



City of Sandy

Agenda

City Council Meeting

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

**Meeting Date: Monday, August
20, 2018**

Meeting Time: 6:00 PM

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1. WORKSHOP 6:00PM

1.1. City Manager Replacement Process

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Workshop to talk about the replacement process for the City Manager.

[City Manager Search/Replacement \(Staff Report - 0019\) - Pdf](#)

2. REGULAR MEETING 7:00PM

3. PLEDGE OF ALLEGIANCE

4. ROLL CALL

5. PUBLIC COMMENT

6. CHANGES TO THE AGENDA

6.1. Presentation by Sandy Watershed

7. RESOLUTIONS

7.1. Resolution to approve the Federal Lands Program Project Memorandum of Agreement

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[Federal Lands Program Project Memorandum of Agreement - Pdf](#)

8. NEW BUSINESS

8.1. Certify Challenge Process Completion for: 18-003 ANN – Sandy Campus Parkland Annexation

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It is hereby recommended that City Council certify that the challenge

process for the attached ballot title is complete. Upon certification the City Elections Official will submit the SEL 802 Notice of Measure Election – City form to the County Elections Official no later than September 6, 2018 along with an explanatory statement. At that time the county elections official will assign a measure number to the ballot title, so voters can approve or reject Resolution 2018-08 in the November 6, 2018 local elections.

Make a motion to approve and certify the challenge process for the attached ballot title as complete.

[Certify Challenge Process Completion \(Staff Report - 0027\) - Pdf](#)

9. CONSENT AGENDA

- 9.1. Draft Meeting Minutes 49 - 55
[City Council Meeting - 06 Aug 2018 - Minutes - Pdf](#)

10. COUNCIL REPORTS

11. REPORT FROM THE CITY MANAGER

12. COMMITTEE REPORTS

13. ADJOURN

14. EXECUTIVE SESSION

- 14.1. ORS 192.660(2)(f) To consider information or records that are exempt by law from public inspection.



Staff Report

Meeting Date: August 6, 2018
From Kim Yamashita, City Manager
SUBJECT: City Manager Search/Replacement

Background:

At the July 16, 2018, meeting I announced my intent to give notice at a future date. This notification was done to allow the city as much time as possible to discuss, debate and decide how they would like to move forward. I have also discussed the matter with legal counsel, David Doughman and we have come up with the following recommendation for council. On Friday July 27, I met with the Department Heads during a retreat. We discussed the process and some great ideas came out of that meeting. Specifically we would like to create a full day of round robin interviews with various groups to weed the candidate pool down to the top 4 or 5 that would proceed to interviews with the council. The interview groups could include, Department Heads, Citizens that live, own a business or manage employees in the city limits, Professional Panel, a panel made up of members from all of the advisory boards and a business leader panel. Additionally, I would like to add staff to some of these panel's or have a panel of staff members.

It was clear during my conversation with the Department Heads, and with staff, that they are concerned what the future holds. When asked for a list of things that they would like to see in a new City Manager that list included:

1. Someone invested in our community
2. Someone that could continue the great forward momentum we have going as a team
3. A person that is not going to use this as a stepping stone to a bigger agency
4. It was suggested that we NOT look for another "City Manager" but that we focus on a good leader and not look at the industry specific City Manager
5. Someone that supports staff and will be a good liaison between staff and council
6. A person that supports the department heads and allows them to run their own departments with as much autonomy as possible
7. A genuine person
8. Cities best interest at heart not their personal interest
9. Law Enforcement Friendly
10. Collaborative leadership style

11. Ask how things work and see the Department Heads as experts in their fields
12. Good Communicator
13. Open minded to our unique budget process and 2 year budget including carry over and the hope that council will hold the new City Manager to this budgeting process.

Recommendation:

We recommend that Council direct staff to write up and advertise the position in appropriate periodicals and with appropriate organizations such as ICMA (International City Managers Association), OCCMA (Oregon County City Managers Association) as examples. Make every effort to manage the recruitment in house as outlined in the process listed above. If that strategy fails to net desired results we could attempt to use a head hunting service. This will give us the opportunity to save money, while still having a process if the council desires.

Financial Impact:

None



Staff Report

Meeting Date: August 20, 2018

From Andi Howell, Transit Director

SUBJECT: Federal Lands Program Project Memorandum of Agreement

Background:

The Sandy Transit Department has received funding from the Federal Lands Access Program since 2013. In 2016, Sandy and Clackamas County were awarded three additional years of FLAP funding, extending Sandy Transit's FLAP funding to 2020. During the 2016 application cycle, several additional providers were also awarded funding including ODOT (Columbia Gorge Express) and Hood River County.

With the award of these funds for existing and expanded service, the Federal Highway Program added additional \$120,000 in funding to the original grant requests to conduct a study of transit service around the mountain, termed "Vision Around the Mountain". Clackamas County and Sandy are awarded FLAP funds as partnering agencies and enter this study as combined providers. Therefore, the required match is \$4,108 per provider with Sandy and Clackamas County sharing the \$4,108. Sandy will be expected to provide \$2,054 as the local match for this planning effort. The match can be provided as in-kind (staff hours) or cash.

Areas that will be studied include: operating efficiencies, marketing coordination, fleet sharing, schedule/transfer coordination, fares, sustainable funding strategies and shared management. The study will also look out 5 years to determine how these services should further evolve to serve the traveling public. The final product of this work will be an action plan that will include implementable solutions with identified agency leads.

Recommendation:

Approve the Memorandum of Agreement (MOA) to allow Sandy to enter this planning study which will provide recommendations to ensure a seamless system for the traveling public for the transit providers providing service around the Mt. Hood region.

" I make a motion to approve Resolution No. 2018-25 for the Memorandum of Agreement and to authorize the Transit Director to sign the attached MOA as presented".

Financial Impact:

Sandy will provide match in the form of in-kind or cash of \$2,054.

Federal Lands Access Program Project Memorandum of Agreement

Project / Facility Name: OR DOT 2016(5) Vision Around the Mountain

Project Route: Historic Columbia River Highway, Highway 26, Highway 35, Highway 84

State: Oregon

County(ies): Multnomah, Hood River, Clackamas

Owner of Federal Lands to which the Project Provides Access: Forest Service

Entity with Title or Maintenance Responsibility for Facility: Oregon Department of Transportation, Region 1, Clackamas County, Hood River County, City of Sandy

Type of Work: The project is to include:

- Planning Project to determine coordination opportunities between transit operators around Mt Hood, including the Mt. Hood Express, Columbia Gorge Express, Sandy Area Metro, and Columbia Area Transit Services.

This Agreement does not obligate (commit to) the expenditure of Federal funds nor does it commit the parties to complete the project. Rather, this agreement sets forth the respective responsibilities as the project proceeds through the project development process.

Parties to this Agreement: Oregon Department of Transportation, Region 1, Hood River County, Clackamas County, City of Sandy, and Federal Highway Administration, Western Federal Lands Highway Division (FHWA-WFL).

The Program Decision Committee approved this project on 11/09/2016.

AGREED:

Hal Gard, ODOT Rail and Public Transit Division Administrator Date

Richard Swift, Clackamas County Health, Housing and Human Services Director Date

Andi Howell, City of Sandy Transit Director Date

Patricia Fink, Hood River County CAT Executive Director Date

Dan Donovan, WFLHD Director of Program Administration Date

A. PURPOSE OF THIS AGREEMENT:

This agreement documents the intent of the parties and sets forth the anticipated responsibilities of each party in the development of the subject project. The purpose of the agreement is to identify and assign responsibilities for Project Development and Contract Advertisement as appropriate for this project.

If Federal Lands Access Program (FLAP) funds are used for the development of this project, Oregon Department of Transportation, Region 1, Hood River County/City of Sandy, and Clackamas County agree to provide a matching share equal to 10.27% of the total cost of the project, as detailed more fully in Section J below.

B. AUTHORITY:

This Agreement is entered into between the signatory parties pursuant to the provisions of 23 U.S.C. 204.

C. JURISDICTION:

Oregon Department of Transportation, Region 1, Clackamas County, City of Sandy, and Hood River County have jurisdictional authority to operate and maintain the existing transit systems in the study area.

D. FEDERAL LAND MANAGEMENT AGENCY COORDINATION:

Oregon Department of Transportation, Region 1, Clackamas County, City of Sandy, and Hood River County has coordinated project development with the US Forest Service. The US Forest Service support of the project is documented in the Project Proposal by endorsing the proposal.

Each party to this agreement who has a primary role in NEPA, design or construction should coordinate their activities with the US Forest Service.

E. PROJECT BACKGROUND / SCOPE:

Public transit opportunities in and around Mt Hood have increased significantly over the past few years.

The Mt Hood Express expanded service to both summer and winter recreational destinations along Highway 26 and up to Timberline Lodge starting in 2013/2014 winter season. The service operated by Clackamas County has received continuous FLAP funding through 2020. The City of Sandy has also received funding to provide connectivity to the Mt Hood Express to Tri-Met Services.

The Columbia Gorge Express started in 2016 as a demonstration project to reduce congestion in the Columbia River Gorge and also provide additional travel options from Portland to Multnomah Falls. In the 2018 season, the service was expanded to Hood River. This service operated by ODOT has also successfully secured funding through the FLAP through 2020.

Columbia Area Transit (CAT) put in a 2016 FLAP proposal for a demonstration project to provide transit on the Highway 35 corridor up to Mt Hood Meadows. The Programming

Decisions Committee did not fully approve the proposal for the demonstration project, but did fund a planning effort to better define transit needs along the corridor.

Together, these services will eventually provide transit service completely around Mt Hood using Highways 84, 26, and 35. As these services evolve in and around Mt Hood, it is important to ensure that transit is coordinated among the various agencies that operate the services. This planning study will provide recommendations to ensure a seamless system for the traveling public. Areas that will be studied include: operating efficiencies, marketing coordination, fleet sharing, schedule/transfer coordination, fares, sustainable funding strategies and shared management. The study will also look out 5 years to determine how these services should further evolve to serve the traveling public. The final product of this work will be an action plan that will include implementable solutions with identified agency leads.

F. PROJECT BUDGET:

This is the anticipated budget for the project based on information developed to date. Federal Lands Access Program funds in conjunction with matching funds provided by the Oregon Department of Transportation, Hood River County, and Clackamas County will fund this project as detailed in Section K.

Item	Total	Comments
TOTAL	\$120,000	Includes match and S&O

G. ROLES AND RESPONSIBILITIES:

Oregon Department of Transportation, Region 1

- Will deliver the planning study
- Will be responsible for project activities identified in Section P.
- Will appoint a representative who will be the primary contact for FHWA-WFL’s Project Manager
- Will provide one-third of the match requirement through In-Kind to all FLAP funds expended on the project even if the project is terminated prior to completion
- Will be responsible for terms and conditions as noted in 2 CFR 200 Common Rule Requirements & other legal requirements contained in Attachment 1

Clackamas County

- Will appoint a representative who will be the primary contact for the project
- Will work with the City of Sandy to provide one-third of the match requirement through In-Kind to all FLAP funds expended on the project even if the project is terminated prior to completion

City of Sandy

- Will appoint a representative who will be the primary contact for the project

Hood River County

- Will appoint a representative who will be the primary contact for the project

- Will provide one-third of the match requirement through In-Kind to all FLAP funds expended on the project even if the project is terminated prior to completion

FHWA-WFL

- Will be responsible for stewardship and oversight activities as noted in Section P.
- FHWA-WFL will be responsible for FHWA decisions that may be not be delegated. These decisions are identified in Section P.

H. ROLES AND RESPONSIBILITIES – MILESTONE SCHEDULE:

Responsible Lead	Product/Service	Schedule Start/Finish
ODOT Region 1	Study Development	Sept 2018/ Dec 2020

I. PROPOSED DESIGN STANDARDS:

N/A

J. FUNDING:

The project is funded by the Federal Lands Access Program administered by FHWA-WFL, with matching funds provided by the Oregon Department of Transportation, Region 1, Hood River County, City of Sandy, and Clackamas County, split evenly among the four entities.

Funding Source	Amount	%	Comments
Federal Lands Access Funds	\$107,676	89.73%	\$102,676 for Study, \$5k for WFL project support
Local Matching Share	\$12,324	10.27%	In-kind, \$4,108 each from ODOT R1, Clackamas County/Sandy, and Hood River County
Total Projected Costs	\$120,000	100%	

K. MATCHING SHARE REQUIREMENTS:

The purpose of this section is to document the intent of ODOT Region 1, City of Sandy, Clackamas County, and Hood River County to meet its match requirement for the subject project as authorized under section 23 USC 201(b)(7)(B).

All FLAP expenditures associated with this project will need to be matched by a Non- Federal source, by other Federal funds other than those made available under Titles 23 and 49 of the United States Code, or by funds made available under 23 U.S.C. 202 and 203. The matching requirement under the FAST Act will be split evenly three ways between ODOT Region 1, Clackamas County/Sandy, and Hood River County.

ODOT Region 1, Clackamas County/Sandy, and Hood River County have committed to the project. The forms of match shall be those consistent with the 'Federal-Aid Guidance Non-Federal Matching Requirements' and as approved by FHWA-WFL. In the state of Oregon, 10.27% of the total project cost.

Estimated costs and fiscal year (FY) for the funding are based on the best budgeting and scheduling information known at the time. The final match will be determined based on actual expenditures at the conclusion of project work.

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 the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

If any litigation claim, negotiation, or audit has been started before expiration of the six-year period, the records shall be retained until completion of the action and resolution of all issues that arise from it.

The following agencies have agreed to contribute the amounts shown which will reduce the federal share by the same amount. The Funding Plan is as follows:

Agency	Phase	Form	Due by	Value	Comments
ODOT R1	PL	<i>In-kind</i>	<i>12/31/2020</i>	\$4,108	

Agency	Phase	Form	Due by	Value	Comments
Clackamas County/City of Sandy	PL	<i>In-kind</i>	12/31/2020	\$4,108	
Hood River County	PL	<i>In-kind</i>	12/31/2020	\$4,108	

L. PROJECT TEAM MEMBERS – POINT OF CONTACT:

The following table provides the points of contact for this project. They are to be the first persons to deal with any issues or questions that arise over the implementation of each party's role and responsibility for this agreement.

NAME / TITLE	ORGANIZATION	TELEPHONE NO. / E-MAIL
Jake Warr, Columbia Gorge Express Manager	Oregon Department of Transportation, Region 1	503-731-8253, Jake.WARR@odot.state.or.us
Teresa Christopherson, Administrative Services Manager	Clackamas County	503-650-5718, teresachr@co.clackamas.or.us
Patty Fink, Columbia Area Transit Executive Director	Hood River County	503-793-1256, patty.fink@catransit.org
Andi Howell, Transit Director	City of Sandy	503-489-0925, ahowell@ci.sandy.or.us
Susan Law, Program Manager	Federal Highway Administration-Western Federal Lands Highway Division	360-619-78940, susan.law@dot.gov

M. CHANGES / AMENDMENTS / ADDENDUMS:

The agreement may be modified, amended, or have addendums added by mutual agreement of all parties. The change, amendment, or addendum must be in writing and executed by all of the parties.

The types of changes envisioned include, but are not limited to, changes that significantly impact scope, schedule, or budget; changes to the local match, either in type or responsibility;

change that alter the level of effort or responsibilities of a party. The parties commit to consider suggested changes in good faith. Failure to reach agreement on changes may be cause for termination of this agreement.

A change in composition of the project team members does not require the agreement to be amended.

It is the responsibility of the project team members to recognize when changes are needed and to make timely notifications to their management in order to avoid project delivery delays.

N. ISSUE RESOLUTION PROCEDURES MATRIX:

Issues should be resolved at the lowest level possible. The issue should be clearly defined in writing and understood by all parties. Escalating to the next level can be requested by any party. When an issue is resolved, the decision will be communicated to all levels below.

Level	LPA	FHWA-WFL	Time
1	Jake Warr, Columbia Gorge Express Manager	Susan Law, Program Manager	15 Days
2	Marsha Hoskins, ODOT Public Transportation Manager	Pete Field, Planning and Programming Branch Chief	15 Days

O. TERMINATION:

1. This agreement may be terminated by mutual written consent of all parties.
2. This agreement may also be terminated if either the NEPA process or funding availability requires a change and the parties are not able to agree to the change.
3. ODOT may terminate this Agreement effective upon delivery of written notice to the parties, or at such later date as may be established by ODOT, under any of the following conditions
 - a. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments or perform under 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 ODOT is prohibited from paying for such work from the planned funding source.
4. Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. If Federal access funds have been expended prior to termination, the party responsible for the match agrees to provide a match in the applicable percentage of the total amount expended on the project prior to the termination.

P. PROJECT and STEWARDSHIP & OVERSIGHT ACTIVITIES:

Phase	Activity	ODOT R1	FHWA-WFL
Planning & Programming	Evidence of funding allocation	Signed Project Agreement	Signed Project Agreement
Planning & Programming	Project agreement (MOA) with scope, schedule, & budget	Signed Project Agreement (MOA)	Signed Project Agreement (MOA)
Environment	FHWA NEPA decision	Comply	Provide
Acquisitions	Contract package for required clauses (Civil Rights, Davis-Bacon, Buy America/)	Provide	File copy
Construction	Copy of Final Report	Provide	Approve

ATTACHMENT 1

2 CFR 200 Common Rule Requirements and other legal requirements

A. GENERAL TERMS AND CONDITIONS

Background. To promote accelerated and efficient delivery of projects that benefit Federal Land Management Agencies, the Secretary has exercised his discretion under 23 U.S.C. § 201(a) and § 204(a)(3) to apply Title 23 U.S.C. Chapter 1 requirements (Federal Aid requirements) to Federal Lands Access Projects delivered by State Departments of Transportation (DOTs) and local public agencies that are evaluated and certified by State DOTs to deliver Federal Aid projects. In instances where a local public agency is not certified to deliver Federal-aid projects and Federal Lands Access projects are delivered by the local public agency cooperatively with Federal Lands Highway Division office oversight, the government-wide Common Rule (2 CFR 200) will be applied. This cooperative relationship will enable the FLH to identify any federal law issues in cooperation with the local public agency which may arise in the project development and delivery process.

1. The Agreement provides funds on a reimbursable basis to the Oregon Department of Transportation, hereinafter "Servicing Agency") for the project described in the Access Program Project Memorandum of Agreement.
2. The Government's liability to make payments to the Servicing Agency under the Agreement is limited to those funds obligated by the Government under the Agreement as indicated herein and by any subsequent amendments agreed to in writing by all parties.
3. The Servicing Agency agrees to abide by and comply with all terms and conditions of the Agreement and to abide by, and comply with, all requirements of applicable law, including those specified in this Attachment, which are considered as an integral part of the Agreement.
4. In the case of any inconsistency or conflict between the specific provisions of the Agreement and this Attachment, such inconsistency or conflict shall be resolved by giving preference to the Agreement.
5. The Servicing Agency shall be responsible for ensuring that the Project is designed and/or constructed in accordance with the Agreement, and all applicable Federal laws, regulations and policies of the Federal Highway Administration ("FHWA" also referred to herein as the "Government").
6. Reimbursement of costs incurred pursuant to the Agreement will be made pursuant to and in accordance with 2 CFR Part 200 and the provisions of such regulations and procedures as the Government may prescribe. Determination of allowable costs incurred by the Servicing Agency under the Agreement shall be made in accordance with applicable government-wide cost principles under 2 CFR 200. Closeout of the Agreement shall be based upon a determination that all applicable administrative actions and all required work of the Agreement have been completed in accordance with 2 CFR Part 200. Upon the Government's review of all financial, performance, and other reports required as a condition of the Agreement, the Government may make any upward or downward adjustments to the allowable costs in accordance with 2 CFR 200.
7. The Servicing Agency agrees to carry out and complete the Project without undue delays and in accordance with the terms of the Agreement, including the Project Schedule set out in the Agreement, or in the Access Program Project Memorandum of Agreement if no Schedule is included in this Agreement, and comply with such regulations and procedures as the Government may prescribe.

8. The Servicing Agency agrees to retain all documents relevant to the Project for a period of three years from completion of the Project and receipt of final reimbursement from the Government. The Servicing Agency agrees to furnish the Government, upon request, all documents and records pertaining to the Project.

9. The Government is subject to the Freedom of Information Act (FOIA). The Servicing Agency should therefore be aware that all materials submitted by the Servicing Agency related to the Agreement will become agency records and thus are subject to FOIA and to public release through individual FOIA requests.

10. The Government shall not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this the Servicing Agency's work under the Agreement. The Government will be responsible for damages or injuries caused by the negligence of its own employees, to the extent permitted under the Federal Tort Claims Act, 28 U.S.C. 2671-2680.

11. To the extent that the State has not already enacted legislation regarding texting while driving, the Government encourages the Servicing Agency to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies that bar text messaging while driving company-owned or rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official government business or when performing any work for or on behalf of the Government. See Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving", Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 "Text Messaging While Driving", Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP-2010-01, Feb. 2, 2010, available at http://www.dot.gov/sites/dot.dev/files/docs/FAPL_2010-01.pdf) This includes, but is not limited to, the Servicing Agency:

- a. considering new rules and programs or re-evaluating existing programs to prohibit text messaging while driving;
- b. conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving; and
- c. encouraging voluntary compliance with the agency's text messaging policy while off duty.

The Servicing Agency is encouraged to insert the substance of this clause in all contracts and subcontracts.

B. APPLICABLE FEDERAL LAWS AND REGULATIONS

By entering into the Agreement, the Servicing Agency assures, certifies, and agrees to comply with all applicable Federal laws, regulations, policies, guidelines, and requirements as they relate to the use of Federal funds for this Project including, but not limited to, the following:

General Federal Legislation

- Fair Labor Standards Act - 29 U.S.C. § 201, et seq.
- Hatch Act - 5 U.S.C. §§ 1501, et seq.
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title - 42 U.S.C. §§4601, et seq.
- National Historic Preservation Act of 1966 – 16 U.S.C. § 470, et seq.
- Archaeological Resources Protection Act – 16 U.S.C. 470aa, et seq.

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- Native American Graves Protection and Repatriation Act - 25 U.S.C. § 3001, et seq.
- National Environmental Policy Act of 1969 - 42 U.S.C. §§ 4321, et seq.
- Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. §§ 1271, et seq.
- Federal Water Pollution Control Act, as amended - 33 U.S.C. §§ 1251-1376
- Clean Air Act – 42 U.S.C. § 7401, et seq.
- Single Audit Act of 1984 - 31 U.S.C. §§ 7501, et seq.
- Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101, et seq.
- Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. § 794
- Title VI of the Civil Rights Act of 1964 - 42 U.S.C. §§ 2000d *et seq.*
- Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. § 1352
- Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. § 1855
- Farmlands Protection Policy Act of 1981 – 7 § U.S.C. 4201
- Noise Control Act of 1972 – 42 U.S.C. § 4901, et seq.
- Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and 23 U.S.C. § 138
- Resource Conservation and Recovery Act of 1976 (RCRA), as amended -- 42 U.S.C. §§ 6901, et seq.
- Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended --42 U.S.C. §§ 9601-9657
- Safe Drinking Water Act -- 42 U.S.C. §§ 300f-300j-6
- Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 – 42 U.S.C. § 6901, et seq.
- Migratory Bird Treaty Act 16 U.S.C. § 760c-760g
- The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
- Cargo Preference Act of 1954 – 46 U.S.C. § 55305
- Buy America Act – 23 U.S.C. § 313 (see http://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm)
- Nondiscrimination – 23 U.S.C. § 140

General Federal Regulations

- Suspension and Debarment – 2 CFR Parts Part 180
- Non-procurement Suspension and Debarment – 2 CFR Part 1200
- External Programs – 23 CFR Part 230
- Manual on Uniform Traffic Control Devices – 23 CFR Part 655
- Environmental Impact and Related Procedures – 23 CFR Part 771
- Procedures for Abatement of Highway Traffic and Construction Noise – 23 CFR Part 772
- Procedures Implementing Section 4(f) of the Department of Transportation Act – 23 CFR Part 774
- DOT's oversight of DOJ's ADA regulations for non-transit programs, including the ADA Accessibility Guidelines, required by the DOJ regulations at – 28 CFR Part 35
- Procedures for predetermination of wage rates – 29 CFR Part 1
- Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 CFR Part 3
- Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 CFR Part 5
- Permitting Requirements under the National Pollutant Discharge Elimination System – 40 CFR Part 122.
- Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) – 41 CFR Parts 60, et seq.
- Uniform administrative requirements, cost principles, and audit requirements for Federal Awards – 2 CFR Part 200
- New Restrictions on Lobbying – 49 CFR Part 20
- Nondiscrimination in Federally Assisted Programs of the Department of Transportation –Effectuation of Title VI of the Civil Rights Act of 1964 – 49 CFR Part 21
- Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 CFR Part 24
- Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 CFR Part 25
- Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs –2CFR 200.
- Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 CFR Part 27
- Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 CFR Part 28
- Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 CFR Part 30
- Government-wide Requirements for Drug-Free Workplace (Financial Assistance) – 49 CFR Part 32
- DOT's implementing ADA regulations for transit, including the ADA Accessibility Guidelines in Part 37, Appendix A – 49 CFR Parts 37 and 38
- Procedures for Transportation Workplace Drug and Alcohol Testing Programs – 49 CFR Part 40
- 23 C.F.R. Part 710 applies unless otherwise agreed to by FHWA

The Servicing Agency, when contracting for work to be performed under this Agreement, will include in the prime contract the applicable provisions required under 2 CFR 200.326.

The Servicing Agency, when contracting for construction services, shall ensure that all laborers and mechanics employed by contractors or subcontractors on the construction work shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality as determined by the Secretary of Labor in accordance with sections 3141, 3146, and 3147 of title 40.

C. ASSURANCES AND CERTIFICATIONS

**TITLE VI ASSURANCE
(Implementing Title VI of the Civil Rights Act of 1964, as amended)**

**ASSURANCE CONCERNING NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS AND
ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE**

(Implementing the Rehabilitation Act of 1973, as amended, and the Americans With
Disabilities Act, as amended)

49 CFR Parts 21, 25, 27, 37 and 38

The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

By entering into the Agreement, the Servicing Agency (also herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal funds from the U.S. Department of Transportation (DOT), through the Federal Highway Administration (FHWA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);

- 28 CFR section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Servicing Agency hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including the FHWA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Servicing Agency, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Servicing Agency agrees with and gives the following Assurances with respect to its receipt of funds for this project:

1. The Servicing Agency agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Servicing Agency will insert the following notification in all solicitations for bids and requests for proposals for work or materials, regardless of funding source:
 - a. *“The Servicing Agency, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”*
3. The Servicing Agency will insert the clauses of Appendix A of this Assurance in every contract or agreement subject to the Acts and the Regulations.

4. The Servicing Agency will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Servicing Agency receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Servicing Agency receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Servicing Agency will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Servicing Agency with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Servicing Agency or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal funds were extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Servicing Agency retains ownership or possession of the property.
9. The Servicing Agency will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other parties funded in whole or part from the funds provided under this Agreement will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Servicing Agency agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing the Agreement, the Servicing Agency also agrees to comply (and require any sub- recipients, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA's access to records, accounts, documents, information, facilities, and staff. The Servicing Agency also recognizes that it must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. The Servicing Agency must keep records, reports, and submit the material for review upon request to FHWA, or its designee in a timely, complete, and accurate way.

Additionally, the Servicing Agency must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Servicing Agency gives this ASSURANCE in consideration of and for obtaining any Federal funds, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation.

This ASSURANCE is binding on the Servicing Agency, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the funds provided under this Agreement.

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-funded programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Servicing Agency or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Servicing Agency or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Servicing Agency will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Servicing Agency or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Servicing Agency to enter into any litigation to protect the interests of the Servicing Agency. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Servicing Agency under the terms of the Agreement:

1. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the Servicing Agency will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

3. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Servicing Agency will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Servicing Agency and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Servicing Agency pursuant to the provisions of this Agreement:

1. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
2. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, the Servicing Agency will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
3. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the Servicing Agency will there upon revert to and vest in and become the absolute property of the Servicing Agency and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

A. ASSURANCE OF DISCLOSURE OF LOBBYING ACTIVITIES

Certification for Contracts, Grants, Loans, and Agreements

The person signing this Agreement for the Servicing Agency certifies, to the best of his or her knowledge and belief, that:

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 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 grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.

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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or grant agreement, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts and contracts under grants, loans and grant agreements) and that all subcontractors shall certify and disclose accordingly.

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 31 U.S.C. § 1352, title. 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.

B. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The Servicing Agency certifies that it will, or will continue, to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Servicing Agency's workplace, and specifying the actions that will be taken against employees for violation of such prohibition.
2. Establishing an ongoing drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The Servicing Agency's policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs;and,

- d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of work supported by the Agreement be given a copy of the statement required by paragraph 1.
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment supported by the Agreement, the employee will:
 - a. Abide by the terms of the statement; and
 - b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
5. Notifying the agency in writing, within ten calendar days after receiving notice under paragraph 4.b. from an employee or otherwise receiving actual notice of conviction. Employers of convicted employees must provide notice, including position title, to FHWA. Notice shall include the order number of the Agreement.
6. Taking one of the following actions, within 30 days of receiving notice under paragraph 4(b), with respect to any employee who is so convicted:
 - a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5, and 6.
8. The Servicing Agency *may*, but is not required to, provide the site for the performance of work done in connection with the Agreement. For the provision of services pursuant to the Agreement, workplaces include outstations, maintenance sites, headquarters office locations, training sites and any other worksites where work is performed that is supported by the Agreement. If the Servicing Agency does so, the Servicing Agency shall identify the Places of Performance by listing the street address, city, county, state, zip code. Also identify if there are workplaces on file that are not identified in this section of the Agreement.

**C. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS --
PRIMARY COVERED TRANSACTIONS**

2 CFR Parts 180, 1200, 48 CFR Part 9, and 49 CFR Part 32

These assurances and certifications are applicable to all construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200, and 48 CFR Part. 9.

By entering into this Agreement the Servicing Agency is providing the assurances and certifications for First Tier Participants and Lower Tier Participants as set out below.

1. Instructions for Certification – First Tier Participants:

- a. The prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal 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 entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier

covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) 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 may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
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 a.2. of this certification; and

4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 C.F.R. Parts 180 and 1200)

a. The prospective lower tier participant is providing the certification set out below.

b. 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.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient and subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal 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.

f. The prospective lower tier participant further agrees by submitting this proposal 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 exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e 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.

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions 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 attach an explanation to this proposal.

D. ASSURANCE OF ADEQUATE FINANCIAL SYSTEMS AND CONTROL OF PROJECT COSTS

1. The Servicing Agency will be reimbursed in accordance with the terms of this Agreement.

2. The Servicing Agency shall have entered into obligations for services and goods associated with the Project prior to seeking reimbursement from the Government. Reimbursement will only be made for expenses incurred after execution of a project agreement.

3. The Servicing Agency shall ensure that the funds provided by the Government are not misappropriated or misdirected to any other account, need, project, line-item, or unrelated activity.

4. Any Federal funds not expended in conjunction with the Project will remain the property of the Government.

5. Financial Management System: By signing this Agreement, the Servicing Agency verifies that it has, or will implement, a financial management system adequate for monitoring the accumulation of costs and that it complies with the financial management system requirements of 2CFR Part 200.302. The Servicing Agency's failure to comply with these requirements may result in Agreement termination.

6. Allowable Costs: Determination of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., 2 CFR Part 200. Disallowed costs are those charges determined to not be allowed in accordance with the applicable Federal cost principles or other conditions contained in this Agreement.

E. TRANSPARENCY ACT REQUIREMENTS

Pursuant to the Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252, hereafter referred to as “the Transparency Act” or “the Act”) and the OMB Interim Final Rule (75 FR 55663 (September 14, 2010) (available at <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf>) (codified at 2 CFR Part 170), the Servicing Agency is required to report as required under the Act: The Servicing Agency shall also report information for its prime contractor.

1. Reporting Obligations

a. Applicability. Unless the Servicing Agency (hereinafter in this section referred to as “you”) are exempt as provided in paragraph 4. of this section, you must report each action that obligates \$25,000 or more in Federal funds for a prime contract to an entity (see definitions in subsection 5. of this section).

b. Where and when to report.

1. You must report each obligating action described in subsection 1.a. of this section to <http://www.fsr.gov>.

2. For contractor information, report no later than the end of the month following the month in which the contract was executed. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

c. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsr.gov> specify.

2. Reporting Total Compensation of Executives.

a. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

1. the total Federal funding authorized to date under this award is \$25,000 or more;
2. in the preceding fiscal year, you received—
 - i. 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

b. Where and when to report. You must report executive total compensation described in subsection 2.a.. of this section:

1. As part of your registration profile at <https://www.sam.gov>
2. By the end of the month following the month in which this award is made, and annually thereafter.

3. Reporting of Total Compensation of Prime Contractor's Executives.

a. Applicability and what to report. Unless you are exempt as provided in subsection d. of this section, for each prime contractor receiving funds for which reimbursement will be sought, you shall report the names and total compensation of each of the prime contractor's five most highly compensated executives for the prime contractor's preceding completed fiscal year, if—

1. in the prime contractor's preceding fiscal year, the contractor received—
 - i. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

2. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

b. Where and when to report. You must report the prime contractor's executive total compensation described in subsection 3.a. of this section:

1. [To http://www.fsrs.gov](http://www.fsrs.gov).

2. By the end of the month following the month during which you executed the prime contract. For example, if a prime contract is executed on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the prime contractor by November 30 of that year.

4. Exemptions.

If, in the previous tax year, you or the prime contractor had gross income, from all sources, under \$300,000, you are exempt from the requirements to report prime contracts and the total compensation of the five most highly compensated executives of any prime contractor.

5. Definitions. For purposes of this section:

a. Entity means all of the following, as defined in 2 CFR Part 25:

1. A Governmental organization, which is a State, local government, or Indian tribe;
2. A foreign public entity;
3. A domestic or foreign nonprofit organization;
4. A domestic or foreign for-profit organization;
5. A Federal agency, but only as a contractor or subcontractor to a non-Federal entity.

b. Executive means officers, managing partners, or any other employees in management positions.

c. Total compensation means the cash and noncash dollar value earned by the executive during the Servicing Agency's or prime contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

1. Salary and bonus.
2. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in

accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

3. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

5. Above-market earnings on deferred compensation which is not tax-qualified.

6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

F. SINGLE AUDIT INFORMATION FOR SERVICING AGENCIES

To maximize the transparency and accountability of funds authorized under the Act as required by Congress and in accordance with 2 CFR 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, the Servicing Agency agrees to maintain records that identify adequately the source and application of FHWA funds.



NO. 2018-25

A resolution to approve the Memorandum of Agreement to participate in the "Vision Around the Mountain" planning study.

Whereas, The Federal Highway Administration, Western Federal Lands Highway Division (FHWA-WFL) awards funding to the City of Sandy Transit Department in partnership with the Clackamas County Mt. Hood Express service through the Federal Lands Access Program (FLAP); and

Whereas, the City Council of the City of Sandy desires to participate in this planning project to better define transit needs along the corridor. The "Vision Around the Mountain" planning study will ensure that transit is coordinated among the various agencies that operate the services including Sandy, Clackamas County, Hood River County and ODOT. This planning study will provide recommendations to ensure a seamless system for the traveling public; and

Whereas, the City of Sandy Transit Department has budgeted available local matching funds to fulfill its share of the obligation related to the planning study; and

Whereas, the City of Sandy intends to appoint a representative who will be the primary contact for the project; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sandy demonstrates its support for the City of Sandy Transit Departments to enter into the "Vision Around the Mountain" planning study.

This resolution is adopted by the Common Council of the City of Sandy and approved by the Mayor this 20 day of August 2018

A handwritten signature in black ink that reads "William King". The signature is written in a cursive style.

William King, Mayor

#2018-25

ATTEST:

A handwritten signature in black ink, appearing to read 'K. Milne', written in a cursive style.

Karey Milne, City Recorder

#2018-25



Staff Report

Meeting Date: August 20, 2018

From James Cramer, Associate Planner
Certify Challenge Process Completion for: 18-003 ANN – Sandy

SUBJECT: Campus Parkland Annexation

Background:

BACKGROUND AND PROCEDURAL INFORMATION:

The City of Sandy, Oregon, requested a Type C Annexation of two, City owned, parcels totaling approximately 35.08 acres into the City of Sandy on February 21, 2018 (Case No 18-003 ANN hereby referred to as “proposed annexation”). The annexation process changed within the Sandy Development Code (SDC) in 1998 when the voters approved an amendment to the city charter establishing voter-approval annexation. The proposed annexation was processed in accordance with the updated Chapter 17.78 (Ord. 2017-05), as modified by the voter-annexation City Charter amendment.

The proposed annexation was presented to the City of Sandy’s Planning Commission on Monday April 23, 2018. At this meeting Planning Commission voted to forward the proposed annexation to City Council with a recommendation for approval.

On May 21, 2018, City Council approved Resolution 2018-08 (Exhibit A) affirming their decision and directed staff to submit a ballot title to voters to approve or reject the annexation of land outside of Sandy’s urban growth boundary.

All ballot titles must comply with the requirements of Oregon Revised Statutes (ORS) 250.035, 250.275, 250.285 and 250.296. A ballot title was filed with the City Elections Officer on August 6, 2018.

The City Elections Officer then completed a Notice of Receipt of Ballot Title (Exhibit B) which included: a statement that a ballot title has been received and that any voter may file a petition for review of the ballot title, the deadline for filing a petition for review of the ballot title with the Clackamas County Circuit Court (7 business days from City), and the ballot title information along with information on how to obtain a copy.

The ballot notice was posted on the City's webpage and published in the Wednesday August 8, 2018 newspaper. Additionally, the submitted ballot title was made available to the public on the City of Sandy webpage. No challenges were filed with the circuit court and the next step is for the City Council to certify that the challenge process is complete. After certification the measure can be filed with the County elections officials along with an explanatory statement describing the measure.

Recommendation:

It is hereby recommended that City Council certify that the challenge process for the attached ballot title is complete. Upon certification the City Elections Official will submit the SEL 802 Notice of Measure Election – City form to the County Elections Official no later than September 6, 2018 along with an explanatory statement. At that time the county elections official will assign a measure number to the ballot title, so voters can approve or reject Resolution 2018-08 in the November 6, 2018 local elections.

"I make a motion to approve and certify the challenge process for the attached ballot title as complete."

Financial Impact:

None

Notice of Receipt of Ballot Title for the November 6, 2018 Election

Notice is hereby given that a ballot title for a measure referred by the Sandy City Council to voters at the November 6, 2018 Election has been filed with the City Elections Officer August 6, 2018. A complete copy of the ballot title which includes caption, question and summary as well as the text of the measure is available from the City Elections Officer.


Any voter may file a petition for review of the ballot title with the Clackamas County Circuit Court no later than 5:00 p.m. August 14, 2018 (the 7th business day after the ballot title was filed with the City Elections Officer) under ORS 250.296. The voter must notify the City Elections Officer (City Recorder) in writing that the petition has been filed. That notice must be given by no later than 5:00 p.m. on the next business day following the day the petition is filed.

Caption: Annexation of land outside of Sandy's urban growth boundary

Ballot Question: Should Sandy annex City-owned land located outside the City's urban growth boundary for park and open space purposes?

Summary: This measure asks voters to approve or reject Resolution 2018-08 which the City Council enacted on May 21, 2018. The resolution requires submission of the annexation request to voters before implementation. If passed, the City's boundary would be extended to annex a City-owned 38.05 acre area (Annexation Area) that is currently outside the urban growth boundary (UGB) and which is contiguous to property inside the City limits that is also City-owned. The City intends to use the Annexation Area, which is located along the Sandy River for park and open space purposes as it will become part of the Sandy River Park. Since the Annexation Area is currently outside the UGB, it may not be used for "urban" purposes. If approved by voters, the City will amend the City's Comprehensive Plan and Zoning Map to reflect park and open space uses for the Annexation Area. The Sandy River Master Plan will also be revised to add the Annexation Area and to ensure adequate planning and law enforcement activity for the Sandy River Park.

This legal notice is to be published by the City Elections Officer in the City of Sandy Post, Sandy, OR or in another newspaper of general distribution within the City.



Signature of City Elections Officer

KAREY MILNE
Printed name of City Elections Officer

8/6/2018
Date Signed

City Recorder
Title

Resolution No. 2018-08

A RESOLUTION APPROVING ANNEXATION OF TWO PARCELS TOTALING 38.05 ACRES LOCATED OUTSIDE OF THE CITY OF SANDY URBAN GROWTH BOUNDARY AND SUBMISSION OF THE ANNEXATION REQUEST TO THE VOTERS OF THE CITY OF SANDY.

THE CITY OF SANDY, CLACKAMAS COUNTY, OREGON (THE CITY) FINDS AS FOLLOWS:

WHEREAS, the City of Sandy as applicants and property owners submitted an application (File No. 18-003 ANN) to annex two parcels totaling approximately 38.05 acres to be included into the Sandy River Park; and,

WHEREAS, the City of Sandy desires to annex these parcels into the city limits subject them to the applicability of the Sandy River Master Plan to ensure consistent and effective planning and law enforcement activities for the Sandy River Park; and,

WHEREAS, the annexation proposal was noticed in accordance with state and local law and was approved in concept by the Department of Land Conservation and Development; and

WHEREAS, the aforesaid application was reviewed at a public hearing on May 21, 2018 by the Sandy City Council as required by the Sandy Municipal Code (SMC) Chapter 17.78.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANDY RESOLVES THAT:

Section 1. The broad purpose of the City is to provide for the health, safety, and welfare of Sandy's residents. As a means of working to accomplish this purpose, the City regulates development through the comprehensive plan, the zoning map and the provisions of SMC Title 17 to ensure development occurs in appropriate locations with access to services and is consistent with the values of the community.


Section 2. The parcels proposed to be annexed, as described above and as mapped in Exhibit A, attached hereto and incorporated by reference, are currently located outside the Sandy city limits and urban growth boundary.

Section 3. The annexation application satisfies the annexation criteria outlined in SMC 17.78, as demonstrated in Exhibit B, attached hereto and incorporated by reference.

Section 4. Staff is hereby directed to file the annexation request for consideration by the voters of the City of Sandy at the next regularly scheduled primary or general election.

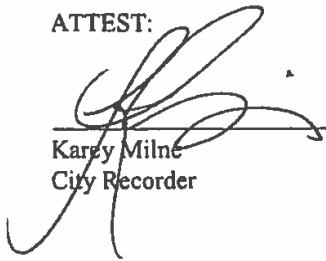
Section 5. If approved by the voters, the City Council will affirm the annexation, directing staff to amend the city limits boundary, and in accordance with the City's development code amend the Comprehensive Plan and Zoning Map designations for the property to Parks and Open Space. The properties subject to the annexation will not be used for urban purposes. The City will then file the necessary annexation reports with State and County agencies, and send notice to the purveyors of local franchise utilities.

This resolution adopted by the Common Council of the City of Sandy and approved by the Mayor this 21st day of May, 2018.



Bill King, Mayor

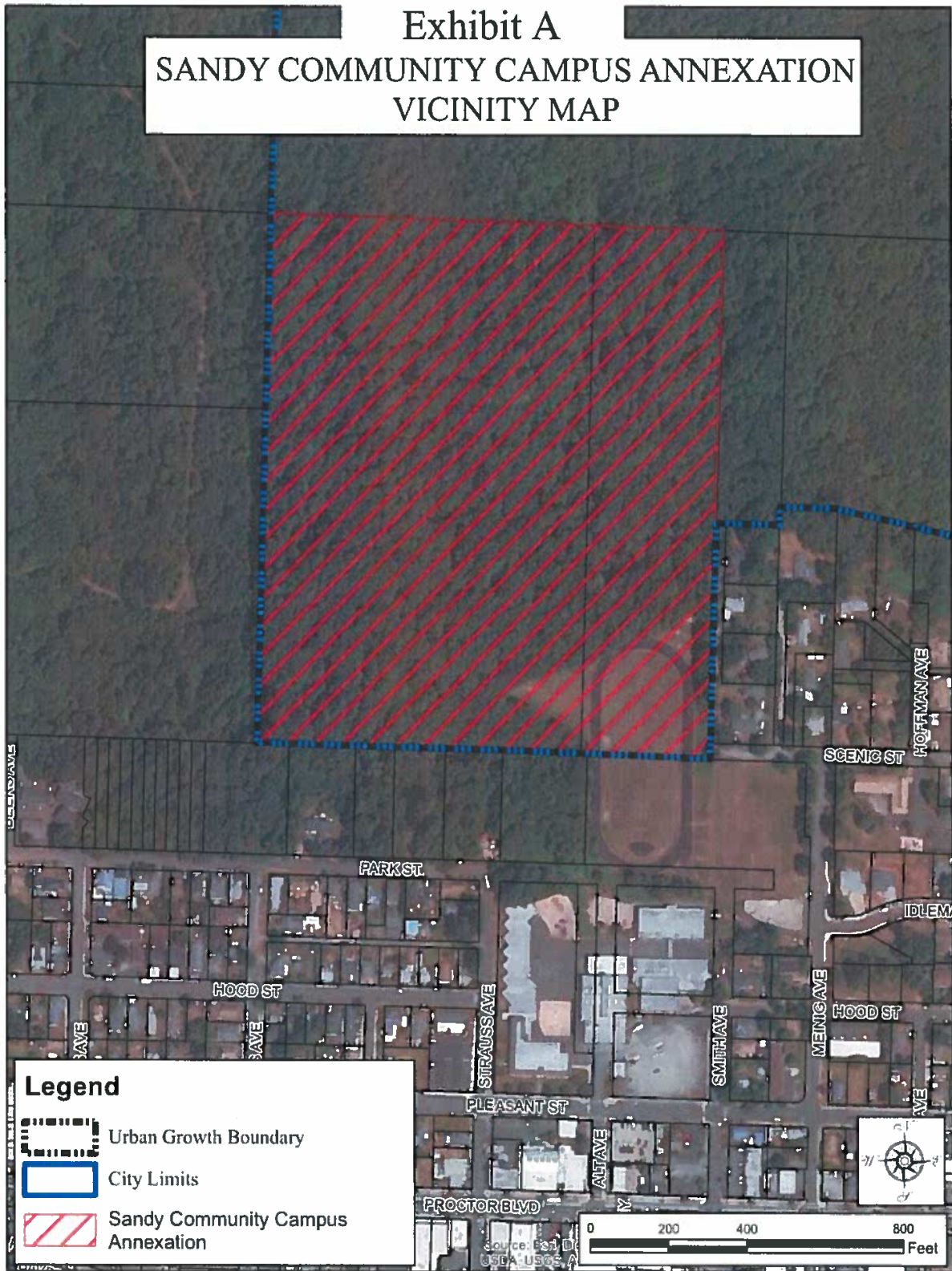
ATTEST:



Kary Milne
City Recorder

Exhibit A

SANDY COMMUNITY CAMPUS ANNEXATION VICINITY MAP



W:\City Hall\Administration\City Council\Resolutions\2018\Resolution 2018-08 Resolution 2018-08 Sandy Community Campus Parkland ANN.docx

EXHIBIT B

FINDINGS OF FACT

1. These findings supplement and are in addition to the staff report. The Council herein incorporates by reference the staff report. Where there is a conflict between these findings and the staff report, these findings shall control.
2. The City Council held a public hearing on May 21, 2018 and reviewed the request for approval to forward the proposed voters to the City of Sandy for two parcels totaling approximately 38.05 acres to be incorporated into the Sandy River Park. The parcels are legally described as T2S R4E Section 13 BA, Tax Lot 200 and T2S R4E Section 13 BA, Tax Lot 300.
3. The goals and policies of the Sandy Comprehensive Plan are not directly applicable to this application, because relevant code sections do not cite specific policies as criteria.
4. The tax lots are currently located outside the Sandy city limits and urban growth boundary and carry a Clackamas County Comprehensive Plan Designation of Forest (F) and a Zoning Designation of Timber (TBR).
5. If voters of the City of Sandy approve annexation of these properties, a separate application process will occur to change the plan designation and zoning map designation to Parks and Open Space (POS).
6. If voters of the City of Sandy approve annexation of these properties, a separate application process will occur to incorporate the properties into the Sandy River Park Master Plan.
7. Section 17.78.20 contains four conditions which must be met prior to beginning an annexation request, unless the Council exercises its discretion to grant an exception in accordance with 17.78.80. The City Council finds that subsections (A) and (C) of 17.78.20 are met. The property is contiguous to the existing City limits and the City Council initiated the annexation on its own motion. Furthermore, the annexation will be submitted to the voters of the City and to any electors residing within the property for their approval at a future election. Section 17.78.20(B) specifies, "the site must be within the City of Sandy Urban Growth Boundary." As noted above the subject properties are located outside the existing Urban Growth Boundary. The City Council finds that an exception to this condition is warranted. The City's intent for the Sandy River Park property is to maintain it in a natural state in accordance with the passive recreational activities that have historically occurred at the site. This intent is reflected in the Sandy River Park Master Plan, dated June 3, 2010. Sandy River Park will not be a park providing "urban" level park services (e.g. ball fields, water features such as pools, splash pads, etc.). Therefore, it is not necessary that the property is located within the City's UGB. The City has shared the proposal to both Clackamas County and DLCD representatives and received no objections to the annexation. If the City in the future desired to provide urban level park services on the property, a UGB amendment would be required. Section 17.78.20(D) states, "The site has not violated Section 17.78.25." Approximately 2.4 acres of the southeast portion of the 38.05 acres of the property was previously cleared to accommodate the existing football field prior to the City purchasing the property. The remainder of the subject property has retained a thick

forest that supports the existing county Timber (TBR) zoning designation. It does not appear that any trees have been removed from the subject properties within the past five years. It is the intention of the City to preserve the existing tree canopy and under no circumstance violate Sections 17.78.25 or 17.102 of the SMC. The City Council notes that having the Sandy River Park property within the City limits will greatly reduce regulatory burdens and their associated costs with respect to the limited number of improvements that the City plans for the property as outlined in the Sandy River Park Master Plan. This benefit and the reasonable desire of the Council to have property the City owns located within Sandy's limits outweigh any arguable burden or negative consequence of creating islands.

8. Police and Fire. Police and fire protection are available to serve the parcels. The Police Department currently provides service to areas directly adjacent to the subject property as does the fire department.
9. The subject property contains greater than one acre so compliance with Chapter 17.102, Urban Forestry, is required.
10. Criterion A. Section 17.78.60 states that an annexation request should satisfy one or more of the four criteria listed in that section. The Council finds that annexing the property meets subsection (A). As discussed above, having the property within the City will permit the implementation of the master plan under the City's substantive and procedural criteria. This will save the City time and money relative to developing the property under the County's standards, modest as that development will be. It will also ensure that any improvements subject to the City's Sandy Style design criteria are built in accordance with those criteria. Therefore, annexing the property establishes a necessary control for development form and standards of an area adjacent to the City with significant cultural and recreational value to the City.



MINUTES
City Council Meeting
Monday, August 6, 2018 City Hall- Council Chambers,
39250 Pioneer Blvd., Sandy, Oregon 97055 7:00 PM

COUNCIL PRESENT: Scott Horsfall, Councilor, John Hamblin, Councilor, Jan Lee, Councilor, Carl Exner, Councilor, Jean Cubic, Councilor, and Jeremy Pietzold, Council President

COUNCIL EXCUSED: Bill King, Mayor

STAFF PRESENT: Karey Milne, Recorder Clerk, Kim Yamashita, City Manager, Thomas Fisher, Engineering Technician, Sarah McInyre, Library Director, Andi Howell, Transit Director, Joe Knapp, IT Director, Ernie Roberts, Police Chief, Kelly O'Neill, Planning Director, and Greg Brewster, Systems Administrator

MEDIA PRESENT:

1. **Pledge of Allegiance**

2. **Roll Call**

3. **Public Comment**
None

4. **Changes to the Agenda**
None

5. **Presentations**

5.1. Presentation - Clackamas River Watershed

Staff Report - 0015

Clackamas County Watershed gave their presentation, they shared what it is they do, what programs they have in place and the issues they are faced with.

Councilor Exner, he and Public Works Director, Mike Walker met and spoke with the watershed council about the city's wastewater treatment plant and watershed issues in and around Sandy. They had a very good conversation, each learning about both sides of the issues each of them face and how to help each other.

6. Ordinances

6.1. Ordinance Amending Chapter 18.02 of the Sandy Municipal Code

Staff Report - 0018

City Manager, Yamashita, Chapter 18 of the Sandy Municipal Code was adopted by council in 2017. Since that time staff has been working on establishing the program and recruitment for commission members. On April 10th, of 2017 we extended the area from which to pull candidates for other advisory groups, but did not include the Arts Commission in that change. The way Chapter 18.02 is written, includes City of Sandy residents only. As we know there is a large contingent of artisans of all types located in the surrounding areas outside of the City Limits. These artisans are showing interest and would be invaluable in helping make our program successful. Recommendation: Staff recommends: Amending Chapter 18.02 (B) to allow citizens living within the City of Sandy, Oregon Trail School District and Library District to participate as members of the Sandy Arts Commission.

Ordinance 2018-23 First Reading

Moved by Scott Horsfall, seconded by Carl Exner

Motion to Approve First Reading of Ordinance 2018-23 Amending Chapter 18.02 (b) of the Sandy Municipal Code.

CARRIED.

Ordinance 2018-23 Second Reading

Moved by Scott Horsfall, seconded by Carl Exner

Motion to Approve Second Reading of Ordinance 2018-23 Amending Chapter 18.02(b) of the Sandy Municipal Code.

CARRIED.

6.2. An ordinance amending Chapter 1.24 of the Sandy Municipal Code

Staff Report - 0026

City Manager, Yamashita, In 2011, the City of Sandy celebrated a centennial anniversary based on the date of 1911, the establishment of the City of Sandy. Originally the seal, as described in 1.24.010 describes the seal as bearing the date of 1913 the date the city was incorporated. Since that celebration all documents have been changed

to reflect the date of 1911 but the ordinance written in 1974 was never updated. In 2018, the City of Sandy approved and adopted a new brand, tag-line and branding strategy for use on documents, vehicles and other marketing items. These changes are housekeeping in nature intended to update SMC 1.24.

Recommendation: Approve ordinance 2018-024 -An Ordinance amending Chapter 1.24 of the Sandy Municipal Code, That the City Recorder uses the seal for her use, and for more official use, not branding uses.

Councilor Hamblin, asked if we can double check with the State Archives that it was indeed changed or does state 1911 as the incorporated date. He did verify it is correct with the State Archives.

Ordinance 2018-24 First Reading

Moved by Carl Exner, seconded by Jan Lee

Motion for First Reading to Approve Ordinance 2018-24 Amending Chapter 1.24 of the Sandy Municipal Code

CARRIED.

Ordinance 2018-24 Second Reading

Moved by Carl Exner, seconded by Jan Lee

Motion for Second Reading to Approve Ordinance 2018-24 Amending Chapter 1.24 of the Sandy Municipal Code

CARRIED.

7. New Business

7.1. Library District Advisory Committee - Member Appointment

Staff Report - 0020

Library Director, Sarah McIntyre, George Hoyt has tendered his resignation after 10 years of being a Hoodland Library representative on the Library District Advisory Committee (LDAC). According to Measure 3-310 LDAC representatives should be drawn from the local library boards and the governing body of each Library City appoints said representative.

The Sandy/Hoodland Library Advisory Board has unanimously chosen Kathleen Drain to forward to City Council for the position of the LDAC member.

Recommendation: Staff asks that you Appoint Kathleen Drain to the Library District Advisory Committee to represent the Sandy and Hoodland Public Libraries.

Motion

Moved by John Hamblin, seconded by Scott Horsfall

Motion to appoint Kathleen Drain to the Library District Advisory Committee to represent the Sandy and Hoodland libraries.

CARRIED.

7.2. Bluff Road Sanitary Sewer LID Petition

Staff Report - 0025

Engineering Tech, Thomas Fisher, We received a petition submitted by the residents of Bluff Road and Jonsrud Lane to form a Local Improvement District (LID) for the extension of sanitary sewer service to serve their properties.

Under Section 12.04 of the Municipal Code an LID can be initiated by Council motion or a "petition of the owners of at least sixty percent of the property to benefit specifically from the improvement...". The proposed LID area totals 416,864 square feet and property owners owning 279,720 square feet (67%) have signed the attached petition form(s).

The proposed improvements include approximately 1,600 lineal feet of sewer and associated improvements (manholes, lateral lines) to serve the parcels. Upon receipt of a valid petition the Council shall by motion direct staff to prepare an Engineer's Report containing a description of the project, a preliminary estimate, a recommended method of assessment and proposed assessments for benefiting properties.

Recommendation: Move to direct staff to prepare an Engineer's Report conforming to the requirements of Section 12.04 of the Municipal Code.

Council had a few questions for staff regarding the petition.

Motion

Moved by Jan Lee, seconded by Scott Horsfall

Motion to approve the Petition submitted to form a Local Improvement District (LID) by residents of Bluff Road and Jonsrud Lane, not to exceed 5,000 in Engineering costs.

CARRIED.

7.3. City Manager Replacement/Process

Staff Report - 0019

City Manager, Yamashita, At the July 16, 2018, meeting she announced her intent to give notice at a future date of her retirement. This notification was done to allow the city as much time as possible to discuss, debate and decide how they would like to move forward. I have also discussed the matter with legal counsel, David Doughman and we have come up with the following recommendation for council. On Friday July 27, I met with the Department Heads during a retreat. We discussed the process and some great ideas came out of that meeting. Specifically we would like to create a full day of round robin interviews with various groups to weed the candidate pool down to the top 4 or 5 that would proceed to interviews with the council. The interview groups could include, Department Heads, Citizens that live, own a business or manage employees in the city limits, Professional Panel, a panel made up of members from all of the advisory boards and a business leader panel. Additionally, I would like to add staff to some of these panel's or have a panel of staff members. It was clear during my conversation with the Department Heads, and with staff, that they are concerned what the future holds. When asked for a list of things that they would like to see in a new City Manager that list included: 1. Someone invested in our community 2. Someone that could continue the great forward momentum we have going as a team 3. A person that is not going to use this as a stepping stone to a bigger agency 4. It was suggested that we NOT look for another "City Manager" but that we focus on a good leader and not look at the industry specific City Manager 5. Someone that supports staff and will be a good liaison between staff and council 6. A person that supports the department heads and allows them to run their own departments with as much autonomy as possible 7. A genuine person 8. Cities best interest at heart not their personal interest 9. Law Enforcement Friendly 10. Collaborative leadership style 11. Ask how things work and see the Department Heads as experts in their fields 12. Good Communicator 13. Open minded to our unique budget process and 2 year budget including carry over and the hope that council will hold the new City Manager to this budgeting process. Recommendation: We recommend that Council direct staff to write up and advertise the position in appropriate periodicals and with appropriate organizations such as ICMA (International City Managers Association), OCCMA

(Oregon County City Managers Association) as examples. Make every effort to manage the recruitment in house as outlined in the process listed above. If that strategy fails to net desired results we could attempt to use a head hunting service. This will give us the opportunity to save money, while still having a process if the council desires.

Council had some questions and concerns about the process listed. They would like to see a workshop to talk more about it and outline the process. They want to make sure they are more transparent with the process this time around versus how it has been done in the past.

8. Consent Agenda

8.1. Draft Meeting Minutes July 16, 2018

Motion to approve the consent agenda as written

9. Committee Reports

a)

Councilor Exner, attended the C4 meeting, they reviewed the status of cities and their residential growth and many other cities were growing at the same rate. It raised questions on how are we going to deal with the growth, congestion, how do we plan for smart growth and deal with our infrastructure. These are questions we should be thinking about. They did vote on C4 to write a recommendation that the state legislature pass house bill 26-199, Clackamas County would get 116 million dollars for housing funds for affordable housing and low income residents, that 116 million will be used in the metro areas of Clackamas County, He would like to get support to try to get the funding to rural communities such as ours. Also coming down the line Clackamas County Commissioners will be voting to raise vehicle registration fees for every vehicle 25-30 dollars per year, some of those funds will come back to our city going off population.

10. Report from the City Manager

None

11. Council Reports

Councilor Exner, Would like to check on the sign permit terms on the real estate sign. Director Kelly O'Neill Jr, it has a permit and it will expire in September and the sign will come down.

Councilor Lee, She is on the board of Clackamas Conservation District, they work with all 10 of watershed councils and she appreciates having the Clackamas River Basin Council speak to us this evening.

Councilor Horsfall, asked about property sale, if there was any interest.

City Manager, Yamashita is has gone back out for invitations to bid, due the 27th of August. A letter was sent out with flyer to all realtors in the area, Gresham, Sandy area etc.

12. Adjourn

City Recorder

Mayor