

# City of Sandy

## Agenda

### City Council Meeting

**Meeting Location:** City Hall- Council Chambers, 39250  
Pioneer Blvd., Sandy, Oregon 97055

**Meeting Date: Monday, July 15, 2019**

**Meeting Time: 7:00 PM**



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#### 1. REGULAR COUNCIL MEETING

#### 2. PLEDGE OF ALLEGIANCE

#### 3. ROLL CALL

#### 4. CHANGES TO THE AGENDA

#### 5. PUBLIC COMMENT

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#### 7. ORDINANCES

- 7.1. Public Safety Fee - Ordinance - Public Hearing 12 - 18  
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- 7.2. Ordinance 2019-13, 18-034 ANN Bird Annexation - Quasi Judicial Public Hearing 19 - 83  
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#### 8. RESOLUTIONS

- 8.1. Public Safety Fee - Resolution 84 - 87

Adopt Resolution 2019-15, Adopting a Public Safety Fee.

[Public Safety Fee - Pdf](#)

## **9. NEW BUSINESS**

9.1. Library Advisory Board Appointments 88 - 89  
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9.2. FTA Procurement Policy 90 - 142

Authorize the Transit Department to adopt the FTA Procurement Policy.

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9.3. STIF Intergovernmental Agreement with TriMet 143 - 188

Authorize the Mayor to sign the Intergovernmental Agreement on behalf of the City.

[Statewide Transportation Improvement Fund Intergovernmental Agreement - Pdf](#)

9.4. Amended Intergovernmental Agreement with Clackamas County 189 - 212

Authorize the Mayor to sign the Intergovernmental Agreement with Clackamas County on behalf of the City.

[Amended Intergovernmental Agreement with Clackamas County - Pdf](#)

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

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

## **12. STAFF UPDATES**

12.1. [Monthly Reports](#)

## **13. ADJOURN**

## **14. EXECUTIVE SESSION**

14.1. ORS 192.660(2)(f) – to consider records that are exempt from public inspection.

14.2. ORS 192.660 (2) (d) To conduct deliberations with person designated by the governing body to carry on labor negotiations.



**MINUTES**  
**City Council Work Session Meeting**  
**Tuesday, June 11, 2019 City Hall- Council Chambers, 39250 Pioneer Blvd., Sandy, Oregon 97055 6:30 PM**

**COUNCIL PRESENT:** Jeremy Pietzold, Council President, Laurie Smallwood, Councilor, Jan Lee, Councilor, Carl Exner, Councilor, Bethany Shultz, Councilor, and Stan Pulliam, Mayor

**COUNCIL ABSENT:** John Hamblin, Councilor

**STAFF PRESENT:** Jordan Wheeler, City Manager, Karey Milne, Recorder Clerk, Ernie Roberts, Police Chief, Mike Walker, Public Works Director, Andi Howell, Transit Director, and Tyler Deems, Finance Director

**MEDIA PRESENT:**

**1. Roll Call**

**2. New Business**

**2.1. Master Fee Schedule Update**

Staff Report - 0149

Finance Director, Tyler Deems, Staff is proposing to present fee adjustments to the Council on a more consistent basis and with it coming up on the new fiscal year, what better time to review and update some of the master fees. Director Deems reviewed the fees proposed to be updated.

Council had some questions and discussions with staff on some of the fees, specifically the Public Improvement Plan Review and Inspection Fees, for the 0.01-10,000, they felt the percentage was high and would like staff to bring back another option.

**2.2. Transit Master Plan Update**

Transit Master Plan Update, Michelle Poyourow, reviewed the data and information received from surveys and the stakeholder meetings to Council along with the next steps in the process for the Transit Master Plan.

2.3. Public Safety Fee

Staff Report - 0150

Finance Director, Tyler Deems, reviewed all the previous data and research for the public safety fee. Staff is looking for Council to provide direction on the amount of the fee and implementation date. The new revenue would generate \$520,000 for the 2019-21 biennium that would be dedicated to the police department to fund the cost of a Patrol Officer and Lieutenant.

Council discussed the fee charges and recommended staff proceed with the process.

3. Adjourn



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Mayor, Stan Pulliam



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City Recorder, Karey Milne

Draft



**MINUTES**  
**City Council Meeting**  
**Monday, June 17, 2019 City Hall- Council Chambers, 39250**  
**Pioneer Blvd., Sandy, Oregon 97055 6:00 PM**

**COUNCIL PRESENT:**

Stan Pulliam, Mayor, Jeremy Pietzold, Council President, Laurie Smallwood, Councilor, John Hamblin, Councilor, Jan Lee, Councilor, Carl Exner, Councilor, Bethany Shultz, Councilor, and Kelly O'Neill, Planning Director

**COUNCIL ABSENT:**

**STAFF PRESENT:**

Karey Milne, Recorder Clerk, Jordan Wheeler, City Manager, David Snider, Economic Development Manager, Andi Howell, Transit Director, and Tyler Deems, Finance Director

**MEDIA PRESENT:**

**1. Work Session 6PM**

**2. ROLL CALL**

**3. Agenda**

- 3.1. Agenda Review
- 3.2. Outdoor Seating SDCs

Staff Report - 0152

Economic Development Manager, David Snider, reviewed his research regarding cities charging SDC funds for outdoor seating of restaurants. After reviewing this data staff would like to propose the idea of drafting an ordinance that would effectively change our current policy to exclude assessing systems development charges (SDC's) for outdoor seating areas. Staff believes it will help encourage further development in our local restaurant industry and help to achieve some of the Council goals.

Council had some discussion, they feel staff should move forward with the Ordinance as well as refund the three businesses that paid SDC's for outdoor seating.

**4. Adjourn Work Session**

**5. Regular Meeting 7PM**

**6. Pledge of Allegiance**

**7. Roll Call**

**8. Changes to the Agenda**

None

**9. Public Comment**

Mayor Stan Pulliam, 18751 Pacific Ave, Sandy OR 97055, Spoke about and would like to bring awareness to suicide prevention.

**10. Presentation**

10.1. Oregon Impact Presentation

Rich Clark with Oregon Impact, they have been working the past few months in Sandy sending out packets on youth substance abuse prevention, things that adults can do to help with prevention. The funds were from a grant by Clackamas County. They were able to get 25 local businesses to help distribute the informational packets. The Local KFC went above and beyond to help increase awareness and they were presented with an award for their efforts.

**11. Consent Agenda**

11.1. City Council Minutes

**12. Resolutions**

12.1. Master Fee Schedule Update

Staff Report - 0153

City Manager, Jordan Wheeler, reminded council that the Master Fee Schedule Update was brought to them in a workshop on June 11th. It is now being brought before council as a Resolution to update the fees.

Finance Director, Tyler Deems, reviewed the changes in fees and what fees will be updated.

The changes in the Master Fees is already reflected in the BN 19-21 Budget.

Moved by Laurie Smallwood, seconded by Carl Exner

Staff Report - 0153

*Approve Resolution 2019-10, a Resolution Adopting Changes to the Master Fee Schedule.*

CARRIED.

12.2. Supplemental Budget

Staff Report - 0155

City Manager, Jordan Wheeler, gave a brief overview. Finance Director, Tyler Deems, Local Budget Law allows for changes to be made to the budget after adopt in certain circumstances. Changes that are less than 10% of the total fund can be adopted at a regularly scheduled Council meeting. Changes that over 10% of the total fund require a public hearing. The following changes are all less than 10% of the total fund, therefore no public hearing is required.

He reviewed from the staff report the minor adjustments and appropriations.

Moved by Jan Lee, seconded by Jeremy Pietzold

Staff Report - 0155

*Adopt Resolution 2019-12, a Resolution as amended Adopting a Supplemental Budget for BN 2017-19.*

CARRIED.

**13. ORDINANCES**

13.1. Public Safety Fee

Staff Report - 0154

7:25 Open Public Hearing Ordinance 2019-11 to Establish a Public Safety Fee  
Abstentions from the hearing body - None

Call for the Staff Report;

Finance Director, Tyler Deems, At the June 11th workshop, Council received information and discussed establishing a Public Safety Fee. The staff report from this meeting can be found here. Both the Budget Committee and the Council agreed to find a new revenue source to increase policing services through the hiring of additional officers. After exploring various options, it was determined that implementing a public safety fee that would be added to utility bills would be the most reasonable way to generate the revenue for these two positions. The fee will be based on customer class and the number of dwelling units. For example, a single family home would pay \$4.60 per month. A three unit multi-family complex would pay \$4.60 for each unit, for a total of \$13.80 per month.

The first reading of this ordinance, including a public hearing, will occur at the June 17th meeting. Staff will provide as much information to the public regarding this ordinance as possible. The second reading of this ordinance will take place at the July 15th meeting. A public hearing will again take place to receive comments from the public. Once adopted, the ordinance will not take effect for 30 days. Following the adoption of the ordinance, Council will need to adopt a resolution setting the amount(s) of the Public Safety Fee. This will likely be done in tandem with the adoption of the ordinance on July 15th. We will continue to communicate the public safety fee need and purpose and input opportunities for the public hearings through sharing information on social media and the city's website. We will also include information about the fee in the upcoming Utility Bill Newsletters.

Call for Public Testimony; William Guthridge 37595 Coralburst St, he really appreciates councils work on this public safety fee, as a Sandy resident it means a lot to have additional police staff to keep our community safer.

Call for staff recap and recommendation; Finance Director, Tyler Deems, both the Budget Committee and the Council agreed to find a new revenue source to increase policing services through the hiring of additional officers with out impacting other services and other departments budgets.

Motion to close the public hearing at 7:33PM Motion by Councilor Pietzold,  
Second by Councilor Exner, all in favor.

Discussion by the hearing body;  
Council had a brief discussion.



Moved by Carl Exner, seconded by Jan Lee

Staff Report - 0154

*Motion to approve the first reading of Ordinance 2019-11, an Ordinance Establishing a Public Safety Fee.*

CARRIED.

**14. New Business**

- 14.1. Authorize Change Order No. 1 for Energy Savings Performance Contract for water meter audit and testing

Staff Report - 0151

Public Works Director, Mike Walker, in September Council approved a proposal from McKinstry to provide technical and financial analysis for an Energy Savings Performance Contract for street lighting LED conversion and a water meter testing and efficiency audit. They are asking for a change order amount for the more detailed analysis of the water meter conversion project that is 25,500. The preliminary analysis cost was approximately 16,000 for a total of 41,500.

There are sufficient funds in the Water and Street Funds to perform this work. Ultimately, these costs can be folded into the total costs for each project and become part of the financing package.

Council had a few questions and discussion.

Moved by John Hamblin, seconded by Bethany Shultz

Staff Report - 0151

*Authorize staff to sign the Change Order for the more detailed technical analysis and investment grade financial analysis for the water meter replacement project.*

CARRIED.

**15. Report from the City Manager**

City Manager, Jordan Wheeler,

- 15.1.

City Manager, Jordan Wheeler, gave an update on the Ten Eyck Vista Loop

Sidewalk project, Mayor Pulliam provided some lobbying and was able to help get some motivation for additional funds to help with this project.

We will be beginning the temperature monitoring of the Sandy River here shortly, looking at four locations to get good data over the next five years.

Reminded everyone of the Longest Day Parkway event.

The fourth of July fireworks show is coming up, thank you to Clackamas County Bank for sponsoring that.

Chalk Art Contest is coming up as well as Sandy Mountain Days.

**16. Committee /Council Reports**

Councilor Shultz, gave an update on the Library Board. She is excited to go into the summer season and all the events that are coming up.

Councilor Exner, met with the Friends of the Sandy Pool, the conversation ended good, he gave an update on the Arts Commission. Was able to visit the SandyNet office and was really impressed with what they have done with the space and what they are accomplishing.

Councilor Lee, she gave out a hand out and reviewed some bills that had recently passed.

She talked about the goals set at the C4 Retreat.

Councilor Smallwood, gave an update on the Parks Board, was made aware of some regional trails meetings where there could be an opportunity for grants. Also would like to let everyone know that Sandy Helping hands is now helping with pets, Sandy Helping Paws.

Councilor Pietzold, thanked staff for all the work that went in to the budget and excited about the progress made on the outdoor seating.

Mayor Pulliam, remind everyone of all the upcoming summer events and wanted to recognize our staff that works so hard to make these events happen, thanked staff for the work on the outdoor seating, and appreciates that the staff reports are being updated, so please keep up the good work.

**17. Staff updates**

17.1. [Monthly Reports](#)

**18. Adjourn**

**19. Executive Session**



City Council  
June 17, 2019

Mayor, Stan Pulliam



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City Recorder, Karey Milne

Draft



## Staff Report

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**Meeting Date:** June 17, 2019  
**From** Tyler Deems, Finance Director  
**SUBJECT:** Public Safety Fee

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**Background:**

At the June 17th Council Meeting, Council received information and discussed establishing a Public Safety Fee. The staff report from this meeting can be found [here](#). Both the Budget Committee and the Council agreed to find a new revenue source to increase policing services through the hiring of additional officers. After exploring various options, it was determined that implementing a public safety fee that would be added to utility bills would be the most reasonable way to generate the revenue for these two positions.

The fee will be based on customer class and the number of dwelling units. For example, a single family home would pay \$4.50 per month. A three unit multi-family complex would pay \$4.50 for each unit, for a total of \$13.50 per month.

Class	Units	Fee	Projected Biennial Revenue
Single Family	3,382	\$ 4.50	365,256
Multi-Family	842	\$ 4.50	90,936
Comm/Indust	256	\$10.50	64,512
			\$ 520,704

Staff has verified the number of units for all customer classes, and the updated count is listed above. With the updated information, staff was able to reduce slightly the monthly fee amounts.

**Implementation Process**

The first reading of this ordinance was completed on June 17th, which included a public hearing. Staff has provided information to the public via the utility bill newsletter and information on the city's website. The second reading of this ordinance will take place at the July 15th meeting. A public hearing will again take place to receive comments from the public. Once adopted, the ordinance will not take effect for 30 days. Following the adoption of the ordinance, Council will need to adopt a resolution setting the amounts of the Public Safety Fee. This will be done in tandem with the adoption of the ordinance on July 15th.

We will continue to communicate the public safety fee need and purpose and input opportunities for the public hearings through sharing information on social media and the city's website. We will also include information about the fee in the upcoming Utility Bill Newsletters.

**Recommendation:**

Adopt Ordinance 2019-11, an Ordinance Establishing a Public Safety Fee.

**Budgetary Impact:**

None. The expected revenue from the fee has already been included in the adopted BN 19-21 budget.



NO. 2019-11

**An Ordinance Establishing a Public Safety Fee**

**WHEREAS**, the City of Sandy has determined that current General Fund Revenues are not keeping pace with Law Enforcement needs; and

**WHEREAS**, police services benefit all utility users in the City; and

**WHEREAS**, in order to safeguard, facilitate, and encourage safety and welfare of the citizens and businesses of the city, the Council finds that a Police Department that is sufficiently well-funded to attract and retain qualified individuals to serve as police officers provides a multitude of economic and social benefits to the public, including, but not limited to:

- Increased police protection.
- Prevention of crime.
- Enhanced protection of property.
- Promotion of business and industry.
- Promotion of community spirit and growth.

**Now Therefore**, The City of Sandy ordains as follows:

**Section 1: Chapter 3.34 is hereby added to the Sandy Municipal Code to read as follows:**

**3.34.010 PURPOSE AND INTENT:**

A. It is the intent of this ordinance to provide a funding mechanism to help pay for the benefits conferred on city residents and businesses by the provision of an adequate program of public safety; and further to help bring the Police Department up to acceptable service levels.

B. The Public Safety Fee enacted in this ordinance is intended to supplement existing funding, and is not intended to provide full funding for the Police Department.

**3.34.020 DEFINITIONS:**

For purposes of this ordinance, the following shall mean:

CITY UTILITY SERVICE: water, sewer, stormwater or broadband services provided by the City.

#2019-11

DEVELOPED PROPERTY: A parcel or portion of real property on which a dwelling, structure, or building exists and is receiving City utility services.

NON-RESIDENTIAL UNIT: Developed property that is not primarily for personal domestic accommodation, such as a business or commercial enterprise. A non-residential structure which provides facilities for one or more businesses, including, but not limited to, permanent provisions for access to the public, shall have each distinct business facility considered as a separate non-residential unit. Motels and hotels shall be considered non-residential units for these purposes.

PERSON: A natural person, unincorporated associates, tenancy in common, partnership, corporation, limited liability company, cooperative, trust, any governmental agency, including the State of Oregon, but excluding the City of Sandy, and any other entity in law or in fact.

RESIDENTIAL UNIT: Developed property with a residential structure which provides complete living facilities for one or more persons including, but not limited to, permanent provisions for living, sleeping, and sanitation. A home business in a residential zone will be regarded only as a residential unit, not as a non-residential unit. Multi-family residential property consisting of two or more dwelling units, condominium units or individual mobile home units shall have each unit considered as a separate residential unit. A lot or parcel which contains a non-residential building or structure used primarily for personal purposes, not primarily for business or commercial purposes, shall be considered a residential unit.

RESPONSIBLE PARTY: The person owing the Public Safety Fee; either the individual who normally pays the City utility bills for a developed property or another individual who has agreed in writing to pay the fee.

UNDEVELOPED PROPERTY: A parcel or portion of real property not receiving City utility services.

**3.34.030 CREATION OF A PUBLIC SAFETY FEE:**

There is hereby created a Public Safety Fee for the purpose of providing funding for Police Department. All revenues and expenditures shall be distinctly and clearly noted in the city budget. The revenues from the Fee shall be collected in the General Fund and shall be used for Police Department expenses (both operational and capital).

**3.34.040 IMPOSITION OF A PUBLIC SAFETY FEE:**

A. The Public Safety Fee shall be assessed to each residential unit and to each non-residential unit. The amount of the fee shall be set made by Council resolution. In the event that funds collected exceed the City's need, the rate of the fees may be decreased or omitted by Council resolution.

#2019-11

B. Except as the fees may be reduced or eliminated under 3.34.070, the obligation to pay a Public Safety Fee arises when a person responsible uses or otherwise benefits from City utility services. It is presumed that City utility services are used, and that a benefit arises, whenever the subject real property is within the City Limits.

C. All developed properties within the City limits shall be charged a Public Safety Fee.

D. The imposition of surcharges shall be calculated on the basis of the number of residential or non-residential units supported, without regard to the number of water meters serving that property. Example – 40-unit complex, with one utility bill will receive a fee for each unit. Exemptions for ADU's and hardship trailers or other financial hardship may be granted if requested and a hardship is demonstrated. A responsible party seeking an exemption for a hardship must pursue the exemption via the appeal process described in Section 3.37.070.

**3.34.050 COLLECTION:**

A. Public Safety Fees shall be collected monthly. Statements for the fee shall be included as an additional item on the city's monthly utility billing wherever feasible, unless otherwise specified below.

B. Unless another person has agreed in writing to pay, and a copy of that writing is filed with the City, the person normally responsible for paying any City utility service charges for a developed property is responsible for paying the Public Safety Fee.

C. A request for any City utility service will automatically initiate appropriate billing for the Public Safety Fee.

D. There shall be no charge for an undeveloped property until such time as an application for any City utility service is submitted for that property.

**3.34.060 PROGRAM ADMINISTRATION:**

A. Except as provided below, the City Manager shall be responsible for the administration of this Chapter and for the collection of fees hereunder.

B. The City Manager is authorized and directed to review the operation of the Chapter and, where appropriate, recommend changes thereto in the form of administrative procedures for adoption by the City Council by resolution or amendments to this Chapter. Such procedures, if adopted by the Council, shall be given full force and effect, and unless clearly inconsistent with this chapter, shall apply uniformly throughout the city.

#2019-11



C. The amount and collection process of the Public Safety Fee shall be examined by the City Manager, City Council, and Budget Committee on a biennial basis as part of the City's bi-annual budget formulation process.

#### 3.34.070 APPEAL PROCESS

A. Any responsible party who disputes any interpretation given by the city as to property classification may appeal such interpretation. If the appeal is successful, relief will be granted by reassignment to a more appropriate billing category. In such instances, reimbursement will be given for any over payment, retroactive to the filing date of the appeal. Factors to be taken into consideration include, but are not limited to: availability of more accurate information; equity relative to billing classifications assigned to other developments of a similar nature; changed circumstances; and situations uniquely affecting the party filing the appeal.

B. Application for appeal shall state the reason for appeal, with supporting documentation to justify the requested change or relief.

C. The City Manager shall be responsible for evaluating appeals. If the City Manager decides information provided through the appeal process justifies change, the City manager may authorize this change (up or down) retroactive to the date the appeal was filed.

D. The City Manager shall make all reasonable attempts to resolve appeals utilizing available existing information, including supporting documentation filed with the appeal, within thirty (30) days of the date the appeal was filed. If, however, more detailed site-specific information is necessary, the City Manager may request the applicant provide information.

E. In any event, the City Manager shall file a report within ninety (90) days of the date the appeal was filed explaining the disposition of the appeal, along with the rationale and supporting documentation for the decision reached.

F. Decisions of the City Manager may be further appealed to the City Council, and shall be heard at a public meeting. Upon such further appeal, the City Council shall at its first regular meeting thereafter set a hearing date. The matter shall be heard solely upon the record. In no event shall a final decision be made later than ninety (90) days after the matter was formally appealed to the City Council.

G. Appeals filed within one hundred twenty (120) days of the effective date of this chapter shall not be subject to paying a filing fee. After this period, the initial filing fee for an appeal shall be fifty (\$50.00) dollars. An additional fifty (\$50.00) dollars fee is required for further appeal to the City Council. These fees are fully refundable should the appellant adequately justify and secure the requested change or relief.

#### **3.34.080 ENFORCEMENT:**

#2019-11

A. In the event funds received from city utility billings are inadequate to satisfy in full all of the water, sewer, stormwater, broadband and Public Safety charges, credit shall be given first to the Public Safety Fee, second to the water service charges, third to the charges for sewer service, fourth to the stormwater, and fifth to broadband.

B. Notwithstanding any provision herein to the contrary, the city may institute any necessary legal proceedings to enforce the provisions of this chapter, including but not limited to injunctive relief and collection of charges owing. The city's enforcement rights shall be cumulative. If the City commences any legal proceedings to enforce the provisions of this Chapter, and the City prevails, the City is entitled to all fees and costs it incurred, as well as any sum that a court, including any appellate court, may deem reasonable as attorney's fees.

**3.34.090 SEVERABILITY:**

The sections and subsections of this Chapter are severable. The invalidity of one section or subsection of this Chapter shall not affect the validity of the remaining sections or subsections.

**Section 2: EFFECTIVE DATE:**

This ordinance shall become effective from and after 30 days following its enactment by the City Council, and the first billing for a payment of fees hereunder shall begin for the billing cycle ending on or after the 15th day of August, 2019.

This ordinance is adopted by the Common Council of the City of Sandy and approved by the Mayor this 17 day of June 2019

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

ATTEST:

\_\_\_\_\_  
Karey Milne, City Recorder

#2019-11



## Staff Report

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**Meeting Date:** July 15, 2019  
**From:** Kelly O'Neill, Planning Director  
**SUBJECT:** Ordinance 2019-13, 18-034 ANN Bird Annexation Staff Report

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### **Background:**

The subject property came into the Urban Growth Boundary (UGB) on June 2, 2017. No previous annexation requests occurred as the property was not eligible to be annexed. The applicant requests annexation and assignment of the Single Family Residential (SFR) zoning designation as identified on the conceptual zoning map.

This request is being processed under a Type IV quasi-judicial review. Notification of the proposal was mailed to property owners within 300 feet of the subject property and to affected agencies on April 30, 2019. Notification of the proposal was posted to the Department of Land Conservation and Development on April 15, 2019 and a legal notice was published in the Sandy Post on May 8, 2019.

The Planning Commission reviewed the subject request at a public hearing on May 28, 2019 and forwarded a recommendation of approval to the City Council. The City Council is reviewing the Planning Commission recommendation at a public hearing on July 15, 2019.

### **Recommendation:**

The Planning Commission held a public hearing on May 28, 2019 and voted 6-0 to recommend that the City Council approve the annexation with the conditions outlined in this staff report. More specifically, the Planning Commission recommends the following:

- If the City Council recommends approval of the annexation request, the Planning Commission suggests adding a condition of approval that the standards and criteria of the FSH overlay will apply to development of the property in accordance with the standards in effect at the time of development.
- Prior to any future tree removal on the subject property the applicant shall apply and receive approval for a tree removal permit in compliance with Chapter 17.102. Removal of trees without a permit prior to annexation approval shall result in the property not being considered for annexation for at least five (5) years. Removal of trees without a permit after annexation shall be enforced in compliance with Chapter 17.06.
- The City shall submit a single application to update the zoning map to reflect the FSH overlay district on all four (4) tax lots (tax lots 900, 2000, 2300, and 801).

### **Code Analysis:**

See attached

**Budgetary Impact:**  
None



**LAND USE APPLICATION FORM**

(Please print or type the information below)

Planning Department  
39250 Pioneer Blvd.  
Sandy OR 97055  
503-668-4886

Name of Project BIRD ANNEXATION

Location or Address 19264 SE JACOBY ROAD

Map & Tax Lot Number T 25, R 4E, Section 24A; Tax Lot(s) 801

Plan Designation LDR Zoning Designation SFR Acres 6.22

Request:

Type A Annexation of one property containing 6.22 acres.

I am the (check one)  owner  lessee of the property listed above and the statements and information contained herein are in all respects true, complete and correct to the best of my knowledge and belief.

Applicant ian Bird	Owner same as applicant
Address 1234 Spinnaker Way	Address
City/State/Zip Sugar Land, TX 77498	City/State/Zip
Phone 281-923-4792	Phone
Email bird.ian.m@gmail.com	Email
Signature 	Signature

If signed by Agent, owner's written authorization must be attached.

File No.	Date <u>7/25/18</u>	Rec. No.	Fee \$ <u>2136.00</u>
Type of Review (circle one): Type I    Type II    Type III <u>Type IV</u>			

24E24A00801



**SUPPLEMENTAL  
LAND USE APPLICATION FORM (No. 1)**

(Please print or type the information below)

Planning Department  
39250 Pioneer Blvd.  
Sandy OR 97055  
503-668-4886

ANNEXATION       ZONE CHANGE       COMPREHENSIVE PLAN AMENDMENT

Property Identification			
Tax Lot Number	Township	Range	Section
801	2S	4E	24A

Existing and Proposed Land Use Designations				
Tax Lot Number(s)	Comprehensive Plan		Zoning Map	
	Existing	Proposed	Existing	Proposed
801	Rural	LDR	RR-FF-5	SFR

**IMPORTANT:** Each section on this application must be fully completed or your application could be deemed incomplete.

Tax Lot Number	Clackamas County Recording Number	Assessed Land Value	Size in Acres or Sq. Ft.
801	0502076	\$190,861	6.22 acres

**LEGAL DESCRIPTION:** Attach a separate page with the written metes and bounds legal description. Accuracy of the legal description(s) must be certified by a registered land surveyor for all annexation applications.

**DESCRIBE EXISTING USES**

Tax lot 801 includes a mix of pasture and woods and is currently vacant.

**DESCRIBE EXISTING BUILDINGS**

How many buildings are located on the property? 0

Number of Total Dwelling Units :

0

**DESCRIBE EXISTING TOPOGRAPHY**

Approximate acreage with slopes less than 14.9%

100%

Approximate acreage with slopes 15% to 24.9%

0

Approximately acreage with slope in excess of 25%

0

Any creeks, water sources, drainageways or wetlands within the property? Yes  No

Any steep slopes, ravines, draws or bluffs within or abutting the property? Yes  No

**DESCRIBE EXISTING ACCESS**

Does the subject property abut a public right-of-way? Yes  No

Name of public right-of-way: SE Jacoby Rd. is located about 895 ft. to the west

Does the property abut a private road? Yes  No

Name of abutting private road(s): This road is an access drive and is not named.

Describe any unusual difficulties in accessing the property:

The property does not have frontage on a public road but is accessed via an access easement as specified on Partition Plat 2008-036.

**DESCRIBE SURROUNDING USES ON ADJACENT PROPERTIES**

Properties surrounding the subject property are developed as rural residential/farm uses.

**DESCRIBE PROPOSED USE OF THE PROPERTY OR LAND DIVISIONS**

**Include number of lots, densities, etc.**

There is no development plan at this time. Development of the property will be completed in compliance with applicable City ordinances.





## SUPPLEMENTAL ANNEXATION LAND USE APPLICATION FORM (No. 2)

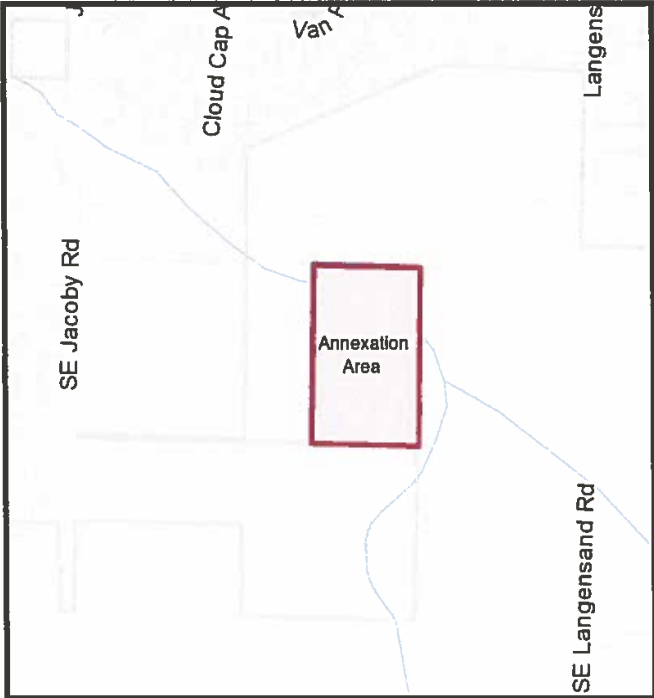
**List of all owners of property included in the application**

Owner Information	Property Description TL, Section, Township, Range
<b>Owner</b> <div style="padding-left: 20px;">Ian Bird</div>	25 4E 24A, tax lot 801 19264 SE Jacoby Road
<b>Address</b> <div style="padding-left: 20px;">1234 Spinnaker Way</div>	
<b>City/State/Zip</b> <div style="padding-left: 20px;">Sugar Land, TX 77498</div>	
<b>Phone</b> <div style="padding-left: 20px;">281-923-4792</div>	
<b>Owner</b>	
<b>Address</b>	
<b>City/State/Zip</b>	
<b>Phone</b>	
<b>Owner</b>	
<b>Address</b>	
<b>City/State/Zip</b>	
<b>Phone</b>	
<b>Owner</b>	
<b>Address</b>	
<b>City/State/Zip</b>	
<b>Phone</b>	
<b>Owner</b>	
<b>Address</b>	
<b>City/State/Zip</b>	
<b>Phone</b>	

**PROJECT NARRATIVE  
FOR**

**BIRD ANNEXATION**

**19264 SE Jacoby Road, Sandy, Oregon  
(24E24A tax lot 801)**



**July 2018**

## **I. PROJECT DESCRIPTION**

Ian and Kelly Bird request approval to annex the property they own located at 19264 SE Jacoby Road into the City of Sandy. The annexation area includes a single property known as 24E 24A tax lot 801 that was partitioned in 2008 (Parcel 1 of Partition Plat 2008-036). The property contains 6.22 acres and does not have frontage on SE Jacoby Road but is accessed by a non-exclusive recorded access easement (Documents 74-12923 and 2008-012774).

The parcel is located in the expanded Urban Growth Boundary approved in 2017. The property carries a conceptual Comprehensive Plan Designation of Low Density Residential and a conceptual Zoning Designation of Single Family Residential (SFR). The property is currently zoned by Clackamas County as "RRFF-5" and has a "Rural" county Comprehensive Plan designation. The applicant requests a Type 'A' Annexation in conformance with the city's conceptual zoning and plan designations.

The proposed annexation area is located directly north of property annexed by the City of Sandy (File No. 17-062 ANN) in February, 2018 located at 19270 SE Jacoby Road. The proposed annexation area is contiguous to the city limits along its entire southern boundary. The property includes a mix of pasture and woods and is currently vacant. A tributary of Tickle Creek flows through the northern portion of the property in an southeast-northwest direction.

## **II. ITEMS SUBMITTED WITH THIS APPLICATION**

- Land Use Application
- Supplemental Application No. 1
- Supplemental Application No. 2
- Notification List
- Notification Map
- Mailing Labels for Notifying Property Owners
- Project Narrative
- Legal Description and Sketch of Annexation Area
- Partition Plat 2008-036 (page 1)

## **III. CODE ANALYSIS**

### **17.26.00 ZONING DISTRICT AMENDMENTS**

*Response: In association with the annexation request, the applicant requests SFR zoning applying the underlying conceptual zoning designation determined during the recent Urban Growth Boundary Analysis process.*

*To determine the net buildable area of the property, 50 percent (3.11 acres) of the property was assumed to be removed for roads and the unbuildable area associated with the protection of Tickle Creek located on the property. These reductions result in a net buildable area of 3.11 acres (6.22 - 3.11 = 3.11).*

Based on the density range required in the SFR Zoning District (3 units/net acre minimum to 5.8 units/net acre maximum) the *density range for the property would be a minimum of 9 dwelling units (3.11 x 3 units = 9.33 units min.) and a maximum of 18 units (3.11 x 5.8 units = 18.04 units max).*

#### **CHAPTER 17.78 ANNEXATION**

Chapter 17.78 contains the procedures and standards for reviewing annexation requests.

**SENATE BILL 1573:** Senate Bill 1573 passed by the legislature, effective on March 15, 2016 requires city's whose charter requires annexations to be approved by voters (Sandy's Charter includes this provision) to annex the property without submitting it to the voters if the proposal meets the following criteria:

- (a) The territory is included within an urban growth boundary adopted by the city or Metro, as defined in ORS 197.015;  
*RESPONSE: The subject property is located within the city's urban growth boundary effective June 2017. The proposal complies with this criterion.*
- (b) The territory is, or upon annexation of the territory into the city will be, subject to the acknowledged comprehensive plan of the city;  
*RESPONSE: The subject property is identified on the City's adopted Comprehensive Plan map to have a Low Density Residential Comprehensive Plan designation. The proposal complies with this criterion.*
- (c) At least one lot or parcel within the territory is contiguous to the city limits or is separated from the city limits only by a public right of way or a body of water; and  
*RESPONSE: The property is contiguous to the city limits along its entire southern boundary. The proposal complies with this criterion.*
- (d) The proposal conforms to all other requirements of the city's ordinances.  
*RESPONSE: As reviewed below, the proposal complies with all requirements contained in the city's ordinance.*

#### **17.78.00 INTENT**

The procedures and standards established in this chapter are required for review of proposed annexations in order to:

- A. Maximize citizen involvement in the annexation review process by holding a public hearing;
- B. Establish a system for measuring the physical, environmental, fiscal and related social effects of proposed annexations; and,
- C. Where possible and practical, avoid the creation of irregular boundaries or annexations that create "island," "cherry stem" or "shoestring" annexations.

**RESPONSE:** The City will process this application using a Type IV quasi-judicial process. This process requires notification of the proposal to property owners within 300 feet of the subject property. In addition, public hearings to review the proposal will be held before both the Planning Commission and City Council. The hearing bodies will consider the items contained in subsection B with their review of the proposal.

Annexation of the subject property expands the city limits in the vicinity and does not create an "island, cherry stem or shoestring". One property (24E24A tax lot 800) located to the west of the subject property will be surrounded on three sides by city limits with the annexation of the subject property but will not be entirely surrounded. The applicant reached out to these property owners to see if they were interested in joining in on this annexation application but did not receive a return response. Since the decision to annex is a property owner initiated process this owner may choose to annex at a later date unaffected by the current application.

The City Council has historically approved the majority of property owner initiated annexation requests. In 2017 an annexation application creating a similar configuration as the current request was reviewed and approved (File No. 2017-031 ANN) by Ordinance 2017-09. Annexation of that property (24E11 tax lot 2200) caused the property to the east of it (24E11AB tax lot 600) to be surrounded on three sides by the city limits. The staff report, Ordinance, and Findings for this application indicated the proposal complied with the annexation criteria in Chapter 17.78 and there weren't any concerns raised regarding the creation of an island with this application.

#### **17.78.10 PROCEDURAL CONSIDERATIONS**

- A. The corporate limits of the City shall include all territory encompassed by its boundaries as they now exist or are modified as provided herein unless mandated by State Law.
- B. The City may annex an island if it is less than 100 acres and has at least 80 percent of its boundary contiguous to the City; or the land is of any size and has at least 80 percent of its boundary contiguous to the City if the area to be annexed existed as an island before October 20, 1997.
- C. The City may annex land for public facilities. Public facilities include but are not limited to schools, senior centers, roads, police and fire stations, parks or open space, and public water, sewer and storm drainage facilities.

**RESPONSE:** The procedural considerations in this section are not pertinent to the proposed annexation request because the applicant is requesting annexation of the subject property. The City has generally only annexed property requested by property owners.

#### **17.78.15 TYPES OF ANNEXATION**

- A. Type A: Annexation in conformance with conceptual zoning designation

B. Type B: Annexation + zone change

C. Type C: Annexation + plan map change + zone change

**RESPONSE:** *The applicant requests a Type A annexation in conformance with the city's conceptual zoning (SFR) and plan designations (LDR).*

#### **17.78.20 CONDITIONS FOR ANNEXATION**

The following conditions must be met prior to beginning an annexation request:

- A. The requirement of Oregon Revised Statutes, Chapters 199 and 222 for initiation of the annexation process are met;
- B. The site must be within the City of Sandy Urban Growth Boundary (UGB); and
- C. The site must be contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water.
- D. The site has not violated Section 17.78.25.

**RESPONSE:** *The proposed annexation complies with the requirements of Chapters 199 and 222 and the Oregon Revised Statutes as allowed by the provisions of Senate Bill 1573. The site is within the City of Sandy Urban Growth Boundary as approved by the Sandy City Council, Clackamas County Board of Commissioners, and the Department of Land Conservation and Development, effective June 2, 2017. The annexation area is contiguous to the existing city limits along its entire southern boundary. As discussed in detail below, tree retention requirements of Section 17.78.25 have not been violated. For these reasons, the proposal complies with all of the required conditions in this section prior to beginning the annexation request.*

#### **17.78.25 TREE RETENTION**

The intent of this section is to treat property with annexation potential (in the UGB) as if it had been subject, prior to annexation, to the tree retention provisions of the City's Urban Forestry Ordinance (Chapter 17.102) and Flood and Slope Hazard (FSH) Overlay District (Chapter 17.60), to discourage property owners from removing trees prior to annexation as a way of avoiding Urban Forestry Ordinance provisions, and to prevent unnecessary tree removal for future subdivision layout. In accordance with ORS 527.722, the State Forester shall provide the City with a copy of the notice or written plan when a forest operation is proposed within the UGB. The City shall review and comment on an individual forest operation and inform the landowner or operator of all other regulations that apply but that do not pertain to activities regulated under the Oregon Forest Practices Act.

- A. Properties shall not be considered for annexation for a minimum of five (5) years if any of the following apply:
  - 1. Where any trees six (6) inches or greater diameter at breast height (DBH) have been removed within 25 feet of the high water level along a perennial stream in the five years prior to the annexation application.

2. Where more than two (2) trees (six (6) inches or greater DBH) per 500 linear feet have been removed in the area between 25 feet and 80 feet of the high water level of Tickle Creek in the five years prior to the annexation application.
3. Where more than two (2) trees (six (6) inches or greater DBH) per 500 linear feet have been removed in the area between 25 feet and 50 feet of the high water level along other perennial streams in the five years prior to the annexation application.
4. Where any trees six (6) inches or greater DBH have been removed on 25 percent or greater slopes in the five years prior to the annexation application.
5. Where more than ten (10) trees (11 inches or greater DBH) per gross acre have been removed in the five years prior to the annexation application, except as provided below.

*RESPONSE: A review of historical aerial photos and a field inspection of the property reveal that no trees have been removed anywhere on the subject property within the last five years in the areas specified in this section. As such, none of the conditions contained in this section pertain to the proposed annexation.*

#### **17.78.30 ZONING OF ANNEXED AREAS**

- A. All lands within the urban growth boundary of Sandy have been classified according to the appropriate city land use designation as noted on the comprehensive plan map (as per the city/county urban growth management area agreement). The zoning classification shall reflect the city land use classification as illustrated in Table 17.26.20.
- B. Where only a single city zoning designation corresponds to the comprehensive plan designation (Type A) and the rezoning decision does not require the exercise of legal or policy judgment on the part of the city council, amendment of the zoning map shall be a ministerial decision of the director made without notice or any opportunity for a hearing.

*RESPONSE: The subject property is identified on the City's Comprehensive Plan Map to have a LDR, Low Density Residential designation and on the City's Zoning Map to be zoned SFR, Single Family Residential. The applicant requests these designations be applied with approval of this application.*

#### **17.78.50 ANNEXATION CRITERIA**

Requests for annexation should not have an adverse impact on the citizens of Sandy, either financially or in relation to the livability of the city or any neighborhoods within the annexation area. Generally, it is desirable for the city to annex an area if the annexation meets any of the following criteria:

- A. A necessary control for development form and standards of an area adjacent to the city; or

- B. A needed solution for existing problems, resulting from insufficient sanitation, water service, or other urban service related problems; or
- C. Land for development to meet urban needs and that meets a logical growth pattern of the city and encourages orderly growth; or
- D. Needed routes for utility and transportation networks.

*RESPONSE: The proposed annexation area is located directly north of property annexed earlier this year (File No. 17-062 ANN) and is bordered by the city limits along its entire southern boundary. Property west of the subject property (19124 SE Jacoby Road) was also annexed in 2018 and the owner of that property is currently preparing a land division application for that property. Water and sanitary sewer service will be available with development of this property and properties to the south of the subject property. Development of the annexation area is a logical growth pattern of the city and utilities will be available in this area of the UGB with development of the property. For these reasons the proposed annexation request complies with Annexation Criteria C. Annexation of the property is a logical growth pattern of the city and encourages orderly growth.*

#### **IV. CONCLUSION**

Ian and Kelly Bird request a Type 'A' Annexation to annex the property they own located at 19264 SE Jacoby Road into the city limits in conformance with the city's conceptual Comprehensive Plan and Zoning Map. The annexation area consists of one parcel containing 6.22 acres. The property is located within the Urban Growth Boundary and is contiguous to the city limits along its entire southern boundary. The proposal complies with the city's conditions for annexation found in Section 17.78.20 and meets annexation criteria "C" contained in Section 17.78.50.



**Exhibit "A"**

Parcel 1 of Partition Plat No. 2008-036, situated in the Northeast quarter of Section 24, Township 2 South, Range 4 East, Willamette Meridian, Clackamas County, Oregon and being more particularly described as follows:

The Point of Beginning being a 5/8" iron rod with a yellow plastic cap scribed "GILBERT PLS 60121" found at the Southwest corner of said Parcel 1, Partition Plat No. 2008-036, said point also being the southeast corner of Parcel 2 of that same plat;

Thence North 00°53'48" East a distance of 668.32 feet to the Northwest corner of said Parcel 1;

Thence South 88°30'10" East a distance of 405.90 feet to the Northeast corner thereof;

Thence South 00°55'34" West a distance of 667.43 feet to the Southeast corner thereof;

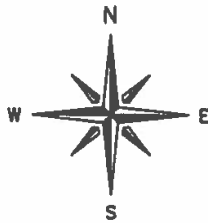
Thence North 88°37'40" West a distance of 405.55 feet to the Point of Beginning;

Containing 6.22 acres, more or less.

Refer to Exhibit 'B' for a map of the described tract.

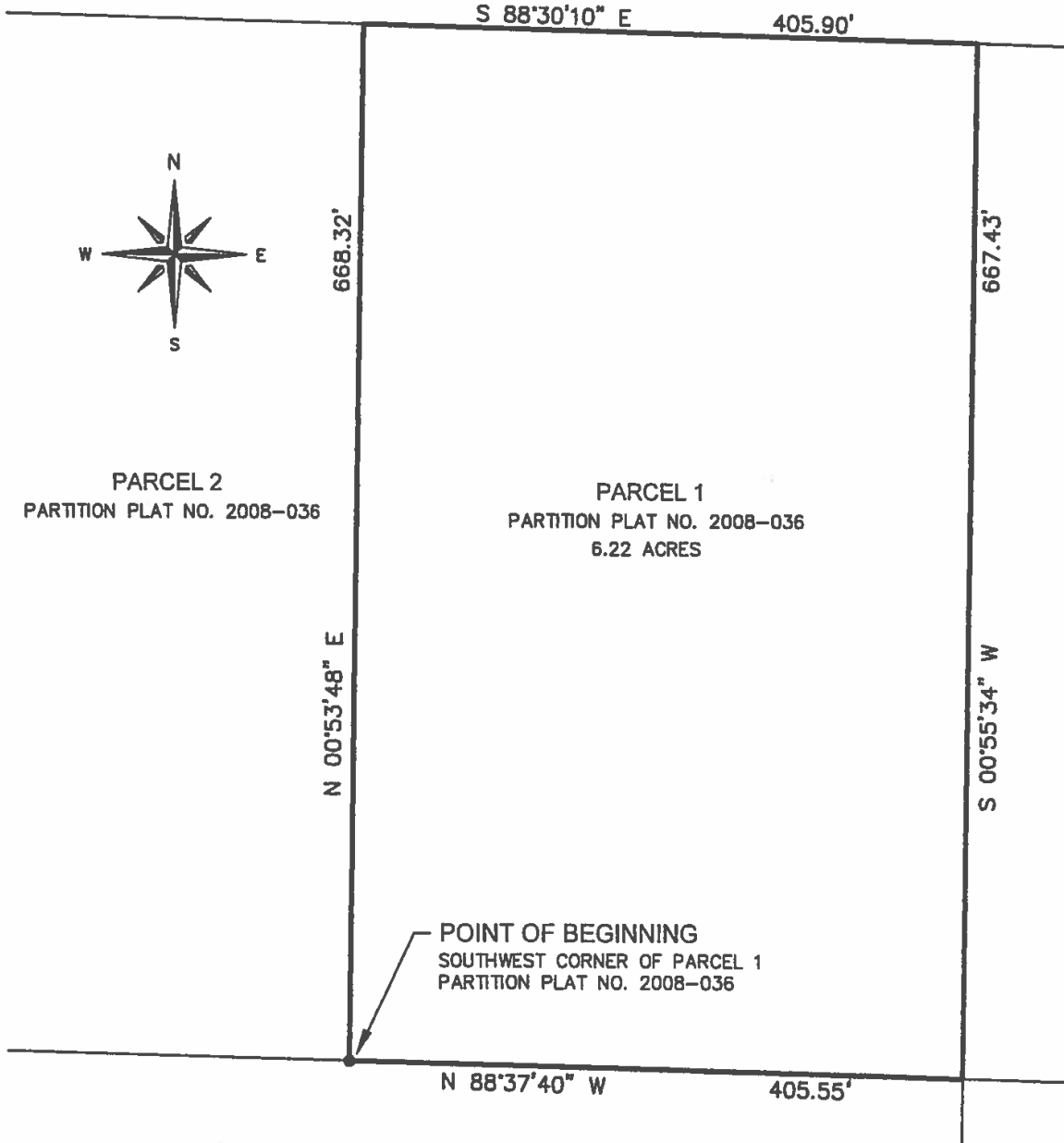
# EXHIBIT "B"

LOCATED IN THE NORTHEAST 1/4 OF SECTION 24  
TOWNSHIP 2 SOUTH, RANGE 4 EAST, WILLAMETTE MERIDIAN,  
COUNTY OF CLACKAMAS, STATE OF OREGON  
SCALE: 1" = 100' DATE: MAY 30, 2018  
BASIS OF BEARING PER PARTITION PLAT NO. 2008-036



PARCEL 2  
PARTITION PLAT NO. 2008-036

PARCEL 1  
PARTITION PLAT NO. 2008-036  
6.22 ACRES



POINT OF BEGINNING  
SOUTHWEST CORNER OF PARCEL 1  
PARTITION PLAT NO. 2008-036



Firwood Design Group, LLC  
SURVEYING + ENGINEERING + PLANNING

359 E HISTORIC COLUMBIA HWY.  
TROUTDALE, OREGON 97060

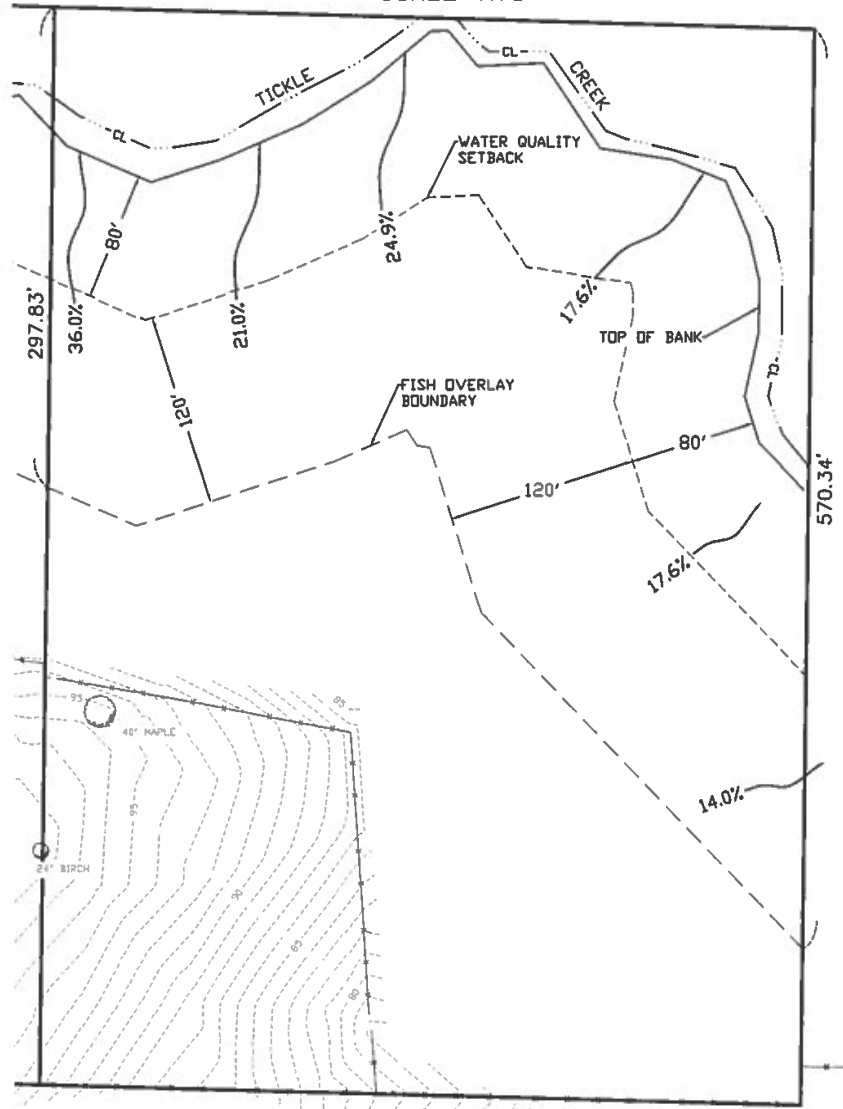
BUS: (503) 668-3737 + FAX: (503) 668-3788

S18-021 EXHIBIT.dwg

EXHIBIT

LOCATED IN THE NORTHEAST 1/4 OF SECTION 24  
TOWNSHIP 2 SOUTH, RANGE 4 EAST, WILLAMETTE MERIDIAN,  
COUNTY OF CLACKAMAS, STATE OF OREGON  
PARCEL 1 OF PARTITION PLAT NO. 2008-036

SCALE: NTS



NOTE:  
SLOPES SHOWN WHERE TAKE WITH A CLINOMETER AND  
ARE AN APPROXIMATE REPRESENTATION OF THE GROUND  
SLOPE.

CLIENT: IAN BIRD



359 E HISTORIC COLUMBIA RIVER HWY.  
TROUTDALE, OREGON 97060

Firwood Design Group, LLC  
SURVEYING ♦ ENGINEERING ♦ PLANNING

BUS: (503) 668-3737 ♦ FAX: (503) 668-3788 FILE: S19-007\_exhibit.dwg  
PLOT DATE: 04/04/19

## Technical Memorandum

**To:** Ian Bird  
**From:** Jessica Hjar  
William Farley, PE  
**Date:** March 11, 2019  
**Subject:** 19264 SE Jacoby Road Annexation  
Trip Generation & Transportation Planning Rule Analysis



### **Introduction**

This memorandum reports the findings of a trip generation analysis conducted for the proposed annexation of a property located at 19264 SE Jacoby Road in Sandy, Oregon.

The purpose of this memorandum is to examine the trip generation potential of the site under *Single Family Residential* (SFR) zoning. The study will review the morning peak hour, evening peak hour, and average daily trip generation potentials of the site and will address Oregon's Transportation Planning Rule (TPR) to ensure that the transportation system is capable of supporting the traffic intensity resultant of the proposed annexation.

### **Location & Project Description**

The project site is located north of SE Trubel Road, south of Dubarko Road, east of SE Jacoby Road, and west of SE Langensand Road in Sandy, Oregon. The site includes a single parcel which encompasses an approximate total of 6.22 acres.

Figure 1 on the following page presents an aerial image of the nearby vicinity with the project site outlined in blue.



March 11, 2019  
Page 2 of 4

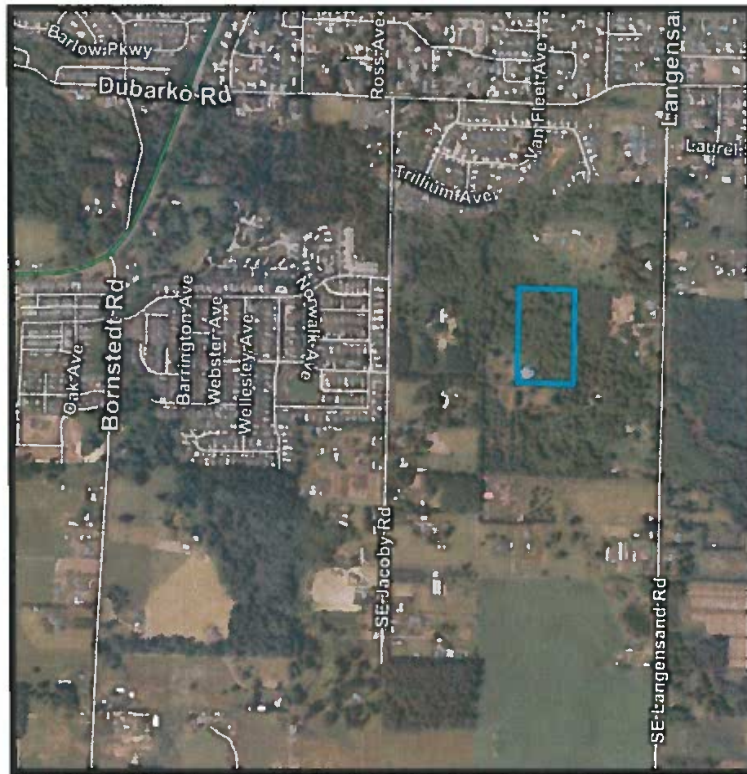


Figure 1: Aerial Photo of Site Vicinity (Image from Clackamas County Online Portal)

### ***Trip Generation – Proposed Annexation***

Per the City of Sandy's Comprehensive Plan, the subject property is to be annexed into the City under the *Single Family Residential* zoning, changing the designation from the County's *Rural Residential Farm/Forest 5 Acres* zoning. To determine the impacts of the proposed annexation, a reasonable "worst-case" development scenario for the proposed zoning was determined utilizing data for the most traffic-intensive uses permitted within the proposed zone.

### ***Proposed SFR Zone***

To determine a reasonable "worst-case" development scenario under the proposed zoning, City of Sandy Code Section 17.34 – *Single Family Residential (SFR)* was referenced and compared to land uses provided

March 11, 2019  
Page 3 of 4

within the *Trip Generation Manual*<sup>1</sup>. Based on an assessment of permitted uses, data from Land-Use Code #210, *Single-Family Detached Housing*, was used based on the number of potential dwelling units.

Per Section 17.34.00, density shall not be less than 3 units or more than 5.8 units per net acre. Based on a project site acreage of 6.22 acres, the proposed SFR zone could include the construction of up to 36 residential detached dwelling units within the site.

Table 1 below provides a summary of the trip generation for the site assuming development under the reasonable worst-case development scenario. Detailed calculations are included in the technical appendix to this memorandum.

**Table 1: Trip Generation Summary – Potential Worst-Case Development**

Land Use Code - Type	Size	Morning Peak Hour			Evening Peak Hour			Week day
		In	Out	Total	In	Out	Total	
#210 – Single-Family Detached Housing	36 units	7	20	27	23	13	36	340

### **Transportation Planning Rule**

Oregon's Transportation Planning Rule (TPR) is in place to ensure that the transportation system is capable of supporting possible increases in traffic intensity that could result from changes to adopted plans and land-use regulations. The applicable elements of the TPR are each quoted in italics below, with responses following.

660-012-0060

- (1) *If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:*
- (a) *Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
  - (b) *Change standards implementing a functional classification system; or*
  - (c) *Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted*

<sup>1</sup> Institute of Transportation Engineers (ITE), *Trip Generation Manual*, 10<sup>th</sup> Edition, 2017.

March 11, 2019  
Page 4 of 4

*TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*

- (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
- (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or*
- (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.*

In the case of this analysis, subsections (a) and (b) are not triggered since the proposed annexation will not impact or alter the functional classification of any existing or planned facility and the proposal does not include a change to any functional classification standards.

According to Action 1F.5 of the *1999 Oregon Highway Plan*<sup>2</sup>, a small increase in traffic does not cause “further degradation” of the facility. The threshold for a small increase in traffic between the existing plan and a proposed amendment is defined as any proposed amendment that does not increase the average daily trips by more than 400. Since the potential worst-case development will generate 340 average daily trips, the amendment is not likely to cause a significant effect to the transportation system per the Oregon Department of Transportation. Accordingly, subsection (c) is not triggered.

Based on the detailed analysis, the proposed annexation will not degrade the performance of any existing or planned transportation facility. Accordingly, the TPR is satisfied, and no mitigation is necessary or recommended in conjunction with the proposed zone change.

### **Conclusions**

The proposed annexation of the 6.22-acre subject property under the *Single Family Residential* zoning is not expected to degrade the performance of any existing or planned transportation facility. Accordingly, the TPR is satisfied, and no mitigation is necessary or recommended in conjunction with the proposed annexation.

If you have any questions regarding this technical memorandum, please don't hesitate to contact us.

---

<sup>2</sup> Oregon Department of Transportation, *1999 Oregon Highway Plan*, 1999.

1e

**Appendix**



1e

### TRIP GENERATION CALCULATIONS

*Land Use:* Single-Family Detached Housing  
*Land Use Code:* 210  
*Setting/Location:* General Urban/Suburban  
*Variable:* Dwelling Units  
*Variable Value:* 36

#### AM PEAK HOUR

*Trip Rate:* 0.74

	Enter	Exit	Total
Directional Distribution	25%	75%	
Trip Ends	7	20	27

#### PM PEAK HOUR

*Trip Rate:* 0.99

	Enter	Exit	Total
Directional Distribution	63%	37%	
Trip Ends	23	13	36

#### WEEKDAY

*Trip Rate:* 9.44

	Enter	Exit	Total
Directional Distribution	50%	50%	
Trip Ends	170	170	340

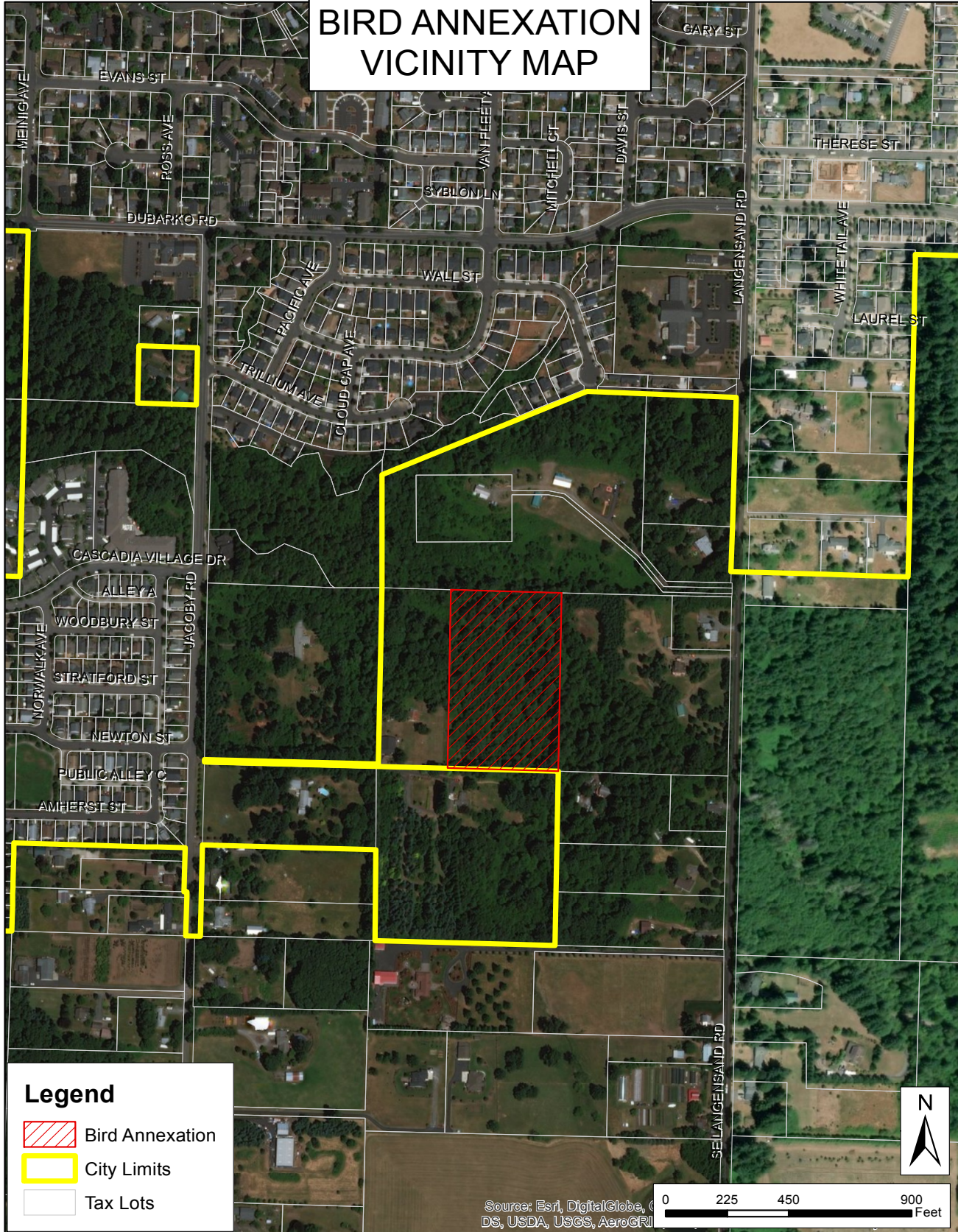
#### SATURDAY

*Trip Rate:* 9.54

	Enter	Exit	Total
Directional Distribution	50%	50%	
Trip Ends	172	172	344

Source: Trip Generation Manual, Tenth Edition

# BIRD ANNEXATION VICINITY MAP



Source: Esri, DigitalGlobe, GeoEye, IGN, GeoEye, USDA, USGS, AeroGRID

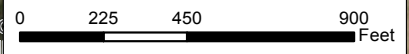
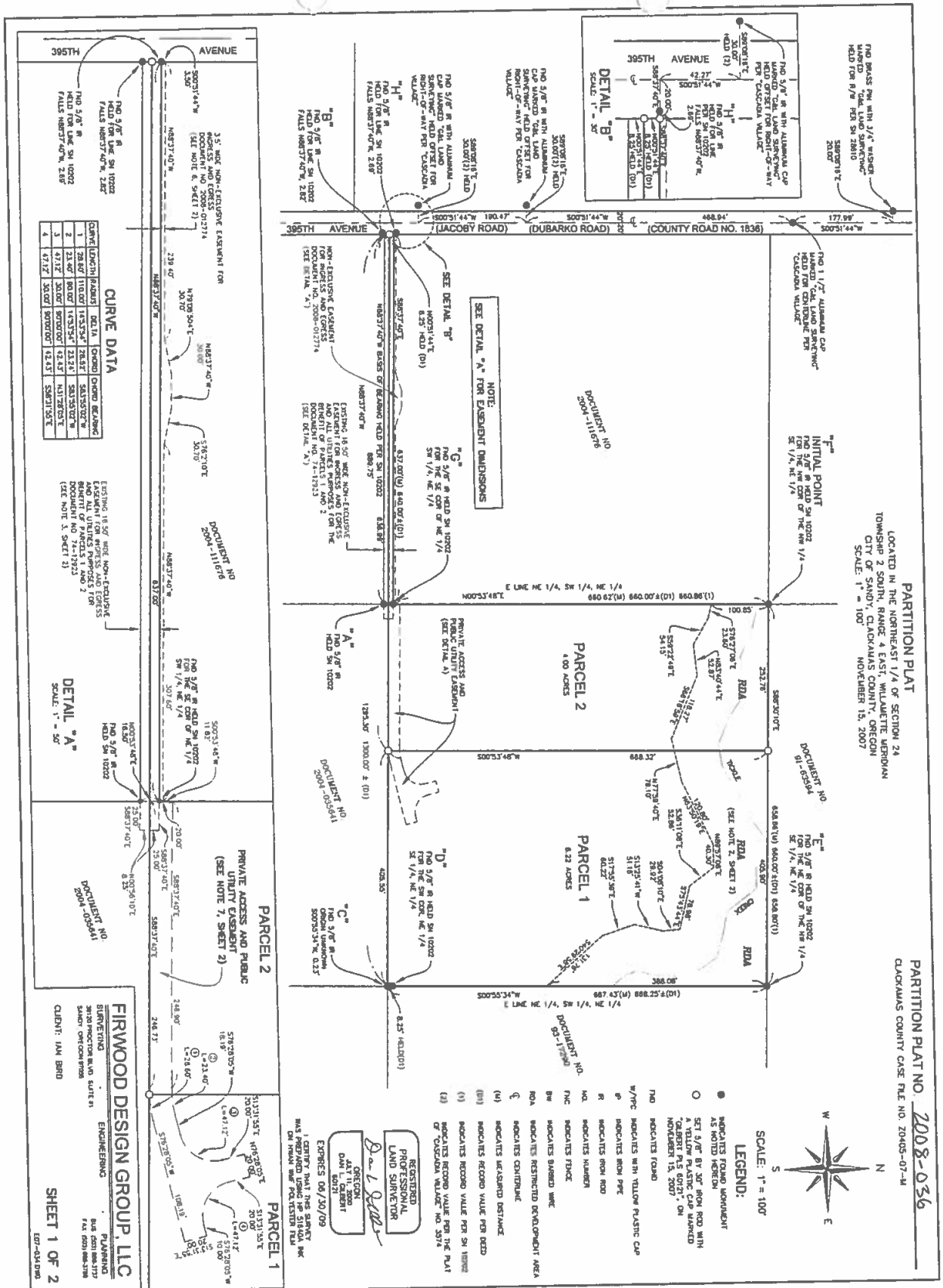


EXHIBIT H



**CURVE DATA**

CURVE	LENGTH	BEARING	DELTA	CHORD	CHORD BEARING
1	28.47'	S80°31'44"W	115.54'	78.24'	S43°53'02"W
2	43.12'	S00°00'00"W	143.54'	43.12'	S00°00'00"W
3	43.12'	S00°00'00"W	143.54'	43.12'	S00°00'00"W
4	43.12'	S00°00'00"W	143.54'	43.12'	S00°00'00"W

EXISTING 16.87' WIDE NON-ENCUMBERED EASEMENT FOR ACCESS AND EGRESS AND ALL UTILITIES PERMITTED FOR THE SAME. (SEE NOTE 3, SHEET 2)

EXISTING 16.87' WIDE NON-ENCUMBERED EASEMENT FOR ACCESS AND EGRESS AND ALL UTILITIES PERMITTED FOR THE SAME. (SEE NOTE 3, SHEET 2)

**FIRWOOD DESIGN GROUP, LLC**  
 SURVEYING ENGINEERING PLANNING  
 3000 N. OREGON ST. PORTLAND, OR 97227  
 CLIENT: ILM BRD  
 SHEET 1 OF 2  
 07-24-10

REGISTERED PROFESSIONAL LAND SURVEYOR  
 David L. Roberts  
 LICENSE NO. 10000  
 EXPIRES 06/30/09  
 THIS CERTIFICATE IS VALID FOR THE STATE OF OREGON AND POLYMERIZED FILM

- LEGEND:**
- INDICATES FOUND MONUMENT
  - SET 5/8" BY 3/4" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "CASEBET PLS 60121", ON NOVEMBER 15, 2007
  - INDICATES FOUND
  - INDICATES WITH YELLOW PLASTIC CAP
  - INDICATES IRON PIPE
  - INDICATES IRON ROD
  - INDICATES NUMBER
  - INDICATES FINCH
  - INDICATES BARBED WIRE
  - INDICATES RESTRICTED DEVELOPMENT AREA
  - INDICATES CENTRUM
  - INDICATES RECORD VALUE PER DEED
  - INDICATES RECORD VALUE PER SURVEY
  - INDICATES RECORD VALUE PER THE PLAT OF "CONSIDER" VALUE NO. 3974

SCALE: 1" = 100'

LOCATED IN THE NORTHEAST 1/4 OF SECTION 24  
 TOWNSHIP 2 SOUTH, RANGE 4 EAST, WILAMETTE MERIDIAN  
 CITY OF SANDY, CLATSOP COUNTY, OREGON  
 SCALE: 1" = 100'  
 NOVEMBER 15, 2007

PARITION PLAT NO. 2008-036  
 CLATSOP COUNTY CASE FILE NO. 2008-036

PARITION PLAT NO. 2008-036  
 CLATSOP COUNTY CASE FILE NO. 2008-036

North Pacific Design, Inc.  
 Landscape Architecture  
 917 Oak Street, Suite 300  
 Portland, Oregon 97205  
 Tele: 503-294-9905

SEE  
 ADOPTED  
 ADDENDUM


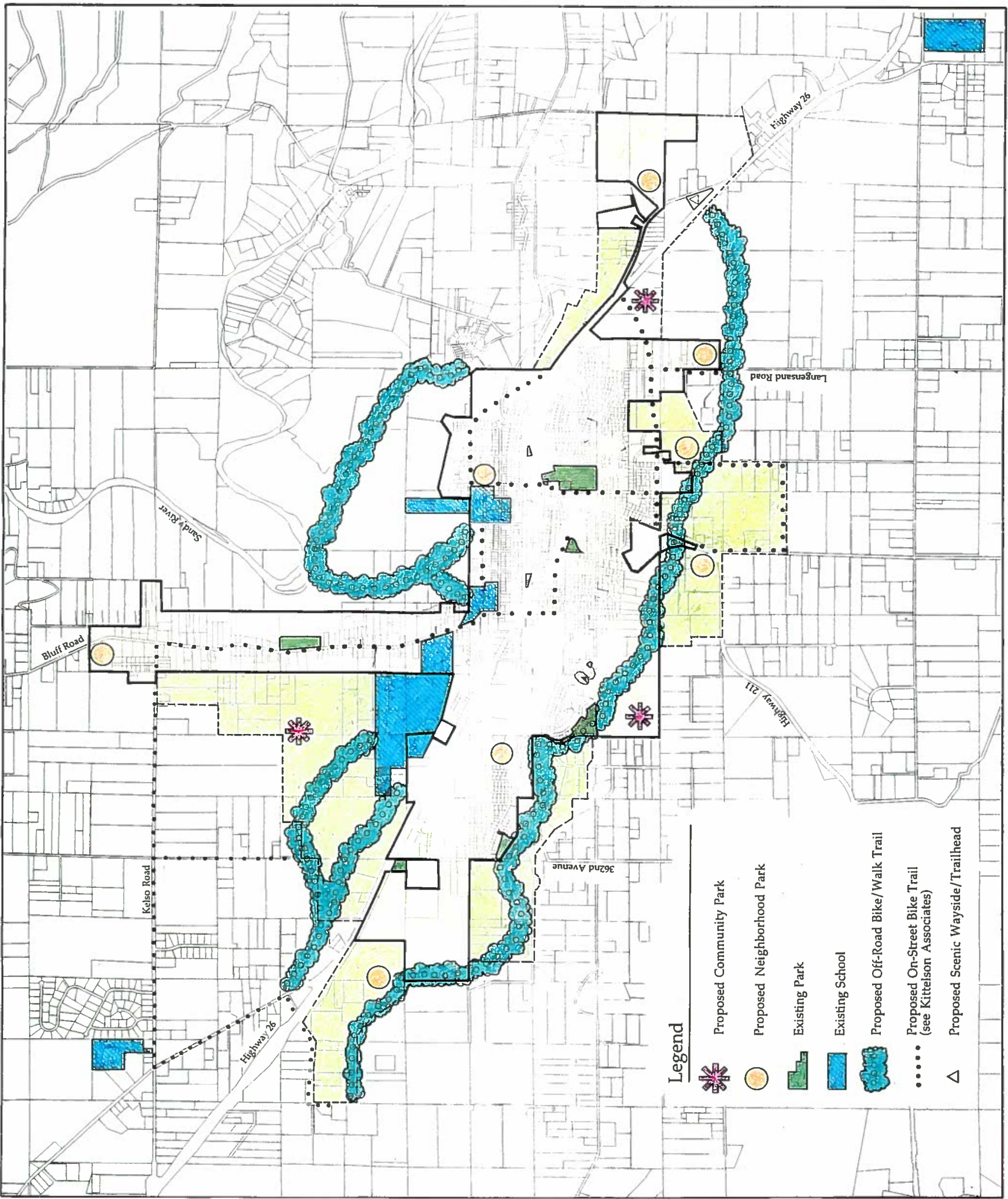
City of Sandy  
 Department of  
 Community Development  
 3858 Pioneer Boulevard  
 Sandy, Oregon

Parks Master Plan  
 Park Facility Plan

Scale: 1" = 800'

North

Date: May 15, 1997



# Oregon

Kate Brown, Governor

EXHIBIT J

## Department of Transportation

Region 1 Headquarters  
123 NW Flanders Street  
Portland, Oregon 97209  
(503) 731.8200  
FAX (503) 731.8259

May 13, 2019

ODOT #9020

## ODOT Response

<b>Project Name:</b> Bird Annexation and Zone Change	<b>Applicant:</b> Ian Bird
<b>Jurisdiction:</b> City of Sandy	<b>Jurisdiction Case #:</b> 18-034 ANN
<b>Site Address:</b> 19264 SE Jacoby Rd, Sandy, OR	<b>State Highway:</b> OR 211

The site of this proposed land use action is in the vicinity of OR 211. ODOT has permitting authority for this facility and an interest in ensuring that this proposed land use is compatible with its safe and efficient operation.

- For Transportation Planning Rule 660-012-0060 compliance, ODOT has determined there will be no significant impacts to state highway facilities and no additional state review is required.

### COMMENTS/FINDINGS

Development of this site may send trips to the Dubarko Rd/OR 211 intersection. We recommend that at the time of development, the city require the applicant to provide a traffic analysis to determine the impact on the intersection of Dubarko Rd/OR 211. If it is determined that trips go toward this intersection, we recommend that the city require them to contribute their proportionate share towards the Transportation System Plan project identified for this intersection.

### Please send a copy of the Notice of Decision including conditions of approval to:

ODOT Region 1 Planning  
Development Review  
123 NW Flanders St  
Portland, OR 97209

[Region1\\_DEVREV\\_Applications@odot.state.or.us](mailto:Region1_DEVREV_Applications@odot.state.or.us)

Development Review Planner: Marah Danielson	503.731.8258, marah.b.danielson@odot.state.or.us
Traffic Contact: Avi Tayar, P.E.	503.731.8221
District Contact: BKM_DistrictRevName	BKM_DistrictRevPhone



EXHIBIT K

May 28, 2019

City of Sandy Planning Commission  
39250 Pioneer Blvd  
Sandy, OR 97055

**Re: File No. 18-034 ANN Bird Annexation**

Dear Commissioners:

This letter is submitted jointly by Housing Land Advocates (HLA) and the Fair Housing Council of Oregon (FHCO). Both HLA and FHCO are non-profit organizations that advocate for land use policies and practices that ensure an adequate and appropriate supply of affordable housing for all Oregonians. FHCO's interests relate to a jurisdiction's obligation to affirmatively further fair housing. Please include these comments in the record for the above-referenced proposed amendment.

As you know, all amendments to the City's Comprehensive Plan and Zoning map must comply with the Statewide Planning Goals. ORS 197.175(2)(a). When a decision is made affecting the residential land supply, the City must refer to its Housing Needs Analysis (HNA) and Buildable Land Inventory (BLI) in order to show that an adequate number of needed housing units (both housing type and affordability level) will be supported by the residential land supply after enactment of the proposed change.

The staff report for the proposed annexation recommends its approval provided certain conditions are met. However, the report does not include findings for Statewide Goal 10, describing the effects of the annexed land and its recommended Single Family Residential zoning and Low Density Residential Comprehensive Plan designations. Goal 10 findings must demonstrate that the proposed changes do not leave the City with less than adequate residential land supplies in the types, locations, and affordability ranges affected. *See Mulford v. Town of Lakeview*, 36 Or LUBA 715, 731 (1999) (rezoning residential land for industrial uses); *Gresham*



*v. Fairview*, 3 Or LUBA 219 (same); see also, *Home Builders Assn. of Lane Cty. v. City of Eugene*, 41 Or LUBA 370, 422 (2002) (subjecting Goal 10 inventories to tree and waterway protection zones of indefinite quantities and locations). Further, because the purpose of the proposal is to allow the development of additional housing units, the report should reference the City's HNA to demonstrate a need for the additional land and the types of housing it will provide. Only with a complete analysis showing any gain in needed housing as compared to the BLI can housing advocates and planners understand whether the City is achieving its goals through the annexation and corresponding zoning and Comprehensive Plan designations. This is particularly the case when determining whether low density meets a housing need or whether the City really needs more land zoned for multi-family development.

HLA and FHCO urge the Commission to defer adoption of the proposed amendments and subdivision plan until Goal 10 findings can be made, and the proposal evaluated under the HNA and BLI. Thank you for your consideration. Please provide written notice of your decision to, FHCO, c/o Louise Dix, at 1221 SW Yamhill Street, #305, Portland, OR 97205 and HLA, c/o Jennifer Bragar, at 121 SW Morrison Street, Suite 1850, Portland, OR 97204. Please feel free to email Louise Dix at [ldix@fhco.org](mailto:ldix@fhco.org) or reach her by phone at (541) 951-0667.

Thank you for your consideration.

A handwritten signature in blue ink that reads "Louise Dix".

Louise Dix  
AFFH Specialist  
Fair Housing Council of Oregon

A handwritten signature in blue ink that reads "Jennifer Bragar".

Jennifer Bragar  
President  
Housing Land Advocates

cc: Kevin Young ([kevin.young@state.or.us](mailto:kevin.young@state.or.us))



EXHIBIT L

Emily Meharg <emeharg@ci.sandy.or.us>

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## Bird Annexation Proposal

---

Ian Bird <bird.ian.m@gmail.com>

Tue, May 28, 2019 at 4:05 PM

To: Emily Meharg <emeharg@ci.sandy.or.us>, koneill@ci.sandy.or.us

Kelly/Emily,

I think you have already addressed most of my concerns with the latest proposal but I just wanted to add a couple of comments for the planning meeting this evening.

I understand that rules in place call for a certain level of setback from Tickle Creek which I understand to be 80 ft. There is an additional FSH overlay area that exists which may require an additional assessment, but is not strictly excluded from development. However, the rules are subject to change between now and the time of any development. I hope I am understanding this correctly. As I read your recommendation, it says that development on the property be subject to whatever rules are in place at the time of development. In other words, no grandfathering to the rules as they stand today should they change prior to the start of development. I am generally ok with this. However, I would like to add a condition if possible. My concern is that changes in the rules between now and the time of development could be so restrictive that it no longer makes sense for me to sell for development should too much of the land be re-purposed or deemed unusable under the new guidelines. Because of my proximity to Tickle Creek on two sides, I am likely to be impacted far more than most and would like some level of protection, or at least some optionality. I just want to be assured that I am not stuck selling the land to a developer if it turns out to be worth less in a development scenario than it would as a single home on the entire property. Stated more directly, I would like to retain the ability to keep the property as a single family residence if the current rules don't already allow for this.

Thank you,  
Ian Bird  
281-923-4792



**REVISED STAFF REPORT MAY 23, 2019**

**SUBJECT:** File No. 18-034 ANN Bird Annexation

**AGENDA DATE:** May 28, 2019

**DEPARTMENT:** Planning and Building

**STAFF CONTACT:** Emily Meharg, Associate Planner

**Application Submitted:** July 25, 2018  
**Application Complete:** April 9, 2019  
**120-Day Deadline:** August 7, 2019

**EXHIBITS:**

**Applicant's Submittals**

- A. Land Use Application
- B. Supplemental Land Use Application
- C. Narrative
- D. Legal Description and Map
- E. Flood & Slope Hazard (FSH) Analysis Area Map
- F. Trip Generation & Transportation Planning Rule Analysis

**City Submittal Items**

- G. Vicinity Map
- H. Partition Plat 2008-036
- I. Park Facility Plan Map

**Agency Comments**

- J. ODOT (May 13, 2019)

**Public Comments**

None

**I. BACKGROUND**

**A. APPLICABLE CRITERIA & REVIEW STANDARDS**

**Sandy Development Code:** Chapter 17.12 Procedures for Decision Making; 17.18 Processing Applications; 17.22 Notices; 17.26 Zoning District Amendments; 17.34 Single Family Residential (SFR); 17.60 Flood & Slope Hazard (FSH) Overlay District; 17.78 Annexations; 17.86 Parkland and Open Space

**B. PROCEEDING**

In conformance with the standards of Chapter 17 of the Sandy Municipal Code (SMC) this application is processed as a Type IV, Quasi-Judicial Land Use Decision.

**C. FACTUAL INFORMATION**

- 1. APPLICANT/PROPERTY OWNER: Ian Bird

2. **LEGAL DESCRIPTION:** T2S R4E Section 24A, Tax Lot 801
3. **PROPOSAL:** Annex one parcel totaling approximately 6.22 acres into City limits per conceptual zoning designations.
4. **SITE LOCATION:** 19264 Jacoby Road, east of Jacoby Road, west of Langensand Road, south of the Timberline Trails subdivision
5. **SITE SIZE:** 6.22 acres
6. **SITE DESCRIPTION:** The site is located within the Sandy Urban Growth Boundary (UGB) and is contiguous to City limits at the south border of the property.
7. **COUNTY COMPREHENSIVE PLAN/ZONING:** Rural (R) Comprehensive Plan designation and Rural Residential Farm Forest 5-acre (RRFF-5) zoning designation.
8. **PROPOSED CITY COMPREHENSIVE PLAN DESIGNATION/ZONING:** Low Density Residential Comprehensive Plan designation and Single Family Residential (SFR) zoning designation.
9. **VICINITY DESCRIPTION:**  
 North: Residential property zoned RRFF-5 outside city limits but within the UGB  
 South: Residential property zoned SFR inside city limits  
 East: Residential property zoned RRFF-5 outside city limits but within the UGB  
 West: Residential property zoned RRFF-5 outside city limits but within the UGB
10. **SERVICE CONSIDERATIONS:** Future development of the property will require connection to city water and sanitary sewer service. Any future development will also require conformance with storm detention and water quality requirements.
11. **RESPONSE FROM GOVERNMENTAL AGENCIES, UTILITY PROVIDERS, AND CITY DEPARTMENTS:** ODOT submitted comments (Exhibit J) stating: "Development of this site may send trips to the Dubarko Rd/OR 211 intersection. We recommend that at the time of development, the city require the applicant to provide a traffic analysis to determine the impact on the intersection of Dubarko Rd/OR 211. If it is determined that trips go toward this intersection, we recommend that the city require them to contribute their proportionate share towards the Transportation System Plan project identified for this intersection."
12. **PUBLIC COMMENTS:** No comments received.

**D. PREVIOUS LAND USE DECISIONS:** The subject property came into the Urban Growth Boundary (UGB) on June 2, 2017. No previous annexation requests occurred as the property was not eligible to be annexed. The applicant requests annexation and assignment of the Single Family Residential (SFR) zoning designation as identified on the conceptual zoning map.

**E. SENATE BILL 1573:** Senate Bill 1573 was passed by the legislature and became effective on March 15, 2016 requiring cities whose charter requires annexation to be approved by voters to annex the property without submitting it to the voters if the proposal meets certain criteria:

(a) The territory is included within an urban growth boundary adopted by the city or Metro, as defined in ORS 197.015; **RESPONSE:** *As shown on the Vicinity Map (Exhibit G), the subject property is located within the City's urban growth boundary.*

(b) The territory is, or upon annexation of the territory into the city will be, subject to the acknowledged comprehensive plan of the city; **RESPONSE:** *The subject property is identified to have a Low Density Residential Comprehensive Plan designation as identified on the adopted Comprehensive Plan map.*

(c) At least one lot or parcel within the territory is contiguous to the city limits or is separated from the city limits only by a public right of way or a body of water; **RESPONSE:** *The subject property is contiguous to city limits at the south border of the property.*

(d) The proposal conforms to all other requirements of the city's ordinances. **RESPONSE:** *An evaluation of each of the city criteria follows.*

## **II. ANALYSIS OF CONFORMANCE - DEVELOPMENT CODE**

### **1. Chapter 17.26 Zoning District Amendments**

*In association with the annexation request, the applicant requests Single Family Residential (SFR) zoning to apply the underlying conceptual zoning designation determined in the 2017 Urban Growth Boundary Expansion Analysis. The applicant submitted a Trip Generation & Transportation Planning Rule (TPR) Analysis (Exhibit F), which analyzes a reasonable "worst-case" development scenario for the proposed zoning. The analysis determined the TPR is satisfied and no mitigation is necessary or recommended in conjunction with the proposed annexation.*

### **2. Zoning**

*The Zoning Map depicts a conceptual zoning designation for the property of Single Family Residential (SFR). Development requirements will be evaluated during land use review (i.e. development) of the subject property. The applicant submitted a Flood & Slope Hazard (FSH) overlay analysis area map (Exhibit E) with this application. Because this property was outside of the Urban Growth Boundary prior to the recent expansion of the UGB, the FSH area is not reflected on the City's zoning map. Thus, the zoning map will need to be updated with the newly defined FSH analysis area. Three other nearby tax lots recently annexed into the City (tax lots 900, 2000, and 2300), at least two of which have restricted development areas, including riparian areas and steep slopes. **The City shall submit a single application to update the zoning map to reflect the FSH overlay district on all four (4) tax lots (tax lots 900, 2000, 2300, and 801).** In addition, the Park Facility Plan (Exhibit I) in the adopted Parks Master Plan details a proposed off-road bike/walk trail (i.e. the future Tickle Creek Trail) on the northern half of the subject property. In the interest of clarity, the FSH overlay analysis prepared by the applicant simply identifies the area of the property that is subject to the FSH standards in Chapter 17.60. This application is not being analyzed for compliance with Chapter 17.60. That will occur at the time an application is submitted to develop the property. A future application for development will need to show compliance with the City's development code, including Chapter 17.60, based on the criteria in effect at the time development is proposed. If the annexation is approved,*

*staff recommends a condition of approval clarifying that the FSH standards and criteria in Chapter 17.60 will apply to development of the property in accordance with the standards in effect at the time of development.*

### **3. Chapter 17.78 Annexation**

**Section 17.78.15** requires the annexation is processed as a Type A, Type B, or Type C.

***RESPONSE:** The applicant requests a Type A annexation in conformance with conceptual zoning.*

**Section 17.78.20** requires that the following conditions must be met prior to beginning an annexation request:

- A. The requirement of Oregon Revised Statutes, Chapters 199 and 222 for initiation of the annexation process are met;
- B. The site must be within the City of Sandy Urban Growth Boundary (UGB);
- C. The site must be contiguous to the city or separated from it only by a public right-of-way or a stream, bay, lake or other body of water;
- D. The site has not violated Section 17.78.25.

***RESPONSE:** Oregon Revised Statute Section 199 pertains to Local Government Boundary Commissions and City-County Consolidation. Oregon Revised Statute Section 222 pertains to City Boundary Changes; Mergers; Consolidations and Withdrawals. The proposal complies with applicable requirements at this time and all notices were mailed as necessary.*

*The proposed annexation area is located within the Urban Growth Boundary (UGB) and is contiguous to city limits on the south side of the subject property.*

**Section 17.78.25** requires review of tree retention requirements per SMC 17.102 and SMC 17.60 at the time of annexation to discourage property owners from removing trees prior to annexing as a way of avoiding Urban Forestry Ordinance provisions.

- A. Properties shall not be considered for annexation for a minimum of five (5) years if any of the following apply:
  - 1. Where any trees six (6) inches or greater diameter at breast height (DBH) have been removed within 25 feet of the high water level along a perennial stream in the five years prior to the annexation application.
  - 2. Where more than two (2) trees (six (6) inches or greater DBH) per 500 linear feet have been removed in the area between 25 feet and 80 feet of the high water level of Tickle Creek in the five years prior to the annexation application.

3. Where more than two (2) trees (six (6) inches or greater DBH) per 500 linear feet have been removed in the area between 25 feet and 50 feet of the high water level along other perennial streams in the five years prior to the annexation application.
4. Where any trees six (6) inches or greater DBH have been removed on 25 percent or greater slopes in the five years prior to the annexation application.
5. Where more than ten (10) trees (11 inches or greater DBH) per gross acre have been removed in the five years prior to the annexation application, except as provided below:
  - a. Sites under one (1) acre in area shall not remove more than five (5) trees in the five years prior to the annexation application.
  - b. Sites where removal of ten (10) or fewer trees will result in fewer than three (3) trees per gross acre remaining on the site. Tree removal may not result in fewer than three (3) trees per gross acre remaining on the site. At least three (3) healthy, non-nuisance trees 11 inches DBH or greater must be retained for every one-acre of contiguous ownership.
  - c. For properties in or adjacent to the Bornstedt Village Overlay (BVO), tree removal must not result in fewer than six (6) healthy 11 inch DBH or greater trees per acre. For properties in or adjacent to the BVO and within 300 feet of the FSH Overlay District, tree removal must not result in fewer than nine (9) healthy 11 inch DBH or greater trees per acre.

Rounding: Site area shall be rounded to the nearest half acre and allowed tree removal shall be calculated accordingly. For example, a 1.5 acre site will not be allowed to remove more than fifteen (15) trees in the five years prior to the annexation application. A calculation of 1.2 acres is rounded down to one (1) acre and a calculation of 1.8 is rounded up to two (2) acres.

Cumulative Calculation: Total gross acreage includes riparian areas and other sensitive habitat. Trees removed under Sections 17.78.25(A) 2. and 3. shall count towards tree removal under Section 17.78.25(A) 5.

B. Exceptions. The City Council may grant exceptions to this section where:

1. The property owner can demonstrate that Douglas Fir, Western Red Cedar, or other appropriate native trees were planted at a ratio of at least two trees for every one tree removed no less than five years prior to the submission of the annexation application, and at least 50 percent of these trees have remained healthy; or
2. The Council finds that tree removal was necessary due to hazards, or utility easements or access; or
3. The trees were removed because they were dead, dying, or diseased and their condition as such resulted from an accident or non-human cause, as determined by a certified arborist or other qualified professional; or

4. The trees removed were nuisance trees; or
5. The trees were removed as part of a stream restoration and enhancement program approved by the Oregon Department of Fish and Wildlife as improving riparian function; or
6. The trees removed were orchard trees, Christmas trees, or commercial nursery trees grown for commercial purposes; or
7. The application of this section will create an island of unincorporated area.

**RESPONSE:** *The subject property is approximately 6.22 acres and requires retention of 19 trees 11-inches DBH or greater and in good condition. Per the submitted narrative (Exhibit C), the applicant has not removed any trees from the property within the last five years. A review of aerial photos from the five years prior to submittal of this application (2013 to the present) reveals that tree canopy has remained in a similar condition. Based solely on aerial photos staff finds that no significant tree removal has occurred on the subject property. **Prior to any future tree removal on the subject property the applicant shall apply and receive approval for a tree removal permit in compliance with Chapter 17.102. Removal of trees without a permit prior to annexation approval shall result in the property not being considered for annexation for at least five (5) years. Removal of trees without a permit after annexation shall be enforced in compliance with Chapter 17.06.***

**Section 17.78.50** contains required annexation criteria. Requests for annexation shall not have an adverse impact on the citizens of Sandy, either financially or in relation to the livability of the city or any neighborhoods within the annexation area. Generally, it is desirable for the city to annex an area if the annexation meets any of the following criteria:

- A. A necessary control for development form and standards of an area adjacent to the city; or
- B. A needed solution for existing problems, resulting from insufficient sanitation, water service, or other urban service related problems; or
- C. Land for development to meet urban needs and that meets a logical growth pattern of the city and encourages orderly growth; or
- D. Needed routes for utility and transportation networks.

**RESPONSE:** *The applicant's narrative (Exhibit C) indicates they believe annexation of the subject property meets Criterion C above. The subject property is currently surrounded by undeveloped land. While the property to the south recently annexed into the City, the properties to the north, east, and west remain outside City limits. If this property were to annex and develop at this time (i.e. prior to any of the surrounding properties), the result would be leapfrog development. The subject property does not have frontage on a public street and is accessed via an easement on a private road on the flag portions of tax lots 800 and 900; the 8.25 foot wide flag pole associated with tax*

*lot 800 is located outside City limits. The easement is for ingress, egress, and access, and does not include a utility easement. The subject property is currently land locked and has no legal access to public utilities. Developing the property in accordance with the City's standards for transportation and utility access to the property at this time would appear to be extremely difficult. Thus, at this time with existing conditions related to utilities staff is not sure that the property is a logical growth pattern of the city and encourages orderly growth in compliance with Criterion C.*

*According to the analysis done by the City Engineer during the 2017 Urban Growth Boundary Expansion Analysis the subject property was evaluated to have some of the least cost associated with sanitary sewer development. The subject property does not have access to any City utilities without acquiring an easement from one or more property owners.*

### **III.SUMMARY**

The broad purpose of the City is to provide for the health, safety, and welfare of Sandy's residents. As a means of working to accomplish this purpose, the City regulates development to ensure it occurs in appropriate locations with access to services and is consistent with the values of the community. In addition, the City must ensure that an adequate level of urban services, such as sanitary sewer, can be provided before permitting subsequent development. According to the analysis done by the City Engineer during the 2017 Urban Growth Boundary Expansion Analysis, the subject property was evaluated to have some of the least cost associated with sanitary sewer development.

Tickle Creek runs along the north portion of the property and the property contains both restricted development area (FSH overlay) and the future extension of the Tickle Creek Trail (Parks and Open Space). The FSH overlay district was mapped as part of this application; however, the zoning map still needs to be updated to reflect this change.

The proposed annexation area was brought into the Urban Growth Boundary (UGB) on June 2, 2017 with anticipation of being included in city limits. As noted above, the proposed annexation complies with the requirements found in Senate Bill 1573 passed by the Oregon Legislature in 2016 and may comply with the criteria in Chapter 17.78, depending on how the Planning Commission interprets Section 17.78.50(C) relative to the issues discussed in that portion of the staff report.

Following annexation, the subject property would be zoned Single Family Residential (SFR) as shown on the conceptual zoning map.

### **IV. RECOMMENDATION**

Staff recommends the Planning Commission hold a public hearing to take testimony on the proposed annexation and forward a recommendation to City Council. If the Planning Commission recommends approval of the annexation request, we suggest adding a condition of approval that the standards and criteria of the FSH overlay will apply to development of the property in accordance with the standards in effect at the time of development.



**LAND USE APPLICATION FORM**

(Please print or type the information below)

Planning Department  
39250 Pioneer Blvd.  
Sandy OR 97055  
503-668-4886

Name of Project BIRD ANNEXATION

Location or Address 19264 SE JACOBY ROAD

Map & Tax Lot Number T 25, R 4E, Section 24A; Tax Lot(s) 801

Plan Designation LDR Zoning Designation SFR Acres 6.22

Request:

Type A Annexation of one property containing 6.22 acres.

I am the (check one)  owner  lessee of the property listed above and the statements and information contained herein are in all respects true, complete and correct to the best of my knowledge and belief.

Applicant ian Bird	Owner same as applicant
Address 1234 Spinnaker Way	Address
City/State/Zip Sugar Land, TX 77498	City/State/Zip
Phone 281-923-4792	Phone
Email bird.ian.m@gmail.com	Email
Signature 	Signature

If signed by Agent, owner's written authorization must be attached.

File No.	Date <u>7/25/18</u>	Rec. No.	Fee \$ <u>2136.00</u>
Type of Review (circle one): Type I    Type II    Type III <u>Type IV</u>			

24E24A00801





**SUPPLEMENTAL  
LAND USE APPLICATION FORM (No. 1)**

(Please print or type the information below)

Planning Department  
39250 Pioneer Blvd.  
Sandy OR 97055  
503-668-4886

ANNEXATION       ZONE CHANGE       COMPREHENSIVE PLAN AMENDMENT

Property Identification			
Tax Lot Number	Township	Range	Section
801	2S	4E	24A

Existing and Proposed Land Use Designations				
Tax Lot Number(s)	Comprehensive Plan		Zoning Map	
	Existing	Proposed	Existing	Proposed
801	Rural	LDR	RR-FF-5	SFR

**IMPORTANT:** Each section on this application must be fully completed or your application could be deemed incomplete.

Tax Lot Number	Clackamas County Recording Number	Assessed Land Value	Size in Acres or Sq. Ft.
801	0502076	\$190,861	6.22 acres

**LEGAL DESCRIPTION:** Attach a separate page with the written metes and bounds legal description. Accuracy of the legal description(s) must be certified by a registered land surveyor for all annexation applications.

**DESCRIBE EXISTING USES**

Tax lot 801 includes a mix of pasture and woods and is currently vacant.

**DESCRIBE EXISTING BUILDINGS**

How many buildings are located on the property? 0

Number of Total Dwelling Units :

0

**DESCRIBE EXISTING TOPOGRAPHY**

Approximate acreage with slopes less than 14.9%

100%

Approximate acreage with slopes 15% to 24.9%

0

Approximately acreage with slope in excess of 25%

0

Any creeks, water sources, drainageways or wetlands within the property? Yes  No

Any steep slopes, ravines, draws or bluffs within or abutting the property? Yes  No

**DESCRIBE EXISTING ACCESS**

Does the subject property abut a public right-of-way? Yes  No

Name of public right-of-way: SE Jacoby Rd. is located about 895 ft. to the west

Does the property abut a private road? Yes  No

Name of abutting private road(s): This road is an access drive and is not named.

Describe any unusual difficulties in accessing the property:

The property does not have frontage on a public road but is accessed via an access easement as specified on Partition Plat 2008-036.

**DESCRIBE SURROUNDING USES ON ADJACENT PROPERTIES**

Properties surrounding the subject property are developed as rural residential/farm uses.

**DESCRIBE PROPOSED USE OF THE PROPERTY OR LAND DIVISIONS**

**Include number of lots, densities, etc.**

There is no development plan at this time. Development of the property will be completed in compliance with applicable City ordinances.



## SUPPLEMENTAL ANNEXATION LAND USE APPLICATION FORM (No. 2)

**List of all owners of property included in the application**

Owner Information	Property Description TL, Section, Township, Range
<b>Owner</b> <div style="padding-left: 20px;">Ian Bird</div>	2S 4E 24A, tax lot 801 19264 SE Jacoby Road
<b>Address</b> <div style="padding-left: 20px;">1234 Spinnaker Way</div>	
<b>City/State/Zip</b> <div style="padding-left: 20px;">Sugar Land, TX 77498</div>	
<b>Phone</b> <div style="padding-left: 20px;">281-923-4792</div>	
<b>Owner</b>	
<b>Address</b>	
<b>City/State/Zip</b>	
<b>Phone</b>	
<b>Owner</b>	
<b>Address</b>	
<b>City/State/Zip</b>	
<b>Phone</b>	
<b>Owner</b>	
<b>Address</b>	
<b>City/State/Zip</b>	
<b>Phone</b>	
<b>Owner</b>	
<b>Address</b>	
<b>City/State/Zip</b>	
<b>Phone</b>	

**PROJECT NARRATIVE  
FOR**

**BIRD ANNEXATION**

**19264 SE Jacoby Road, Sandy, Oregon  
(24E24A tax lot 801)**



**July 2018**

## **I. PROJECT DESCRIPTION**

Ian and Kelly Bird request approval to annex the property they own located at 19264 SE Jacoby Road into the City of Sandy. The annexation area includes a single property known as 24E 24A tax lot 801 that was partitioned in 2008 (Parcel 1 of Partition Plat 2008-036). The property contains 6.22 acres and does not have frontage on SE Jacoby Road but is accessed by a non-exclusive recorded access easement (Documents 74-12923 and 2008-012774).

The parcel is located in the expanded Urban Growth Boundary approved in 2017. The property carries a conceptual Comprehensive Plan Designation of Low Density Residential and a conceptual Zoning Designation of Single Family Residential (SFR). The property is currently zoned by Clackamas County as "RRFF-5" and has a "Rural" county Comprehensive Plan designation. The applicant requests a Type 'A' Annexation in conformance with the city's conceptual zoning and plan designations.

The proposed annexation area is located directly north of property annexed by the City of Sandy (File No. 17-062 ANN) in February, 2018 located at 19270 SE Jacoby Road. The proposed annexation area is contiguous to the city limits along its entire southern boundary. The property includes a mix of pasture and woods and is currently vacant. A tributary of Tickle Creek flows through the northern portion of the property in an southeast-northwest direction.

## **II. ITEMS SUBMITTED WITH THIS APPLICATION**

- Land Use Application
- Supplemental Application No. 1
- Supplemental Application No. 2
- Notification List
- Notification Map
- Mailing Labels for Notifying Property Owners
- Project Narrative
- Legal Description and Sketch of Annexation Area
- Partition Plat 2008-036 (page 1)

## **III. CODE ANALYSIS**

### **17.26.00 ZONING DISTRICT AMENDMENTS**

*Response: In association with the annexation request, the applicant requests SFR zoning applying the underlying conceptual zoning designation determined during the recent Urban Growth Boundary Analysis process.*

*To determine the net buildable area of the property, 50 percent (3.11 acres) of the property was assumed to be removed for roads and the unbuildable area associated with the protection of Tickle Creek located on the property. These reductions result in a net buildable area of 3.11 acres (6.22 - 3.11 = 3.11).*

Based on the density range required in the SFR Zoning District (3 units/net acre minimum to 5.8 units/net acre maximum) the *density range for the property would be a minimum of 9 dwelling units (3.11 x 3 units = 9.33 units min.) and a maximum of 18 units (3.11 x 5.8 units = 18.04 units max).*

#### **CHAPTER 17.78 ANNEXATION**

Chapter 17.78 contains the procedures and standards for reviewing annexation requests.

**SENATE BILL 1573:** Senate Bill 1573 passed by the legislature, effective on March 15, 2016 requires city's whose charter requires annexations to be approved by voters (Sandy's Charter includes this provision) to annex the property without submitting it to the voters if the proposal meets the following criteria:

- (a) The territory is included within an urban growth boundary adopted by the city or Metro, as defined in ORS 197.015;  
*RESPONSE: The subject property is located within the city's urban growth boundary effective June 2017. The proposal complies with this criterion.*
- (b) The territory is, or upon annexation of the territory into the city will be, subject to the acknowledged comprehensive plan of the city;  
*RESPONSE: The subject property is identified on the City's adopted Comprehensive Plan map to have a Low Density Residential Comprehensive Plan designation. The proposal complies with this criterion.*
- (c) At least one lot or parcel within the territory is contiguous to the city limits or is separated from the city limits only by a public right of way or a body of water; and  
*RESPONSE: The property is contiguous to the city limits along its entire southern boundary. The proposal complies with this criterion.*
- (d) The proposal conforms to all other requirements of the city's ordinances.  
*RESPONSE: As reviewed below, the proposal complies with all requirements contained in the city's ordinance.*

#### **17.78.00 INTENT**

The procedures and standards established in this chapter are required for review of proposed annexations in order to:

- A. Maximize citizen involvement in the annexation review process by holding a public hearing;
- B. Establish a system for measuring the physical, environmental, fiscal and related social effects of proposed annexations; and,
- C. Where possible and practical, avoid the creation of irregular boundaries or annexations that create "island," "cherry stem" or "shoestring" annexations.

**RESPONSE:** The City will process this application using a Type IV quasi-judicial process. This process requires notification of the proposal to property owners within 300 feet of the subject property. In addition, public hearings to review the proposal will be held before both the Planning Commission and City Council. The hearing bodies will consider the items contained in subsection B with their review of the proposal.

Annexation of the subject property expands the city limits in the vicinity and does not create an "island, cherry stem or shoestring". One property (24E24A tax lot 800) located to the west of the subject property will be surrounded on three sides by city limits with the annexation of the subject property but will not be entirely surrounded. The applicant reached out to these property owners to see if they were interested in joining in on this annexation application but did not receive a return response. Since the decision to annex is a property owner initiated process this owner may choose to annex at a later date unaffected by the current application.

The City Council has historically approved the majority of property owner initiated annexation requests. In 2017 an annexation application creating a similar configuration as the current request was reviewed and approved (File No. 2017-031 ANN) by Ordinance 2017-09. Annexation of that property (24E11 tax lot 2200) caused the property to the east of it (24E11AB tax lot 600) to be surrounded on three sides by the city limits. The staff report, Ordinance, and Findings for this application indicated the proposal complied with the annexation criteria in Chapter 17.78 and there weren't any concerns raised regarding the creation of an island with this application.

#### **17.78.10 PROCEDURAL CONSIDERATIONS**

- A. The corporate limits of the City shall include all territory encompassed by its boundaries as they now exist or are modified as provided herein unless mandated by State Law.
- B. The City may annex an island if it is less than 100 acres and has at least 80 percent of its boundary contiguous to the City; or the land is of any size and has at least 80 percent of its boundary contiguous to the City if the area to be annexed existed as an island before October 20, 1997.
- C. The City may annex land for public facilities. Public facilities include but are not limited to schools, senior centers, roads, police and fire stations, parks or open space, and public water, sewer and storm drainage facilities.

**RESPONSE:** The procedural considerations in this section are not pertinent to the proposed annexation request because the applicant is requesting annexation of the subject property. The City has generally only annexed property requested by property owners.

#### **17.78.15 TYPES OF ANNEXATION**

- A. Type A: Annexation in conformance with conceptual zoning designation



B. Type B: Annexation + zone change

C. Type C: Annexation + plan map change + zone change

*RESPONSE: The applicant requests a Type A annexation in conformance with the city's conceptual zoning (SFR) and plan designations (LDR).*

#### **17.78.20 CONDITIONS FOR ANNEXATION**

The following conditions must be met prior to beginning an annexation request:

- A. The requirement of Oregon Revised Statutes, Chapters 199 and 222 for initiation of the annexation process are met;
- B. The site must be within the City of Sandy Urban Growth Boundary (UGB); and
- C. The site must be contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water.
- D. The site has not violated Section 17.78.25.

*RESPONSE: The proposed annexation complies with the requirements of Chapters 199 and 222 and the Oregon Revised Statutes as allowed by the provisions of Senate Bill 1573. The site is within the City of Sandy Urban Growth Boundary as approved by the Sandy City Council, Clackamas County Board of Commissioners, and the Department of Land Conservation and Development, effective June 2, 2017. The annexation area is contiguous to the existing city limits along its entire southern boundary. As discussed in detail below, tree retention requirements of Section 17.78.25 have not been violated. For these reasons, the proposal complies with all of the required conditions in this section prior to beginning the annexation request.*

#### **17.78.25 TREE RETENTION**

The intent of this section is to treat property with annexation potential (in the UGB) as if it had been subject, prior to annexation, to the tree retention provisions of the City's Urban Forestry Ordinance (Chapter 17.102) and Flood and Slope Hazard (FSH) Overlay District (Chapter 17.60), to discourage property owners from removing trees prior to annexation as a way of avoiding Urban Forestry Ordinance provisions, and to prevent unnecessary tree removal for future subdivision layout. In accordance with ORS 527.722, the State Forester shall provide the City with a copy of the notice or written plan when a forest operation is proposed within the UGB. The City shall review and comment on an individual forest operation and inform the landowner or operator of all other regulations that apply but that do not pertain to activities regulated under the Oregon Forest Practices Act.

- A. Properties shall not be considered for annexation for a minimum of five (5) years if any of the following apply:
  - 1. Where any trees six (6) inches or greater diameter at breast height (DBH) have been removed within 25 feet of the high water level along a perennial stream in the five years prior to the annexation application.

2. Where more than two (2) trees (six (6) inches or greater DBH) per 500 linear feet have been removed in the area between 25 feet and 80 feet of the high water level of Tickle Creek in the five years prior to the annexation application.
3. Where more than two (2) trees (six (6) inches or greater DBH) per 500 linear feet have been removed in the area between 25 feet and 50 feet of the high water level along other perennial streams in the five years prior to the annexation application.
4. Where any trees six (6) inches or greater DBH have been removed on 25 percent or greater slopes in the five years prior to the annexation application.
5. Where more than ten (10) trees (11 inches or greater DBH) per gross acre have been removed in the five years prior to the annexation application, except as provided below.

*RESPONSE: A review of historical aerial photos and a field inspection of the property reveal that no trees have been removed anywhere on the subject property within the last five years in the areas specified in this section. As such, none of the conditions contained in this section pertain to the proposed annexation.*

#### **17.78.30 ZONING OF ANNEXED AREAS**

- A. All lands within the urban growth boundary of Sandy have been classified according to the appropriate city land use designation as noted on the comprehensive plan map (as per the city/county urban growth management area agreement). The zoning classification shall reflect the city land use classification as illustrated in Table 17.26.20.
- B. Where only a single city zoning designation corresponds to the comprehensive plan designation (Type A) and the rezoning decision does not require the exercise of legal or policy judgment on the part of the city council, amendment of the zoning map shall be a ministerial decision of the director made without notice or any opportunity for a hearing.

*RESPONSE: The subject property is identified on the City's Comprehensive Plan Map to have a LDR, Low Density Residential designation and on the City's Zoning Map to be zoned SFR, Single Family Residential. The applicant requests these designations be applied with approval of this application.*

#### **17.78.50 ANNEXATION CRITERIA**

Requests for annexation should not have an adverse impact on the citizens of Sandy, either financially or in relation to the livability of the city or any neighborhoods within the annexation area. Generally, it is desirable for the city to annex an area if the annexation meets any of the following criteria:

- A. A necessary control for development form and standards of an area adjacent to the city; or

- B. A needed solution for existing problems, resulting from insufficient sanitation, water service, or other urban service related problems; or
- C. Land for development to meet urban needs and that meets a logical growth pattern of the city and encourages orderly growth; or

- D. Needed routes for utility and transportation networks.

*RESPONSE: The proposed annexation area is located directly north of property annexed earlier this year (File No. 17-062 ANN) and is bordered by the city limits along its entire southern boundary. Property west of the subject property (19124 SE Jacoby Road) was also annexed in 2018 and the owner of that property is currently preparing a land division application for that property. Water and sanitary sewer service will be available with development of this property and properties to the south of the subject property. Development of the annexation area is a logical growth pattern of the city and utilities will be available in this area of the UGB with development of the property. For these reasons the proposed annexation request complies with Annexation Criteria C. Annexation of the property is a logical growth pattern of the city and encourages orderly growth.*

#### **IV. CONCLUSION**

Ian and Kelly Bird request a Type 'A' Annexation to annex the property they own located at 19264 SE Jacoby Road into the city limits in conformance with the city's conceptual Comprehensive Plan and Zoning Map. The annexation area consists of one parcel containing 6.22 acres. The property is located within the Urban Growth Boundary and is contiguous to the city limits along its entire southern boundary. The proposal complies with the city's conditions for annexation found in Section 17.78.20 and meets annexation criteria "C" contained in Section 17.78.50.

**Exhibit "A"**

Parcel 1 of Partition Plat No. 2008-036, situated in the Northeast quarter of Section 24, Township 2 South, Range 4 East, Willamette Meridian, Clackamas County, Oregon and being more particularly described as follows:

The Point of Beginning being a 5/8" iron rod with a yellow plastic cap scribed "GILBERT PLS 60121" found at the Southwest corner of said Parcel 1, Partition Plat No. 2008-036, said point also being the southeast corner of Parcel 2 of that same plat;

Thence North 00°53'48" East a distance of 668.32 feet to the Northwest corner of said Parcel 1;

Thence South 88°30'10" East a distance of 405.90 feet to the Northeast corner thereof;

Thence South 00°55'34" West a distance of 667.43 feet to the Southeast corner thereof;

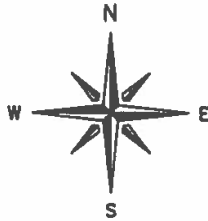
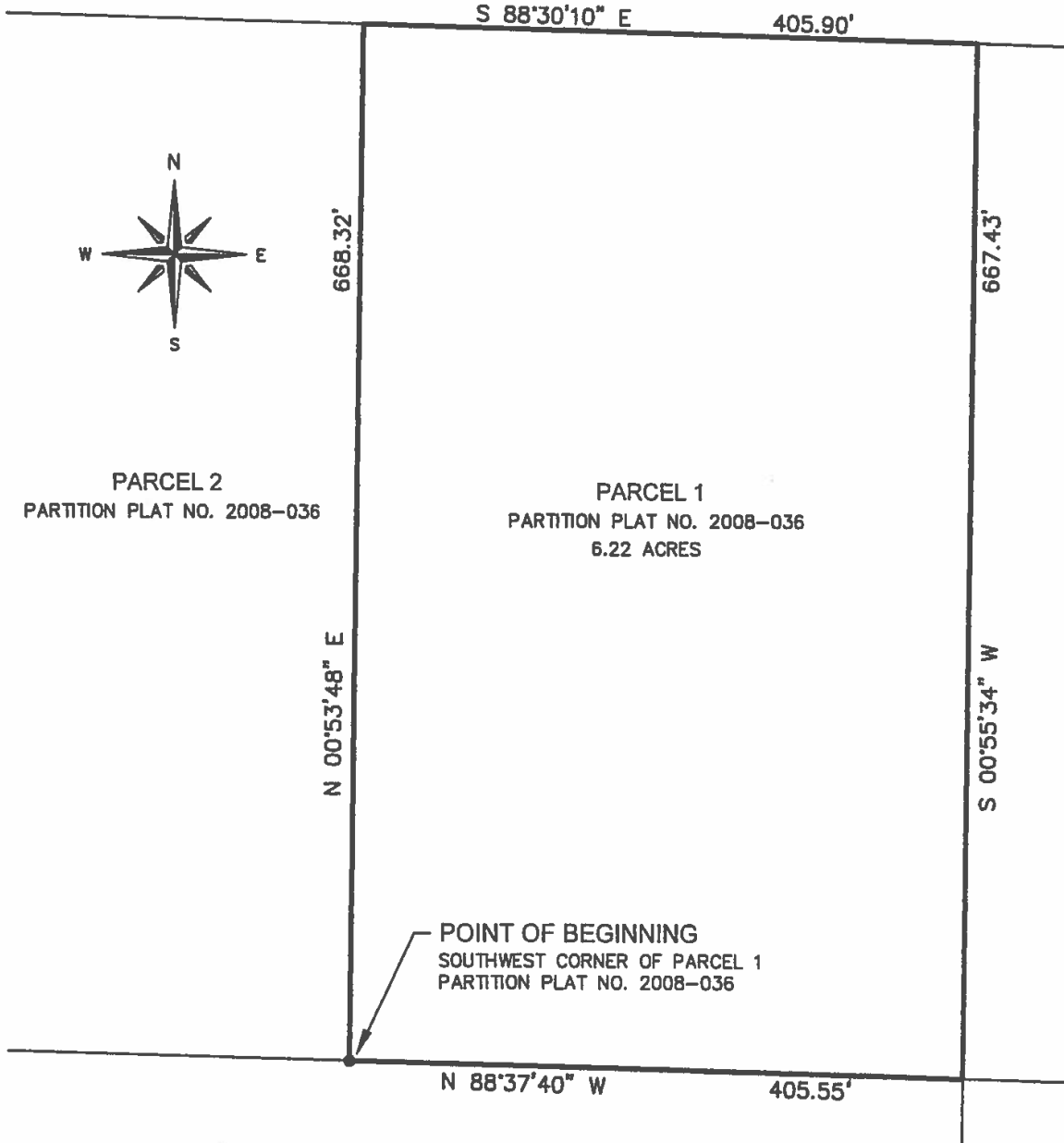
Thence North 88°37'40" West a distance of 405.55 feet to the Point of Beginning;

Containing 6.22 acres, more or less.

Refer to Exhibit 'B' for a map of the described tract.

# EXHIBIT "B"

LOCATED IN THE NORTHEAST 1/4 OF SECTION 24  
TOWNSHIP 2 SOUTH, RANGE 4 EAST, WILLAMETTE MERIDIAN,  
COUNTY OF CLACKAMAS, STATE OF OREGON  
SCALE: 1" = 100' DATE: MAY 30, 2018  
BASIS OF BEARING PER PARTITION PLAT NO. 2008-036



PARCEL 2  
PARTITION PLAT NO. 2008-036

PARCEL 1  
PARTITION PLAT NO. 2008-036  
6.22 ACRES

POINT OF BEGINNING  
SOUTHWEST CORNER OF PARCEL 1  
PARTITION PLAT NO. 2008-036



Firwood Design Group, LLC  
SURVEYING + ENGINEERING + PLANNING

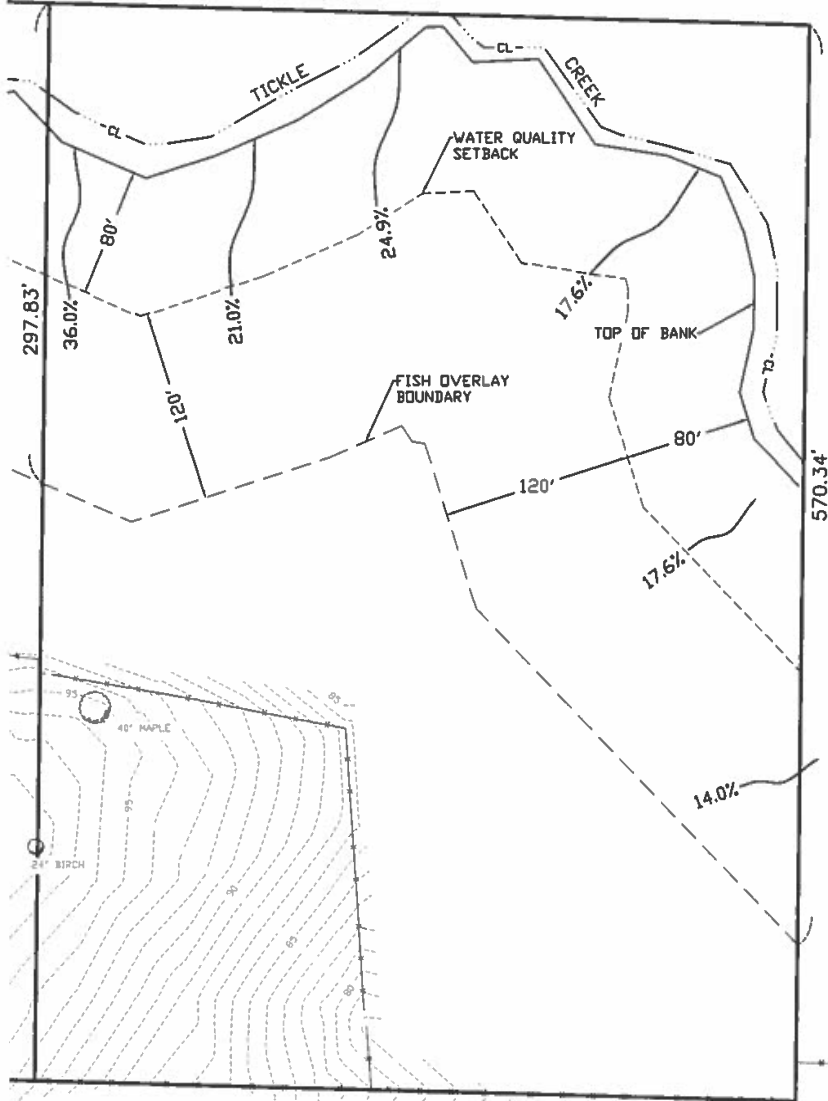
359 E HISTORIC COLUMBIA HWY.  
TROUTDALE, OREGON 97060  
BUS: (503) 668-3737 + FAX: (503) 668-3788

S18-021 EXHIBIT.dwg

EXHIBIT

LOCATED IN THE NORTHEAST 1/4 OF SECTION 24  
TOWNSHIP 2 SOUTH, RANGE 4 EAST, WILLAMETTE MERIDIAN,  
COUNTY OF CLACKAMAS, STATE OF OREGON  
PARCEL 1 OF PARTITION PLAT NO. 2008-036

SCALE: NTS



NOTE:  
SLOPES SHOWN WHERE TAKE WITH A CLINOMETER AND  
ARE AN APPROXIMATE REPRESENTATION OF THE GROUND  
SLOPE.

CLIENT: IAN BIRD



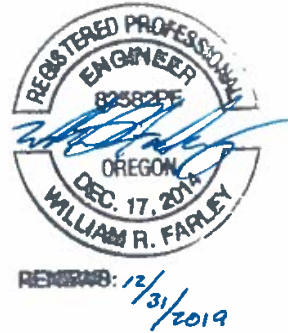
359 E HISTORIC COLUMBIA RIVER HWY.  
TROUTDALE, OREGON 97060

Firwood Design Group, LLC  
SURVEYING ♦ ENGINEERING ♦ PLANNING

BUS: (503) 668-3737 ♦ FAX: (503) 668-3788 FILE: S19-007\_exhibit.dwg  
PLOT DATE: 04/04/19

## Technical Memorandum

**To:** Ian Bird  
**From:** Jessica Hjar  
William Farley, PE  
**Date:** March 11, 2019  
**Subject:** 19264 SE Jacoby Road Annexation  
Trip Generation & Transportation Planning Rule Analysis



### **Introduction**

This memorandum reports the findings of a trip generation analysis conducted for the proposed annexation of a property located at 19264 SE Jacoby Road in Sandy, Oregon.

The purpose of this memorandum is to examine the trip generation potential of the site under *Single Family Residential* (SFR) zoning. The study will review the morning peak hour, evening peak hour, and average daily trip generation potentials of the site and will address Oregon's Transportation Planning Rule (TPR) to ensure that the transportation system is capable of supporting the traffic intensity resultant of the proposed annexation.

### **Location & Project Description**

The project site is located north of SE Trubel Road, south of Dubarko Road, east of SE Jacoby Road, and west of SE Langensand Road in Sandy, Oregon. The site includes a single parcel which encompasses an approximate total of 6.22 acres.

Figure 1 on the following page presents an aerial image of the nearby vicinity with the project site outlined in blue.



March 11, 2019  
Page 2 of 4

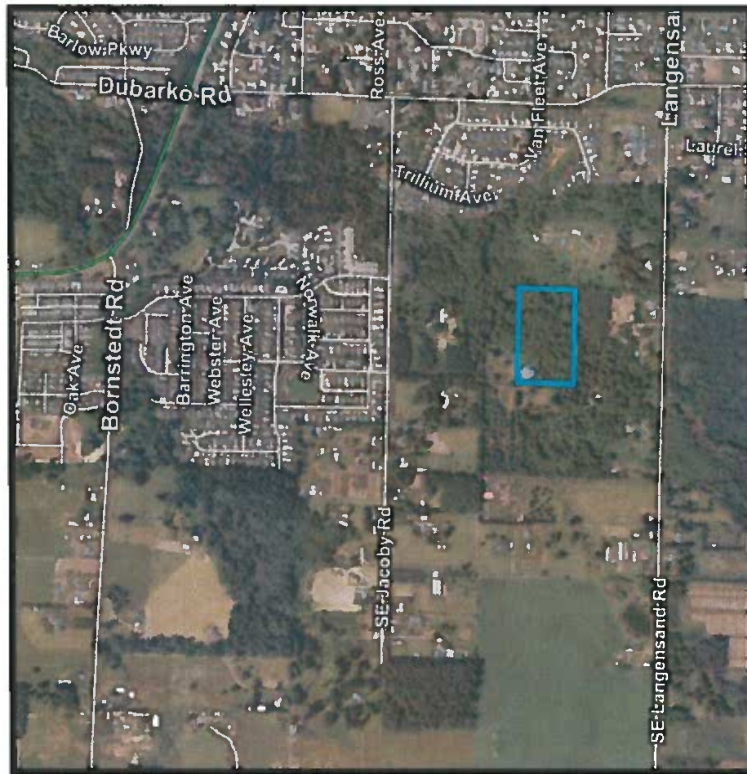


Figure 1: Aerial Photo of Site Vicinity (Image from Clackamas County Online Portal)

### ***Trip Generation – Proposed Annexation***

Per the City of Sandy's Comprehensive Plan, the subject property is to be annexed into the City under the *Single Family Residential* zoning, changing the designation from the County's *Rural Residential Farm/Forest 5 Acres* zoning. To determine the impacts of the proposed annexation, a reasonable "worst-case" development scenario for the proposed zoning was determined utilizing data for the most traffic-intensive uses permitted within the proposed zone.

### ***Proposed SFR Zone***

To determine a reasonable "worst-case" development scenario under the proposed zoning, City of Sandy Code Section 17.34 – *Single Family Residential (SFR)* was referenced and compared to land uses provided



March 11, 2019  
Page 3 of 4

within the *Trip Generation Manual*<sup>1</sup>. Based on an assessment of permitted uses, data from Land-Use Code #210, *Single-Family Detached Housing*, was used based on the number of potential dwelling units.

Per Section 17.34.00, density shall not be less than 3 units or more than 5.8 units per net acre. Based on a project site acreage of 6.22 acres, the proposed SFR zone could include the construction of up to 36 residential detached dwelling units within the site.

Table 1 below provides a summary of the trip generation for the site assuming development under the reasonable worst-case development scenario. Detailed calculations are included in the technical appendix to this memorandum.

**Table 1: Trip Generation Summary – Potential Worst-Case Development**

Land Use Code - Type	Size	Morning Peak Hour			Evening Peak Hour			Week day
		In	Out	Total	In	Out	Total	
#210 – Single-Family Detached Housing	36 units	7	20	27	23	13	36	340

### **Transportation Planning Rule**

Oregon's Transportation Planning Rule (TPR) is in place to ensure that the transportation system is capable of supporting possible increases in traffic intensity that could result from changes to adopted plans and land-use regulations. The applicable elements of the TPR are each quoted in italics below, with responses following.

660-012-0060

- (1) *If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:*
- (a) *Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
  - (b) *Change standards implementing a functional classification system; or*
  - (c) *Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted*

<sup>1</sup> Institute of Transportation Engineers (ITE), *Trip Generation Manual*, 10<sup>th</sup> Edition, 2017.

March 11, 2019  
Page 4 of 4

*TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*

- (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
- (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or*
- (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.*

In the case of this analysis, subsections (a) and (b) are not triggered since the proposed annexation will not impact or alter the functional classification of any existing or planned facility and the proposal does not include a change to any functional classification standards.

According to Action 1F.5 of the *1999 Oregon Highway Plan*<sup>2</sup>, a small increase in traffic does not cause “further degradation” of the facility. The threshold for a small increase in traffic between the existing plan and a proposed amendment is defined as any proposed amendment that does not increase the average daily trips by more than 400. Since the potential worst-case development will generate 340 average daily trips, the amendment is not likely to cause a significant effect to the transportation system per the Oregon Department of Transportation. Accordingly, subsection (c) is not triggered.

Based on the detailed analysis, the proposed annexation will not degrade the performance of any existing or planned transportation facility. Accordingly, the TPR is satisfied, and no mitigation is necessary or recommended in conjunction with the proposed zone change.

### **Conclusions**

The proposed annexation of the 6.22-acre subject property under the *Single Family Residential* zoning is not expected to degrade the performance of any existing or planned transportation facility. Accordingly, the TPR is satisfied, and no mitigation is necessary or recommended in conjunction with the proposed annexation.

If you have any questions regarding this technical memorandum, please don't hesitate to contact us.

---

<sup>2</sup> Oregon Department of Transportation, *1999 Oregon Highway Plan*, 1999.

1e

**Appendix**

1e

### TRIP GENERATION CALCULATIONS

*Land Use:* Single-Family Detached Housing  
*Land Use Code:* 210  
*Setting/Location:* General Urban/Suburban  
*Variable:* Dwelling Units  
*Variable Value:* 36

#### AM PEAK HOUR

*Trip Rate:* 0.74

	Enter	Exit	Total
Directional Distribution	25%	75%	
Trip Ends	7	20	27

#### PM PEAK HOUR

*Trip Rate:* 0.99

	Enter	Exit	Total
Directional Distribution	63%	37%	
Trip Ends	23	13	36

#### WEEKDAY

*Trip Rate:* 9.44

	Enter	Exit	Total
Directional Distribution	50%	50%	
Trip Ends	170	170	340

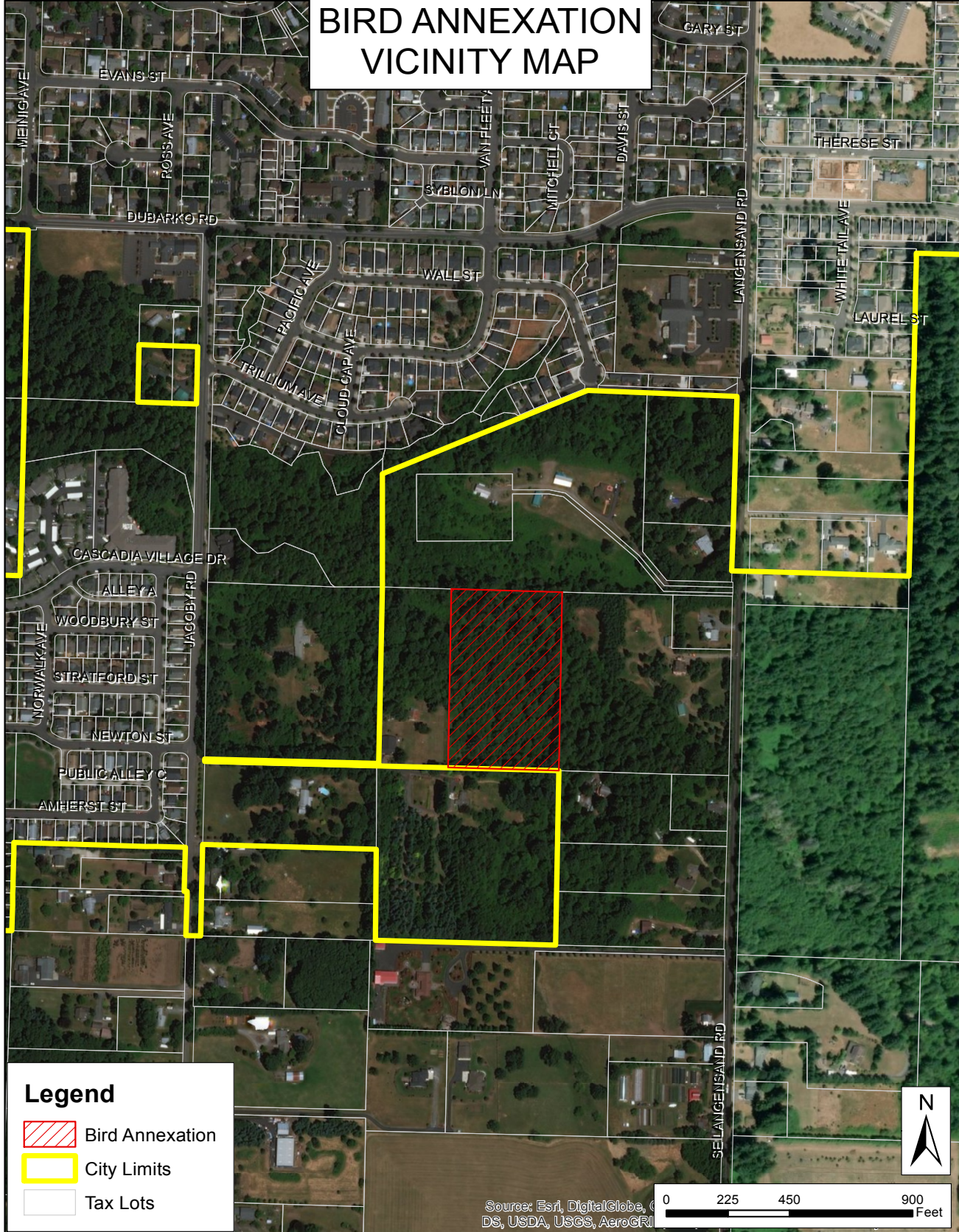
#### SATURDAY

*Trip Rate:* 9.54



	Enter	Exit	Total
Directional Distribution	50%	50%	
Trip Ends	172	172	344

Source: Trip Generation Manual, Tenth Edition

# BIRD ANNEXATION VICINITY MAP



### Legend

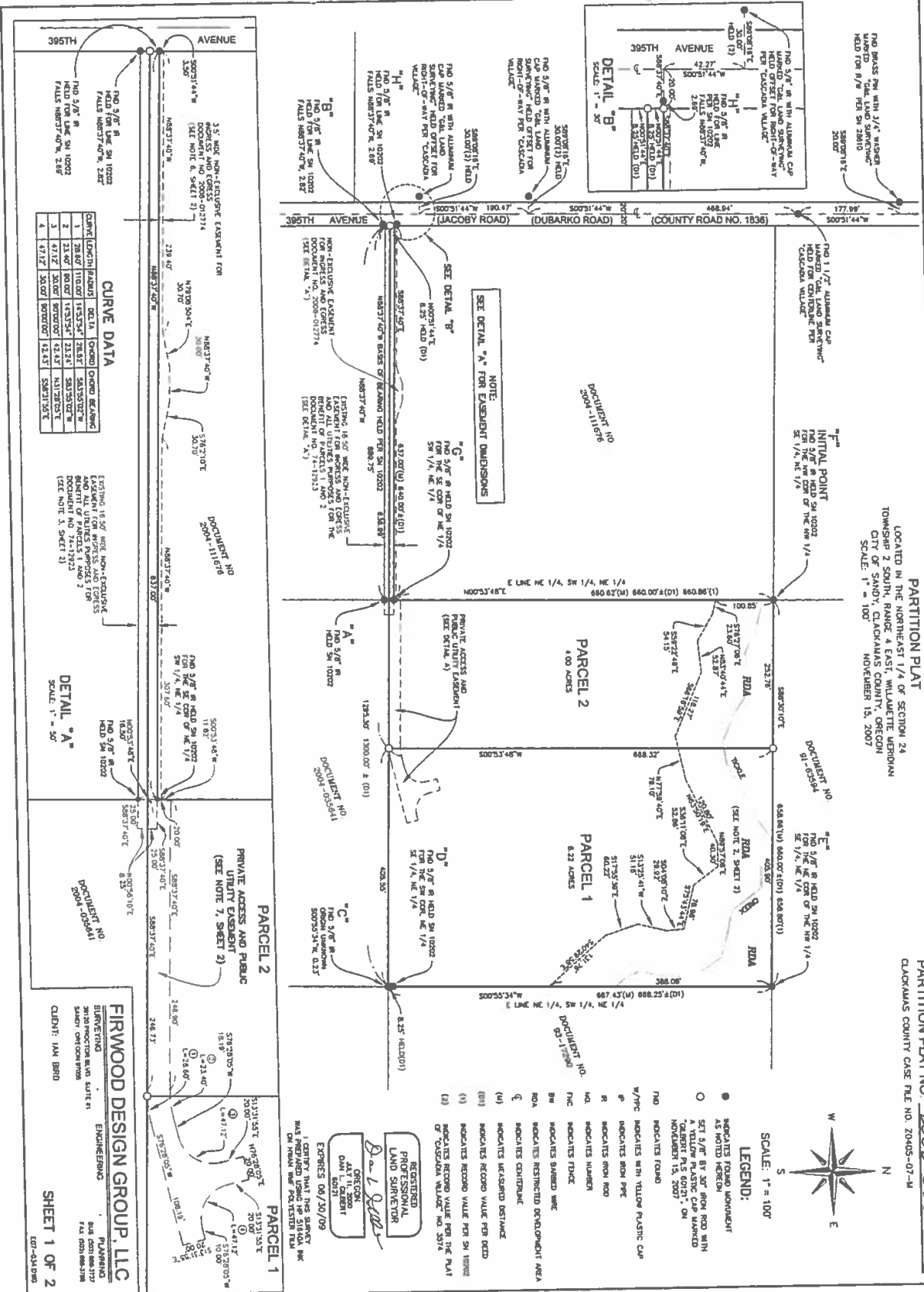
-  Bird Annexation
-  City Limits
-  Tax Lots

Source: Esri, DigitalGlobe, GeoEye, IGN, GeoEye, USDA, USGS, AeroGRID

0 225 450 900 Feet



EXHIBIT H



LOCATED IN THE NORTHEAST 1/4 OF SECTION 24  
TOWNSHIP 2 SOUTH, RANGE 4 EAST, WILAMETTE MERIDIAN  
CITY OF SANDY, CLATSOP COUNTY, OREGON  
SCALE: 1" = 100'  
NOVEMBER 15, 2007

PARTITION PLAT NO. 2008-036  
CLATSOP COUNTY CASE FILE NO. 20045-07-4

SCALE: 1" = 100'

LEGEND:

- INDICATES FOUND MONUMENT
- SET 5/8" BY 3/4" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "CASE# R/S 60121", ON NOVEMBER 15, 2007
- INDICATES FOUND
- INDICATES WITH YELLOW PLASTIC CAP
- INDICATES IRON PIPE
- INDICATES IRON ROD
- INDICATES NUMBER
- INDICATES FINCH
- INDICATES BARBED WIRE
- INDICATES RESTRICTED DEVELOPMENT AREA
- INDICATES CENTRUM
- INDICATES MEASURED DISTANCE
- INDICATES RECORD VALUE PER DEED
- INDICATES RECORD VALUE PER SURVEY
- INDICATES RECORD VALUE PER THE PLAT OF "CORRECTION" VALUE NO. 3974

REGISTERED PROFESSIONAL LAND SURVEYOR  
DAN L. GIBSON  
ASST. SURVEYOR  
EXPIRES 06/30/09  
NOTE: I HEREBY CERTIFY THAT THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE STANDARDS OF PRACTICE AND POLICE SET FORTH IN THE OREGON SURVEYING ACT.

**CURVE DATA**

CURVE	LENGTH	BEARING	DELTA	CHORD	CHORD BEARING
1	28.47'	110.00°	143.54'	78.84'	84.55102°
2	41.27'	30.00°	143.54'	78.84'	84.55102°
3	41.27'	30.00°	143.54'	78.84'	84.55102°
4	41.27'	30.00°	143.54'	78.84'	84.55102°

**FIRWOOD DESIGN GROUP, LLC**  
SURVEYING ENGINEERING PLANNING  
3800 OREGON AVENUE SANDY, OREGON 97055  
CLIENT: ILM BRD  
SHEET 1 OF 2  
EIT-4341040

North Pacific Design, Inc.  
 Landscape Architecture  
 917 Oak Street, Suite 300  
 Portland, Oregon 97205  
 Tele: 503-294-9905

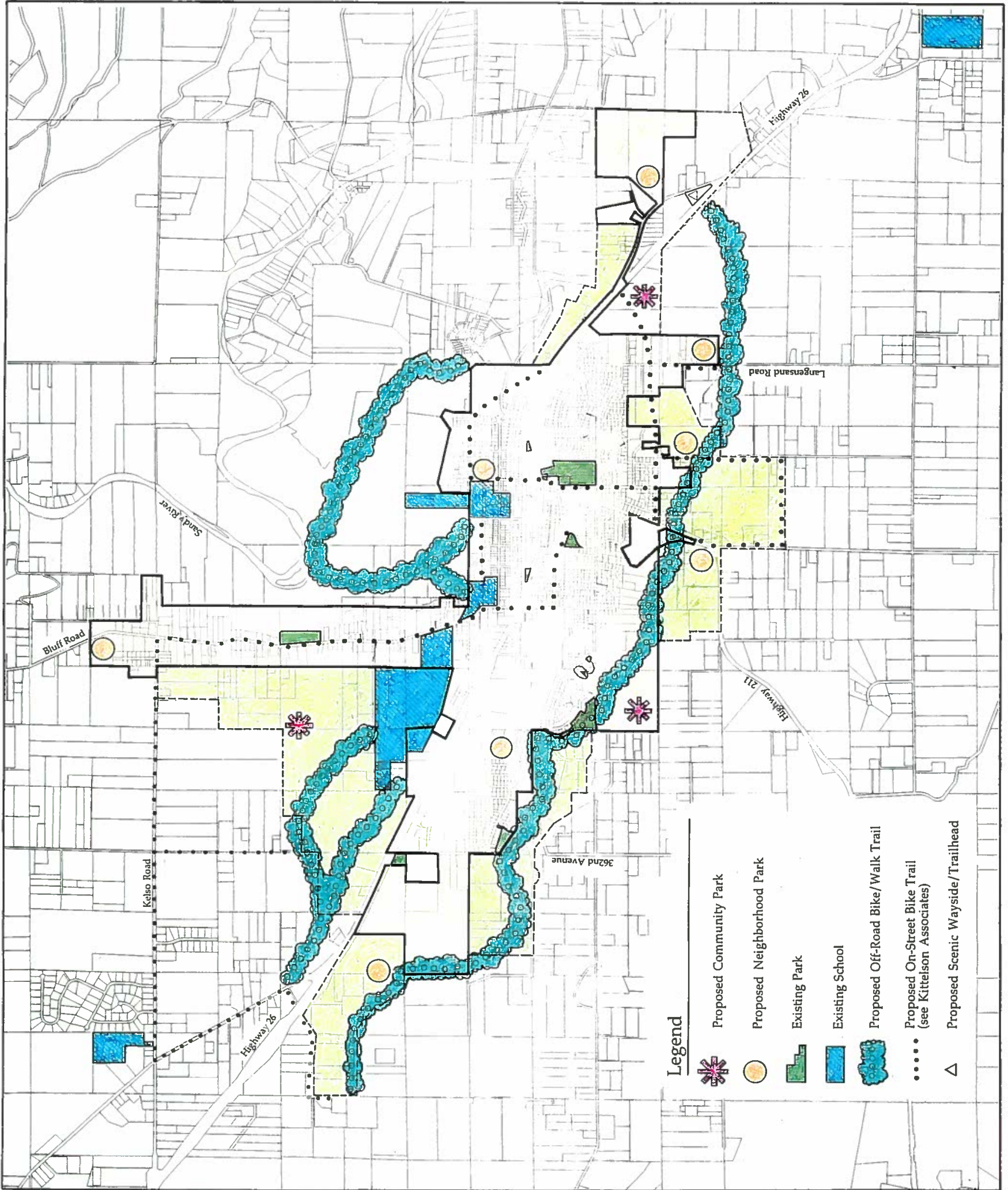
SEE  
 ADOPTED  
 ADDENDUM

City of Sandy  
 Department of  
 Community Development  
 3858 Pioneer Boulevard  
 Sandy, Oregon








Parks Master Plan  
 Park Facility Plan

Sheet  
 Scale: 1" = 800'

Date: May 15, 1997



Legend

-  Proposed Community Park
-  Proposed Neighborhood Park
-  Existing Park
-  Existing School
-  Proposed Off-Road Bike/Walk Trail
-  Proposed On-Street Bike Trail  
(see Kittelson Associates)
-  Proposed Scenic Wayside/Trailhead



# Oregon

Kate Brown, Governor

EXHIBIT J

## Department of Transportation

Region 1 Headquarters  
123 NW Flanders Street  
Portland, Oregon 97209  
(503) 731.8200  
FAX (503) 731.8259

May 13, 2019

ODOT #9020

## ODOT Response

<b>Project Name:</b> Bird Annexation and Zone Change	<b>Applicant:</b> Ian Bird
<b>Jurisdiction:</b> City of Sandy	<b>Jurisdiction Case #:</b> 18-034 ANN
<b>Site Address:</b> 19264 SE Jacoby Rd, Sandy, OR	<b>State Highway:</b> OR 211

The site of this proposed land use action is in the vicinity of OR 211. ODOT has permitting authority for this facility and an interest in ensuring that this proposed land use is compatible with its safe and efficient operation.

- For Transportation Planning Rule 660-012-0060 compliance, ODOT has determined there will be no significant impacts to state highway facilities and no additional state review is required.

### COMMENTS/FINDINGS

Development of this site may send trips to the Dubarko Rd/OR 211 intersection. We recommend that at the time of development, the city require the applicant to provide a traffic analysis to determine the impact on the intersection of Dubarko Rd/OR 211. If it is determined that trips go toward this intersection, we recommend that the city require them to contribute their proportionate share towards the Transportation System Plan project identified for this intersection.

### Please send a copy of the Notice of Decision including conditions of approval to:

ODOT Region 1 Planning  
Development Review  
123 NW Flanders St  
Portland, OR 97209

[Region1\\_DEVREV\\_Applications@odot.state.or.us](mailto:Region1_DEVREV_Applications@odot.state.or.us)

Development Review Planner: Marah Danielson	503.731.8258, marah.b.danielson@odot.state.or.us
Traffic Contact: Avi Tayar, P.E.	503.731.8221
District Contact: BKM_DistrictRevName	BKM_DistrictRevPhone





## NO. 2019-13 Ordinance

### **An Ordinance approving annexation of one property totaling 6.22 acres and assignment of SFR, Single Family Residential zoning in conformance with the 2017 Urban Growth Boundary Expansion Analysis.**

**Whereas,** Ian Bird as the property owner submitted an application (File No. 18-034 ANN) requesting approval to annex one parcel totaling approximately 6.22 acres known as T2S R4E Section 24A Tax Lot 801 and requested that SFR (Single Family Residential) zoning be assigned in conformance with the 2017 Urban Growth Boundary Expansion Analysis;

**Whereas,** Sandy Municipal Code Chapter 17.78, Annexation identifies the procedures to be followed by the City for annexations;

**Whereas,** in 2016, the Oregon Legislature passed Senate Bill 1573, effective March 15, 2016 that requires a city whose charter requires annexations to be approved by voters to annex the property without submitting it to the voters if the proposal meets certain criteria;

**Whereas,** the City received a letter dated May 28, 2019 from the Housing Land Advocates ("HLA") and the Fair Housing Council of Oregon ("FHCO") regarding the annexation's compliance with Goal 10. To the extent it is necessary, the City finds that the decision to annex the subject property complies with Goal 10 and its implementing rule at OAR Chapter 660, division 8. In 2014, the City completed an "urbanization study." That study was deemed acknowledged in 2015. The study included an analysis and update of the city's comprehensive plan with respect to Goal 10 and concluded the existing UGB did not contain sufficient residential lands to meet the city's housing needs to 2034. The urbanization study contained a buildable lands inventory ("BLI") and a housing needs projection ("HNP"), both of which followed the methodologies required by ORS 197.296, Goal 10, OAR Chapter 660, division 8 and OAR Chapter 660, division 24;

**Whereas,** in 2017, the city completed its UGB expansion in accordance with the urbanization study. The Department of Land Conservation and Development approved the UGB expansion in a letter dated June 2, 2017. No parties objected to the UGB expansion and it is now acknowledged in accordance with Oregon law. The property that is the subject of this annexation was included in the UGB expansion to satisfy part of the land needs identified in the urbanization study and its HNP. The property is being annexed in accordance with its conceptual zoning in the UGB expansion, Single Family Residential (SFR). The HNP concluded that the city had a need of approximately 277 acres of low density residential land through 2034. This property contains approximately 3.73 developable acres and therefore reduces the

#2019-13 Ordinance

city's identified low density residential land need by a proportional amount. Therefore, Goal 10 and the concerns expressed in the October 2, 2017 letter from FHCO are satisfied;

**Whereas**, notification of the proposed annexation was sent to the Department of Land Conservation and Development on April 15, 2019 and a separate notice was sent to the property owners and other property owners within 300 feet of the subject property on April 30, 2019 in compliance with the provisions of applicable regulations;

**Whereas**, the Sandy Planning Commission reviewed the request at a public hearing on May 28, 2019 and recommended City Council approve the annexation with the recommended conditions identified by staff in the staff report; and

**Whereas**, the Sandy City Council reviewed the request at a public hearing on July 15, 2019 and determined the proposal complies with both the criteria in SB 1573 and the criteria in the Sandy Municipal Code Chapter 17.78, Annexation.

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

**Section 1:** The City Council directs staff to amend the city limits boundary and to provide notice of the annexation to other agencies and organizations as required by state law.

**Section 2:** The City Council adopts the July 15, 2019 staff report as findings supporting the approval of this annexation and incorporates the report into this ordinance by reference.

**Section 3:** Following adoption of this Ordinance, the Zoning designation for the subject properties will be changed to SFR, Single Family Residential as shown on the adopted zoning map.

**Section 4:** A legal description and map of the property is attached as Exhibit A to this ordinance.

This ordinance is adopted by the Common Council of the City of Sandy and approved by the Mayor this 15 day of July 2019

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Stan Pulliam, Mayor

ATTEST:

#2019-13 Ordinance

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Karey Milne, City Recorder

#2019-13 Ordinance



## Staff Report

---

**Meeting Date:** June 17, 2019  
**From** Tyler Deems, Finance Director  
**SUBJECT:** Public Safety Fee

---

**Background:**

At the June 17th Council Meeting, Council received information and discussed establishing a Public Safety Fee. The staff report from this meeting can be found [here](#). Both the Budget Committee and the Council agreed to find a new revenue source to increase policing services through the hiring of additional officers. After exploring various options, it was determined that implementing a public safety fee that would be added to utility bills would be the most reasonable way to generate the revenue for these two positions.

The fee will be based on customer class and the number of dwelling units. For example, a single family home would pay \$4.50 per month. A three unit multi-family complex would pay \$4.50 for each unit, for a total of \$13.50 per month.

Class	Units	Fee	Projected Biennial Revenue
Single Family	3,382	\$ 4.50	365,256
Multi-Family	842	\$ 4.50	90,936
Comm/Indust	256	\$10.50	64,512
			\$ 520,704

Staff has verified the number of units for all customer classes, and the updated count is listed above. With the updated information, staff was able to reduce slightly the monthly fee amounts.

**Implementation Process**

The implementation of this fee will occur 30 days after the adoption of this resolution. As such, it will go into effect the same date as Ordinance 2019-11. Revenue will begin to be recognized in September 2019. As previously noted, the fee will be added to customers utility bills.

**Recommendation:**

Adopt Resolution 2019-15, Adopting a Public Safety Fee.

**Budgetary Impact:**

None. The expected revenue from the fee has already been included in the adopted BN 19-21 budget.



NO. 2019-15

**A Resolution Adopting a Public Safety Fee**

**Whereas**, the City of Sandy has determined that current General Fund Revenues are not keeping pace with Law Enforcement needs; and

**Whereas**, police services benefit all utility users in the City; and

**Whereas**, in order to safeguard, facilitate, and encourage safety and welfare of the citizens and businesses of the city, the Council finds that the Police Department is sufficiently well-funded to attract and retain qualified individuals to serve as police officers provides a multitude of economic and social benefits to the public, including, but not limited to:

- Increased police protection.
- Prevention of crime.
- Enhanced protection of property.
- Promotion of business and industry.
- Promotion of community spirit and growth.

**Whereas**, Ordinance 2019-11, An Ordinance Establishing a Public Safety Fee, authorizes the city to charge utility customers within city limits a monthly fee via their utility bills as a funding mechanism for police services.

**NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sandy that the Public Safety Fee be implemented on August 15, 2019 as follows:**

<b>Rate Class</b>	<b>Fee</b>
Single Family	\$4.50
Multi Family	\$4.50
Commercial/Industrial	\$10.50

This resolution is adopted by the Common Council of the City of Sandy and approved by the Mayor this 15 day of July 2019

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

#2019-15

ATTEST:

---

Karey Milne, City Recorder

#2019-15



## Staff Report

---

**Meeting Date:** July 15, 2019  
**From** Sarah McIntyre, Library Director  
**SUBJECT:** Library Advisory Board Appointments

---

### **Background:**

The Library Advisory Board has had an open call for members to join the Board for many months. In addition we had two members of the Board finishing out terms of previous members. We have had 1 new applicant for the Board for the Sandy Service Area, and two reapplicants - one for the Hoodland Service Area and one for the Sandy Service area. Our new applicant was interviewed by Bethany Shultz - City Council Liaison, Jeri McMahan - Library Board Chair, and Sarah McIntyre - Staff.

### **New Applicant**

Dale Scoberg has attended 3 out of the last 4 Library Advisory Board meetings in the past 6 months. He has had great input and insight for our discussions. Dale worked in the criminal justice field for over 30 years, and was Police Chief in Sandy for 8 years, retiring from Sandy in 2003. He is currently on the Kiwanis Board. Dale stated on his application "The Library has been an integral part of our life in Sandy. I appreciate all of the resources my family has taken advantage of over the years. I would appreciate being part of the Library while lending any skills I may have to ensure the Library continues to serve the community for years to come."

### **Reapplicants**

Kathleen Draine was the Reference Librarian at the Sandy Library from 1999-2013. Since she retired, she has volunteered for various projects at the Sandy and Hoodland Libraries, including the Hoodland Library relocation, and RFID tagging. She is already an excellent advocate of library services, and greatly interested in furthering the aims of the library. The Library Board feels that Kathleen will continue to be a great asset to the Board with her in depth knowledge of the library. Kathleen is also the representative of Sandy and Hoodland Libraries on the Library District Advisory Committee (LDAC). LDAC advises the County Commissioners on library matters county-wide. Kathleen was originally appointed by City Council to the Library Advisory Board on March 5, 2018 to fill the remainder of a term.

Lynne Pollard has lived in the Welches area since 1976. Lynne was a special librarian that began her career working for Nike in their IT department. She retired 3 years ago from her position as Vice President for Digital Services at Oregon Public Broadcasting (OPB). She has previously been the Vice President of the board of the Hoodland Preschool, and a past PTA President at



Welches School. She is currently on the committee for Public Media Women in Leadership, and on the board of the Hoodland Women's Club. Lynne Pollard was originally appointed by City Council to the Library Advisory Board on February 19, 2019 to fill the remainder of a term.

**Recommendation:**

Appoint Dale Scoberg to the Library Advisory Board for the Sandy Service Area.  
Reappoint Kathleen Draine to the Library Advisory Board for the Sandy Service Area  
and Lynne Pollard for the Hoodland Service Area

**Budgetary Impact:**

none



## Staff Report

---

**Meeting Date:** July 15, 2019  
**From** Andi Howell, Transit Director  
**SUBJECT:** FTA Procurement Policy

---

**Background:**

Last March, the Transit Department received a triennial review (2015-2018). RLS, a consulting firm out of Washington D.C. hired on behalf of the Oregon Department of Transportation (ODOT), visited the Sandy Transit Facilities including the Operations Center, bus shelters and vehicles. RLS consultants and ODOT employees worked with Transit staff to assess how Sandy meets the varied compliance requirements imposed by the Federal Transit Administration and Oregon DOT. The overall goal of the review is to improve Sandy Transit's compliance with applicable regulations while strengthening the management's abilities to comply with Federal and state laws, rules, requirements and regulations.

The review consist of two parts; a desk review during which the agency is given 30 days to provide all information requested via a secure cloud server and a 2-day on-site review. The review is organized into nine major areas, encompassing: program management, financial management, operations management, procurement, use and maintenance of project equipment, civil rights, Americans with Disabilities Act, charter and school bus, Statewide Transportation Improvement Fund, and other elements of the review. At the conclusion of the review, a compliance report is issued listing compliance observations. ODOT expects the transit system to satisfactorily resolve all compliance observations.

The Oregon Department of Transportation (ODOT) Public Transit and Rail Division's Compliance Monitoring Program has presented Sandy Transit with an compliance observation requiring the City to adopt a FTA Procurement Policy.

As you will find in section 1.3 of the policy, "FTA regulations (2 CFR § 200.319(c) and FTA Circular 42201.1.F, Chapter III, § 3a) requires Sandy Area Metro to have written procurement procedures. This policy is designed to meet FTA and ODOT's requirements in this regard."

These policies and procedures pertain only to the City of Sandy Transit Department's purchases made with FTA funds for the transit program; purchases with local funds and for purposes other than transit should follow the applicable Oregon Revised Statues.

**Recommendation:**

Authorize the Transit Department to adopt the FTA Procurement Policy.

**Budgetary Impact:**

None.

**CITY OF SANDY, TRANSIT DEPARTMENT  
SANDY AREA METRO  
FTA PROCUREMENT POLICY**

**July 15, 2019**

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## 1. INTRODUCTION

### 1.1. Purpose

This policy establishes guidelines and minimum standards that Sandy Area Metro will use in the management of its third-party contracts. This manual is intended to ensure that Sandy Area Metro complies with Federal Transit Administration (FTA) and the Oregon Department of Transportation's standards to ensure full and open competition and equitable treatment of all potential sources for all purchases made with funding derived from the Federal, state, and local governments. In all purchasing activity, the goal of Sandy Area Metro is to ensure maximum open and free competition consistent with:

- FTA Circular 4220.1F "Third Party Contracting Guidance" or latest version thereof;
- 2 CFR § 200.317 – 200.326
- ODOT State Management Plan.

### 1.2. Applicability

This manual applies to all procurements undertaken and financed, in whole or in part, with FTA financial assistance provided to Sandy Area Metro to support **open market procurements**. An open market solicitation is used to purchase a good or service by soliciting from any available source. Most grantee procurement activity will be undertaken on the open market. Open market procurements exclude:

- Employment Contracts;
- Real Estate Contracts; and
- Intergovernmental Agreements.

The goal of this procurement policy is to provide an atmosphere in which all procurement transactions will be conducted in a manner providing full and open competition. Sandy Area Metro will avoid the following situations considered to be restrictive of competition:

- Application of unreasonable requirements placed on firms in order for them to qualify to do business;
- Imposition of geographic preference standards in the selection of vendors;
- Imposition of unnecessary experience and excessive bonding requirements;
- Use of noncompetitive pricing practices between firms or between affiliated companies;
- Employment of noncompetitive awards to any person or firm on retainer contracts;
- Failure to recognize organizational conflicts of interest, which means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;

**1.2.1.1. Use of "brand name" specifications without listing its salient characteristics and not allowing "an equal" product to be offered; and**

- Any arbitrary action in the procurement process.

Sandy Area Metro will conduct procurements in a manner that does not give in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not pre-empt Oregon licensing laws from being considered in those disciplines that are regulated by the State of Oregon. Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services if an appropriate number of qualified firms, given the nature and size of the project, are able to compete for the contract.

**1.3. Third Party Contracting Capacity**

FTA regulations (2 CFR § 200.319(c) and FTA Circular 42201.1.F, Chapter III, § 3a) requires Sandy Area Metro to have written procurement procedures. This policy is designed to meet FTA and ODOT's requirements in this regard.

**1.4. Relationship to Other City of Sandy Transit Department Policies**

The purpose of these purchasing policies and procedures are two-fold. First, the City of Sandy has established these policies and procedures to conform to the provisions of Federal procurement regulations that govern the City of Sandy's use of FTA and ODOT funds. Second, these policies and procedures assure that materials, supplies, services and equipment required for efficient and effective operation of the transit program are procured with regard to an analysis of price, quality, quantity, terms and delivery specifications. These policies and procedures pertain only to the City of Sandy Transit Department's purchases made with FTA funds for the transit program; purchases with local funds and for purposes other than transit should follow the applicable Oregon Revised Statutes.

These policies may not answer all questions related to purchasing; if any employee of Sandy Area Metro has a question regarding these procedures, ODOT should be contacted for clarification and guidance.

When Sandy Area Metro undertakes any purchase utilizing FTA funds, this policy shall supersede any existing purchasing policy promulgated by the City of Sandy. When any conflict exists between this policy and the existing policies of the City of Sandy, the procedures in this policy shall prevail. If any employee of Sandy Area Metro determines that a conflict exists between these policies and state and local law, Sandy Area Metro shall contact ODOT and communicate the conflict.

## 2. CODE OF ETHICS AND CONFLICT OF INTEREST POLICY

### 2.1. Purpose

Federal grant management rules (2 CFR § 200.318(c)(1)) require each recipient to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. This policy must address:

- Personal conflicts of interest
- Gifts; and
- Violations.

### 2.2. Definition of Key Terms

As used herein, the following definitions apply:

**Conflict of Interest** – A situation in which an employee, city council member, officer, or agent has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties. A conflict of interest represents a divergence between a person covered by this policy and their private interests and their professional obligations to Sandy Area Metro such that an independent observer might reasonably question whether the individual’s professional actions or decisions are determined by considerations of personal gain, financial or otherwise.

**Financial Interest** – An officer, agent, city council member, his or her partner, employee, or their immediate family, is considered as having a financial interest in a company if: they receive more than \$10,000 in consulting income, salaries, or equity in the company; they have more than 5 percent equity in the company; they have intellectual property rights in or receive royalties from the company; or they serve as a director, officer, partner, trustee, manager or employee of the company.

**Immediate Family** – Immediate family includes an employee’s spouse, grandparent, parent, brother, sister, child or grandchild, his or her partner.

### 2.3. Applicability

No employee, elected official, agent, or other individual under an employment contract with City of Sandy Transit Department, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of those previously listed individuals has a financial or other interest in the firm selected for award.

## **2.4. Gifts**

Any contractor, subcontractor, or supplier who has a contract with the City of Sandy Transit Department; has performed under such a contract within the past year; or anticipates bidding on such a contract in the future shall be prohibited from making gifts or to providing favors to any individual defined in Section 2.2. who is charged with the duty of:

- Preparing plans, specifications, or estimates for public contract; or
- Awarding or administering public contracts; or
- Inspecting or supervising construction.

Sandy Area Metro also prohibits all covered individuals defined in Section 2.2. who perform the functions listed above from receiving or accepting any such gift or favor.

## **2.5. Employee Conflicts of Interest**

### **2.5.1. Conflicts of Interest**

It shall be a breach of ethical standards for any Sandy Area Metro employee to participate directly or indirectly in a procurement when the employee knows:

- The employee or any member of the employee's immediate family, city council, officer, agent, his or her partner, has a financial interest pertaining to the procurement;
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- Any other person, business or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

### **2.5.2. Discovery of Actual or Potential Conflict of Interest (Disqualification and Waiver)**

Upon discovery of an actual or potential conflict of interest, an employee participating directly or indirectly in a procurement shall:

- Promptly file a written statement of disqualification with the Transit Director; and
- Withdraw from further participation in the procurement.

The employee may, at the same time, request from the Transit Director, an advisory opinion as to what further participation, if any, the employee may have in the procurement. It shall be at the sole discretion of the Transit Director to determine if the employee may have any further participation in the procurement and, if so, the extent to which the employee may participate. Any employee who fails to comply with the provisions of this paragraph may be subject to disciplinary action.

### **2.5.3. Employee Disclosure Requirements**

A Sandy Area Metro employee, who has reason to believe that he/she or his/her immediate family have an interest that may be affected by his/her official acts or actions as a Sandy Area Metro employee or by the official acts or actions of Sandy Area Metro, shall disclose the precise nature and value of such interest in a written disclosure statement to the Transit Director. The employee's disclosure statement will be reviewed by the Transit Director and the Transit Director will respond to the employee in writing with an opinion as to the propriety of said interest.

In the event that the Transit Director has reason to believe that he/she or his/her immediate family has an interest that may be affected by his/her official acts or actions as a Sandy Area Metro employee or by the official acts or actions of Sandy Area Metro, he/she shall disclose the precise nature and value of such interest in a written disclosure statement to the City Manager.

### **2.5.4. Confidential Information**

A Sandy Area Metro employee may not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, confidential information acquired by virtue of their position or employment with Sandy Area Metro.

### **2.5.5. Solicitation Provision**

Sandy Area Metro shall insert the following provisions in all formal competitive solicitation documents for products and services:

*These policies shall apply to Sandy Area Metro employees involved in procurement. It is a breach of ethical standards for any Sandy Area Metro employee to participate directly or indirectly in a procurement when the employee knows:*

- *The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;*
- *A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or*
- *Any other person, business or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.*

*In addition, any persons acting as members of an evaluation committee for any procurement shall, for the purposes of the procurement, be bound by conditions of this Section. Throughout the bid/proposal evaluation process and subsequent contract negotiations, offerors shall not discuss or seek specific information about this procurement, including but not limited to, the contents of submissions, the evaluation process or the contract negotiations, with members of any evaluation committee, the City Council, or other City employees other than the designated procurement officer.*

## **2.6. Organizational Conflicts of Interest**

The procurement officer and technical personnel are encouraged to work closely with the legal counsel to review all situations that appear to have the potential for an organizational conflict of interest.

Organizational conflicts of interest may result in bias and potentially provide an unfair competitive advantage to a potential offeror. An organizational conflict of interest occurs due to the type of work to be performed under a third-party contract, or because of other activities or relationships such as:

- A contractor is unable, or potentially unable, to render impartial assistance or advice to the City of Sandy Transit Department;
- A contractor's objectivity in performing contract work is or might otherwise be impaired; or
- A contractor has an unfair competitive advantage.

Bias arises when a contractor is placed in a situation where there may be an incentive to distort advice or decisions. Whenever a contract is awarded that involves the rendering of advice, the question must always be asked as to whether the potential for a conflict of interest exists for the contractor rendering the advice. Sandy Area Metro will utilize a "Conflict of Interest Disclosure Statement," in its solicitation when contracting for services of this nature.

### **3. SANDY AREA METRO RESPONSIBILITIES UNDER FEDERAL LAW**

#### **3.1. Third Party Contracting Capacity**

Sandy Area Metro must maintain adequate technical capacity to carry out its FTA assisted projects and comply with Federal rules. Sandy Area Metro's third-party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, state, and local requirements.

#### **3.2. Contract Administration System**

Sandy Area Metro must maintain a contract administration system to ensure that it and its third-party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, state and local requirements.

##### **3.2.1. Written Procurement Procedures**

Sandy Area Metro must maintain and follow written procurement procedures that address:

- (a) Solicitations – Requirements for Sandy Area Metro solicitations are addressed in Section 5.
- (b) Necessity – Requirements related to Sandy Area Metro's need for products or services are addressed in Section 3.2.2.
- (c) Lease Versus Purchase – Requirements related to the use of lease or purchase alternatives to achieve an economical and practical procurement are addressed in Section 3.2.2.
- (d) Metric Usage – Requirements related to the acceptance of products and services dimensioned in the metric system of measurement are addressed in Section 3.5.2.
- (e) Environmental and Energy Efficiency Preferences – Requirements related to preference for products and services that conserve natural resources, protect the environment, and are energy efficient are addressed in Sections 3.4.3 and 3.4.4.
- (f) Procurement Methods – Descriptions of the procurement methods that Sandy Area Metro may use are included in Section 5.
- (g) Legal Restrictions – Descriptions of Federal and state restrictions on Sandy Area Metro's acquisitions are included in Section 5.
- (h) Third Party Contract Provisions – Specific third-party contract provisions required for each third-party contract and flow down requirements to subcontracts are included in Section 3.1 through 3.7.
  - (1) Sources – Descriptions of the availability and use of various sources of products and services are addressed in Section 4.

- (2) Resolution of Third-Party Contracting Issues – Procedures related to the resolution of third-party contracting issues are included in Section 6.8.

### **3.2.2. Adequate Third-Party Contract Provisions**

Sandy Area Metro must include provisions in all of its third-party contracts that are adequate to form a sound and complete agreement.

### **3.2.3. Industry Contracts**

Sandy Area Metro shall not use an industry developed contract or a contract that is provided by a bidder or offeror unless it has first evaluated the benefits of the contract. Sandy Area Metro shall ensure that such contracts include all required Federal provisions but do not include terms and conditions that may be unfavorable to Sandy Area Metro.

### **3.2.4. Revenue Contracts**

Sandy Area Metro may enter into a revenue contract with a third-party to generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. Any such said contract opportunity will follow a competitive selection procedures and principles outlined herein.

### **3.2.5. Record Keeping**

Sandy Area Metro must prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. Sandy Area Metro must maintain these records for five (5) years after Sandy Area Metro and its subrecipients, if any, have made final payment and all other pending matters are closed. Specific record keeping requirements include:

- (a) Written Record of Procurement History – Sandy Area Metro must maintain and make available to ODOT and FTA written records detailing the history of each procurement. For all procurements above the micro-purchase level Sandy Area Metro must maintain records relating to:
- (1) Procurement Method – Sandy Area Metro must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive;
  - (2) Contract Type – Sandy Area Metro must state the reasons for selecting the contract type it used;
  - (3) Contractor Selection – Sandy Area Metro must state its reasons for contractor selection or rejection;
  - (4) Contractor Responsibility – Sandy Area Metro must provide a written determination of responsibility for the successful contractor;
  - (5) Cost or Price – Sandy Area Metro must evaluate and state its justification for the contract cost or price;



- (6) Reasonable Documentation – Sandy Area Metro must retain documentation commensurate with the size and complexity of the procurement; and
  - (7) Vendor Verification – Sandy Area Metro must include verification of acceptance with a selected vendor/supplier/manufacturer through the Federal System of Award Management (SAM) for each project and associated project file.
- (b) Access to Records – Sandy Area Metro must provide FTA and ODOT officials, the Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance.
- (c) Use of Technology/Electronic Commerce – Sandy Area Metro may use an electronic commerce system to conduct third-party procurements. If Sandy Area Metro uses an electronic commerce system, then the following requirements apply:
- (1) Sufficient System Capacity –Sandy Area Metro’s system must have sufficient system capacity necessary to accommodate all Federal requirements for full and open competition.
  - (2) Written Procedures – Before any solicitation takes place, Sandy Area Metro must establish adequate written procedures to ensure that all information FTA/ODOT requires for project administration is entered into the system and can be made readily available to ODOT as needed.

### **3.3. Determination of Needs**

Sandy Area Metro must maintain and follow adequate procedures for determining the types and amounts of products and services it needs to acquire. Sandy Area Metro shall comply with the following requirements when determining the types and amounts of products and services it needs to acquire:

### **3.4. Eligibility**

All products and services to be acquired with FTA funds must be eligible under the Federal law authorizing the FTA assistance award and any regulations thereunder. All products and services to be acquired with FTA funds must also be eligible for support within the scope of the underlying grant or cooperative agreement from which the FTA assistance to be used is derived.

### **3.5. Necessity**

Sandy Area Metro shall adhere to the following standards for avoiding the purchase of duplicative and/or unnecessary products and services it does not need.

#### **3.5.1. Unnecessary Reserves**

Sandy Area Metro shall limit the acquisition of Federally-assisted property and services to the amount it needs to support its operations.

### **3.5.2. Acquisition for Assignment Purposes**

Sandy Area Metro shall contract only for its current and reasonably expected public transportation needs and shall not add quantities or options to third party contracts solely to permit assignment to another party at a later date. These limits on assignments, however, do not preclude joint procurements that are entered into simultaneously by two or more parties to obtain advantages unavailable for smaller procurements.

- (a) General Prohibition – Sandy Area Metro may contract only for its current and reasonably expected public transportation needs and may not add quantities or options to third-party contracts solely to permit assignment to another party at a later date.
- (b) Changes in the Recipient’s Needs – ODOT and FTA recognize that the quantity of property or services a recipient reasonably believes it may need at the time of contract award may change. Sandy Area Metro's later needs might decrease due to changed circumstances or honest mistakes. In those situations, Sandy Area Metro may assign its unneeded contract authority to another entity that would like to acquire the property or services.
- (c) Exceptions – These limits on assignments, however, do not preclude:
  - (1) Joint Procurements – Sandy Area Metro and one or more other FTA recipients may enter into a single procurement at the same time to obtain advantages unavailable for smaller procurements.
  - (2) Participation in ODOT Sponsored Vehicle Procurements – Sandy Area Metro may enter into contracts developed by the State of Oregon to acquire vehicles.
- (d) Procurement Size – For every procurement, Sandy Area Metro shall consider whether to consolidate or break out the procurement to obtain the most economical purchase. Absent efforts to foster greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms and women’s business enterprises, Sandy Area Metro shall not split a larger procurement merely to gain the advantage of micro-purchase or small purchase procedures.
- (e) Options – Sandy Area Metro shall justify, as needed, all option quantities included in every solicitation and contract. An option is a unilateral right in a contract by which, for a specified time, Sandy Area Metro may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.
- (f) Lease Versus Purchase – Sandy Area Metro shall review lease versus purchase alternatives for acquiring property and shall prepare or obtain an analysis to determine the most economical alternative. If Sandy Area Metro chooses to lease an asset, then it must prepare a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset.

- (g) Specifications – Sandy Area Metro's procurement specifications shall clearly describe the products or services to be procured and shall state how the proposals will be evaluated. Sandy Area Metro's procurement specifications shall not be exclusionary, discriminatory, unreasonably restrictive or otherwise in violation of Federal or Oregon laws or regulations.

### **3.6. Contractor Responsibilities**

Sandy Area Metro, in awarding contracts, financed in whole or in part, with FTA financial assistance, shall follow guidance in this section to evaluate contractor capabilities to perform the contract.

In addition to the Federal rules (2 CFR § 200.318(h)) that require contract awards be made only to responsible contractors, Federal transit law at 49 U.S.C. § 5325(j) limits third party contractor awards to those contractors capable of successfully performing under the terms and conditions of the proposed contract. Before selecting a contractor for award, Sandy Area Metro must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

#### **3.6.1. Debarment and Suspension**

Debarment and suspension regulations and guidance include the following provisions:

##### **3.6.1.1. DOT Debarment and Suspension Regulations**

U.S. Department of Transportation (DOT) regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200 apply to each third party contract at any tier of \$25,000 or more, to each third-party contract at any tier for a federally required audit (irrespective of the contract amount), and to each third-party contract at any tier that must be approved by an FTA official irrespective of the contract amount (2 CFR § 1200). Sandy Area Metro shall apply DOT’s debarment and suspension requirements to itself and each third-party contractor at every tier to the extent required by DOT’s regulations that incorporate the requirements of Office of Management and Budget (OMB), “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)” (2 CFR § 180).

##### **3.6.1.2. System for Award Management**

The System for Award Management (SAM) combines Federal procurement systems and the Catalog of Federal Domestic Assistance into one new system. SAM includes the functionality from the following systems:

- Central Contractor Registry (CCR)
- Federal Agency Registration (Fedreg)
- Online Representations and Certifications Application
- Excluded Parties List System (EPLS)

At its discretion, Sandy Area Metro may collect a debarment and suspension certification from the prospective third-party contractor or include a clause in the third-party contract requiring disclosure. Additionally, it shall be the policy of Sandy Area Metro to verify that the prospective third-party vendor is not listed as a debarred contractor on SAM.

### **3.6.2. Lobbying Certification and Disclosure**

If a third-party contract will exceed \$100,000, before awarding the contract, Sandy Area Metro will obtain a lobbying certification, and if applicable, a lobbying disclosure from a prospective third-party contractor (see DOT regulations, “New Restrictions on Lobbying,” 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352).

### **3.6.3. Additional Requirements**

In addition to the requirements outlined above, there are various requirements that may apply to Sandy Area Metro’s third-party contracts, depending upon the type of procurement and the anticipated dollar value of said contract. It is the responsibility of Sandy Area Metro to assess each procurement and determine the applicable FTA third-party terms and conditions that should be included in the solicitation and contract documents. FTA Circular 4220.1F, Appendix D, has a matrix stipulating these conditions. These conditions may include:

- Federal Civil Rights Laws and Regulations
  - Federal Equal Employment Opportunity (EEO) Requirements
  - Nondiscrimination on the Basis of Sex
  - Nondiscrimination on the Basis of Age
  - Nondiscrimination in Federal Public Transportation Programs
  - Title VI of the Civil Rights Act
  - Environmental Justice
  - Limited English Proficiency (LEP)
  - Nondiscrimination on the Basis of Disability
- Socio-Economic Development Regulations
  - Disadvantaged Business Enterprises (DBE)
  - Small and Minority Firms and Women’s Business Enterprises
  - Sensitive Security Information
  - Seat Belt Use
- Socio-Economic Requirements for the Acquisition of Property and Services
  - Labor Regulations
    - Wage and Hour Requirements
    - Fair Labor Standards
- Environmental Protections
  - Environmental Mitigation
  - National Environmental Policy Act (NEPA)
    - Protections for Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites
    - Clean Air
    - Clean Water

- Recycled Products
  - Other Federal Environmental Protection Requirements
- Energy Conservation
- Preference for U.S. Property--Buy America
- Shipments of Property--U.S. Flag Requirements
  - Shipments by Ocean Vessel
  - Shipments by Air Carrier
  - Project Travel--Use of U.S. Flag Air Carriers
- Technical Restrictions on the Acquisition of Property and Services
  - Intelligent Transportation Systems (ITS)
  - Metric Measurements
  - Use of \$1 Coins
- Rolling Stock--Special Requirements
  - Accessibility
  - Transit Vehicle Manufacturer Compliance with DBE Requirements
  - Minimum Service Life
  - Spare Ratios
  - Air Pollution and Fuel Economy
  - Pre-award and Post Delivery Review
  - Bus Testing
  - In-State Dealers
  - Basis for Contract Award
  - Five-Year Limitation
- Public Transportation Services—Special Requirements
  - Protections for Public Transportation Employees
  - Drug and Alcohol Testing
  - Accessibility
  - Charter Service Restrictions
  - School Bus Restrictions
- Construction – Special Requirements
  - Bonding
  - Bid Guarantee
  - Performance Bond
  - Payment Bond
  - Anti-Kickback
  - Construction Safety
  - Labor Neutrality
  - Prevailing Wages

### **3.7. Bonding**

Some procurements may require Sandy Area Metro to require the vendor to submit a bid bond, performance bond, or payment bond (typically construction projects). When bonding is required, the following conditions will apply.

### **3.7.1. Thresholds**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, ODOT may accept the bonding policy and requirements of the City of Sandy provided that ODOT has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

#### **3.7.1.1. Bid Guarantee**

A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

#### **3.7.1.2. Performance Bond**

A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

#### **3.7.1.3. Payment Bond**

A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **3.7.2. Acceptable Sureties**

Federal rules for non-governmental recipients requires the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, “Surety Companies Doing Business with the United States,” (31 CFR Part 223). For a current list of approved sureties, see Department of the Treasury’s Listing of Approved Sureties (Department Circular 570), <http://fms.treas.gov/c570/c570.html>. As FTA encourages governmental recipient to require similarly acceptable sureties, it shall be the policy of Sandy Area Metro to such accept sureties.

### **3.7.3. Reduced Bonding**

Sandy Area Metro recognizes that bonding costs can be expensive. Sandy Area Metro will accept a local bonding policy that conforms to the minimums described in Section 3.4.1. If bonding levels are sought at levels less than these amounts, Sandy Area Metro must obtain the prior approval of ODOT/FTA. ODOT/FTA shall approve such requests only if it determines that Sandy Area Metro's bonding policy adequately protects the Federal interest in the project.

### **3.7.4. Excessive Bonding**

Sandy Area Metro will adhere to FTA’s rules on excessive bonding requirements (FTA Circular 4220.1F, Chapter IV, § 2h(1)(f)). However, if Sandy Area Metro determines it has a material risk of loss because of a failure of the prospective contractor, bonding requirements may exceed those outlined in Section 3.7.1 only with the prior approval of ODOT/FTA.

### **3.8. Preference for U.S. Property—Buy America**

Any construction contract exceeding \$150,000 entered into by Sandy Area Metro with FTA assistance shall include provisions that require the third-party contractor to provide property produced or manufactured in the United States for use in the construction project that the recipient acquires, unless FTA has granted a waiver authorized by those regulations. FTA cautions that its Buy America regulations are complex and different from the Federal “Buy American Act” regulations in FAR Subparts 25.1 and 25.2.

Property that the contractor acquires to perform its construction activities for the recipient, such as tools, machinery, and other equipment or facilities, is not covered by FTA’s Buy America requirements unless the recipient intends to take possession of that property upon completion of the project. Thus, if a third-party contractor is acquiring property for its general inventory of equipment or facilities to conduct its overall business affairs, Sandy Area Metro may enter the cost of that acquisition into its calculations of overhead amounts applicable to the FTA assisted project irrespective of whether that property would comply with FTA’s Buy America regulations.

### **3.9. Accessibility**

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR § 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR § 1192 and 49 CFR § 38. Notably, DOT incorporated by reference the ATBCB’s “Americans with Disabilities Act Accessibility Guidelines” (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

## **4. SOURCES OF ACQUISITIONS**

### **4.1. Force Account**

Force account means use of Sandy Area Metro's own labor forces and equipment to undertake a project (typically construction, renovation, or repair). The use of force account labor is a project management function, rather than a procurement and contract administration function, except in the general sense of the City of Sandy's ability to perform work with its own forces rather than contracting with another entity to acquire the property or services it needs, and the cost implications of the recipient's decision. Sandy Area Metro does not charge force account labor to its FTA grants.

### **4.2. Joint Procurements**

Sandy Area Metro may participate in joint procurements whereby Sandy Area Metro and one or more other entities agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of products or services. The following requirements apply to Sandy Area Metro's participation in joint procurements:

- Solicitation documents may not be drafted for the purpose of accommodating the needs of other parties that may later want to participate in the benefits of the contract.
- Sandy Area Metro is responsible for ensuring that the joint procurement solicitation and contract complies with all Federal requirements and that the solicitation document and contract includes all required clauses and certifications.

### **4.3. State or Local Government Purchasing Schedules or Purchasing Contracts**

#### **4.3.1. Definition**

FTA uses the term "state or local government purchasing schedule" to mean an arrangement that a State or local government has established with several or many vendors in which those vendors agree to provide essentially an option to the State or local government, and its subordinate government entities, to acquire specific property or services in the future at established prices. These arrangements are somewhat similar to the General Services Administration's (GSA) Cooperative Purchasing Program available for Federal Government use.

The Oregon Department of Administrative Services (DAS) helps the PTD contract for appropriate vehicles to meet the needs of public transportation providers. While ODOT does not purchase vehicles directly, grantees are permitted to purchase vehicles from the online Oregon Procurement Information Network (ORPIN) system operated by DAS, which contains a list of qualified vendors for each vehicle type contracted. There are some vehicles on the contracts that do not fit within Oregon's useful life standards and are not eligible for reimbursement with grant funds. Therefore, PTD has created a crosswalk document that lists each vehicle within the state useful life categories. This document, posted on PTD's Web site, will assist agencies in selecting vehicles and documenting a process that meet all Federal



requirements for funding. The state price agreements were developed by DAS and ODOT procurement and PTD staff with input from transit agencies.

#### **4.3.2. Applicability of Federal Provisions**

When obtaining property or services in this manner, Sandy Area Metro must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the recipient's purchase document. While DAS and ODOT take all precautions to ensure that such provisions are in the original solicitation and contract documents, it is ultimately Sandy Area Metro's responsibility to ensure such documents and certifications are obtained.

If such requirements, clauses, and certifications were not included in the original purchase solicitation and contracts, Sandy Area Metro may request the vendor to append the required Federal clauses in the purchase order or other document that effects the Sandy Area Metro's procurement. When this method is used, Sandy Area Metro shall obtain Buy America certification before entering into the purchase order. This method cannot be used to circumvent FTA's Buy America requirements.

#### **4.3.3. Federal Supply Schedules**

Purchases by Sandy Area Metro from Federal Supply Schedules established by the U.S. General Services Administration (GSA) are limited to the purchase of information technology (IT) products and to products and services to facilitate recovery from a major disaster. The following requirements apply to Sandy Area Metro purchases from GSA schedules:

- Sandy Area Metro is authorized to use GSA schedules for purchases of products and services to facilitate recovery from a major disaster that is declared by the President of the United States. Upon declaration of a major disaster by the President, Sandy Area Metro may purchase products and services from GSA schedules both in advance and in the aftermath of the emergency event. Sandy Area Metro shall be responsible for ensuring that the products and services acquired will only be used for recovery.
- Sandy Area Metro must ensure that all Federal requirements, required clauses and certifications are properly followed and included, whether in the master intergovernmental contract or Sandy Area Metro's purchase document.
- Sandy Area Metro is required to evaluate the reasonableness of prices obtained from GSA schedules. GSA schedule pricing may not be used as a sole or single source for procurement. Sandy Area Metro may only use GSA schedule pricing as one of multiple pricing sources solicited in accordance with its requirements for small purchases described in Section 5.

#### **4.3.4. Existing Contracts**

Sandy Area Metro may use existing contract rights as an acquisition source. An "existing contract" means a contract that, when formed, was intended to be limited to the original parties thereto.

##### **4.3.4.1. Permissible Actions**

Within the conditions set forth below, Sandy Area Metro may use existing contract rights held by another recipient of FTA assistance:

- (a) Exercise of Options – Sandy Area Metro may use contract options held by another recipient of FTA assistance with the following limitations:
  - (1) Consistency with the Underlying Contract – Sandy Area Metro must ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
  - (2) Price – Sandy Area Metro may not exercise an option unless it has determined that the option price is better than prices available in the open market, or that when it intends to exercise the option, the option is more advantageous.
  - (3) Awards Treated as Sole Source Procurements – The following actions constitute sole source awards:
    - i. Failure to Evaluate Options Before Awarding the Underlying Contract – If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.
    - ii. Negotiating a Lower Option Price – Exercising an option after Sandy Area Metro has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured.
  
- (b) Assignment of Contract Rights (“Piggybacking”) – If Sandy Area Metro finds that it has inadvertently acquired contract rights in excess of its needs, it may assign those contract rights to another ODOT subrecipient if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions. Sandy Area Metro may use contractual rights through assignment from another recipient of FTA assistance after first determining the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. Sandy Area Metro need not perform a second price analysis if a price analysis was performed for the original contract; however, Sandy Area Metro must determine whether the contract price or prices originally established are still fair and reasonable before using those rights. Sandy Area Metro shall be responsible for ensuring the contractor’s compliance with FTA’s Buy America requirements and execution of all the required pre-award and post-delivery Buy America review certifications. Before proceeding with the assignment, however, Sandy Area Metro shall review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities that Sandy Area Metro seeks, do not exceed the amounts available under the assigning recipient’s contract.

**4.3.4.2. Impermissible Actions**

Sandy Area Metro may not use Federal assistance to finance:

- (a) Improper Contract Expansion – A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the recipient’s reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity.
  
- (b) Cardinal Changes – A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change or “tag-on”. A change within the scope of the contract is not a cardinal change or “tag-on”.

#### **4.4. The Open Market**

Sandy Area Metro will acquire most of the property and services it needs through procurements in the open market using procedures described in Section 5 of this Manual.

## **5. PROCEDURES FOR OPEN MARKET PROCUREMENTS**

### **5.1. Solicitation of Competitive Price Quotes, Bids or Proposals**

Compliance with the solicitation procedures described in Section 5.4 below will fulfill FTA requirements for “full and open competition”.

### **5.2. Receipt and Evaluation of Unsolicited Proposals**

Sandy Area Metro may enter into contracts based on an unsolicited proposal when authorized by applicable State law or regulation. Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, Sandy Area Metro must seek competition. To satisfy the requirement for full and open competition, Sandy Area Metro must take the following actions before entering into a contract resulting from an unsolicited proposal:

- Publicize its receipt of the unsolicited proposal;
- Publicize an adequate description of the products or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the products or services sought;
- Publicize its interest in acquiring the products or services described in the proposal;
- Provide an adequate opportunity for interested parties to comment or submit competing proposals; and
- Publicize its intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.

If it is impossible to describe the products or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the products or services sought, Sandy Area Metro may make a sole source award to the offeror. A sole source award may not be based solely on the unique capability of the offeror to provide the specific products or services proposed.

### **5.3. Prequalification**

Sandy Area Metro may prequalify bidders, offerors, and products for procurement purposes; however, Sandy Area Metro is not required to do so. The decision of whether to require prequalification for eligibility to participate in procurement shall be made separately for every procurement and shall be approved by the Transit Director.

If Sandy Area Metro opts to prequalify bidders, offerors, and products for procurement purposes, the following conditions apply:

- Sandy Area Metro must ensure that all prequalification lists it uses are current;
- Sandy Area Metro must ensure that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition; and

- Sandy Area Metro must permit potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). Sandy Area Metro is not required to hold a particular solicitation open to accommodate a potential supplier that submits products for approval before or during that solicitation nor must Sandy Area Metro expedite or shorten prequalification evaluations of bidders, offerors, or products presented for review during the solicitation period.

#### **5.4. Solicitation Requirements and Restrictions**

Every procurement solicitation that Sandy Area Metro issues above the micro-purchase level (currently established in Federal guidance at \$10,000), must include the following information and be advertised in a manner that ensures adequate and open competition.

##### **5.4.1. Description of the Property or Services**

The solicitation and the contract awarded thereunder must include a clear and accurate description of Sandy Area Metro's technical requirements for the products or services to be acquired in a manner that provides for full and open competition.

###### **5.4.1.1. Descriptive Elements**

Sandy Area Metro will prepare descriptions of property, goods, or service in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. Detailed product specifications should be avoided if at all possible; however, there is no prohibition against their use when appropriate.

###### **5.4.1.2. Quantities**

Additional quantities or options above Sandy Area Metro's needs at the time of acquisition may not be added to contracts solely to allow assignment of those quantities or options at a later date.

###### **5.4.1.3. Brand Name or Equal**

When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of a specific type of property. The salient characteristics of the named brand that bidders or offerors must provide must be identified.

###### **5.4.1.4. Prohibited Practices**

Solicitations with requirements that contain features that unduly restrict competition may not be used. Sandy Area Metro shall not:

- Impose unreasonable business requirements for bidders or offerors.
- Impose unnecessary experience requirements for bidders and offerors.
- Use prequalification procedures that conflict with the prequalification standards described in Section 5.3.

- Make a noncompetitive award to any person or firm on a retainer contract with Sandy Area Metro if that award is not for the property or services specified for delivery under the retainer contract.
- Impose unreasonable restrictive bonding requirements on bidders and offerors in excess of FTA and state requirements.
- Specify only a “brand name” product without allowing offers of an “equal” product or allowing an “equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable for award.
- Specify in-state or local geographical preferences or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. The only exception expressly mandated or encouraged by Federal law that may be applicable to Sandy Area Metro is the procurement of Architectural and Engineering (A&E) Services. Geographic location may be a selection criterion in the procurement of A&E services if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.
- Engage in practices that result in organizational conflicts of interest. An organizational conflict of interest occurs when any of the following circumstances arise:
  - Lack of Impartiality or Impaired Objectivity – When the bidder or offeror is unable, or potentially unable, to provide impartial and objective assistance or advice to Sandy Area Metro Transit due to other activities, relationships, contracts, or circumstances.
  - Unequal Access to Information – When the bidder or offeror has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
  - Biased Ground Rules – When during the conduct of an earlier procurement, the bidder or offeror has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
- Support or acquiesce in noncompetitive pricing practices between firms or between affiliated companies.
- Take any arbitrary action in the procurement process.

**5.4.2. Evaluation Factors.**

All solicitations issued by shall identify all factors to be used in evaluating bids or proposals. At the discretion of the Transit Director, the relative order of importance and/or weights may be communicated to prospective offerors.

**5.4.3. Permissible Contract Types**

Sandy Area Metro shall state the type of contract that will be awarded in all solicitation documents. The following types of contracts will typically be executed with the successful vendor:

**5.4.3.1. Firm Fixed Price**

A firm fixed price contract includes a price that remains fixed irrespective of the contractor's cost experience in performing the contract. A firm fixed price contract may include an economic price adjustment provision, incentives, or both.

**5.4.3.2. Cost Reimbursement**

A cost-reimbursement contract provides for payment of the contractor's allowable incurred costs, to the extent prescribed in the contract. Allowable costs may include incentives if the recipient believes they can prove helpful. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.

**5.4.4. Prohibitive or Restricted Contract Types**

The following contract types are prohibited or restricted:

**5.4.4.1. Cost Plus Percentage of Cost**

Cost plus Percentage of Cost type contracts are prohibited.

**5.4.4.2. Time and Materials**

Time and Materials type contracts may be used only after a written determination is made that no other contract type is suitable. In addition, the contract between Sandy Area Metro and the Contractor must specify a ceiling price that the Contractor may not exceed except at its own risk.

**5.4.5. Other Federal Requirements Affecting the Property or Services to be Acquired**

The solicitation and resulting contract must identify those Federal requirements that will affect contract scope and performance.

**5.4.6. Other Federal Requirements Affecting the Bidder or Offeror and the Contractor**

The solicitation and resulting contract must identify all Federal requirements that a bidder or offeror must fulfill before and during contract performance.

**5.4.7. Reservation of Right to Award to Other Than the Low Bidder or Offeror**

The solicitation must specifically reserve Sandy Area Metro right to award a contract to other than the low bidder or offeror. If the solicitation documents do not specify this right, Sandy Area Metro will be obligated to award the contract to the low bidder.

#### **5.4.8. Reservation of Right to Reject All Bids or Offers**

The solicitation must specifically reserve Sandy Area Metro's right to reject all bids or offers.

### **5.5. Methods of Procurement**

Sandy Area Metro shall use competitive procedure(s) appropriate for the acquisition undertaken. The procedures used must comply with Oregon and local law as well as with Federal requirements. Federal restrictions vary with the type of procurement method used. The following guidance is based on the requirements of 2 CFR § 200.318 – 200.326, supplemented by FTA policies that address the needs of FTA recipients.

#### **5.5.1. Micro-Purchases**

##### **5.5.1.1. Definition**

Micro-purchases are those purchases of products and services that cost \$10,000 or less, as defined by 2 CFR §200.67 (or current threshold established by Federal Acquisition Regulations (FAR)); for purposes of this policy, Sandy Area Metro will use \$5,000 as the threshold for relatively simple purchases as a means to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost.

##### **5.5.1.2. Approval Authority**

Micro-purchases must be approved in writing by one of the following City of Sandy employees:

- Transit Direct; or
- City Manager.

##### **5.5.1.3. Competition**

Sandy Area Metro may acquire products and services valued at less than \$5,000 without obtaining competitive quotations. Micro-purchases should be distributed equitably among qualified suppliers.

Micro purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though the recipient uses micro-purchase procurement procedures.

##### **5.5.1.4. Prohibited Divisions**

The size or dollar value of procurements may not be divided or reduced merely to come within the micro purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBEs, small and minority firms and women's business enterprises in Sandy Area Metro's Federally-assisted procurements.



**5.5.1.5. Documentation**

Every micro-purchase must be accompanied by a written determination that the price is fair and reasonable and a description of how that determination was made.

**5.5.2. Small Purchases**

**5.5.2.1. Definition**

FTA defines small purchases are those purchases of products and services, including construction services, that cost greater than \$10,000 but not more than \$150,000. For purposes of this policy, Sandy Area Metro will consider small purchase those that cost greater than \$5,000 but not more than \$150,000.

**5.5.2.2. Approval Authority**

Small purchases must be approved in writing by one of the following City of Sandy employees:

- Transit Director; and/or
- City Manager.

**5.5.2.3. Required Competition**

Price or rate quotations must be obtained from an adequate number of qualified sources. It is the responsibility of Sandy Area Metro to ensure that an adequate number of quotations, bids, or proposals are received.

**5.5.2.4. Prohibited Divisions**

The size or dollar value of procurements may not be divided or reduced merely to come within the small purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBEs, small and minority firms and women’s business enterprises in Sandy Area Metro’s Federally-assisted procurements.

**5.5.2.5. Documentation**

Every small purchase must be documented in the grantee’s written procurement history file. The level of documentation is stipulated in Section 6.6.1.

For small purchases, price quotations may be oral or written.

**5.5.2.6. Special Considerations**

Sandy Area Metro may acquire products and services directly from State contract vendors in lieu of competitively procuring such products and services itself through the small purchase method of procurement.

Small purchases are exempt from FTA's Buy America requirements.

Sandy Area Metro reserves the right to use formal purchase methods, even if small purchase thresholds are met, if the Transit Director believes it is in the best interests of the City of Sandy to do so.

### **5.5.3. Formal Purchases**

#### **5.5.3.1. Definition**

Formal purchases are those purchases of products and services that cost greater than the current Federal threshold of \$150,000, as defined in 2 CFR § 200.88. For purposes of this policy, Sandy Area Metro will use formal procedures for all purchases over \$150,000.

#### **5.5.3.2. Approval Authority**

Large purchases must be approved in writing by the following Sandy Area Metro employees or officials:

- City Council; or
- City Manager.

No further delegation of approval authority for large purchases may be made.

#### **5.5.3.3. Procurement Methods**

There are two primary methods of procurement for large purchases of products and services:

- Sealed Bid method; and
- Competitive Proposal method.

#### **5.5.3.4. Required Competition**

Formal bids and competitive proposals must be publicly advertised.

For formal purchases by the sealed bid method of procurement, two or more responsible bidders must be willing and able to compete effectively for the business.

For formal purchases by the competitive proposal method of procurement, two or more offerors must be willing and able to submit an offer or proposal.

#### **5.5.3.5. Required Documentation**

Every formal purchase must, at a minimum, be supported by a written independent cost estimate, formal bids or proposals, a written cost or price analysis as appropriate, a written justification and detailed rationale for contractor selection (including application of evaluation criteria) and a written determination of the responsibility of the contractor. Additional

documentation requirements are dependent upon the formal procurement method that is utilized to make the purchase.

#### **5.5.3.6. Special Considerations**

Sandy Area Metro may acquire products and services via state contract in lieu of competitively procuring such products and services itself through the sealed bid and competitive proposal methods of procurement.

#### **5.5.3.7. Procedural Methods for Sealed Bids**

The sealed bid method of procurement is a formal method in which bids are publicly solicited and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the Invitation for Bids, is lowest in price. The vehicle through which bids are solicited is an Invitation for Bids (IFB). The IFB document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a bid, and the forms on which bids must be submitted.

- (a) When Appropriate – The sealed bid method of procurement is the preferred method for acquiring products and services that, including construction services, cost greater than \$150,000. The sealed bid method of procurement may also be used for small purchases if it is determined to be appropriate. The sealed bid method of procurement is appropriate if the following conditions apply:
  - (1) Precise Specifications – A complete, adequate, precise, and realistic specification or purchase description is available.
  - (2) Adequate Sources – Two or more responsible bidders are willing and able to compete effectively for the business.
  - (3) Fixed Price Contract – The procurement generally lends itself to a firm fixed price contract.
  - (4) Price Determinative – The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.
  - (5) Discussions Unnecessary – Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.
  
- (b) Requirements for Sealed Bids – The following requirements apply to the sealed bid method of procurement:
  - (1) Publicity – The Invitation for Bids must be publicly advertised.
    - i. The Transit Director shall ensure that sufficient time is allowed to prepare bids before the date of bid opening.

- ii. Notice of bidding opportunities may be provided in other ways in addition, but not as a substitute, to a published notice. The methods may include, but not necessarily be limited to:
  - a. Direct notice, based on compiled vendor lists or from pre-qualification list, sent to prospective offerors; or
  - b. Use of advertisement by electronic means.
- (2) Adequate Sources – Bids must be solicited from an adequate number of known suppliers.
- (3) Adequate Specifications – The Invitation for Bids, including any specifications and pertinent attachments, must describe the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
- (4) Sufficient Time – Bidders must be allowed sufficient time to prepare bids before the date of bid opening.
- (5) Public Opening – All bids must be publicly opened at the time and place prescribed in the Invitation for Bids.
- (6) Fixed Price Contract – A firm fixed price contract must be awarded in writing to the lowest responsive and responsible bidder unless the Invitation for Bids specifically allowed for award of a fixed price incentive contract or the inclusion of an economic price adjustment provision.
- (7) Rejection of Bids – Any or all bids may be rejected if there is a sound, documented business reason.

#### **5.5.3.8. Competitive Proposals**

The competitive proposal method of procurement is a formal method in which written proposals are publicly solicited and a contract is awarded to the responsible offeror whose proposal, taking into consideration price and other factors, is considered to be the most advantageous to Sandy Area Metro or that is considered to be the “best value” to Sandy Area Metro. The vehicle through which proposals are solicited is Request for Proposals (RFP). The RFP document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a proposal and the forms on which proposals must be submitted, if applicable.

- (a) When Appropriate – The competitive proposal method of procurement is appropriate for the acquisition of products and services that cost greater than \$150,000 when the nature of the procurement does not lend itself to sealed bidding and Sandy Area Metro expects that more than one source will be willing and able to submit a proposal. The competitive proposal method of procurement may also be used for small purchases if it is determined to be appropriate. The competitive proposal method of procurement may not be used for the procurement of construction services. The competitive proposal method of procurement is appropriate when any of the following circumstances are present:

- (1) Type of Specifications – The products or services to be acquired are described in a performance or functional specification, or if described in detailed technical specifications, other circumstances such as the need for

discussions or the importance of basing contract award on factors other than price alone are present.

- (2) Uncertain Number of Sources – Uncertainty about whether more than one bid will be submitted in response to an Invitation for Bids.
  - (3) Price Alone Not Determinative – Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.
  - (4) Discussions Expected – Separate discussions with individual offerors are expected to be necessary after they have submitted their proposals.
- (b) Requirements for Competitive Proposals – The following requirements apply to the competitive proposal method of procurement:
- (1) Publicity – The Request for Proposals must be publicly advertised.
  - (2) Evaluation Factors – All evaluation factors and their relative importance must be specified in the solicitation, but numerical or percentage ratings or weights need not be disclosed.
  - (3) Adequate Sources – Proposals must be solicited from an adequate number of qualified sources.
  - (4) Evaluation Method – A specific method must be established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
  - (5) Price and Other Factors – An award must be made to the responsible offeror whose proposal is most advantageous to Sandy Area Metro or that represents the “best value” to Sandy Area Metro with price and other factors considered.
  - (6) Best Value – Sandy Area Metro may award a contract to the offeror whose proposal provides the greatest value to Sandy Area Metro. To do so, the solicitation must inform potential offerors that the award will be made on a “best value” basis and identify what factors will form the basis for award. Sandy Area Metro must base its determination of which proposal represents the “best value” on an analysis of the tradeoff of qualitative technical factors and price or cost factors.

#### **5.5.3.9. Two-Step Procurements**

Sandy Area Metro may use two-step procurement procedures in both sealed bid and competitive proposal procurements, provided the opportunity for full and open competition is retained.

- (a) Review of Technical Qualifications and Approach – The first step is a review of the prospective contractors’ technical approach to Sandy Area Metro’s request and their technical qualifications to carry out that approach followed by the establishment of a competitive range consisting of prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.
- (b) Review of Bids and Proposals Submitted by Qualified Prospective Contractors – The second step consists of soliciting and reviewing complete bids or proposals, including

price, submitted by each prospective contractor determined to be qualified. Absent exceptional circumstances, bids or proposals must be solicited from at least three qualified prospective contractors.

#### **5.5.3.10. Architectural and Engineering (A&E) Services and Other Services**

FTA's enabling legislation at 49 U.S.C. § 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the "Brooks Act," 40 U.S.C. § 1101 through 1104, to acquire A&E services.

(a) Qualifications-Based Procurement Procedures Required – Sandy Area Metro must use qualifications-based procurement procedures to acquire architectural and engineering (A&E) services as well as certain other services that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. In addition to A&E services, other services that must be procured by qualifications-based procurement procedures include:

- Program management;
- Construction management;
- Feasibility studies;
- Preliminary engineering;
- Design, architectural, engineering;
- Surveying, mapping; and
- Other related services.

The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used.

(b) Qualifications-Based Procurement Procedures Prohibited – Unless FTA determines otherwise in writing, qualifications-based procurement procedures may not be used to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. Qualifications-based procurement procedures may not be used for actual construction, alteration or repair to real property.

(c) Qualifications-Based Procurement Procedures – The following procedures apply to qualifications-based procurements:

- (1) Qualifications – Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award.
- (2) Price – Price is excluded as an evaluation factor.
- (3) Most Qualified – Price negotiations are first conducted with only the most qualified offeror.

- (4) Next Most Qualified - Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.

## **5.6. Procurement by Other Than Full and Open Competition**

Normally, Sandy Area Metro must provide for full and open competition when soliciting bids or proposals. Federal regulations at 2 CFR § 200.320(f)(1) – (4), however, acknowledges that under certain circumstances, a recipient may conduct procurements without providing for full and open competition.

### **5.6.1. When Appropriate**

Noncompetitive procurement procedures may only be used when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances are present:

#### **5.6.1.1. Competition Adequacy**

After soliciting several sources and receiving an inadequate response, Sandy Area Metro shall review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more price quotes, bids or proposals. If Sandy Area Metro determines that the specifications are not unduly restrictive, and changes cannot be made to encourage greater competition, Sandy Area Metro may determine the original competition adequate and complete the purchase from among the sources that submitted a price quote, bid or proposal. A cost analysis must be performed in lieu of a price analysis when this situation occurs.

#### **5.6.1.2. Sole Source**

When Sandy Area Metro requires products or services available from only one responsible source, and no other products or services will satisfy its requirements, Sandy Area Metro may make a sole source award. In addition, when Sandy Area Metro requires an existing contractor to make a change to its contract that is beyond the scope of that contract, Sandy Area Metro will consider the change a sole source award that must be justified. Sole source awards are only appropriate when one of the following conditions apply:

- (a) Unique Capability or Availability – The products or services are available from only one source if one of the conditions described below is present:
  - (1) Unique or Innovative Concept – The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted and is available to Sandy Area Metro

only from one source and has not in the past been available to Sandy Area Metro from another source.

- (2) Patents or Restricted Data Rights – Patent or data rights restrictions preclude competition.
  - (3) Substantial Duplication Costs – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
  - (4) Unacceptable Delay – In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling Sandy Area Metro's needs.
- (b) Single Bid or Proposal – Upon receiving a single bid or proposal in response to a solicitation, Sandy Area Metro should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.
- (1) Adequate Competition – Competition is adequate when the reasons for a single response were caused by conditions beyond Sandy Area Metro's control.
  - (2) Inadequate Competition – Competition is inadequate when the reasons for a single response were caused by conditions within Sandy Area Metro's control.
- (c) Unusual and Compelling Urgency – Sandy Area Metro may limit the number of sources from which it solicits bids or proposals when Sandy Area Metro has such an unusual and urgent need for the products or services that Sandy Area Metro would be seriously injured unless it were permitted to limit the solicitation. Sandy Area Metro may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the products or services.
- (d) Authorized by ODOT – Sandy Area Metro may request permission from ODOT to allow it to use noncompetitive proposals for a particular procurement.
- (e) When Prohibited – Less than full and open competition is not justified based on:
- (1) Failure to Plan – Sandy Area Metro's lack of advance planning, resulting in limited competition, is not justification for a sole source or single bid award.
  - (2) Limited Availability of Federal Assistance – Concerns about the amount of Federal assistance available to support the procurement.
- (f) Procurement Procedures – The following requirements apply when Sandy Area Metro completes a procurement utilizing less than full and open competition:
- (1) Potential Sources – Sandy Area Metro must solicit offers from as many potential sources as is practicable under the circumstances.



- (2) Sole Source Justification – Sandy Area Metro must justify all sole source procurements in writing. Sole source procurement justifications must describe the reasons for why a sole source procurement is appropriate, state which of the authorized justifications listed in Section 5.6.1.2 are applicable, include a cost analysis and be signed by the Transit Director. If Sandy Area Metro decides to solicit an offer from only one source, Sandy Area Metro must justify its decision in writing. The written justification must include the same elements as a sole source justification except that it must state which of the authorized justifications listed in Section 5.6.1.2 are applicable to the sole source purchase.
  - (3) Cost Analysis – Sandy Area Metro must prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits. A price analysis shall not be adequate to justify a sole source purchase.
- (g) Exception for Procurement Activities Using Non-FTA Funds – When it is determined by the Transit Director to be in the best interest of Sandy Area Metro, noncompetitive procurement procedures may be utilized to acquire professional or other transportation-related services that do not involve the use of FTA financial assistance. Any such determination must be made in writing and signed by the Transit Director.

## **5.7. Evaluation Requirements**

The following standards shall apply to all evaluations of bids or proposals conducted by Sandy Area Metro.

### **5.7.1. General**

When evaluating bids or proposals received in response to a solicitation, Sandy Area Metro shall consider all evaluation factors specified in the solicitation documents and shall evaluate the bids or offers proposals only on the evaluation factors included in those solicitation documents. Sandy Area Metro may not modify its evaluation factors after bids or proposals have been received without re-opening the solicitation.

### **5.7.2. Options**

The following standards shall apply when awarding contracts that include options:

#### **5.7.2.1. Evaluation Required**

In general, Sandy Area Metro must evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded.

#### **5.7.2.2. Evaluation Not Required**

Sandy Area Metro need not evaluate bids or offers for any option quantities when Sandy Area Metro does not intend to exercise those options after the contract is awarded or if it determines that evaluation would not otherwise be in its best interests.

#### **5.7.2.3. Evaluators**

In addition to evaluators with experience in technical or public policy matters related to the procurement, other evaluators may also include auditors and financial experts to the extent that the Transit Director determines would be necessary or helpful. If Sandy Area Metro lacks qualified personnel within its organization, it may solicit evaluators from other transit organizations or may contract for evaluation services. If it does so, the procurement procedures in this policy will apply to those contracts and to those contractors selected to perform evaluation functions on behalf of the recipient.

### **5.8. Contract Award Requirements**

The following standards shall apply to all contract award decisions made by Sandy Area Metro:

#### **5.8.1. Award to Other Than the Lowest Bidder or Offeror**

Sandy Area Metro may award a contract to other than the lowest bidder if the award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53, including improved long-term operating efficiency and lower long-term costs. Sandy Area Metro may also award a contract to other than the offeror whose price proposal is lowest, when stated in the evaluation factors of the solicitation. In both cases, Sandy Area Metro must include a statement in its solicitation document reserving the right to award the contract to other than the low bidder or offeror.

##### **5.8.1.1. Award Only to a Responsible Bidder or Offeror**

Sandy Area Metro may only award contracts to responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract and who demonstrate that its proposed subcontractors also qualify as responsible. Sandy Area Metro must consider such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources when making a determination of contractor responsibility. Sandy Area Metro must also ensure that the contractor is not listed as a debarred or suspended contractor on the System for Award Management (SAM), which is maintained by the General Services Administration (GSA), at the time of contract award. Entities that are listed as debarred or suspended contractors on SAM may not be determined to be responsible contractors by Sandy Area Metro. For every procurement action above the micro-purchase level, Sandy Area Metro must make a written determination of the responsibility of the contractor and include such determination in the applicable contract file (See Section 3.6).

To designate a prospective contractor “responsible” as required by 49 U.S.C. § 5325, Sandy Area Metro, at a minimum, must determine and ensure that the prospective contractor satisfies the following criteria described herein. In addition to being otherwise qualified and eligible to receive the contract award under applicable laws and regulations, a responsible contractor:

- (a) Integrity and Ethics – Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A).
- (b) Debarment and Suspension – Is neither debarred nor suspended from Federal programs under DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4.
- (c) Affirmative Action and DBE – Is in compliance with the Common Grant Rules’ affirmative action and FTA’s Disadvantaged Business Enterprise requirements.
- (d) Public Policy – Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. § Section 5325(j)(2)(B).
- (e) Administrative and Technical Capacity – Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D).
- (f) Licensing and Taxes – Is in compliance with applicable licensing and tax laws and regulations.
- (g) Financial Resources – Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D).
- (h) Production Capability – Has, or can obtain, the necessary production, construction, and technical equipment and facilities.
- (i) Timeliness – Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- (j) Performance Record – Is able to provide a:
  - (1) Current Performance – Satisfactory current performance record; and
  - (2) Past Performance – Satisfactory past performance record in view of its records of long-time performance or performance with a predecessor entity, including:
    - i. Sufficient Resources. Key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance,
    - ii. Adequate Past Experience. Past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in the recipient’s solicitation, and
    - iii. Any Past Deficiencies Not the Fault of the Bidder or Offeror. A prospective bidder or offeror that is or recently has been seriously deficient in contract performance is presumed to be non-responsible, unless the recipient

determines that the circumstances were properly beyond the bidder or offeror's control, or unless the bidder or offeror has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of non-responsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance. ODOT expects Sandy Area Metro to consider the number of the bidder or offeror's contracts involved and the extent of deficient performance in each contract when making this determination.

#### **5.8.1.2. Rejection of Bids and Proposals**

Sandy Area Metro may reject all bids or proposals submitted in response to an Invitation for Bids or Request for Proposals. Sandy Area Metro must include a statement in its solicitation document reserving the right to reject all bids or proposals.

- (a) Extent and Limits of Contract Award – The selection of a contractor to participate in one aspect of a project does not, by itself, constitute a sole source selection of the contractor's wholly owned affiliates to perform other work in connection with the project.

### **5.9. Independent Cost Estimate and Cost and Price Analysis**

#### **5.9.1. Independent Cost Estimate**

For every procurement, Sandy Area Metro shall make a written independent estimate of cost prior to receiving price quotes, bids or proposals.

#### **5.9.2. Cost or Price Analysis**

Sandy Area Metro shall perform a cost or price analysis in connection with every procurement over \$150,000 and for all contract modifications.

##### **5.9.2.1. Price Analysis**

If Sandy Area Metro determines that competition was adequate, a written price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price.

##### **5.9.2.2. Cost Analysis**

Sandy Area Metro must perform or obtain a cost analysis when:

- (a) A price analysis will not provide sufficient information to determine the reasonableness of the contract cost.
- (b) When the offeror submits elements of the estimated cost.

(c) When only a sole source is available, even if the procurement is a contract modification.

(d) In the event of a change order.

**5.9.3. Approval of Contracts**

All contracts must be signed by the City Manager.

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## **6. CONTRACT ADMINISTRATION REQUIREMENTS AND CONSIDERATIONS**

### **6.1. Sandy Area Metro Staff Responsibilities**

Prior to execution of third-party contracts, Sandy Area Metro shall designate a Project Manager to serve as Sandy Area Metro's principal contact with the contractor and as the primary administrator of the contract. The designated Project Manager for each contract shall have responsibility for directing and overseeing the work performed by the contractor; reviewing and approving deliverables and invoices from the contractor; determining percentage of contract completion for progress payments (if applicable); making recommendations on the exercise of contract options (if applicable); recommending contract changes; preparing justifications for contract changes; performing independent cost estimates and cost or price analyses for contract changes; making recommendations on approval or rejection of subcontractors; assisting with the resolution of contract disputes; making recommendations on contract termination or other contractor disciplinary actions; maintaining complete contract files; and other contract administration duties that may be necessary.

### **6.2. Administrative Restrictions on the Acquisition of Property and Services**

The following Federal laws and regulations impose administrative requirements, many of which will affect specific third-party procurements.

#### **6.2.1. Legal Eligibility**

The property or services acquired must be eligible for support under the restrictions accompanying the Federal statute authorizing the Federal assistance to be used.

#### **6.2.2. Scope of the Project**

The property or services acquired must be eligible for support within the scope of the underlying grant or cooperative agreement from which the Federal assistance to be used is derived.

#### **6.2.3. Period of Performance**

Sandy Area Metro will use sound business judgment and be judicious in establishing and extending a contract's period of performance.

##### **6.2.3.1. General Standards**

The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. Sandy Area Metro will also consider competition, pricing, fairness, and public perception. Sandy Area Metro's procurement files will document its rationale for determining the performance period designated for each contract.

##### **6.2.3.2. Time Extensions**

Consistent with the general tone of FTA Circular 4220.1F, contract time extensions shall be considered in light of whether they are permissible changes or impermissible cardinal changes. Once Sandy Area Metro awards a third-party contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification.

**6.2.3.3. Authority to Extend**

The City Manager has the sole authority to approve and execute contract modifications. The Transit Director for the contract shall recommend all contract time; prior to making a recommendation for a contract time extension. The Transit Director shall prepare a written justification and cost analysis (if applicable) for the contract time extension and shall negotiate the appropriate contract modification with the contractor.

**6.3. Federal Cost Principles**

Federal rules require project costs to conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient.

OMB guidance for grants and agreements, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR § 200, applies to project costs incurred Sandy Area Metro.

**6.4. Payment Provisions**

Sandy Area Metro will follow the provisions of this section when using FTA funds to support its third-party contracts.

**6.4.1. Financial Support for the Project**

Costs may only be incurred by Sandy Area Metro if ODOT has awarded a financial assistance contract to Sandy Area Metro.

**6.4.1.1. Progress Payments**

Progress payments are payments for contract work that has not been completed. Sandy Area Metro may use ODOT assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

**6.4.1.2. Adequate Security for Progress Payments**

Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement



scenarios and factual circumstances. Sandy Area Metro should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.

**6.4.1.3. Adequate Documentation**

Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.

**6.4.1.4. Percentage of Completion Method**

Federal rules require that any progress payments for construction contracts be made on a percentage of completion method described therein. Sandy Area Metro, however, may not make progress payments for other than construction contracts based on this percentage method.

**6.5. Protections Against Performance Difficulties**

Sandy Area Metro shall include provisions in its third-party contracts that will reduce potential problems that might occur during contract performance, as follows:

**6.5.1. Changes**

Sandy Area Metro shall include provisions that address changes and changed conditions in all third-party contracts except for routine supply contracts.

**6.5.2. Remedies**

Sandy Area Metro shall include provisions that address remedies in its third-party contracts. Provisions related to remedies may include provisions for:

**6.5.2.1. Liquidated Damages**

Sandy Area Metro may use liquidated damages if Sandy Area Metro reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. Rate and measurement standards must be calculated to reasonably reflect Sandy Area Metro's costs should the standards not be met and must be specified in the solicitation and contract. The assessment for damages may be established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The contract file must include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account.

**6.5.2.2. Violation or Breach**

Third party contracts exceeding \$100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third-party contractor.

**6.5.2.3. Suspension of Work**

Sandy Area Metro may include provisions pertaining to suspension of work in its third-party contracts.

**6.5.2.4. Termination**

Termination for cause and termination for convenience provisions must be included in third-party contracts exceeding \$10,000.

**6.6. Contents of Complete Contract Files**

The following documents shall comprise the contents of a complete contract file for procurements above the micro-purchase level:

**6.6.1. Written Record of Procurement History**

Sandy Area Metro shall maintain written records detailing the history of the procurement, including records relating to:

**6.6.1.1. Procurement Method**

Sandy Area Metro must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive.

**6.6.1.2. Contract Type**

Sandy Area Metro must state the reasons for selecting the contract type it used.

**6.6.1.3. Contractor Selection**

Sandy Area Metro must state its reasons for contractor selection or rejection, including written justification and evaluation documents.

**6.6.1.4. Contractor Responsibility**

Sandy Area Metro must provide a written determination of responsibility for the successful contractor.

**6.6.1.5. Cost or Price**

Sandy Area Metro must evaluate and state its justification for the contract cost or price, including the independent cost estimate and cost or price analysis.

**6.6.1.6. Reasonable Documentation**

Sandy Area Metro must retain documentation commensurate with the size and complexity of the procurement, including documents related to solicitation, receipt and evaluation of offers, and contract award, negotiation and execution.

**6.7. Access to Records**

Federal rules (49 U.S.C. § 5325(g)) provide FTA and ODOT officials, the Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

**6.8. Contract Administration and Close-Out Documents**

Sandy Area Metro shall maintain written records detailing the performance and close-out of the contract, including records relating to:

**6.8.1. Contractor Performance**

Sandy Area Metro must maintain documents related to contractor adherence to budget and schedule, compliance with contract terms and conditions, DBE participation, progress reports, disputes and disciplinary actions.

**6.8.2. Contract Deliverables**

Sandy Area Metro must maintain copies of all contract deliverables and records relating to approval, rejection and requested modifications of contract deliverables.

**6.8.3. Contract Changes**

Sandy Area Metro must maintain copies of all contract modifications, including documentation related to the determination of need, written justification and rationale, cost analysis, negotiation and execution.

**6.8.4. Contract Payments**

Sandy Area Metro must retain documentation of invoices, approval of payments, requests for modifications to invoices, determination of percentage of contract completion for partial payments (if applicable), and ownership of title to partial work products.

#### **6.8.5. Contract Close-Out**

Sandy Area Metro must retain documentation related to contractor performance and evaluation, approval of final deliverables and payments, transfer of title to complete work products to Sandy Area Metro, and contract audit and final reconciliation.

#### **6.9. Protest Procedures**

##### **6.9.1. Statement of Policy**

Sandy Area Metro is responsible for resolving all contractual and administrative issues, including protests of evaluations and contract awards, arising out of its third-party procurements using good administrative practices and sound business judgment.

In general, ODOT will not substitute its judgment for that of Sandy Area Metro unless the matter is primarily a Federal concern. Nevertheless, ODOT and FTA can become involved in Sandy Area Metro's administrative decisions when a Sandy Area Metro protest decision is appealed to ODOT.

Sandy Area Metro shall give timely notification to ODOT when it receives a third-party procurement protest and will keep FTA informed about the status of any such protest. Sandy Area Metro shall disclose all information about any third-party procurement protest to ODOT upon request.

Sandy Area Metro's procedure for addressing third party procurement protests is described in Paragraph 6.9.2 below. Sandy Area Metro shall insert its protest procedure in all solicitation documents for products and services having an estimated value of \$100,000 or greater.

##### **6.9.2. Sandy Area Metro Staff Responsibilities**

The following staff responsibilities shall be assigned in all protests:

- Transit Director – Responsibilities include: ensuring that the Sandy Area Metro Protest Procedure is included in all solicitation documents; and providing information to and assisting the City Manager and Legal Counsel with the resolution of protests.
- Legal Counsel – Responsibilities include: reviewing all procurement protests; and advising and assisting the Sandy Area Metro as needed with the resolution of all procurement protests.

##### **6.9.3. Solicitation Provision**

Sandy Area Metro shall insert the following provision in all solicitation documents:

#### **6.9.3.1. Pre-Proposal Protests**

All protests concerning solicitation specifications, criteria and/or procedures shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Transit Director as specified below not later than ten (10) business days prior to the deadline for submission of bids/proposals.

The Transit Director may, within his or her discretion, postpone the deadline for submission of bids/proposals, but in any case, shall provide a written response to all protests not later than five (5) business days prior to the deadline for submission of bids/proposals. If the deadline for submission of bids/proposals is postponed by the Transit Director as the result of a protest the postponement will be announced through an addendum to the solicitation.

The decision by the Transit Director shall be the final agency decision on the matter but shall be subject to judicial review as set forth by FTA below.

#### **6.9.3.2. Pre-Award Protests**

With respect to protests made after the deadline for submission of bids/proposals but before contract award by Sandy Area Metro, protests shall be limited to those protests alleging a violation of Federal or State law, a challenge to the bids/proposals evaluation and award process, Sandy Area Metro's failure to have or follow its protest procedures or its failure to review a complaint or protest. Such protests shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Transit Director as specified below not later than five (5) business days after the Recommendation for Contract Award announcement by Sandy Area Metro.

The Transit Director may, within his or her discretion, postpone the award of the contract, but in any case, shall provide a written response to all protests not later than three (3) business days prior to the date that Sandy Area Metro shall announce the contract award.

The decision by the Transit Director shall be the final agency decision on the matter but shall be subject to judicial review as set forth or review by ODOT as specified below.

#### **6.9.4. Requirements for Protests**

All protests must be submitted to Sandy Area Metro in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail), with sufficient documentation, evidence and legal authority to demonstrate that the Protestor is entitled to the relief requested. The protest must be certified as being true and correct to the best knowledge and information of the Protestor and be signed by the Protestor. The protest must also include a mailing address to which a response should be sent.

Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action by Sandy Area Metro.

All protests must be directed in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Transit Director at the address shown in the solicitation documents.

#### **6.9.5. Protest Response**

The Transit Director shall issue written responses to all protests received by the required protest response dates. All protest responses shall be transmitted by first-class U.S. Postal Service to the address indicated in the protest letter.

For convenience, Sandy Area Metro will also send a copy of the response to a protest to the Protester by facsimile and/or electronic mail if a facsimile number and/or electronic mail address are indicated in the protest letter. The protest response transmitted by U.S. Postal Service shall be the official Sandy Area Metro response to the protest and Sandy Area Metro will not be responsible for the failure of the Protester to receive the protest response by either facsimile or electronic mail.

#### **6.9.6. Review of Protests by ODOT**

All protests involving contracts financed with Federal assistance shall be disclosed to ODOT. Protesters shall exhaust all administrative remedies with Sandy Area Metro prior to pursuing protests with ODOT. ODOT limits its reviews of protests to: a grantee's failure to have or follow its protest procedures; a grantee's failure to review a complaint or protest when presented an opportunity to do so; or violations of Federal law or regulation. Appeals to ODOT must be received within five (5) working days of the date the Protester has received actual or constructive notice of Sandy Area Metro final decision or within five (5) working days of the date the Protester has identified other grounds for appeal to ODOT.



## Staff Report

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**Meeting Date:**

**From** Andi Howell, Transit Director  
Statewide Transportation Improvement Fund Intergovernmental  
**SUBJECT:** Agreement

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**Background:**

House Bill 2017, Keep Oregon Moving, created a statewide, stable funding source for transit, known as the Statewide Transit Improvement Fund or STIF.

Per Legislative Rules, STIF funds are to be distributed to each Oregon Department of Transportation (ODOT) region through the region's mass transportation district or the County if a mass transportation district does not exist.

Sandy is located in ODOT region 1. TriMet is the mass transportation district in region 1 and therefore designated as the "Qualified Entity" to receive and distribute STIF funds.

The attached Intergovernmental Agreement is the contract that will oversee how the funds are distributed, audit requirements and compliance reporting.

**Recommendation:**

Authorize the Mayor to sign the Intergovernmental Agreement on behalf of the City.

**Budgetary Impact:**

\$57,708 for STIF approved FY19 expenditures. \$131,068 for STIF approved FY20 expenditures. \$150,097 for STIF approved FY21 expenditures.

**TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON  
SUBRECIPIENT AGREEMENT [GP200806EV]  
DISBURSEMENT OF STATE OF OREGON, PUBLIC TRANSIT SECTION  
SPECIAL TRANSPORTATION IMPROVEMENT FUNDS**

**PARTIES:**

1. Tri-County Metropolitan Transportation District of Oregon (TriMet), a mass transit district organized under ORS Chapter 267. TriMet is acting as a Qualified Entity designated to distribute funds pursuant to ORS Chapter 184.751 *et seq* to authorized entities that provide Public Transportation Services from the State of Oregon Department of Transportation (ODOT), Public Transit Division, Special Transportation Improvement Fund (STIF) for the purposes set forth at ORS 184.758. Pursuant to Resolution No. 18-10-72, TriMet's Board of Directors authorized TriMet to disburse STIF Formula Funds received by TriMet to eligible Subrecipients in accordance with the STIF Plan.
2. City of Sandy, by and through its Sandy Area Metro ("SAM") Department (Subrecipient).

**DEFINITIONS:**

As used in this Agreement, which includes all Exhibits:

1. "Americans with Disabilities Act" ("ADA") means section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008.
2. "Capital Asset" means real property or tangible items purchased or leased with STIF moneys, including without limitation vehicles and structures, with a purchase price of \$5,000 or more and a useful life of at least one year.
3. "Commission" means the Oregon Transportation Commission ("OTC") established under ORS 184.612.
4. "Fiscal Year" means the annual period which begins on July 1 and ends on June 30.
5. "Low-Income Household" means a household the total income of which does not exceed 200% of the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2) for the 48 Contiguous States and the District of Columbia.
6. "Project" means a public transportation improvement activity or group of activities that is (i) eligible for STIF moneys; (ii) included in a STIF Plan adopted by the Commission; and (iii) funded by this Agreement.
7. "Project Manager(s)" means the individuals identified in Section 12 of this Agreement who are authorized by TriMet and Subrecipient respectively to send and receive communications regarding this Agreement.
8. "Public Transportation Services" means any form of passenger transportation by car, bus, or other conveyance, either publicly or privately owned, which provides service to the general public (not including charter, sightseeing, or exclusive school bus service) on a regular and continuing basis. Such transportation may be for purposes such as health care, shopping, education, employment, public services, personal business, or recreation.



9. "Public Transportation Service Provider" means a Qualified Entity or a city, county, Special District, Intergovernmental Entity or any other political subdivision or municipal or Public Corporation that provides Public Transportation Services.
10. "Qualified Entity" means, a county in which no part of a Mass Transit District or Transportation District exists, a Mass Transit District, a Transportation District or an Indian Tribe.
11. "Recipient" means a Qualified Entity or Public Transportation Service Provider that has a STIF Plan approved by the Commission or enters into an agreement directly with ODOT to receive STIF Formula Funds.
12. "Representation Letter" means a letter prepared by a Subrecipient's external auditors and sign by Subrecipient's senior management that attests to the accuracy of the statements that the Subrecipient has submitted to the auditors for their analysis.
13. "Satisfactory Continuing Control" means the legal assurance that a Capital Asset will remain available to be used for its originally authorized purpose throughout its useful life or until disposition.
14. "STIF" or "Statewide Transportation Improvement Fund" means the fund established under ORS 184.751.
15. "STIF Formula Fund" means up to 90 percent of the Statewide Transportation Improvement funds to be disbursed to Qualified Entities conditioned upon the Commission's approval of a STIF Plan, pursuant to ORS 184.758(1)(a).
16. "STIF Formula Fund Cycle" means the time period between Fiscal Years 2019 through the end of Fiscal Year 2021 (June 30, 2021) that is programmed in the STIF Plan.
17. "STIF Plan" means a public transportation improvement plan that is approved by TriMet's Board of Directors and submitted to the Oregon Department of Transportation for review and approval by the Commission in order for TriMet to receive a share of the STIF Formula Fund.

**RECITALS:**

1. ORS 184.751 establishes the Statewide Transportation Improvement Fund, which appropriates funds to the Oregon Department of Transportation to finance investments and improvements in public transportation services.
2. The STIF Formula Fund is intended to improve Public Transportation Services for current and potential future Oregon transit users by distributing moneys to Qualified Entities. STIF Formula Funds are not intended to supplant local funding sources to maintain existing services.
3. The Commission has approved TriMet's multi-year Plan for use of STIF Formula Funds through the end of Fiscal Year 2021. TriMet is a Recipient of STIF Formula Funds as it is authorized to receive STIF Formula Funds directly from the Oregon Department of Transportation. TriMet's STIF Plan consists of numerous Projects to provide Public Transportation Services in TriMet's area of responsibility based on anticipated STIF Formula Funds.
4. Subrecipient is authorized to receive STIF Formula Funds and provide Public Transportation Services in and around Sandy, Oregon. Subrecipient provides Public Transportation Services in TriMet's Area of Responsibility as defined by OAR 732-040-0005(5).
5. TriMet's STIF Plan anticipates sufficient future STIF Formula Funds for Subrecipient for a Project or Projects that provide Public Transportation Services as specified in this Agreement.

6. Pursuant to ORS Chapter 184 and OAR Chapter 732, Divisions 40 and 42, TriMet and Subrecipient enter into this Agreement for the sole purpose of disbursing the approved STIF Formula Funds to Subrecipient in order for Subrecipient to complete one or more tasks specified in the STIF Plan. **Funds shall be used solely for the Project(s) and shall not be used for any other purpose.**

## **AGREEMENTS:**

### **1. General**

- 1.1. Subrecipient agrees to comply with and use the STIF Formula Funds in accordance with the terms of this Agreement including the terms and conditions of ORS 184.751 through 184.766, the provisions of OAR Chapter 732 Divisions 40 and 42, as may be amended, TriMet's Approved FY2019-2021 STIF Plan, and any ODOT guidance documents pertaining to the Statewide Transportation Improvement Funds program, all of which are incorporated into and made part of this Agreement. Specific contractual requirements applicable to Subrecipient under this Agreement are set forth in Exhibits A, B, C, D, E, F, and G, which are incorporated into and made part of this Agreement. Any conflict among the terms of this Agreement shall be resolved in accordance with the following order of precedence: this Agreement form: Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit F, and Exhibit G. This Agreement is subject to any agreements made between ODOT and TriMet regarding disbursement of the STIF Formula Funds, and shall be amended to incorporate those changes.
- 1.2. Subrecipient affirms that it has all the necessary policies and procedures in place to ensure compliance with OAR 732 Divisions 40 and 42, and to achieve the goals and outcomes described in the Project, including but not limited to program and project management; financial management; operations management, procurement, use and maintenance of equipment, records retention, compliance with state and federal civil rights laws, compliance with the Americans with Disabilities Act (ADA), charter and school bus, and safety and asset management.
- 1.3. Subrecipient shall not be relieved of any responsibility for performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient shall require any subcontractor performing services under this Agreement to enter into a written agreement with Subrecipient before the commencement of services, which shall require the subcontractor to comply with ORS 184.751 through 184.766 and the provisions of OAR Chapter 732, Divisions 40 and 42, as may be amended, and the terms of this Agreement. Where provided in this Agreement, Subrecipient shall specifically include in all subcontracts a requirement that the subcontractor shall be bound as provided in this Agreement and exhibits thereto.
- 1.4. Subrecipient and TriMet agree that the percentages of STIF Formula Funds designated for Subrecipient in Exhibit E represents, to the extent possible and using the best available data, an allocation method that is proportionate to the amount of employee payroll tax revenue generated within the geographic territory of the Subrecipient.
  - 1.4.1. If Subrecipient receives STIF Formula Funds generated within TriMet's geographic district, Subrecipient agrees that the STIF Formula Funds in Exhibit E represent the allocation to Subrecipient approved by the Oregon Transportation Commission.
- 1.5. If the total amount of STIF Formula Funds transferred to Subrecipient pursuant to Section 1.4 exceeds the total amount in Exhibit D, the Subrecipient shall retain all excess funds in a restricted account for a future STIF Plan or for disbursement as otherwise approved by the Oregon Transportation Commission.

1.6. If the total amount of STIF Formula Funds received by TriMet from ODOT exceeds the total amount budgeted by Subrecipient for any fiscal year in Exhibit D, then TriMet shall retain all excess funds in a restricted account and will disburse the funds plus interest to Subrecipient for STIF Plan activities to be conducted in the following fiscal year until the maximum amount for the STIF Plan has been reached. A Subrecipient cannot spend more than the amount budgeted for STIF Plan Period, whether from STIF Formula funds or interest earned on those funds.

1.6.1. Any STIF Formula Funds, including interest, accrued at the end of the STIF Plan period in excess of the amount budgeted by Subrecipient for the STIF Plan period in Exhibit D will be retained by TriMet and disbursed in accordance to the subsequent STIF Plan approved by the Oregon Transportation Commission.

1.7. If the STIF Formula Funds transferred to Subrecipient pursuant to Section 1.4 are not sufficient to meet the funding schedule in Exhibit D, TriMet will utilize the Subrecipient's percentage of STIF Formula Funds identified in Exhibit E relative to the total STIF Formula Funds received by TriMet, unless the Parties agree otherwise.

1.8. TriMet agrees to distribute STIF Formula Funds due to Subrecipient in accordance with the terms of this Agreement, ORS 184.751 *et seq.*, and OAR Chapter 732 Divisions 40 and 42.

## **2. Audit and Compliance Review**

2.1. Subrecipient shall conduct an annual financial audit of the STIF Formula Funds received by the Subrecipient pursuant to this Agreement. All financial audit reports shall be submitted to TriMet no later than 30 days after the receipt of the auditor's final report(s).

2.2. All audits prepared pursuant to Section 2.1 shall include the agreed-upon procedures (AUP) as set forth in Exhibit F. Those procedures, and related costs, will be included with the Subrecipient's annual financial statement audit as referenced in Section 2.1.

2.3. Subrecipient shall be subject to periodic on-site compliance reviews by TriMet. The purpose of the compliance site review is to ensure that Subrecipient has appropriate, adequate internal controls and management procedures to meet the terms and conditions of agreements governing the disbursement of STIF Formula Funds. Compliance reviews may include but not be limited to the following, as applicable: program and project management, financial management, operations management, procurement, use and maintenance of equipment, records retention, compliance with state and federal civil rights laws, compliance with the Americans with Disabilities Act (ADA), charter and school bus, and safety and asset management.

2.4. An on-site compliance review may not be required upon satisfactory completion by Subrecipient of the AUP as required in Exhibit F and the following:

2.4.1 When conducting a financial statement audit in accordance with Generally Accepted Auditing Standards (GAAS) and Generally Accepted Government Auditing Standards (GAGAS or the Yellow Book), written representations are provided in Subrecipient's Representation Letter regarding STIF Formula Funds to complement the auditing procedures of the independent auditor. TriMet requires the following language to be included in the Representation Letter to account for STIF Formula Funds regardless of materiality:

"We are responsible for complying, and have complied with, the requirements pursuant to ORS Chapter 184 and OAR 732, Divisions 40 and 42 for the use of STIF Formula funds identified in the approved FY2019-21 STIF Plan. We have all appropriate, adequate internal controls and management procedures to meet the terms

and conditions of agreements governing the disbursement of STIF Formula Funds, including program and project management, financial management, operations management, procurement, use and maintenance of equipment, records retention, compliance with state and federal civil rights laws, compliance with the Americans with Disabilities Act (ADA), charter and school bus, and safety and asset management.”

- 2.4.2 No later than 30 days after receipt of the auditor’s financial report, Subrecipient will provide an electronic copy of the following documents to TriMet:
- 2.4.2.1. Audited Financial Statements or Comprehensive Annual Financial Report (CAFR);
  - 2.4.2.2. Report of Independent Auditors on Compliance and on Internal Control Over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance with Oregon Municipal Auditing Standards;
  - 2.4.2.3. Report of Independent Auditors on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards.
  - 2.4.2.4. Report of Independent Auditors on Compliance for the Major Federal Program, Report on Internal Control Over Compliance, and Report on the Schedule of Expenditures of Federal Awards Required by the Uniform Guidance;
  - 2.4.2.5. Management Representation Letter with the representation described in 2.4.1;
  - 2.4.2.6. Agreed Upon Procedures Report as required by ODOT and fully described in Appendix F.
  - 2.4.2.7. Written communications describing material weaknesses, significant deficiencies, or other matters, including written comments for opportunities for improvement;
  - 2.4.2.8. The results of any comprehensive review completed by the Federal Transit Administration or the Oregon Department of Transportation within 30 days of receipt, if applicable;
  - 2.4.2.9. The results of any STIF Formula Fund related reviews or audits within 30 days of receipt, if applicable.
- 2.5. If applicable, the asset inventory list as described in the Agreed Upon Procedures. If additional compliance requirements and/or findings are identified by the independent auditor resulting in a corrective action plan, then TriMet will undertake necessary steps to ensure compliance requirements have been met and/or corrective action plans are fully developed and implemented. TriMet will bill Subrecipient for any audit or compliance review services as provided in this Section 2 on a cost reimbursement basis.
- 2.6. TriMet may request additional information including, but not limited to, audits of specific projects or services. Subrecipient will adhere to financial management procedures in accordance with Oregon and other applicable laws and requirements, and specifically as provided by ORS 184.751 through 184.766 and OAR Chapter 732, Divisions 40 and 42 in addition to the requirements set forth in this Agreement.
- 2.7. Subrecipient shall permit TriMet, ODOT, the Secretary of State of the State of Oregon, or their authorized representatives, upon reasonable notice, access to all data and records relating to STIF Formula Funds received or disbursed and to inspect the STIF Plans and Projects financed with STIF Formula Funds including, but not limited to, the financial records, physical premises, and Capital Assets used to deliver public transportation services.

2.8. Subrecipient shall ensure that its agreements or contracts with subcontractors or vendors include provisions which permit TriMet, ODOT, the Secretary of State of Oregon, or their authorized representatives, access to data and records held by the Subrecipient or vendor as described in this Section.

### **3. Accounting Requirements**

3.1. Subrecipient shall account for STIF Formula Funds separately. Any interest accrued must be added to the moneys and must be reported to TriMet at the end of the Fiscal Year in which it was earned.

3.2. Subrecipient shall document the expenditure of all STIF Formula Funds disbursed by TriMet under this Agreement. Subrecipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles (GAAP) and in sufficient detail to permit TriMet to verify how the STIF Formula Funds were expended. Subrecipient shall comply with applicable federal, state and local laws for accounting, billing and reporting requirements with STIF Formula Funds.

### **4. Reporting Requirements**

4.1. In addition to any other reporting required by this Agreement or by law, Subrecipient shall submit the following electronic documentation to TriMet:

4.1.1. The Subrecipient's adopted annual budget for the upcoming Fiscal Year must be submitted no later than 30 days after adoption. A subcontractor is not required to submit its organization's annual budget.

4.1.2. The results of any relevant financial audits of the Subrecipient or any subcontractor, as required by a local, state or federal oversight agency for the purposes of statewide reporting including, but not limited to:

4.1.2.1. Any other report concerning the financial and administrative activities of Subrecipient as required by law that affects the ability of Subrecipient or a subcontractor to perform the functions or programs funded by this Agreement.

4.2. Results of audits described in this Section 4.1.2 must be submitted to TriMet no later than 15 days after receipt of the final results. A copy of information submitted under this Section 4.1.2.1 must be sent to TriMet no later than 15 days after submittal to the requesting agency.

4.3. Subrecipient will provide TriMet with any report that documents the benefits and discrete measurable outcomes associated with each Project as outlined in Exhibit G, the ODOT STIF Formula Fund Reporting Requirements Overview.

### **5. Withholding of Funds**

5.1. Subrecipient shall assure that funds allocated hereunder are used only for the purposes permitted, and assumes responsibility for breach of conditions of the STIF Formula Funding requirements hereunder by Subrecipient. Upon breach of this Agreement by Subrecipient TriMet may withhold future STIF Formula Fund payments to Subrecipient.

5.2. In addition to any other provisions of this Agreement TriMet may withhold payment of STIF Formula Funds, if:

5.2.1. The Subrecipient or its subcontractor is not using STIF Formula Funds in accordance with the STIF Plan, this Agreement, or applicable laws or regulations;

5.2.2. The Subrecipient or its subcontractor has not submitted reporting required by applicable law or this Agreement, subject to a reasonable cure period;

- 5.2.3. TriMet determines that there are any unresolved audit finding relating to the accounting for STIF Formula Funds as provided by Section 2 Audit and Compliance Review of this Agreement;
- 5.2.4. TriMet determines that there is any unresolved compliance review finding relating to the use of STIF moneys as provided by Section 2 Audit and Compliance Review of this Agreement;
- 5.2.5. If an audit or a review of Subrecipient under this Agreement determines that Subrecipient used STIF Formula Funds inconsistently with this Agreement, TriMet may withhold future STIF Formula Funds;
- 5.2.6. Federal or State laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement;
- 5.2.7. The Commission has withdrawn, modified, or limited its approval of Subrecipient's program as described in this Agreement;
- 5.2.8. Subrecipient terminates this Agreement; or
- 5.2.9. TriMet fails to receive funding, appropriations, limitations or other expense authority outside the control of TriMet, sufficient to allow TriMet, in the exercise of its reasonable administrative discretion or to continue to make payments for performance of this Agreement.

## **6. Discrimination Prohibited/Compliance with Laws**

- 6.1. Subrecipient certifies that no person shall, on the grounds of race, color, creed, religion, sex, age, national origin, or disability, be excluded from participation in, or be denied the benefits of, any activity for which Subrecipient receives STIF Formula Funds. Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, age, national origin, or disability.
- 6.2. Subrecipient shall comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project. Without limiting the generality of the foregoing, Subrecipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- 6.3. Subrecipient will include the terms of Sections 6.1-6.2 in any contract with a vendor or subcontractor for the use of STIF Formula Funds.

## **7. Indemnification**

- 7.1. The parties agree that TriMet shall have no liability of any nature in connection with the Subrecipient's use of the STIF Formula Funds or Subrecipient's provision of transportation services. To the fullest extent permitted by law, Subrecipient agrees to fully indemnify, hold harmless and defend, TriMet, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorney's fees, resulting from or arising, as between TriMet and Subrecipient, solely out of the Subrecipient's use of the STIF Formula Funds or Subrecipient's provision of transportation services by Subrecipient, its officers, directors, employees, agents, subcontractors and volunteers under this Agreement. If Subrecipient is a public body and the claim, suit, or action subject to indemnification under this section is limited by the Oregon Tort Claims Act (ORS 30.260 *et seq*), then Subrecipient's indemnification will not exceed an amount equal to the applicable tort claim limit for Subrecipient pursuant to the Oregon Tort Claims Act. Any claim, suit, or action not arising solely out of the Subrecipient's use of the STIF Formula Funds or Subrecipient's provision of transportation services shall be governed by Exhibit A(6), contribution.

7.2. In addition to any other remedies available to TriMet as provided for by law or under this Agreement, any Subrecipient receiving STIF Formula Funds, pursuant to this Agreement shall assume sole liability for that Subrecipient's breach of the conditions of this Agreement. The provisions set forth in this Section and related provisions in Exhibit A shall survive termination or expiration of this Agreement.

## **8. Vehicle/ Operator Requirements**

8.1. Subrecipient shall ensure that all drivers of equipment purchased with STIF Formula Funds have a valid Oregon driver's license and shall have passed a defensive driving course or bus driver's training course. Per ORS 820.200, drivers of public passenger-carrying vehicles must be at least 21 years of age. Drivers of equipment designed to carry 16 or more passengers, including the driver, shall have a valid Commercial Driver's License (CDL). Subrecipient shall otherwise ensure that operation of the vehicles is performed in accordance with all applicable laws and regulations.

8.2. Subrecipient shall require criminal, Department of Motor Vehicles and employment background checks as part of the eligibility requirements for all drivers as provided by Subrecipient's own policy or as provided for in a contract with a vendor or contractor.

8.3. Subrecipient will include the terms of Sections 8.1-8.2 in any contract with a vendor or subcontractor for the use of STIF Formula Funds.

## **9. Progress Reporting Requirements**

9.1. Quarterly Reports: Subrecipient shall prepare a quarterly report for TriMet which details Project progress, outcomes achieved, and expenditures of STIF Formula Fund moneys by itself and any subcontractors. The quarterly report must be submitted no later than 30 days following the end of a quarter.

9.1.1. The quarterly reporting periods for each STIF Plan year are:

- 9.1.1.1. January through March
- 9.1.1.2. April through June
- 9.1.1.3. July through September
- 9.1.1.4. October through December

9.2. Quarterly progress reports should be remitted via TriMet's established process for posting on its website that meets the requirements of Exhibit A and Exhibit D. Reports must be in a format acceptable to TriMet.

9.3. TriMet reserves the right to request additional information as may be necessary to comply with state reporting requirements.

9.4. STIF Plan Period Reconciliation: Within 30 days of the end of an approved STIF Plan period, TriMet shall reconcile disbursements made to Subrecipient against the Subrecipient's reported expenditures. If disbursements are found to exceed the expenditures, the amount may be carried forward by the Subrecipient into the next STIF Formula Fund Cycle provided that the Commission approves of the funding plan any funds carried forward.

9.5. Capital Asset Reports: If the Subrecipient has acquired, purchased or leased Capital Assets using STIF Formula Fund moneys, Subrecipient shall provide TriMet with a report of the Capital Asset inventory, described in Exhibit C Section 2, including an identification of any sale, transfer or other disposition of the Capital Asset as described in Exhibit C. Capital Asset Reports must be submitted to TriMet on a quarterly schedule in a manner specified by TriMet.

**10. Funding**

- 10.1. Upon execution of this Agreement, TriMet shall disburse to Subrecipient funds quarterly as outlined in the schedule set forth in Exhibits A, D, and E.
- 10.2. Subrecipient shall document eligible use of STIF Formula Funds through the reports submitted to TriMet’s Project Manager in accordance with this Agreement and the Exhibits.
- 10.3. The parties acknowledge that the schedule for disbursement of funds in Exhibits D and E are based on anticipated future tax revenue collected by the State of Oregon. The estimated disbursements are not guaranteed. Actual funds received may not be sufficient to provide Subrecipient the full amount of STIF Formula Funds in any quarter as anticipated by this Agreement.

**11. Term**

This Agreement shall be in effect from July 1, 2019 through June 30, 2021, unless the Agreement is terminated earlier as provided in this Agreement.

**12. Communications**

All communications between the parties regarding this Agreement shall be directed to the parties' respective Project Managers as indicated below:

**TriMet:**

For Reporting:

Erika Turney, Grants Administrator  
 TriMet  
 1800 SW 1st Ave., Suite 300  
 Portland, OR 97201  
 503.962.4832  
[turney@trimet.org](mailto:turney@trimet.org)

For STIF Program Questions:

Tom Mills, Service Development Manager  
 TriMet  
 1800 SW 1st Ave., Suite 300  
 Portland, OR 97201  
 503.962.4883  
[millst@trimet.org](mailto:millst@trimet.org)

**Subrecipient:**

For all communications:

Andi Howell  
 Transit Director  
 Sandy Area Metro  
 16610 Champion Way  
 Sandy, OR 97055  
 TELEPHONE: 503-489-0925  
 FAX: 503-826-0618  
[ahowell@ci.sandy.or.us](mailto:ahowell@ci.sandy.or.us)

If one party finds a need to designate a new Project Manager, it shall immediately notify the other party in writing, electronic mail, or other dated documentation.



### **13. Assignment/Subcontracts**

Except with regard to audit requirements, Subrecipient may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of TriMet. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by TriMet. If the delegation to a specific entity has been made in the STIF Plan approved by ODOT, then TriMet consents to the delegation.

### **14. Mediation**

Should any dispute arise between the parties concerning this Agreement, which is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this Agreement agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the parties. Notwithstanding the foregoing, either party may seek equitable relief, including, but not limited to, injunctive relief and specific performance, at any time prior to, during, or following mediation.

### **15. Entire Agreement/Authority**

- 15.1. This Agreement, which includes the attached Exhibits A-G constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by either party of that or any other provision.
- 15.2. If any term of this Agreement is determined by a court to be illegal or conflict with any law, the remaining terms shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 15.3. This Agreement may be executed in two or more counterparts (by facsimile or scanned email PDF), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- 15.4. The individuals signing below represent and warrant that they have authority to bind the party for which they sign.

TRIMET

By: Bernie Bottomly

Signature: \_\_\_\_\_

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

SANDY CITY COUNCIL

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

Name \_\_\_\_\_

Title \_\_\_\_\_

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

Approved as to form

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

Office of City Attorney

## EXHIBIT A

### SPECIFIC AGREEMENT PROVISIONS

**Subrecipient shall comply with the provisions as set forth in this Exhibit. Where provided in Exhibit A, Subrecipient shall require each of its subrecipients or subcontractors to comply with the provisions as set forth in this Exhibit.**

#### 1. Disbursement and Recovery of STIF Formula Funds.

A. **Disbursement Generally.** TriMet shall promptly disburse STIF Formula Funds to Subrecipient after the Oregon Department of Transportation provides funding to TriMet in accordance with and subject to approval of the STIF Plan, the terms and conditions of this Agreement, and Subrecipient's compliance with this Agreement. As used in this Section, "promptly" means within 5 business days of TriMet's receipt of STIF Formula Funds from ODOT after July 1, 2019, absent a written notification from TriMet to Subrecipient explaining the reason(s) for any delay beyond 5 business days. Subject to the forgoing and based on the current and best available information, TriMet anticipates the following schedule for distribution of STIF Formula funds to Subrecipient:

- i. Provided this Agreement has been executed by Subrecipient at least 7 business days prior to July 1, 2019, and Subrecipient has provided TriMet with payment instructions required by TriMet by June 21, 2019, the first disbursement will take place within 5 business days of July 1, 2019. This disbursement is expected to reflect STIF Formula Funds from ODOT for the first two quarters of Fiscal Year 2019.
- ii. The second disbursement is anticipated for later in July 2019. The second disbursement is anticipated to reflect STIF Formula Funds from ODOT for the third quarter of Fiscal Year 2019.
- iii. After the two disbursement above that are anticipated to occur in July 2019, TriMet will make subsequent disbursements quarterly following receipt from ODOT. ODOT expects to disburse funds to TriMet on January 15, April 15, July 15, and October 15 each year during the STIF Plan Period.
- iv. Following the first to disbursements in this Section 1(A)(i)-(ii), the next disbursement is anticipated to occur after TriMet receives funding on October 15, 2019 and then every quarter thereafter during the STIF Plan Period.

B. **STIF Plan Budget Revisions.** In the event that Subrecipient determines that funds need to be shifted between tasks within that Subrecipient's Project or between that Subrecipient's Projects as allowed under ODOT published guidance, Subrecipient's Project Manager will submit a transfer request to TriMet's Project Manager. TriMet will promptly request approval from ODOT on Subrecipient's behalf.

#### 2. Representations and Warranties of Subrecipient. Subrecipient represents and warrants to TriMet as follows:

A. **Organization and Authority.** Subrecipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the STIF Formula Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will

not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Subrecipient's Charter, Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.

- B. **Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- C. **No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to sub agreements, except as permitted by applicable law. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- D. **No Debarment.** Neither Subrecipient nor its principals is presently debarred, suspended, or voluntarily excluded from this transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Subrecipient agrees to notify TriMet immediately if it is debarred, suspended or otherwise excluded from this federally- assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.
- E. **Policies and Procedures.** Subrecipient represents and warrants that it has all of the policies and procedures in place to ensure compliance with OAR 732, Divisions 40 and 42, and to achieve the goals and outcomes specified in the Agreement, including but not limited to program and project management, financial management, operations management, procurement, use and maintenance of equipment, records retention, compliance with state and federal civil rights laws, compliance with the Americans with Disabilities Act (ADA), charter and school bus, and safety and asset management.

The warranties set in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

3. **Retention of Records and Audit Expenses**

- A. **Retention of Records.** Subrecipient shall retain and keep and require its subcontractors to retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the STIF Formula Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the expiration date of this Agreement. If there are unresolved audit questions at the end of the six-year period, Subrecipient and its subcontractors shall retain the records until the questions are resolved.
- B. **Capital Asset Records.** For any Capital Asset purchased with STIF Formula Funds by Subrecipient or a subcontractor, all records relating to such Capital Assets shall be maintained for three years after disposition of the Capital Asset.
- C. **Audit Requirements.** To the fullest extent permitted by law, Subrecipient shall save, protect and hold harmless TriMet from the cost of any audits or special investigations performed with respect to the STIF Formula Funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this Agreement. This section does not apply to regular audit and compliance reviews that are conducted pursuant to Section 2 of this Agreement.

#### 4. Subrecipient Sub agreement and Procurement

A. **Sub agreements.** Subrecipient may enter into agreements with contractors or subcontractors (collectively, "sub agreements") for performance of the Project.

- i. All sub agreements must be in writing executed by Subrecipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the sub agreement(s). Use of a sub agreement does not relieve Subrecipient of its responsibilities under this Agreement. Subrecipient agrees to provide TriMet with a copy of any signed sub agreement upon request by TriMet. Any substantial breach of a term or condition of a sub agreement relating to funds covered by this Agreement must be reported by Subrecipient to TriMet within ten (10) days of its being discovered.

B. **Subrecipient's sub agreement(s) shall require the other party to such sub agreement (s) to indemnify, defend, save and hold harmless TriMet, and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including reasonable attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's sub agreement or any of such party's officers, agents, employees or subcontractors ("Claims"). The sub agreement shall specifically state that it is the specific intention that TriMet shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of TriMet, be indemnified by the other party to Subrecipient's sub agreement(s) from and against any and all Claims.**

Any such indemnification shall also provide that neither Subrecipient's subrecipient(s), contractor(s) nor subcontractor(s) (collectively "Subcontractors"), nor any attorney engaged by Subrecipient's Subcontractor(s), shall defend any claim in the name of TriMet nor purport to act as legal representative of TriMet without the prior written consent of TriMet. TriMet may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipient's Subcontractor is prohibited from defending TriMet or that Subrecipient's Subcontractor is not adequately defending TriMet's interests, or that an important governmental principle is at issue or that it is in the best interests of TriMet to do so. TriMet reserves all rights to pursue claims it may have against Subrecipient's Subcontractor if TriMet elects to assume its own defense.

Subrecipient shall require the other party, or parties, to each of its sub agreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit B to this Agreement.

C. **Procurements.** Subrecipient shall make purchases of any equipment, materials, or services for the Project comply with all applicable procurement laws and policies.

#### 5. Termination

A. **Termination by Subrecipient.** Subrecipient may terminate this Agreement or terminate or suspend any specific Project funded by this Agreement, effective upon delivery of written notice of termination to TriMet within 30 days, or at such later date as may be established by Subrecipient in such written notice, if:

- i. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or
- ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.

B. **Effect of Termination.** The expiration or termination of this Agreement or any Project, for any reason, shall not release Subrecipient from any obligation or liability to TriMet, any requirement or obligation that:

- i. Has already accrued hereunder;

- ii. Comes into effect due to the expiration or termination of the Agreement; or
- iii. Otherwise survives the expiration or termination of this Agreement.

Following the termination of this Agreement or any Project as provided in this Section, Subrecipient shall promptly identify all unexpended funds and return all unexpended funds to TriMet. Unexpended funds are those funds received by Subrecipient under this Agreement that (i) have not been spent or expended to pay the costs or expenses of the Project or Projects; and (ii) are not required to pay costs or expenses of the terminated Project(s) that will become due and payable as a result of the termination of the Project(s).

Subrecipient's identification and calculation of unexpended funds in this Section is Subject to **Section 2, Audit and Compliance Review**, of this Agreement.

## 6. General Provisions

- A. **Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against TriMet or Subrecipient with respect to which the other party may have liability, the notified party must promptly notify the other party in writing of the Third Party Claim and deliver to the other party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a party of the notice and copies required in this paragraph and meaningful opportunity for the party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which TriMet is jointly liable with Subrecipient (or would be if joined in the Third Party Claim), TriMet shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Subrecipient in such proportion as is appropriate to reflect the relative fault of TriMet on the one hand and of the Subrecipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of TriMet on the one hand and of Subrecipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. TriMet's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if TriMet had sole liability in the proceeding.

With respect to a Third Party Claim for which Subrecipient is jointly liable with TriMet (or would be if joined in the Third Party Claim), Subrecipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by TriMet in such proportion as is appropriate to reflect the relative fault of Subrecipient on the one hand and of TriMet on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Subrecipient on the one hand and of TriMet on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. If Subrecipient is a public body, Subrecipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, if Subrecipient had sole liability in the proceeding.

- B. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America, TriMet or any other party, organization or individual.

- C. **No Third Party Beneficiaries.** TriMet and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- D. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to Subrecipient's Project Manager or TriMet's Project Manager at the address or number set forth in Paragraph **12 Communications** of this Agreement, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given three days after the date of mailing. If email is used for communications pursuant to the following Sections, either mail or personal delivery must also be employed by the sender to the recipient and the later of the delivery dates is the date that will be used to calculate any timeframes for responses or cure periods for the recipient: Section 5.2; Exhibit A, Sections 1(A), 3(C), 5, and 6(A); and Exhibit C, Section 7.
- E. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between TriMet and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County in the State of Oregon. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.
- F. **Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services 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. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subrecipient shall ensure that each of its contractor(s) and subcontractor(s) complies with these requirements. Subrecipient shall include in any subcontracts to perform services pursuant to this Agreement a provision requiring a subcontractor to comply with this Subsection F, and that failure to do so is a material breach of the subcontract with Subrecipient.
- G. **Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of TriMet. Subrecipient shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to PERS contributions, workers compensation, unemployment taxes and state and federal income tax withholdings. Subrecipient has no right or authority to incur or create any obligation for or legally bind TriMet in any way. TriMet cannot and will not control the means or manner by which Subrecipient performs the Project, except as specifically set forth in this Agreement. Subrecipient is responsible for determining the appropriate means and manner of performing the Project. Subrecipient acknowledges and agrees that Subrecipient, its officers, directors, employees, subcontractors or volunteers are not an "officer," "employee," or "agent" of TriMet, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary. Neither Subrecipient, nor its directors, officers, employees, subcontractors, or volunteers shall hold themselves out either explicitly or implicitly as officers, employees, or agents of TriMet for any purpose whatsoever. Nothing in this Agreement shall be deemed to create a partnership, franchise, or joint venture between the parties.

**EXHIBIT B**  
**SUBRECIPIENT INSURANCE REQUIREMENTS**

GENERAL

Subrecipient shall obtain and provide, and require in its first tier sub agreements with entities that are not units of local government as defined in ORS 190.003, if any, that the subcontractor obtain and provide the same insurance applicable to Subrecipient for subcontractor's performance under its sub agreement: i) insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance of this Agreement and of any sub agreement commences, and ii) maintain the insurance in full force throughout the duration of this Agreement and sub agreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to TriMet. Subrecipient shall not commence work under this Agreement, and shall not authorize work to begin under a sub agreement until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements in its sub agreements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in the sub agreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subrecipient permit work under a sub agreement when Subrecipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a sub agreement in which the Subrecipient is a party.

Subrecipient may be self-insured as long as the amount of insurance are equal to the amounts listed below. Subrecipient shall comply with any requirements of TriMet with respect to these insurance requirements, including but not limited to TriMet issued stop work orders (or the equivalent) until the insurance is in full force, or terminating the Contract as permitted by this Contract, or pursuing legal action to enforce the insurance requirements.

TYPES AND AMOUNTS

- I. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employer's liability insurance with coverage limits of not less than \$500,000 must be included.
- II. **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to TriMet. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by TriMet:  
  
Bodily Injury, Death and Property  
Damage:  
  
\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).  
  
Insurance policy shall include Sexual Abuse/Molestation coverage with limits no less than \$500,000 per occurrence/aggregate.
- III. **AUTOMOBILE Liability Insurance: Automobile Liability.** Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and



"Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by TriMet:

Bodily Injury, Death and Property  
Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

#### ADDITIONAL INSURED

The Commercial General Liability Insurance and Automobile Liability insurance must include TriMet, and its respective officers, employees and agents as Additional Insureds but only with respect to the Subrecipient's activities to be performed under the Agreement and, with respect to subcontractors, activities to be performed under their sub agreements. Coverage must be primary and non-contributory with any other insurance and self-insurance.

#### "TAIL" COVERAGE

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the Subrecipient and the subcontractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement for Subrecipient, and the effective date of the sub agreement for subcontractors, for a minimum of 24 months following the later of: (i) the Subrecipient's completion and TriMet's acceptance of all services required under this Agreement, and the subcontractors completion and Subrecipient's acceptance of all services required under the sub agreement or, (ii) the expiration of all warranty periods provided under this Agreement with respect to Subrecipient and the sub agreement with respect to the subcontractor. Notwithstanding the foregoing 24-month requirement, if the Subrecipient or subcontractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the Subrecipient or subcontractor may request and TriMet may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If TriMet approval is granted, the Subrecipient or subcontractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

#### NOTICE OF CANCELLATION OR CHANGE

The Subrecipient or its insurer must provide 30 days' written notice to TriMet before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

#### CERTIFICATE(S) OF INSURANCE

Subrecipient shall submit to TriMet a certificate(s) of insurance for all required insurance before the commencement of performance of services. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage. In lieu of filing the certificate of insurance required herein, if Subrecipient is a local government as defined under ORS 190.003, Subrecipient may furnish a declaration that Grantee is self-insured for no less than the amounts required by applicable law.

## EXHIBIT C

### CAPITAL ASSET REQUIREMENTS

The terms of this Exhibit C applies to all Capital Assets purchased with STIF Formula Funds.

1. Subrecipient shall ensure Satisfactory Continuing Control of a Capital Asset purchased in whole or part with STIF Formula Funding during the period of its useful life.
2. Subrecipient shall inventory Capital Assets purchased in whole or part with STIF Formula Funds. The inventory will include a description of the Capital Asset, date of purchase, purchase price, amount of STIF Formula Funds contributed to the purchase, the source of other funds, the authorized use, the Subrecipient or subcontractor using the Capital Asset, and the condition of the asset.
  - i. If Capital Asset is a vehicle, the inventory must include the size of vehicle, the total number of passenger seats, the total number of ADA stations, the total number of seats when all ADA stations are deployed, the current mileage, and its current condition.
  - ii. If Capital Asset is an improvement to real property, such as a facility, building, or transit shelter, the inventory must include the location of the Capital Asset and its current condition.
3. Vehicles may be replaced using STIF Formula Funding if:
  - i. Subrecipient holds clear title to the vehicle(s) being replaced. Salvaged titles will not be accepted.
  - ii. The vehicle(s) has met or exceeded the applicable useful life guidelines established by the Oregon Department of Transportation (ODOT), or, if federal funds are used to purchase the vehicle, those established by the Federal Transit Administration (FTA), provided such FTA standards are no less stringent.
  - iii. The vehicle has not been previously replaced.
4. By executing an Agreement that includes the purchase of Capital Assets, Subrecipient commits to continually use the vehicle for the approved purpose for the useful life of the vehicle(s).
5. To be eligible to receive STIF Formula Funds for a real property Capital Asset, such as a transit facility, bus barn, maintenance facility, land, or administration building, Subrecipient shall demonstrate one or more of the following:
  - i. Subrecipient ownership of the property upon which the Capital Asset will be located;
  - ii. Subrecipient possession of an executed lease agreement for the property location that will be in place for the useful life of the Capital Asset;
  - iii. Subrecipient possession of an executed lien on the property for the useful life of the Capital Asset;
  - iv. In the case of a Project which will utilize property owned by a local city, county or government, an executed intergovernmental agreement with the property owner guaranteeing ongoing use for the duration of the useful life of the Capital Asset; or
  - v. In the case of a Project to purchase land, an option to purchase the land identified in the Project.

6. Subrecipient: shall:
- i. Comply with all useful life standards established by TriMet and ODOT for Capital Assets acquired pursuant to their STIF Plans, or, if federal funds are used to purchase the Capital Asset(s), those established by the FTA, provided such FTA standards are no less stringent.
  - ii. Use TriMet's and ODOT's established procedures for the disposition of Capital Assets acquired with STIF Formula Fund moneys, or, if federal funds are used to purchase the Capital Asset(s), those established by the FTA, provided such FTA standards are no less stringent.
  - iii. Retain the net proceeds from a sale or other disposition of a Capital Asset purchased with STIF Formula Funds in a restricted account to allow Subrecipient to propose reinvesting the proceeds in a future STIF Plan or return the net proceeds to ODOT. Net proceeds are the disposal proceeds less original value, less depreciation, less disposal costs. If non-STIF Formula Funds were used in the original purchase, then only the proportion representing STIF Formula Fund contribution to the purchase are subject to this rule.
  - iv. Comply with TriMet's and ODOT's written procedures to ensure that a Capital Asset is maintained in safe operating condition, or, if federal funds are used to purchase the Capital Asset(s), those established by the FTA provided such FTA standards are no less stringent.
  - v. Maintain insurance coverage, or require subcontractors to maintain insurance coverage, that meets or exceeds the standards in ORS 806.070.
  - vi. Ensure that vehicles purchased in whole or in part with STIF Formula Fund moneys are titled with the Oregon Department of Transportation Driver and Motor Vehicle Services Division pursuant to ORS 803.045 and supporting rules, with the Oregon Department of Transportation listed as a security interest holder, subject to the following additional requirements:
    1. If the vehicle is registered in the name of an entity that is not a Qualified Entity or Public Transportation Service Provider, then TriMet, as the Qualified Entity and as required by OAR 732-042-0040(6), must be listed on the vehicle title as the primary security interest holder.
    2. If the vehicle was purchased with federal funds in addition to STIF Formula Fund moneys, and the federal funding source requires the vehicle to be titled otherwise than provided in this Agreement, then the federal titling requirements prevail.
7. Subrecipient shall notify TriMet of the sale, transfer or other disposition of a Capital Asset purchased with STIF Formula Fund moneys and shall report the use of proceeds, if any, from the sale to TriMet.
8. A Subrecipient may transfer its interest in a Capital Asset to an asset of equal or greater value if the transfer is proposed in a STIF Plan which is approved by the Commission.
9. When TriMet is a security interest holder in a Capital Asset, TriMet may exercise all of the rights provided to a secured lien holder under Oregon law, including without limitation, the ability to take control or possession of the Capital Asset if it determines either:
- i. that the asset is not being used for the purpose described in a STIF Plan under which it was funded in whole or part by STIF Formula Fund moneys; or

- ii. if, during a compliance audit conducted pursuant to **Section 2 Audit and Compliance Review** of this Agreement, TriMet determines the asset is not being maintained in a state of good operational repair.

**EXHIBIT D  
CITY OF SANDY SCOPE OF WORK**

Sub-Recipient Contact Information

- Name of Organization: City of Sandy
- Contact Person: Andi Howell, Transit Director, Sandy Area Metro
- Address: 16610 Champion Way, 97055
- Telephone: 503-489-0925
- E-Mail: ahowell@ci.sandy.or.us
- FAX: 503-826-0618

TriMet Contact for Reporting:

- Contact Person: Erika Turney, Grants Administrator
- Address: 1800 SW 1st Ave., Suite 300, Portland, OR 97201
- Telephone: 503.962.4832
- E-Mail: [turneye@trimet.org](mailto:turneye@trimet.org)

TriMet Contact about HB2017 Program:

- Contact Person: Tom Mills, Manager, Service Planning
- Address: 1800 SW 1st Ave., Suite 300, Portland, OR 97201
- Telephone: 503.962.4883
- E-Mail: [millst@trimet.org](mailto:millst@trimet.org)

Term of Contract:

7/1/2019 thru 6/30/2021

Total FY19-FY21 STIF Formula Funds: \$338,873

**DESCRIPTION OF PROJECTS**

City of Sandy will receive Oregon Statewide Transportation Improvement Funds via TriMet to conduct the following activities:

<b>STIF Plan Project Number</b>	<b>Project Name</b>	<b>Project Description</b>	<b>Task Number &amp; Description</b>
17	Sandy Enhancement Plan Infrastructure Improvement	Sandy Transit will implement the first round of STIF funds for infrastructure improvements to the Sandy Transit Operations Facility at 16610 Champion Way. Improvements will include computer equipment and software, bus and bus stop improvements.	Task 1: Acquire 35 bus stop signs Task 2: Acquire wifi on 4 buses Task 3: Acquire 2 computer monitors Task 4: Acquire 2 dispatch computers and monitors Task 5: Acquire transit tax software Task 6: Acquire updated dispatch software

			Task 7: Acquire two garbage receptacles
			Task 8: 2 solar lighting repairs/updates
			Task 9: 1 new shelter
18	Sandy Capacity Planning and Construction	Project for planning and construction of an improved administration space, adequate and private training room, the addition of a driver restroom/break area at the Sandy Operations Center located at 16610 Champion Way, Sandy Or.	Task 1: Engineering and design of administration building
			Task 2: Construction of administration building
19	Route Expansion	This project will add runs to 3 Sandy Transit routes. SAM Gresham, SAM Estacada and the Sandy Shopper Shuttle will all have added runs to improve service and connectivity.	Task 1: Fixed route operations
			Task 2: Fixed route operations
			Task 3: Fixed route operations

**PLAN BUDGET:**

STIF Plan Project Number	FY19	FY20	FY21
17	\$44,391	\$0	\$0
18	\$13,317	\$50,073	\$43,079
19	\$0	\$80,995	\$107,018
<b>Subtotal</b>	<b>\$57,708</b>	<b>\$131,068</b>	<b>\$150,097</b>
<b>Grand Total:</b>	<b>\$338,873</b>		

**REPORTING:**

Plan Outcomes	FY19-21 Plan	Quarterly Report	Annual Report
Revenue Miles	31,788	X	
Revenue Hours	2,184	X	
Rides	16,000	X	
Number of new shared stops with other transit providers	0	X	
Number of students in grades 9-12 served by demand response	n/a	X	
Number of students in grades 9-12 with free or reduced fares	n/a	X	
Other outcomes	n/a	X	
Number of individuals within a ½ mile of a transit stop for fixed route transit	29,057		X
Number of low-income households within a ½ mile of a transit stop for fixed route transit	5,084		X
Number of students in grades 9-12 attending a school served by transit	200		X
Number of rides to students in grades 9-12	n/a		X

<b>Program Criteria</b>		
Increased frequency to areas with a high percentage of low-income households		X
Expanded routes or services to areas with a high percentage of low-income households		X
Reduced fares in communities with a high percentage of low-income households		X
Procurements of low or no emission buses for use in areas with a population of 200,000 or more		X
Improved frequency and reliability of service between communities in and out of the Qualified Entity's area		X
Improved coordination among Public Transportation Service Providers to reduce fragmentation of service		X
Implementation of programs to provide student transit service for students in grades 9-12		X
<b>Capital Assets</b>		
Acquired, purchased or leased capital assets Qualified Entities and Public Transportation Service Providers using STIF funds	X	
<b>Low-Income Tax Mitigation</b>		
Report on mitigating the tax on low-income passengers		X
<b>Audit Reports</b>		
Copy of financial audits, including STIF procedures		X

**EXHIBIT E – STIF FUNDING DISBURSEMENT FORMULA**

**PORTLAND METRO/TRIMET QUALIFIED ENTITY AREA**

**FY19 STIF DISBURSEMENT – BASED ON 100% ODOT DEC. '18 ESTIMATE**

	FY19 Projected Total	Adjustment to FY19 Projected Total	Regional Coordination Program	Adjustment to FY19 Projected Total with Regional Coordination	Percent of Adjustment to FY19 Projected Total with Regional Coordination	Not to Exceed FY19 Plan Budget
TriCounty Total - ODOT Dec. '18 Projection	\$ 20,027,000					
TriMet - Service, LIF, Capital, Student Fare, ED, Ebus	\$ 18,740,000	\$ 18,740,000	\$ -	\$ 17,569,035	0.8772674	\$ 26,754,708
Ride Connection - STIF E&D	\$ -	\$ -	\$ -	\$ -	0.0000000	\$ -
Portland Streetcar	\$ 350,000	\$ 350,000	\$ -	\$ 350,000	0.0174764	\$ 350,000
Canby	\$ 106,605	\$ 105,730	\$ -	\$ 105,730	0.0052793	\$ 64,044
Sandy	\$ 49,427	\$ 49,021	\$ -	\$ 49,021	0.0024477	\$ 57,709
SCTD	\$ 58,683	\$ 58,201	\$ -	\$ 58,201	0.0029061	\$ 68,508
Wilsonville	\$ 447,238	\$ 443,563	\$ 120,000	\$ 563,563	0.0281402	\$ 1,198,516
Clackamas County	\$ 165,024	\$ 163,668	\$ 152,691	\$ 316,359	0.0157966	\$ 334,344
Multnomah County	\$ 19,000	\$ 19,000	\$ 243,250	\$ 262,250	0.0130948	\$ 265,100
Washington County	\$ 98,628	\$ 97,817	\$ 596,000	\$ 693,817	0.0346441	\$ 728,000
Columbia County CC Rider	\$ -	\$ -	\$ 59,024	\$ 59,024	0.0029472	\$ 59,024
<b>Total</b>	<b>\$ 20,034,604</b>	<b>\$ 20,027,000</b>	<b>\$ 1,170,965</b>	<b>\$ 20,027,000</b>		<b>\$ 29,879,953</b>

**ADJUSTMENT TO FY19 PROJECTED TOTAL WAS DETERMINED BY PROPORTIONALLY REDUCING CLACKAMAS AND WASHINGTON COUNTY PROJECTED TOTALS.**

<b>Difference between FY19 Projected Total (\$20,027,000) and Sum of Individual Projected Totals (\$20,034,604)</b>	<b>\$ 7,604</b>
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<b>Proportional Distribution</b>		
Canby	\$ 106,605	11.52%
Sandy	\$ 49,427	5.34%
SCTD	\$ 58,683	6.34%
Clackamas County	\$ 165,024	17.83%
Washington County	\$ 98,628	10.66%
Wilsonville	\$ 447,238	48.32%
<b>Total</b>	<b>\$ 925,604</b>	



**FY20 STIF DISBURSEMENT – BASED ON 100% ODOT DEC. '18 ESTIMATE**

	FY20 Projected Total	Adjustment to FY20 Projected Total	Regional Coordination Program	Adjustment to FY20 Projected Total with Regional Coordination	Percent of Adjustment to FY20 Projected Total with Regional Coordination	Not to Exceed FY20 Plan Budget
TriCounty Total - ODOT Dec. '18 Projection	\$ 46,194,000					
TriMet - Service, LIF, Capital, Student Fare, ED, Ebus	\$ 42,655,346	\$ 42,655,346	\$ -	\$ 39,299,367	0.8507461	\$ 36,854,657
Ride Connection - STIF E&D	\$ 677,654	\$ 677,654	\$ -	\$ 677,654	0.0146697	\$ 677,654
Portland Streetcar	\$ 700,000	\$ 700,000	\$ -	\$ 700,000	0.0151535	\$ 700,000
Canby	\$ 247,585	\$ 243,958	\$ -	\$ 243,958	0.0052812	\$ 128,087
Sandy	\$ 114,793	\$ 113,111	\$ -	\$ 113,111	0.0024486	\$ 131,068
SCTD	\$ 136,290	\$ 134,293	\$ -	\$ 134,293	0.0029071	\$ 163,890
Wilsonville	\$ 1,036,944	\$ 1,021,751	\$ 553,600	\$ 1,575,351	0.0341029	\$ 1,587,116
Clackamas County	\$ 383,261	\$ 377,646	\$ 1,035,472	\$ 1,413,118	0.0305909	\$ 1,379,267
Multnomah County	\$ 46,000	\$ 46,000	\$ 553,050	\$ 599,050	0.0129681	\$ 603,110
Washington County	\$ 227,576	\$ 224,241	\$ 1,160,636	\$ 1,384,877	0.0299796	\$ 1,399,136
Columbia County CC Rider	\$ -	\$ -	\$ 53,221	\$ 53,221	0.0011521	\$ 53,221
<b>Total</b>	<b>\$ 46,225,449</b>	<b>\$ 46,194,000</b>	<b>\$ 3,355,979</b>	<b>\$ 46,194,000</b>		<b>\$ 43,677,206</b>

**ADJUSTMENT TO FY20 PROJECTED TOTAL WAS DETERMINED BY PROPORTIONALLY REDUCING CLACKAMAS AND WASHINGTON COUNTY PROJECTED TOTALS.**

Difference between Dec. '18 TriCounty Projected Total (\$46,194,000) and Sum of Individual Projected Totals (\$46,225,449)	\$ 31,449
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Proportional Distribution		
Canby	\$ 247,585	11.53%
Sandy	\$ 114,793	5.35%
SCTD	\$ 136,290	6.35%
Clackamas County	\$ 383,261	17.86%
Washington County	\$ 227,576	10.60%
Wilsonville	\$ 1,036,944	48.31%
<b>Total</b>	<b>\$ 2,146,449</b>	

**FY21 STIF DISBURSEMENT – BASED ON 100% ODOT DEC. '18 ESTIMATE**

	FY21 Projected Total	Adjustment to FY21 Projected Total	Regional Coordination Program	Adjustment to FY21 Projected Total with Regional Coordination	Percent of Adjustment to FY21 Projected Total with Regional Coordination	Not to Exceed FY21 Plan Budget
TriCounty Total - ODOT Dec. '18 Projection	\$ 52,974,000					
TriMet - Service, LIF, Capital, Student Fare, ED, Ebus	\$ 49,446,709	\$ 49,446,709	\$ -	\$ 46,446,709	0.8767831	\$ 44,232,750
Ride Connection - STIF E&D	\$ 328,291	\$ 328,291	\$ -	\$ 328,291	0.0061972	\$ 328,291
Portland Streetcar	\$ 721,000	\$ 721,000	\$ -	\$ 721,000	0.0136105	\$ 721,000
Canby	\$ 282,102	\$ 279,433	\$ -	\$ 279,433	0.0052749	\$ 538,629
Sandy	\$ 130,797	\$ 129,560	\$ -	\$ 129,560	0.0024457	\$ 150,097
SCTD	\$ 155,290	\$ 153,821	\$ -	\$ 153,821	0.0029037	\$ 169,891
Wilsonville	\$ 1,182,997	\$ 1,171,805	\$ 553,600	\$ 1,725,405	0.0325708	\$ 1,344,116
Clackamas County	\$ 436,694	\$ 432,562	\$ 686,838	\$ 1,119,400	0.0211311	\$ 1,294,400
Multnomah County	\$ 52,000	\$ 52,000	\$ 534,613	\$ 586,613	0.0110736	\$ 593,263
Washington County	\$ 261,291	\$ 258,819	\$ 1,168,349	\$ 1,427,168	0.0269409	\$ 1,467,849
Columbia County CC Rider	\$ -	\$ -	\$ 56,600	\$ 56,600	0.0010684	\$ 56,600
<b>Total</b>	<b>\$ 52,997,172</b>	<b>\$ 52,974,000</b>	<b>\$ 3,000,000</b>	<b>\$ 52,974,000</b>		<b>\$ 50,896,886</b>

**ADJUSTMENT TO FY21 PROJECTED TOTAL WAS DETERMINED BY PROPORTIONALLY REDUCING CLACKAMAS AND WASHINGTON COUNTY PROJECTED TOTALS.**

Difference between Dec. '18 TriCounty Projected Total (\$52,974,000) and Sum of Individual Projected Totals (\$52,997,172)	\$ 23,172
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<b>Proportional Distribution</b>		
Canby	\$ 282,102	11.52%
Sandy	\$ 130,797	5.34%
SCTD	\$ 155,290	6.34%
Clackamas County	\$ 436,694	17.83%
Washington County	\$ 261,291	10.67%
Wilsonville	\$ 1,182,997	48.30%
<b>Total</b>	<b>\$ 2,449,172</b>	

## EXHIBIT F

### Statewide Transportation Improvement Fund Agreed-Upon Audit Procedures

Any Qualified Entity or Public Transportation Service Provider (entity or subrecipient), as defined under OAR 732-040-0005, that receives STIF money is required to be audited on the use of those funds per OAR 732-040-0015. Consistent with guidance provided by the Oregon Secretary of State, the Oregon Department of Transportation developed agreed-upon audit procedures for the program audit of the Statewide Transportation Improvement Fund (STIF). The Agreed-Upon Audit Procedures are established in accordance with Generally Accepted Government Auditing Standards (GAGAS) and American Institute of Certified Public Accountants (AICPA) AT-C Section 215. ODOT set forth the minimum procedures required for an audit of STIF funds. As set forth under Section 2, TriMet has also developed additional audit procedures based on ODOT's Compliance Guide: Monitoring Subrecipient Compliance with STIF Requirements. These agreed Upon Procedures detailed below are to be added to the STIF recipient's annual financial audit process.

#### STIF Funded Services

1. What best describes the STIF-funded services operated by this Subrecipient, identify all that apply?
  - Light rail operating expenses
  - Creation of new systems and services with origins, destinations, or stops in Oregon
  - Maintenance or continuation of systems and services (only after new services has been place in operation)
  - Planning for and development of a Local Plan or future STIF Plan to improve Public Transportation Service
  - Local match for state and federal funds which also provide Public Transportation Service
2. Did the services, funded by STIF, meet eligibility requirements?
3. Did the entity provide school bus or charter services?
4. Note any other observations that may impact the findings from this review, if any: (such as Infrastructure, political, key staff or major funding changes that might alter the landscape at the local level.

#### Financial Management

1. What types of STIF funds did the entity receive?
  - a. Formula
  - b. Discretionary
  - c. Intercommunity
2. Does the entity have a separate account in their accounting system for each type of STIF fund received?  
Yes/No. If no, attach an explanation.
3. How much interest was earned on STIF Formula funds?
  - a. Was interest spent on STIF-approved expenditures?
  - b. If 100% of interest was not expended on STIF approved expenditures, what amount will be carried forward into a future STIF Plan?
4. Did the entity spend STIF Formula funds, including interest, on expenditures NOT included in a STIF Plan?  
If yes, attach a summary of expenditures and narrative explaining the deviation from the STIF Plan.
5. What amount of unspent STIF Formula funds were carried forward to the next Fiscal Year?
6. Does the Subrecipient use the same policies and procedures to account for, and expend, STIF funds as it does for all other Federal and State grant funds? Yes/No. If no, attach an explanation.

7. For each STIF award, does the Subrecipient's accounting system provide for the following?
  - a. Authorizations
  - b. Obligations
  - c. Funds received
  - d. Program income
  - e. Outlays
  - f. Unobligated balances
8. Are STIF accounting records supported by source documentation (e.g. canceled checks, paid bills, payrolls, contracts)? Yes/No. If no, attach an explanation.
9. Are bank statements reviewed and reconciled at least monthly by someone other than the person who disburses funds from the STIF account? Yes/No. If no, attach an explanation.
10. Does the Subrecipient maintain written policies and procedures for documenting personnel compensation regarding employees whose time is charged to the STIF program? Yes/No. If no, attach an explanation.
11. Personnel records: Yes/No. If no, attach an explanation
  - a. Are personnel records supported by a system of internal controls that provide reasonable assurance the charges are accurate, allowable, and properly allocated?
  - b. Are personnel records incorporated into the Subrecipient's official records?
  - c. Do personnel records reasonable reflect the total activity for which the employee is compensated?
  - d. Do personnel records encompass state assisted activities, as well as all other activities compensated by the subrecipient?
  - e. Do not rely on estimates as a basis to charge time to STIF activities?
12. Did the entity supplant local funding sources earmarked for existing services with STIF funds?

**Internal Controls**

1. Are members of the entity's governing board actively involved in the acceptance of the STIF grant award and oversight of its personnel in the execution of STIF activities? Yes/No?
 

If no, attach an explanation.

If yes, describe and note the governing board's role in providing oversight of the STIF grant.
2. Do the procedures employed by the Subrecipient in handling cash receipts and disbursements of STIF funds include the following safeguards:
  - a. Receipts are promptly logged, restrictively endorsed and deposited in an insured bank account?
  - b. Bank statements are promptly reconciled to the accounting records and are reconciled by someone other than the individuals handling cash, disbursements and maintaining accounting records?
  - c. All disbursements (except petty cash or electronic funds transfer disbursements) are made by pre-numbered checks?
  - d. Supporting documents (e.g. purchase orders, invoices) accompany the checks submitted for signature, and are marked paid or otherwise prominently noted after the payments are made?
  - e. Checks drawn to "cash" and advance signing of checks are prohibited?
  - f. Multiple signatures are required on checks?

**Eligible use of STIF Funds**

1. STIF funds are appropriated to finance investments and improvements in public transportation services, except that monies may not be used for light rail capital expenses. Based on what the Subrecipient indicates during the review, system website, and other public information literature, do the services implemented with STIF eligibility services criteria? Yes/No. If no, attach an explanation.

**Capital Asset Management**

Eligible capital assets are defined as real property or tangible items with a purchase price of \$5,000 or more and a useful life of at least one year (consistent with 2 CFR 200.33), with the exception of light rail capital.

1. Did the Subrecipient acquire light rail capital? Yes/No. If yes, provide an explanation as this is an ineligible use of funds.
2. Did the Subrecipient maintain adequate insurance coverage pursuant to ORS 806.080?
  - i. Does the insurance coverage maintained on the asset meet or exceed the standards in ORS 806.070?
3. Did the Subrecipient own or develop any real property using STIF funds? N/A, Yes/No. If yes, then:
  - a. If real property (facilities) was purchased/constructed, is the real property being used in whole or in part for transit purposes consistent with the STIF Plan? N/A, Yes/No. If no, attach an explanation. If yes,
  - b. Is the real property located in a flood zone?
4. If the Subrecipient utilized STIF Formula Funds to purchase or improve real property, is there a written facilities maintenance plan used to ensure the facility is maintained in a state of good repair? Yes/No. If no, attach an explanation.
5. Did the Subrecipient purchase a vehicle? Yes/No. If yes, then:
  - a. What amount and percentage of STIF funding was used to purchase the vehicle(s)?
  - b. Is each vehicle purchased titled with the Oregon Department of Transportation Driver and Motor Vehicle Services Division?
  - c. Identify the primary security interest holder on each vehicle purchased?
6. Does the Subrecipient maintain an asset inventory of all STIF acquired capital? N/A, Yes, No. If no, attach an explanation. If yes, does the inventory contain the following elements:
  - i. Equipment:
    1. description of the asset,
    2. date of purchase,
    3. purchase price,
    4. amount of STIF monies contributed to the purchase price,
    5. the ratio of STIF funds to total purchase price,
    6. source of other funds used,
    7. current use of the asset,
    8. condition of the asset, and
    9. name of Subrecipient or recipient using the asset?
  - ii. Vehicles: If rolling stock was purchased, did the asset inventory list include items 1-9 above and:
    10. size of vehicle
    11. total number of passenger seats
    12. total number of ADA stations
    13. total number of seats when all ADA stations are in use, and

14. current mileage
15. useful life benchmark

iii. If real property was purchased, did the asset inventory list include items 1-9 above and:

15. the location of the asset?

8. Does the Subrecipient have written procedures that ensure that STIF funded assets (including vehicles) are maintained in a state of good repair? Yes/No. If no, attach an explanation.
9. Did the Subrecipient dispose of any STIF-funded assets during the fiscal year under audit? Yes/No. If yes, then:
  - a. Is there evidence that the asset was beyond the useful life?
  - b. Were the disposition proceeds greater than \$5k?
    - b. If yes, were the disposition of proceeds of any such sale returned to QE or ODOT or retained to reinvest in a future STIF Plan Capital Project?

#### **STIF Record Retention**

1. Has the entity established a record retention policy associated with its use of STIF funds? If yes, does the policy meet minimum STIF record requirements of no less than 6 years following the entity's final disbursement under the STIF Plan/or grant agreement?
2. Does Subrecipient have written records that require the entity to maintain all records relating to capital assets for three (3) years following disposition?

#### **Procurement**

1. Does the entity have procurement policies and procedures in place that follow OR 279 requirements and is there evidence that they follow their own agency procurement requirements?
2. Did the entity competitively procure for all services and/or purchases using STIF funding? If no, attach an explanation.
3. Does the agreement between recipient and subcontractor include language that specifically permits the Agency, the Secretary of State of Oregon, or their authorized representative access to data and records held?
4. Did the entity subcontract with lower tier recipients to provide services funded with STIF funds? If yes, then:
  - a. Was all required STIF information as identified in 2.2 included in the agreement??
  - b. Did the entity have an established oversight program to ensure lower tier recipients/subcontractor complied with STIF requirements?

*If the entity received a review/audit from ODOT and FTA in the last year to assess the agency's internal controls and compliance with Federal and state laws, rules, requirements and regulations, then the following additional audit procedures do not apply:*

#### **Civil Rights**

1. Is the Subrecipient required to prepare a Title VI Program pursuant to FTA Circular 4702.1B? If yes, then:
  - a. Has the Subrecipient established a complaint form and a process to resolve complaints? Yes/No. If no, attach an explanation.

2. Does the LEP element of the program identify any LEP populations that need key documents translated to the specified language? If yes,
  - a. Has the subrecipient translated key documents? Yes/No. If no, attach an explanation.
3. Does the Subrecipient provide fixed route service or operate 50 or more fixed route vehicles in peak service located in a UZA with a population of 200k or more? If yes, then:
  - a. Has the Subrecipient adopted the required service policies and elements (ex. distribution of transit amenities, by mode and vehicle assignment, by mode) and standards (ex: vehicle load, by fixed mode, by peak and off peak periods, vehicle headway, on-time performance service availability for each mode)? If no, attach an explanation.
4. Did the Subrecipient track, resolve and respond to Civil Rights complaints?

**Americans with Disabilities ACT (ADA)**

1. Determine the compliance status of the Subrecipient with ADA, by type and service mode.
  - a. For Fixed Modes:
    - i. Non-commuter bus (traditional fixed route)
    - ii. Commuter bus
    - iii. Intercity bus
    - iv. Route/point deviation (with deviations limited to certain riders)
  - b. For Demand Response:
    - i. Complementary paratransit
    - ii. Route/point deviation (deviations provided to all riders)
    - iii. General demand response service
2. Does the Sub recipient engage in any practices that would be discriminatory (such as extra charges, requiring passengers to transfer from their mobility device to a bus seat, requiring a passenger to travel with a PCA, etc.)? Yes/No. If yes, attach an explanation.
3. Has the Subrecipient designated an individual to be responsible for taking requests for reasonable modification of services and policies and to take complaints regarding the ADA? Yes/No. If no, attach an explanation.
4. If the transit system operates fixed route modes, do the drivers announce stops when required? If yes, then:
  - a. Does the Subrecipient operate a complementary paratransit system that meets the required service criteria? If Yes, then:
    - i. Does the Subrecipient manage an eligibility process to determine, unconditional, conditional, temporary, or denied eligibility?
5. If demand response modes are operated, is the demand response fleet 100% accessible? Yes/No If no, then:
  - a. Does Subrecipient operate “equivalent service”?
6. If system information, brochures, rider guides, etc. available in alternative formats upon request? Yes/No. If no, attach an explanation.

7. Does the system offer accessible telecommunication access (e.g., TTY)? Yes/No. If no, attach an explanation.
8. Did the Subrecipient track, resolve and respond to ADA related complaints?

References

1. OAR 732-40 Statewide Transportation Improvement Fund – General Information
2. OAR 732-42 Statewide Transportation Improvement Fund – Formula
3. ORS 184.758 & ORS 184.751
4. Civil Rights Restoration Act of 1987
5. “Sections 503 and 504 of the Rehabilitation Act of 1973, as amended
6. Americans with Disabilities Act of 1990, as amended
7. Title VI of the Civil Rights Act of 1964, as amended
8. Federal Transit Laws, Title 49, U.S.C.
9. Equal Employment Opportunity Act of 1972
10. Civil Rights Act of 1991
11. Equal Pay Act of 1963
12. Age Discrimination in Employment Act of 1967
13. Title IX of the Education Amendments of 1972
14. Uniformed Services Employment & Reemployment Rights Act of 1994
15. Single Audit Act of 1984, as amended
16. ORS 803-045 and 803-070



## EXHIBIT G

### **Statewide Transportation Improvement Fund Formula Fund Reporting Requirements Overview FINAL, May 8, 2019**

#### STIF REPORTING BACKGROUND

This document provides an overview for both quarterly and annual reporting requirements for the Statewide Transportation Improvement Fund (STIF).

The quarterly reporting requirements are outlined in OAR 732-042-0035(1), which states “Quarterly Reports:

Using a form provided by the Agency, each Qualified Entity [(QE)] shall  
prepare a quarterly report to [ODOT] which details Project progress, outcomes achieved, and  
expenditures of STIF Formula Fund moneys by itself and its Sub-Recipients.”

The capital asset reporting requirements outlined in OAR 732-042-0035(3) and OAR 732-044-0040(2) will be completed by recipients in the Agency Periodic Report (APR) on a quarterly basis.

The annual reporting requirements outlined in OAR 732-040-0025 include the following three additional reports: 1) low-income mitigation actions, 2) annual QE budget, and 3) annual audit reports.

The purpose of this document is for QEs and Public Transportation Service Providers (PTSPs) to become familiar with the upcoming quarterly and annual reporting requirements for STIF Formula projects.

ODOT staff will develop separate reporting requirements for STIF Discretionary/Intercommunity funded projects and instructions will be provided to QEs and PTSPs in advance.

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ROLES AND RESPONSIBILITIES

QEs and PTSPs will have different roles and responsibilities for STIF reporting requirements.

The following are the QEs roles and responsibilities:

- Initiate and submit the quarterly report, STIF Periodic Report (SPR)
- Delegate relevant projects in the SPR to their PTSPs so that they can enter updates
- Report on STIF capital assets in the Agency Periodic Report (APR)
- Bundle and submit all low-income mitigation action reports from their PTSPs (including PTSPs that are only receiving STIF discretionary funds)
- Provide a copy of their adopted annual budget to ODOT
- Provide copies of their financial audits to ODOT, including STIF procedures

The following are the PTSPs roles and responsibilities:

- Receive SPR prompt from their QE and enter project updates
- Submit an annual low-income mitigation actions report to their QE
- Provide copies of financial audits to ODOT, including STIF procedures
- Report on STIF capital assets in the Agency Periodic Report (APR)

QUARTERLY VS. ANNUAL REPORTING REQUIREMENTS SUMMARY TABLE

Type of Reporting	Quarterly Basis	Annual Basis	Where to Submit
Outcomes	As applicable to individual projects as specified in an approved STIF Plan: <ul style="list-style-type: none"> <li>• revenue miles</li> <li>• revenue hours</li> <li>• rides</li> <li>• number of new stops shared with other providers</li> <li>• number of students in grades 9-12 served by demand response</li> <li>• number of students in grades 9-12 with free or reduced fares</li> </ul>	<ul style="list-style-type: none"> <li>• number of people within a half mile of transit stop</li> <li>• number of Low-Income Households within a half mile of transit stop</li> <li>• number of students in grades 9-12 attending a school served by transit</li> <li>• number of rides provided to students in grades 9-12</li> </ul>	STIF Periodic Report
Program Criteria	N/A	<ul style="list-style-type: none"> <li>• increased frequency to areas with high-percentage of low income households</li> <li>• expanded routes or services to areas with</li> </ul>	STIF Periodic Report

		<p>high-percentage of Low-Income Households</p> <ul style="list-style-type: none"> <li>• reduced fares in communities with high percentage of Low-Income Households</li> <li>• procurements of low-or no-emission buses for use in areas with population of 200,000 or more</li> <li>• improved frequency and reliability of service between communities in and out of QE's service area</li> <li>• improved coordination among PTSPs to reduce fragmentation of service</li> <li>• implementation of programs to provide student transit service for students in grades 9-12</li> </ul>	
Capital Assets	Acquired, purchased or leased Capital Assets by QEs and PTSPs using STIF funds	N/A	Agency Periodic Report
Low-Income Tax Mitigation	N/A	Report on mitigating the impact of the tax on low-income passengers	Attach to STIF Periodic Report
QE Budget	N/A	Copy of QE's adopted annual budget	Email hyperlink to <a href="mailto:ODOTPTDreporting@odot.state.or.us">ODOTPTDreporting@odot.state.or.us</a>
Audit Reports	N/A	Copies of financial audits, including STIF procedures	<a href="mailto:ODOTPTDreporting@odot.state.or.us">ODOTPTDreporting@odot.state.or.us</a>

## QUARTERLY REPORTING

### *Quarterly Reporting Introduction*

The SPR is for QEs to report on their STIF Plan for a quarterly time period. ODOT staff and OGMA Consulting Corp. are developing the SPR template in the [Oregon Public Transit Information System \(OPTIS\)](#). This quarterly report template will be finalized in July 2019. It will be the responsibility of the QEs to gather all applicable information from their PTSPs and complete the SPR. The SPR template is designed for the QE to initiate the SPR and then delegate the appropriate projects to the PTSPs for reporting. The SPR will be auto-populated from the QE's STIF Plan. There will be fields and text boxes for entering status updates for each project and the associated tasks.

ODOT staff will track the completion of the SPR and whether a QE has substantially complied with its approved STIF Plan (see [STIF Guidance for Determining Whether Expenditures are Substantially Compliant and Consistent with STIF Plan](#)). Following ODOT staff review of each submitted SPR, staff will identify any compliance issues and work with the QE toward resolution. After the review, QEs will be notified that they 1) Have complied with the approved STIF Plan or 2) Failed to substantially comply with the approved STIF Plan. If there are three or more SPRs within the past two years that indicate the QE failed to substantially comply with its approved STIF Plan, the QE will be required to include a description of the QE's strategies to ensure that it will substantially comply with the proposed STIF Plan in the next biennium. (Remediation strategy requirements are specified in OAR 732-042-0015(2)(h).) Such a QE is at risk of the OTC rejecting its next proposed STIF Plan.

ODOT staff will review the submitted SPR and follow up with observations that could lead to a QE receiving technical assistance from its regional transit coordinator. For example, ODOT could share a current best practice to aid the QE. The SPR will also enable ODOT to track the QE's STIF Plan outcomes and the overall impact of the STIF formula funds.

### *Quarterly Reporting and Disbursements*

Table 1 shows the general schedule for reporting and disbursement of STIF Formula funds. The transit tax is due from businesses to the Oregon Department of Revenue (DOR) approximately one month after the end of the tax assessment period. The DOR releases the revenues to ODOT approximately one month after they are due to DOR. ODOT then calculates the disbursement amounts and releases the funds to the QEs approximately one month later.

*Table 1. STIF Formula Disbursement Schedule*

STIF Formula Fund Disbursement and Reporting Schedule				
Disbursement to QEs	Jan 15	Apr 15	Jul 15	Oct 15
QE STIF Plan reporting period	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec
QE STIF Plan reports due to ODOT	May 15	Aug 14	Nov 14	Feb 14

Tables 2 and 3 show the disbursement and reporting schedules for QEs that submitted their STIF Plans in November 2018 and May 2019, respectively. The schedule for these initial disbursements and reporting is different because they are occurring off-cycle as reflected in the tables below.

For QEs that submitted in November 2018 (see Table 2), the first STIF report (FY 2019 Q4) is due on August 14, 2019, and will cover expenditures and outcomes for Q1, Q2, Q3, and Q4 of FY 2019 (July 1, 2018 through June 30, 2019), to the extent the QE made expenditures during these quarters.

For QEs that submitted in May 2019 (see Table 3, below), the first STIF report is due on February 14, 2020, and will cover all of FY 2019 and Q1 and Q2 of FY 2020, to the extent the QE made expenditures during these quarters.

Table 2. Quarterly Reporting Schedule for November 2018 Submissions

STIF Cycle 1 (November 2018 Submissions)			
Disbursement to QEs	May 15, 2019	Jul 15, 2019	Oct 15, 2019
QE STIF Plan reporting period	Jul 2018-Jun 2019	Jul-Sep 2019	Oct-Dec 2019
QE STIF Plan reports due to ODOT	Aug 14, 2019	Nov 14, 2019	Feb 14, 2020

Table 3. Quarterly Reporting Schedule for May 2019 Submissions

STIF Cycle 2 (May 2019 Submissions)	
Disbursement to QEs	Oct 15, 2019*
QE STIF Plan reporting period	Jul 2018-Dec 2019
QE STIF Plan reports due to ODOT	Feb 14, 2020

\*Contingent upon STIF Plan approval

*STIF Periodic Report vs. Agency Periodic Report*

The SPR will have a similar design to the existing APR but is being developed to include STIF-specific items. Both the SPR and the APR are quarterly reports. The SPR will not replace the APR, but is a supplemental OPTIS document for reporting the additional information required under STIF. Unlike the APR, the details (e.g., expenditure, capital outcomes) reported on the SPR are at the project task level, not at the agency level. Also, the APR reports all sub-grants (including STIF) and the SPR reports only STIF grants. Currently, the SPR is for the STIF Formula fund only; it may be modified to include reporting for STIF Discretionary/Intercommunity funds. The APR can be downloaded as a PDF whereas the SPR can be downloaded as an Excel spreadsheet.

The SPR includes the following STIF-specific items:

- Project Status (with deliverables)
- Task Level Expenditures
- Measurable Benefits
- Capital Outcomes
- Program Criteria

The SPR does NOT include the following APR-specific items; these will continue to be reported at the agency level through the APR:

- Volunteer and Non-Cash Resources
- Assets
- Accidents
- Civil Rights

Note: STIF capital assets will be added to the asset register in OPTIS by ODOT.

*STIF Periodic Report Template*

Final screenshots for the entire SPR and required information are in process and will be provided at a later date. (Please note the OPTIS and SPR figures included in this document are sample screenshots and are not from the final SPR template.) ODOT staff have provided additional context on what will be displayed and the required information in the next sections. As previously mentioned, the SPR will be auto-populated from the QE's STIF Plan. There will be fields and text boxes for entering status updates for each project and the associated tasks. ODOT will require the QE to report on all projects and associated tasks identified in its STIF Plan. Text boxes will be available for the projects and associated tasks to provide additional context on any changes and/or deviations from the STIF Plan. Rationales for changes or inactivity will be required in the SPR.

*STIF Periodic Report Process*

STIF Periodic Reports will be created from the OPTIS main navigation menu (see Figure 1). The OPTIS user will be prompted to select the QE for which it will be reporting. The QE will only be able to select their own STIF Plan in order to complete the SPR. Once the STIF Plan is selected, the QE is then presented with a page from which they can create the SPR. The QE can select the project tasks and send them to the relevant PTSPs for their completion in OPTIS. Also, if a QE is a PTSP, then it can only complete the report when prompted by its QE. For example, Crook County is a QE but if it is listed in the Confederated Tribes of the Warm Spring Reservation STIF Plan as a PTSP, it will need to enter project updates when the Confederated Tribes of the Warm Spring Reservation delegates the SPR items to Crook County.

*Figure 1. OPTIS Main Menu*



A completed SPR will provide an overview of the entire planned STIF Plan budget and remaining funding (see Figure 2).

Figure 2. SPR Project Task Report

**OPTIS** Close

### STIF Project Task Report

Report for: **FY2019 Qtr.1: July - September 2018** Number: SPR-19-0502-02

**Public Transit Service Provider:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

**Prepared by:** \_\_\_\_\_ **E-mail:** \_\_\_\_\_

**Phone No.:** \_\_\_\_\_ **Fax No.:** \_\_\_\_\_

**Provider**

**I have certified that this document is correct to the best of my knowledge and that I am the authorized representative shown below.**

**Authorized by:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Attachments Exist

#### Budget

	Planned	Total To Date	Remaining
STIF Funds	\$160,000.00	\$82,440.00	\$77,560.00
Other Funds	\$20,000.00	\$7,820.00	\$12,180.00
<b>Total Expenditure</b>	<b>\$180,000.00</b>	<b>\$90,260.00</b>	<b>\$89,740.00</b>
Future Expenditure	\$32,460.00		

#### Expenditures

	Previous	Current	Total To Date
STIF Funds	\$12,340.00	\$70,100.00	\$82,440.00
Other Funds	\$7,820.00	\$0.00	\$7,820.00
<b>Total Expenditure</b>	<b>\$20,160.00</b>	<b>\$70,100.00</b>	<b>\$90,260.00</b>

#### Project Status

Project Task #	Title

As described in OAR 732-042-0035(1), QEs and PTSPs will be required to report project progress, including expenditures and outcome measures. Providers will enter the project status in an update field and enter the amount spent in an expenditures field.

*Outcomes and Reporting Methods*

The outcomes reported in the SPR will be reported either quarterly or annually depending on the type of project and activity included in the STIF Plan. The reported outcomes must reflect the QE’s progress on the outcomes and benefits, considering the estimated outcomes listed in the QEs OTC-approved STIF Plan. QEs must report on all estimated outcomes and/or benefits from a STIF Plan.

ODOT staff has developed guidance below to assist in reporting outcomes and identifying what is attributable to STIF for the following: revenue miles, revenue hours, rides, number of new stops shared with other providers, number of students in grades 9-12 served by demand response, and number of students in grades 9-12 with free or reduced fares.

A provider may have a direct charge accounting method with STIF funds to report their revenue miles, revenue hours, and rides. Otherwise, an acceptable method for reporting the following outcomes is to allocate the data by the funding percentage: revenue miles, revenue hours, and rides. The funding percentage is calculated as the actual expenditures for STIF as a percentage of total expenditures from other sources. The provider will also



calculate the total number of miles, number of hours, and the number of rides in the STIF Plan reporting period, then apply the STIF funding percentage. The provider will need to separate new and existing routes and indicate what is attributable to STIF funding. ODOT staff will be reviewing the fixed route and demand response service separately.

QEs should report when a new shared stop goes into service. A new shared stop may be a stop that was served by one provider and is now served by a second provider or a stop that was served by two or more providers and is now served by the QE.

Reporting methods may vary for reporting on number of students in grades 9-12 served by demand response and the number of students in grades 9-12 with free or reduced fares. The provider should use the most accurate method for counting student ridership such as onboard ridership surveys, passenger counts, and/or requesting age/grade information when scheduling demand response rides.

Figure 3. SPR Outcome Measures

The screenshot shows the OPTIS web application interface for reporting outcome measures. At the top, there is a dark blue header with the 'OPTIS' logo and a 'Close' button. Below the header, the page title is '3. Outcome Measures' and the item identifier is 'Item 1.1'. The 'Number' is 'SPR-19-0502-02' and the 'Control #' is '10095225'. A navigation bar contains five buttons: 'Skip', 'Back', 'Save', 'Next', and 'Finish'. On the left, a vertical list shows four steps: '1. Task Information', '2. Other Funds', '3. Outcome Measures', and '4. Annual Measures'. The main content area is titled 'Outcome Measures' and includes a help icon and the instruction: 'Enter the applicable measures for this task in this reporting period.' Below this, there are seven rows of labels with corresponding input fields: 'Revenue Miles', 'Revenue Hours', 'Rides', '# of New Stops Shared with Other Providers', '# of Rides to Students in Grades 9-12', '# of Students in Grades 9-12 Served by Demand Response', and '# of Students in Grades 9-12 with Free or Reduced Fares'. The final row is 'Other Benefit' with a larger, empty text box.

*Quarterly STIF Capital Assets*

The capital asset reporting requirements outlined in OAR 732-042-0035(3) and OAR 732-044-0040(2) will be completed by the provider in the APR on a quarterly basis. This reporting includes acquired, purchased, or leased capital assets by providers using STIF Formula fund and/or STIF Discretionary/Intercommunity funds. This capital asset reporting will be completed through the APR to fulfill the STIF requirements. ODOT will enter the STIF capital assets in OPTIS prior to beginning the APR.

The STIF capital assets for STIF Formula and STIF Discretionary/Intercommunity will then be populated when the provider begins the APR.

ANNUAL REPORTING

*SPR Annual Reporting Outcomes*

The following access to public transportation outcomes must be reported in the SPR as **part of the 4<sup>th</sup> quarter** SPR of each year: number of people within a half mile of transit stop, number of Low-Income Households within a half mile of transit stop, number of students in grades 9-12 attending a school served by transit, and number of rides provided to students in grades 9-12 served by fixed route services.

The method for calculating access to transit outcomes, as list above, may vary. QEs should use the same method for reporting as was used to estimate outcomes in the STIF Plan. Methods may have included using transportation tools, such as Remix or TNexT. QEs also may have used U.S. Census data to calculate the number of low-income households within a given geographic area. See the [STIF Methods for Calculating Low-Income Households](#) guidance document for more information.

The method may vary for calculating the number of rides provided to students in grades 9-12, depending on the type of service provided and other factors. The provider should use the most accurate method for counting student ridership such as onboard ridership survey, passenger counts, and requesting age/grade information when scheduling rides.

*Figure 4. Annual Outcome Measures*

The screenshot shows the OPTIS system interface for '4. Annual Measures'. At the top, there is a dark blue header with 'OPTIS' on the left and 'Close' with a close icon on the right. Below the header, the main title '4. Annual Measures' is displayed in a large, bold font. Underneath, 'Item 1.1' is shown, followed by 'Number: SPR-19-0502-02' and 'Control #: 10095225'. A navigation bar contains five buttons: 'Skip', 'Back', 'Save', 'Next', and 'Finish'. The main content area is titled 'Annual Measures' and includes a question mark icon followed by the text: 'These measures are required at the end of each fiscal year (4th & 8th quarters)'. Below this, there are three rows of labels and input fields: '# of People within a Half Mile of Transit Stop', '# of Low-Income Households within a Half Mile of Transit Stop', and '# of Students in Grades 9-12 Attending a School Served by Transit'. Each label is followed by an empty rectangular input field. At the bottom left, there is a note: '\* indicates a required field'. At the bottom right, there is a 'Top' button with an upward arrow icon.

#### *SPR Annual Reporting Program Criteria*

The following program criteria must be reported in the SPR as part of the 4<sup>th</sup> quarter of each year. ODOT staff has developed guidance below to assist in reporting program criteria for the following: increased frequency to areas with high-percentage of low income households, expanded routes or services to areas with high percentage of low-income households, reduced fares in communities with high percentage of low-income households, procurements of low-or no-emission buses for use in areas with population of 200,000 or more, improved frequency and reliability of service between communities in and out of QE's service area, improved coordination among PTSPs to reduce fragmentation of service, and implementation of programs to provide student transit service for students in grades 9-12.

The method for reporting each program criterion is to review the percentage allocated in the STIF Plan and enter the same percentage as the STIF Plan allocates, unless there has been a variance. If the percentage has changed, enter the updated percentage and explain in the available text box why the change occurred. If there is STIF match for the procurement of low-or no-emission buses for use in areas with population of 200,000 or more, then the QE will need to update the percentage with what is attributable to STIF funding.

#### *Annual Reporting Outside of the SPR*

The reporting requirements include three additional documents that must be submitted on an annual basis: report on mitigating the impact of the tax on low-income passengers, QE budget, and audit reports. Instructions on how to submit these three documents to ODOT will be provided online and as part of ODOT's upcoming grant management training in July 2019.

#### *Annual STIF Low-Income Tax Mitigation Reports*

The annual low-income reporting requirements are required by statute and the details are outlined in OAR 732-040-0025(1). The report must consist of actions taken by any PTSP located within the area of the QE to mitigate the impact of the STIF tax on passengers who reside in low-income communities.

PTSPs will submit reports to their relevant QE and the QE will bundle the low-income reports from applicable PTSPs for submittal to ODOT. The QE will include reports from PTSPs located within their area of responsibility that receive STIF discretionary funds, even if they do not receive STIF formula funds.

The report must also explain how the QE defines and identifies passengers in low-income communities. The method used must be consistent with the definition of Low-Income Households from the QEs STIF Plan. This report will provide information on the overall dollars spent in improving and expanding transportation services to Low-Income Households. OAR 732-40-0005(17) defines Low-Income Households as those below 200% the federal poverty guidelines. This report is due as **part of the 4<sup>th</sup> quarter** SPR reporting and can be attached to the SPR in OPTIS.

#### *Annual QE Budget*

In accordance with the budget reporting requirements specified in statute and OAR 732-040-0025(2), a copy of the QE's adopted annual budget for the upcoming fiscal year must be submitted to ODOT. The deadline for ODOT receipt of each QEs' budgets is no later than 30 days after adoption.

#### *Annual Audit Reports*

Per the audit requirements articulated in statute and described in detail in OAR 732-040-0025(3), a QE or any PTSP located within the QE's area of responsibility must submit the results of any relevant financial audit, as required by a local, state, or federal oversight agency for the purposes of statewide reporting. ODOT is requesting submittal of any required local, state, federal, or any voluntarily submitted audits. This includes a) the state financial report required under ORS 291.040, b) the results of any comprehensive review completed by the Federal Transit Administration of the Agency; and c) any information submitted by the QE, and their PTSPs, as part of the

requirements of a statewide audit in accordance with the federal Single Audit Act of 1984, as amended by the Single Audit Act Amendments of 1996. A QE is not expected to audit their PTSPs. The QE's role is limited to compliance oversight.

Per the audit requirements articulated in statute and described in detail in OAR 732-040-0015(1), recipients shall conduct an annual financial audit of the STIF moneys received. See the [STIF Agreed-Upon Audit Procedures](#) for a list of audit items that must be included in STIF recipients annual audits. All financial audit reports shall be submitted to ODOT no later than 30 days after the receipt of the auditor's final report(s) per OAR 732-040-0015(2).

#### STIF DISCRETIONARY/INTERCOMMUNITY REPORTING

The STIF Discretionary/Intercommunity reporting requirements are currently being developed by ODOT staff. The reporting requirements will be explicit in the grant agreements. ODOT is exploring options for modifying the existing APR or SPR for reporting purposes. The report template will allow PTSPs to report on STIF Discretionary/Intercommunity funded projects directly to ODOT.



## Staff Report

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**Meeting Date:** July 15, 2019

**From** Andi Howell, Transit Director

**SUBJECT:** Amended Intergovernmental Agreement with Clackamas County

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**Background:**

Sandy Transit has successfully collaborated with Clackamas County for administrative duties related to the Mount Hood Express (MHX) service. Due to the success of this collaboration and the efficiencies in savings, employment practices and the great customer experience of seamless service, the County and Sandy Transit would like to amend the current IGA to include "purchased service".

The County continues as the responsible entity of the MHX service. Sandy, as the on-site provider, would take a larger role in oversight of contract and maintenance invoicing, insurance coverage and other the daily operations. This collaboration allows both parties to continue to improve staff utilization and increased productivity and operational savings on parts, supplies and facility cost-sharing. It will also allow Sandy and MHX to combine vehicles into a larger fleet covered by a mutual insurance provider.

**Recommendation:**

Authorize the Mayor to sign the Intergovernmental Agreement with Clackamas County on behalf of the City.

**Budgetary Impact:**

Sandy Transit would receive an increase in fees paid for both administrative support and facility fees. These fees would amount to a \$6,000 increase in administrative support and a \$5,000 increase in facility fees.

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
CLACKAMAS COUNTY, OREGON  
AND  
CITY OF SANDY, OREGON**

1. Purpose. This agreement (“Agreement”) is entered into between Clackamas County (“COUNTY”) and City of Sandy (“CITY”) for the cooperation of units of local government under the authority of ORS 190.010. This agreement provides the basis for a cooperative working relationship for the purpose of providing operational support to the COUNTY’s Mt. Hood Express (“MHX”) transit service in partnership with the CITY’s SAM transit service to increase operational efficiencies, collaboration and cost effective management of both services.
2. Scope of Work and Cooperation.
  - 2.1. Subject to the terms of this Agreement, CITY agrees to provide the following support functions for the MHX:
    - 2.1.1. Compile data required for completion of fiscal and grant reports, including tracking performance measures.
    - 2.1.2. Conduct semiannual rider surveys as required by grants and compile results for analysis.
    - 2.1.3. Conduct research and analysis associated with policy and program development.
    - 2.1.4. Work with COUNTY for operational issues requiring county input.
    - 2.1.5. Assist with completion of grant applications and other activities designed to promote long term stable funding.
    - 2.1.6. Work with Hoodland area businesses to promote ridership and to effectively communicate service needs and upcoming changes.
    - 2.1.7. Assist with planning and coordination of events.
    - 2.1.8. Provide staff support to the Mt Hood Transportation Alliance, including taking minutes and following up on action items.
    - 2.1.9. Update the MHX website and respond to information requests.
    - 2.1.10. Interact with public at the Sandy Park and Ride location.
    - 2.1.11. General office and clerical duties as needed.
    - 2.1.12. Participate in required training programs and staff meetings.
    - 2.1.13. Provide space for office staff, program materials and parking of buses.
    - 2.1.14. Order necessary shop supplies to support the operations of the Mt Hood Express
    - 2.1.15. Provide a vehicle for use by the Mt Hood Express in emergencies when existing Clackamas County owned vehicles are out of service.
    - 2.1.16. Provide purchased service from Rojoy Services LLC to continue the operations of the Mt Hood Express based on the cooperative RFP No. SAM2018 issued by the City of Sandy on April 13, 2018, (Exhibit 5) and as outlined in the response received from Rojoy Services LLC (Exhibit 6). The purchased service will include reimbursement for all preventative maintenance and repair activities completed by Rojoy Services LLC.

- 2.1.17. Provide insurance coverage for vehicles leased to CITY under separate lease agreement for use in the provision of the Mt Hood Express bus service, with Rojoy Services LLC listed as an additional insured.
- 2.1.18. Provide necessary staff and other administrative resources necessary to fulfill its obligations under this Agreement.
- 2.1.19. Other tasks and projects as needed.

2.2. Subject to the terms of this Agreement, COUNTY agrees to provide the following:

- 2.2.1. Provide ongoing fiscal support to the Mt Hood Express, as set forth in Section 3 of this Agreement. Changes in funding requiring changes in service levels will be communicated to CITY when notification is received from the funder, and the parties will negotiate in good faith to address those changes.
- 2.2.2. Complete and submit required reports to funders in a timely manner.
- 2.2.3. Participate in ongoing planning and coordination efforts, including participation in the Mt Hood Transportation Alliance.
- 2.2.4. Reimburse CITY for shop supplies purchased by CITY
- 2.2.5. Pay a vehicle use fee of \$50 per day for the back-up bus if needed.
- 2.2.6. Reimburse CITY for all purchased service from Rojoy Services, LLC, billed for the Mt Hood Express bus service, including reimbursement for preventative maintenance and repairs.
- 2.2.7. Reimburse CITY for insurance costs associated with the vehicles leased to the CITY for use for the Mt Hood Express service.
- 2.2.8. COUNTY will be responsible for all costs associated with accidents, including insurance deductibles, repairs not covered by insurance and towing for CITY-owned MHX back up bus for incidents occurring during its use for MHX routes.
- 2.2.9. The county will continue to be responsible for paying for costs associated with MHX service that are not specifically included in this agreement. Those costs historically have included fuel, advertising, printing, website costs, and vehicle replacement
- 2.2.10. Provide administrative and operational support as needed.

### 3. Compensation and Record Keeping.

- 3.1. Compensation. COUNTY shall compensate the CITY for satisfactorily performing the services identified in Section 2 as described in *Exhibit C: Budget*, attached hereto and incorporated by this reference herein. Total maximum compensation under this Agreement shall not exceed **\$664,533**. Any continuation or extension of this Agreement after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Agreement, as determined by the COUNTY in its sole administrative discretion.
- 3.2. Method of Payment. To receive payment, CITY shall submit invoices and accompanying progress reports as required in *Exhibit B: Reporting Requirements*, attached hereto and incorporated by this reference herein.

- 3.3. Withholding of Contract Payments. Notwithstanding any other payment provision of this Agreement, should CITY fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, COUNTY may immediately withhold payments hereunder. The COUNTY may continue to withhold payment until CITY submits required reports, performs required services, or establishes to COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of CITY.
- 3.4. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this Agreement and all other pending matters are closed.
- 3.5. Access to Records. COUNTY, the State of Oregon and the federal government and their duly authorized representatives shall have access to the books, documents, papers, and records of CITY that are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, and transcripts. Likewise, CITY, the State of Oregon and the federal government and their duly authorized representatives shall have access to the books, documents, papers, and records of COUNTY that are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, and transcripts.

4. Manner of Performance.

- 4.1. Compliance with Applicable Laws and Regulations, and Special Federal Requirements. CITY and COUNTY shall comply with all federal laws and regulations, Oregon laws and regulations, local ordinances and rules applicable to this Agreement, including, but not limited to, all applicable federal and Oregon civil rights and rehabilitation statutes, rules and regulations, and as listed in Exhibit 4, attached and incorporated into this Agreement.
- 4.2. Precedence. When a requirement is listed both in the Agreement and in an exhibit to it, the requirement in the exhibit shall take precedence.
- 4.3. Subcontracts. CITY shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from COUNTY.

5. General Provisions.

- 5.1. Contact. All routine correspondence and communication regarding this Agreement, as well as requests for written acknowledgment, shall be directed to the following representatives:

For COUNTY: Teresa Christopherson, 2051 Kaen Rd, Oregon City, OR 97045  
([teresachr@co.clackamas.or.us](mailto:teresachr@co.clackamas.or.us)) (503-650-5718)

For CITY: Andi Howell, Transit Director, City of Sandy, 16610 Champion Way,  
Sandy, OR 97055 ([ahowell@ci.sandy.or.us](mailto:ahowell@ci.sandy.or.us)) (503-489-0925)



Either party may change the contact or its associated information by giving prior written notice to the other party.

- 5.2. Indemnification. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including its officers, commissioners, councilors, agents and employees, against all claims, demands, actions and suits of any kind or nature for personal injury, death or damage to property arising out of this Agreement where the loss or claim is attributable to the negligent acts or omissions of the indemnitor or the indemnitor's officers, commissioners, councilors, employees, agents, subcontractors, or anyone over which the party has a right to control. Each party shall give the other party immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this Agreement.
- 5.3. Severability. If any provision of this Agreement is found to be unconstitutional, illegal or otherwise unenforceable by a Court or authority of competent jurisdiction, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision, to give effect to the intentions of the parties to the maximum extent possible.
- 5.4. Modifications. Any modification or change to the terms of this Agreement shall be effective only when reduced to writing and approved by the governing bodies of both parties. Any modification or change, including any additional agreement providing descriptions of tasks, standards of performance or costs, shall be in writing, shall refer specifically to this Agreement and shall be valid only when approved by the governing bodies of both parties.
- 5.5. Integration. This Agreement contains the entire agreement between the parties concerning its subject matter.
- 5.6. Third-Party Beneficiaries. The CITY and COUNTY are the only parties to this Agreement and are the only parties entitled to enforce its terms.
- 5.7. Applicable Law. The laws of the State of Oregon govern this Agreement without respect to conflict of laws principles. Any litigation between the parties arising out of or related to this Agreement will be conducted exclusively in the Circuit Court for the State of Oregon, Clackamas County. The parties accept the personal jurisdiction of this court.
- 5.8. Dispute Resolution.
  - 5.8.1. Subject to mutually agreed upon extensions of time in writing, failure or unreasonable delay by any party to substantially perform any material provision of this Agreement shall constitute default. In the event of an alleged default or breach

of any term or condition of this Agreement, the party alleging such default or breach shall give the other party not less than 30 days written notice specifying the nature of the alleged default and the manner in which the default may be cured satisfactorily. During this 30-day period, the party shall not be considered in default for purposes of termination or instituting legal proceedings.

5.8.2. The parties shall negotiate in good faith to resolve any dispute arising under this Agreement. Should any dispute arise between the parties concerning this Agreement that cannot be resolved by mutual agreement, the parties may mutually agree to mediate the dispute prior to a party commencing litigation. The mediation shall take place in Clackamas County, Oregon. The parties will equally bear the mediator's fees and costs.

5.9. Term and Termination.

5.9.1. Term. This Agreement is effective on July 1, 2019 and will terminate on June 30, 2020, unless the parties agree in writing to extend the Agreement.

5.9.2. Termination For Convenience. Either party may terminate this Agreement by providing at least 30 days prior written notice to the other party.

5.9.3. Termination For Cause. Either party may immediately terminate this Agreement if that party complied with Section 5.8.1 of this Agreement and the other party did not cure its default within the time provided by Section 5.8.1.

5.9.4. Termination for Lack of Appropriation. Either party may terminate this Agreement in the event that party fails to receive expenditure authority, including but not limited to receipt of state or federal funds, sufficient to allow the party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either party is prohibited from paying for such work from the planned funding source.

5.10. Effective Date. This Agreement will only become effective upon approval by the governing bodies of COUNTY and CITY.

5.11. Necessary Acts. Each party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement including, but not limited to, any additional requirements imposed by state or federal funding sources.

5.12. Debt Limitation. This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

***[SIGNATURES ON FOLLOWING PAGE]***

**CITY OF SANDY**  
Stan Pulliam, Mayor

Signing on Behalf of the Mayor & Council

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

\_\_\_\_\_  
Date

**CLACKAMAS COUNTY**

Signing on behalf of the Board  
Commissioner: Jim Bernard, Chair  
Commissioner: Sonya Fischer  
Commissioner: Ken Humberston  
Commissioner: Paul Savas  
Commissioner: Martha Schrader

\_\_\_\_\_  
Richard Swift, Director  
Health, Housing & Human Services

\_\_\_\_\_  
Date

**Exhibit A**

**City of Sandy Clackamas County Employee Support Proposal**

## City of Sandy Clackamas County Employee Support Proposal

In an effort of collaboration and cost effective management, the City of Sandy Transit Department proposes a supported administrative employment approach between the City of Sandy and Clackamas County. Sandy and Clackamas County have a demonstrated record of collaboration through shared contracting and facility utilization. As outlined in the Mt Hood Service and Sustainable Operations Plan, there could be further efficiencies for both systems through the use of administrative employees to support the Mount Hood Service. Due to the lack of authority for the City of Sandy in the Mount Hood communities, the City cannot claim jurisdiction to the Mount Hood System, however the two can work together to seamlessly operate regardless of funding structure. See proposal below.

City of Sandy will employ 1 Program Administrator (STEP 7) at \$4065/month

City of Sandy will employ 1 Administrative Secretary (STEP 3) at \$2790/month

Both positions will be City employees, however their job descriptions will be outlined as support positions for both Sandy Transit and the Clackamas County Mount Hood Service. The County will exercise no control over the work or working conditions of these City employees, and the County has no right to hire, fire, assign or direct and control these employees.

The City of Sandy is proposing a commitment of \$55,000 per year from the County to provide the following functions for Mount Hood Express Services:

- Compile data required for completion of fiscal and grant reports, including tracking performance measures
- Conduct semiannual rider surveys as required by grants and compile results for analysis
- Conduct research and analysis associated with policy and program development
- Work with MHX contractor for operational issues requiring county input
- Assist with completion of grant applications and other activities designed to promote long term stable funding
- Work with Hoodland area businesses to promote ridership and to effectively communicate service needs and upcoming changes
- Assist with planning and coordination of events
- Provide staff support to the Mt Hood Transportation Alliance, including taking minutes and following up on action items
- Update the MHX website and respond to information requests
- Interact with public at the Sandy Park and Ride location

- General office and clerical duties as needed
- Participate in required training programs and staff meetings
- Other tasks and projects as needed

EXHIBIT B  
REPORTING REQUIREMENTS

Reporting:

CITY shall submit on a quarterly basis a narrative summary of the work performed on behalf of the Mt Hood Express, including progress on any planning or special projects.

Invoicing

CITY, through designated staff, shall submit to COUNTY a monthly invoice for project management services, staff mileage, bus rental and reimbursement of shop supplies and purchased service from Rojoy Services, LLC, including preventative maintenance and repairs. The invoice shall include copies of all back up documentation from Rojoy Services LLC sufficient to allow the billing to be reimbursed from applicable funding sources, as well as copies of reimbursable invoices for all shop supplies. Any bus rental fees will include a summary of rental use.

CITY, through designated staff, shall submit invoices on an as-needed basis to obtain reimbursement from COUNTY for insurance on vehicles owned by COUNTY and leased to CITY for use in Mt Hood Express bus service

Invoices and required reports may be submitted electronically via e-mail as an attachment and shall be received by COUNTY on or before the 15<sup>th</sup> of each month following the billing period.

E-mail address: [teresachr@clackamas.us](mailto:teresachr@clackamas.us)

COUNTY shall make payment to CITY within 30 days of receipt of each invoice submitted.

EXHIBIT C

BUDGET

\$61,000 for staff support for MHX project  
 \$1,000 for staff mileage in support of the MHX project  
 \$12,200 for space for staff, program materials, and bus parking  
 \$1,500 for vehicle rental  
 \$2,000 for shop supplies  
 \$43,000 for insurance cost reimbursement for MHX vehicles leased under separate agreement

Reimbursement for purchased service and for preventative maintenance and repairs as outlined below:

-

<u>Service Description</u>	<u>Estimated Service Hours</u>	<u>Revenue Hour Rate: The hourly rate reflects all fixed and variable costs involved in providing service.</u>
<u>Express Service</u>	<u>5,989</u>	<u>\$50.67</u>
<u>Added Winter Service</u>	<u>531</u>	<u>\$50.67</u>
<u>Villages Shuttle</u>	<u>1440</u>	<u>\$50.67</u>
<u>Total Annual Cost of Service (revenue hour rate x estimated hours of service)</u>		<u>\$403,333</u>
<u>Maintenance Reimbursement</u>		<u>\$80,000</u>
<u>Future Expansion</u>		<u>\$60,500</u>
<u>Total Operations Contract Cost per Year</u>		<u>\$543,833</u>

Total maximum compensation under this contract shall not exceed \$664,533



EXHIBIT D  
SPECIAL REQUIREMENTS

1. CITY certifies to the best of its knowledge and belief that neither it nor any of its principals:
  - (a) Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or CITY;
  - (b) Have within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 1(b) of this certification; and
  - (d) Have within a three-year period preceding this agreement had one or more public transactions (federal, state or local) terminated for cause or default.

Where the CITY is unable to certify to any of the statements in this certification, such CITY shall attach an explanation to this proposal.

2. In case of suspected fraud by applicants, employees, or vendors, CITY shall cooperate with all appropriate investigative agencies, and shall assist in recovering invalid payments.
3. CITY shall protect the confidentiality of all information concerning applicants for and recipients of services funded by this agreement and shall not release or disclose any such information except as directly connected with the administration of the particular Clackamas County program(s) or as authorized in writing by the applicant or recipient. All records and files shall be appropriately secured to prevent access by unauthorized persons.

CITY shall ensure that all officers, employees, and agents are aware of and comply with this confidentiality requirement.

4. CITY shall ensure that no person or group of persons shall, on the ground of age, race, color, national origin, primary language, sex, religion, handicap, political affiliation or belief, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part by funds delegated under this agreement.
5. CITY will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity covered by this contract.
6. CITY will comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).
7. CITY will establish safeguards to prohibit employees and volunteers from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. CITY certifies, to the extent required by federal law, that it will provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in CITY's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
  - (b) Establishing a drug-free awareness program to inform employees about:
    - (1) The dangers of drug abuse in the workplace;
    - (2) CITY's policy of maintaining a drug-free workplace;
    - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - (4) The penalties that may be imposed upon employees for drug abuse violations.
  - (c) Making it a requirement that each employee to be engaged in the performance of this contract be given a copy of the statement required by subsection (a) above.
  - (d) Notifying the employee in the statement required by subsection (a) that as a condition of employment on such contract, the employee will:
    - (1) Abide by the terms of the statement; and
    - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
  - (e) Notifying the County within 10 days after receiving notice under subsection (d)(2) from an employee or otherwise receiving actual notice of such conviction.
  - (f) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by Section 5154 of the Drug-Free Workplace Act of 1988.
  - (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of subsections (a) through (f).

Exhibit E

RFP Issued by City of Sandy dated 4/13/18

Exhibit F

Response to RFP: Rojoy Services LLC

## Exhibit G:

### Additional Terms and Conditions

CITY shall ensure that their contract with Rojoy Services LLC (Contractor) includes the following terms and conditions, as well as the Certifications and Assurances required for funding under the Federal Transit Administration as included in Exhibit H:

#### **Contractor Responsibilities:**

##### **Definition of Service and Service Boundaries**

The Mt Hood Express operates primarily on Highway 26 from the City of Sandy through the communities of the Hoodland area, including Welches and Rhododendron, with express service provided to Government Camp and Timberline Lodge.

The point deviated fixed route service (“Village Shuttle”) provides service between Sandy and Rhododendron three times daily, with morning, mid-day and evening times. The estimated number of daily revenue hours is 4 hours for an approximate annual total of 1,440 revenue hours per year. Riders requiring curbside pickup for the deviated fixed route service shall be scheduled through Contractor’s dispatching services, which must operate out of a locally provided dispatch center. Additional service may be considered in the future.

The commuter service (“Express”) provides six runs daily from Sandy to Government Camp and Timberline Lodge with limited stops. In addition, a seventh run is offered Dec. 1 to March 31 in the evenings. Finally, additional service is provided on weekends and holidays from December to February for an additional three runs per day. The average time for a run is generally 2.75 revenue hours with an approximate annual total of 6,520 revenue hours per year.

##### **Service Hours**

Contractor will operate the Villages Shuttle, one bus, three runs daily between Rhododendron and points in the City of Sandy seven days per week between the hours of 5:45am and 5:40pm. Holidays are as follows: New Year’s Day, Memorial Day, Labor Day, Independence Day, Thanksgiving Day and Christmas Day. Express commuter bus service, shall be offered six times daily between the hours of 5:45am and 8:55pm, with one additional run ending at 11:28pm from Dec. 1 to March 31, and three additional runs on weekends and holidays during the regular operating hours from December to February. Holidays for the Express shall be Thanksgiving Day and Christmas Day. Contractor will also provide one additional run daily on both the Express and the Villages shuttle service based on funding received effective April 1, 2019. Additional service may be considered in the future.

##### **Hourly Service Rate**

Compensation for operations will be on a revenue per hour basis. Contractor will be compensated on a monthly basis following submission of invoice with accompanying documentation, including information required for federal and state reporting. In the event there is an increase or decrease of more than fifteen percent (15%) in service needs an amendment may be issued by the County to renegotiate the contracted hourly rate contingent on funding.

**Bus Equipment, Fuel and Maintenance**

County shall provide at least two ADA-compliant vehicles for the Villages Shuttle and at least three ADA compliant buses for the Express and pay for all related fuel, maintenance and repair expenses. The vehicles will be leased to the City for use in the provision of public transit only. Contractor shall assess mechanical condition of vehicle, schedule maintenance services and transport vehicles to the appropriate service and/or repair locations. Contractor shall maintain a vehicle repair and maintenance schedule that provides for excellent safety and maintenance in compliance with all state and federal law and with vehicle manufacturer's recommendations for service. Contractor will be reimbursed by City for repair and maintenance expenses based on actual expenses incurred and the submission of a billing statement and copies of original invoices. Repairs in excess of \$1,500 in value require written permission from the City Project Manager. All physical damage should be reported to City within 1 day of occurrence whenever feasible. Barring normal wear and tear, vehicles shall be returned to the County in the same condition they were received by Contractor.

Contractor will pay vehicle repair costs and/or the insurance deductible for any preventable accident or incident while operated by their employees.

Fuel cards shall be provided by County and used at Pacific Pride fueling station only for fuel used for the defined Mt Hood Express service.

The Contractor will be responsible for keeping vehicles clean both inside and out. All service records will be kept on all vehicles and will be made available to the County at the end of each month. Contractor shall assist County with all warranty claims and Safety Bulletin Certificates of Compliance.

Invoices for reimbursement for repairs or maintenance on all vehicles shall have 0% markup for services rendered by third party.

**Back-up Vehicle**

The City will be responsible for providing a comparable back-up vehicle if the vehicles leased by the City are out of service.

**Bus Storage and Operating Facilities**

Operating facilities, including office space, are shared under a rental agreement between the County and the City of Sandy. Rents are paid directly by the County.

**Vehicle Usage**

The use of vehicles provided for any purpose other than the Mt Hood Express Service is prohibited without written permission from the County Project Manager.

**Safety**

Contractor shall ensure the safety of riders by any and all means necessary, including, but not limited to: ability to communicate with vehicle at all times, driver training, retraining and monitoring; alcohol and drug training; mobility assistance training; vehicle maintenance; maintaining order in and around vehicles; providing safety and emergency procedures and training; etc. Contractor shall equip all vehicles with emergency equipment to be defined in consultation with the City. This shall include at a minimum: fire extinguisher, first aid kit, blood borne pathogen kit, fluids kit and flashlight. All fire extinguishers will be serviced by Contractor as recommended by manufacturer.

**Fares**

Contractor shall work in coordination with the County and City to set fare policy, collect ticket sales and fares, and provide a monthly accounting of revenue received. Contractor will establish a secure procedure

for receiving fares and report on this process to the County. Fares received shall be deducted from monthly billings for service. County, acting on advice of Contractor and the Board of County Commissioners, shall be solely responsible for establishing new fare rates. Contractor and its employees are prohibited from soliciting or accepting tips or gifts of any kind.

**Scheduling and Dispatch and Staffing**

The Contractor will provide trip reservation scheduling and dispatch services at a minimum between 8:00 am and 5:00 pm weekdays and during service hours on weekends for the point deviated fixed route service. Emergency or on-call dispatch support shall be maintained during all hours of operation. Point deviated fixed route dispatch will be in accordance with all ADA requirements. Trip reservation scheduling and phone skills using excellent customer service is preferred during all hours of operations. The Contractor must have the ability to provide this function effectively and efficiently. An automated answering system must be used during non-business hours to provide general information and accept reservations in compliance with ADA requirements. The County will not provide software for dispatch.

**Personnel**

Contractor shall be solely responsible for the provision and satisfactory work performance of all employees as needed. Contractor shall be solely responsible for payment of all employee wages and benefits. Without additional expense to the City, Contractor shall comply with the requirements of employee liability, workers compensations, employment insurance, Social Security and all other applicable laws. County shall have the right to demand removal from the project, for reasonable cause, any personnel furnished by Contractor, provided the County makes such request in writing. Contractor shall obtain County's written consent prior to entering into any subcontract affecting or providing for transportation service.

The Contractor will be responsible for hiring dispatchers, drivers and staff, orientation and on-going training, supervision and evaluation. Contractor shall conduct both a criminal and a driver history background check before hiring drivers.

Contractor will conduct alcohol and drug testing and ensure compliance with Federal Transit Administration (FTA) regulations as described in 49 CFR Part 65, Part 655 and Part 40 (as amended), Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations.

Contractor will ensure that all drivers operating in service for the City will possess a current Oregon Class B Driver's License with both airbrake and passenger endorsements.

Contractor will provide written policies for safe operating procedures in all conditions including inclement weather, accidents and emergencies.

**The Contractor will provide dispatch and driver training in at least the following areas:**

- **Defensive driving including emergency situations**
- **Passenger Safety/Blood Borne Pathogens**
- **Passenger sensitivity and customer service**
- **Disability issues**
- **Mobility Assistance, including proper use and handling of vehicle passenger lifts or ramps and other equipment**
- **FTA Drug/Alcohol rules & regulations**
- **ADA Act**
- **Accident procedures**
- **Safety Equipment**

- **Cellular phones**
- **Confidential radio communication, i.e., 10-codes**
- **Passenger behavior problems and security training**
- **Customer service**

Contractor will follow their submitted outline of training curriculum with the amount of time committed to each of the training topics included. The City may request additional training in any area it deems necessary.

Contractor shall conduct, at a minimum, yearly evaluations that will include updated criminal and driver history checks. The Contractor will consult with the City in developing evaluations regarding any input the County may have received from customers.

The Contractor will ensure that all drivers meet the following minimum criteria to participate in this program:

1. No more than two (2) moving violations in any one year period. No more than three (3) moving violations in any three (3) year period during the service contract or in the five (5) years prior to application of this program (personal and commercial records inclusive).
2. If license has ever been suspended, applicant must have five (5) full subsequent years with no violations.
3. If license has ever been revoked, must have ten (10) subsequent years with no violations.
4. Under no condition, will an applicant be accepted as a driver for this program if (1) he/she has been convicted of a felony, (2) and/or has been convicted of a drug or alcohol offense including DUII diversion.
5. Contractor will require drivers to inform his/her supervisor of every conviction for a moving traffic violation immediately after such conviction. Failure to provide proper disclosure may be grounds for suspension or dismissal.

The Contractor will provide uniforms for all field personnel, as approved by the City. These may include both summer and winter uniforms.

Contractor will ensure that all employees will maintain the highest levels of professional behavior in the workplace, especially during their interactions with the public.

The County and City both reserve the right to require the removal of any driver, dispatcher or supervisor it deems is not an asset to the County and City.

#### **Employee Wages, Salaries and Benefits**

The Contractor, at a minimum, shall make available to employees providing service to the City the following level of employee wages, salaries and benefits:

1. **Wages and Salaries:** The Contractor shall provide wages and salaries commensurate with the responsibilities of the positions offered and in concert with current market labor rates in order to ensure a qualified available work force. At a minimum, wages should include:

#### **Driver and Dispatch Salary Range**

Fixed/Commuter route; demand–response; ADA or medical transit operators can start at different step levels or wage levels within the step. Wages can be within corresponding step range for seniority. Shift differentials are encouraged for non-traditional hours including evenings and weekends.



Training wages can be reduced by up to \$1.00 per hour during a probation period not to exceed six (6) months.

**Manager**

	7/1/2018	7/1/2019	7/1/2020	7/1/2021	7/1/2022
<b>Year 1</b>	<b>\$20.75</b>	<b>\$20.75</b>	<b>\$20.75</b>	<b>\$20.75</b>	<b>\$20.75</b>
<b>Year 2</b>	<b>\$22.50</b>	<b>\$22.50</b>	<b>\$22.50</b>	<b>\$22.50</b>	<b>\$22.50</b>
<b>Year 3</b>	<b>\$23.50</b>	<b>\$23.50</b>	<b>\$23.50</b>	<b>\$23.50</b>	<b>\$23.50</b>
<b>Year 4</b>	<b>\$24.50</b>	<b>\$24.50</b>	<b>\$24.50</b>	<b>\$24.50</b>	<b>\$24.50</b>
<b>Year 5</b>	<b>\$25.50</b>	<b>\$25.50</b>	<b>\$25.50</b>	<b>\$25.50</b>	<b>\$25.50</b>

**Drivers & Dispatchers,  
Maintenance**

	7/1/2018	7/1/2019	7/1/2020	7/1/2021	7/1/2022
<b>Initial Training (6 wks)approx</b>	<b>\$14.75</b>	<b>\$14.75</b>	<b>\$15.00</b>	<b>\$15.00</b>	<b>\$15.00</b>
<b>Probation Period (6 mo)</b>	<b>\$15.25</b>	<b>\$15.50</b>	<b>\$15.50</b>	<b>\$15.50</b>	<b>\$15.50</b>
<b>End of Probation</b>	<b>\$15.75</b>	<b>\$16.00</b>	<b>\$16.00</b>	<b>\$16.00</b>	<b>\$16.00</b>
<b>After One Year from Date-of-Hire</b>	<b>\$16.50</b>	<b>\$16.50</b>	<b>\$16.50</b>	<b>\$16.50</b>	<b>\$16.50</b>
<b>After Two Years</b>	<b>\$17.50</b>	<b>\$17.50</b>	<b>\$17.50</b>	<b>\$17.50</b>	<b>\$17.50</b>
<b>After Three Years</b>	<b>\$18.50</b>	<b>\$18.50</b>	<b>\$18.50</b>	<b>\$18.50</b>	<b>\$18.50</b>
<b>After Four Years</b>	<b>\$19.50</b>	<b>\$19.50</b>	<b>\$19.50</b>	<b>\$19.50</b>	<b>\$19.50</b>
<b>After Five Years</b>	<b>\$20.50</b>	<b>\$20.50</b>	<b>\$20.50</b>	<b>\$20.50</b>	<b>\$20.50</b>

**Bus washer**

	7/1/2018	7/1/2019	7/1/2020	7/1/2021	7/1/2022
<b>Year 1</b>	<b>\$15.00</b>	<b>\$15.00</b>	<b>\$15.00</b>	<b>\$15.00</b>	<b>\$15.00</b>
<b>Year 2</b>	<b>\$15.75</b>	<b>\$15.75</b>	<b>\$15.75</b>	<b>\$15.75</b>	<b>\$15.75</b>
<b>Year 3</b>	<b>\$16.50</b>	<b>\$16.50</b>	<b>\$16.50</b>	<b>\$16.50</b>	<b>\$16.50</b>
<b>Year 4</b>	<b>\$17.25</b>	<b>\$17.25</b>	<b>\$17.25</b>	<b>\$17.25</b>	<b>\$17.25</b>
<b>Year 5</b>	<b>\$18.00</b>	<b>\$18.00</b>	<b>\$18.00</b>	<b>\$18.00</b>	<b>\$18.00</b>

<b>Longevity increase over 5 years</b>	<b>\$0.10</b>
<b>Longevity increase over 12 years</b>	<b>\$0.25</b>

Employees who receive a satisfactory performance evaluation are eligible to move to the next step annually until they reach the top step of the pay range. Should an evaluation result in denial of an employee a step increase, he/she may appeal through Contractor's grievance procedure.

2. Benefits: Benefits are based upon a 35/40-hour workweek. Benefits may be prorated for part-time employees (less than 35/40 hours per week) based upon the employee's regular work schedule or a combination of actual hours worked and his/her regular work schedule for work performed under the terms of this contract.

- a) Sick leave accrued at 6.67 hours per month up to 12 days per year.
- b) Personal leave accrued:
  - i. After one year: 5 days
  - ii. After three years: 10 days
  - iii. After seven years: 15 days

- iv. After ten years: 20 days
- c) Holiday leave of six paid holidays per year;
- d) Health benefit cash stipend prorated after 24 hours up to \$300 per month

The Contractor shall not establish work schedules to avoid paying full-time benefits and shall maintain at least 2/3 of staffing as full-time positions.

The Contractor will obtain permission from the City for the use of any sub-Contractor that will be used in conjunction with this Contract.

Contractor shall be responsible for adequate staffing to provide continuous driver service and dispatch service during the normal hours of operation.

**Safety Inspections**

Contractor employees shall conduct daily safety inspections of vehicles prior to beginning each day's service. Vehicles failing the daily safety inspection shall not be used in service until the reason for the failure is corrected. County reserves the right to ensure that vehicles are being maintained properly and are in safe operating condition. County may inspect vehicles at any reasonable time and may bar a vehicle from service until problem(s) are corrected.

**Radios and other communication devices**

Contractor shall be responsible for providing all communication devices to ensure adequate dispatch service.

**Data collection and Record Retention**

Contractor will collect information on number of riders, including elderly and disabled ridership and other data as requested by the City and as required by federal and state guidelines. At a minimum, this data shall include record of deviations, distance traveled, and number of riders per trip. Contractor shall maintain all records in compliance with regulatory agencies and in compliance with City policies.

**Grant Writing and Reporting**

The County shall provide all grant writing and reporting functions for state and federal grants to support this project. The service agency shall supply on request any necessary information to complete grant requests and reporting requirements.

**Rider Confidentiality**

Any and all information regarding any individual served by the County or City is strictly confidential. All Contractor staff are expected to comply with the most current local, state and federal law regarding confidentiality. Information in any form, including in aggregate, shall not be released to any party without the authorization of the individual and/or County or City.

**Contractor's Waiver of Competition**

Contractor understands that the award of contract and subsequent rendition of the service called for by these documents shall in no manner be construed so as to place Contractor in a position to be entitled to the benefits afforded to private transit operations under Section 3(e) of the Federal Transit Administration Act of 1964 (49 U.S.C., Section 1602(e) or any other comparable provision of federal or state law (or under any regulations promulgated thereunder), as they now exist or hereinafter may be amended. Contractor hereby waives any right it otherwise might have to assert any claim or claims under said provisions of law or that may be based upon principles of unfair competition.

**Permits to Operate**

At its sole cost and expense, Contractor shall obtain any and all permits, licenses, certificates, insurance, or entitlement to operate as are now or hereafter required by any agency, specifically including the Oregon Department of Transportation, and local building, planning and business license departments, to enable Contractor to perform this Contract, and shall provide copies of all such documents to County when received by Contractor. Contractor is liable for any and all taxes due as a result of this Contract. A failure to obtain any such permit, license, certificate, or insurance constitutes a breach of this Contract.

**Changes in Funding**

COUNTY reserves the right to reduce or expand service based on levels of available funding.

**Indemnification of the State of Oregon**

Contractor shall indemnify, defend, save and hold harmless the County and the State of Oregon (the "State") and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the parties that the County or the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by Contractor from and against any and all Claims.

Neither Contractor, nor its contractors or subcontractors (collectively "Subrecipients"), nor any attorney engaged by Subrecipients, shall defend any claim in the name of the County or the State or any agency of the State, nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General and County Counsel. The State or the County may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipients are prohibited from defending State or the County or that Subrecipients are not adequately defending State or County's interests, or that an important governmental principle is at issue or that it is in the best interests of State or County to do so. State and the County reserve all rights to pursue claims it may have against Subrecipients if State or County elects to assume its own defense.

Exhibit H

FTA Certifications and Assurances