

# City of Sandy

## Agenda

### City Council Meeting

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

**Meeting Date:** Monday, March 4, 2019

**Meeting Time:** 6:00 PM



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**1. WORK SESSION PM**

**2. ROLL CALL**

**3. WORK SESSION ITEMS**

3.1. Agenda Review

3.2. Public Comment

3.3. Budget Direction and Priorities

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**4. ADJOURN WORK SESSION**

**5. REGULAR MEETING 7PM**

**6. PLEDGE OF ALLEGIANCE**

**7. ROLL CALL**

**8. CHANGES TO THE AGENDA**

**9. PUBLIC COMMENT**

**10. CONSENT AGENDA**

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- 10.2. ODOT Intergovernmental Agreement and Fund Exchange Agreement for US 26 Vista Loop to Ten Eyck Pedestrian Improvements Project 13 - 42  
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**11. PUBLIC HEARING FOR LOCAL IMPROVEMENT DISTRICT**

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**12. NEW BUSINESS**

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- 12.3. Request for Exemption From Undergrounding Requirement in Section 17.84.80(E) 54 - 56  
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- 12.4. Proposals for Utility Rate Model and Wastewater SDCs Update 57 - 58  
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**13. REPORT FROM THE CITY MANAGER**

**14. COMMITTEE/COUNCIL REPORTS**

**15. STAFF UPDATES**

- 15.1. [Monthly Reports](#)

**16. ADJOURN**



## Staff Report

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**Meeting Date:**

**From** Jordan Wheeler, City Manager

**SUBJECT:** Budget Direction and Priorities

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**Background:**

As staff prepares the budget for the 2019-21 biennium, we are seeking council's input or preliminary direction on general budget priorities and topics for the budget committee meetings. While we can't go into specifics of the proposed budget until the budget message is presented to the committee, we can discuss policy issues, the major assumptions, and significant drivers to the budget.

**General Fund Services and Funding**Topic 1: Police Department Funding & Staffing

The loss of the Estacada contract results in a decline of just over \$1.1 million in operating revenue for the police department in the next biennium. This funding gap presents a challenge to support the current level of services without additional revenue or budget reductions. In the current biennium, the police department received a total of \$458,721 in one-time support from general fund contingency and an interfund loan from the transit department to maintain services and purchase needed equipment.

Estacada notified the city of the termination of the service contract in January, 2018 and Sandy officially stopped servicing the City of Estacada in September, 2018. Since the termination of the contract, one position was converted into a second school resource officer (SRO) for the Oregon Trail School District. The other position, a patrol officer, is currently vacant and under recruitment.

The police department's budget currently includes 17 sworn officers and 3 administrative staff for a total of 20 full time equivalents (FTE). This includes the 2 FTEs that were added in 2013 with the Estacada contract. In other words, if the department's current staffing level is maintained, it would reflect one additional officer and one additional SRO in comparison to staffing levels before the Estacada contract.

Even with allocating over \$1 million more general revenue to the police department in the next budget cycle, we are projecting that the department will still have a shortfall if the current staffing levels are maintained.

Staff is seeking the council's input on some potential options for balancing the police department's budget:

1. Public Services/Public Safety Fee. Consider a proposed monthly public safety fee on utility bills within the city limits. The fee could be phased in over the biennium to help reduce the impact on households. A \$5.00 fee in the first year would generate about \$230,000 and cost a household \$60 per year. A \$7.00 fee would generate about \$327,000 per year and cost a household \$84 per year. Note that this fee would not include an amount for the aquatic center, which was under consideration by the council last year.
2. Reduce general revenue allocations to other departments. To allocate more general revenue funding to the police department, we could reduce the amount of funding that is allocated to other general fund departments. This would result in service and staffing impacts to those departments. The council's guidance on service priorities would be helpful.
3. Reduce police department staffing/service levels. The police department currently has two vacancies which presents an opportunity to reduce staffing levels through attrition to the 2013 staffing levels (prior to the Estacada contract).
4. Reduce general fund contingency. A discussion on the general fund contingency policy follows in the section below. The council could decide to reduce the budgeted reserve amount in order to free up more resources for the police department.
5. A combination of the above.
6. Other options from council.

We may also suggest a follow up work session on the police department services when Chief Roberts returns.

#### Topic 2: General Fund Contingency and Reserve Policy

Another major driver of this year's budget is rebuilding the general fund's reserves and setting a general fund reserve policy. Over the course of the current biennium, the general fund's contingency (originally budgeted at \$785,000) was allocated to community services, the aquatic center, and the police department as needs occurred in those departments. As of today, the general fund contingency sits at \$240,878. As a result, the reserves need to be replenished with general revenue for the next biennium.

For now, we are developing a reserve policy that would require initially setting aside 5% of the general fund operating budget in contingency. This amount would be consistent with prior budgets and provide cash flow and operating coverage for approximately 1.32 months. A more formal policy will be drafted based on this approach and government best practices.

It's also important to note that under the city's expenditure control budgeting approach, departments still have their own carryover contingencies to build reserves and use for one-time expenses that are consistent with council goals and policies.

For the next biennium, we are also planning to set aside an amount in contingency for funding the results of the planned compensation study.

Topic 3: Sandy Aquatic Center

A 2019 City Council goal is to “make a decision on the future of the Sandy Community Campus.” This includes “implementing a strategy, including a financing plan, for the ongoing operation and maintenance of the aquatic center.” The council will begin the conversation about the future of the community campus on March 11.

We’ve included this as an information only topic since operating the pool is a new program that impacts the general fund budget. Based on the data we have for the first six months of operating the pool since July, we would need to allocate about \$360,000 per year from the general fund.

Topic 4: Communications

Another council goal is to “enhance the city’s communications to its residents and public.” And, “through the budget process, consider the creation of a city communications position.”

A consequence of the other budget drivers is that there is not enough available ongoing revenue in the next biennium to fund a communications position without impacting other services and priorities. Roughly, the total annual salary and benefits cost for a communications specialist position would be around \$110,000.

**Additional Resource Options**

There are a few resource options that the council previously considered that may be worth exploring and discussing in the budget process. A 2019 city council goal is to “study options for generating additional revenue including cost recovery and alternative sources of funding.”

Public Safety or Public Services Fee

The public services fee was last proposed and discussed at the [December 17, 2018 meeting](#). But conversations about a fee started when the acquisition of the community campus and pool was under consideration. A monthly fee on city utility bills for public safety services could generate \$234,000 per year.

Monthly Fee	\$3.00	\$5.00	\$7.00
Annual Revenue	\$140,000	\$234,000	\$327,000
Annual Household Cost	\$36	\$60	\$84

Franchise Fee on City Utilities

The city currently does not charge a franchise fee to any of the city owned and operated utilities. This includes water, wastewater, stormwater, and Sandynet. A recent League of Oregon Cities’ survey of 91 cities reported that about 36% of the respondents

charged a franchise fee to itself. The fee would be a percentage charged on gross revenues.

<b>Utility</b>	<b>3%</b>	<b>4%</b>	<b>5%</b>
Water	\$46,000	\$61,000	\$76,000
Wastewater	\$42,000	\$56,000	\$69,000
Stormwater	\$7,000	\$10,000	\$12,000
Sandynet	\$35,000	\$48,000	\$60,000
<b>Annual Revenue</b>	<b>\$130,000</b>	<b>\$175,000</b>	<b>\$217,000</b>

Establishing a fee on our own utilities would impact the utilities' planned capital expenditures, rates, or both. If the council is interested, staff would recommend that we bring back more information about how the franchise fee may impact the rates.

**Recommendation:**

Staff is seeking council's input and general direction on the budget topics outlined above. The key questions that may help the discussion:

1. Should a public safety or public services fee be considered and incorporated into the proposed budget as an option to balance the Police Department's budget?  
Or, should staff assume no additional revenue and prepare a budget accordingly?
2. Is there interest in establishing a franchise fee on the city's own utilities and does the Council want more information about the fee?
3. Does the council have input on the proposed approach for the General Fund reserve policy?
4. What other information would be helpful for the council when the proposed budget is presented?



**MINUTES**  
**City Council Meeting**  
**Tuesday, February 19, 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, Carl Exner, Councilor, and Bethany Shultz, Board Member

**COUNCIL ABSENT:** Jan Lee, Councilor

**STAFF PRESENT:** Karey Milne, Recorder Clerk, Jordan Wheeler, City Manager, Andi Howell, Transit Director, Sarah McIntyre, Library Director, and Tyler Deems, Finance Director

**MEDIA PRESENT:**

- 1. Work Session 6PM**
- 2. Roll Call**
- 3. Work Session Items**
  - 3.1. Agenda Review

Mayor Pulliam, did a review of the agenda items. He let council know there are some items now being added to the consent agenda.

The Mayor and Councilors discussed the minutes and asked for some changes to the February 4th meeting agenda regarding the work session item on the tourism grant item.

Also asked for changes in the minutes regarding the LID, make sure it states that council asked that notices are all sent by certified mail.

Discussed advisory boards recruitment, staff would like some clarity from council on how they would like to see recruitment handled. Council would like to review and update the council rules, they would like to be apart of the interview process for advisory boards.

- 3.2. Public Comment

Mayor Pulliam and Council had some discussion on public comment for the regular meeting and how to direct public comment.

- 3.3. Review of Plan of Action/Conflict of Interest Policy

Finance Director, Tyler Deems, Reviewed the findings from the auditor in this last fiscal year audit. Both findings are reflected and taken care of in the Plan of Action Resolution and the Conflict of Interest policy.  
Council had just a few clarifying questions for Director Deems.

**4. Adjourn Work Session**

**5. Regular Council Meeting 7PM**

**6. Pledge of Allegiance**

**7. Roll Call**

**8. Changes to the Agenda**

**9. Public Comment**

Lucille Pulliam, 18751 Pacific Ave, Sandy OR, She has an idea to decorate Meinig Park for the great Christmas light fight, she even came up with a slogan Sandy may be small but we are big in lights. She has come up with this idea all by herself and hopes that the council is as excited as she is about the idea.

**10. Presentation**

10.1. Tonya Moffitt with Merina & Co., will be presenting the annual report for the fiscal year ending June 30, 2018.

**11. Consent Agenda**

11.1. City Council Minutes

11.2. Sandy Transit Vehicle Replacement

Staff Report - 0106

Moved by Carl Exner, seconded by John Hamblin

Staff Report - 0106

*Motion to approve the Consent Agenda*

CARRIED.

**12. Resolutions**



12.1. Plan of Action

Staff Report - 0107

Finance Director, Tyler Deems, recapped the findings from the auditor and that he has responded with a resolution and a conflict of interest policy. Once council has adopted it will be sent over to the Secretary of States office.

No discussion by council.

Moved by Laurie Smallwood, seconded by Jeremy Pietzold

Staff Report - 0107

*Staff recommends that Council "Approve Resolution 2019-04, a resolution adopting a Plan of Action."*

CARRIED.

12.2. Resolution 2019-3 Declaring the City Council's Intention to Form a Local Improvement District

Staff Report - 0104

Public Works Director, Mike Walker, At the February 4th meeting the City Council reviewed an Engineer's Report outlining two alignments and cost estimates for the Bluff Road/Jonsrud local improvement district (LID) and approved Alternative B from the report. Section 12.04.030 of the Municipal Code requires that a Resolution declaring the City's intent to form an LID be considered by the Council. The Resolution must include certain information regarding notice, process, costs and proposed assessments.

Council did ask that we send out notification via certified mail, that is in the Resolution before you.

Staff also may want to take a look at the Ordinance regarding local improvement districts and clean it up to mirror the state statute that governs LIDs. Council agrees.

Staff Recommends council to approve Resolution 2019-3

Moved by Jeremy Pietzold, seconded by Laurie Smallwood

Staff Report - 0104

*Approve Resolution 2019-3 Declaring the City Council's Intention to Form a Local Improvement District*

CARRIED.

**13. New Business**

13.1. Library Advisory Board Appointments

Staff Report - 0105

Library Director, Sarah McIntyre, reviewed the process of recruitment for the board. We have had 2 applicants for the Board one for the Sandy Service Area and one for the Hoodland Service Area.

Blanca Doroteo has lived in the Sandy community since 2005. She is a Family Advocate Assistant for Head Start. Blanca is active in the Hispanic community (Vista) and volunteers her time to help her community members and assist with library programs. She says that she wants to be on the Library Board to learn more about her city, the resources available for her community, and the community at large. Blanca brings her children to the library to check out books and attend LEGO Club. 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.

Staff Recommends to appoint both candidates to the Library Advisory Board. Council had just a few questions and a brief discussion.

Moved by Bethany Shultz, seconded by John Hamblin

Staff Report - 0105

*Appoint Blanca Doroteo to the Library Advisory Board for the Sandy Service Area*

*Appoint Lynne Pollard to the Library Advisory Board for the Hoodland Service Area*

CARRIED.

**14. Report from the City Manager**

City Manager, Jordan Wheeler, thank you to the Public Works crew for keeping the roads safe through our winter storms. Reminder we did reschedule the joint meeting with the parks board for February 27, at 6PM.

We are still looking for budget committee meeting members as well, so please help get the word out.

**15. Committee /Council Reports**

Councilor Shultz, She attended her first Library Advisory Board meeting, she is excited to be a part of the board. They are currently working on updating their handbook and also reviewed the two candidates that were brought before council tonight.

Councilor Exner, he attended the WWTP presentation and is very happy with the level of professionalism Murraysmith brought. He was a little disappointed in public attendance. He will be attending the upcoming Arts Commission meeting and the Tree Committee meeting.

Councilor Hamblin, unable to attend the Oregon Trail School Board meeting as it was re-scheduled to this evening, he will try to get an update from Brittany Allen with the Sandy Post as she attends those meetings. He would like to thank the Mayor's daughter for coming and pitching her idea, he would love to be a part of that, maybe not this year but next.

Councilor Smallwood, she would like to thank the Public Works crew for keeping the roads safe during the storms. The Parks Board did not have a meeting, they will be apart of the joint meeting on the 27th. They are currently working on getting their by-laws and presentation ready for that meeting.

Councilor Pietzold, No committee reports, he wanted to thank Andi for the amazing public transit system, he was able to take the bus when the weather and roads were not the best. Would like to remind everyone as well just from the ODOT meeting we recently had, that we are the alternate route when I84 is shut down, we had an abundance of traffic this past week when it was shut down due to bad road conditions. A resident brought up some parking issues to him recently on Hwy26 headed west down around Beers Street and Pioneer and Proctor.

Mayor Pulliam, Committee Report, C4 meeting two issues that face us as a city, the county is looking for 2.5 million in statewide funding for a transportation study. The Clackamas County Commissioners will be voting for the increase in your vehicle registration fees and the funds will be split between the County and City. This is not an item that will go out for public vote. If it does pass there will be funds that will come to the City.

He read his letter from State Representative Anna Williams, a thank you for attending the City Day and she looks forward to building relationships with our City. He thanked her as well for attending our recent ODOT meeting. Thank you to the Public Works Department for all the hard work the last few weeks. He recently had a meeting with Jackie Key from the VFW and Sarah McIntyre and Rebecca Robinowitz from the Library regarding the Youth Council. The youth council went from 3 to 12 members, they will be going to Salem in the next few weeks. The VFW will help pay for their lunches that day. Friday we have a lunch with Congressman Blumenaur regarding our WWTP and the issues we face. We have Ree Armitage out on February 28th from

Senator Ron Wydans office meeting with us if anyone from council would like to attend. Steve Wise, the Executive Director with the Sandy River Watershed Council asked to meet and set up a meeting to discuss the WWTP. February 28th he will be attending his monthly metropolitan Mayor Consortium and then the Greater Portland Inc, small cities meeting, same evening is the Clackamas Cities Dinner several of us will be attending. He also reviewed some other upcoming community meetings. He attended the Clackamas County Commissioners State of the County Lunch meeting, there are a lot of opportunities for attracting businesses in the cross laminated timber industries, he looks forward to working with David Snider on some of this and they have scheduled a meeting for next week with some of those folks to talk about opportunities. He has had no less than eight local business owners reach out to him about how hard it is to do business in Sandy. He would like to work on changing this and get the economic development committee activated.

**16. Staff updates**

16.1. [Monthly Reports](#)

**17. Adjourn**



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Mayor, Stan Pulliam



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City Recorder, Karey Milne



## Staff Report

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**Meeting Date:** March 4, 2019

**From** Mike Walker, Public Works Director  
ODOT Intergovernmental Agreement and Fund Exchange

**SUBJECT:** Agreements

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**Background:**

As discussed at the February 12th Council Workshop several agreements with ODOT need to be approved to provide services for the US 26 Vista Loop to Ten Eyck Pedestrian Improvement (STIP) Project.

Attached is an Intergovernmental Agreement between the City and ODOT allowing ODOT to provide right-of-way appraisal and acquisition services for the project. The estimated cost including payment for land or rights acquired is \$400,000 the City share for these services is \$58,400 and is based on the same ODOT/City cost sharing for the project as a whole (85.5%/14.5%).

The other document is a Fund Exchange agreement. The City intends to use Surface Transportation Program (STP) dollars for our original match (\$330,000) and the additional project costs (about \$565,00) approved by the Council in the Fall of 2017. Surface Transportation Program funds are Federal dollars distributed to urban areas greater than 5,000 population based on population. These funds are retained by ODOT on the City's behalf until we identify an eligible project for their use. We currently have about \$650,000 in STP funds and receive roughly an additional \$110,000 annually. Since these funds are Federal we can either comply with myriad, complex Federal Highway Administration (FHWA) requirements or "exchange" these dollars for State funds and get out from under from the Federal regulations. However ODOT exchanges these funds at a 6% discount so we only receive 94 cents on the dollar through the Fund Exchange. This seems like a steep price to pay but given the burdensome federal regulations that we would otherwise have to comply with this is really a bargain.

Both of these agreements have been reviewed by the City Attorney.

**Recommendation:**

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

**Budgetary Impact:**

These funds are available in the current budget or in our STP account in Salem.

**INTERGOVERNMENTAL AGREEMENT  
FOR RIGHT OF WAY SERVICES**  
US-26: Ten Eyck Rd/Wolf Dr - Vista Loop)

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and City of Sandy, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. That certain Ten Eyck Road/Wolf Drive and West Vista Loop are City Streets under the jurisdiction and control of Agency and Agency may enter into an agreement for the acquisition of real property.
4. US-26, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
5. This Agreement shall define roles and responsibilities of the Parties regarding the real property to be used as part of right of way for road, street or construction of public improvement. The scope and funding is further described in IGA Agreement number 31098. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project."
6. As of this time there are no local public agencies (LPAs) certified to independently administer federal-aid projects for right of way services. Therefore, State is ultimately responsible for the certification and oversight of all right of way activities under this Agreement (except as provided under "Agency Obligations" for LPAs in State's certification program for consultant selection).

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**TERMS OF AGREEMENT**

1. Under such authority, to accomplish the objectives in Agreement No. 31098, State and Agency agree to perform certain right of way activities shown in Special Provisions - Exhibit

A, attached hereto and by this reference made a part hereof. For the right of way services State performs on behalf of the Agency, under no conditions shall Agency's obligations exceed a maximum of \$400,000, including all expenses, unless agreed upon by both Parties.

2. The work shall begin on the date all required signatures are obtained and shall be completed no later than 10 calendar years following the date of final execution, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
3. The process to be followed by the Parties in carrying out this Agreement is set out in Exhibit A.
4. It is further agreed both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."

#### **STATE OBLIGATIONS**

1. State shall perform the work described in Special Provisions - Exhibit A.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. State shall perform the service under this Agreement as an independent contractor and 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, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
4. State's right of way contact person for this Project is David Mendelson, Right of Way Project Manager, 123 NW Flanders Street, Portland, OR 97209, 503-731-8451, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

#### **AGENCY OBLIGATIONS**

1. Agency shall perform the work described in Special Provisions - Exhibit A.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.
3. Agency's needed right of way services, as identified in Exhibit A, may be performed by qualified individuals from any of the following sources:



- a. Agency staff,
- b. State staff,
- c. Staff of another local public agency, as described in ODOT's Right of Way Manual and approved by the State's Region Right of Way Office;
- d. Consultants from State's Full Service Architectural and Engineering (A&E) Price Agreement 2 Tier Selection Process. Tier 2 procurements must be requisitioned through State's Local Agency Liaison (LAL) with solicitation process administered by State Procurement Office. Forms and procedures for Tier 2 process are located at: <http://www.oregon.gov/ODOT/CS/OPO/docs/fs/tier2guide.doc>;
- e. \*Appraiser services procured by Agency from State's Qualified Appraiser List (on line at <http://www.oregon.gov/ODOT/HWY/ROW/Pages/index.aspx>);
- f. \*Other right of way related services procured by Agency from any source of qualified contractors or consultants.

\* Selections may be based on price alone, price and qualifications, or qualifications alone followed by negotiation. **Federally funded procurements** by Agency for right of way services must be conducted under State's certification program for consultant selection and must comply with requirements in the [LPA A&E Requirements Guide](#) (and must use the State's standard [A&E Contract Template for LPAs](#) which may be modified to include State-approved provisions required by Agency). **State and local funded procurements** by Agency must be in conformance with applicable State rules and statutes for A&E "Related Services" (and Agency may use its own contract document).

4. If Agency intends to use Agency staff, staff of another local public agency, consultants (except for consultants on State's Qualified Appraiser List), or contractors to perform right of way services scheduled under this Agreement, Agency must receive prior written approval from State's Region Right of Way Office.
5. The LPA A&E Requirements Guide and A&E Contract Template referenced above under paragraph 3 are available on the following Internet page: [http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local\\_Public\\_Agency\\_\(LPA\)\\_Consultant\\_Templates\\_and\\_Guidance\\_Docs](http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local_Public_Agency_(LPA)_Consultant_Templates_and_Guidance_Docs).
6. Agency or its subcontractor will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."
7. Agency represents that this Agreement is signed by personnel authorized to do so on behalf of Agency.
8. Agency's right of way contact person for this Project is Mike Walker, Project Manager, 39250 Pioneer Blvd, Sandy, Or 97055, 503-489-2162, mwalker@ci.sandy.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

**PAYMENT FOR SERVICES AND EXPENDITURES:**

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$58,440. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.
2. Agency agrees to reimburse salaries and payroll reserves of State employees working on Project, direct costs, costs of rental equipment used, and per-diem expenditures.

**GENERAL PROVISIONS:**

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
  - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If either Party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within ten (10) days or such longer period as may be authorized.
  - c. If Agency fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
3. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

4. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency 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.
5. All employers that employ subject workers who work under this Agreement 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. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Both Parties shall ensure that each of its subcontractors complies with these requirements.
6. 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 State or Agency 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.
7. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State 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 Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency 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 State on the one hand and of Agency 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. State'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 State had sole liability in the proceeding.
8. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency 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 State in such proportion as is appropriate to

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reflect the relative fault of Agency on the one hand and of State 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 Agency on the one hand and of State 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. Agency'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 it had sole liability in the proceeding.

9. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
10. When federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.
11. When federal funds are involved in this Agreement, Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
12. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
13. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
14. This Agreement and attached exhibits and Agreement No. 31098 constitute 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,

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if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

**Signature Page to Follow**

**CITY OF SANDY**, by and through  
its Elected Officials

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_

Date \_\_\_\_\_

**Agency Contact:**

Mike Walker  
39250 Pioneer Blvd.  
Sandy, Oregon 97055  
503-489-2162  
mwalker@ci.sandy.or.us

**State Contact:**

David Mendelson  
123 NW Flanders Street,  
Portland, Oregon 97209  
503-731-8451  
David.Mendelson@odot.state.or.us

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
State Right of Way Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 1) Right of Way Manager

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By N/A  
Assistant Attorney General

Date \_\_\_\_\_

**APPROVED**

(If Litigation Work Related to Condemnation is  
to be done by State)

By N/A  
Chief Trial Counsel

Date \_\_\_\_\_

**SPECIAL PROVISIONS EXHIBIT A**  
**Right of Way Services**

THINGS TO BE DONE BY STATE OR AGENCY

1. Pursuant to this Agreement, the work performed on behalf of the Agency can be performed by the Agency, the Agency's consultant, the State or a State Flex Services consultant, as listed under Agency Obligations, paragraph 3 of this Agreement. The work may be performed by Agency staff or any of these representatives on behalf of Agency individually or collectively provided they are qualified to perform such functions and after receipt of approval from the State's Region 1 Right of Way Manager.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.

**Instructions:** Insert either: State, Agency, or N/A on each line.

**A. Preliminary Phase**

1. State shall provide preliminary cost estimates.
2. State shall make preliminary contacts with property owners.
3. State shall gather and provide data for environmental documents.
4. State shall develop access and approach road list.
5. State shall help provide field location and Project data.

**B. Acquisition Phase**

1. General:
  - a. When doing the Acquisition work, as described in this Section, State shall provide Agency with a status report of the Project monthly.
  - b. Title to properties acquired shall be in the name of the State.
  - c. The Agency shall adopt a resolution of intention and determination of necessity in accord with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation, such approval will be conditioned on passage of a resolution by Agency substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof. If the Oregon Department of Justice is to handle condemnation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required; and authorization for such representation shall be included in the resolution adopted by the Agency. Prior approval by Oregon Department of Justice is required.

2. Legal Descriptions:

- a. State shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
- b. State shall provide construction plans and cross-section information for the Project.
- c. State shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide" and the "Right of Way Engineering Manual." The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
- d. State shall specify the degree of title to be acquired (e.g., fee, easement).

3. Real Property and Title Insurance:

- a. State shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
- b. State shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "State Right of Way Manual" and the "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide." Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
- c. State shall conduct a Level 1 Initial Site Assessment, according to State Guidance, within Project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the Project design as possible, but at a minimum prior to property acquisition or approved design.
- d. State shall conduct a Level 2 Preliminary Site Investigation, according to State Guidance, of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Initial Site Assessment indicates the potential presence of contamination that could impact the properties.
  - If contamination is found, a recommendation for remediation will be presented to State.
- e. State shall be responsible for proper treatment and cost of any necessary remediation.



- f. State shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.

4. Appraisal:

- a. State shall conduct the valuation process of properties to be acquired.
- b. State shall perform the Appraisal Reviews to set Just Compensation.
- c. State shall recommend Just Compensation, based upon a review of the valuation by qualified personnel.

5. Negotiations:

- a. State shall tender all monetary offers to land-owners in writing at the compensation level shown in the Appraisal Review. State shall have sole authority to negotiate and make all settlement offers. Conveyances taken for more or less than the approved Just Compensation will require a statement justifying the settlement. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions. If State performs this function, it will provide the Agency with all pertinent letters, negotiation records and obligations incurred during the acquisition process.
- b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way shall occur prior to advertising for any construction contract, unless exceptions have been agreed to by Agency and State.
- c. State agrees to file all Recommendations for Condemnation at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.

6. Relocation:

- a. State shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the Project.
- b. State shall make all relocation and moving payments for the Project.
- c. State shall facilitate the relocation appeal process.

**C. Closing Phase**

1. State shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments
2. State shall record conveyance documents, only upon acceptance by appropriate agency.

#### **D. Property Management**

1. State shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.
2. State shall dispose of all improvements and excess land consistent with State prevailing laws and policies.

#### **E. Condemnation**

1. State may offer mediation if the State and property owners have reached an impasse.
2. State shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
3. State shall perform all legal and litigation work related to the condemnation process, including all settlement offers. (Therefore, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required. Where it is contemplated that property will be obtained for Agency for the Project, such approval will be conditioned on passage of a resolution by Agency substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof, specifically identifying the property being acquired.)
4. When State shall perform legal or litigation work related to the condemnation process, Agency acknowledges, agrees and undertakes to assure that no member of Agency's board or council, nor Agency's mayor, when such member or mayor is a practicing attorney, nor Agency's attorney nor any member of the law firm of Agency's attorney, board or council member, or mayor, will represent any party, except Agency, against the State of Oregon, its employees or contractors, in any matter arising from or related to the Project which is the subject of this Agreement.

#### **F. Transfer of Right of Way to State**

When right of way is being acquired in Agency's name, Agency agrees to transfer and State agrees to accept all right of way acquired on the State highway. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the

State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

**G. Transfer of Right of Way to Agency**

When right of way is being acquired in State's name, State agrees to transfer and Agency agrees to accept all right of way acquired on the Agency's facility, subject to concurrence from FHWA at the time of the transfer. The specific method of conveyance will be determined by the State and the Agency at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. If requested, State agrees to provide Agency information and file documentation associated with the transfer.

For purposes of Exhibits B and C, references to Department shall mean State, references to Contractor shall mean Agency, and references to Contract shall mean Agreement.

**EXHIBIT B (Local Agency or State Agency)**

**CONTRACTOR CERTIFICATION**

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

**DEPARTMENT OFFICIAL CERTIFICATION**

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

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Exhibit C  
Federal Provisions  
Oregon Department of Transportation

**CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION**

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it and its principals:

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;</li><li>2. Have not within a three-year period preceding this Contract been convicted of or had a civil</li></ul> | <ul style="list-style-type: none"><li>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</li></ul> |
|--|--|

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falsification or destruction of records, making false statements or receiving stolen property;

3. Are not 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
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

**EXCEPTIONS:**

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

**II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS--PRIMARY COVERED TRANSACTIONS**

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation

shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273,  
REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

**Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

**IV. EMPLOYMENT**

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

**V. NONDISCRIMINATION**

During the performance of this Contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative

to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.

2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:
  - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and

selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
  - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event

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Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

**DBE POLICY STATEMENT**

**DBE Policy.** It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

**Required Statement For USDOT Financial Assistance Agreement.** If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

**DBE Obligations.** The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49

CFR Part 26 in the award and administration of such contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Department deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Contract.

**Records and Reports.** Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

**DBE Definition.** Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

**CONTRACTOR'S DBE CONTRACT GOAL**

**DBE GOAL** 0 %

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING  
DEPARTMENT'S DBE PROGRAM  
REQUIREMENT CONTACT OFFICE OF  
CIVIL RIGHTS AT (503)986-4354.

**RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN EXHIBIT D  
Right of Way Services**

**(Instructions, please delete before completing form)**Regions: This portion of the document is unlocked. The LPA should block and copy to incorporate this language into their own standard resolution form **OR** fill in an "attested to" line or signature line at the bottom and use this form.

WHEREAS (insert title of agency) may exercise the power of eminent domain pursuant to (Agency's charter) (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the (insert title of agency)'s governing body to accomplish public purposes for which (insert title of agency) has responsibility;

WHEREAS (insert title of agency) has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project or projects known as (insert Project name) have been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A," attached to this resolution and, by this reference incorporated herein; now, therefore

BE IT HEREBY RESOLVED by (Agency's Council, Commission, or Board)

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. The (insert title of agency)'s staff and the (Agency's Attorney, Counsel, or District's Counsel (or) (The Oregon Department of Transportation and the Attorney General) are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the (Agency's Council, Commission, or Board).
4. (insert title of agency) expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

2019 FUND EXCHANGE AGREEMENT  
US26:Ten Eyck Rd/Wolf Dr - Vista Loop (Sandy)  
City of Sandy

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and the CITY OF SANDY, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) [190.110](#), [366.572](#) and [366.576](#), State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. The City of Sandy shall use their fund exchange dollars to fund their match and overmatch as needed for the US26: Ten Eyck Rd/Wolf Dr – Vista Loop Project, Key Number 18823. The phases to be included are PE, RW, CON.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**TERMS OF AGREEMENT**

1. Agency has submitted a completed and signed Part 1 of the Project Prospectus, or a similar document agreed to by State, outlining the schedule and costs associated with all phases of the US26:Ten Eyck Rd/Wolf Dr - Vista Loop, hereinafter referred to as "Project."
2. State has reviewed Agency's prospectus and considered Agency's request for the Fund Exchange. State has determined that Agency's Project is eligible for the exchange of funds.
3. To assist in funding the Project, Agency has requested State to exchange federal funds in the following manner:

Fiscal Year	Federal Funds	Exchange Rate	State Funds
2019	\$77,910	94%	\$73,050
20	\$	94%	\$

20	\$	94%	\$
20	\$	94%	\$
Total	\$77,910		\$73,050

4. Agency shall exchange a total of \$77,910 federal funds for state funds at the ratios defined in the above table. State shall reimburse Agency up to the total of \$73,050 state funds for eligible costs incurred.
5. The term of this Agreement will begin upon execution and will terminate at ten (10) years unless extended by an executed amendment.
6. The Parties agree that the exchange is subject to the following conditions:
  - a. The federal funds transferred to State may be used by State at its discretion.
  - b. State funds transferred to Agency must be used for the Project. This Fund Exchange will provide funding for specific roadway projects and may also be used for the following maintenance purposes:
    - i. Purchase or Production of Aggregate. Agency shall ensure the purchase or production of aggregate will be highway related and used exclusively for highway work.
    - ii. Purchase of Equipment. Agency shall clearly describe how it plans to use said equipment on highways. Agency shall demonstrate that the equipment will only be used for highway purposes.
  - c. State funds may be used for all phases of the Project, including preliminary engineering, right of way, utility relocations and construction. Said use shall be consistent with the Oregon Constitution and statutes (Section 3a of Article IX Oregon Constitution). Agency shall be responsible to account for expenditure of state funds.
  - d. This Fund Exchange shall be on a reimbursement basis, with state funds limited to a maximum amount of \$73,050. All costs incurred in excess of the Fund Exchange amount will be the sole responsibility of Agency.
  - e. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
  - f. Agency, and any contractors, shall perform the work as an independent contractor and will be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work including, but not limited to,

retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.

- g. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS [279C.505](#), [279C.515](#), [279C.520](#), [279C.530](#) and [279B.270](#) incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency 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.
- h. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way in accordance with current state and federal laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the Project.
- i. Agency shall submit invoices to State on a quarterly basis, for actual costs incurred by Agency on behalf of the Project directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the agreement number, the invoice number or account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$73,050, including all expenses. Travel expenses will not be reimbursed.
- j. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and service demand.
- k. All employers, including Agency, that employ subject workers 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](#). Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its subcontractors complies with these requirements.
- l. This Agreement may be terminated by either party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
  - i. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:

- A. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - B. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
- ii. Either Party may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established by the terminating Party, under any of the following conditions:
    - A. If either Party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow either Party, in the exercise of their reasonable administrative discretion, to continue to make payments for performance of this Agreement.
    - B. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or either Party is prohibited from paying for such work from the planned funding source.
  - iii. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- m. State and Agency agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

**Design and construction of a project IS on or along State Highway System (regardless of funding) and ODOT owns the contract, use the language below.**

- 7. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:
  - a. Utilize ODOT standards to assess and ensure Project compliance with the Americans with Disabilities Act of 1990 (ADA), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
  - b. Follow ODOT's processes for design, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a

**temporary pedestrian accessible route plan** and current ODOT Curb Ramp Inspection form;

- c. At Project completion, send an ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

[http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForm\\_s1.aspx](http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForm_s1.aspx)

8. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
9. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
10. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
11. This Agreement and attached exhibits constitute 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 State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The funding for this Fund Exchange program was approved by the Oregon Transportation Commission on July 20, 2017, as a part of the 2018-2021 Statewide Transportation Improvement Program (STIP).

32523

Draft 1-10-19



The Program and Funding Services Manager approved the Fund Exchange on (insert date of HPO approval letter).

**Signature Page to Follow**

Draft 1-10-19

32503

**CITY OF SANDY**, by and through its  
elected officials

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**LEGAL REVIEW APPROVAL**  
(If required in Agency's process)

By \_\_\_\_\_  
Counsel

Date \_\_\_\_\_

**Agency Contact:**  
Mike Walker, Director of Public Works  
39250 Pioneer Blvd  
Sandy, OR 97055  
503-489-2162 V  
[mwalker@ci.sandy.or.us](mailto:mwalker@ci.sandy.or.us)

**State Contact:**  
Justin Shoemaker, Local Agency  
Liaison  
123 NW Flanders  
Portland, OR 97209  
503-731-8486  
[Justin.d.shoemaker@odot.state.or.us](mailto:Justin.d.shoemaker@odot.state.or.us)

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_



## Staff Report

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**Meeting Date:** March 4, 2019

**From** Thomas Fisher,

**SUBJECT:** Public Hearing Bluff / Jonsrud Local Improvement District

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**Background:**

At their February 4th meeting the City Council approved the Engineer's Report for the Bluff / Jonsrud Sanitary Sewer Local Improvement District. Resolution 2019-3 declaring the Council's intent to form a Local Improvement District was approved at the February 19th meeting and notice was provided to all property owners in the proposed District per the requirements of Section 12.04.030 of the Municipal Code. The next step in the process is to conduct a public hearing to consider public testimony and receive remonstrances from property owners objecting to formation of a District. If remonstrances are received from property owners representing more than 2/3rds of the property (277,909 sq. ft. or 6.38 acres) in the proposed District the process is abandoned and cannot be reconsidered for three months.

Section 12.04.040 of the Code permits the Council to form a District over the objections of property owners representing more than 2/3rds of the property if a finding is made that a "danger to public health" exists. Staff is not aware of any failing or failed on-site sewage disposal systems within the proposed District so it is unlikely that such a finding could be justified.

Remonstrances (objections) must be filed in writing prior to or during the hearing. No form or format for remonstrances is outlined in the Code. We will have forms available at the hearing and online prior to the hearing but the form is not necessary to file a written objection. No reason is required for filing a remonstrance against forming a District - a simple statement indicating an objection is all that is needed. Staff will have a spreadsheet set up at the meeting to allow rapid tallying of remonstrances and determine if the 2/3rds threshold has been met or not. Persons representing property in the proposed District that do not object to the formation of a District need not do anything.

This is a public hearing and the public may testify regarding the formation of a District but the decision to form or not to form a District must be made solely on the basis of the remonstrances received. Since public testimony is not the basis for a decision Council may wish to place a time limit on testimony or limit redundant testimony.

If the 2/3rds threshold is not met prior to or at the hearing staff would return at the March 19th meeting with a resolution forming the District.

**Recommendation:**

Open the public hearing and receive written objections from property owners within the proposed District and accept testimony from the public.

**Budgetary Impact:**

None at this stage in the process.



## Staff Report

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**Meeting Date:** March 4, 2019

**From** David Snider, Economic Development Manager

**SUBJECT:** Draft of Economic Development Committee Resolution

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**Background:**

At the Council work session on February 4th, 2019, City Council addressed their desire to see the creation of an Economic Development Committee and provided some specific preferences as to some of the structural elements of this committee.

As a result of the work session discussion and direction, staff put together a first draft of the resolution establishing a City of Sandy Economic Development Committee. We have incorporated the feedback received at the February 4th meeting into this initial draft including elements such as the membership requirements and scope of the Committee. The resolution reflects the following:

- The mission of the committee shall be to provide the City Council with citizen and business/property owner input and recommendations with regard to economic development in the City of Sandy.
- The committee should be comprised of nine members.
- No more than three of those members shall be City Council members.
- The Chair and Vice Chair shall be elected from the membership and the Mayor and City Council members are eligible.
- The Sandy Area Chamber of Commerce (SACC) shall have a seat on the committee.
- Members shall be recruited from key business sectors and fit the following criteria:
  - Live within the city limits of Sandy.
  - Own/operate a business within the city limits of Sandy.
  - Own commercially-zoned or industrially-zoned property in Sandy.

There were other structural elements to this Committee that Council did not provide with direct input. In these cases, staff inferred as to the intent of City Council with the understanding that Council can review, revise, and provide direction on the resolution.

**Recommendation:**

Staff requests Council review of the draft resolution and suggest language changes as needed to achieve the Council's vision for the Economic Development Committee.

**DRAFT**

**RESOLUTION NO. 2019- XX**

**A RESOLUTION OF THE CITY OF SANDY ESTABLISHING AN  
ECONOMIC DEVELOPMENT COMMITTEE**

**WHEREAS**, the City of Sandy supports business growth and retention through existing economic development programs, grants, community partnerships, and business assistance information; and

**WHEREAS**, the City Council of the City of Sandy values the public input and involvement of its business community and citizenry; and

**WHEREAS**, the City of Sandy City Council desires to create a committee of local business owners and operators, commercial property owners, and community stakeholders to advise and provide recommendations on policies, programs, and plans to support and work toward City Council goals with regard to business recruitment, retention, and growth in the City of Sandy;

**NOW, THEREFORE, BE IT RESOLVED** that an Economic Development Committee is established.

1. Membership; Terms; Qualifications.
  - a. The Economic Development Committee shall consist of nine regular members appointed by the City Council for four-year terms.
    - i. Inaugural Appointments. All nine inaugural members of the Economic Development Committee shall be appointed by the Mayor and confirmed by the City Council.
    - ii. Inaugural Terms. Four of the inaugural members of the Committee shall serve an initial term of three years in order to achieve staggered terms of office.
    - iii. Once the inaugural committee has been seated, the Economic Development Committee shall develop membership standards and application materials for future membership vacancies.
    - iv. Appointments and vacancies. After the first full Economic Development Committee has been seated, new members shall be seated by an application, interview, and appointment process. Applicants shall be interviewed by members of the Economic Development Committee which shall recommend appointments to the City Council. The City Council shall appoint new members by a full vote of the Council before being seated.

- v. Terms of service. All terms after the first full Economic Development Committee has been seated are for four years, or for the remainder of the existing term if filling a midterm vacancy.
    - b. The Committee membership shall include voting members from the following stakeholder groups:
      - i. No more than three members of the City Council.
      - ii. Owners of businesses established within Sandy city limits.
      - iii. Commercial or industrial property owners within Sandy city limits.
      - iv. A representative from the Sandy Area Chamber of Commerce.
      - v. No more than one at-large member who resides within the urban services boundary of the City of Sandy.
- 2. Officers; Duties. The Committee shall annually elect a Chair and Vice Chair from its members. All Committee members, including the Mayor and City Councilors are eligible to serve as officers.
  - a. The Chair shall preside at all meetings and establish the agendas in coordination with staff.
  - b. The Vice Chair shall preside when the Chair is absent.
- 3. Mission and Duties.
  - a. Advise and provide recommendations to City Council on programs, policies, municipal codes, and incentive programs that encourage business growth and retention and overall economic development activity in the City of Sandy.
  - b. Provide input to staff on economic development opportunities, programs, and activities through developing strategic plans, reviewing existing practices, and assisting in implementing Council goals.
- 4. Meetings. The Committee shall establish a regular meeting schedule. All meetings shall be open to the public and minutes shall be maintained and made available to the public.

This resolution is adopted by the Common Council of the City of Sandy and approved by the Mayor this \_\_\_\_ day of \_\_\_\_ 2019.

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

ATTEST:

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



## Staff Report

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**Meeting Date:** March 4, 2019  
**From** Kelly O'Neill, Planning Director  
**SUBJECT:** Park Land Fee In-Lieu Request

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**Background:**

An applicant for a proposed subdivision on Ponder Lane is requesting the City Council's review of a parks fee-in-lieu proposal.

The applicant completed a pre-application meeting with city staff on November 13, 2018. Staff took the applicant's subdivision proposal to the Parks and Trails Advisory Board on December 19, 2018 for input and discussion. The Board recommended park land dedication in the proposed subdivision, not fee in-lieu of dedication.

The applicant then brought a revised plan before staff on January 29, 2019 and requested a reconsideration regarding the park land dedication recommendation by the Parks and Trails Advisory Board. On January 30, 2019, Mike Robinson with Schwabe, Williamson and Wyatt presented a proposal for a subdivision on Ponder Lane for his client Geo Development. Mr. Robinson asked the Board to reconsider the prior Board recommendation from December not to accept a parks fee in-lieu of dedicating parks land.

After discussion between the Board and Mr. Robinson, a motion was made to reconsider the prior recommendation. The motion failed with a vote of two (Michael Weinberg and Valerie Wicklund) recommending the prior decision be reconsidered and two (Susan Drew and Kathleen Walker) recommending the prior decision stand until the Board had additional time to consider the request. The Board asked Mr. Robinson to bring the request back before them at the February meeting.

On February 19, 2019, Mr. Robinson submitted a letter on behalf of Geo Development (attached) to the Mayor and City Council. Mr. Robinson would like City Council to review the parks fee in-lieu of dedication request and render a preliminary decision so that Geo Development can decide on how to proceed with their conceptual subdivision. The attached letter has numerous code references and ORS citations that will be further discussed by the City Attorney, David Doughman.

**Recommendation:**

Staff recommends the City Council allow Mr. Robinson and Geo Development to present the information contained in their letter from February 19, 2019. Staff further recommends that City Council consult with staff and the city attorney to make a



preliminary decision if the City prefers parks fee in-lieu of dedication or dedication of 1.26 acres of parkland.

**Budgetary Impact:**

Unknown. Based on a 98 lot single family home subdivision, the City would receive a \$303,660 parks fee in-lieu payment.

February 19, 2019

**Michael C. Robinson**

Admitted in Oregon

T: 503-796-3756

C: 503-407-2578

mrobinson@schwabe.com

**VIA E-MAIL**

Mr. Stan Pulliam, Mayor  
City of Sandy City Council  
Sandy City Hall  
39250 Pioneer Boulevard  
Sandy, OR 97055

RE: March 4, 2019 City Council Agenda to Discuss Park Land Dedication Versus  
Cash-in-Lieu Payment for Ponder Lane 98-Lot Subdivision

Dear Mayor Pulliam and Members of the Sandy City Council:

This office represents Geo Development, LLC (“Geo”). Geo has met with City of Sandy (the “City”) staff regarding a proposed 98-lot subdivision on Ponder Lane adjacent to the City’s Urban Growth Boundary (the “UGB”). Geo has not yet submitted an application because it wishes to work collaboratively with the City to resolve several issues, including the City’s request that Geo extend Gunderson Road outside of the City’s UGB in order to provide a connection to Oregon Highway 211 and to address the Sandy Park and Trails Advisory Board (the “Parks Board”) recommendation that the application include dedication of park land instead of a cash-in-lieu payment. As we have discussed with Staff and explained to the Parks Board in a meeting on January 30, 2019, it is not possible for Geo to both construct Gunderson Road (which also requires an “Exception” to Statewide Planning Goal (“Goal”) 3 because it is an urban facility outside of the UGB) and dedicate land for a park in the subdivision. Geo is willing to seek an Exception to Goal 3 in order to construct Gunderson Road and to make a cash-in-lieu payment to the City as allowed by Sandy Development Code (“SDC”) 17.86.40, “Cash in Lieu of Dedication”.

Geo Development has not yet submitted its application because it wants to resolve this issue before doing so because the resolution will determine what the application proposes. This letter is not intended to be a substitute for an application but is intended to provide the City Council with information explaining why the Applicant believes that cash in lieu of dedication is both lawful and appropriate.

**Exhibit 1** is a map showing the location of the proposed 98-lot subdivision and the extension of Gunderson Road. The symbols denoted as “N” on the exhibit are Neighborhood Park locations shown on the 2018 Sandy Comprehensive Plan Map.

Four representatives of Geo Development will be at the March 4 City Council meeting: Mr. David Hill, Mr. Chris Goodell of AKS Engineering & Forestry, Mr. Todd Mobley of Lancaster

Mr. Stan Pulliam, Mayor  
February 19, 2019  
Page 2

Engineering and Mr. Garrett Stephenson of this law firm. Those persons will make a ten minute presentation to the City Council and would be happy to answer any questions that the City Council has.

**1. Construction of Gunderson Road.**

Geo Development has conservatively estimated that the cost of the construction of Gunderson Road, plus the time and cost to obtain an Exception from Clackamas County in order to construct the road outside of the UGB, and to coordinate with the Oregon Department of Transportation (“ODOT”) to allow the connection to Oregon Highway 211, will be between \$1,000,000 and \$2,000,000. Geo is not legally obligated to pursue an Exception and has responses to the City’s issue of too many vehicle trips on Melissa Avenue. However, in the spirit of collaboration, Geo is willing to pursue the Exception and construct Gunderson Road.

**2. Cash-in-Lieu Instead of Park Land Dedication.**

Having committed to construct Gunderson Road if the Exception to Goal 3 can be obtained, Geo cannot afford the loss of the lots caused by park land dedication. The economics of the subdivision require Geo to either dedicate the park land or not construct Gunderson Road. However, Geo can make the cash-in-lieu payment. Geo believes for several reasons that the cash-in-lieu payment option is preferable to a land dedication, including the fact that the 98-lot Ponder Lane Subdivision borders the UGB in two places and the City can obtain land outside of the UGB for a future park with the cash-in-lieu payment.

As a legal matter, it will be difficult for the City to condition the dedication of park land as part of the subdivision application. First, the Parks Board’s reliance on the City’s 1997 Parks Master Plan is not an approval criterion for the subdivision (SDC 17.100.060.E (1)-(6)) for two reasons. A subdivision is defined as a “Limited Land Use Decision” in ORS 197.015(12) because it is the division of land inside a UGB. Limited land use decisions may not include Comprehensive Plan policies as approval criteria unless they are expressly listed in a City’s acknowledged land use regulations. ORS 197.195(1). None of the approval criteria found in E (1)-(6) expressly reference the 1997 Parks Master Plan nor any of its policies. Further, SDC 17.100.060.E (4), requiring “adequate public facilities”, cannot be applied to a subdivision application under ORS 197.307(4) because it is a subjective standard. Residential subdivisions are “Needed Housing” applications and only clear and objective approval criterion may be applied to such applications.

Further, dedication under SDC 17.86.10-17.86.30 would require the City to show a “nexus” between the subdivision’s impacts and the need for land dedication. However, SDC 17.86.40 allows for cash-in-lieu of land dedication.

For these reasons, Geo believes it will be difficult for the City to legally obtain park land dedication as part of the subdivision application. Nevertheless, and notwithstanding the above analysis, Geo is willing to make the cash-in-lieu for park land acquisition or improvements elsewhere in the City.

Mr. Stan Pulliam, Mayor  
February 19, 2019  
Page 3

Finally, Mr. Hill and I attended the Parks Board meeting on January 30, 2019. While the Parks Board decided not to vote on a second recommendation that night, at least two of the four Parks Board members present that night agreed with Geo's proposal for a cash-in-lieu payment. Only the Parks Board Chair took the position that dedication should be required.

**3. Conclusion.**

Geo appreciates the opportunity to discuss this matter with the City Council. The City Attorney and I have agreed that the City Council's decision is not a binding final decision but Geo will consider the City Council's discussion in making its application.

Geo looks forward to speaking with the City Council. We hope that this information is helpful to the City Council.

Very truly yours,

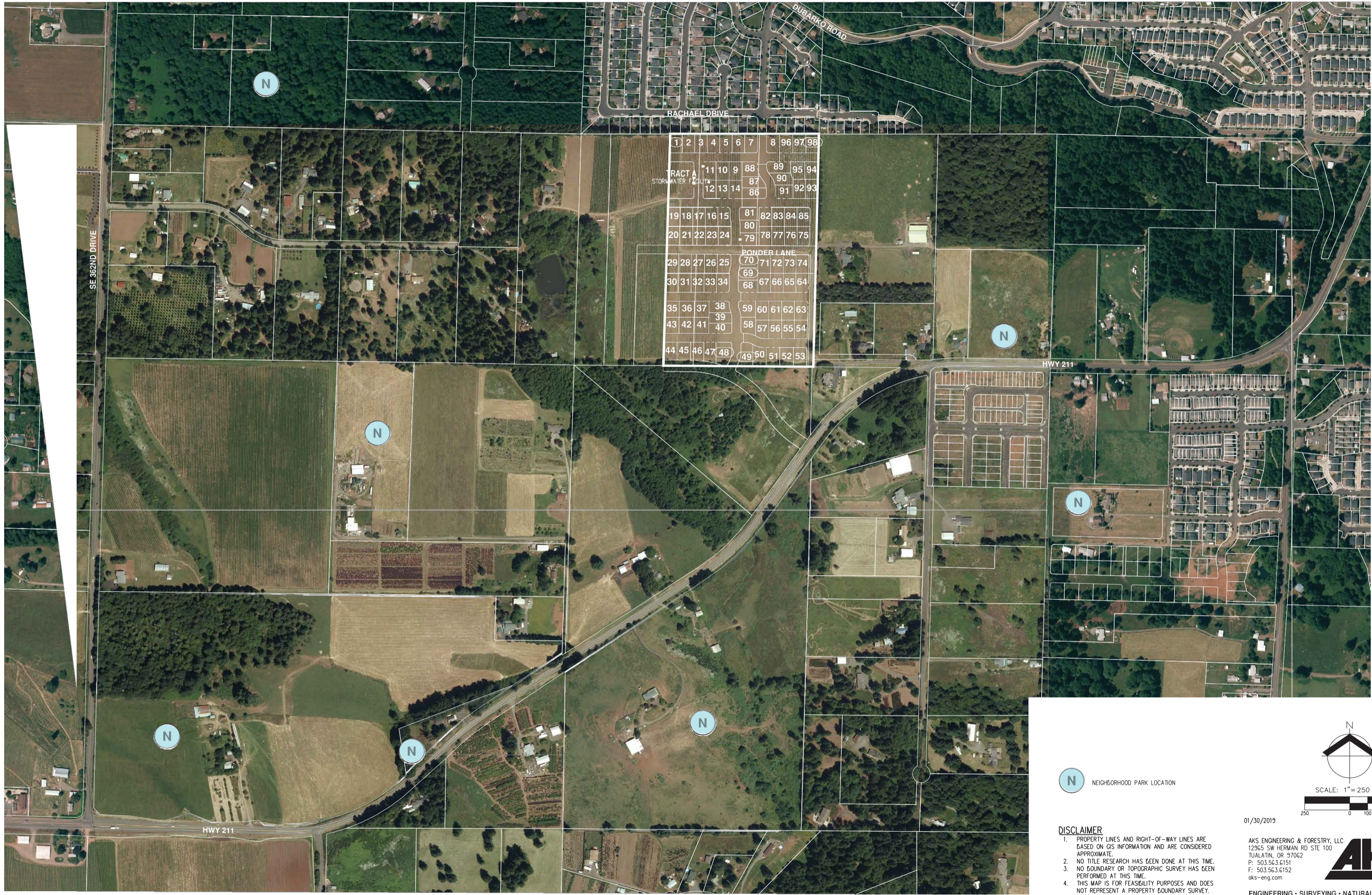


Michael C. Robinson

MCR:jmhi  
Enclosure

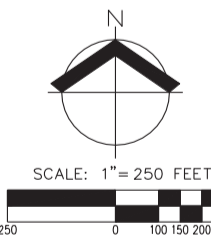
Cc Mr. Cody Bjugan (w/encl.) (via email)  
Mr. Monty Hurley (w/encl.) (via email)  
Mr. Todd Mobley (w/encl.) (via email)  
Mr. David Hill (w/encl.) (via email)  
Mr. Chris Goodell (w/encl.) (via email)  
Mr. Garrett Stephenson (w/encl.) (via email)  
Mr. Kelly O'Neill (w/encl.) (via email)  
Mr. David Doughman (w/encl.) (via email)

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			86				91	92	93		
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							79	78	77	76	75
29	28	27	26	25			70	71	72	73	74
30	31	32	33	34			69				
							68	67	66	65	64
35	36	37	38				59	60	61	62	63
43	42	41	40				58	57	56	55	54
44	45	46	47	48			49	50	51	52	53

NEIGHBORHOOD PARK LOCATION



01/30/2019

**DISCLAIMER**

1. PROPERTY LINES AND RIGHT-OF-WAY LINES ARE BASED ON GIS INFORMATION AND ARE CONSIDERED APPROXIMATE.
2. NO TITLE RESEARCH HAS BEEN DONE AT THIS TIME.
3. NO BOUNDARY OR TOPOGRAPHIC SURVEY HAS BEEN PERFORMED AT THIS TIME.
4. THIS MAP IS FOR FEASIBILITY PURPOSES AND DOES NOT REPRESENT A PROPERTY BOUNDARY SURVEY.

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## Staff Report

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**Meeting Date:** March 4, 2019

**From** Mike Walker, Public Works Director  
Request for Exemption From Undergrounding Requirement in  
**SUBJECT:** Section 17.84.80(E)

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**Background:**

The City recently received a right-of-way permit application from PGE for installation of an overhead neutral conductor (wire) on Proctor Blvd. between Ten Eyck/Wolf Dr. and the PGE substation at Bluff Rd. Section 17.84.80(E) of the Municipal Code requires that "all franchise utility distribution facilities installed to serve new development shall be placed underground". Staff asked PGE to provide more information on the proposed line.

PGE replied that the new neutral is required to serve the increased electrical demand in Sandy resulting from new development. Currently, (no pun intended) some of the electrical demand in Sandy is supplied by a substation in Eagle Creek. With the recent improvements made at the Sandy substation needs to install an additional neutral line along Proctor Blvd. to connect to the local substation.

Given the amount of money and effort expended on placing much of the overhead lines underground in this section of Proctor Blvd. Staff advised PGE that any new overhead conductors would require an exemption from the City Council.

Additional conduits were installed with the utility undergrounding project to accommodate future expansion of PGE's facilities but PGE has indicated that the spare conduits are not suitable for a neutral line installation. PGE staff provided the following additional explanation for the installation of the proposed line:

"The underground conduits that were recently installed are for new service lines for new customers.

The new neutral line is being installed as new hardware to upgrade the existing overhead transmission and distribution lines for the grid. It is PGE's standard to have at least a 4/0 AAC Neutral for 336 AAC Conductor or larger.

Due to the higher voltage running over the lines, the neutral conductor helps to ground the electricity flowing through the different phased lines and the existing transformers in conjunction with pole grounds, as these are interconnected to the earth grounding grids of the substations. The earth doesn't provide enough low-resistance connection the way a wire does for a 2-phase power line. The neutral wire carries current in the event of a fault and when that happens, it will trip the circuit breaker as a safety feature. A new neutral wire (newer technology) also improves the safety of the line crew when working on the overhead lines.

Sandy's municipal code speaks to "line extensions and new construction", but this line is an upgrade to the existing overhead equipment."

PGE also provided the attached photo of the existing overhead neutral to provide some scale regarding the proposed new neutral.

**Recommendation:**

No staff recommendation

**Budgetary Impact:**

None







## Staff Report

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**Meeting Date:** March 4, 2019

**From** Mike Walker, Public Works Director

**SUBJECT:** Proposals for Utility Rate Model and Wastewater SDCs Update

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**Background:**

On January 25th staff requested proposals to update or replace our existing utility (water and sewer) rate model and our wastewater System Development Charges (SDCs). Proposals were due by February 19th and we received four proposals.

Our existing rate model has not been updated for a number of years, requires a great deal of data entry, is very cumbersome to operate and has been altered by various users over the years such that the results from it are not reliable. A more streamlined rate model will allow us to set rates annually (or more frequently) and provide a long-range rate forecast of future rates.

System Development Charges (SDCs) are collected from new development (or existing development that increases in intensity) in order to fund improvements necessary to accommodate population growth. Existing rate payers should not be responsible for subsidizing new growth and new growth should not be responsible for funding maintenance and repair of existing facilities. Our wastewater SDCs have not been updated since 1998 and when adopted did not include a methodology that allowed for annual adjustments to compensate for inflation.

Evaluation and scoring factors included: The firm's demonstrated understanding of the project (35 points); the firm's and the project team's experience and background on similar projects (35 points) and the estimated fee for the proposed work (30 points). City staff reviewed and ranked the four proposals and the results are summarized in the table below:

<b>Firm</b>	<b>Score (Avg.)</b>	<b>Score (Total)</b>
Donovan Enterprises	81	243
FCS Group	88.3	265
GovRates	75	225
Raftelis	70	210

The highest ranked proposal was from FCS Group. The proposed fees ranged from \$25,200 to \$49,965. The estimated hours of service provided ranged from 225 hours to

308 hours. FCS Group's proposed fee is \$49,965 and estimated hours are 308, both of which were the highest of the four proposals received.

FCS Group revised and updated the City's Transportation and Parks/Trails SDC methodology in 2017. We were pleased with their work on that project.

**Recommendation:**

Accept the proposal from FCS Group and authorize the City Manager to negotiate a scope of work and fee not to exceed \$50,000 and enter into an agreement with FCS Group for updating the utility rate model and wastewater System Development Charges.

**Budgetary Impact:**

There are sufficient funds in the water and sewer utility budgets to fund this work.