

Request for Qualifications
Sandy, Oregon Comprehensive Plan



Closing date and time: August 6, 2021 5:00 PM PST

Schedule:

RFQ Posted	June 30, 2021
Clarification Inquires	July 14, 2021
Proposals due	August 6, 2021
Interviews	August 9-20, 2021
Council Award	August 25, 2021

City of Sandy
39250 Pioneer Blvd
Sandy, OR 97055

CITY OF SANDY, OREGON
NOTICE AND REQUEST FOR QUALIFICATIONS FOR:
COMPREHENSIVE PLAN

Proposals due at 5:00 PM PST on August 6, 2021

The City of Sandy is soliciting proposals from qualified consulting firms to assist on the City of Sandy Comprehensive Plan as detailed in the City's Request for Qualifications (RFQ).

Sealed RFQ submissions must be received by Jeff Aprati, City Recorder, at 39250 Pioneer Blvd., Sandy, OR 97055, on or before 5:00 PM PST on August 6, 2021. Envelopes should be clearly marked "Comprehensive Plan Update RFQ." Please provide one (1) digital copy (no email submittals) and five (5) hard copies of the proposal.

Late submissions will not be accepted.

The City of Sandy reserves the right to reject proposals not in compliance with the prescribed procedures and requirements set forth in the RFQ and may reject for good cause any or all responses upon a finding of the City that it is in the public interest to do so.

All requests for clarification must be submitted in writing no later than July 14, 2021 to Shelley Denison, Associate Planner, at:

sdenison@ci.sandy.or.us

or

Shelley Denison
39250 Pioneer Blvd
Sandy, OR 97055

Section I:	City Information
Section II:	Project Description, Timeline, and Scope of Work
Section III:	Evaluation Criteria and Instructions
Appendix A:	Preliminary Work Breakdown Structure
Appendix B:	Public Engagement Strategy
Appendix C:	Terms and Conditions

I. City Information

The city of Sandy, Oregon is home to approximately 11,650 residents. It has experienced significant growth since the last Comprehensive Plan written in 1997, and it is anticipated to continue to grow through the coming decades. In fact, as of 2018, Sandy was the 2nd fastest growing city in Oregon. Sandy is recognized as the entrance to the Mount Hood corridor and its businesses serve residents and tourists alike.

Sandy has a mayor/Council style of government and is supported by an engaged and innovative city staff. Sandy has an annual general fund of about \$18.2 million. There are a few unique challenges facing the city, including the following:

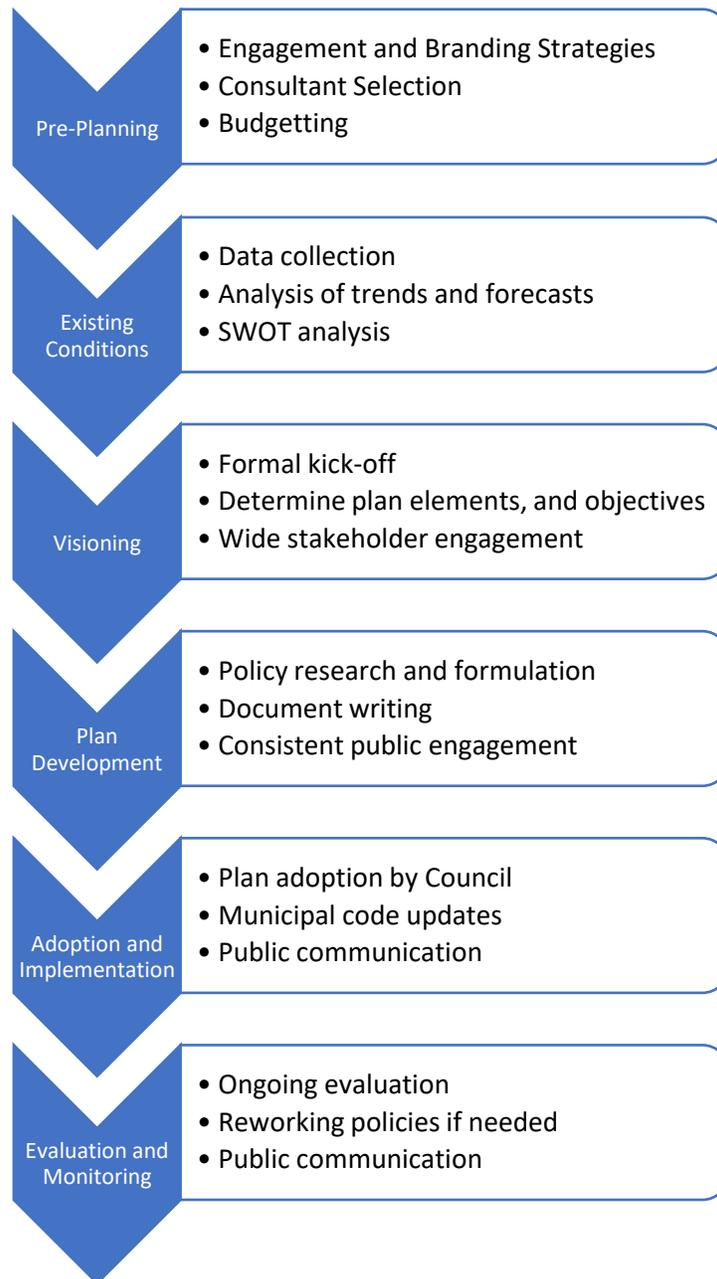
- A major arterial road, Highway 26, runs through Sandy's downtown. As of the last TSP update, this road has an average daily trip count of over 37,000 and it is forecasted to have over 50,000 daily trips by 2029.
- Sandy's population is growing significantly. In 2019 the population was 11,070, and population forecasts show this population over 17,000 by 2040.
- Sandy has had a few controversial residential development applications over the last two years. This has created frustrations among the public, City staff, and elected/appointed City officials.
- Sandy has a high wildfire risk due to its geographic location, forested landscape, and climate change. During the Summer 2020 wildfires, Sandy was spared from damage, but not without heightened anxiety from residents and City officials.

II. Project Description, Timeline, and Scope of Work

The City of Sandy is soliciting proposals from qualified consulting firms to assist on Sandy's Comprehensive Plan. The current plan was written in 1997. The updated Plan will have a 20-year planning horizon and will reflect the interests, goals, and priorities of Sandy leaders and community members. The Plan will include goals and policies related to land use, environmental sustainability and climate resilience, economic development, hazard mitigation,

and other elements to be determined. The Comprehensive Plan update will be a joint venture between City staff and the Consultant with the City’s Associate Planner acting as project lead.

The entire Comprehensive Planning process is anticipated to take about two years, with a goal for adoption by Council in Summer 2023. The general timeline is as follows:



The Consultant will work with a number of individuals and teams as part of the planning process. On the City side, this includes City staff, Planning Commission, and City Council. On the public side, this may include a Business Advisory Committee, a Resident Advisory Committee, a Climate and Environmental Advisory Committee, and a Youth Advisory Committee. Including

the participation of other agencies, such as ODOT, DLCD, DEQ, and Clackamas County will be expected as well.

Consultant participation in all stages of the planning process is crucial for project success. To date, the project scope and work breakdown structure (Appendix A) are only preliminary. While the finalized and detailed work scope will be determined after the consultant is hired, the following is a general outline of expected deliverables:

1. Project Scoping: The consultant will assist in finalizing the project scope and work breakdown structure. Consultant deliverables will be the following:
 - a. Final scope of work.
 - b. Final work breakdown structure.

2. Existing Conditions Assessment: The consultant will assist with analyzing historical trends and future forecasts, including climate change trends and forecasts, using multiple data sources. Consultant deliverables will be the following:
 - a. Report detailing data sources and analysis for inclusion in the Existing Conditions Assessment chapter.
 - b. Well-designed data visualization images such as charts and graphs.
 - c. SWOT Analysis.

3. Public Engagement: While the City is taking the lead on public engagement efforts, the Consultant will be expected to provide expert guidance. Public engagement will take place both online and in person (pending COVID-19 safety protocols). The City has contracted with EngagementHQ for all online public engagement efforts. Consultant deliverables will be the following:
 - a. Formal feedback on public engagement strategy (see Appendix B).
 - b. Regular reporting on public engagement efforts.

4. Visioning and Goal Setting: The Consultant will assist with convening appropriate stakeholders to determine a vision and goals for the Plan. Consultant deliverables will be the following:
 - a. Report summarizing the major themes/categories of ideas identified during the public outreach process, and how these will be presented in the vision statement.
 - b. Vision document, which will include vision statement, goals, and priorities.

5. Policy Formulation and Implementation: The Consultant will assist with developing policies and implementation strategies. Consultant deliverables will be the following:
 - a. Regular reports on policies relevant to goals and objectives
 - b. Regular reports on policy implementation strategies

The consultant will also be expected to attend an initial project kick-off meeting, monthly update meetings with City staff, and all public engagement events.

III. Evaluation Criteria and Instructions

Proposals from applicants should include the following information. The City is open to additional project components and methodologies that have proven successful in other Comprehensive Planning projects.

1. Project Approach: Explain how you will approach this project and how you plan on working with City staff and public officials. Emphasize your approach to public engagement, policy formulation, and climate resiliency (including mitigation and adaptation).
2. Statement of Work and Products to be Delivered: This should be a clear statement of the services to be performed, the form they will take and what the final product or result will be.
3. Qualifications and Experience: You should include the number of organizations you have worked with in performing the type of services covered by this RFP, the sizes of those organizations, and a brief description of the services provided. You should also include a description of your organizational framework, special resources, and any other information to demonstrate that you can effectively and efficiently provide the requested product.
4. Experience with EngagementHQ: The City has contracted with EngagementHQ for all online public engagement efforts, and experience with this platform is desired.
5. Experience with Adobe Creative Suite: The final document will be created using Adobe InDesign, and familiarity with this program is desired.

Applications will be judged on a pre-determined set of criteria according to a points system. Once all applications have been scored, they will be ranked. Up to three applicants may be contacted for interviews. The evaluation criteria are as follows:

Criteria:	Points:
Thoroughness, quality, and conciseness of submittal.	20 pts.
Project understanding and approach for accomplishing the City’s objectives.	20 pts.
Qualifications of the project manager and project team, and proven ability to successfully complete projects of similar scope.	15 pts.
References from past and present clients with projects of similar scope.	15 pts.
Experience with climate resiliency work	10 pts.
Experience with EngagementHQ	5 pts.
Experience with Adobe Creative Suite	5 pts.

Appendix B: Public Engagement Strategy

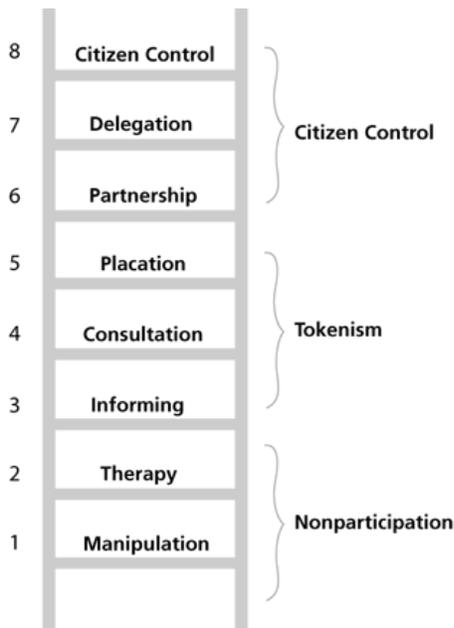
Introduction

Goal one of Oregon’s Statewide Land Use Planning Goals relates to citizen involvement and outlines a municipality’s responsibility for engaging its residents in the planning process. More specifically, it obligates that “the governing body charged with preparing and adopting a comprehensive plan shall adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land-use planning process.”¹

This document outlines a plan to achieve this goal in order to more effectively involve Sandy residents in long-range planning processes through a public engagement plan. There are two key reasons for the creation of this plan: First, tension between Sandy residents and the City is particularly high surrounding development and planning projects. Second, City planning staff is undertaking an update of the City’s Comprehensive Plan. For these reasons, the City should prioritize community stakeholder engagement in the Comprehensive Plan update process.

Background

Currently, Sandy meets the minimum statutory requirements for community stakeholder involvement: mailed notices (in English only) to solicit comments from property owners within a



Arnstein's Ladder (1969)
Degrees of Citizen Participation

specified radius around a proposed development site as well as public hearings for formal comments. The pioneering academic work in planning literature related to public engagement is Sherry Arnstein’s Ladder of Citizen Participation.² Arnstein’s ladder model shows different levels of public participation. At the bottom of the ladder is “nonparticipation,” which describes situations in which residents are not engaged at all beyond being the subjects of public relation actions. In the middle of the ladder is “tokenism” which includes informing, consulting, and placating residents. The top part of the ladder is “citizen control” which is characterized by active resident involvement, and potentially even complete resident control over planning and development processes. It’s important to note that this type of “citizen control” participation is not pragmatic or even

necessarily desirable. Rather, this model simply describes each possible scenario of public participation. Arguably, Sandy's current use of participation techniques falls under the "tokenism" section because we meet minimum state statutory requirements. This means that there is an opportunity for improvement to develop a more robust partnership-style model of public participation.

Contemporary planning theory prizes an approach called communicative planning. Communicative planning refers to the belief that, fundamentally, planning is an act of communication. It is important to emphasize that "planning communications are not just exchanges of words but reflect a variety of institutional, political, and power relationships³." Additionally, communicative theorists believe that the communicative planner should be "an active and intentional participant in a process of public discourse and social change⁴." John Forester, a prominent communicative planner and researcher, explains four characteristics of good communication in planning: it should be comprehensible, sincere, legitimate, and true.⁵

As the City of Sandy prepares a public engagement plan, we are operating on the assumption that both City staff and community stakeholders possess different kinds of knowledge and experiences which are relevant to and necessary for undertaking planning processes. We must then ask if these knowledges are worth the time, energy, and resources to capture. There are a number of reasons why doing this would be worthwhile. According to the Institute for Local Government⁶, these reasons include better identification of the public's values, more informed residents, more community buy-in and support with less contentiousness, opportunities for leadership development, more trust in each other and in local government, and improved decision-making with better outcomes. The remainder of this document lays the framework for public participation by stating the desired goals, values, and tools for public engagement.

Goals

While goals for each engagement tool will differ based on the scope, size, purpose, and type of tool, we can still approach all public engagement efforts with a set of overarching goals in mind. These goals represent the desired outcome of all public engagement processes:

1. Increased capacity and opportunities for discussion, knowledge sharing, and problem solving between community stakeholders, City staff, and officials;
2. Greater trust in local government by community stakeholders;
3. More informed and educated community stakeholders; and,

4. Intentional and meaningful use of citizen feedback in the Comprehensive Plan update.

Values

In addition to overarching goals, it is important to state the foundational values which will guide public engagement efforts. Additionally, while the goals represent desired outcomes, these values represent what will guide the processes in order to achieve the anticipated goals. These two pieces – the process and the outcomes—are both fundamentally integral to planning, and appropriate emphasis must be placed on both.

These values are based on three sources: The Institute for Local Government⁷, The National Coalition for Dialogue and Deliberation⁸, and The International Association for Public Participation⁹. These sources provide the framework for the values which can guide Sandy’s planning and development public engagement work. The following five values can help guide the public engagement process:

1. *Inclusivity*: Municipal planning often runs up against the “STP” problem, or the “Same Ten People” problem. This means that, typically, planners and land use public hearing officers hear from the same group of people. These people tend to be English-speaking, White, affluent homeowners who feel comfortable speaking in public and are usually antagonistic toward planning and development efforts.¹⁰ In addition to the feedback from these individuals, we should strive to capture the feedback of other demographics, especially demographics that historically have not been well-served by planning and development efforts. Additionally, we should seek a larger range of geographic representation. This requires deliberate attempts to enhance the accessibility of public engagement opportunities.
2. *Public Empowerment*: The primary method by which the public can feel empowered to participate in the planning process is through education. It is important that all public engagement efforts include an education piece to reflect this value.
3. *Authentic Intent*: City staff and officials should lead public engagement efforts with the intent to capture and implement the knowledge and experiences of all community stakeholders.
4. *Meaningful Impact*: Citizens should be able to trust that their efforts will be considered and implemented in appropriate and meaningful ways in the Comprehensive Plan update. This trust is maintained through relationship building and responsiveness.
5. *Low-Friction*: Participating in the planning process should be easy and attractive for community stakeholders, and there should be a minimal learning curve for participation.

Tools for Public Engagement

There are multiple tools we should consider for effective community engagement in the Comprehensive Plan update process. This section of this document will explain a set of tools that could be chosen for this process and how they could be implemented.

Citizen Advisory Committee (CAC). We will disseminate applications for a 12-person Citizen Advisory Committee. Applications will be reviewed by City staff and the Public Engagement Committee according to pre-determined criteria. Special attention will be paid to geographic diversity, socioeconomic diversity, and diversity of time living in Sandy. Once the CAC is selected, they will be notified by their preferred method (phone or email). The CAC members' responsibilities will include the following:

- Attend Citizen Advisory Committee meetings;
- Assist in planning and executing public engagement events;
- Act as liaisons between neighborhoods and the City; and,
- Provide feedback and guidance on the Comprehensive Plan update.

Regular evaluation of these responsibilities and how they reflect the goals and values of public engagement will be undertaken.

Youth Advisory Committee (YAC). There is an increasing amount of research showing that involving children and teenagers in planning processes yields positive outcomes.^{11,12} We are interested in organizing a Youth Advisory Committee to capture their unique perspective and vision for the future of Sandy. Additionally, participation on a YAC builds leadership and civic efficacy skills. The responsibilities of the YAC will require less time and commitment than those of the Citizen Advisory Committee, and greater guidance on how to complete responsibilities will be provided. We will work with the Oregon Trail School District to find appropriate methods for YAC recruitment. Responsibilities for the YAC include the following:

- Attend Youth Advisory Committee meetings;
- Assist in involving school participation; and,
- Provide youth-specific feedback and guidance on the Comprehensive Plan update.

Surveys. Surveys will be used to gather the general interests and positions of the public throughout the Comprehensive Planning process. Digital surveys will be conducted online and paper

surveys will be distributed to strategic locations around the city, such as the library, Ant Farm, senior center, and similar “third place” locations. The data from these surveys will be aggregated and used to inform various elements in the Comprehensive Plan.

Open Houses. Once Covid-19-related restrictions are lifted and it is safe to gather indoors, we will hold multiple open houses for the public to gather and share their priorities and preferences for various elements of the Comprehensive Plan. These open houses will be inclusive, accessible, and interactive. Multiple “stations” will be displayed to both educate participants as well as encourage active participation, such as voting or soliciting comments. Additionally, staff and officials will be available to answer questions and discuss ideas with participants. In order to encourage participation, we will offer snacks/beverages as well as activities for children.

Online Engagement. In addition to formal engagement efforts such as committees, surveys, and open houses, ongoing education and engagement solicitation will be offered through online platforms. This includes the City’s social media channels as well as through a contracted third party platform such as EngagementHQ. These engagement opportunities will be advertised in Sandy community Facebook groups, City communication channels, and in-person in aforementioned “third places.”

¹ Oregon Admin. Rule 660-015-0000(1).

² Arnstein, S. (1969). A Ladder of Citizen Participation, *Journal of the American Planning Association*, 35:4, 216-224.

³ Brooks, M. (2002). *Planning Theory for Practitioners*. Chicago: American Planning Association. p. 121.

⁴ Ozawa, C. and Seltzer, E. (1999). Taking Our Bearings: Mapping a Relationship among Planning Practice, Theory, and Education, *Journal of Planning Education and Research*, 18:3, 259.

⁵ Forester, J. (1994). *Critical Theory and Planning Practice: Toward a Critical Pragmatism*. Albany: State University of New York Press.

⁶ Institute for Local Government. (2016). What is Public Engagement and Why Should I Do It? <https://www.ca-ilg.org/sites/main/files/file-attachments/ilg_what_is_public_engagement_and_why_should_i_do_it_8.31.16.pdf>.

⁷ Institute for Local Government. (2015). Principles of Local Government Public Engagement. <<https://www.ca-ilg.org/PublicEngagementPrinciples>>.

⁸ National Coalition for Dialogue and Deliberation. (2009). Core Principles for Public Engagement. <<https://ncdd.org/rc/item/3643/>>.

⁹ International Association for Public Participation. (2017). Core Values. <<https://www.iap2.org/page/corevalues>>.

¹⁰ Einstein, K., Glick, D., & Palmer, M. (2019). *Neighborhood Defenders: Participatory Politics and America's Housing Crisis*. Cambridge: Cambridge University Press.

¹¹ American Planning Association. (1999). Youth Participation in Community Planning. <<https://planning-org-uploaded-media.s3.amazonaws.com/publication/online/PAS-Report-486.pdf>>.

¹² Institute for Local Government. (n.d.). Youth Engagement and Local Planning. <https://www.ca-ilg.org/sites/main/files/file-attachments/ilg_briefing_paper_3_proof7.pdf>.

**CITY OF SANDY
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into as of the date first indicated on the signature page, by and between the City of Sandy, Oregon (hereinafter referred to as the "City"), and _____ (hereinafter referred to as "Consultant") for the project commonly known as the Comprehensive Plan Project ("Project").

WHEREAS, City requires services which Consultant is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Consultant represents that it is qualified on the basis of specialized experience and technical competence and prepared to provide such services as City does hereinafter require;

NOW, THEREFORE, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agreed as follows:

A. Term

The term of this Agreement shall be from the date of execution by both parties until tasks required hereunder are complete and accepted, unless earlier terminated in accordance herewith.

B. Consultant's Services

B.1 The scope of Consultant's services and time of performance under this Agreement are set forth in Exhibit A. All provisions and covenants contained in Exhibit A are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

B.2 All written documents, drawings, and plans submitted by Consultant and intended to be relied on for the project shall bear the signature, stamp or initials of Consultant or Consultant's authorized Project Manager. Any documents submitted by Consultant which do not bear Consultant's signature, stamp or initials or those of the Consultant's authorized Project Manager shall not be relied upon by City, and shall be returned to Consultant to affix such signature, stamp or initials, as appropriate. Interpretation of plans and answers to questions covering Plans given by Consultant or Consultant's Project Manager need not be put in writing unless requested by the City and may be relied upon by City.

B.3 All agreements on the Consultant's part are contingent upon, and the Consultant shall not be responsible for damages or be in default or be deemed to be in default by reason of delays in performance due to third party: strikes, lockouts, accidents; acts of God; other delays unavoidable or beyond the Consultant's reasonable control, or due to shortages or unavailability of labor at established area wage rates or delays caused by failure of the City or City's agents to furnish information or to approve or disapprove the Consultant's work promptly, or due to late or slow, or faulty performance by the City, other contractors, other consultants not under Consultant's control or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of the Consultant's work. In the case of the happening of any such cause of delay, the time of completion shall be extended accordingly.

- B.4 The existence of this Agreement between City and Consultant shall not be construed as City's promise or assurance that Consultant will be retained for future services unrelated to the services as contemplated by this Agreement.
- B.5 Consultant shall maintain confidentiality of any private confidential information and any public information which is exempt from disclosure under state or federal law to which the Consultant may have access by reason of this Agreement. Consultant warrants that its employees assigned to work on services provided in this Agreement shall maintain confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.
- B.6 Consultant agrees to complete in satisfactory, proper and timely manner the services described in attached Exhibit A.

C. Compensation

- C.1 City agrees to pay Consultant not more than _____ (\$_____.00) for performance of those services provided hereunder. However, compensation may be less than such maximum amount and shall be actually determined on an hourly basis as provided in Exhibit A. Compensation shall be only for actual hours worked on this project and related direct expenses. Consultant shall furnish with each bill for services an itemized statement showing the number of hours devoted to the project by Consultant as well as any agents or employees of Consultant and any direct expenses.
- C.2 During the course of Consultant's performance, if City or its Project Manager specifically requests Consultant to provide additional services which are beyond the scope of the services described on Exhibit A, Consultant shall provide such additional services and bill the City at the hourly rates outlined on the attached Fee Schedule, provided the parties comply with the requirements of Section Q. No compensation for additional services shall be paid or owing without the prior written consent of both parties to such additional compensation and services.
- C.3 Unless expressly set forth on Exhibit A as a reimbursable expense item, Consultant shall only be entitled to the compensation amount specified in subsections C.1 and C.2. Only those reimbursable expenses which are set forth in Exhibit A and itemized on Consultant's bills for services shall be the basis for which payment of those expenses by City shall be owing.

- C.4 Except for amounts withheld by City pursuant to this Agreement, Consultant will be paid for services for which an itemized bill is received by City within 30 days.
- C.5 City shall be responsible for payment of required fees, payable to governmental agencies (including, but not limited to fees related to plan checking, land use, zoning, building permits, and all other similar fees resulting from this project) and not specifically covered by Exhibit A.
- C.6 Consultant's compensation rate includes but is not limited to salaries or wages plus fringe benefits and contributions including payroll taxes, workers' compensation insurance, liability insurance, pension benefits and similar contributions and benefits.
- C.7 In the event Consultant's responsibilities as described in Exhibit A have been separated into two or more phases, then Consultant shall not be entitled to any compensation for work performed directly on a later category of responsibilities unless and until City specifically directs that Consultant proceed with such work.

D. City's Project Manager

City's Project Manager is Shelley Denison, Associate Planner. City shall give Consultant prompt written notice of any resignation of its Project Manager.

E. Consultant's Project Manager

Consultant's Project Manager is _____ [name], _____ [title]. In the event that Consultant's designated Project Manager is changed, Consultant shall give City prompt written notification of such resignation. In the event that City receives any communication from Consultant of whatsoever nature which is not executed by Consultant's designated Project Manager, City may request clarification by Consultant's Project Manager, which shall be promptly furnished.

F. Project Information

City shall provide full information regarding its requirements for the Project. Consultant agrees to share all project information, to fully cooperate with all corporations, firms, contractors, public utilities, governmental entities, and persons involved in or associated with the Project. No information, news or press releases related to the Project, whether made to representatives of newspaper, magazines or television and radio stations, shall be made without the authorization of City's Project Manager.

G. Duty to Inform

If at any time during the performance of this Agreement, or any future phase of this Agreement for which Consultant has been retained, Consultant becomes aware of actual or potential problems, faults or defects in the project or any portion thereof, any nonconformance with the federal, state or local laws, rules, or regulations, or has any objection to any decision or order made by City with respect to such laws, rules or regulations, Consultant shall give prompt written notice thereof to City's Project Manager. Any delay or failure on the part of City to provide a written response to Consultant shall neither constitute agreement with nor acquiescence to Consultant's statement or claim, nor constitute a waiver of any of City's rights.

H. Consultant is Independent Contractor

- H.1 Consultant shall be and herein declares that it is an independent contractor for all purposes and shall be entitled to no compensation other than compensation provided for under Section C of this Agreement. Consultant binds itself, its partners, officers, successors, assigns and legal representatives to the City.
- Consultant shall be completely independent and solely determine the manner and means of accomplishing the end result of this Agreement, and City does not have the right to control or interfere with the manner or method of accomplishing said results. City, however, has the right to specify and control the results of the Consultant's responsibilities.
- H.2 Subcontracting: City understands and agrees that only those special consulting services identified on Exhibit A may be performed by those persons identified on Exhibit A and not by Consultant. Consultant acknowledges such services are provided to City pursuant to a subcontract(s) between Consultant and those who provide such services. Consultant may not utilize any subcontractors or in any way assign its responsibility under the Agreement without first obtaining the express written consent of the City.
- H.3 Consultant shall be responsible for and indemnify and defend City against any liability, cost or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, omissions, or errors. Subcontractors will be required to meet the same insurance requirements of Consultant under this Agreement. Unless otherwise specifically agreed to by City in writing, Consultant shall require that subcontractors also comply with and be subject to the provisions of this Section H.
- H.4 Consultant shall make prompt payment of any claim for labor, materials or services furnished to the Consultant by any person in connection with this Agreement as such claim becomes due. Consultant shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of the Consultant. If the Consultant fails, neglects or refuses to make prompt payment of any such claim, the City may pay such claim to the person furnishing the labor, materials or services and charge the amount of the payment against funds due or to become due the Consultant under this Agreement.
- H.5 No person shall be employed under the terms of this Agreement as described herein in violation of any wage and hour laws.
- H.6 Should Consultant elect to utilize employees on any aspect of this Agreement, Consultant shall be fully responsible for payment of all withholding required by law, including but not limited to taxes, including payroll, income, Social Security (FICA) and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incidental to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall indemnify, defend and hold City harmless from claims for payment of all such expenses. Unless otherwise

expressly set forth on Exhibit A as a reimbursable expense item, specific costs associated with items set forth in this paragraph shall be deemed as fully and conclusively included in the rate upon which consultant's compensation is based.

H.7 No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age, disability or national origin. Any violation of this provision shall be grounds for cancellation, termination or suspension of the Agreement in whole or in part by the City.

I. Indemnity and Insurance

I.1 Consultant acknowledges responsibility for liability arising out of the performance of this Agreement and the attachments thereto, and all liability resulting from the negligent acts, performance or errors or omissions of the Consultant or anyone acting on behalf of Consultant in connection with or incidental to the work performed under the contract. Consultant shall hold City harmless from and indemnify City against any and all claims of loss or damages including reasonable costs, expenses, and attorney's fees to the extent resulting from Consultant's negligent acts, omissions, errors or willful misconduct provided pursuant to this Agreement, or from Consultant's failure to perform its responsibilities as set forth in this Agreement. The review, approval or acceptance by City, its Project Manager or City employees of documents or other work prepared or submitted by Consultant shall not relieve Consultant of its responsibility to provide such materials in full conformity with City's requirements as set forth in this Agreement and to indemnify City from claims, losses and damages resulting from Consultant's failure to adhere to the standard of performance described in Section I.2.3. The provisions of this section shall survive termination of this Agreement.

I.2 Insurance Requirements and Consultant's Standard of Care.

I.2.1 Consultant shall provide City with evidence of the following insurance coverages prior to the commencement of the work. A copy of each insurance policy, issued by a company currently licensed in the State of Oregon, and certified as a true copy by an authorized representative of the issuing company or at the discretion of the City, in lieu thereof, a certificate in a form satisfactory to City certifying to the issuance of such insurance shall be furnished to City. Expenses relating to the cost of insurance shall not be the basis for additional reimbursement to Consultant.

I.2.2 Reserved.

I.2.3 In the performance of its professional services, Consultant shall use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession practicing in the Portland Metropolitan Area. The Consultant will re-perform any services not meeting this standard without additional compensation. Consultant's re-performance of any services, even if done at City's request, shall not be considered as a limitation or waiver by City of any other remedies or

claims it may have arising out of consultant's failure to perform in accordance with the applicable standard of care or this Agreement.

- I.2.4 Consultant shall furnish the City a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Agreement. All policies shall be written on an "occurrence basis," except for Consultant's Professional Liability Insurance which may be written on a "claims made" basis, provided it shall endeavor to be maintained in full force for not less than four (4) years following Consultant's performance under this Agreement. All policies shall provide for not less than 30 days' written notice to the City before they may be canceled or reduced or materially changed by endorsement. The Consultant shall provide not less than 30 days' written notice to the City before the policy coverage may be reduced. Excepting professional liability and worker's compensation coverage, all policies shall provide an endorsement naming the City, its officers, employees and agents as additional insureds. In the event the policy lapses during performance, the City may: treat said lapse as a breach; terminate this Agreement and seek damages; withhold progress payments without impairing obligations of Consultant to proceed with work; pay an insurance carrier (either Consultants' or a substitute) the premium amount and withhold that amount from payments; and, use any other remedy provided by this Agreement or by law.
- I.2.5 Insurance Requirements. The Consultant, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. The Consultant will maintain throughout this Agreement the following insurance:
- I.2.5.1 Workers' compensation and employers liability insurance as required by the State where the work is performed.
- I.2.5.2 Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles, with \$2,000,000 combined single limits.
- I.2.5.3 Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the Consultant or of any of its employees, agents or subcontractors, with \$2,000,000 per occurrence and in the aggregate.
- I.2.5.4 Professional liability insurance of \$2,000,000 per occurrence and in the aggregate, including contractual liability coverage. If Consultant proposes using subcontractors, in addition to any other requirements of this Agreement, such subcontractors

shall provide Professional Liability Insurance in an amount and form of coverage that complies with the requirements of paragraphs I.2.1, I.2.3, I.2.4 and I.2.5.4.

I.2.5.5 City will be named as an additional insured with respect to Consultant's liabilities hereunder in all insurance coverages identified in items I.2.5.2 and I.2.5.3.

I.2.6 The coverage provided by these policies shall be primary and any other insurance carried by City shall be excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. In the event a dispute arises between City and Consultant for which Consultant has obtained insurance, the maximum amount which may be withheld by City for all such claims shall be no more than the amount of the applicable insurance deductible.

J. Early Termination

J.1 This Agreement may be terminated prior to the expiration of the agreed upon terms:

J.1.1 By mutual written consent of the parties;

J.1.2 By City for any reason within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person, or at such later date as may be established by the City; and

J.1.3 By Consultant, effective upon 14 days prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of the Consultant.

J.2 If City terminates the Agreement in whole or in part due to default or failure of Consultant to perform services in accordance with this Agreement, City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, Consultant shall be liable for all costs and damages incurred by City in procuring such similar service, and the Contract shall be in full force to the extent not terminated.

J.3 If City terminates the Agreement for its own convenience, payment of Consultant shall be prorated to and include the day of termination and shall be in full satisfaction of all claims by Consultant against City under this Agreement.

J.4 Termination under any provision of this paragraph shall not affect any right, obligation or liability of Consultant or City which accrued prior to such termination. Consultant shall surrender to City items of work or portions thereof, referred to in Section N for which Consultant has received payment, or City has made payment. City retains the right to elect whether or not to proceed with actual construction of the project.

K. Suspension of Work

City may suspend, delay or interrupt all or any part of the work for such time as the City deems appropriate for its own convenience by giving written notice thereof to Consultant. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within the Consultant's control. City shall not be responsible for work performed by any subcontractors after notice of suspension is given by City to Consultant.

L. Subconsultants and Assignments

- L.1 Consultant shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from the City Project Manager. In all subcontracts entered into by the Consultant pursuant to this Agreement, the City shall be named as an express third-party beneficiary of such subcontracts with full rights as such. Consultant acknowledges such services are provided to City pursuant to a subcontract(s) between Consultant and subcontractor(s). City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any attempted assignment of this Agreement without the written consent of City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Consultant shall not be subject to additional reimbursement by City beyond the scope of payment for services as contemplated by this Agreement.
- L.2 City shall have the right to let other contracts be coordinated with this Agreement. Consultant shall cooperate with other firms, engineers, consultants and other City contractors on this and related City projects, and the City itself, so that all portions of this and other projects may be completed in the least possible time within normal working hours. Consultant shall furnish other engineers and consultants and affected public utilities, whose designs are fitted into Consultant's designs and detail drawings, giving full information so that conflicts can be avoided.

M. Access to Records

The City, Oregon Secretary of State's Office, the Federal Government and the duly authorized representatives of any of the above, shall have access to the books, documents, papers, records and receipts of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts. The City, Oregon Secretary of State's Office, the Federal Government and authorized representatives shall have the authority to inspect, audit and copy from time to time, any records of the Consultant regarding billings or work under this Agreement for a period of four years after the completion or termination of this contract.

N. Work is Property of City

N.1 Originals or Certified copies of the original work forms, including but not limited to documents, reports, drawings, tracings, surveying records, mylars, papers, diaries, inspection reports and photographs, performed or produced by Consultant under this Agreement shall be the exclusive property of City and shall be delivered to City prior to completion or termination of this contract and prior to final payment. Any statutory or common law rights to such property held by Consultant as creator of such work shall be conveyed to City upon request without additional compensation. Upon City's approval and provided City is identified in connection therewith Consultant may include Consultant's work in its promotional materials. Consultant shall be entitled to keep copies of all work products produced.

N.2 Reserved.

O. Law of Oregon

The Agreement shall be governed by the laws of the State of Oregon. The Agreement provisions required by ORS Chapter 279C to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein. Consultant shall adhere to all applicable federal and state laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers' compensation, and minimum and prevailing wage requirements. Any certificates, licenses or permits which Consultant is required by law to obtain or maintain in order to perform work described on Exhibit A, shall be obtained and maintained throughout the term of this Agreement.

P. Adherence to Law

Consultant shall comply with all federal, state and local laws and ordinances, rules and regulations applicable to the work under this contract. Consultant agrees that the public contract law provisions contained in ORS Chapter 279C shall apply to and govern the performance of this contract. Consultant shall certify compliance with ORS 670.600. Further, Consultant agrees to comply with applicable provisions of and amendments to the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973 and with all applicable requirements of federal and state and rehabilitation statutes, rules and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990, ORS 659.425A, and all regulations and administrative rules established pursuant to those laws. Further, all certificates, licenses (including a City business license) or permits, which the consultant is required by law to obtain or maintain in order to perform work described in Exhibit A, shall be obtained and maintained throughout the term of this

Agreement.

Q. Modification

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both parties. A modification is a written document, contemporaneously executed by City and Consultant, which increases or decreases the cost to City over the agreed sum or changes or modifies the scope of service or time of performance. No modification shall be binding unless executed in writing by Consultant and City. In the event that Consultant receives any communication of whatsoever nature from City, which communication Consultant contends to give rise to any modification of this Agreement, Consultant shall, within thirty (30) days after receipt, make a written request for modification to City's Project Manager. Consultant's failure to submit such written request for modification in the manner outlined herein may be the basis for refusal by the City to treat said communication as a basis for modification. In connection with any modification to the contract affecting any change in price, Consultant shall submit a complete breakdown of labor, material, equipment and other costs. If Consultant incurs additional costs or devotes additional time on project tasks beyond which were reasonably expected as part of the original agreement or any mutually approved modifications, then City shall be responsible for payment of only those costs for which it has previously agreed to pay.

R. Other Conditions

R.1 Except as otherwise provided in paragraphs R.1.1, R.1.2, and R.1.3 Consultant represents and agrees that the contract specifications and plans, if any, prepared by the Consultant will be adequate and sufficient to accomplish the purposes of the Project; and further, that any review or approval by the City of the plans and specifications shall not be deemed to diminish the adequacy of Consultant's work.

R.1.1 Reserved.

R.1.2 Opinions of Cost, Financial Considerations, and Schedules. In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, Consultant agrees and understands that as part of the service it is providing are professional assessments of cost and price of labor and materials; potential for unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; evaluation of the likelihood of issues arising regarding time or quality of performance by third parties; quality, type, management, and direction of operating personnel; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. While the parties acknowledge that the work contemplated under this Agreement cannot provide exact costs, Contractor agrees, acknowledges and understands that the City intends to rely on Contractor's expertise in accurately evaluating Project costs, financial aspects, economic feasibility, and schedule estimates.

R.1.3 Record Drawings. Records, drawings, and reports will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. Consultant is

responsible for any errors or omissions about which the Consultant knew or should have known in the information from the City or those employees or firms employed by the Consultant under the terms of this Agreement as stated therein that is incorporated into the records, drawings and reports.

- R.2 Notwithstanding any acceptance or payments, City shall not be precluded or stopped from recovering from Consultant, or its insurer or surety, such damages as may be sustained by reason of Consultant's failure to comply with the terms of this Agreement. A waiver by City of any breach by Consultant shall not be deemed to be a waiver of any other previous or subsequent breach by Consultant.

S. Assignments of Products Rights

- S.1 The Consultant hereby assigns to the City all rights, title and interest, including but not limited to copyright rights, all notes, designs, drawings, specifications, technical data reports, computer programs and documentation, and other materials resulting from the Consultant's work under this Agreement.
- S.2 The City agrees to include the Consultant's name and give credit to the consultant or the design in presentation and publication of the design and completed work resulting from this Agreement.

T. Dispute Resolution

- T.1 Should any dispute arise between the parties to this Agreement concerning their respective obligations of either or the terms hereof, it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute arising under the terms of this Agreement shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation. Any litigation arising under or as a result of this Agreement shall be tried to the court without a jury.
- T.2 Each party agrees to be responsible for payment of its own professional fees, including attorneys' fees in both mediation and litigation.
- T.3 The parties shall exercise good faith efforts to select a mediator, who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If either party requests mediation, and the other party fails to respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Washington County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section.

U. Integration

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified

herein regarding this Agreement. Consultant, by the signature below of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

V. Miscellaneous / General

Consultant binds itself, its partners, officers, successors, assigns and legal representatives to the City under the terms and conditions of this Agreement as described herein. Any conflict between a term or condition of this Agreement and a term or condition contained in an exhibit to this Agreement will be resolved in favor of the language in this Agreement.

The CONSULTANT and the CITY hereby agree to all provisions of this AGREEMENT.

IN WITNESS WHEREOF, the parties by their signatures below enter into this Agreement this _____ day of _____, 2019.

[Signatures on Following Page]

CITY OF SANDY

CONSULTANT:

By _____

By _____

Shelley Denison, Project Manager

_____ [name], Project Manager

City of Sandy

_____ [company]

Mailing Address:

Mailing Address:

39250 Pioneer Blvd
Sandy, OR
97055

Phone:

Phone:

503-783-2587

Email:

Email:

sdenison@ci.sandy.or.us

Employer ID No. **[Insert Employer ID No.]**