANCE AND PAYMENT SECURITY; PUBLIC WORKS BOND**

G.2.1 Prior to commencement of construction phase services and in any event not later than execution of the GMP Amendment, the CM/GC shall provide to the City a full Performance Bond and a full Payment Bond in the amount of the GMP Amendment.

If an Early Work Amendment is executed the CM/GC shall provide Performance and Payment Bonds in the amount of the Early Work Amendment. The CM/GC shall provide to the City additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of labor or materials for the prosecution of the Work covered by the Amendment and in each case a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a scope change, which increases the GMP, the CM/GC shall provide to the City an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

The CM/GC shall maintain the Performance and Payment Bonds in full force from Sureties licensed to do business in Oregon. The Parties understand and agree that the obligation of the CM/GC's Surety for the faithful performance of the Contract pursuant to the requirements of Oregon Revised Statutes 279C.375.

G.2.2 Bond forms furnished by the City and notarized by awarded CM/GC's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

G.2.3 Pursuant to ORS 279C.605, any person claiming a right of action under ORS 279C.600 must file a notice of claim as provided in ORS 279C.605.

G.2.4 The CM/GC will:

(1) file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(2) (7) or (8).

(2) Include in every subcontract a provision requiring the Subcontractor to file a public works bond with the Construction

Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(2), (7) or (8).

### **G.3 INSURANCE**

**G.3.2. General Insurance Requirement.** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Oregon such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) Claims under workers' compensation, disability benefit, and other similar employee benefit acts that are applicable to the Work to be performed;
- (2) Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- (4) Claims for damages insured by usual personal injury liability coverage and commercial general liability coverage (or its equivalent as approved in advance by the City);
- (5) Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- (6) Claims for damages because of bodily injury, death of a person, or property damage arising out of ownership, maintenance, or use of a motor vehicle;
- (7) Claims for bodily injury or property damage arising out of completed operations;
- (8) Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 107.06 of the General Conditions;
- (9) Claims for third-party injury and property damage (including without limitation clean-up costs) as a result of pollution conditions arising from the Contractor's operations or completed operations; and
- (10) Claims involving the Contractor's professional liability, solely to the extent that the Contractor accepts design or design/build responsibilities under the Contract

**G.3.3 Required Coverage.** Without waiver of any other requirement of the Contract Documents, the Contractor will provide, pay for, and maintain in full force and effect at all times during the performance of the Work until final acceptance of the Work or for such further duration as required, the following policies of insurance issued by a responsible carrier. All of the Contractor's insurance carriers shall be rated A VII or better by A.M. Best's rating service, unless otherwise approved by the City.

- (1) Workers' Compensation.** Workers' compensation coverage sufficient to meet statutory liability limits.
- (2) Employer's Liability.** The Contractor shall purchase and maintain employer's liability insurance in addition to its workers' compensation coverage with at least the minimum limits in C below.
- (3) Commercial General Liability.** The Contractor shall purchase and maintain commercial general liability ("CGL") insurance on an occurrence basis, written on ISO Form CG 0001 (12/04 or later) or an equivalent form approved in advance by the Owner. CGL coverage shall include all major coverage categories including bodily injury, property damage, and products/completed operations coverage maintained for at least ~~six~~ **Ten** years following final payment. The CGL insurance will also include the following: (1) separation of insured; (2) incidental medical malpractice; and (3) per-project aggregate for premises operations.
- (4) Professional Liability/Errors and Omissions.** To the extent that the Contractor accepts design or design/build responsibilities, the Contractor shall purchase and maintain professional liability/errors and omissions insurance or cause those Subcontractors providing design services do so.

(5) Automobile Liability. The Contractor shall purchase and maintain automobile liability insurance with coverage for owned, hired, and non-owned vehicles on ISO form CA 00 01 or an equivalent form approved in advance by the City. The automobile liability insurance shall include pollution liability coverage resulting from vehicle overturn and collision.

(6) Pollution Liability. The Contractor shall purchase a contractors' pollution liability policy. Coverage shall include third-party claims for bodily injury, property damage, and environmental damage resulting from pollution conditions caused during the performance of covered operations for both on-site and migrating from the job site. Such coverage shall include pollution conditions arising from covered operations including work performed by its Subcontractors and third-party claims against the Contractor alleging improper supervision of its Subcontractors.

(7) Commercial Umbrella/Excess Coverage. The Contractor shall purchase or maintain a commercial umbrella or excess liability policy to meet the minimum limits as described below in Section C. Commercial umbrella/excess liability coverage will include: (1) "Pay on behalf of" wording; (2) concurrency of effective dates with primary coverage; (3) punitive damages coverage (where not prohibited by law); (4) application of aggregate (where applicable) in primary coverage; (5) "care, custody, and control" coverage that follows the form for primary coverage; and (6) drop-down feature. Excess/umbrella coverage will be scheduled to the CGL, employee's liability, and automobile liability policies.

**G.3.4 Limits.** The insurance required by this exhibit shall be written for at least the limits of liability specified in this Section or required by law, whichever is greatest.

(1) Workers' Compensation. Statutory Limits

(2) Employer's Liability.

Each Accident:	\$ 1,000,000
Each Bodily Injury Disease:	\$ 1,000,000
Aggregate Bodily Injury Disease:	\$ 1,000,000

(3) Commercial General Liability.

Each Occurrence:	\$ 1,000,000
General Aggregate:	\$ 2,000,000
Product/Completed Operations:	\$ 2,000,000
Personal & Advertising Injury:\$	\$ 1,000,000
Fire Damage Limit:	\$ 100,000
Medical Expense Limit:	\$ 5,000

(4) Automobile Liability.

Combined Single Limit:	\$ 1,000,000
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(5) Pollution Liability.

Single Limit:	\$1,000,000
Aggregate:	\$1,000,000

(6) Commercial Umbrella/Excess Coverage.

Each Occurrence:	\$5,000,000
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**G.3.5 Additional Insureds.** The Contractor's third-party liability insurance policies shall include the City and its officers, employees, agents, volunteers, partners, successors, and assigns as additional insureds. The policy endorsement must extend premise operations and products/completed operations to the additional insureds. The additional insured

endorsement for the CGL insurance must be written on ISO Form CG 2010 (11/85), a CG 2037 (07/04) together with CG 2033 (07/04), or the equivalent; but shall not use the following forms: CG 20 10 (10 93) or CG 20 10 (03 94).

**G.3.6 Joint Venture.** If the Contractor is a joint venture, the joint venture shall be a named insured for the liability insurance policies.

**G.3.7 Primary Coverage.** The Contractor's insurance shall be primary insurance coverage and may not seek contribution from any insurance or self-insurance carried by the City or the Architect including any property damage coverage carried by the Owner. Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought. The Contractor's insurance shall not include any cross-suit exclusion or preclude an additional insured party from asserting a claim as a third party.

**G.3.8 Contractor's Failure to Maintain Insurance.** If the Contractor for any reason fails to maintain required insurance coverage, such failure shall be deemed a material breach of the Contract and the City, at its sole discretion, may suspend or terminate the Contract pursuant to Section J of the General Conditions. The City may, but has no obligation to, purchase such required insurance, and without further notice to the Contractor, the City may deduct from the Contract Sum any premium costs advanced by the City for such insurance. Failure to maintain the insurance coverage required by this exhibit shall not waive the Contractor's obligations to the City.

**G.3.9 Certificates of Insurance.** The Contractor shall supply to the City Certificates of Insurance for the insurance policies described in this exhibit prior to the commencement of the Work and before bringing any equipment or construction personnel onto the Project site.

(1) Additional Certificates. To the extent that the Contractor's insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

(2) Prohibition Until Certificates Received. The City shall have the right, but not the obligation, to prohibit the Contractor and its Subcontractors from entering the Project site until the required certificates (or other competent evidence that insurance has been obtained in complete compliance with this exhibit) are received and approved by the City.

(3) Deductibles/Self-Insured Retentions. Payment of deductibles or self-insured retention is a Cost of the Work within the Guaranteed Maximum Price and does not justify a Change Order. Satisfaction of all self-insured retentions or deductibles will be the sole responsibility of the Contractor.

**G.3.10 Subcontractor Insurance.** The Contractor shall cause each Subcontractor to purchase and maintain in full force and effect policies of insurance as specified in this exhibit, except for coverage limits, which will be agreed upon between the City and the Contractor. The Contractor will be responsible for the Subcontractors' coverage if the Subcontractors fail to purchase and maintain the required insurance. When requested by the City, the Contractor will furnish copies of certificates of insurance establishing coverage for each Subcontractor.

**G.3.11 Limitations on Coverage.**

(1) No insurance provided by the Contractor under this exhibit will be required to indemnify the City, the Architect, or their employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own negligence, but will require indemnity to the extent of the fault of the Contractor or its agents, representatives, or Subcontractors.

(2) The obligations of the Contractor under this exhibit shall not extend to the liability of the Architect or its consultants for (1) the preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs, or specifications, or (2) the giving or failure to give directions or instructions, to the extent that the directions, or failure to provide directions, are the cause of the injury or damage.

(3) By requiring insurance, the City does not represent that coverage and limits will necessarily be adequate to protect the Contractor. Insurance in effect or procured by the Contractor will not reduce or limit the Contractor's contractual obligations to indemnify and defend the City for claims or suits that result from or are connected with the performance of the Contract.

### **G.3.12. Property Insurance**

#### **(1) Builder's Risk.**

Contractor shall obtain, at Contractor's expense, and keep in effect until final acceptance by the City, "all risk" Builder's Risk Insurance (including earthquake and flood) covering the real and personal property of others in the care, custody, and control of the Contractor. Coverage shall include theft and damage to building interiors, exterior, in transit and offsite storage. The minimum amount of coverage to be carried shall be equal to the full amount of the contract. Contractor shall be financially responsible for any deductible applied to loss. This insurance shall include City, the Contractor and its subcontractors as their interest may appear. (2) **Contractor's Responsibility.** Contractor must provide insurance for its own machinery, tools, equipment, or supplies that are not to become a part of the Project.

## **SECTION H SCHEDULE OF WORK**

### **H.1 CONTRACT PERIOD**

- H.1.1 Time is of the essence on this Contract. The CM/GC shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. CM/GC shall commence Work on the site within ten (10) business days of Notice to Proceed, unless directed otherwise.
- H.1.2 Unless specifically extended by Change Order, all Work shall be complete by the date contained in the Contract Documents. The City shall have the right to accelerate the completion date of the Work, which may require the use of overtime to the extent such overtime is not required to achieve Substantial Completion. Such accelerated Work schedule shall be an acceleration in performance of Work under Section D.1.2 (f) and shall be subject to the Change Order process of Section D.1. In the event that overtime or other acceleration is required to achieve the Substantial Completion Date in the Contract Documents, the CM/GC shall be responsible for the additional cost.
- H.1.3 The City shall not waive any rights under the Contract by permitting the CM/GC to continue or complete the Work or any part of it after the date described in Section H.1.2 above.

### **H.2 SCHEDULE**

CM/GC shall provide by ten (10) business days before the pre-construction conference, a detailed master construction schedule for review and acceptance by the City. The submitted schedule must illustrate Work by significant project components, significant labor trades, long lead items, broken down by building and/or floor where applicable. Each schedule item shall account for no greater than 5 % of the monetary value of the project or 5 % of the available Contract Time. Schedules with activities of less than one day or valued at less than 1% of the Contract will be considered too detailed and will not be accepted. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Included within the schedule are the following: Notice to Proceed, any interim or phased work completions, Substantial Completion, and Final Completion. Schedules will be updated monthly and submitted with the monthly payment application. Acceptance of the Schedule by the City does not constitute agreement by the City, as to the CM/GC's sequencing, means, methods, or allocated Contract Time. Any positive difference between the CM/GC's scheduled completion and the Contract completion date is float owned by the City. City reserves the right to negotiate the float if it is deemed to be in City's best interest to do so. In no case shall the CM/GC make a request for additional compensation for delays if the Work is completed within the Contract Time but after CM/GC's scheduled completion.

### **H.3 PARTIAL OCCUPANCY OR USE**

The City may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and CM/GC have reasonably accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, insurance or self-insurance, maintenance, heat, utilities, and damage to the Work, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents with respect to such portion of the Work. Approval by the CM/GC to partial occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, the City and CM/GC shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### **H.4 BENEFICIAL OCCUPANCY OR USE**

The City may take possession of areas of the Project as a part of a scheduled, phased occupancy. Where such Beneficial Occupancy occurs, the CM/GC shall facilitate such occupancy, shall agree to work around occupied areas and shall conduct the balance of the construction of the Work in such a fashion to avoid impeding or otherwise obstructing the access to or activities conducted within the occupied space.

### **SECTION I CORRECTION OF WORK**

#### **I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT**

The CM/GC warrants to the City that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements shall be deemed defective. CM/GC shall promptly remove from the premises and replace all defective materials and equipment as determined by the City's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the City, and CM/GC shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. CM/GC shall be allowed a period of no longer than sixty (60) Calendar Days for completion of defective (punch list) work, unless otherwise agreed. At the end of that period, or earlier if requested by the CM/GC, City shall arrange for inspection of the Work by the Architect/Engineer. Should the Work not be complete, and all corrections made, the costs for all subsequent re-inspections shall be borne by the CM/GC. If CM/GC fails to complete the punch list work within the above time period, without affecting CM/GC's obligations City may perform such work and CM/GC shall reimburse City all costs of the same within twenty five (25) days after demand.

#### **I.2 WARRANTY WORK**

(1) Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the CM/GC from responsibility for defective Work and, unless a longer period is specified, CM/GC shall correct all defects that appear in the Work within a period of one year from the date of issuance of the written notice of Substantial Completion by the City except for latent defects which will be remedied by the CM/GC at any time they become apparent.

The City shall give CM/GC notice of defects with reasonable promptness. CM/GC shall perform such warranty work within a reasonable time after City's demand. If CM/GC fails to complete the warranty work within such period as City determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, without affecting CM/GC's obligations, City may perform such work and CM/GC shall reimburse City all costs of the same within thirty (30) Days after demand.

(2) This provision does not negate guarantees or warranties for periods longer than one year including without limitation such guarantees or warranties required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.

(3) In addition to CM/GC's warranty, manufacturer's warranties shall pass to the City and shall not take effect until affected Work has been accepted in writing by the City's Authorized Representative.

(4) The one-year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work, and shall be extended by corrective Work performed by the CM/GC pursuant to this Section, as to the Work corrected. The CM/GC shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the CM/GC nor accepted by the City.

(5) Nothing contained in this Section I.2 shall be construed to establish a period of limitation with respect to any obligations that the CM/GC has under the Contract Documents. Establishment of the period for correction of Work as described in this Section I.2 relates only to the specific contractual obligation of the CM/GC to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the CM/GC's liability with respect to such obligations.

(6) If the City prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as

appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **SECTION J**

### ***SUSPENSION AND/OR TERMINATION OF THE WORK***

#### **J.1 CITY'S RIGHT TO SUSPEND THE WORK**

- J.1.1 The City and/or the City's Authorized Representative has the authority to suspend portions or all of the Work
- J.1.2 The City shall notify CM/GC and the CM/GC's Surety in writing of the effective date and time of the suspension and shall notify CM/GC and its surety in writing to resume Work.

#### **J.2 CM/GC'S RESPONSIBILITIES**

- J.2.1 During the period of the suspension, CM/GC is responsible to continue maintenance at the project just as if the Work were in progress. This includes, but is not limited to, protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.
- J.2.2 When the Work is recommenced after the suspension, the CM/GC shall replace or renew any Work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the project in every respect as though its prosecution had been continuous and without suspension.

#### **J.3 COMPENSATION FOR SUSPENSION**

- J.3.1 Depending on the reason for suspension of the Work, the CM/GC or the City may be due compensation by the other party. If the suspension was required due to acts or omissions of CM/GC, the City may assess the CM/GC actual costs of the suspension in terms of administration, remedial work by the City's forces or another CM/GC to correct the problem associated with the suspension, rent of temporary facilities, and other actual costs related to the suspension. If the suspension was caused by acts or omissions of the City, the CM/GC shall be due compensation which shall be defined using Section D, Changes in Work. If the suspension was required through no fault of the CM/GC or the City, neither party owes the other for the impact.

#### **J.4 CITY'S RIGHT TO TERMINATE CONTRACT**

- J.4.1 The City may, without prejudice to any other right or remedy, and after giving CM/GC five business days' written notice and an opportunity to cure, terminate the Contract in whole or in part under the following conditions:
- (1) If CM/GC should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and CM/GC as debtor in-possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
  - (2) If CM/GC should make a general assignment for the benefit of CM/GC's creditors;
  - (3) If a receiver should be appointed on account of CM/GC's insolvency;
  - (4) If CM/GC should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;
  - (5) If CM/GC should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the City or its Authorized Representative; or
  - (6) If CM/GC is otherwise in material breach of any part of the Contract.
- J.4.2 At any time that any of the above occurs, City may exercise all rights and remedies available to City at law or in equity, and in addition, City may take possession of the premises and of all materials and appliances and finish the Work by whatever method it may deem expedient. In such case, the CM/GC shall not be entitled to receive further payment until the Work is completed. If the City's cost of finishing the Work exceeds the unpaid balance of the Contract Price, CM/GC shall pay the difference to the City.

#### **J.5 TERMINATION FOR CONVENIENCE**

- J.5.1 City may terminate the Contract in whole or in part whenever City determines that termination of the Contract is in the best interest of the public.

J.5.2 The City will provide the CM/GC with five (5) business days' prior written notice of a termination for public convenience. After such notice, the CM/GC shall provide the City with immediate and peaceful possession of the premises and materials located on and off the premises for which the CM/GC received progress payment under Section E. Compensation for Work terminated by the City under this provision will be according to Section E. In no circumstance shall CM/GC be entitled to lost profits for Work not performed due to termination.

#### **J.6 ACTION UPON TERMINATION**

J.6.1 Upon receiving a notice of termination, and except as directed otherwise by the City, CM/GC shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, unless assigned as provided in Section J.6.4, below, CM/GC shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior written approval of the City, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.

J.6.2 As directed by the City, CM/GC shall upon termination transfer title and deliver to the City all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to the City.

J.6.3. Upon receiving a notice of termination Contractor shall, prior to vacating the site, provide to City a detailed written assessment of any potentially unsafe conditions on site that may be a threat to health or human safety.

J.6.4 CM/GC shall assign to City each subcontract agreement for a portion of the Work provided that: (i.) Assignment is effective only after termination of this Contract by City for cause or stoppage of the Work by City, and only for those subcontract agreements which City accepts by notifying the subcontractor and CM/GC in writing; and (ii). Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to this Contract. Upon such assignment, if the Work has been suspended for more than thirty (30) days, City shall equitably adjust subcontractor's compensation for increases in cost resulting from the suspension.

### **SECTION K CONTRACT CLOSE OUT**

#### **K.1 RECORD DOCUMENTS**

As a condition of final payment (refer also to section E.6), CM/GC shall comply with the following: CM/GC shall provide to City's Authorized Representative, Record Documents of the entire project. Record Documents shall depict the project as constructed and shall reflect each and every change, modification, and deletion made during the construction. Record Documents are part of the Work and shall be provided prior to the City's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed.

#### **K.2 OPERATION AND MAINTENANCE MANUALS**

As part of the Work, CM/GC shall submit completed operation and maintenance manuals ("O & M Manuals") and asbuilts in electronic format (.PDF) and for review by the City's Authorized Representative prior to submission of any pay request for more than 75% of the Work. No payments beyond 75% will be made by the City until the O & M Manual have been received. The O & M Manual shall contain a complete set of all submittals, all product data as required by the specifications, training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties and bonds. The City's Authorized Representative shall review and return an electronic copy of the O & M Manual for any modifications or additions required. Prior to submission of its final pay request, CM/GC shall deliver three complete and approved bound paper copies of O & M Manuals and one electronic copy delivered either in CD or Flash Drive format to the City's Authorized Representative.

#### **K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS**

As a condition of final payment, the CM/GC shall submit to the City's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to City, which states that all Subcontractors and suppliers have been paid in full, all disputes with property Citys have been resolved, all obligations on the project have been satisfied, all monetary claims and indebtedness have been paid, and that, to the best of the CM/GC's knowledge, there are no claims of any kind outstanding against the project. The CM/GC shall indemnify, defend (with counsel of City's choice) and hold harmless the City from all claims for labor and materials finished under this Contract. The CM/GC shall



furnish complete and valid releases or waivers, satisfactory to the City, of all liens arising out of or filed in connection with the Work. CM/GC shall collect all affidavit and lien release documents to deliver to the City in a single consolidated package.

**K.4 COMPLETION NOTICES**

K.4.1 CM/GC shall provide City notice of both Substantial and Final Completion. The certificate of Substantial Completion shall state the date of Substantial Completion, the responsibilities of the City and CM/GC for security, maintenance, heat, utilities, damage to the Work and insurance, and the time within which the CM/GC shall finish all items on the punch list accompanying the Certificate. Both completion notices must be signed by the CM/GC and the City to be valid. The City shall provide the final signature on the notices. The notices shall take effect on the date they are signed by the City.

K.4.2 Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, HVAC) shall be that degree of completion that has provided a minimum of thirty (30) continuous Days of successful, trouble-free operation with normal operational staffing experience and levels, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the City's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable the City to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. The CM/GC may request that a punch list be prepared by the City's Authorized Representative with submission of the request for the Substantial Completion notice.

**K.5 TRAINING**

As part of the Work, and prior to submission of the request for final payment, the CM/GC shall schedule with the City's Authorized Representative, training sessions for all equipment and systems, as required in the individual specifications sections. CM/GC shall schedule training sessions at least ten (10) business days in advance of the date of training to allow City personnel adequate notice. The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment and/or system is completely installed and operational in its normal operating environment.

**K.6 EXTRA MATERIALS**

As part of the Work, CM/GC shall provide spare parts, extra maintenance materials, and other materials or products in the quantities specified in the specifications, prior to final payment. Delivery point for extra materials shall be designated by the City's Authorized Representative.

**K.7 ENVIRONMENTAL CLEAN-UP**

As part of the Final Completion notice, or as a separate written notice submitted with or before the notice of Final Completion, the CM/GC shall notify the City that all environmental pollution clean-up which was performed as a part of this Contract has been disposed of in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdiction over such environmental pollution. The notice shall reaffirm the indemnification given under Section F.5.1 above.

**K.8 CERTIFICATE OF OCCUPANCY**

The CM/GC shall not be granted Final Completion or receive final payment if the City has not received an unconditioned certificate of occupancy from the appropriate state and/or local building officials, unless failure to obtain an unconditional certificate of occupancy is due to the fault or neglect of City.

**K.9 OTHER CM/GC RESPONSIBILITIES**

The CM/GC shall be responsible for returning to the City all items issued during construction such as keys, security passes, site admittance badges, and all other pertinent items. The CM/GC shall be responsible for notifying the appropriate utility companies to transfer utility charges from the CM/GC to the City. The utility transfer date shall not be before Substantial Completion and may not be until Final Completion, if the City does not take beneficial use of the facility and the CM/GC's forces continue with the Work.

**K.10 SURVIVAL**

All warranty and indemnification provisions of this Contract, and all of CM/GC's other obligations under this Contract that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination

of the Contract

**SECTION L**  
**LEGAL RELATIONS & RESPONSIBILITIES**

**L.1 LAWS TO BE OBSERVED**

In compliance with ORS 279C.525, CM/GC shall comply with any and all enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract. State law requires that solicitation documents for a public improvement contract make specific reference to federal, state, and local agencies that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution or the preservation of natural resources that may affect the performance of this Contract. These agencies include, but are not limited to:

- L.1.1 Federal Agencies: Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Mines, Bureau of Reclamation, Geological Survey, Minerals Management Service, U.S. Fish and Wildlife Service, Department of Labor, Mine Safety and Health Administration, Occupation Safety and Health Administration, Department of Transportation, Federal Highway Administration, Water Resources Council.
- L.1.2 State Agencies: Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Consumer and Business Services, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, Department of Water Resources.
- L.1.3 Local Agencies: City councils, county courts, county boards of commissioners, metropolitan service City councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special City boards of directors, and other special Cities and special governmental agencies such as Tri-Met, urban renewal agencies, and Port Cities.
- L.1.4 Tribal Governments.

**EXHIBIT D – GMP AMENDMENT**

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR CONTRACT**

**Between City of Sandy**

**and**

**FULL, LEGAL NAME OF CONTRACTOR**

**AMENDMENT No.**

**for the following PROJECT:**

*(Name and address or location)*

**City of Sandy**

\_\_\_\_\_

**THE CM/GC:**

*(Name, legal status and address)*

**EXHIBIT D.1**

**D.1.1 Guaranteed Maximum Price**

Pursuant to Article 6. of the Contract, the City of Sandy and CM/GC hereby amend the Contract to establish a Guaranteed Maximum Price. As agreed by the City of Sandy and CM/GC, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed.

**D.1.1.1** The Contract Sum is guaranteed by the CM/GC not to exceed « \_\_\_\_\_ » (\$ « \_\_\_\_\_ »), subject to additions and deductions as provided in the Contract Documents.

**D.1.1.2 Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the CM/GC's Fee, and other items that comprise the Guaranteed Maximum Price.

*(Provide below or reference an attachment.)*

« »

**D.1.1.3** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the City of Sandy:

*(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)*

« »

**D.1.1.4** Allowances included in the Guaranteed Maximum Price, if any:

*(Identify allowance and state exclusions, if any, from the allowance price.)*

**Item**

**Price (\$0.00)**

\_\_\_\_\_

**D.1.1.5** Assumptions, if any, on which the Guaranteed Maximum Price is based:

« »

**D.1.1.6** The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

**D.1.1.7** The Guaranteed Maximum Price is based upon the following Specifications:  
*(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)*

« »

Section	Title	Date	Pages

**§ D.1.1.8** The Guaranteed Maximum Price is based upon the following Drawings:  
*(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)*

« »

Number	Title	Date

**D.1.1.9** The Guaranteed Maximum Price is based upon the following other documents and information:  
*(List any other documents or information here, or refer to an exhibit attached to this Amendment.)*

« »

**ARTICLE D.2**

**D.2.1** In accordance with paragraph 5.b of the Contract, the anticipated date of Substantial Completion established by this Amendment is:

« »

If this date is different than the date established in paragraph 5.b of the Contract, the date in this GMP Amendment will control.

**ARTICLE D.3**

**D.3.1** As permitted by paragraph 6.d. of the Contract, the CM/GC will continue providing the following pre-construction services after execution of this GMP Amendment and City of Sandy will compensate CM/GC for such continued pre-construction services as follows:

« »

\_\_\_\_\_  
**City of Sandy** *(Signature)*  
  
\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**CM/GC** *(Signature)*  
  
\_\_\_\_\_  
*(Printed name and title)*



## Staff Report

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**Meeting Date:** May 16, 2022  
**From** Kelly O'Neill Jr., Development Services Director  
**SUBJECT:** SMC Section 15.04.120 Edits

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**DECISION TO BE MADE:**

Whether to adopt Ordinance No. 2022-09, to modify Section [15.04.120](#) of the Sandy Municipal Code

**PURPOSE / OBJECTIVE:**

This is a housekeeping amendment to align the Sandy Municipal Code with State of Oregon building code references.

**BACKGROUND / CONTEXT:**

Section [15.04.120](#) of the Sandy Municipal Code has outdated OAR references and contains incorrect code titles. The proposed code modifications will align the Sandy Municipal Code with adopted State of Oregon regulations. The proposed modifications were reviewed by the State of Oregon Building Codes Division.

**RECOMMENDATION:**

Adopt Ordinance No. 2022-9

**BUDGETARY IMPACT:**

None

**SUGGESTED MOTION LANGUAGE:**

"I move to approve the first reading of Ordinance No. 2022-09."



NO. 2022-09

**AN ORDINANCE AMENDING CHAPTER 15.04 OF TITLE 15 OF THE SANDY MUNICIPAL CODE IN COMPLIANCE WITH STATE OAR.**

**Whereas**, Section 15.04.120 of the Sandy Municipal Code has outdated OAR references and contains incorrect code titles; and

**Whereas**, the City Council desires to align the Sandy Municipal Code with adopted State of Oregon regulations; and

**Whereas**, the City Council held a public hearing to review the proposal on May 16, 2022;

**NOW, THEREFORE, THE CITY OF SANDY ORDAINS AS FOLLOWS,**

**Section 1:** Sandy Municipal Code Chapter 15.04 is amended as detailed in Exhibit A, attached and incorporated by reference.

**Section 2:** All remaining provisions of Title 15 of the Sandy Municipal Code are reaffirmed in their entirety.

This ordinance is adopted by the Common Council of the City of Sandy and approved by the Mayor this 16 day of May 2022

\_\_\_\_\_  
Stan Pulliam, Mayor

ATTEST:

\_\_\_\_\_  
Jeff Aprati, City Recorder

#2022-09

**Sec. 15.04.120. Building code standard.**

- A. *State of Oregon Structural Specialty Code - Current Edition.*
1. *Enforcement of State Code.* The Oregon Structural Specialty Code, as adopted by OAR 918-~~469~~460-0010 through 981-460-0015, except as modified in this code, is enforced as part of this code, including all code sections and appendixes that are permissible for municipal regulation.
  2. *Excavation and Grading/Erosion Control.* Appendix Chapter 33 of the Uniform Building Code, ~~current~~ 1997 edition, published by the ICBO, is adopted as part of this code.
- B. ~~Uniform-International~~ Fire Code with Oregon Amendments. For the purposes of prescribing regulations and governing conditions hazardous to life and property from fire or explosion, the ~~Uniform-Oregon~~ Fire Code, current edition, as amended by the State Fire Marshal, is adopted in its entirety as though it were fully and completely set out in this section, is enforced as part of this code.
- C. ~~State of Oregon Mechanical Specialty Code - Current Edition.~~
1. *Enforcement of State Code.* The Oregon Mechanical Specialty Code, as adopted by OAR 918-440-0010 through 918-440-~~0040~~0012, is enforced as part of this code.
  - ~~2. *Process Piping.* Appendix Chapter 14 of the Uniform Mechanical Code, current edition, published by the International Conference of Building Officials, except as modified in the following paragraph, is adopted as part of this code.~~
  - ~~3. *Section 1401 of this Appendix chapter is modified to read as follows:*~~  

~~The regulations of this chapter shall govern the installation of hazardous process piping in or in conjunction with a building or structure or located upon the premises.~~
- D. ~~State of Oregon Plumbing Specialty Code - Current Edition.~~
1. *Enforcement of State Code.* The Oregon Plumbing Specialty Code, as adopted by 918-750-0010, through 918-750-0115, OAR 918-770-0050 through 918-770-0330, OAR 918-780-0030 through 918-780-0065 and OAR 918-780-0085 through 918-780-0140, is enforced as part of this code, is enforced as part of this code.
- E. ~~State of Oregon One and Two Family Dwelling Residential Specialty Code - Current Edition.~~ The Oregon Residential Specialty Code, as adopted by OAR 918-480-0005 through 918-480-0150, are enforced as part of this code, including all code sections and appendixes that are permissible for municipal regulation. ~~One and Two Family Dwelling Specialty Code, as adopted by OAR 918-600-0005 through 918-600-0110, are enforced as part of this code.~~
- F. ~~State of Oregon Manufactured Home Installation Standards Specialty Code - Current Edition.~~
1. *Enforcement of State Rules.* These manufactured dwelling rules adopted by OAR 918-500-0000 through 918-500-0500 and OAR 918-520-~~0010-0000~~ through 918-520-~~0020-0600~~ are enforced as part of this code.
- G. *Manufactured Dwelling Parks.*
1. *Enforcement of State Rules.* These manufactured dwelling park rules adopted by OAR 918-600-~~000-005~~ through 918-650-~~0095-0600~~ are enforced as part of this code.
- H. ~~State of Oregon Recreational Park and Organizational Camp Regulations.~~
1. *Enforcement of State Rules.* The recreational park and organizational camp rules adopted by OAR 918-650-0000 through 918-650-~~0085-0080~~ are enforced as part of this code.

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I. Oregon Electrical Specialty Code - Current Edition.

1. Enforcement of State Code. The Oregon Electrical Specialty Code, as adopted by OAR 918-251-0090 through 918-305-0702

(Ord. No. 98-12, § 1(part), 1998)

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(Supp. No. 1, Update 3)

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## Staff Report

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**Meeting Date:** May 16, 2022

**From** Kelly O'Neill Jr., Development Services Director

**SUBJECT:** Parks Code Modifications and revised Parks & Trails Master Plan

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**DECISION TO BE MADE:**

Review the code modifications and revised master plan in anticipation of adoption on June 6, 2022.

**PURPOSE / OBJECTIVE:**

Facilitate successful implementation of the goals set forth in the 2022 Parks and Trails Master Plan.

**BACKGROUND / CONTEXT:**

**CODE EDITS** - In conjunction with the adoption of the new Parks and Trails Master Plan, the City is revising two municipal code chapters that regulate parkland and open space development. The two development code chapters that are proposed to be modified are Chapter 17.32, Parks and Open Space (POS) and Chapter 17.86, Parkland and Open Space.

**MASTER PLAN MODIFICATIONS** - The revised modifications amend and replace the adopted 2021 Parks and Trails Master Plan. The Plan was prepared by ESA Associates in partnership with the Parks and Trails Advisory Board and a Technical Advisory Committee. It was adopted by Sandy City Council on September 20, 2021. The Plan provides a framework for managing the continuing growth and maintenance of the City's parks and recreation resources through the year 2035.

The Parks and Trails Advisory Board reviewed the proposed amendments on April 13, 2022 and the Planning Commission reviewed the proposed amendments on April 25, 2022. Both the Board and Commission recommended approval of the code edits and revised master plan to the City Council. Staff worked with the Parks and Trails Master Plan consultant, Environmental Science Associates (ESA), the city attorney's office, with input from the Parks and Trails Advisory Board and City Councilors on the proposed code amendments.

**KEY CONSIDERATIONS / ANALYSIS:**

**CODE EDITS**

Chapter 17.32

1. Removed the references to public and private ownership in the intent statement as there is no need to distinguish between public and private parks and open space, or those that are “designated or proposed.” Our legal counsel has informed staff that this is uncommon in an ‘intent’ statement, and it is enough to say that the chapter is intended to provide for parks and open space.
2. Added an applicability section.
3. Added additional clarity to the primary permitted uses and accessory permitted uses.

#### Chapter 17.86

1. Added clarity to Section 17.86.10 to expressly incorporate the 2022 Amended Parks and Trails Master Plan by reference for limited land use decisions.
2. Increased the ratio to 0.0068 of an acre of parkland per person as recommended by ESA and consistent with the revised Parks and Trails Master Plan.
3. Added Section 17.86.10 (C) that specifies when an applicant shall pay a fee in lieu as it relates to the size of dedicated land.
4. Added additional clear and objective requirements for minimum parkland development standards in Section 17.86.20.
5. Removed the diagram in Section 17.86.20 as it was likely not clear and objective. It also set burdensome precedent by requiring streets around all sides of parks which is expensive to construct as the Parks SDC account has to pay for half street improvements along parkland.
6. Modified Section 17.86.30 to make the dedication process more clear and objective and to better define the environmental testing requirements.
7. Added additional clear and objective requirements for fee in lieu of dedication in Section 17.86.40, including a level of service reference and stated that the City of Sandy does not want parkland less than one-quarter of an acre unless for trail needs.

One item that FCS is recommending to modify, but is not modified yet in Exhibit B, is the total persons per unit in Section 17.86.10. FCS is recommending the City reduces single family dwelling unit from 3.0 total persons per unit to 2.73 total persons per unit, increases standard multi-family dwelling unit from 2.0 total persons per unit to 2.02 total persons per unit, and increases manufactured dwelling unit from 2.0 total persons per unit to 2.20 total persons per unit. FCS did not provide recommended modifications for duplex dwelling unit or congregate multi-family dwelling unit. Staff asked the City Attorney for advice on this recommended change. The City Attorney finds that the existing numbers are defensible, but so are the proposed numbers from FCS. **If the City Council wants to modify any of the total persons per unit numbers in Section 17.86.10, staff will need direction prior to June 6.**

#### **MASTER PLAN MODIFICATIONS**

Three key revisions have been made to the amended Plan:

1. Align the Plan with the Transportation System Plan update;
2. Refresh U.S. Census data; and

3. Align the level of service and needs analysis methodology with proposed Sandy Development Code amendments.

**RECOMMENDATION:**

Provide input to staff in anticipation of the June 6 adoptions.

**BUDGETARY IMPACT:**

1. Likely a cost savings for Parks SDCs with removal of the requirement to require streets around all sides of parks.
2. Likely additional parkland dedication or fee in lieu of land will be collected as the acre of parkland per person is proposed to increase.
3. Likely a reduction in legal costs by having updated municipal code that is easier for staff to enforce.

**LIST OF ATTACHMENTS/EXHIBITS:**

Exhibit A. Chapter 17.32 Code Modifications – track changes version  
Exhibit B. Chapter 17.86 Code Modifications – track changes version  
Exhibit C. Parks & Trails Master Plan

## EXHIBIT A.

Title 17 - DEVELOPMENT CODE  
CHAPTER 17.32 PARKS AND OPEN SPACE (POS)

### CHAPTER 17.32 PARKS AND OPEN SPACE (POS)<sup>1</sup>

#### Sec. 17.32.00. Intent.

This ~~district~~chapter is intended to ~~provide for recognize those publicly owned lands designated or proposed for~~ parks and open spaces. Parks include ~~publicly~~ developed parks, ~~and undeveloped park land open space, and~~ natural areas where ~~typical~~ uses include both active and passive outdoor recreation activities, trails, ~~open space,~~ cultural activities, park buildings and structures, concessions, general park operations and maintenance, and storm drainage facilities. Open space includes ~~publicly~~ developed and undeveloped lands and sensitive natural areas where uses include passive recreation activities such as trails, interpretive displays, viewpoints, picnic and seating areas, as well as environmentally sensitive areas such as wildlife habitats, wetlands, riparian corridors, steep slopes, forested areas, and stream corridors, and areas that support unique and/or endangered plant and animal species.

#### Sec. 17.32.10. Applicability

This chapter applies to all land designated or proposed for parks and open spaces. Where land is subject to a specific park master plan, such as Bornstedt Park or Sandy River Park, compliance with the specific master plan is required.

#### Sec. 17.32.~~1020~~. Permitted uses.

##### A. Primary Uses Permitted Outright:

1. Parks, natural areas and open space, and special use areas improvements identified in Map 5 Existing Park Inventory, Map 8 Proposed Park System, Table 12 Tier 1 Capital Improvement Plan, or Table A-3 Proposed Park Capital Improvement Plan of the 2022 Parks and Trails Master Plan; or Park Specific Master Plans adopted by the City Council.
2. Trails identified in Map 6 Existing Trail Inventory, Map 14 Proposed Trail System, Table 12 Tier 1 Capital Improvement Plan, or Table A-4 Proposed Trail Capital Improvement Plan; in otherwise undeveloped open space.
3. Other uses similar in nature as listed in the 2022 Parks and Trails Master Plan.

##### B. Accessory Uses Permitted Outright:

1. Accessory structures, detached or attached~~;~~
2. Educational activities in accordance with the primary purposes of the zone~~;~~
3. Interpretive displays~~;~~
4. Skate parks;

<sup>1</sup>Editor's note(s)—Pre-republication, this chapter was last revised by Ord. No. 2013-11, effective December 18, 2013. Any amendments occurring post-republication have a history note in parenthesis at the bottom of the amended section.

{00796137; 1 }

- 5. Splash pads;
- 6. Community gardens;
- 7. Disc golf courses;
- 8. Pump tracks;
- 9. Climbing walls;
- 10. Off-leash dog parks;
- 11. Sports fields and courts;
- 412. Park furnishings, including arbors, barbeques, benches, bicycle racks, drinking fountains, gazebos, kiosks, picnic tables, play equipment and signage--;
- 513. Public driveways and parking areas for uses permitted in this zone--;
- 614. Public restroom facilities--;
- 15. Other uses similar in nature as listed in the 2022 Parks and Trails Master Plan.

**Sec. 17.32.2030. Minor conditional uses and conditional uses.**

- A. *Minor Conditional Uses:* None
- B. *Conditional Uses:*
  - 1. Campgrounds;
  - 2. Swimming pools and aquatic facilities;
  - 3. Community centers;
  - 43. Other uses similar in nature.

**Sec. 17.32.3040. Sandy River Park.**

The above uses are inapplicable to the Sandy River Park property owned by the City of Sandy. This section contains requirements specific to Sandy River Park. Development of the Sandy River Park is guided by and limited to the uses identified in the Sandy River Park Master Plan dated June 3, 2010, and any future Sandy River Park Master Plan amendments adopted by the City Council. The primary uses specified in the plan include hiking, nature study, ~~and~~ habitat restoration and the construction of a trail system to facilitate ~~this-these~~ uses. Accessory structures identified in the plan include installation of interpretative signage, benches, picnic tables, restroom facilities, and limited parking.

**Sec. 17.32.4050. Development standards.**

Parks and Open Space	
Lot Area	No minimum
Lot Dimension	No minimum
Setbacks	No minimum or maximum
Lot Coverage	No maximum
Structure Height	35 ft. maximum
Off-Street Parking	See Chapter 17.98
Design Review Standards	See Section 17.90.120

{00796137; 1 }

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(Supp. No. 1, Update 2)

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**Sec. 17.32.5060. Additional requirements.**

- A. ~~Where applicable, p~~Park improvements shall comply with ~~city design standards-Chapter 17.90 Design Standards.~~
- B. Provisions for pedestrian and vehicular off-street access ~~to adjoining properties~~ shall be included in ~~individual~~ park ~~specific~~ master plans.

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(Supp. No. 1, Update 2)

Page 3 of 3

## EXHIBIT B.

Title 17 - DEVELOPMENT CODE  
CHAPTER 17.86 PARKLAND AND OPEN SPACE

### CHAPTER 17.86 PARKLAND AND OPEN SPACE<sup>1</sup>

#### Sec. 17.86.00. Intent.

The availability of parkland and open space is a critical element in maintaining and improving the quality of life in Sandy. Land that features trees, grass and vegetation provides not only an aesthetically pleasing landscape but also buffers incompatible uses, and preserves sensitive environmental features and important resources. Parks and open space, together with support facilities, also help to meet the active and passive recreational needs ~~of the population~~ of Sandy residents. This chapter implements policies of Goal 5 and Goal 8 of the Comprehensive Plan and the 2022 Parks and Trails Master Plan by outlining provisions for parks and open space in the City of Sandy.

#### Sec. 17.86.10. Minimum parkland dedication requirements.

Parkland Dedication: ~~New residential subdivisions, planned developments, Residential subdivisions and partitions, single-family or~~ multi-family developments, or and manufactured home park developments shall be required to provide parkland to serve ~~existing and future~~ residents of those developments. Congregate Mmulti-family housing developments ~~which that~~ provides some "congregate" services and/or facilities, ~~such as group transportation, dining halls, emergency monitoring systems, etc., but which have individual dwelling units rather than sleeping quarters only, as defined in Chapter 17.10 of the City's Municipal Code,~~ are considered to be multi-family developments for the purpose of parkland dedication. Licensed adult congregate care living facilities, nursing homes, and all other ~~similar residential care~~ facilities ~~which that~~ provide ~~their~~ clients with individual beds and sleeping quarters, but in which all other care and services are communal and provided by facility employees, are ~~specifically~~ exempt from parkland dedication. ~~and system development fee requirements. The dedication or provision of parks, open space, trails, and amenities shall comply with the 2022 Parks and Trails Master Plan, dedicated pursuant to the formula in Section 17.86.10 (B), and in compliance with the improvement standards in Section 17.86.20. The level of service standards as well as the park and trail level of service needs as identified in Chapter 4, Table 10, of the 2022 Parks and Trails Master Plan are specifically incorporated by this reference.~~

- A. The required parkland shall be dedicated as a condition of approval for the following:
1. Single-family and duplex building permits;
  2. Tentative plat for a subdivision or partition;
  2. ~~Planned Development conceptual or detailed development plan;~~
  3. Design review for a multi-family development or manufactured home park; ~~and~~
  4. Design review for a multi-family development accessory to commercial or industrial development; and,
  45. Replat or amendment of any site plan for multi-family development or manufactured home park where dedication has not previously been made or where the density of the development involved will be increased.

<sup>1</sup>Editor's note(s)—Pre-republication, this chapter was last revised by Ord. No. 2013-03, effective July 3, 2013. Any amendments occurring post-republication have a history note in parenthesis at the bottom of the amended section.

{00796141; 1 }

- B. Calculation of Required Dedication: The required parkland acreage to be dedicated ~~is shall be~~ based on ~~a calculation of~~ the following formula:

Required parkland dedication (acres) = (proposed dwelling units) x (persons/dwelling unit) x ~~0.00430.0068~~ (per person park land dedication factor)

1. Population Formula: The following table shall be used to determine the number of persons per unit to be used in calculating required parkland dedication:

Type of Unit	Total Persons Per <u>Dwelling</u> Unit
Single family dwelling unit	3.0
Duplex dwelling unit	3.0*
Standard multi-family unit	2.0
Manufactured dwelling unit	2.0
Congregate multi-family unit	1.5

\* The total persons per unit for the entire duplex (both units) would be six.

~~Persons per unit, age distribution, and local conditions change with time.~~ The specific formula for the dedication of land will, therefore, be subject to periodic review and amendment. ~~The A~~ fee-in-lieu under Section 17.86.40 shall be based on the number and type of dwelling units proposed at time of plat, but an additional fee in-lieu will be ~~necessary-required~~ and calculated on a per lot basis if any lots are constructed or converted to add additional dwelling units. For example, if an existing single family dwelling unit is converted into a duplex dwelling unit the existing single family ~~home-dwelling~~ unit shall receive a credit, but the new dwelling unit shall pay the difference in persons per dwelling unit. This would equate to one proposed dwelling unit multiplied by three additional persons multiplied by ~~0.00430.0068~~ for the above example.

2. Per Person Parkland Dedication Factor: The total parkland dedication requirement shall be ~~0.00430.0068~~ of an acre per person based on the adopted standard of ~~4.36.8~~ acres of land per 1,000 of ~~ultimate~~ population per the 2022 Parks and Trails Master Plan.<sup>2</sup> This standard represents the citywide land-to-population ratio for city parks at 5.25 acres of land per 1,000 of population, and land for trails at 1.55 acres of land per 1,000 of population, ~~and may be adjusted periodically through amendments to the Parks Master Plan.~~

(Ord. No. 2021-03 , § 8(Exh. H), 5-17-2021)

C. Notwithstanding Section 17.86.10 (A) above, when the amount of land to be dedicated is less than one quarter acre, or the level of service standards for mini parks in the 2022 Parks and Trails Master Plan have been met for the subject site, the applicant shall pay a fee in lieu of dedication as provided in Section 17.86.40 (B), with the following exceptions:

1. When the land to be dedicated is for a trail identified in Map 14 Proposed Trail System, Table 12 Tier 1 Capital Improvement Plan, or Table A-4 Proposed Trail Capital Improvement Plan of the 2022 Parks and Trails Master Plan;

<sup>2</sup>Editor's note(s)—~~Parks Master Plan, Implementation Plan section, Pages 4 and 5 indicate a required park acreage total of 64.5 acres. This number, divided by population (2015) of 15,000 equates to 4.3 acres per 1000 population or 0.0043 per person. 2022 Parks and Trails Master Plan, Section 4.2, Park and Trail Needs, Table 10 (Park and Trail Needs Analysis).~~

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(Supp. No. 1, Update 2)



- 
2. When the land to be dedicated abuts existing or planned parkland that necessitates additional acreage to meet the identified parkland acreage needs as identified in Map 8 Proposed Park System, Table 12 Tier 1 Capital Improvement Plan, or Table A-3 Proposed Park Capital Improvement Plan of the 2022 Parks and Trails Master Plan.

### **Sec. 17.86.20. Minimum parkland standards.**

Land required or proposed for parkland dedication shall be contained within a continuous unit and ~~must~~ shall be suitable for active-accommodate use as a mini-neighborhood, or ~~mini-community-park~~, as defined in the 2022 Parks and Trails Master Plan, based on the following criteria:

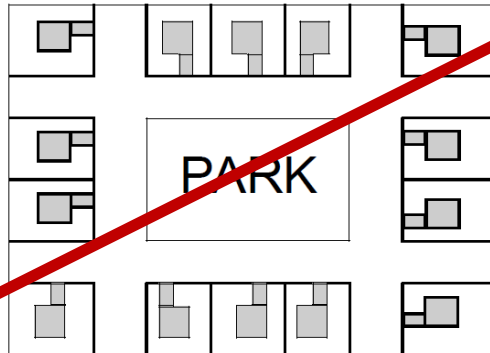
- A. ~~Homes must~~ The primary entrance of single-family homes and duplexes front shall face towards parkland when separated by street right-of-way, on the parkland as shown in the example below: Residential through lots or corner lots that abut more than one street with one of the streets defined as an arterial or collector street shall have the front door face the arterial or collector street as defined by Chapter 17.82.
- B. On the sides of the parkland not fronting onto a street, a pedestrian and bicycle access way shall be provided with a minimum improved surface of ten feet within a 15-foot right-of-way or tract. If the parkland abuts land to be developed for multi-family development or a manufactured home park the multi-family development or manufactured home park shall include a pedestrian and bicycle access way in a public easement from any abutting street right-of-way through the property with multi-family development or a manufactured home park to the parkland.
- C. In all zones where property abuts parkland, a fence no higher than six feet shall separate the use from the parkland. Barbed wire is not permitted on fences abutting parks.
- D. ~~Any~~ retaining wall constructed at the perimeter of ~~the a~~ park adjacent to a public right-of-way or private street shall not exceed four (4) feet in height.
- E. The required parkland dedication for parks one acre or greater shall be abutted by street right-of-way for at least 400 linear feet, with the following exceptions for trails and parks less than one acre:
  1. Land dedicated for trails as identified in the 2022 Parks and Trails Master Plan only need to abut street right-of-way for a total of 15 linear feet.
  2. If the land dedication is between half-acre and one-acre the parkland shall be abutted by street right-of-way for at least 200 linear feet.
  3. If the land dedication is less than half-acre the parkland shall be abutted by street right-of-way for at least 100 linear feet.

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- ~~BF.~~ The required dedication shall be contained as a contiguous unit and not separated into pieces or divided by ~~roadways, streets or other pedestrian barriers.~~
- ~~CG.~~ The parkland ~~must shall be able to accommodate provide for~~ park facilities, such as play structures and play fields, picnic areas, or other active park use facilities, as described in the 2022 Parks and Trails Master Plan, subject to the following standards: ~~The average slope of the active use parkland shall not exceed 15 percent.~~
  - ~~1.~~ Neighborhood Parks or Community Parks: Not more than 20 percent of the park may exceed 15 percent slope. Zero percent of the park shall include wetlands.
  - ~~1-2.~~ Mini Parks: Not more than 10 percent of the park may exceed 15 percent slope. Zero percent of the park shall include wetlands.
- ~~E.~~ ~~Once dedicated, the City will assume maintenance responsibility for the neighborhood or mini parkland.~~

**Sec. 17.86.30. Dedication procedures.**

~~Land dedicated to the City as parkland shall be dedicated on the final plat, or by recording a deed, easement, or other appropriate document when there is not a plat. Prior to approval of the final plat, the developer shall dedicate the land as previously determined by the City in conjunction with approval of the tentative plat. Dedication of land in conjunction with multi-family development shall be required prior to issuance of building permits, and commencement of construction.~~

- A. Prior to ~~acceptance of required parkland dedications~~ final plat approval, the applicant/~~developer~~ shall complete the following items for all proposed dedication areas:
  - 1. The ~~developer-applicant~~ shall clear, fill, and/or grade all land ~~to the satisfaction of the City in accordance with the approved grading plan~~, install curb, gutter, and sidewalks in accordance with the Transportation System Plan on the park land adjacent to any street, and seed the park-land; and,
  - 2. The ~~developer-applicant~~ shall submit a Phase I Environmental Site Assessment ~~of the parkland to the City~~, completed by a qualified professional according to American Society of Testing and Materials (ASTM) standards (ASTM E 1527). The results of this study shall indicate a clean environmental record prior to dedication.
    - a. In the event that the Phase 1 Environmental Site Assessment detects the potential for contaminated soil, the applicant shall perform further assessment, testing and sampling as needed to determine the type and extent of contamination present, and potential remediation steps needed.

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b. If contaminated conditions are present the applicant shall either remediate the condition and submit a report to the City documenting the procedures and final soil conditions or select other property for the parkland dedication.

B. Additional Requirements.

1. In addition to a formal dedication on the plat to be recorded, the subdivider shall convey the required lands to the city by general warranty deed. The developer of a multi-family development or manufactured home park shall deed the lands required to be dedicated by a general warranty deed. In any of the above situations, the land so Land dedicated and deeded or restricted for use as parkland shall not be subject to any other easements, reservations of record, or encumbrances of any kind or easements which, in the opinion of the Director, will that interfere with the use of the land for park, open space, or recreational purposes.

The subdivider or developer shall be required to present to the City a title insurance policy on the subject property ensuring the marketable state of the title.

2. Where any reservations, encumbrance, or easements exists, the applicant may propose an alternative lot or parcel for parkland dedication or the City may require payment in lieu of the dedication of lands, unless it chooses to accept the land subject to encumbrances.

C.3. Phased Developments. In a phased development, the required park land for the entire development shall be dedicated prior to approval of the on the final plat for the first phase of the development. Improvements to the land as required by Section 17.86.30.A.1. shall be made completed or bonded per the standards in Chapter 17.100 prior to approval of the final plat for the phase that includes the park-land.

**Sec. 17.86.40. Cash Fee in lieu of dedication.**

At the city's discretion only, the city may accept payment of a fee in lieu of land dedication. The city may require payment in lieu of land when the park land to be dedicated is less than three acres. A payment in lieu of land dedication is separate from Park Systems Development Charges (SDCs), and is not eligible for a credit of Park Systems Development Charges SDCs. The amount of the fee in lieu of land dedication (in dollars per acre) shall be set by City Council Resolution based on relevant economic indices, and it shall be based on the typical market value of developed property (finished lots) in Sandy net of related development costs.

A. The following factors shall be used in the choice of whether to accept land or cash in lieu:

1. The topography, geology, access to, parcel size, and location of land in the development available for dedication;
2. Potential adverse/beneficial effects on environmentally sensitive areas;
3. Compatibility with the Parks Master Plan, Public Facilities element of the Comprehensive Plan, and the City of Sandy Capital Improvements Program in effect at the time of dedication;
4. Availability of previously acquired property; and
5. The feasibility of dedication.

A. The City shall accept a fee in lieu of dedication from an applicant if the land area proposed to be dedicated is not identified in Map 14 Proposed Trail System, Table 12 Tier 1 Capital Improvement Plan, or Table A-4 Proposed Trail Capital Improvement Plan of the 2022 Parks and Trails Master Plan or is not in compliance with the improvement standards in Section 17.86.20.

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- B. The City shall accept a fee in lieu of dedication from an applicant if the land area proposed to be dedicated is not identified in Map 8 Proposed Park System, Table 12 Tier 1 Capital Improvement Plan, or Table A-3 Proposed Park Capital Improvement Plan of the 2022 Parks and Trails Master Plan or is not in compliance with the improvement standards in Section 17.86.20.
- C. The City shall accept a fee in lieu of dedication from an applicant if the park area to be dedicated is less than one-quarter acre, or the level of service standard for mini parks described in the 2022 Parks and Trails Master Plan has been satisfied, with the following exceptions:
1. When the land to be dedicated is for a trail identified in Map 14 Proposed Trail System, Table 12 Tier 1 Capital Improvement Plan, or Table A-4 Proposed Trail Capital Improvement Plan of the 2022 Parks and Trails Master Plan;
  2. When the land to be dedicated abuts existing or planned parkland that necessitates additional acreage to meet the identified parkland acreage needs as identified in Map 8 Proposed Park System, Table 12 Tier 1 Capital Improvement Plan, or Table A-3 Proposed Park Capital Improvement Plan of the 2022 Parks and Trails Master Plan.
- ~~B.D. Cash~~ The fee in lieu of parkland dedication for a residential subdivision shall be paid prior to approval of the final plat or as specified below:
1. Fifty (50) percent of the payment shall be paid prior to final plat approval, and
  2. The remaining 50 percent of the payment, plus an administrative surcharge specified by City Council resolution, shall be pro-rated equally among the lots and paid at the time of building permit issuance for each lot, ~~plus an administrative surcharge as determined by the City Council through a resolution, will constitute a lien against the property payable at the time of sale.~~
- E. The fee in lieu of dedication for a single-family dwelling, duplex, or multi-family dwelling not in conjunction with a residential subdivision shall be paid at the time of building permit issuance for the subject lot or parcel.

#### **Sec. 17.86.50. Minimum standards for open space dedication.**

~~The applicant through~~ An application for a subdivision, partition, replat or design review ~~process~~ may propose the ~~designation-dedication~~ and protection of open space areas as part of that process. ~~This~~ However, this open space ~~will shall~~ not be eligible to, ~~however, be~~ counted toward the parkland dedication requirement of Sections 17.86.10 through 17.86.40.

- A. The types of open space that may be provided are ~~as follows~~:
1. *Natural Areas*: areas of undisturbed vegetation, steep slopes, stream corridors, wetlands, wildlife habitat areas, riparian corridors, or areas replanted with native vegetation after construction.
  2. *Greenways*: linear green belts ~~areas~~ linking residential areas with ~~other~~ open space areas. These greenways may contain bicycle paths or footpaths. Connecting greenways between residences and recreational areas ~~are~~ is encouraged.
- B. A subdivision, partition, replat, or design review application proposing designation of open space shall include the following information as part of ~~this~~ the application:
1. Designate the boundaries of all open space areas; and

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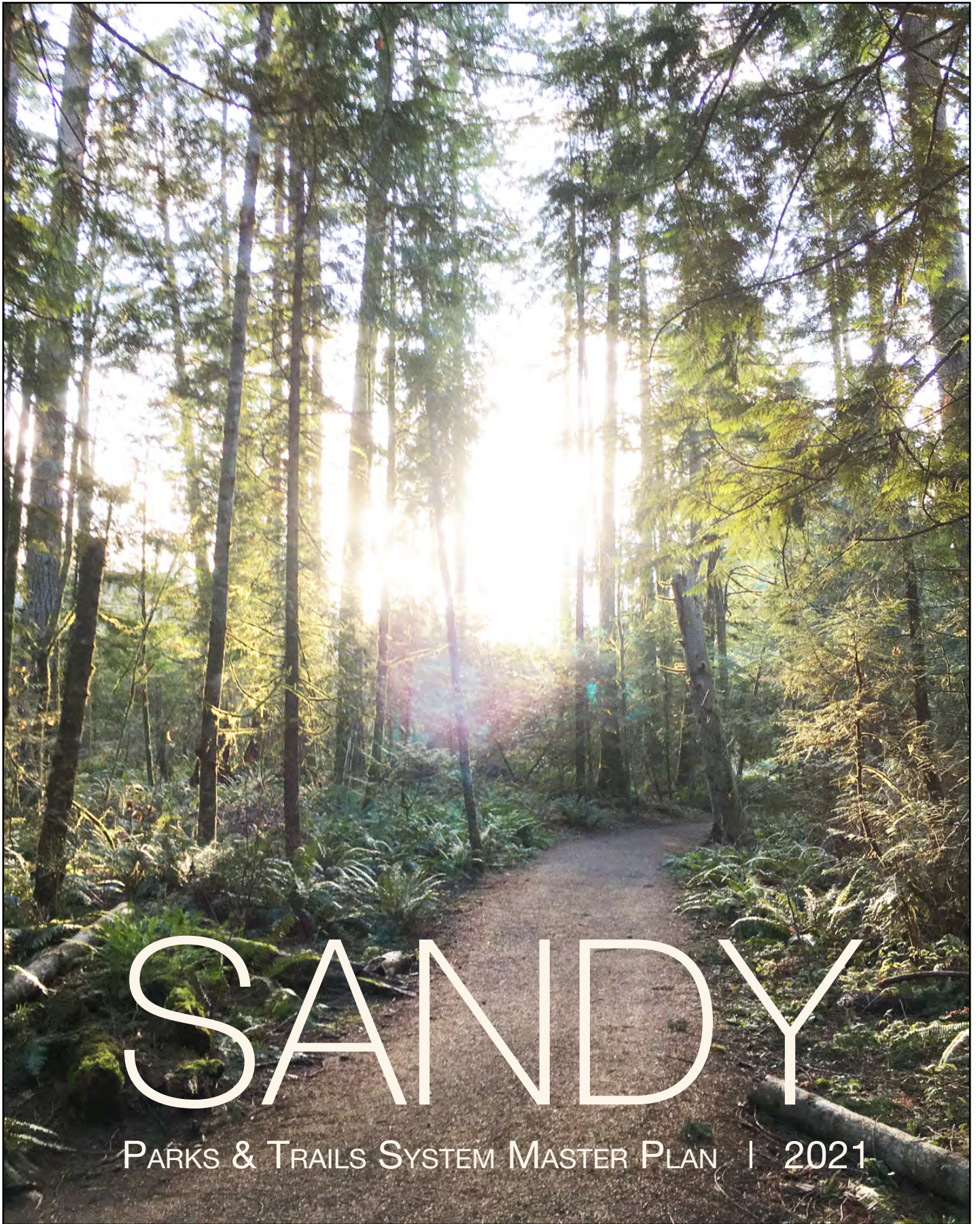
- 
2. Specify the manner in which the open space shall be ~~perpetuated~~downed, maintained, and administered; and
  3. Provide for public access to trails included in the 2022 Parks and Trails Master Plan, including but not limited to the Tickle Creek ~~Path~~Trail.
- C. Dedication of open space may occur concurrently with development of ~~the a~~a project. ~~At the discretion of the city~~City, ~~for~~for ~~phased~~phased development ~~that will be phased~~, the open space may be set aside in totality and/or dedicated in conjunction with the first phase of the development or incrementally set aside and dedicated in proportion to the development occurring in each phase.
- D. Open space areas shall be maintained so that the use and enjoyment thereof ~~is not diminished or destroyed~~remain safe, healthy, and functional. Open space areas may be owned, preserved, and maintained by any of the following mechanisms or combinations thereof:
1. Dedication to the City of Sandy or ~~an appropriate~~another public agency, ~~approved by the City~~, if there is a public agency willing to accept the dedication. Prior to acceptance of proposed open space, the City ~~may~~shall require the ~~developer~~applicant to submit a Phase I Environmental Site Assessment of the open space area completed by a qualified professional according to American Society of Testing and Materials (ASTM) standards (ASTM E 1527). The results of this study shall indicate a clean environmental record prior to dedication.
    - a. In the event that the Phase 1 Environmental Site Assessment detects the potential for contaminated soil, the applicant shall perform further assessment, testing and sampling as needed to determine the type and extent of contamination present, and potential remediation steps needed.
    - b. If contaminated conditions are present the applicant shall either remediate the condition and submit a report to the City documenting the procedures and final soil conditions or, select another area for parkland dedication.
  2. Common ownership by a homeowner's association that assumes full responsibility for its maintenance;
  3. Dedication of development rights to ~~an appropriate~~another public agency with ownership remaining with the developer or homeowner's association. Maintenance responsibility will remain with the property owner; and/or
  4. Deed-restricted private ownership preventing development and/or subsequent ~~subdivision~~land division and providing for ongoing maintenance responsibilities.
- E. In the event that ~~any private~~an owner of private open space fails to maintain it according to the standards of this Code, the City of Sandy, following reasonable notice, may demand that the deficiency of maintenance be corrected, and may enter the open space for maintenance purposes. All costs thereby incurred by the City shall be charged to those persons having the primary responsibility for maintenance of the open space. The City shall enforce the maintenance requirement, pursuant to Sandy Municipal Code Sections 1.18 or 8.16.

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# SANDY

PARKS & TRAILS SYSTEM MASTER PLAN | 2021

Amended

CITY OF SANDY  
PARKS AND TRAILS MASTER PLAN  
Update

Prepared for  
City of Sandy

February 2022



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# ACKNOWLEDGEMENTS

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## EXECUTIVE SUMMARY

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The 2021 Sandy Parks and Trails Master Plan provides a framework for managing the continuing growth and maintenance of the City's parks and recreation resources through the year 2035. The document is intended to be reviewed and updated regularly in response to plan progress and changing conditions. The plan is a reflection of the community's values and a significant accomplishment made possible by a collaborative effort involving community stakeholders, City Council, the Parks and Trails Advisory Board, the Technical Advisory Committee, and City staff.

The plan is divided into six sections with supporting material included in appendices:

- Chapter 1 describes the purposes of the plan, reports progress made since the prior plan, and identifies related planning documents that have bearing on Sandy's parks and trails system.
- Chapter 2 characterizes the physical and demographic context of the planning area and summarizes public outreach efforts.
- Chapter 3 outlines the park system's organization, classifies and inventories park and trail assets, and briefly discusses other regional recreation providers.
- Chapter 4 explains the concept of level of service and uses it to identify needs in the existing park and trail resources and set goals for future acquisition, development, operations, and maintenance growth.
- Chapter 5 provides recommendations for general priorities and improvements to existing parks, concepts for existing undeveloped parks and trails, and guidance on potential funding and operations changes.
- Chapter 6 identifies strategies to implement and fund the recommended improvements and includes near term capital improvements projects.
- The Appendices contain full capital project lists, design guidelines, existing park and trail inventories, additional context for the undeveloped park concepts in Chapter 5, and a full description of public outreach during the planning process.

Unlike land-constrained Portland and its suburbs, the City of Sandy is largely surrounded by tracts of natural, low density residential, and agricultural lands. The availability of undeveloped land presents an opportunity for the parks and trails system to be extensive, well connected, and high quality. On the other hand, Sandy is one of the fastest growing communities in Oregon and faces consistent pressure to develop land for residential use. The City must be strategic and forward looking to preserve the unique character and charm of beloved assets like Meinig Memorial Park, the Tickle Creek Trail, and Jonsrud Viewpoint, while continuing to develop a diverse, accessible system that serves all community members.

Future parks will be designed to incorporate amenities, features, and practices which prioritize a diverse, inclusive, accessible, and sustainable park system that incorporates public art where possible.

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# CHAPTER 1

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## Introduction

*The City of Sandy, Oregon, is located approximately halfway between the state's largest population center, Portland, and its highest mountain, Mt. Hood. The City is adjacent to its namesake, the Sandy River and surrounded by mountains, forests, streams and rolling foothills. The scenic nature of Sandy's setting makes it an attractive bedroom community to the Portland-metro area. It also serves as the first full service city for those headed west from Mt. Hood.*

### 1.1 PLAN PURPOSE

This update to the 1997 City of Sandy Parks Master Plan was undertaken to address the City's steady population growth, recent expansion of the Urban Growth Boundary (UGB), and completion of most of the projects identified in the 1997 Plan. The update sets the year 2035 as the target planning horizon. The general purpose for the amendment is to:

- Update the previous plan to reflect current parks and trails system conditions
- Identify the type and geographic distribution of proposed new parks and trails to meet the needs of continued population expansion
- Recommend improvements to existing parks to repair or replace older features to reduce maintenance costs and improve user experiences
- Recommend funding strategies for future park and trail projects
- Update the Capital Improvement Plan (CIP) to help guide priorities over the 15 year planning period.

### 1.2 PROGRESS SINCE PREVIOUS MASTER PLAN

When Sandy adopted its first Parks Master Plan in 1997, the parks system was limited to a handful of parks and undeveloped parcels and relied heavily on school, church, and regional park facilities to serve the community. To meet growing demand, the City initiated the planning process by inventorying existing facilities, assessing recreational needs, and crafting recommendations for park development. Current and projected demographics and public engagement efforts informed recommendations which highlighted the following goals:

- Upgrade existing park facilities
- Acquire land for future parks, especially larger tracts, to meet community park needs
- Adjust system development charges to provide funding for future park development
- Develop new pedestrian and bicycle trails and provide connections between parks

- Develop new parks alongside residential and commercial development to ensure equitable access to parks and trails for a growing population

The 1997 Plan also prioritized athletic fields, indoor or covered facilities, sport courts, and the preservation of open space and natural areas. The community expressed interest in developing a cooperative partnership between Sandy and the Oregon Trail School District for joint use, maintenance, and funding of facilities.

Since the adoption of the 1997 Plan, Sandy's population has more than doubled and many of the Plan's goals have been achieved:

- Meinig Memorial Park facilities were upgraded
- The City added 5 mini parks, 6 neighborhood parks, a community park, an urban plaza, a skate park, and over 200 acres of natural and open space
- System development charges were established and have been used as a steady source of funding to develop and improve park and trail facilities
- Nearly two miles of the Tickle Creek Trail has been completed
- Park land is acquired via dedication or purchased using fee in lieu of land payments as a condition of development. Fee in lieu and System Development Charge (SDC) money is combined with grants, partnerships, and volunteer labor to acquire land and develop parks to support new residential development.



*Basketball Court at Timberline Park*

### 1.3 RELATED PLANS

#### Sandy Comprehensive Land Use Plan

The Sandy Comprehensive Land Use Plan is the guiding document for all planning and development efforts in the city. Goal 8 of the Plan directs the City to maintain, preserve, enhance, and reinforce its desirable and distinctive characteristics and those of its individual neighborhoods by providing parks and open space for each neighborhood. The Plan outlines policies and goals to guide park planning efforts. These include:

- Ensure new residential development contributes equitably to park land acquisition, development, and maintenance.
- Establish methods to maintain and enhance the quality and quantity of parks, open space, and recreational facilities and services. Ensure that these facilities and services serve the diverse recreational needs and interests of area residents and are accessible to all members of the community.

- Establish viewpoints for natural vistas and protect natural resources.
- Establish user fees for recreation uses and facility reservations.
- Use improvement funds such as transportation SDC's for sidewalk projects and bicycle facilities that implement elements of the Transportation System Plan.

The Plan also identifies the need to:

- Develop a Parks Master Plan outlining park locations, recreational facilities, and services.
- Develop a parks system that provides both active recreation and exercise and passive enjoyment of the outdoors.
- Locate parks near schools and cooperate with the school district on joint recreational facilities.



*Trail at Sandy River Park*

The Plan outlines funding policies to use system development charges, bonds, grants, and donations for new parks, open space and facilities. It calls for recreation user fees for recreation uses and facility reservations. The Plan calls for the City to consider the dedication of a portion of road construction and improvement funds for sidewalk projects and bicycle facilities and highlights the need for park maintenance volunteers.

Recommended changes to Goal 8 of the Comprehensive Plan are proposed in Chapter 5 of this report. Sandy will be embarking on a Comprehensive Plan update in 2021, with adoption anticipated in 2023.

### Sandy Transportation System Plan

The City's Transportation System Plan (TSP) serves as the foundation for the construction of arterial and collector streets, helps shape the future development of Sandy, and serves as a valuable resource for staff, policy makers, and the public.

The current plan was adopted in 2011. The Bicycle and Pedestrian components of the plan are currently in the process of being updated with expected adoption in 2022. The update will identify strategies to improve mobility throughout Sandy by addressing bike and pedestrian needs, connectivity, increased traffic volumes, funding opportunities, street design, development conditions, and user preferences. Elements of the current (2011) plan that serve both recreation and transportation needs have been incorporated into this plan, including access way / trails that are not associated with roadway projects, and a proposed pedestrian over crossing of Highway 211.



## Oregon Statewide Comprehensive Outdoor Recreation Plan

The Oregon Statewide Comprehensive Outdoor Recreation Plan (SCORP) identifies current trends in recreation participation and demand and key planning issues facing communities, and provides state and local recommendations to address these issues. The 2019–2023 SCORP identified five important demographic and societal changes facing outdoor recreation providers in the coming years, including an aging population, an increasingly diverse population, lack of youth engagement in outdoor recreation, an underserved low-income population, and the health benefits of physical activity.

The 2019-2023 SCORP identified Sandy’s UGB as a high priority area for families with children and middle old populations (75-84 years). As a high-priority city, Sandy is eligible for potential ranking prioritization when applying for Oregon Parks and Recreation Department (OPRD) grants.

## Individual Park Master Plans

The City of Sandy has completed master plans for a number of parks in the system over the past decade. Elements or initial phases of these plans have been implemented, with future phases remaining incomplete. Those master plans supplemented these planning efforts and are included to identify planned improvements, community needs, and estimated costs. Reference master plans include:

- Bornstedt Park Master Plan
- Sandy River Park Master Plan



## CHAPTER 2

### Community Profile

The City of Sandy's parks and recreation facilities serve a population that is 2-3 times larger than the 12,612 people within City limits. These areas include residents of the villages of Mt. Hood, Boring, Eagle Creek and Estacada. Sandy manages lands within City limits, while Clackamas County manages lands within the Urban Growth Boundary (UGB) and Urban Growth Reserve (UGR). The Sandy UGB expanded in 2017 and 2020.

#### 2.1 PHYSICAL CONTEXT AND PLANNING AREA

##### Regional Location

Sandy is separated from surrounding cities and towns by rural reserves. The areas of Clackamas County to the east of Sandy are unincorporated small villages: Alder Creek, Brightwood, Wemme, Welches, Zigzag, Rhododendron and Government Camp. These villages are surrounded by the Mt. Hood National Forest and Bureau of Land Management lands, which offer more than a million forested acres providing a wide range of recreational opportunities. Residents in these villages come to Sandy, to meet many of their shopping and personal needs. The larger towns south and west of Sandy including Boring, Eagle Creek and Estacada, are composed of some denser residential areas and large areas of farm and agricultural nursery lands interspersed with large home lots. Farther west, towards Gresham, the nursery land transitions to a more populated and urban setting.

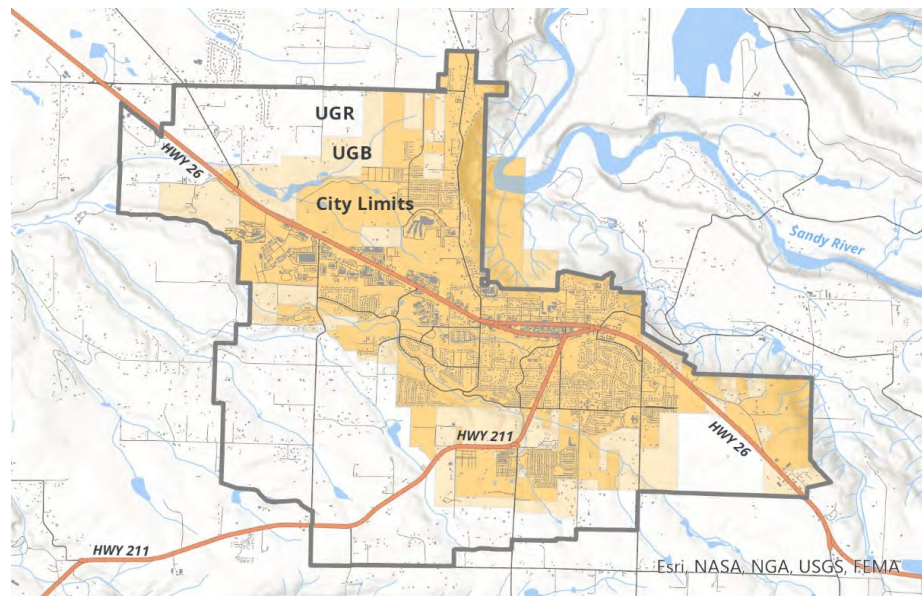


Figure 1 Vicinity Map

## Planning Area

The planning area for Sandy’s Parks and Trails Master Plan Amendment is defined as the City’s Urban Growth Reserve (UGR), with an emphasis on the areas within the recently expanded urban growth boundary (UGB). The undeveloped areas within the UGB and UGR, but outside the City limits, are currently under the planning jurisdiction and policies of Clackamas County until they are annexed into the City.

Sandy is bisected by two state highways that act as significant physical barriers to community connectivity: Highway 26 provides access from Portland and Gresham to the Mt. Hood National Forest. State Highway 211 begins at an intersection with Highway 26 in Sandy and heads south to Estacada, Molalla and beyond.



**Figure 2** Planning Area

## Climate and Surroundings

Sandy’s climate is fairly mild with wet winters and occasional wind storms, especially east winds along Bluff Road. Temperatures average in the mid 40’s in winter and in the mid 60’s in summer. Annual rainfall averages over 75 inches.

Land cover of non-urbanized areas within the planning area consists of a mixture of open agricultural fields (berry fields and nursery stock), small patches of forests, and large lots with single family homes. Forest lands are a mixture of hardwoods (alder, big leaf maples, and vine maples) and conifers (Douglas fir, western hemlock and western red cedar). There are numerous small creeks draining to Tickle Creek, Sandy River, and Deep Creek which support salmon runs. Wildlife is abundant in and around Sandy with signs and sightings of raccoons, possum, coyotes, bear, cougars, bobcats, bald eagles, osprey and a variety of birds.

Topography is the most limiting factor for development in Sandy. The north edge of town is defined by the Sandy River canyon and a precipitous drop of nearly 600 feet of elevation. The City sits at 1,000 feet above sea level and elevations generally rise as you head east towards Mt. Hood. Drainages increase south of Sandy and generally flow to the Clackamas River.

## 2.2 DEMOGRAPHICS

*In 2020, there were nearly 4,700 estimated households in Sandy with an average size of 2.77 people. Of those households, 40% had children under the age of 18, and one third included someone over the age of 60. Sandy uses federal census data and population studies conducted by Portland State University.*

### Population and Age

Sandy’s population grew steadily over the previous decades and is expected to continue this trend through 2035.

Population Growth				
Year	2000	2010	2020	Projected 2035
Population	5,361	9,570	12,612	<b>19,100</b>
Percent Change		79%	32%	<b>51%</b>

Source: U.S. Census Bureau, Metro, Clackamas County, and Portland State University

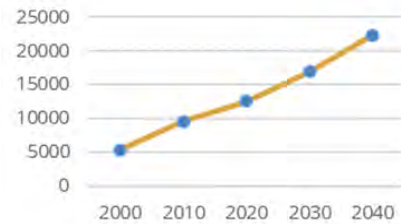
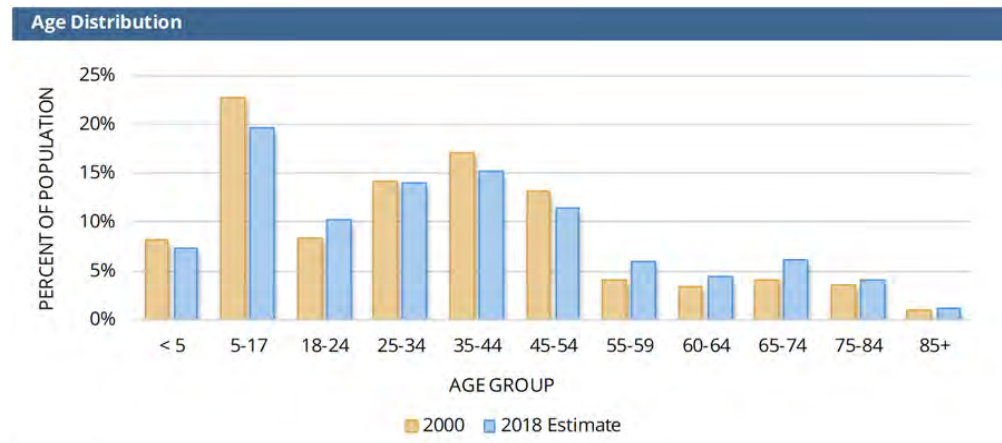


Figure 3 Population



The general age group composition remained relatively consistent between 2000 and 2018. Although adults over the age of 55 comprise a smaller percentage of the total population, the older age groups are exhibiting a growing trend which aligns with statewide and national trends. The percentage of adults over age 55 increased from 16% to 22% of the total population.



Source: U.S. Census Bureau and Portland State University

Figure 4 Age Distribution

### Race, Ethnicity, and Language

While Sandy remains predominantly white, diversity has been steadily increasing since 2000. The portion of Sandy’s population identifying as Hispanic or Latino increased five-fold since the last parks planning effort. Steady growth of this demographic is expected to continue.

TABLE 1  
RACE AND ETHNICITY

Race and Ethnicity	2010	2020
White alone	90%	84%
Black or African American alone	0.9%	1.5%
American Indian and Alaska Native alone	2.5%	4.1%
Asian alone	2.3%	2.8%
Native Hawaiian and Other Pacific Islander alone	0.6%	0.6%
Some Other Race alone	3.8%	6.6%
Hispanic or Latino (of any race)	8.9%	10%
Not Hispanic or Latino	87.5%	90%

Source: U.S. Census Bureau

An estimated 10% of Sandy’s population speaks a language other than English, and an estimated 97% of the population speaks English only or speaks English “very well.”

**TABLE 2**  
**LANGUAGE**

Language	
Speak only English	90%
Speak a language other than English	10%
Spanish	5.5%
Other Indo-European languages	4.1%
Asian and Pacific Island languages	0.8%

Source: U.S. Census Bureau

### Income and Employment

In 2018, an estimated 2% of the Sandy labor force was unemployed. Median household income was consistent with state-wide estimates at \$64,296.

An estimated 11% of Sandy residents’ income was below poverty level with those under the age of 18 contributing a higher rate (around 16%) and those over 18 a slightly lower rate (around 9%).

## 2.3 PLANNING PROCESS AND COMMUNITY ENGAGEMENT

Planning for the update of the 1997 Parks Master Plan has been ongoing for a number of years. A variety of surveys and other community outreach has been conducted both prior to and through the current Parks and Trails Master Plan update process to insure that the final master plan is in line with community needs and desires. A summary of the types of outreach and input received is included below. A more detailed public engagement summary can be found in Appendix F.

### Prior Surveys

#### 2013 Community Needs and Perceptions Survey

In 2013, the City issued an online Parks and Trails Survey to City residents with more than 600 surveys returned. Nearly 97% of the respondents had visited a park within the last year with Meinig Park, Tickle Creek Trail, and Jonsrud Viewpoint being the most popular destinations.

One third of survey respondents said they visited a park daily, another 25% visited weekly or bi-weekly, and another third visited a city park at least monthly. Nearly 90% felt that the city parks were in good or excellent condition.

When asked about park types and park features needed in Sandy, the most common responses included restrooms, picnic facilities and off-leash dog parks. Sandy has since added one dog park, but interest in additional dog parks remains high and users desire more amenities at existing facilities.

Most residents felt that park funds should be allocated to maintain existing facilities and construct new facilities on existing park land rather than be used to purchase additional land for parks and trails.

### **2018 Longest Day Parkway**

In 2018, City staff had a booth at the Longest Day Parkway event held in June to reconnect with the public and gather updated information regarding needs and preferences. The event included a series of display boards with a dot-voting exercise and a one-page questionnaire, which was a streamlined version of the 2013 survey. The responses to the questionnaire were fairly similar to the 2013 survey, with the top parks and park features closely aligned. Notably, the number of respondents that visited parks up to twice a month was substantially higher at 84% of Longest Day Parkway attendees, over 61% of survey participants. This could be in part due to the population likely to participate in this type of event. In the dot exercise, spraygrounds, obstacle courses, and natural play equipment were the top choices across age groups. Kids indicated a preference for an updated skatepark, and trails and natural space, while adults preferred trails and natural space, and sports fields and courts to round out their top five priorities. The survey participants included 44 adults and 107 children

### **2019 Community Survey**

In 2019, the City conducted a Parks and Recreation Survey to City residents. Over 5,000 copies were mailed to residents and an online option was also available. More than 1,200 responses were received, 12% online and 88% by mail. The primary purpose of the survey was to solicit feedback from the community on how to use manage the old Cedar Ridge Middle School, pool and grounds which had been recently acquired by the City. Nearly 75% of respondents supported expanding or renovating the existing pool. The survey also asked for preferences for which amenities to include within the park. Top priorities included paths or trails to the river, playground, outdoor sports fields, and dog park.

### **Other Surveys**

In addition to the surveys noted above, Sandy has conducted several surveys to garner input on potential redevelopment of the former Cedar Ridge Middle School and Olin Bignall Aquatic Center complex, also known as the Sandy Community Campus. Specifically, a survey was conducted in 2014 to gauge interest on the City acquisition of the School District facility. More than half of respondents felt that continued operation of the pool was very important and supported a potential monthly fee to help fund it. In 2020, a survey was conducted to investigate the potential of pursuing an Aquatic and Recreation Fee District to help fund pool renovations, operations and maintenance costs. Initial response included

46% “No”, 43% “Yes”, and 11% “Don’t know”. The formation of a recreation district would require passage by voters, and the analysis of the survey results indicated that the Aquatics & Recreation District formation was not likely to pass.

### 2020 Parks & Trails Master Plan

The City of Sandy began the Master Plan update with an inventory of existing parks. Parks maintenance staff conducted and documented routine facility condition inventories and identified deferred maintenance needs. Staff reviewed updates to the Transportation Plan, participated in the expansion of the Urban Growth Boundary (UGB) planning process, and reviewed updates to national park land standards.

The City conducted a series of stakeholder meetings, technical advisory committee meetings, open houses, and online surveys to collect data on existing park use patterns, desires and priorities. The Parks Board worked with City planners to review population projections and potential City boundary adjustments that would influence future park locations. The Board developed a preliminary needs assessment based on the findings.

The City reviewed the current development code’s role in parks and trails development and noted opportunities for system expansion.

### Technical Advisory Committee

The city formed a technical advisory committee to guide and inform the PTSMP update. The committee was composed of one City Councilor, two Park and Trail Advisory Board members, two City staff, one School District representative, and several local community representatives. The technical advisory committee met six times during the course of the project to review public input, comment on draft maps and reports, and review the proposed master plan.



### Stakeholder interviews

A series of stakeholder meetings were conducted to collect input from key user groups within the community. Twelve stakeholders were interviewed to inform the PTSMP update. They represented a diverse array of community groups, residents, and special interests. Key topics included special recreational amenities (skate parks, pump tracks, dog parks, community gardens), sports fields, maintenance and operations, accessibility and universal design, the trail system, and balanced distribution of parks and amenities.



### Public Open Houses

Several public open houses were held over the course of the project. The first open house was held at the Sandy Community/Senior Center and was intended to gather input on park distribution, needs and desired park amenities. A questionnaire and comment form was collected at the meeting. The second open house was held at the Sandy Vista Apartments Community room. The meeting included the maps and posters from the first open house, translated into Spanish, as well as a translated questionnaire. The second open house featured bi-lingual staff who were able to present materials and answer questions in both English and Spanish. The third open house was held online due to the ongoing public health crisis. The online open house featured a number of stations with survey questions related to the materials embedded at each station. The online open house materials were translated into a Spanish language flyer and distributed at Sandy Vista Apartments as a follow up to the second open house.



## CHAPTER 3

### Existing Park System

*Sandy is among the fastest growing cities in Oregon. To plan a parks system that will adequately serve its future population, the City must first assess its current condition. Department structure, community partnerships, funding sources, and the park facilities themselves all contribute to the success of the system in meeting anticipated growth.*

#### 3.1 ORGANIZATION AND PARTNERSHIPS

##### Organization

The Parks, Buildings, & Grounds Department program maintains and makes minor improvements to the city's parks, open spaces, public spaces, and public buildings. These activities are funded primarily out of the General Fund.

- **Staff and Roles** - Sandy's parks, grounds, trails, and open spaces are maintained by three full-time employees and a seasonal worker employed during the summer months. Parks maintenance staff also perform minor building maintenance for some City facilities. Local landscaping firms are contracted to maintain landscaping at the library, police building, community center, and two landscape island at either end of downtown.
- **Policy and Planning** - Policy for Sandy's parks system is created by the City Council with assistance from a seven-person citizen advisory board. One City Council member is assigned as a liaison between the Parks & Trails Advisory Board and the Sandy City Council. The Parks & Trails Advisory Board is a volunteer board that supports planning and advocacy for the parks system and assists with park improvement projects.

##### Partnerships

- **Oregon Trail School District (OTSD)** – The City occasionally provides funding for sports fields and court improvements, and the district rents out facilities for youth and adult recreation sport leagues, summer camps, parades, pet shows, and other community events.
- **AntFarm** - AntFarm is a non-profit dedicated to serving community youth including job and environmental skills training through hands-on volunteer work. The City partnered with AntFarm and its YouthCore Crew to construct trails at Sandy River Park and a community garden at Bornstedt Park.
- **Mt Hood Athletic Club** - The City occasionally partners with the Mt. Hood Athletic Club for special events including fun runs and senior activities.
- **Non-profits and For-profits** - The City is finalizing a permit process that includes an application, fee structure, insurance requirements, and permits to formalize the increasing use of City parks and trails for fundraisers and other events.

- **Volunteers** - Sandy has a long history of parks related volunteerism, including a 100-person effort to construct the Fantasy Forest Playground in Meinig Park, fundraising for dog parks and other improvements, and service day outings such as Solv-it in Sandy. However, there is no coordinated parks and trails volunteer organization to provide consistent operations and maintenance assistance.



Fantasy Forest playground at Meinig Park

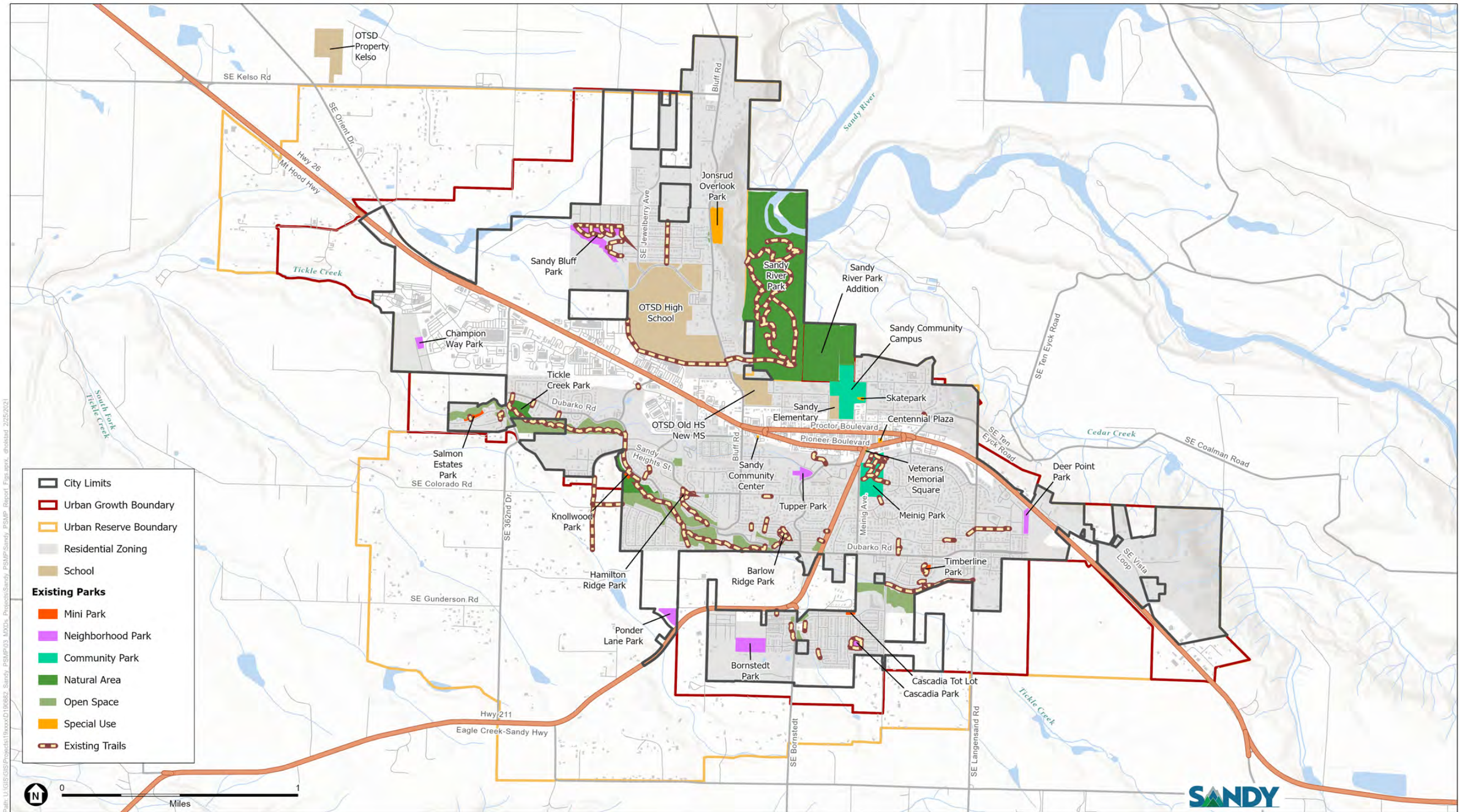
### 3.2 PARK CLASSIFICATION AND INVENTORY

Sandy classifies its park facilities according to the Oregon Statewide Comprehensive Outdoor Recreation Plan (SCORP) developed by Oregon Parks and Recreation Department (OPRD). According to this plan,

“The most effective park system to develop and manage is one made up of a variety of different types of parks, open space areas, and recreational venues, each designed to provide a specific type of recreation experience or opportunity. A park system that is classified and used properly is easier to maintain, encounters less conflicts between user groups, and minimizes negative impacts on adjoining neighbors. A good park classification system also helps assess what facilities are available for current use and what types of parks will be needed to serve the community in the future.”

The prior Park Master plan defined nine park and trail classifications, a number of which were owned and/or operated by other regional providers. Under the Parks and Trails Master Plan update, the park classifications were reviewed and streamlined to focus efforts on the key types of parks that the City currently has in its inventory, and the classifications that are likely to be the most beneficial to the community moving forward. The park system has been reorganized to include five primary classifications to meet the needs of the community:

- Mini parks,
- Neighborhood parks,
- Community parks,
- Natural areas and open space,
- Special use areas.



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Esri, NASA, NGA, USGS, FEMA; USFWS NWI, Open Street Map, City of Sandy, OR.



**Map 5**  
Existing Park Inventory

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The following classifications were developed from the SCORP guidelines and selected as most applicable to Sandy’s park system. Each existing park was inventoried for total land area, area developed, and current amenities.

### Mini Parks

Mini parks, sometimes called pocket parks, are the smallest park classification. Mini parks provide basic recreation opportunities on small lots, within residential areas serving an area within approximately 5-minute walking time (approximately ¼ mile) from neighbors. Typically less than one acre in size (¼ to ¾ acre), these parks are designed to serve residents in immediately adjacent neighborhoods. Mini parks provide limited recreation amenities, such as small playgrounds, benches, picnic tables, and accessible paths, and normally do not provide off-street parking. Mini parks should be used sparingly, primarily to fill service area gaps in developed neighborhoods, due to their high maintenance demand and limited service area. Sandy currently has six mini parks, all of which are developed.



Timberline Ridge Mini Park

**TABLE 3  
MINI PARK INVENTORY**

MINI PARKS			Existing Amenities																					
Park Name	Total Acres	Developed Acres	Restroom	Drinking Fountain	Playground	Splash Pad	Picnic Shelter	Group Shelter	Picnic Tables	Stage / Amphitheater	Community Garden	Open Field	Baseball Field	Soccer Field	Skate-park	Sport Court	Parking	Benches	Dog Park Fenced	Dog Waste Station	Hiking / Walking Path	Bike Trails	Interpretive Area	Trail Signage
Barlow Ridge Park	0.81	0.81		✓	✓				✓							✓		✓		✓	✓		✓	
Cascadia Park Tot Lot	0.04	0.04			✓				✓											✓				
Hamilton Ridge Park	0.78	0.78		✓	✓				✓			✓						✓		✓	✓			
Knollwood Park Tot Lot	0.60	0.60			✓													✓		✓	✓	✓		✓
Salmon Estates Park	0.77	0.77			✓							✓						✓		✓	✓			
Timberline Ridge Park	0.87	0.87		✓	✓				✓							✓		✓		✓	✓			
<b>Total</b>	<b>3.87</b>	<b>3.87</b>																						

### Neighborhood Parks

Neighborhood parks provide close-to-home recreation opportunities, primarily for passive and non-organized recreation activities. They are located within approximately 5-10 minute walking time (approximately ¼ - ½ mile) from local residences, without crossing major roads and/or other structures that can be considered barriers for safe and easy walking and biking. They serve up to a one-half-mile radius, although service areas are also influenced by neighborhood configuration, geographical and transportation barriers, and are generally 2-5 acres in size. Neighborhood parks typically include amenities such as playgrounds, outdoor sports courts, sports fields, picnic tables, pathways, and multi-use open grass areas. They may or may not provide off-street parking. Neighborhood parks can, when practical, be located next to elementary schools in order to provide more efficient use of public resources. Neighborhood parks should avoid inclusion of amenities that could be a draw to people travelling from further distances, such as dog parks, skate parks, and splash pads, unless appropriate support facilities such as restrooms and parking are also provided. Sandy currently has seven neighborhood parks, with four developed parks and three undeveloped parcels.



Deer Point Neighborhood Park

**TABLE 4  
NEIGHBORHOOD PARK INVENTORY**

NEIGHBORHOOD PARKS			Existing Amenities																					
Park Name	Total Acres	Developed Acres	Restroom	Drinking Fountain	Playground	Splash Pad	Picnic Shelter	Group Shelter	Picnic Tables	Stage / Amphitheater	Community Garden	Open Field	Baseball Field	Soccer Field	Skate-park	Sport Court	Parking	Benches	Dog Park Fenced	Dog Waste Station	Hiking / Walking Path	Bike Trails	Interpretive Area	Trail Signage
Bornstedt Park	5.03	5.03	✓	✓	✓	✓	✓	✓	✓		✓	✓						✓		✓	✓			
Cascadia Park	1.83	1.83		✓			✓		✓			✓						✓		✓	✓			
Champion Way Park	0.99	0.00																						
Deer Point Park	1.41	0.00										✓						✓		✓	✓			
Ponder Lane	2.00	0.00																						
Sandy Bluff Park	8.37	8.37	✓	✓								✓						✓	✓	✓	✓			
Tupper Park	1.66	1.66	✓	✓					✓		✓					✓		✓		✓				
<b>Total</b>	<b>21.29</b>	<b>16.89</b>																						

### Community Parks



Stage at Meinig Community Park

Community parks are typically larger in size and serve a broader purpose than neighborhood parks. Their focus is on meeting the recreation needs of several neighborhoods or large sections of the community, as well as preserving unique landscapes and open spaces.

Community parks are typically 10 to 30 acres, depending on the spatial requirements of the facilities provided and the amount of land dedicated to natural resource protection. Community

parks provide both active and passive recreation opportunities that appeal to the entire community serving an area within approximately 15 minutes driving time or three miles. While community parks may be proximate to a neighborhood and can provide typical neighborhood park amenities, they are normally designed to be driven to. Community parks typically accommodate large numbers of people, and offer a wide variety of facilities, such as group picnic areas and large shelters, sports fields and courts, large children’s play areas, swimming pools and splash pads, community gardens, extensive pathway systems, community festival or event space, and green space or natural areas. Community parks require additional support facilities, such as off-street parking and restrooms and can also serve as regional trailheads. Sandy currently has two community parks, one of which, Meinig Park, is developed. Sandy Community Campus includes a few amenities such as fields that are left over from its prior role as a school campus, and it houses the Sandy Skate Park but it is primarily undeveloped. Both parks are at the small end of the potential size range which limits the quantity and size of amenities they can accommodate.

**TABLE 5  
COMMUNITY PARK INVENTORY**

COMMUNITY PARKS			Existing Amenities																					
Park Name	Total Acres	Developed Acres	Restroom	Drinking Fountain	Playground	Splash Pad	Picnic Shelter	Group Shelter	Picnic Tables	Stage / Amphitheater	Community Garden	Open Field	Baseball Field <sup>1</sup>	Soccer Field	Skate-park	Sport Court	Parking	Benches	Dog Park Fenced	Dog Waste Station	Hiking / Walking Path	Bike Trails	Interpretive Area	Trail Signage
Sandy Community Campus & Skate Park	14.00	0.25										✓	✓ <sup>1</sup>	✓	✓		✓			✓	✓			
Meinig Memorial Park	10.82	10.82	✓	✓	✓		✓	✓	✓	✓							✓	✓		✓	✓			
<b>Total</b>	<b>24.82</b>	<b>11.07</b>																						

<sup>1</sup> Field is unmaintained and in poor condition



### Natural and Open Space

Natural areas are lands set aside for preservation of significant natural resources, remnant landscapes, open space, and for visual aesthetics/buffering. They may preserve or protect environmentally sensitive areas, such as wildlife habitats, wetlands, riparian corridors, or unique and/or endangered plant species. Natural areas can vary in size from small parcels (less than 10 acres) to large properties of more than 100 acres, and typically serve the entire community. Public access to natural areas may be limited due to the sensitive nature of the habitats and features. Some nature parks may be managed secondarily to provide passive recreation opportunities. These sites may contain trails, interpretive displays, viewpoints, picnic and seating areas. Sandy currently has six natural areas, four of which include trails and other light passive use. Natural area acreage is not considered developed at the same level as other park classifications, but may include developed areas such as trails and trailheads.



**TABLE 6  
NATURAL AREA AND OPEN SPACE INVENTORY**

NATURAL & OPEN SPACE			Existing Amenities																					
Park Name	Total Acres	Developed Acres <sup>1</sup>	Restroom	Drinking Fountain	Playground	Splash Pad	Picnic Shelter	Group Shelter	Picnic Tables	Stage / Amphitheater	Community Garden	Open Field	Baseball Field	Soccer Field	Skate-park	Sport Court	Parking	Benches	Dog Park Fenced	Dog Waste Station	Hiking / Walking Path	Bike Trails	Interpretive Area	Trail Signage
Knollwood Park	5.45	NA																✓		✓	✓	✓		
Sandy River Park	116.28	NA															✓				✓	✓		
Sandy River Park Addition	24.16	NA																			✓	✓		
Sandy Community Campus	7.10	NA																						
Tickle Creek Park	4.92	NA																			✓	✓		
Tickle Creek Open Space Parcels	66.73	NA																						
<b>Total</b>	<b>224.64</b>	<b>NA</b>																						

<sup>1</sup> Natural areas are generally not considered developed at the level of other park types

### Special Use Areas



Centennial Plaza

The Special Use classification covers a broad range of park and recreation lands that are specialized or single-purpose in nature. Parks in this category can include waterfront parks, boat ramps, memorials, historic sites, waysides, sites with significant geologic or scenic features, and single purpose such as dedicated sports complexes, dog parks, skate parks, display gardens. Special use parks that have a community or regional draw may

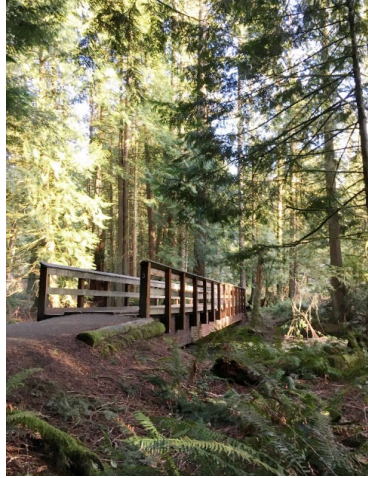
require supporting facilities such as parking or restrooms. Park size is dependent on the special use and can vary from very small to many acres. Sandy currently has four special use areas.

**TABLE 7  
SPECIAL USE AREA INVENTORY**

SPECIAL USE AREAS			Existing Amenities																						
Park Name	Total Acres	Developed Acres	Restroom	Drinking Fountain	Playground	Splash Pad	Picnic Shelter	Group Shelter	Picnic Tables	Stage / Amphitheater	Community Garden	Open Field	Baseball Field	Soccer Field	Skate-park	Sport Court	Parking	Benches	Dog Park Fenced	Dog Waste Station	Hiking / Walking Path	Bike Trails	Interpretive Area	Trail Signage	
Jonsrud Viewpoint	4.91	0.80		✓													✓	✓						✓	
Centennial Plaza	0.22	0.22	✓	✓			✓			✓															
Community / Senior Center	0.10	0.10	✓	✓													✓								
Veterans Memorial Square	0.04	0.04	✓																					✓	
<b>Total</b>	<b>5.27</b>	<b>1.16</b>																							

### 3.3 TRAIL SYSTEM INVENTORY

#### Trails



*Bridge on the Tickle Creek Trail*

The trail classification encompasses a number of trail types including shared-use and pedestrian, hard and soft surface trails and paths to accommodate a variety of activities such as walking, running, biking, dog walking, rollerblading, skateboarding, and horseback riding. Trails may be located within parks or along existing streets and roadways and can serve as part of the bicycle and pedestrian components of the City transportation system. Shared-use trails are designed for use by pedestrians, bicyclists, skateboarders, wheelchairs, and other non-motorized vehicles. These trails are usually hard surfaced to provide accessibility for people with disabilities and wide enough to accommodate both bicyclists and pedestrians. Hard surfaced pedestrian trails are generally found within

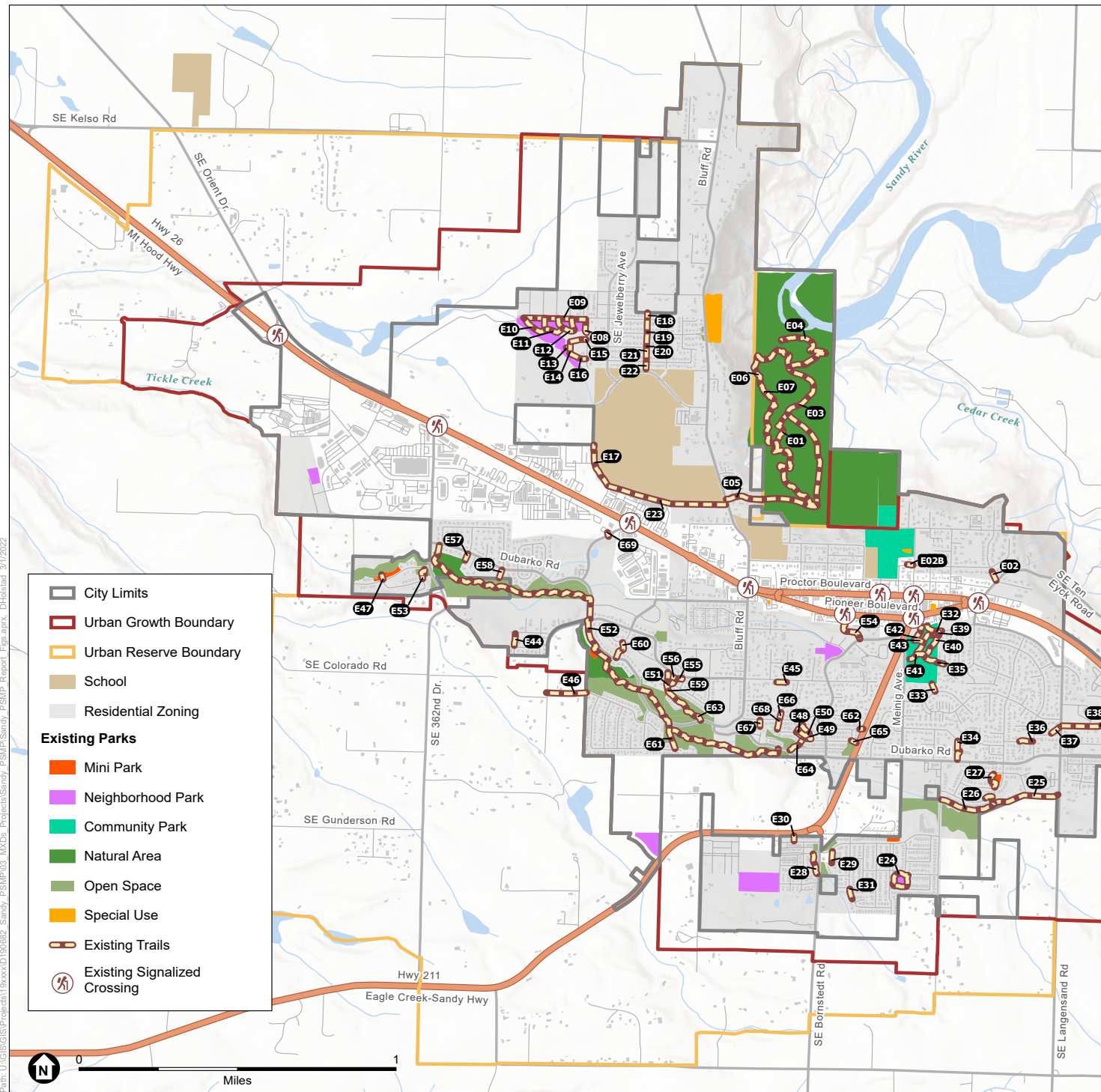
smaller parks and as secondary trails within larger parks. Soft surfaced trails are composed of soft-surface materials, such as soil, crushed rock, hog fuel, and wood chips. Most soft surfaces do not provide accessibility for people with disabilities but are preferable for some recreation activities, such as running and hiking. Trails may include amenities such as directional and control signage, gates, benches, overlooks, drinking fountains, lighting, trailhead kiosks, and interpretive signs.

**TABLE 8  
TRAIL INVENTORY**

TRAILS & PATHS WITHIN PARKS		TRAILS & PATHS OUTSIDE PARKS	
Park Name	Miles of Path / Trail	Associated Feature	Miles of Path / Trail
Sandy River Park	3.85	Tickle Creek	2.10
Sandy Bluff Park	0.70	Sandy High School <sup>1</sup>	0.53
Cascadia Park	0.16	Neighborhood Paths	1.05
Timberline Park	0.06	Kate Schmidt Trail	0.14
Meinig Park	0.50	<b>Total</b>	<b>3.82</b>
Salmon Estates Park	0.07		
Barlow Ridge Park	0.21		
Hamilton Ridge Park	0.21		
<b>Total</b>	<b>5.76</b>		

<sup>1</sup>High School trail includes restricted access nature trail not always available for public use.

<sup>2</sup>Trail outside of parks have been converted from miles to acreage for level of service (LOS) in Table 9, based on an assumed 15-foot trail corridor width. Trails within parks are included in park LOS.



Keynote	Trail Name	Feet	Miles	Keynote	Trail Name	Feet	Miles
E01	Sandy River Midway Trail	732	0.14	E35	Meinig Park Access Kimberly Drive	114	0.02
E02	Ten Eyk Road to Hood Street	169	0.03	E36	Mitchell Court to Davis Street	224	0.04
E02B	Hood Street Connection	97	0.02	E37	Barker Court to Langensand Road	170	0.03
E03	Upper Sandy River Trail	4,011	0.76	E38	Langensand Road to Antler Avenue	751	0.14
E04	Lower Sandy River Trail	1,685	0.32	E39	City Hall to Lower Parking	1,020	0.19
E05	Marcy Street Connector to Sandy River Park Trail	627	0.12	E40	Bathroom Path	429	0.08
E06	Final Jim Slagle Loop Trail	4,995	0.95	E41	Lower Parking to Amphitheater	429	0.08
E07	Jim Slagle Loop Featured Hike	8,129	1.54	E42	Fantasy Forest to Lower Parking	291	0.06
E08	Bachelor Avenue to Golden Rain Street	256	0.05	E43	Bridge Path	156	0.03
E09	Sandy Bluff Park North Sidewalk	1,030	0.2	E44	Ichabod to Katrina	208	0.04
E10	Sandy Bluff Park Pod 4	661	0.13	E45	Sandy Heights Street Seaman Avenue to Beebee Court	164	0.03
E11	Sandy Bluff Park Pod 3	512	0.1	E46	Solso Path	670	0.13
E12	Sandy Bluff Park Pod 2	412	0.08	E47	Salmon Creek Estates Park Entrance	86	0.02
E13	Bachelor Avenue to Sandy Bluff Connector	66	0.01	E48	Barlow Ridge Trail	307	0.06
E14	Bachelor Avenue to Sandy Bluff Park West	207	0.04	E49	Barlow Ridge Trail 2	616	0.12
E15	Bachelor Avenue to Sandy Bluff Park North	270	0.05	E50	Barlow Ridge Trail 3	164	0.03
E16	Bachelor Avenue to Sandy Bluff Park South	285	0.05	E51	Hamilton Ridge Paths	329	0.06
E17	Kate Schmidt Trail Section	761	0.14	E52	Tickle Creek Trail	8,481	1.61
E18	Golden Rain Street to Olson Street	93	0.02	E53	Salmon Creek Estates Trail	275	0.05
E19	Green Mountain Street to Golden Rain Street	195	0.04	E54	Bruns Road to Tupper Road Connector Trail	457	0.09
E20	Emerald Cascade Street to Green Mountain Street	204	0.04	E55	Hamilton Ridge Tot Lot	124	0.02
E21	Coralburst Street to Emerald Cascade Street	203	0.04	E56	Off Road Trail Hamilton Tot Lot	333	0.06
E22	Coralburst Street to Bell Street	111	0.02	E57	Tickle Creek Trail Entrance by Orr Street	123	0.02
E23	Sandy HS Edge Trail (SHS Owned, Restricted Access)	1,992	0.38	E58	Tickle Creek Trail Entrance near Double Creek	147	0.03
E24	Cascadia Village Park Trail	836	0.16	E59	Sandy Heights Street to Hamilton Ridge Drive	334	0.06
E25	Wall Street Alley Trillium Street to Langensand Road	1,363	0.26	E60	Towle Drive to Dubarko Path	319	0.06
E26	Wall St Alley to Jacoby Road	949	0.18	E61	Rachel Drive to Tickle Creek Trail	363	0.07
E27	Timberline Park Path	324	0.06	E62	Sawyer Street to Highway 211	54	0.01
E28	Bornstedt Road Entrance	356	0.07	E63	Hamilton Ridge Drive to Dubarko Road	793	0.15
E29	Cascadia Village Drive to Redwood Street	200	0.04	E64	Barlow Parkway to Dubarko Road	281	0.05
E30	Galway Street to Highway 211	90	0.02	E65	Barlow Parkway to Highway 211	93	0.02
E31	Haskins Street to Jerger Street	181	0.03	E66	Miller Street to Seaman Avenue	104	0.02
E32	Meinig Park Access McCormick Drive	79	0.01	E67	Miller Street to Dubarko Road	111	0.02
E33	Meinig Park Barker Court Access	143	0.03	E68	Miller Street to Barlow Parkway	149	0.03
E34	Dubarko Estates to Evans Street Path	373	0.07	E69	Crosswalk Ruben Lane near Freightway Lane	67	0.01

- City Limits
- Urban Growth Boundary
- Urban Reserve Boundary
- School
- Residential Zoning
- Existing Parks**
- Mini Park
- Neighborhood Park
- Community Park
- Natural Area
- Open Space
- Special Use
- Existing Trails
- Existing Signalized Crossing



Esri, NASA, NGA, USGS, FEMA; USFWS NWI, Open Street Map, City of Sandy, OR.



**Map 6**  
Existing Trail Inventory

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### 3.4 OTHER PROVIDERS

*Below are some significant parks and natural areas managed by other providers within a ten-mile radius of Sandy.*

#### Bureau of Land Management (BLM)

- **Sandy Ridge Trail System** – 15+ miles of single track mountain biking trails approximately 10 miles east of Sandy.

#### Oregon Parks and Recreation District (OPRD)

- **Milo McIver State Park** – 2,000-acre park with developed campgrounds, river recreation and fishing access, hiking and equestrian trails, and disc golf. Situated along the Clackamas River near Estacada.
- **Bonnie Lure State Recreation Area** – 150-acre passive day use nature park along the Clackamas River near Eagle Creek.

#### METRO

- **Oxbow Regional Park** – 2,000-acre park with developed campgrounds, river recreation and fishing access, hiking and biking trails, playgrounds, and wildlife viewing. Situated along the Sandy River east of Gresham.

#### Clackamas County Parks

- **Boring Station Trailhead** – Transition point between the Springwater Corridor and the Cazadero Trail. Small park in Boring with playground, restroom, picnic shelter.
- **Eagle Fern Park** – 360-acre day-use park with hiking, creek access, fishing, and picnic shelters.
- **Barton Park** – 300-acre park with developed campgrounds, hiking, multiple day use and event amenities, and a variety of river recreation opportunities. Situated along the Clackamas River.
- **Barlow Wayside Park** – 180-acre passive day use nature park with trails near the Sandy River and BLM Sandy Ridge Trail System



*Barlow Wayside Trail – Clackamas County Parks*

#### Portland Water Bureau

- **Dodge Park** – Day use river recreation, fishing, playground, and picnic facilities situated along the Sandy River north of Sandy.

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## CHAPTER 4

### Level of Service and Needs Assessment

*The needs assessment provides the information necessary to make informed decisions on how many parks, trails, and facilities to provide in Sandy now and in the future. The community needs identified will be used as a basis for determining recommendations for system-wide improvements, including acquiring or developing new park sites and improving existing parks.*

#### 4.1 LEVEL OF SERVICE

The Oregon Statewide Comprehensive Outdoor Recreation Plan defines level of service standards as “measures of the amount of public recreation parklands and facilities being provided to meet that jurisdiction’s basic needs and expectations.”

Level of service (LOS) standards are presented as a range and are meant to be flexible in accommodating the unique demographic, geographic, and economic characteristics of communities. LOS is usually represented as the ratio of park acres or trail miles per 1,000 residents.

##### Current Total LOS

Sandy’s current LOS was calculated to consider both total park acreage and developed park acreage for each classification. The Current City of Sandy LOS was then compared to the Standard that was established in the 1997 Parks Master Plan and the SCORP recommended ranges to evaluate progress since the last plan. The prior plan set aspirational goals to increase the level of service for almost all park classifications. Sandy has made substantial progress since the 1997 plan. The total park acreage LOS is currently 22.08 acres / 1000 population, which exceeds the standard of 17.40 acres / 1000 set in 1997. The total acreage is bolstered by significant increases in natural area and open space acreage. Analysis of the primary park classifications is summarized below:

- Mini parks - Sandy is exceeding the standard for mini parks, and is above average when compared to the SCORP.
- Neighborhood parks - Sandy is slightly exceeding the standard for total park acreage, with a developed park acreage that is slightly below the target City standard, and is in the middle of the SCORP recommended LOS range.
- Community parks – Sandy is below the standard in both total and developed acreage, and is at the low end of the recommended SCORP range.



**TABLE 9  
LEVEL OF SERVICE ANALYSIS**

Park Classification	Total Acres	Developed Acres	Current Total LOS	Current Developed LOS <sup>1</sup>	1997 Parks Master Plan Standard	SCORP Recommended LOS (Acres) <sup>5</sup>
Mini Parks	3.87	3.87	0.31	0.31	0.10	0.25 to 0.50
Neighborhood Parks	21.29	16.89	1.69	1.34	1.60	1.0 to 2.0
Community Parks	24.82	11.07	1.97	0.88	2.60	2.0 to 6.0
Natural & Open Space <sup>3</sup>	224.64	NA	17.81	17.81	12.00	2.0 to 6.0
Special Use Parks	5.27	1.16	0.42	0.09	1.10	No Guidance
Trails (Acres) <sup>4</sup>	6.95	6.95	0.55	0.55	-	0.9 to 2.7
<b>Total</b>	<b>286.84</b>	<b>39.94</b>	<b>22.74</b>	<b>20.98</b>	<b>17.40</b>	<b>6.15 to 17.2</b>

<sup>1</sup> Level of Service (LOS) calculated based on Acres / 1000 Population

<sup>2</sup> Current Population based on U. S. Census 2020 of 12,612.

<sup>3</sup> Natural Area level of service is based on total acreage.

<sup>4</sup> Trail miles have been converted to acreage based on an average 15-foot trail corridor. Trails within parks are included under park classification LOS.

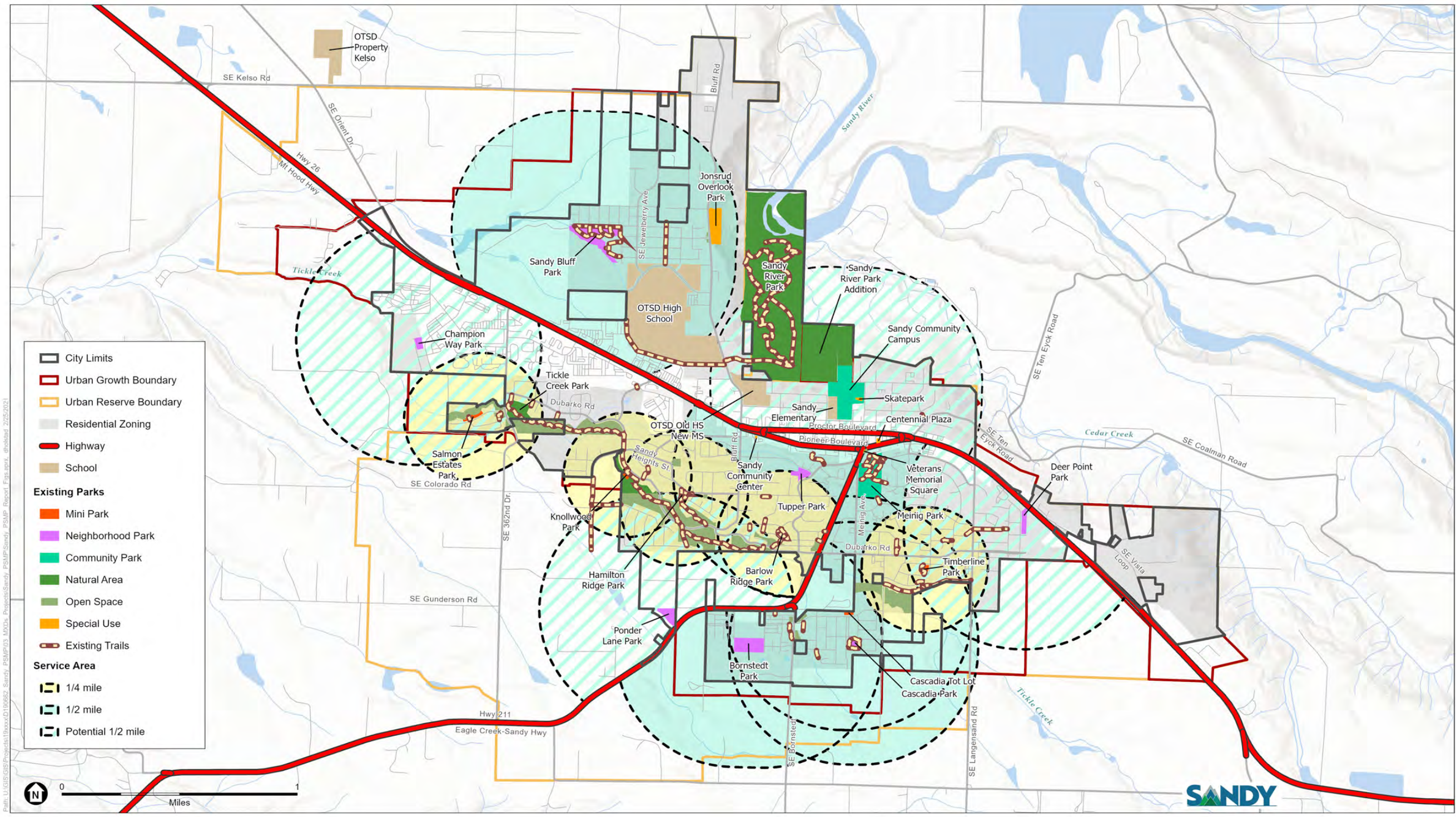
<sup>5</sup> SCORP Recommended LOS for Trails is 0.5 to 1.5 miles per 1000 Population or 0.9 to 2.7 acres per 1000 based on the 15-foot corridor.

### Current Geographic LOS

The geographic service area analysis examines whether residential areas in Sandy are within a reasonable travel distance of mini and neighborhood parks. Service areas for these parks range from 1/4- to 1/2- mile radius, the service areas for existing mini and neighborhood parks are featured in Figure 7.

Because mini and neighborhood parks are generally accessed by walking or biking, major roads, railroad tracks, and natural obstacles such as rivers are considered barriers to access that the service area may not cross. Minor roads, signalized intersections, crosswalks, bridges, under- and over-passes can provide safe crossing, and help to mitigate the access barriers. The following high volume roads are considered barriers:

- **Highway 26** (Pioneer/Proctor Boulevard) is a major regional state highway and bisects the town into north and south. There are multiple signaled pedestrian crossings west of downtown, however some users may feel comfortable crossing in the downtown area where the traffic is divided, the road narrows, and speeds are reduced.
- **Highway 211** begins at an intersection with Highway 26 at the east end of downtown and joins a series of smaller towns along its route to Woodburn. There are no signaled or signed pedestrian crossings, no sidewalks or bike lanes, and traffic flows at high speeds with limited visibility in some locations. This road is a significant physical barrier dividing neighborhoods south of downtown.



- City Limits
- Urban Growth Boundary
- Urban Reserve Boundary
- Residential Zoning
- Highway
- School
- Existing Parks**
- Mini Park
- Neighborhood Park
- Community Park
- Natural Area
- Open Space
- Special Use
- Existing Trails
- Service Area**
- 1/4 mile
- 1/2 mile
- Potential 1/2 mile

0 1 Miles



Esri, NASA, NGA, USGS, FEMA; USFWS NWI, Open Street Map, City of Sandy, OR.



**Map 7**  
Existing Park Service Areas

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## 4.2 PARK AND TRAIL NEEDS

Communities establish their target park and trail LOS based on community values and goals and the availability of park land. The recommended LOS identified below is intended to balance the distribution of parks by classification to better meet the needs of the community. When compared to the SCORP recommended range, Sandy's target LOS for the 2035 planning horizon aims at the low end for mini parks, middle range for community parks and trails, high end for neighborhood parks, and a continuation of exceeding recommended acres of natural and open space. Specific figures are established in the table below.

**TABLE 10  
PARK AND TRAIL NEEDS ANALYSIS**

Park Classification	Current Developed LOS <sup>1</sup>	SCORP Recommended LOS	Sandy LOS (Acres)	CURRENT	FUTURE	TOTAL
				Current Acres Needed <sup>2,3</sup>	Future Acres Needed <sup>4</sup>	Total Acres Needed
Mini Parks <sup>7</sup>	0.31	0.25 to 0.50	0.25	-0.72	1.62	0.91
Neighborhood Parks <sup>7</sup>	1.34	1.0 to 2.0	2.00	8.33	12.98	21.31
Community Parks <sup>7</sup>	0.88	2.0 to 6.0	3.00	26.77	19.46	46.23
Natural & Open Space <sup>5</sup>	17.81	2.0 to 6.0	15.00	-35.46	97.32	61.86
Special Use Parks	0.09	No Guidance	-	-	-	-
Trails (Acres) <sup>7</sup>	0.55	0.9 to 2.7	1.50	11.97	9.73	21.70
<b>Total<sup>6</sup></b>	<b>20.98</b>	<b>6.15 to 17.2</b>	<b>21.75</b>	<b>47.1</b>	<b>141.1</b>	<b>152.0</b>

<sup>1</sup> Level of Service (LOS) calculated based on Acres / 1000 Population

<sup>2</sup> Current need based on 2020 United States Census population of 12,612.

<sup>3</sup> Acres Needed includes development of existing undeveloped parcels and acquisition to meet current needs.

<sup>4</sup> Future need based on Sandy Urbanization Study estimated an Average Annual Growth Rate (AAGR) of 2.8%, for a 2035 population of 19,100.

<sup>5</sup> Natural Area level of service is based on total acreage.

<sup>6</sup> Total Current parks and acres needed excludes surplus acreage in mini parks and natural areas.

<sup>7</sup> Parks subject to land dedication or fee-in-lieu to support growth, 6.75 Acres / 1000 Population.

### Assessment

While Sandy has made much progress growing its parks and trail system, there is still work to do. Several neighborhood parks such as Champion Way, Deer Point, and Ponder Lane, as well as the newest community park, Sandy Community Campus, remain undeveloped open space which provides minimal recreational opportunity for neighbors. The large natural area of Sandy River Park and newly acquired adjacent parcel are underutilized by the broader community due to inadequate development of access points, trails and support facilities such as parking and restrooms. Over-development of mini parks has strained maintenance resources and resulted in service area gaps between parks.

Based on the recommended level of service target and planning for population growth, Sandy should plan to acquire and develop parks and acreage as noted in Table 10. This roughly equates to 2 mini parks, 9 neighborhood parks, 2 community parks, and nearly 20

miles of trails over the next 15 years. Natural areas will likely be acquired through donation or conservation easement with varying parcel sizes.

Geographic distribution of parks and trails should be equitable and responsive to natural and developed barriers that disrupt service areas. Non-standard amenities, such as skate spots, splash pads, dog parks, nature trails, etc., should also be distributed equitably across the system. This will likely require redevelopment of aging, existing facilities to add or expand amenities to avoid desirable public space clustering around new development.

As noted above, Sandy is currently underserved for developed community parks. This translates to below average access to larger active recreation facilities when compared to SCORP guidelines. Special urgency should be given to the development of community parks to meet demand for active recreation. Sandy's parks system is lacking in sport courts, sport fields, and other active use spaces like disc golf and off-road cycling. These uses are best incorporated into community parks along with a variety of other passive recreation opportunities that appeal to a broad swath of user groups. Amenities such as ball fields, skate parks, and pump tracks are usually located in community parks because they tend to be a regional draw, require adequate space to accommodate the diversity of uses, and need support amenities such as restrooms and parking.

Sandy should also prioritize the development of larger neighborhood parks with programming and space to serve multiple user groups over continued reliance on mini parks which serve a narrower demographic, offer fewer amenities, and require higher levels of maintenance. Larger neighborhood parks could help to improve geographic distribution of a number of elements that are in the current park system, but not at the level necessary to serve all community members. Neighborhood parks can have the capacity to accommodate splash pads, dog parks and community gardens, if sited and distributed appropriately.



*With its community garden, splash pad, and parking, Bornstedt Park provides elements with broader appeal than a traditional neighborhood park*

### 4.3 RECREATION AMENITY NEEDS

In addition to park and trail needs, the quantity and distribution of specific recreation facilities, such as picnic tables, basketball courts, and sports fields was assessed. The level of service was determined based on the quantity of each item in the current park system relative to the quantity per 1,000 population.

The resulting level of service was then compared to the SCORP recommended level of service for each facility type. Sandy is doing fairly well in providing access to most of the standard facilities, with a few areas that require attention to address current deficiencies. Facilities that are below the recommended level of service for the current population include volleyball, tennis courts, picnic tables, disc golf, baseball and softball fields. Optional facilities are things that a community may or may not choose to focus on as a priority. A pump track and an indoor swimming pool are the optional facilities that are currently below the recommended level of service and are likely not meeting the needs of the community based on public input. Sandy has one existing indoor pool which is currently closed and was not included as an available facility in the analysis. A non-motorized boat launch could potentially be provided in the future if an appropriate river front site becomes available. Sports fields have not been an historic priority for Sandy. However, multi-use fields could be developed to serve soccer, lacrosse and other field sport needs. While Sandy currently has a skatepark that meets the SCORP recommended level of service for current and future population, it is an older facility which will be need in renovation or replacement in the near term.

**TABLE 11**  
**RECREATION FACILITY LEVEL OF SERVICE**

Facility Type	Total Facilities in Community	SCORP Recommended Facility LOS <sup>1</sup>	Current Facility LOS <sup>1</sup>	Current Facility Need (Deficit)	Future Facility Need (Growth) <sup>2</sup>
<b>Standard Facilities</b>					
Picnic shelters <sup>3,4,5,7</sup>	8	0.30	0.63	-4	2
Day-use picnic tables <sup>3,4,5,7</sup>	35	10.00	2.77	91	65
Basketball courts / multi-use courts <sup>3,4,5</sup>	3	0.20	0.24	0	1
Playgrounds <sup>3,4,7</sup>	10	0.40	0.79	-5	3
Soccer fields / Multi-use field <sup>4,5</sup>	1	0.20	0.08	2	1
Tennis / Pickleball courts <sup>5</sup>	0	0.35	0.00	4	2
Off-leash dog parks <sup>5</sup>	1	0.04	0.08	0	0
Disc golf courses <sup>7</sup>	0	0.02	0.00	0	0
Volleyball courts	0	0.20	0.00	3	1
Skateboard parks <sup>6</sup>	1	0.04	0.08	0	0
Amphitheaters	3	0.03	0.24	-3	0
Baseball & Softball fields	1	0.20	0.08	2	1
<b>Optional Facilities</b>					
Pump Track (not in SCORP) <sup>3,5,6</sup>	0	0.00	0.00	1	0
Indoor swimming pools <sup>3,4</sup>	0	0.05	0.00	1	0
Splash Pads (not in SCORP) <sup>6</sup>	1	0.00	0.08	-1	0
Community Gardens (not in SCORP) <sup>3</sup>	1	0.00	0.08	-1	0
Non-motorized boat launches	0	0.25	0.00	3	2
Lacrosse fields	0	0.15	0.00	2	1
Football fields	1	0.10	0.08	0	1

<sup>1</sup>Level of Service (LOS) calculated based on Acres or Miles / 1000 Population

<sup>2</sup>Future need quantity assumes current need has already been fulfilled

**Top Priorities from Public Input**

<sup>3</sup>PTSMF Open House 1 Dot Exercise top 10, February 2020.

<sup>6</sup>PTSMF Online Open House, October 2020

<sup>4</sup>PTSMF Survey 1 top 10, February 2020.

<sup>7</sup>Longest Day Parkway Input, June 2018.

<sup>5</sup>PTSMF Stakeholders interviews, January 2020.

In addition to the traditional facilities included in the SCORP, there are a number of emerging recreation trends that should be considered for addition to the Sandy park system including pickleball, a pump track, sensory gardens, and nature play. Passive recreation including unprogrammed spaces, natural areas, trails and paths are also priorities.

The priority deficiencies should be a focus that can be addressed as existing undeveloped park land is developed into neighborhood and community parks, as noted in the assessment above.

#### 4.4 PLANNING, OPERATIONS, AND MAINTENANCE NEEDS

Parks maintenance staff consists of three full time equivalent (FTE) positions and two ½ FTE position hired on a seasonal basis that are increasingly difficult to fill. Staff commit approximately 15% of their time to building maintenance at City facilities, in addition to overseeing about 275 acres of park land and nearly 10 miles of trails.

According to the National Recreation and Park Association, Sandy’s parks maintenance staff to population ratio is below the lowest end of the national average. Median FTE staffing for jurisdictions serving 20,000 residents or less is 10 per 10,000 residents. With an estimated 2020 population of 11,650 and density of over 3,000 residents per square miles, Sandy’s staffing is below the lower quartile of 5 FTE for sparsely populated jurisdictions (less than 500 residents per square mile).



*Aging amenities at Tupper Park*

Low staffing levels make it difficult to perform anything more than standard maintenance such as mowing, garbage collection, and restroom cleaning and replenishment. Routine maintenance activities that may be deferred due to limited staff resources can result in reduced longevity of park features, resulting in more frequent replacement. Structures for example require power washing, painting, refinishing, and maintenance checks on hardware and connections to prevent compounding damage from weather exposure that can lead to rot, rust, and structural failure.

Park amenities have finite lifespans and must be replaced at some point. Some low cost features, such as benches or tables, can be repaired or replaced as part of regular maintenance. In other cases, the entire park or portions of the park must be redeveloped to meet modern safety and accessibility standards, respond to increased use demands or environmental factors, or simply replace larger, more expensive elements like custom play structures or sport courts. This type of major maintenance is generally not factored into operations and maintenance budgets and should be considered in capital improvement plans.

## CHAPTER 5

### Recommendations

*This chapter summarizes recommendations for the development of new parks and trails and non-capital recommendations for operations and maintenance. These recommendations are based on the combined results of the existing facilities inventory, needs assessment, and public and stakeholder engagement. Several overarching themes recurred frequently during the planning process including the need for walking and biking connections to parks, additional amenities at existing parks, equitable distribution of park programming and recreation types across the city, access to large, multi-use fields, and improvement of existing undeveloped sites.*

#### 5.1 GENERAL PRIORITIES

The following are general recommendations that should be considered in Park and Trail planning and development within the City of Sandy.

- Develop one new community park with sports fields
- Improve geographic distribution of key amenities: dog parks, community gardens, splash pads.
- Improve trail connections and pedestrian transportation throughout the city.
- Provide safe pedestrian crossings for Highways 26 and 211, and Bluff Road. Crossings could be signalized, over- or under-passes.
- Fill service area gaps so that all residential areas are served by either a neighborhood or mini park.
- Develop undeveloped park land: Champion Way, Deer Point, Ponder Lane, and Sandy Community Campus.
- Add unique amenities not currently offered in the park system such as a pump track, pickleball courts, a disc golf course, sensory gardens, nature play, sports field(s), and other unique features.
- Develop a new universal access playground that provides for a range of mobility types and user ages. The playground should be inclusive and provide for children with special needs, including fencing, sensory elements.
- Renovate existing parks to update aging equipment, such as playgrounds, sport courts, and paths: Tupper, Sandy Bluff, Meinig.
- Renovate existing paths and trails throughout the system to provide accessible routes to parks and amenities in accordance with the Americans with Disabilities Act Standards for Accessible Design.



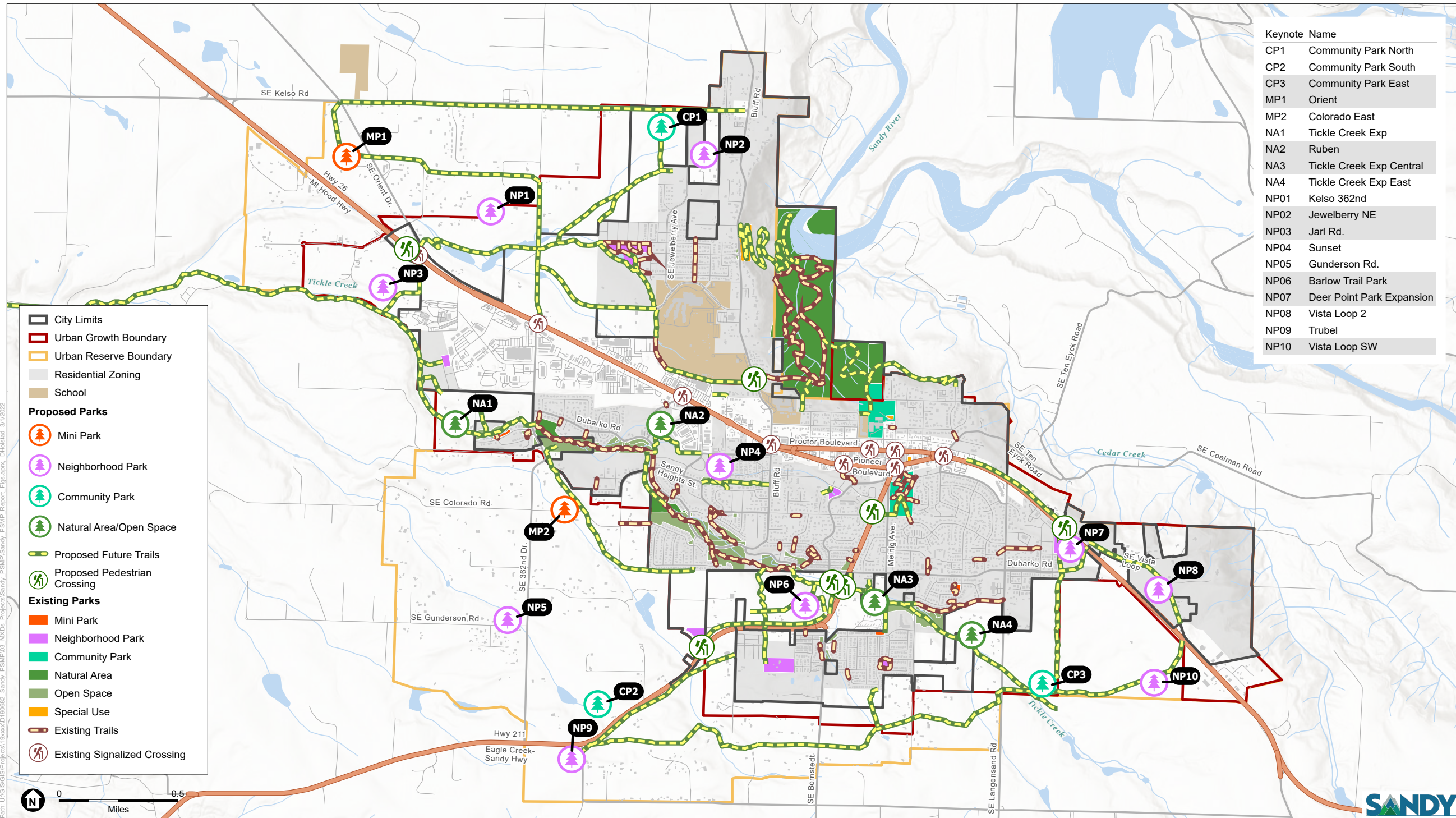
- Negotiate a public access easement with the Oregon Trail School District to allow unrestricted access/use of E17 and E23 trails along south edge of the high school.
- Focus on neighborhood and community park development.
- Minimize acquisition and development of mini parks to only highly constrained areas and small service area gaps without options for larger parcels.
- Prioritize neighborhood parks over mini parks when land is available.
- Residential areas should be served by the ¼-mile service area of a mini park or the ½-mile service area of a neighborhood park.
- Incorporate natural areas, wildlife habitat and native pollinator gardens into all park classifications.

## 5.2 PARK AND OPEN SPACE IMPROVEMENTS

### Proposed Parks

The proposed park system is depicted in Figure 8. It identifies general areas where park land might be acquired to help expand the park system. Many of the proposed parks are located in the Urban Growth Boundary or the Urban Reserve Boundary and would serve new areas of the City in the future. The plan provides a conceptual distribution of proposed parks within the planning area to serve the needs of the current and future population. Specific land acquisitions will be determined based on land availability, areas of residential development, and site suitability for park development. Due to potential variability in park land availability and parcel size, a few additional park sites have been included on the map. After acquisition, park sites will proceed through site specific master planning, which may include site analysis, public outreach, and conceptual design, prior to proceeding with permitting, design, and construction.





Keystone Name	
CP1	Community Park North
CP2	Community Park South
CP3	Community Park East
MP1	Orient
MP2	Colorado East
NA1	Tickle Creek Exp
NA2	Ruben
NA3	Tickle Creek Exp Central
NA4	Tickle Creek Exp East
NP01	Kelso 362nd
NP02	Jewelberry NE
NP03	Jarl Rd.
NP04	Sunset
NP05	Gunderson Rd.
NP06	Barlow Trail Park
NP07	Deer Point Park Expansion
NP08	Vista Loop 2
NP09	Trubel
NP10	Vista Loop SW

- City Limits
- Urban Growth Boundary
- Urban Reserve Boundary
- Residential Zoning
- School
- Proposed Parks**
- Mini Park
- Neighborhood Park
- Community Park
- Natural Area/Open Space
- Proposed Future Trails
- Proposed Pedestrian Crossing
- Existing Parks**
- Mini Park
- Neighborhood Park
- Community Park
- Natural Area
- Open Space
- Special Use
- Existing Trails
- Existing Signalized Crossing



Esri, NASA, NGA, USGS, FEMA; USFWS NWI, Open Street Map, City of Sandy, OR.



**Map 8**  
Proposed Park System

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## Existing Parks

Several existing parks within the City include undeveloped or underutilized areas that could better serve the community if they were renovated or expanded to increase the availability of popular amenities.

### Bornstedt Park Phase 2

Phase 1 is complete and includes a looped path, splash pad, playground, picnic tables, a community garden, and two picnic shelters. As depicted in Figure 9 below, Phase 2 will include a half-sized basketball court, viewing mound, a community center, and parking, and half street improvements along the north and west sides. This park offers the only splash pad in the city, and even without the planned parking lot, there is ample street parking. These factors combine to make this a destination park and the city should consider including a plumbed restroom as surrounding development continues and use intensifies.



**Figure 9** Bornstedt Park Master Plan

### Jonsrud Viewpoint

Access to Jonsrud Viewpoint is narrow, and highly constrained by Bluff Road on the west and the steep slope below to the east. It currently functions as single lane pull through drive aisle with a few parallel parking spaces along the side. If a trail connection is developed to connect Jonsrud down the bluff to Sandy River Park, other improvements should be considered at the viewpoint, including accessibility and safety improvements for pedestrian paths, parking reconfiguration, picnic tables, and additional benches.

### **Meinig Memorial Park**

The Fantasy Forest is a wooden play structure, and will require major redevelopment at some point in the future, although maintenance staff estimates at least 10 additional years of use. Although Meinig Park has one plumbed restroom, the City should consider locating another in closer proximity to the heavily used playground and event stage area. An undeveloped portion of the park with informal natural surface trails is separated from the larger park by a small stream and steep slope. This area could be programmed, but consideration should be given to its quality as natural and open space. Trails throughout the park are being undermined by the creek or damaged by tree roots, and may require replacement within the next few years. General park improvements could include delineating circulation and improving structures at event space, adding lighting, and improving paths to meet accessibility standards.



*Fantasy Forest Playground at Meinig Park*

### **Sandy Bluff Park**

Sandy Bluff Park includes the only dog park in the City, as well as a playground, looped trails, and a bench. Near term priorities for improvement at the park include adding shade structures and other amenities to the dog park, replacing the play structure and improving accessibility to it, and adding picnic facilities and more benches.

### **Sandy Skate Park**

The Sandy Skate Park is currently a standalone special use facility on the edge of the Sandy Community Campus. The skate park is at least 20-years old. There have been significant design and technological advancements in skate parks over its lifespan and its showing its age. A new or revamped skate park was a high priority during public outreach, and is included a potential element of the Sandy Community Campus (SCC) redevelopment. The skate park could be replaced in its current location or combined with the SCC and relocated within the broader planned park improvements.



*Sandy Skate Park*



*Tupper Park*

### **Tupper Park**

This aging neighborhood park will require significant redevelopment in the near term. The play structure is at the end of its life span and the sport court pavement is failing. The sport court and much of the lawn are often unusable from poor drainage. Sandy should consider daylighting the creek, adding accessible routes to features, and improving drainage as part of any redevelopment plans.

### **Sandy River Park**

The City should consider implementation of the previously developed Sandy River Park Master Plan. The park currently has no dedicated parking facilities and a few trails. The plan describes an expanded hierarchical trail system, parking and restroom facilities, wayfinding, and riverbank restoration. The plan includes offsite trail connections to other nearby parks including Jonsrud Viewpoint and Sandy Community Campus, which could contribute to an off-street trail network on the north side of Sandy. The plan should be updated to reflect the recent purchase of the adjacent forested parcel to the east and describe the trail connections to the Sandy Community Campus in greater detail.



*Jim Slagle Loop Trail at Sandy River Park*

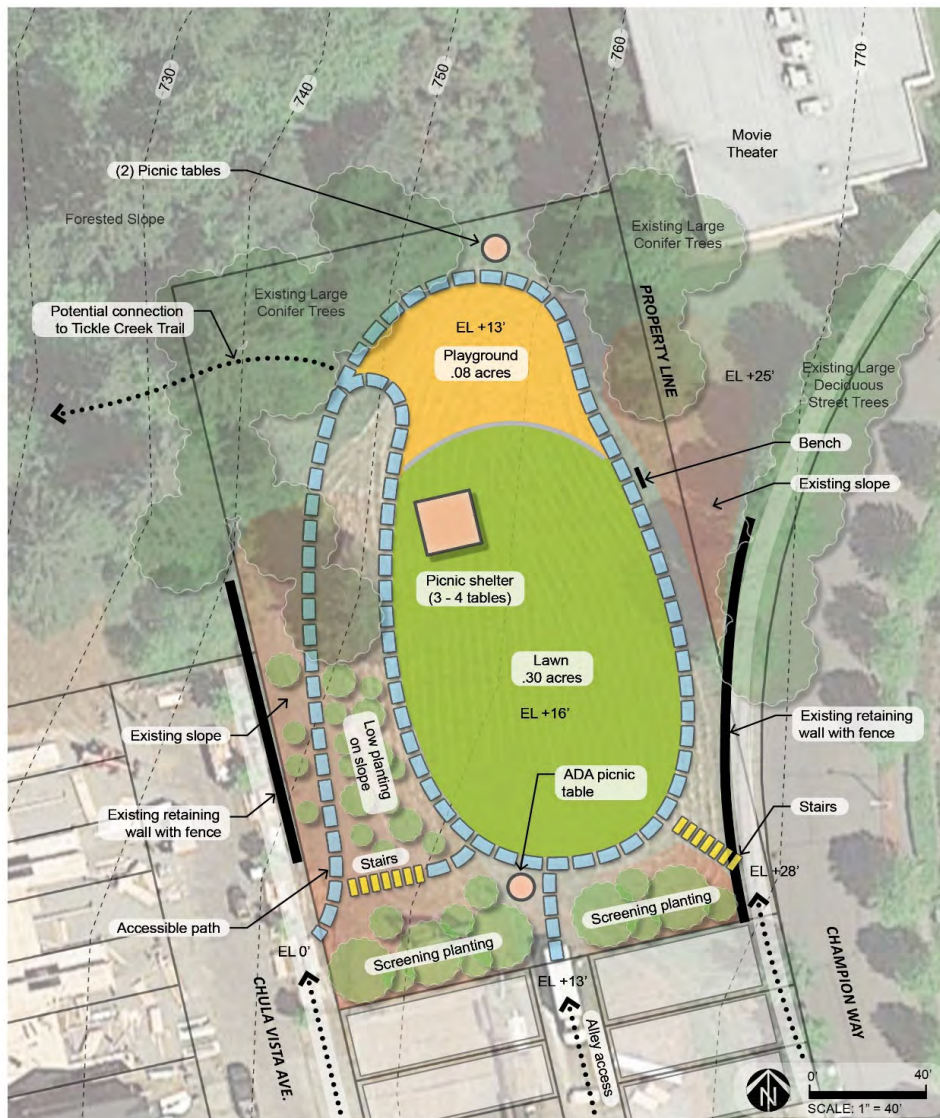
### **Undeveloped Parks**

The following concepts present possible solutions for undeveloped parcels that could be developed into new parks. Three of these are classified as neighborhood parks: Champion Way, Deer Point, and Ponder Lane. The Sandy Community Campus is an underdeveloped community park located at the site of the former Cedar Ridge Middle School. See Appendix D for additional details on each of these park sites.

Planning for these new parks should include a focus on filling some of the specific amenity needs within the community, such as a pump track, sport field(s), disc golf, and other features noted elsewhere in this plan.

### Champion Way Neighborhood Park

Champion Way is an existing, undeveloped 0.99-acre park located on the west side of Sandy, just south of Highway 26 and the Sandy Cinema. The gently sloping park is bounded by fenced retaining walls on both street frontages, houses and an alley on a third side, and transitions to a steeply sloping forested area on the fourth. The concept would introduce standard neighborhood park amenities including an accessible looped path, playground, open lawn, picnic shelter and tables, and screening planting.



**Figure 10**  
Champion Way Neighborhood Park Concept

### Deer Point Neighborhood Park

Deer Point is an existing, undeveloped 1.41-acre park located on the east side of Sandy, just south of Highway 26 and Sandy Vista apartments. The long, narrow, gently sloping parcel is bounded by neighborhood streets on two sides, Highway 26 on a third, and fields with clusters of mature trees to the east. The concept provides standard neighborhood park amenities including an accessible looped path, playground, multi-use field, picnic shelters and tables, and a sport court with the option to expand east into the undeveloped parcel identified as NP 7, Deer Point Expansion on **Figure 8**.



**Figure 11**  
Deer Point Neighborhood Park Concept



### Ponder Lane Neighborhood Park

Ponder Lane is a recently acquired, undeveloped 1.94-acre parcel located on the south side of Sandy. The gently sloping park is bounded on the east by a single family residence, Highway 211 to the south, and an under-construction Gunderson Road and neighborhood development to the west and north, respectively. The concept would introduce standard neighborhood park amenities including an accessible looped path, playground, multi-use field, picnic shelter and tables, a fenced off-leash dog park, and a small parking area. See Appendix E for additional detail.



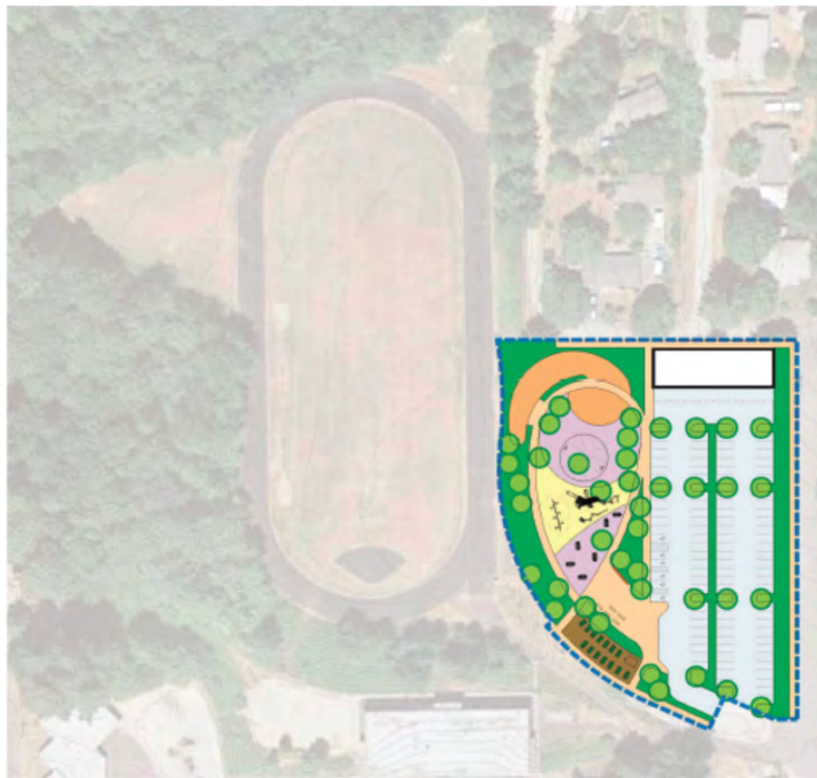
**Figure 12**  
Ponder Lane Neighborhood Park Concept

### Sandy Community Campus

This underdeveloped community park consists of school buildings, pool (currently closed), parking lot, and the surrounding land which includes the skate park, football field, track, and trails that connect to Sandy River Park natural area. The pool and buildings will remain closed for the time being and are not considered part of this master plan. City Council is studying options for the Cedar Ridge pool and buildings.

A preliminary concept for redevelopment of the park was created as part of the Aquatic Facility Analysis. The entire park will be too expensive to develop all at one time. The concept was broken into four phases.

The proposed Phase 1 schematic design is below. The final design is likely to evolve, but this concept provides guidance on the type of improvements that could be included in Phase 1. The Phase 1 park concept focuses on redevelopment of the east portion of the park and includes a parking lot, a playground, picnic area, basketball court, and a community garden. Sandy Community Campus will also fill a neighborhood park service area gap for community members within ½-mile of the park. The community expressed interest for prioritizing a pump track and the skate park replacement in Phase 1, while reducing parking.



**Figure 13**  
Sandy Community Campus Phase 1 Concept

### 5.3 TRAIL IMPROVEMENTS

The proposed trail system map includes potential local and regional trails throughout the city. Some of the trails have also been identified in the Transportation System Plan or other regional planning documents or could be incorporated into the new Transportation System Plan update. The goal of the proposed trail system is to create a looped network of trails that connects parks and neighborhoods, and provides opportunities for alternative transportation and recreation throughout the city.



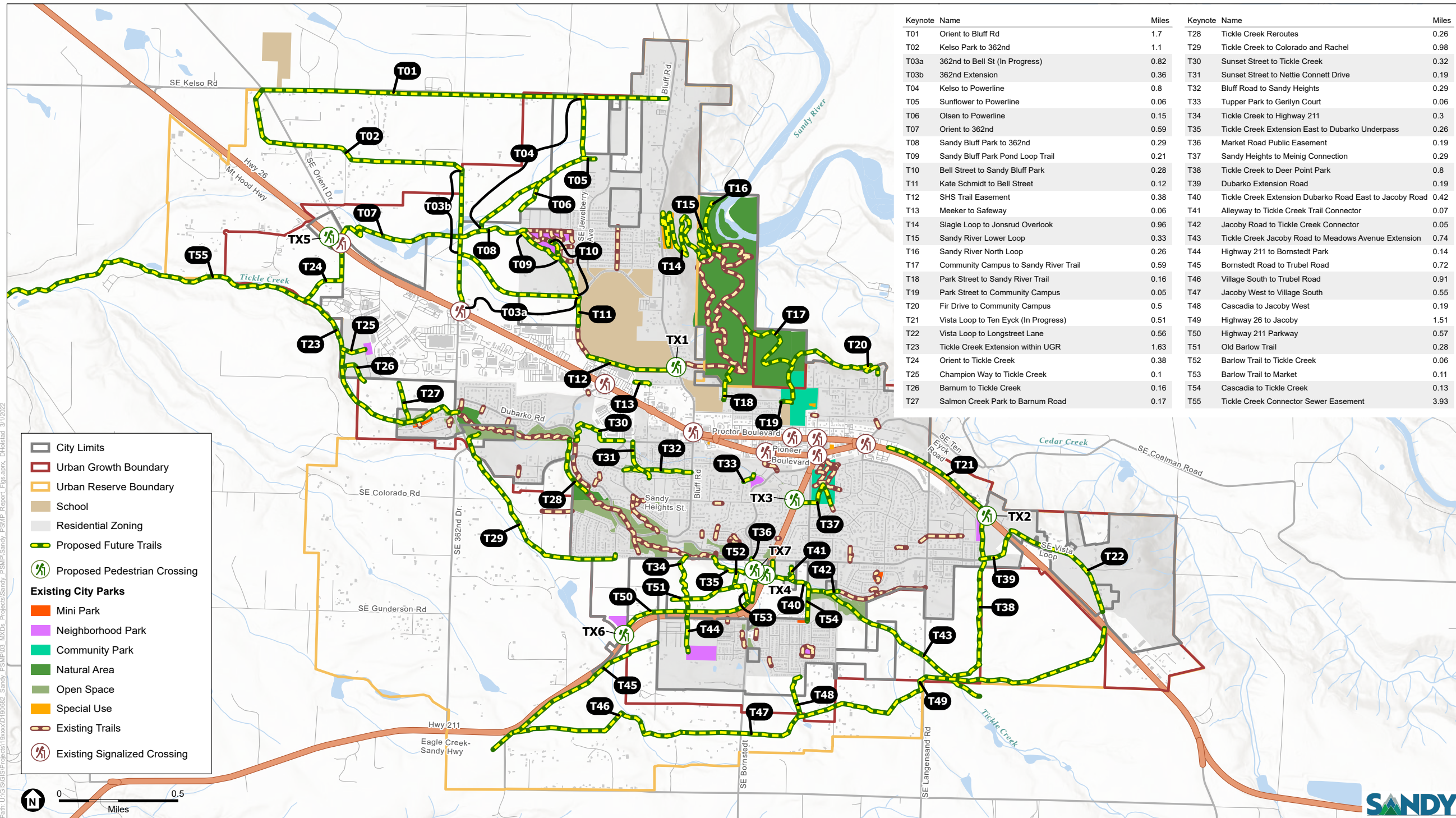
*Pedestrian under-pass under Highway 20 in Bend, Oregon*

To achieve this goal, an extensive network of trails has been proposed, as depicted in Figure 14, including several major highway crossings. The proposed trail system provides conceptual trail alignments that are intended to provide an alternative pedestrian network, not to replace the sidewalk network or paths associated with road improvements in the Transportation System Plan. Where proposed trails and roads follow similar alignments, trails may be developed initially as gravel multi use paths to serve current needs prior to eventual replacement with paved sidewalks or pathways associated with planned road improvements. Individual trails will require planning and analysis to refine the alignments to meet design criteria, including accommodating steep terrain, avoiding wetlands, potential creek crossings, and connections with other trails. Trail design criteria are further described in Appendix B.

The plan includes new pedestrian crossings at both the east and west ends of the City to facilitate safe crossing of Highway 26, Mt Hood Highway. The plan also includes three crossings of Highway 211, and one crossing of Bluff Road near the high school. The pedestrian crossings could take a number of forms: mid-block crossings with rapid flashing beacon, signalized street intersection, or a grade separated pedestrian bridge or under-pass.

Many of these crossings would be major multi-agency collaborations involving Oregon Department of Transportation (ODOT), Sandy Public Works, Clackamas County, and others. These projects have been identified in this plan as critical to a safe, linked trail system within the City, but they have been omitted from the CIP list, due to the scale and scope of the projects, combined with the necessary buy-in of ODOT and the likely long range implementation.

Budget estimates for the crossings and assumptions on crossing type have been included in the Capital Improvement Plan. Actual project costs will be determined by the type of crossing that is used, and the extent of permitting, design, and agency coordination required for the project. The crossings may also be included as transportation facilities in the Transportation System Master Plan.



Keystone Name	Miles	Keystone Name	Miles
T01 Orient to Bluff Rd	1.7	T28 Tickle Creek Reroutes	0.26
T02 Kelso Park to 362nd	1.1	T29 Tickle Creek to Colorado and Rachel	0.98
T03a 362nd to Bell St (In Progress)	0.82	T30 Sunset Street to Tickle Creek	0.32
T03b 362nd Extension	0.36	T31 Sunset Street to Nettie Connett Drive	0.19
T04 Kelso to Powerline	0.8	T32 Bluff Road to Sandy Heights	0.29
T05 Sunflower to Powerline	0.06	T33 Tupper Park to Gerilyn Court	0.06
T06 Olsen to Powerline	0.15	T34 Tickle Creek to Highway 211	0.3
T07 Orient to 362nd	0.59	T35 Tickle Creek Extension East to Dubarko Underpass	0.26
T08 Sandy Bluff Park to 362nd	0.29	T36 Market Road Public Easement	0.19
T09 Sandy Bluff Park Pond Loop Trail	0.21	T37 Sandy Heights to Meinig Connection	0.29
T10 Bell Street to Sandy Bluff Park	0.28	T38 Tickle Creek to Deer Point Park	0.8
T11 Kate Schmidt to Bell Street	0.12	T39 Dubarko Extension Road	0.19
T12 SHS Trail Easement	0.38	T40 Tickle Creek Extension Dubarko Road East to Jacoby Road	0.42
T13 Meeker to Safeway	0.06	T41 Alleyway to Tickle Creek Trail Connector	0.07
T14 Slagle Loop to Jonsrud Overlook	0.96	T42 Jacoby Road to Tickle Creek Connector	0.05
T15 Sandy River Lower Loop	0.33	T43 Tickle Creek Jacoby Road to Meadows Avenue Extension	0.74
T16 Sandy River North Loop	0.26	T44 Highway 211 to Bornstedt Park	0.14
T17 Community Campus to Sandy River Trail	0.59	T45 Bornstedt Road to Trubel Road	0.72
T18 Park Street to Sandy River Trail	0.16	T46 Village South to Trubel Road	0.91
T19 Park Street to Community Campus	0.05	T47 Jacoby West to Village South	0.55
T20 Fir Drive to Community Campus	0.5	T48 Cascadia to Jacoby West	0.19
T21 Vista Loop to Ten Eyck (In Progress)	0.51	T49 Highway 26 to Jacoby	1.51
T22 Vista Loop to Longstreet Lane	0.56	T50 Highway 211 Parkway	0.57
T23 Tickle Creek Extension within UGR	1.63	T51 Old Barlow Trail	0.28
T24 Orient to Tickle Creek	0.38	T52 Barlow Trail to Tickle Creek	0.06
T25 Champion Way to Tickle Creek	0.1	T53 Barlow Trail to Market	0.11
T26 Barnum to Tickle Creek	0.16	T54 Cascadia to Tickle Creek	0.13
T27 Salmon Creek Park to Barnum Road	0.17	T55 Tickle Creek Connector Sewer Easement	3.93

- City Limits
- Urban Growth Boundary
- Urban Reserve Boundary
- School
- Residential Zoning
- Proposed Future Trails
- Proposed Pedestrian Crossing
- Existing City Parks**
- Mini Park
- Neighborhood Park
- Community Park
- Natural Area
- Open Space
- Special Use
- Existing Trails
- Existing Signalized Crossing



Esri, NASA, NGA, USGS, FEMA; USFWS NWI, Open Street Map, City of Sandy, OR.



**Map 14**  
Proposed Trail System

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The City of Sandy Trail system also has the potential to extend and connect to the larger regional trail network beyond the City planning area. Regional trail connections should be wide, paved multi user trails such as Class 1 or 2 as defined in Appendix B, the Park & Trail Design Guidelines. Regional trails may not be eligible for SDC's because they extend beyond the planning area. The City should work with regional partners such as Metro, to identify and pursue grants and other funding sources. Regional trails that could connect to or through the City of Sandy in the future include:

- Extending the Tickle Creek Trail west to connect with the Springwater Trail
- Extending east to the Sandy Ridge bike trail system and the extensive trail network in Mount Hood National Forest.
- Extending south along Highway 211 to connect to the Cazedero Corridor.



*Tickle Creek Trail*

## 5.4 PLANNING, OPERATIONS, AND MAINTENANCE

The following recommendations pertain to non-capital planning, operations and maintenance needs:

- Revise the City of Sandy Development Code, Chapters 17.32 and 17.86, to reflect new parks policies identified in this plan.
- Update Goal 8 of the City of Sandy Comprehensive Plan to align with recommendations included in this plan.
- Update the System Development Charge Methodology to reflect current demographics, population growth projections, and level of service recommendations identified in this plan.
  - Consider including a reimbursement fee for surplus park classifications such as mini parks and natural areas.
  - Include all capacity increasing improvements in the SDC, including new amenities at Meinig and Tupper Parks that are excluded in the current SDC.
  - Update SDC fees annually during the budget cycle relative to economic indices.
  - SDC should be updated based on official 2020 census data when available.
  - Consider SDC fee estimates with and without a General Obligation (GO) Bond. Adjust the rate accordingly if GO Bond isn't passed within 5 years.

## 5. Recommendations

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- Update the fee in lieu calculations related to parkland dedication as defined in the City of Sandy Development Code, 17.86, and update the fees annually during the budget cycle relative to economic indices.
- Establish a method for acquisition of Community Park land, such as through fee in lieu or SDC.
- Investigate the potential to implement a General Obligation Bond to help fund park development and major renovation projects identified in the CIP.
- Investigate the potential to implement a Parks Utility Fee to help fund park maintenance and operations.
- Investigate applying stormwater user fees to supplement parks maintenance funding.
- Develop an asset management program including a detailed inventory and assessment of existing amenities to help plan for and prioritize life-cycle renovation and replacement for the existing park system.
- Increase Parks staffing levels to match system growth, including adding a park planner, up to two maintenance and operations staff to meet current needs.
- Consider adding a volunteer coordinator position.
- Consider shifting contracted landscape maintenance in-house (with commensurate staffing increase) or consolidating under a single contract to reduce management and coordination.



*Light bollard, drinking fountain, and picnic table in various conditions at Timberline Ridge mini park*



## CHAPTER 6

### Implementation

*This chapter identifies a strategy to implement and fund the improvements recommended in this Plan. This is a long range plan that is anticipated to be implemented over the next 15+ years. As the economy, population, development, and other factors evolve and change, the plan will need to be reevaluated, updated, and modified to keep pace with current community needs and align with actual population growth. Capital Project Lists and Cost Estimates were developed to reflect Sandy's park needs through 2035. These projects are organized based on prioritization criteria developed to guide future decision making. Non-Capital costs to maintain the park system and available and potential funding sources are also discussed.*

#### 6.1 PRIORITIES

Projects in this plan have been prioritized as short term (Tier 1, 1 to 5 years), mid term (Tier 2, 6 to 10 years), and long term (Tier 3, 11+ years) to distribute park and trail development over the length of the planning period. Key criteria to guide this prioritization were developed from public input, the needs analysis, and general parks goals and policies. The list below is ranked in approximate priority order:

- Develop undeveloped park sites to serve existing neighborhoods.
- Acquire and develop new park land to meet current and future needs, with a particular focus on community parks and existing neighborhood park service area gaps.
- Develop trails to improve connectivity throughout the city, including safe separated crossings of Highways 26 and 211.
- Renovate and upgrade existing parks to expand capacity.
- Distribute parks equitably throughout the city.
- Plan for future growth within the UGB expansion areas, prioritize based on projected timing and location of future growth.

Short term projects have been selected based on these prioritization criteria. Final project selection and development will be determined by City staff, the Parks and Trails Advisory Committee, funding availability, and other factors. Community priorities and focus areas may change over the course of the plan. The priorities and the proposed project lists should be reviewed biennially during the budget cycle to ensure that they align with economic and demographic changes.



## 6.2 CAPITAL IMPROVEMENT PLAN

The City's capital improvement plan (CIP) is a combination major renovation, and development projects. The list accounts for the priorities identified above. Projects in the CIP are funded through a variety of sources including SDC's, grants, and donations. A general obligation (GO) bond, if approved by voters, could also be a source to fund significant acquisition and development projects. Partnerships, volunteers and other alternative sources may also assist with funding and executing projects, sometimes in the form of in-kind donations of labor or materials. The City General Fund is primarily reserved for Parks Department planning, operations, and maintenance activities and has not been included as a source of funding for capital improvements. Similarly, the land fee-in-lieu funds have not been allocated within the CIP but could be used for acquisition of a large community park parcel identified for development in the CIP.

Costs used in the Capital Improvement Program were derived from a variety of sources.

- Itemized cost estimates were prepared in association with concept plan development for the existing undeveloped park sites (Champion Way, Deer Point, and Ponder Lane), and are included in Appendix D.
- Cost estimates developed through prior park master plan efforts were reviewed. Costs were escalated to account for cost increases since the year the plan was adopted. (Bornstedt, Sandy River Park, and Sandy Community Campus).
- Park development cost estimates for future parks are based on an average size and cost per acre for that park classification, with the assumption that the site is reasonably flat and developable, and is designed to include all standard amenities, some optional amenities, and some half street improvements scaled to the park size.
- Trail development costs are based on a unit cost per linear foot depending on the trail classification, which defines the surface type and width.
- Soft costs, including survey, permitting, design, and project management costs are included in the cost for each project.
- Land acquisition costs were not included in the cost estimates. Land values are highly volatile, and dependent on parcel size, location, development pressure and other factors. Further analysis is anticipated during the Land Dedication / Fee-in-lieu policy review and update.

These costs should be considered to be preliminary budget-level estimates only. Actual project costs will be established for each site as part of the planning and development process. The capital costs included in Table 12 and Appendix A were developed with the following assumptions:

- Costs are based on Quarter 1 of 2021 dollars.
- Costs derived from other planning efforts have been escalated at 3% per year to the current year.
- Annual operations and maintenance fees are excluded from the estimates.
- Land acquisitions costs are excluded from the estimates.

**TABLE 12**  
**TIER 1 CAPITAL IMPROVEMENT PLAN**

Map ID	Site	Improvements	Cost
<b>Tier 1 Existing Parks</b>			
NP	Deer Point Park	Design, permitting, & development	\$ 1,442,800
NP	Champion Way Park	Design, permitting, & development	\$ 998,700
NP	Ponder Lane Park	Design, permitting, & development	\$ 1,848,000
NP	Sandy Bluff Park	Dog Park; Playground; Picnic Area	\$ 250,000
CP	Sandy Community Campus - Phase 1	Parking area, playground, picnic, skate park	\$ 3,633,200
CP	Meinig Memorial Park	Path renovations, creek restoration	\$ 100,000
NA	Sandy River Park - Phase 1	Trailhead, trails	\$ 800,000
<b>Tier 1 Existing Park Improvement Cost</b>			<b>\$ 9,072,700</b>
<b>Tier 1 Proposed Parks</b>			
NP 4	Sunset	Fill service area gap on portion of City owned parcel	\$ 1,700,000
NP 7	Deer Point Expansion	Expand existing undeveloped park	\$ 1,700,000
CP 1	Community North	Develop future community park in north	\$ 5,900,000
NA 1	Tickle Creek Expansion - West	Opportunity acquisitions/ donations along creek	\$ -
<b>Tier 1 Proposed Park Improvement Cost</b>			<b>\$ 9,300,000</b>
<b>Tier 1 Proposed Trails</b>			
T03 (P21)	362 <sup>nd</sup>	8' wide asphalt trail	\$ -
T04	Kelso to Powerline	6' - 8' wide gravel trail	\$ 185,800
T05	Sunflower to Powerline	5' concrete path	\$ 32,500
T06	Olson to Powerline	5' concrete path	\$ 81,300
T08 (P19)	Sandy Bluff Park to 362nd	8' wide asphalt trail	\$ 198,100
T09 (P19)	Sandy Bluff Park Pond Loop Trail	8' wide asphalt trail	\$ 143,500
T10 (P19)	Bell Street to Sandy Bluff Park	8' wide asphalt trail	\$ 191,300
T11 (P19)	Kate Schmidt to Bell Street	8' wide asphalt trail	\$ 82,000
T12 (P19)	SHS Trail Easement 1	8' wide asphalt trail	\$ 259,600
T13	Meeker to MH Athletic Club	5' concrete path	\$ 32,500
T17	Community Campus to Sandy River Trail	3' wide natural surface trail	\$ 23,700
T19	Park Street to Community Campus	3' wide natural surface trail	\$ 2,000
T21	Vista Loop to Hood Street	6' - 8' wide gravel trail	\$ -
T28 (P16)	Tickle Creek Reroutes	8' wide asphalt trail	\$ 93,750
T30	Sunset Street to Tickle Creek	3' wide natural surface trail	\$ 12,800
T31	Sunset Street to Nettie Connett Drive	5' wide concrete path	\$ 103,000
T32	Bluff Road to Sandy Heights	3' wide natural surface trail	\$ 11,600
T33	Tupper Park to Gerilyn Court	5' concrete path	\$ 32,500
T35 (P17)	Tickle Creek Extension East to Dubarko Underp;	6' - 8' wide gravel trail	\$ 125,000
T38	Tickle Creek to Deer Point Park	5' concrete path	\$ 432,000
T39	Dubarko Extension Road	8' wide asphalt trail	\$ -
T40 (P22)	Tickle Creek Extension Dubarko East to Jacoby	3' - 8' wide asphalt trail	\$ 400,000
T41	Alleyway to Tickle Creek Trail Connector	5' concrete path	\$ 37,500
T42	Jacoby Road to Tickle Creek Connector	5' concrete path	\$ -
T44	Bornstedt Park	5' concrete path	\$ 78,000
T50 (P23)	Highway 211 Parkway	8' wide asphalt trail	\$ 406,250
T54	Cascadia to Tickle Creek	6' - 8' wide gravel trail	\$ 30,200
TX1	Bluff Road Crossing (Mid-block)		\$ -
<b>Tier 1 Proposed Trail Improvement Cost</b>			<b>\$ 2,995,000</b>
<b>Total Tier 1 Cost</b>			<b>\$ 21,367,700</b>

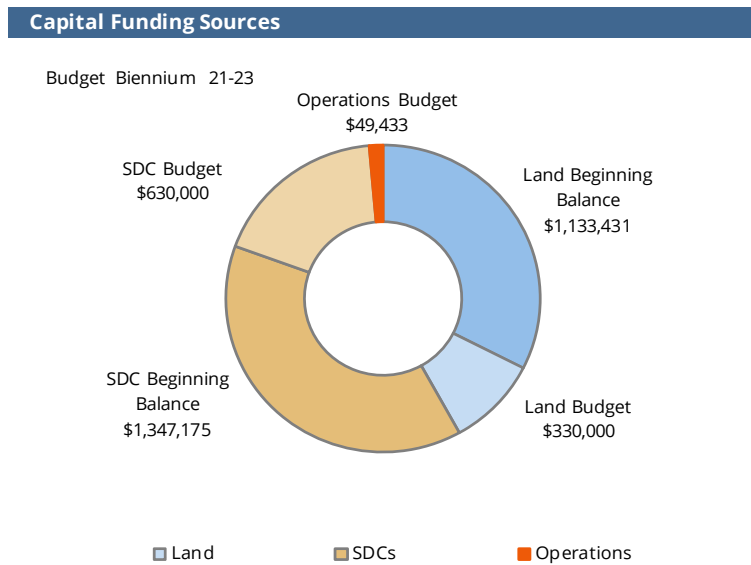
**Assumptions:**

- Capital project cost estimates are based on 2021 dollars. Costs derived from other planning efforts include escalation of 3% per year up to 2021 dollars
- Annual operations and maintenance fees are excluded from the estimates
- Costs include soft costs (master planning, survey, design, permitting) of 30%
- Land Acquisition costs are excluded from the estimate

The complete Capital Improvement project lists for the 15-year planning period in this plan is included in Appendix A. Tier 1 or near term projects have been identified and prioritized for development within the next five years. These projects generally fulfill the top priorities identified above.

### 6.3 FINANCING STRATEGIES

There are numerous funding sources available to address both capital and non-capital funding needs for park and trail acquisition and development. The most commonly used funding sources are outlined below. A summary of additional potential grant options is included in Appendix E. Sandy uses a variety of funding approaches to achieve parkland acquisition and park and trail construction. The existing beginning balance and forecast budget from the primary funding sources (land fee in lieu and SDC's) for the current biennium are depicted in Figure 15. No other funding sources, such as grants, were included in the City budget for Parks and Trails.



Source: City of Sandy Draft Budget Biennium 21-23

**Figure 15**  
FY 2021-2023 Budget Parks Capital Funding

This budget information was reviewed and updated to reflect current available balances and develop capital funding estimates for the next 5 years. Funding levels can be expected to fluctuate from year to year and are influenced by the economic climate, population growth, construction activity and other factors. The Tier 1 capital project list exceeds the available funding from the current funding sources alone. In addition to the funding sources included in the biennial budget, the capital funding estimate includes the assumption that additional funding sources will be leveraged to fulfill the plan

goals. These additional funding sources include grants, donations, volunteers, urban renewal funds, and a general obligation bond. The annual SDC estimate is based on the FY 19-21 biennial budget and is likely to adjust upward with an SDC update and increase in residential development generating more funding than in prior budget cycles.

**TABLE 13**  
**CAPITAL FUNDING ESTIMATE**

Funding Source	Amount
SDC Annual Budget Estimate	\$ 315,000
General Fund	\$ -
Grants	\$ 100,000
Donations / Volunteers	\$ 50,000
Estimated Annual Revenue	\$ 465,000
Estimated 5-year Revenue	\$ 2,325,000
Park System Development Charge (SDC) Balance <sup>1</sup>	\$ 1,355,028
Urban Renewal Funds	\$ 3,300,000
General Obligation Bond	\$ 15,000,000
<b>Estimated 5-Year Capital Funding Total</b>	<b>\$ 21,980,028</b>

<sup>1</sup> Fund balance as of 4/27/2021

Currently, the primary funding source for land acquisition has been either land dedication or fee-in-lieu funding. This process is described in greater detail in the following section. Similar to the SDC's, the fees collected have not kept pace with the current cost of land in the area. Due to this, the revenue generation has been below the potential, and is anticipated to improve after Chapter 17.86 of the Sandy Development code is updated. Additional funding sources that could be used for land acquisition in addition to development include grants and bonds. The available balance could be used to acquire new park land to help fulfill needs identified through this planning process.

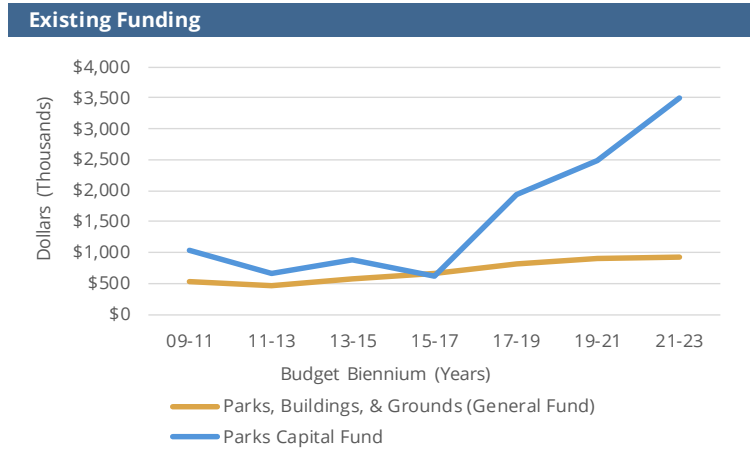
**TABLE 14**  
**LAND ACQUISITION FUNDING ESTIMATE**

Funding Source	Amount
Land (Fee in Lieu) Annual Budget Estimate	\$ 165,000
Estimated 5-year Land (Fee-in-Lieu) Revenue	\$ 825,000
Land (Fee in Lieu) Beginning Balance <sup>1</sup>	\$ 1,133,431
<b>Estimated 5-Year Land Acquisition Total</b>	<b>\$ 1,958,431</b>

<sup>1</sup> Fund balance as of 4/27/2021

## 6.4 OPERATIONS AND MAINTENANCE

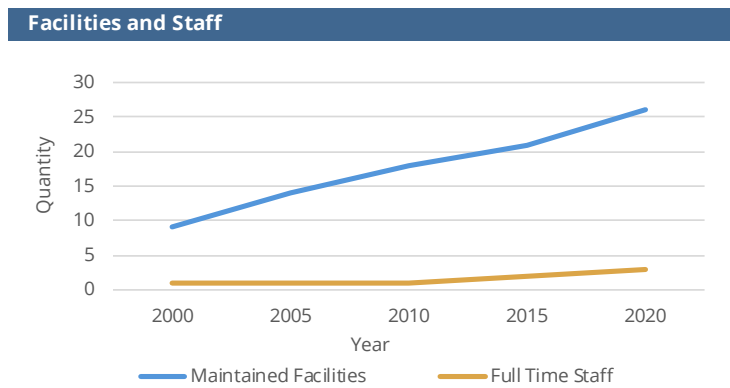
Operations and maintenance budgets are currently funded through the City General Fund. Figure 16 below shows a comparison of the parks maintenance funding and the parks capital fund. The parks capital fund is a combination of SDC's and fee in-lieu funds collected. The steep growth aligns with population growth and development in recent years.



Source: City of Sandy Biennial Budgets

**Figure 16**  
Existing Funding Trend

Figure 17 depicts the relationship between the number of full time staff and the number of maintained facilities over the previous 20 years, and closely correlates with the increased capital funding in Figure 16. Nearly half of the park system’s facilities have been added in the past 15 years. As noted previously staff are already stretched to adequately maintain the current parks and trails. As these facilities age, and the park system expands, the maintenance burden will increase. The City should plan for additional staff and increased maintenance costs when drafting future budgets.



Source: City of Sandy Biennial Budgets, Google Earth

**Figure 17**  
Maintenance Staff Levels and Facilities Maintained

Operations and maintenance can be funded through a variety of sources. The general fund provides the current funding, but is stretched by many demands. As the park system grows, other funding sources should be explored. Sources of funding for operations and maintenance are more limited than those for capital projects. Two options to consider to fund maintenance of the growing park system are a parks utility fee and a local option levy.

## 6.5 FUNDING SOURCES

### Existing Funding Sources

#### Park Land Dedication Policy

The park land dedication policy is defined in Chapter 17.86 of the Sandy Development Code and used to acquire land. New residential subdivisions, planned developments, multi-family or manufactured home park developments are required to provide park land to serve future residents of those developments.

Since the adoption of the 1997 Plan, the City has had the option to choose to require land dedication or collect fee in lieu funds on a case-by-case basis as development occurred. When park or trail land dedication is required, a formula is used to determine the acreage required based on the number of residential units and anticipated population. The land dedication requirement is in addition to SDC's collected for development.

The land dedication generally provides smaller neighborhood parks to serve new subdivisions. Fees collected can be combined to purchase larger parcels, such as community parks.

In addition, developers may propose the designation and protection of open space and/or greenway corridor areas as part of the City platting process. This open space does not count towards parkland dedication requirements. Open spaces may include natural areas of undisturbed vegetation, steep slopes, stream corridors, wetlands, or restored vegetation areas. Greenway corridors may link residential areas with parks and open space areas and may contain pedestrian and bike paths.

#### System Development Charges

Parks and trails system development charges (SDCs) are one-time fees assessed on new development to cover a portion of the cost of providing parks and trails to serve population growth associated with new development. The fees are assessed as part of building permits and may include two components: 1) a reimbursement fee to recover the cost of eligible existing improvements in the transportation and parks systems that will serve the new development and 2) an improvement fee to contribute to the cost of planned, eligible capacity-increasing park improvements which will serve the new development. Sandy's current park and trail SDC's have not been increased regularly to keep pace with market growth and development pressure, and are currently among the lowest in the region. As

noted in the recommendations in Chapter 5, an SDC methodology update should be implemented as soon as possible, to bring Sandy's rates in line with our communities in the region and insure that new development is paying an appropriate share of the current and future park system.

## Potential Funding Sources

### Grants

Historically grants have been used to assist in development of some parks in the City of Sandy. A wide array of grants are available from or administered through a number of sources including Oregon Parks and Recreation Department, Oregon Department of Transportation, Housing and Urban Development Block Grants. They generally require a percentage funding to be matched from another source. The match can be SDC's, donated or volunteered time, or recent prior expenditures such as land acquisitions. Additional detail on selection of specific grants that are likely to be most applicable to the Sandy park and trail system are included in Appendix E.

### General Obligation Bond

There are several types of bonds that can be used a variety of public improvements. A general obligation bond can be used to fund capital improvements, renovations, and new facilities if approved a vote. A bond could form the basis for a comprehensive funding package to implement major acquisitions and development. A general obligation bond has been included in the 5-year revenue estimate.

### Parks Utility Fee

A parks utility fee could be implemented a fee added to the monthly utility bill. The fee level would be determined by the revenue generation desired to support parks maintenance and operations, or could be divided between operations. The City Council has the authority to impose a fee without a vote of the electorate. A utility fee could be combined with other funding sources to provide revenue for maintenance or to support capital improvements funded through other sources. Implementing a fee of \$3.00 per month per single family residence and \$2.25 per multi family residence could generate adequate funding to support one or two additional FTE positions for operations and maintenance. Revenue generated by a utility fee could also be divided between parks operations and debt service on a bond.

### Local Option Levy

A local option levy could be used to generate revenue to fund operations, maintenance, and/or capital projects. It is a tax based on assessed property value and must be approved in an election. The levy period is dependent on the intended use of the funds. An operations and maintenance levy would assess additional property taxes for a fixed period, after which time it would need to be renewed by another round of voter approval.



## **Code Amendments**

# **Parks and Trails System Master Plan Amendments**

**City Council Meeting  
May 16, 2022**



## Code Amendments & Parks and Trails Master Plan Amendments

### Objectives:

- a. Review edits on code modifications to Chapters 17.32 & 17.86 before adoption on June 6, 2022. Adoption will be done by emergency.
- b. Review the revised Parks and Trails System Master Plan before adoption on June 6, 2022.

# Code Amendments Timeline



## Board & Commission

The Parks and Trails Advisory Board, and the Planning Commission review amendments

## Parks & Trails Board

Recommends approval of revised code amendments

## Planning Commission

Recommends approval of revised code amendments with a few small modifications

## City Council

Ordinance adoption scheduled



## Chapter 17.32 main amendments

- Removed the references to public and private ownership in the intent statement as there is no need to distinguish between public and private parks and open space, or those that are “designated or proposed.”
- Added an applicability section.
- Added additional clarity to the primary permitted uses and accessory permitted uses.

## Chapter 17.86 main amendments

- Expressly incorporated the 2022 Amended Parks and Trails Master Plan by reference for limited land use decisions.
- Increased the ratio to 0.0068 of an acre of parkland per person as recommended by ESA and consistent with the revised Master Plan.
- Specified when an applicant shall pay a fee in lieu as it relates to the size of dedicated land.

## Chapter 17.86 main amendments continued

- Removed the diagram in Section 17.86.20 as it set a burdensome precedent by requiring streets around all sides of parks which is expensive to construct as the Parks SDC account has to pay for half street improvements along parkland.
- Modified Section 17.86.30 to better define the environmental testing requirements.
- Added a level of service reference to Section 17.86.40.

## Code Amendments - One additional consideration

Section 17.86.10.

FCS is recommending the City reduces single family dwelling unit from 3.0 total persons per unit to 2.73 total persons per unit, increases standard multi-family dwelling unit from 2.0 total persons per unit to 2.02 total persons per unit, and increases manufactured dwelling unit from 2.0 total persons per unit to 2.20 total persons per unit. FCS did not provide recommended modifications for duplex dwelling unit or congregate multi-family dwelling unit.



# Parks and Trails System Master Plan Amendment Timeline



## Parks and Trails System Master Plan main amendments

- Align the Plan with the Transportation System Plan update;
- Refresh U.S. Census data; and,
- Align the level of service and needs analysis methodology with proposed Sandy Development Code amendments.



**Next Step: Adoption on  
June 6, 2022**

