



# CITY COUNCIL MEETING

Monday, June 17, 2024 at 6:00 PM  
Sandy City Hall and via Zoom

## AGENDA

---

---

### **TO ATTEND THE MEETING IN-PERSON:**

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

### **TO ATTEND THE MEETING ONLINE VIA ZOOM:**

Please use this link: <https://us02web.zoom.us/j/86498332856>

Or by phone: (253) 215-8782; Meeting ID: 86498332856

### **WORK SESSION – 6:00 PM**

1. [Clackamas County Homelessness Services](#)

### **REGULAR MEETING – 7:00 PM**

#### **PLEDGE OF ALLEGIANCE**

#### **ROLL CALL**

#### **CHANGES TO THE AGENDA**

#### **PUBLIC COMMENT (3-minute limit)**

The Council welcomes your comments on other matters at this time. The Mayor will call on each person when it is their turn to speak for up to three minutes.

-- **If you are attending the meeting in-person**, please submit your comment signup form to the City Recorder before the regular meeting begins at 7:00 p.m. Forms are available on the table next to the Council Chambers door.

-- **If you are attending the meeting via Zoom**, please complete the online comment signup webform by 4:00 p.m. on the day of the meeting:  
<https://www.ci.sandy.or.us/citycouncil/webform/council-meeting-public-comment-signup-form-online-attendees>.

#### **RESPONSE TO PREVIOUS COMMENTS**

#### **CONSENT AGENDA**

2. [City Council Minutes: June 3, 2024](#)
3. [Contract Amendment: Veolia Water North America – West, LLC](#)

#### **PRESENTATIONS**

4. [Mt Hood Community College Presentation](#)

## **ORDINANCES**

5. [PUBLIC HEARING - Ordinance 2024-15: Authorizing Wastewater Revenue Bonds \(WIFIA Loan Agreement\)](#)

## **NEW BUSINESS**

6. [Purchase Authorization: Street Sweeper for Public Works Department](#)

## **REPORT FROM THE CITY MANAGER**

## **COMMITTEE / COUNCIL REPORTS**

## **STAFF UPDATES**

Monthly Reports: <https://reports.cityofsandy.com/>

## **ADJOURN**

Americans with Disabilities Act Notice: Please contact Sandy City Hall, 39250 Pioneer Blvd. Sandy, OR 97055 (Phone: 503-668-5533) at least 48 hours prior to the scheduled meeting time if you need an accommodation to observe and/or participate in this meeting.



# STAFF REPORT

---

**Meeting Type:** City Council Work Session  
**Meeting Date:** June 17, 2024  
**From:** Tyler Deems, City Manager  
**Subject:** Homelessness Services

---

**DECISION TO BE MADE:**

None.

**PURPOSE / OBJECTIVE:**

Receive a presentation from Clackamas County’s Health, Housing, and Human Services staff. Discuss current programs and initiatives, ask questions, and gain a better understanding of the current services being provided to homeless individuals, or those experiencing the threat of homelessness, within the Sandy community.

**BACKGROUND / CONTEXT:**

Council has been interested in gaining a better understanding of the homelessness services and initiatives that are available in the Sandy area and funding through Clackamas County for quite some time. At the May 20<sup>th</sup> Council Meeting, staff asked the Council for any other specific questions they may have so that County staff could provide answers and further information. Examples of the information that the Council requested include:

- What services is the County providing to individuals who are experiencing homelessness?
- Who is managing these services and how are they being funded?
- What is the timeline for receipt of initial services (emergency housing, for example) to finding permanent housing?
- Are the services being providing in Sandy serving Sandy community members specifically, or are individuals seeking services coming from other parts of the County?

Staff from Clackamas County’s Health, Housing, and Human Services department will be in attendance to discuss the current programs and initiatives for homeless individuals, or those experiencing the threat of homelessness. AntFarm will also be in attendance.

**BUDGET IMPACT:**

None.

**RECOMMENDATION:**

Receive the presentation, ask questions, and engage in discussion with County staff.



# CITY COUNCIL MEETING

Monday, June 03, 2024 at 7:00 PM  
Sandy City Hall and via Zoom

## MINUTES

---

---

### PLEDGE OF ALLEGIANCE

### ROLL CALL

#### PRESENT

Mayor Stan Pulliam  
Council President Laurie Smallwood  
Councilor Chris Mayton  
Councilor Rich Sheldon  
Councilor Kathleen Walker  
Councilor Carl Exner  
Councilor Don Hokanson

### CHANGES TO THE AGENDA

(none)

### PUBLIC COMMENT (3-minute limit)

(none)

### RESPONSE TO PREVIOUS COMMENTS

(none)

### CONSENT AGENDA

1. City Council Minutes: May 20, 2024
2. Library Advisory Board Appointment

#### **MOTION: Adopt the Consent Agenda**

Motion made by Councilor Walker, Seconded by Council President Smallwood.

Voting Yea: Mayor Pulliam, Council President Smallwood, Councilor Mayton, Councilor Walker, Councilor Exner, Councilor Hokanson

**MOTION CARRIED: 6-0**



## RESOLUTIONS

### 3. PUBLIC HEARING: Resolution 2024-11 - Revised Moratorium Raising Limit on New Wastewater Connections

#### Abstentions

(none)

#### Conflicts of Interest

(none)

#### Staff Report

The City Attorney summarized the staff report, which was included in the agenda packet.

The Council engaged in discussion on the following points:

- Concern about the proposed ERU reassignment concept; suggestion that ERUs are scarce and that other property owners also want to develop and would want the pipeline to be resolved faster
- Discussion on the anticipated number of units to be constructed at Cedar Creek Heights
- Concern about unanticipated duplexes and potentially inadequate infrastructure; suggestion to assume all developers will construct the maximum possible number of duplexes
- Information about HB 2001, including the provision to deny an application due to inadequate infrastructure

#### Public Testimony

Kendal Pelton: questioned how many ERUs are allocated; asked whether any will be left over after the allocation process; asked whether dwellings with failed septic systems will be able to connect to the wastewater system; asked about the effect of the City's zoning regulations on the types of housing that can be constructed.

In response, staff reviewed the ERU calculation assumptions, the allocation application process, possibilities for revisions to the moratorium in another six months, County allowances for septic system replacements, and further HB 2001 details

Garrett Stephenson: stated supported for the resolution; stressed the need to assure lenders that ERUs are available for projects; expressed confidence in staff's ERU estimates; acknowledged the reality of needing to implement this program despite its imperfections; provided further details on development plans.

\*\*\*

#### **MOTION: Close the public hearing**

Motion made by Councilor Sheldon, Seconded by Councilor Exner.

Voting Yea: Mayor Pulliam, Council President Smallwood, Councilor Mayton, Councilor Sheldon, Councilor Walker, Councilor Exner, Councilor Hokanson

**MOTION CARRIED: 7-0**

\*\*\*

Council Discussion

- Possible consequences if some developments build more duplexes than originally anticipated
- Desire for further details on staff's estimates of anticipated units
- Details of how the 'duplex pool' will be administrated by staff
- Reminder that the cap on available ERUs can increase later after further wastewater system improvements
- Optimism about the effect of this moratorium revision on future development
- Reminder that the ERU allocation program and the land use approval extension ordinance involve two different timelines and deadlines
- Staff's expectation that the number of reassigned ERUs will be low

\*\*\*

**MOTION: Adopt Resolution 2024-11**

Motion made by Council President Smallwood, Seconded by Councilor Exner.

Voting Yea: Mayor Pulliam, Council President Smallwood, Councilor Mayton, Councilor Sheldon, Councilor Walker, Councilor Exner, Councilor Hokanson

**MOTION CARRIED: 7-0**

4. PUBLIC HEARING: Resolution 2024-14 - Master Fees & Charges Annual Update

Abstentions

(none)

Conflicts of Interest

(none)

Staff Report

The City Manager summarized the staff report, which was included in the agenda packet. In response to questions from the Council, staff provided additional explanation of the fee in lieu of mitigation trees, the technology fee for software licensing and other costs, the degree to which planning fees cover the cost of providing services, and the fact that the Council established policy goals related to cost recovery.

Public Testimony

(none)

\*\*\*

**MOTION: Close the public hearing**

Motion made by Councilor Sheldon, Seconded by Councilor Mayton.

Voting Yea: Mayor Pulliam, Council President Smallwood, Councilor Mayton, Councilor Sheldon, Councilor Walker, Councilor Exner, Councilor Hokanson

**MOTION CARRIED: 7-0**

\*\*\*

Council Discussion

- Details on methods used to calculate CPI increases
- Concern that the proposed fees may not be capturing the entire cost of providing services
- Recognition that the intention of fees is not to support a certain level of staffing
- Suggestion that while building fees are closely tied to actual costs, planning fees often are not because smaller projects and requests are accommodated in the interest of providing good customer service to residents
- Note that the Building Division is operated like an enterprise, while the Planning Division receives general revenue
- Suggestion to approve the resolution, and continue to evaluate fees during the upcoming budget process to ensure costs are being recovered
- Information on the City's business license program

\*\*\*

**MOTION: Adopt Resolution 2024-14, with the addition that fees will be reevaluated during the next budget process**

Motion made by Councilor Hokanson, Seconded by Councilor Walker.

Voting Yea: Mayor Pulliam, Council President Smallwood, Councilor Mayton, Councilor Sheldon, Councilor Walker, Councilor Exner, Councilor Hokanson

**MOTION CARRIED: 7-0****NEW BUSINESS**

5. Cedar Park Project Update

The Parks and Recreation Director summarized the staff report, which was included in the agenda packet along with a link to a folder with photos and video of the park development.

Council discussion ensued on the following subjects:

- Whether the construction team has uncovered any debris resulting from the use of the site as a dump in decades past
- Concern about the steep slope on the site, and suggestions to implement retaining walls that could be used for tiered seating to observe action sports events
- Details on the project budget and remaining contingency funds
- Praise for staff's efforts on the project

6. PUBLIC HEARING: Cedar Park Entry Sign Variance Request

Abstentions

(none)

Conflicts of Interest

(none)

Staff Report

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

Applicant Presentation

The Parks and Recreation Director provided introductory remarks. Kurt Lango with Lango Hansen presented the sign concept; renderings were included in the agenda packet.

Public Testimony

Kendal Pelton: expressed concern about safety for children who may become stuck in the sign; noted the importance of maintaining the site slope for sledding

Applicant Rebuttal

Openings in the sign will be more than four inches and the entrapment concern is minimal.

\*\*\*

**MOTION: Close the public hearing**

Motion made by Councilor Walker, Seconded by Councilor Sheldon.

Voting Yea: Mayor Pulliam, Council President Smallwood, Councilor Mayton, Councilor Sheldon, Councilor Walker, Councilor Exner, Councilor Hokanson

**MOTION CARRIED: 7-0**

\*\*\*

Council Discussion

- Concern about children attempting to jump over the sign
- Question as to whether Base Camp signage will also be installed
- Suggestion that usage of the sign as a skateboarding surface would be difficult
- Details on the type of steel to be used
- Suggestion to include lighting for the sign
- Suggestion to ensure sign style continuity throughout the park
- Suggestion that the proposed sign is appropriate given the large scale of the park
- Concern about people sledding in the direction of the skatepark
- Note that other recent sign variances have been approved
- Discussion of similar signs in other cities
- Concern about children climbing on the sign and potentially falling

\*\*\*

**MOTION: Approve the requested variance for the Cedar Park sign**

Motion made by Councilor Sheldon, Seconded by Councilor Walker.

Voting Yea: Mayor Pulliam, Council President Smallwood, Councilor Mayton, Councilor Sheldon, Councilor Walker, Councilor Exner, Councilor Hokanson

**MOTION CARRIED: 7-0****REPORT FROM THE CITY MANAGER**

- Update on the code enforcement issues near the dog park; staff is proactively working to achieve compliance
  - Staff is also pursuing the vegetation issue at Dubarko and Van Fleet, as well as concerns in the industrial area
- Reminder on the community reception for the police chief finalists on Friday; overview of the process
- Note that interviews will be scheduled to begin the SandyNet master plan process

**COMMITTEE / COUNCIL REPORTS**Councilor Hokanson

- Thanks to SandyNet staff for smoothly executing recent improvements to the City's internet infrastructure

Councilor Exner

- Praise for recent code enforcement efforts

- Concern about dead trees on Fir Drive
- Discussion of school-related congestion and parking challenges
  - Staff response: drone footage is being used to study the problems and identify solutions; lane width and emergency access is being verified; options for posting parking restrictions and educating parents are being pursued; options are being explored to utilize the firework launching area and/or the fire access road

#### Councilor Walker

- Note that the Library Advisory Board is working to gain County approval for rent support for the Hoodland Library
- Encouragement for residents to take advantage of Library resources
- Praise for code enforcement staff and the MySandy app; emphasis on the need to address chronic code violations

#### Councilor Sheldon

- Discussion on wayfinding signs; suggestion to install signage directing people to Cedar Park from the highway
- Discussion regarding advertisement of park assets generally
- Discussion on sign installation at the City's new parking lot

#### Council President Smallwood

- Recap of the recent chainsaw carving event

#### Councilor Mayton

(none)

#### Mayor Pulliam

- Recap of the recent chainsaw carving event; praise for their passport program

### **STAFF UPDATES**

Monthly Reports: <https://reports.cityofsandy.com/>

### **ADJOURN**

**EXECUTIVE SESSION** - the City Council met in executive session pursuant to ORS 192.660(2)(e)



# STAFF REPORT

---

**Meeting Type:** City Council  
**Meeting Date:** June 17, 2024  
**From:** Jenny Coker, Public Works Director  
**Subject:** Contract Amendment: Veolia Water North America – West, LLC

---

## DECISION TO BE MADE:

Whether to authorize the City Manager to execute Amendment No. 2 to the agreement with Veolia Water North America – West, LLC (Veolia) for Operations, Maintenance and Management Services at the City’s Drinking Water and Wastewater Treatment Plants

## BACKGROUND / CONTEXT:

The City of Sandy entered into a five-year agreement with Veolia for operations, maintenance, and management services for the drinking water and wastewater treatment plants. The contract includes a provision for the City to extend the agreement for an additional five years. The original five-year agreement expired on March 1, 2024, and was extended by Amendment 1 at the February 20, 2024 Council meeting through June 30, 2024 as both parties entered into negotiations with the intention to renew for an additional five-year period.

The City has been working to negotiate the amended and restated operations and maintenance agreement. However, both parties have proposed an additional three-month extension of the current agreement through September 30, 2024 to continue negotiations. In summary, new rules regarding prevailing wage require additional legal analysis by both Veolia and the City to complete before the Agreement can be amended and restated.

## KEY CONSIDERATIONS / ANALYSIS:

As was discussed at the June 6<sup>th</sup> meeting of the Water & Wastewater System Improvements Oversight Committee, this amendment is necessary to continue to maintain a contract for operations services for the Drinking Water and Wastewater Treatment plant past June 30, 2024.

Veolia has been an excellent partner to the City in stabilizing and improving treatment and operations the last five years, as well as conducting stress testing of the system. This amendment will allow the City and Veolia to finalize the updated agreement for a new five year term, which staff will bring back to the Council by September 2024 for council consideration.

At the end of the next five years, the City will have completed upgrades to both the Wastewater and Water Treatment Plants, making it an appropriate time to conduct a new RFP process for contract operations services. Until that time, remaining with Veolia is in the City’s interest given the firm’s substantial involvement with the improvement projects currently underway.

**BUDGET IMPACT:**

The fees for the current agreement are included within the BN 2023-25 budget.

**RECOMMENDATION:**

Authorize the City Manager to execute Amendment 2 with Veolia for a three-month extension.

**SUGGESTED MOTION LANGUAGE:**

“I move to approve Amendment 2 to the City’s agreement with Veolia Water North America-West, LLC, as included in the agenda packet.”

**LIST OF ATTACHMENTS / EXHIBITS:**

- Veolia Amendment 2
- Original Veolia Agreement



## AMENDMENT NO. 2 TO AGREEMENT FOR OPERATIONS, MAINTENANCE AND MANAGEMENT SERVICES

This Amendment No. 2 (this “**Amendment**”), with an effective date of July 1, 2024, is an amendment to that certain Agreement for Operations, Maintenance and Management Services, dated as of December 19, 2018 (the “**Agreement**”), by and between Veolia Water North America-West, LLC (“**VEOLIA**”), and the City of Sandy, Oregon (“**Owner**” and, together with Veolia, the “**Parties**”).

### RECITALS

**WHEREAS**, Owner and VEOLIA entered into the Agreement in order to provide for the operation and maintenance of Owner’s wastewater treatment facility (defined in the Agreement as the “**Project**”; and

**WHEREAS**, the Parties entered into Amendment 1 of the Agreement on March 1, 2024 to, among other things, extending the term of the Agreement through June 30<sup>th</sup>, 2024; and

**WHEREAS**, the Parties wish to amend the Agreement in Amendment 2 to, among other things, extend the term of the Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained in this Amendment, the Parties agree as follows:

1. Capitalized terms used but not otherwise defined in this Amendment shall have the same meaning given to those terms in the Agreement.
2. Section 4.1 is hereby deleted and replaced in its entirety with the following:  
  
“The initial term of this Agreement shall be from the Commencement Date to September 30, 2024.”
3. The Parties agree that the Annual Base Fee is to remain per the March 1, 2024 rates. The annual Base Fee is \$ 735,395 for the Wastewater Services and \$242,650 for the Water Services. Veolia bills on a monthly basis as 1/12 of the amount of the annual fee.
4. VEOLIA has hired a worker on a temporary basis to support the Project (such temporary worker, the “Additional Worker”). The Parties will treat the Additional Worker as a Change in Scope, and VEOLIA will invoice the Owner for VEOLIA’s costs of such Additional Worker in accordance with Appendix E, Section E.2, with no markup.
5. This Amendment sets forth the entire agreement between the Parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Except as expressly modified or amended herein, all the terms and conditions set forth in the Agreement remain unchanged, in full force and effect, and are incorporated by reference. In the event of a conflict between the provisions of the Agreement and this Amendment, the provisions of this Amendment shall govern and control.

6. This Amendment may be executed in multiple counterparts, each of which is deemed an original but together constitute one and the same instrument, and a signature delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signature. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into this Amendment on behalf of the respective legal entities of VEOLIA and the Owner. This Amendment shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have executed and entered into this Amendment as of the date first written above.

**CITY OF SANDY, OREGON**

By: \_\_\_\_\_  
Name:  
Title:

APPROVED AS TO FORM

By: \_\_\_\_\_  
Name:  
Title: City Attorney

**VEOLIA WATER NORTH AMERICA-WEST, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**AGREEMENT**  
**for**  
**OPERATIONS, MAINTENANCE AND MANAGEMENT SERVICES**  
**for the**  
**CITY of SANDY, OREGON**

TABLE OF CONTENTS

1. SERVICES AND STANDARD OF PERFORMANCE .....	1
2. OWNER'S RESPONSIBILITIES .....	1
3. COMPENSATION AND PAYMENT .....	2
4. TERM .....	2
5. INDEMNITY AND LIABILITY .....	3
6. FINES AND CIVIL PENALTIES .....	4
7. INSURANCE.....	5
8. LABOR DISPUTES .....	6
9. UNFORESEEN CIRCUMSTANCES .....	6
10. ACCESS TO FACILITIES AND PROPERTY .....	6
11. CONTRIBUTIONS TO THE INDUSTRIAL ACCIDENT FUND .....	7
12. LIENS AND CLAIMS .....	7
13. INCOME TAX WITHHOLDING.....	7
14. INDEPENDENT CONTRACTOR.....	7
15. MEDICAL CARE FOR EMPLOYEES .....	7
16. SAFETY AND HEALTH REQUIREMENTS .....	7
17. PAYMENT REQUIREMENTS (ORS 2798.220).....	7
18. HOURS OF WORK .....	8
19. CHANGES .....	8
20. NO THIRD PARTY BENEFICIARIES .....	8
21. JURISDICTION .....	8
22. SEVERABILITY AND SURVIVAL .....	8
23. AUTHORITY.....	8
24. NOTICES .....	8
25. RECORDS.....	9
26. WORK IS PROPERTY OF OWNER .....	9
27. DUTY TO INFORM .....	10
28. MEDIATION/TRIAL WITHOUT A JURY .....	10
29. ENTIRE AGREEMENT .....	10

APPENDIX A - DEFINITIONS

APPENDIX B - SCOPE OF SERVICES

APPENDIX C - CAPACITY AND CHARACTERISTICS

APPENDIX D - LOCATION OF PROJECT

APPENDIX E - COMPENSATION, PAYMENT AND BASE FEE ADJUSTMENT FORMULA

APPENDIX F - PROJECT VEHICLES AND EQUIPMENT

APPENDIX G - LANDSCAPE MAINTENANCE REQUIREMENTS AND SPECIFICATIONS

**AGREEMENT FOR OPERATIONS, MAINTENANCE  
AND MANAGEMENT SERVICES**

THIS AGREEMENT is made and entered into this 19<sup>th</sup> day of December 2018 (the “Effective Date”), by and between the City of Sandy, Oregon whose address for any formal notice is 39250 Pioneer Blvd, Sandy, OR 97055 (“Owner”) and Veolia Water North America-West, LLC (“VEOLIA”), whose address for any formal notice is 700 E Butterfield Rd, Suite 201, Lombard, IL 60148 with a contemporaneous copy to: 53 State Street, 14th Floor, Boston MA 02109, Attn: General Counsel. Owner and VEOLIA are each referred to as a “Party” and are collectively referred to as the “Parties.”

**STATEMENT OF PURPOSE**

WHEREAS, the Owner owns certain facilities and systems which are further described in Appendix C; and

WHEREAS, Owner desires to contract with VEOLIA to perform certain operation and maintenance services as further described in Appendix B under the terms and conditions set forth in this Agreement.

**1. SERVICES AND STANDARD OF PERFORMANCE**

- 1.1. Veolia shall, within the design capacity and capability of the Owner’s facilities, perform the services set forth in Appendix B in accordance with applicable law and the requirements set forth in Appendix C.
- 1.2. VEOLIA shall perform the services with the degree of skill and diligence normally employed by operations and maintenance personnel performing the same or similar services under the same conditions.
- 1.3. VEOLIA shall be responsible for the cost of operation, maintenance and fuel for Owner vehicles and equipment, unless otherwise agreed to between the parties. Owner shall retain title and ownership of such vehicles and equipment. Use of such vehicles and equipment by VEOLIA shall be limited to duties and use within the course and scope of this Agreement. Training for VEOLIA employees and other such activities are not part of the course and scope of this Agreement and therefore Owner vehicles and equipment should not be used for such matters.

**2. OWNER’S RESPONSIBILITIES**

- 2.1. Maintain and renew, with respect to all existing portions of the System, warranties, guarantees, easements, permits, authorizations and licenses that have been granted to the Owner, to the extent the maintenance thereof is not a responsibility of VEOLIA hereunder. All land, buildings, facilities, easements, licenses, structures, rights-of-way, equipment and vehicles presently or hereinafter acquired by Owner shall remain the exclusive property of Owner unless specifically provided for otherwise in this Agreement.
- 2.2. The Owner shall pay all amounts associated with the occupancy or operation of the Project and the performance of the obligations as listed in Appendix B including, but not limited to, all excise, ad valorem, property, franchise, occupational and disposal taxes, or other taxes associated with the Project. Taxes imposed upon VEOLIA’s net income and/or payroll taxes for VEOLIA’s employees are not included.

- 2.3. The Owner shall provide all registrations, licenses and insurance for Owner's vehicles and heavy equipment used in connection with the Project.
- 2.4. The Owner shall provide for VEOLIA's use of all vehicles and equipment currently in use at the Project, including the vehicles described in Appendix F. Such vehicles and equipment shall be in road safe condition. As stated above, VEOLIA shall be responsible for the cost of operation, maintenance and fuel for such vehicles and equipment, unless otherwise agreed to between the parties. Owner shall retain title and ownership of such vehicles and equipment. Use of such vehicles and equipment by VEOLIA shall be limited to duties and use within the course and scope of this Agreement. The parties may supplement this Agreement to provide for an agreed schedule of replacement of such vehicles and equipment and provision of any other insurance coverage deemed necessary or appropriate.
- 2.5. The Owner agrees to not offer employment or other compensation to Project Management and Supervisory personnel of VEOLIA directly working on this Project for a period of two (2) years after the end date of this Agreement or said employee's re-assignment from this Project.
- 2.6. Owner has provided to VEOLIA all data in Owner's possession relating to the Project. VEOLIA will reasonably rely upon the accuracy and completeness of the information provided by the Owner.

### **3. COMPENSATION AND PAYMENT**

Compensation for the services is described in Appendix E.

### **4. TERM**

- 4.1. The initial term of this Agreement shall be for five (5) years commencing on the Commencement Date. Thereafter, this Agreement may be renewed for a term of five (5) years ("Renewal Term") if approved in writing by both parties. If the Parties agree to a Renewal Term, the parties will strive to begin negotiations one hundred eighty (180) days prior to expiration.
- 4.2. Either Party may terminate this Agreement for a material breach of this Agreement by the other Party after giving written notice of the breach and allowing the other Party a reasonable time to correct the breach. Neither Party shall terminate this Agreement without giving the other Party thirty (30) days' written notice of intent to terminate for failure of the other Party to correct the breach within a reasonable time.
- 4.3. Beginning on the first anniversary of the Commencement Date, either Party may terminate this Agreement at its discretion either with or without cause, by giving at least one hundred twenty (120) days prior written notice.
- 4.4. For the initial term of the Agreement only, in the event Owner exercises its rights under Section 4.3 above, Owner shall reimburse Veolia for Veolia's demobilization costs and expenses not to exceed \$20,000 (the "Termination Payment"). If Owner terminates the Agreement under Section 4.3 after the first anniversary of the Commencement Date, Owner will reimburse Veolia up to \$20,000 for actual expenses. If Owner terminates the Agreement under Section 4.3 after the second anniversary of the Commencement Date, Owner will reimburse Veolia up to \$10,000 for actual expenses. There will be no reimbursement if the Owner exercises its rights under Section 4.3 after the third anniversary of the Commencement Date. The Termination Payment will be due on the effective date of termination.

- 4.5. Upon notice of termination by either Party, VEOLIA shall assist Owner in assuming or transferring the operation of the Project. If additional Cost is incurred by VEOLIA at the request of Owner, Owner shall pay VEOLIA such Cost within 30 (thirty) days of invoice receipt. If requested by Owner, VEOLIA will continue to provide the current operations staff for a period of up to ninety (90) days beyond the date of termination for a pro-rated Base fee. If the current staff are not available, VEOLIA will provide an operations staff for a period of up to ninety (90) days beyond the termination for a negotiated fee to include travel, per diem and associated labor costs.
- 4.6. Upon termination of this Agreement and all renewals and extensions of it, VEOLIA will return the Project to Owner in the same condition as it was upon the Commencement Date of this Agreement, ordinary wear and tear and repairs not approved by Owner excepted. If Owner incurs any additional costs associated with returning the Project to the original condition less ordinary wear and tear, VEOLIA shall pay Owner such costs within thirty (30) days of invoice receipt. Equipment and other personal property purchased by VEOLIA for use in the routine operation or maintenance practices of the Project and billed to the Owner in excess of the Base Fee shall become the property of the Owner upon termination of this Agreement, provided that Owner has reimbursed VEOLIA for such equipment and other personal property. However, any equipment or personal property that is purchased by VEOLIA and not billed to the Owner shall be the property of VEOLIA and shall be removed from the Project by VEOLIA at the termination of this Agreement.
- 4.7. Effect of termination. If the Agreement is terminated before the expiration date, Owner will compensate Veolia for work performed up until the effective date of the termination and any payments subject to Sections 4.4 and 4.5.

## **5. INDEMNITY AND LIABILITY**

- 5.1. VEOLIA agrees to indemnify, defend (with counsel reasonably acceptable to Owner) and hold harmless Owner and its officers, officials, employees and agents from and against all liability, loss, damage, expense, costs, including attorney fees, arising out of or associated with VEOLIA's work or duties as described herein, to the extent caused by (1) any willful misconduct, negligent act or omission of VEOLIA, its agents, any of its subcontractors, and anyone directly or indirectly employed by VEOLIA, its agents or its subcontractors, and anyone for whose acts any of them may be liable, (2) the negligent operation of the Project by or under the direction of Veolia, or (3) Veolia's failure to perform its duties under this Agreement, except to the extent caused by the Owner's willful misconduct, negligent act or omission.
- 5.2. It is understood and agreed that, in seeking the services of VEOLIA under this Agreement, Owner is requesting VEOLIA to undertake inherently unsafe obligations for Owner's benefit involving the presence or potential presence of hazardous substances. Therefore, to the fullest extent permitted by law, Owner agrees to hold harmless, indemnify, and defend VEOLIA from and against any and all claims, losses, damages, liability, and costs including, but not limited to, costs of defense arising out of or in any way connected with the presence, discharge, release, or escape of contaminants of any kind, excepting only such liability as may arise out of the negligent acts or omissions, or willful misconduct of VEOLIA, its employees or its subcontractors in the performance of services under this Agreement.
- 5.3. TO THE FULLEST EXTENT OF THE LAW AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL OWNER, VEOLIA, THEIR SUBCONTRACTORS OR THEIR OFFICERS OR EMPLOYEES BE LIABLE TO ANY



OTHER PARTY IN ANY ACTION OR CLAIM FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS, LOSS OF OPPORTUNITY, LOSS OF PRODUCT OR LOSS OF USE, WHETHER SUCH LIABILITY ARISES IN BREACH OF CONTRACT OR WARRANTY, TORT INCLUDING NEGLIGENCE, STRICT OR STATUTORY LIABILITY, OR ANY OTHER CAUSE OF ACTION. ANY PROTECTION AGAINST LIABILITY FOR LOSSES OR DAMAGES AFFORDED ANY INDIVIDUAL OR ENTITY BY THESE TERMS SHALL APPLY WHETHER THE ACTION IN WHICH RECOVERY OF DAMAGES IS SOUGHT IS BASED ON CONTRACT, TORT (INCLUDING SOLE, CONCURRENT OR OTHER NEGLIGENCE AND STRICT LIABILITY OF ANY PROTECTED INDIVIDUAL OR ENTITY), STATUTE OR OTHERWISE. TO THE EXTENT PERMITTED BY LAW, ANY STATUTORY REMEDIES, WHICH ARE INCONSISTENT WITH THESE TERMS, ARE WAIVED. Veolia's responsibility is to operate the facilities in compliance with current laws and regulations, to the extent of the facility's design, capabilities and physical capacity. It is not part of VEOLIA'S scope to test for or eliminate water borne bacteria or viruses except as required by current laws and regulations.

- 5.4. TO THE FULLEST EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, VEOLIA'S CUMULATIVE LIABILITY FOR PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATION ARISING UNDER THE AGREEMENT (WHETHER ARISING UNDER BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER THEORY OF LAW OR EQUITY) INCLUDING, BUT NOT LIMITED TO ITS INDEMNITY OBLIGATIONS SPECIFIED IN SECTION 5.1 OF THE AGREEMENT, SHALL NOT EXCEED (1) ANY AVAILABLE AND RECOVERED PROCEEDS FROM INSURANCE REQUIRED BY THIS AGREEMENT UP TO THE SPECIFIED LIMITS (WITHOUT REGARD TO THE AMOUNT OF ANY DEDUCTIBLE WHICH MAY BE APPLICABLE UNDER ANY SUCH POLICY) AND (2) TO THE EXTENT INSURANCE IS NOT APPLICABLE, TEN MILLION (\$10,000,000) FOR THE DURATION OF THE AGREEMENT, PROVIDED THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO ANY LOSSES RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF VEOLIA IN BREACH OF VEOLIA'S OBLIGATIONS UNDER THIS AGREEMENT.

## **6. FINES AND CIVIL PENALTIES**

- 6.1. Veolia shall be liable for fines or civil penalties which may be imposed by a regulatory or enforcement agency for violations occurring on or after the Commencement Date, as a result of the failure to comply with the terms and conditions of any duly authorized permit, court order, administrative order, law, statute, or ordinance for reasons resulting from VEOLIA's breach, negligence or willful misconduct during the term of this Agreement. Owner will assist VEOLIA to contest any such fines in administrative proceedings and/or in court prior to any payment by VEOLIA. VEOLIA shall pay the costs of contesting any such fines.
- 6.2. VEOLIA shall not be liable for fines or civil penalties that result from violations that occurred prior to the Commencement Date of this Agreement (unless covered by the existing agreement between the parties) or are otherwise directly related to the ownership of the Project. Any violation that occurred prior to the Commencement Date of this Agreement will be covered by the terms and conditions of the then-existing Agreement between the parties in which time the violation occurred.

6.3. OWNER shall be liable for those fines or civil penalties imposed by any regulatory or enforcement agencies on OWNER and/or Veolia that are not a result of Veolia's breach, negligence or willful misconduct, or are otherwise directly related to the ownership of the Project, and shall indemnify and hold Veolia harmless from the payment of any such fines and/or penalties.

## 7. INSURANCE

7.1. VEOLIA shall provide the following insurances throughout the term of the Agreement, and shall provide to Owner Certificates of Insurance demonstrating compliance with this provision:

1. Statutory Worker's Compensation and Employers Liability Insurance as required by the State in which the Project is located.
2. Automobile Liability Insurance with Two Million Dollars (\$2,000,000) combined single limits covering claims for injuries to members of the public and/or damages to property of others arising from the use of VEOLIA owned or leased motor vehicles, including onsite and offsite operations.
3. Commercial General Liability Insurance with limits of Five Million Dollars (\$5,000,000) per occurrence and in the aggregate, covering claims for injuries to members of the public or damages to property of others arising out of any covered act or omission of VEOLIA or any of its employees, or subcontractors.
4. Pollution Liability Insurance with limits of Five Million Dollars (\$5,000,000) per occurrence and in the aggregate, covering operation of the wastewater treatment facilities only.

7.2. VEOLIA shall add Owner and Owner's elected officials, officers, and employees, as additional insured in VEOLIA's commercial general liability, automobile liability, excess/umbrella, and contractor's pollution liability policies.

7.3. VEOLIA's commercial general liability, automobile liability, employer's liability, excess/umbrella, and contractor's pollution liability policies will be primary and non-contributory to any other coverage available to Owner.

7.4. VEOLIA will provide at least thirty (30) days written notice to Owner prior to any cancellation, non-renewal or adverse material change in coverage required in Section 7 (except ten (10) days' notice for non-payment of premium).

7.5. Owner will maintain the following insurances throughout the term of the Agreement, and shall provide VEOLIA with Certificates of Insurance to demonstrate compliance with this provision:

7.5.1. Property Damage Insurance for all property including Owner supplied vehicles and equipment for the full fair market value of such property. Owner will obtain a waiver of subrogation in favor of Veolia and Veolia's insurers.

7.5.2. Liability Insurance for all motor vehicles and equipment provided by Owner and operated by VEOLIA under this Agreement.

## 7.6. Certificates of Insurance (“COI”).

7.6.1. The Parties shall provide a COI evidencing the required insurance policies, limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 7 and its subsections. COI will reference the project name as identified on the first page of this Agreement.

7.6.2. In the event the COI provided indicates that any required insurance will expire during the period of this Agreement, the party shall furnish, on or before the expiration date, a renewed COI as proof that equal and like coverage for the balance of the period of the Agreement and any extension thereafter has been procured and in effect.

7.6.3. In the event a COI evidencing the renewed coverage is not available prior to the policy renewal date, that party shall provide to the other party, within fifteen (15) days of the policy’s renewal date(s). The party shall furnish the insurance certificates to the other party immediately upon the first party’s receipt.

## 8. LABOR DISPUTES

In the event activities by Owner’s employee groups or unions causes disruption in VEOLIA’s ability to perform its obligations under this Agreement, Owner, with VEOLIA’s assistance, or VEOLIA at its own option, may seek appropriate injunctive court orders during any such disruption, VEOLIA shall operate the facilities on a best efforts basis until any such disruptions cease, but VEOLIA cannot assure compliance with all contract conditions.

## 9. UNFORESEEN CIRCUMSTANCES

Neither Party shall be liable for damages, delays, or failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstance beyond its reasonable control. The Party invoking this clause shall notify the other Party immediately by verbal communication and in writing of the nature and extent of the contingency within ten (10) working days after its occurrence, and shall take reasonable measures to mitigate any impact of an Unforeseen Circumstance.

In the case of Unforeseen Circumstances Owner agrees to pay any undisputed Costs incurred by VEOLIA in connection with the Unforeseen Circumstance. Before payment is made, VEOLIA shall provide the Owner with an itemized list of Costs and explanations. Any disputed costs will be reviewed and negotiated by both parties to determine final payment.

## 10. ACCESS TO FACILITIES AND PROPERTY

10.1. Owner will make its facilities accessible to VEOLIA as required for VEOLIA’S performance of its services, and will secure access to any other Owner property necessary for performance of VEOLIA’s services.

10.2. VEOLIA shall provide 24-hour per day access to Project for Owner’s personnel. Visits may be made at any time by any of Owner’s employees so designated by Owner’s Representative. Keys for the Project shall be provided to Owner by VEOLIA. All visitors to the Project shall comply with VEOLIA’s operating and safety procedures.

## 11. CONTRIBUTIONS TO THE INDUSTRIAL ACCIDENT FUND

VEOLIA shall pay all contributions or amounts due the Industrial Accident Fund from VEOLIA incurred in the performance of this Agreement, and shall ensure that all subcontractors pay those amounts due from the subcontractors. (ORS 2798.220)

## 12. LIENS AND CLAIMS

VEOLIA shall not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. (ORS 2798.220)

## 13. INCOME TAX WITHHOLDING

VEOLIA shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. (ORS 279B.220).

## 14. INDEPENDENT CONTRACTOR

14.1. VEOLIA is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Agreement. As an independent contractor, VEOLIA is not entitled to indemnification by Owner or the provision of a defense by Owner under the terms of ORS 30.285. This acknowledgment by VEOLIA does not affect its independent ability (or the ability of its insurer) to assert the monetary affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS 30.300).

14.2. Worker's Compensation Coverage. VEOLIA hereby certifies that it has qualified for State of Oregon Worker's Compensation coverage either as carrier-insured employer or as a self-insured employer. (ORS 279B.230).

## 15. MEDICAL CARE FOR EMPLOYEES

VEOLIA shall make payment of all sums to any person, co-partnership, association or corporation, furnishing medical, surgical and/or hospital care incident to the sickness or injury of VEOLIA's employee(s), all sums which VEOLIA agrees to pay for such services and all monies and sums which Owner collected or deducted from the wages of employees pursuant to any law, contract or contract for the purpose of providing or paying for such service. (ORS 279B.230).

## 16. SAFETY AND HEALTH REQUIREMENTS

VEOLIA shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division.

## 17. PAYMENT REQUIREMENTS (ORS 2798.220)

VEOLIA shall make payment promptly, as due, to all persons supplying to VEOLIA labor or material for the prosecution of the work provided for in this Agreement. (ORS 279B.220). If VEOLIA fails, neglects, or refuses to make a prompt payment of any claim for labor or services furnished to VEOLIA or a subcontractor, or by any person in connection with this contract as the claim becomes due, the Owner may pay the claim to the person furnishing the labor or services

and charge the amount of the payment against funds due or to become due to VEOLIA pursuant to this contract. The Owner's payment of a claim under this Section shall not relieve VEOLIA or VEOLIA's surety, if any, from responsibility for those claims.

## **18. HOURS OF WORK**

Veolia shall pay employees for overtime work performed under the terms of this Agreement in accordance with ORS 653.010 to ORS 653.261 and the Fair Labor Standards Act of 1938 (29 USC §201 et. seq.).

## **19. CHANGES**

Owner and VEOLIA may mutually make changes within the general scope of services of this Agreement. The contract price and schedule will be equitably adjusted pursuant to a written Change Order, Modification or Amendment to the Agreement executed by both parties.

## **20. NO THIRD PARTY BENEFICIARIES**

This Agreement gives no rights or benefits to anyone other than Owner and VEOLIA and has no third party beneficiaries.

## **21. JURISDICTION**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon.

## **22. SEVERABILITY AND SURVIVAL**

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

## **23. AUTHORITY**

Both Parties represent and warrant to the other Party that the execution delivery and performance of this Agreement has been duly authorized by the responsible parties thereof. Both parties warrant that all required approvals have been obtained and the executing Party below has such authority to bind the Party.

## **24. NOTICES**

All notices shall be in writing and delivered, mailed or e-mailed to each Party at the respective addresses written below. All notices shall be deemed given (i) if delivered personally or by messenger, upon delivery, (ii) if delivered or sent by overnight mail or overnight courier, on the scheduled day of delivery or such earlier time as is confirmed by the receiving Party, (iii) if sent by registered or certified first class mail, upon the sooner of the date on which receipt is acknowledged or the expiration of three (3) days after deposit in United States post office facilities properly addressed with postage prepaid, or (iv) if delivered or sent by e-mail, on the day of transmittal if transmitted during normal business hours or on the next business day if not transmitted during normal business hours. Notice of change of address shall be provided in the same manner, and such change shall not be deemed a modification or amendment to the Agreement.

Owner's Project Manager:  
 Mike Walker  
 Public Works Director  
 39250 Pioneer Blvd.  
 Sandy, OR 97055

Veolia's Project Manager:  
 Mike Greene, General Manager  
 10350 SW Arrowhead Creek Lane  
 Wilsonville, Oregon 97070

With Copies To:  
 Veolia Water North America-West, LLC  
 700 E. Butterfield Road, Suite 201  
 Lombard, IL 60148

Veolia Water North America-West, LLC  
 Attn: General Counsel  
 53 State Street, 14th Floor  
 Boston MA 02109

## **25. RECORDS**

VEOLIA agrees that Owner and its authorized representatives shall have access during normal business hours to all books, documents, papers and records that are directly related to the Project for the purpose of making any audit, examination, copies, excerpts and transcripts.

## **26. WORK IS PROPERTY OF OWNER**

All work, including but not limited to documents, drawings, papers, computer programs, photographs, and reports ("Deliverables"), performed or produced by VEOLIA under this Agreement shall be the property of Owner. VEOLIA may retain copies of said documents and materials as desired but will deliver all original materials to Owner upon Owner's written notice. Owner agrees that use of VEOLIA'S completed work product, for purposes other than identified in this Agreement, or use of incomplete work product, is at Owner's own risk. Except as provided by this Agreement, VEOLIA shall retain ownership of its business records and Owner shall have no right to view or obtain copies of such business records, except pursuant a subpoena lawfully issued by court of competent jurisdiction. Notwithstanding the foregoing, VEOLIA shall retain the right to use the ideas, concepts, know-how, and techniques derived from the rendering of the Deliverables, and VEOLIA shall be entitled to any and all protections afforded under state and federal statutory or common law with respect to any materials that were prepared, developed or used by VEOLIA prior to or outside the scope and course of completing the Services performed under the terms of this Agreement ("VEOLIA Intellectual Property"), and such VEOLIA Intellectual Property shall remain the intellectual property of VEOLIA and shall not be the property of Owner. In the event (and to the extent) that any Deliverable contains any items or elements that are VEOLIA Intellectual Property, VEOLIA grants to Owner an irrevocable, perpetual, royalty-free limited license to use, execute, display and/or perform such to the extent it is necessary to fulfill Owner's purposes under this Agreement.

VEOLIA shall maintain all records and accounts concerning the operation, maintenance and repair of the Project in accordance with generally accepted accounting principles. All such records and accounts shall be retained by VEOLIA and kept accessible for a minimum of three (3) years from the expiration or termination of this Agreement, except as required longer by law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

## **27. DUTY TO INFORM**

VEOLIA shall give prompt written notice to Owner's Project Manager if, at any time during the performance of this Agreement, VEOLIA becomes aware of actual or potential problems, faults or defects in the Project, any nonconformity with the Agreement, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by Owner. Any delay or failure on the part of Owner to provide a written response to VEOLIA shall constitute neither agreement with nor acquiescence in VEOLIA's statement or claim and shall not constitute a waiver of any of Owner's rights.

## **28. MEDIATION/TRIAL WITHOUT A JURY**

Should any Agreement-related dispute arise between the Parties, which does not involve claims made by or asserted against third parties, and if the dispute cannot be settled through negotiation in good faith, 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 non-binding mediation and only in the event said mediation efforts fail, then through litigation.

EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS.

The Parties shall exercise good faith efforts to select a mediator who shall be compensated equally by the Parties. Mediation will be conducted in Sandy, Oregon, unless the Parties agree in writing otherwise. Parties agree to exercise good faith efforts to resolve all Agreement-related disputes through the mediation process. If a 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 Clackamas County Circuit Court upon the request of either Party. The Parties shall retain all rights with respect to any dispute not covered by this Section. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties.

## **29. ENTIRE AGREEMENT**

This Agreement, together with all Appendices attached hereto, contains all representations and the entire understanding between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, or agreements, whether or not such correspondence, memoranda or agreements are in conflict with this Agreement, are intended to be replaced in total by this Agreement and its Appendices. The parties mutually declare there are no oral understandings or promises not contained in the Agreement which contains the complete, integrated, and final agreement between the parties.

Both parties indicate their approval of this Agreement by their signatures below, and each Party warrants that all corporate or governmental action necessary to bind the parties to the terms of this Agreement has been and will be taken.

Veolia Water North America-West, LLC

City of Sandy, Oregon

By:  \_\_\_\_\_

By:  \_\_\_\_\_

Title: Senior Vice President

Title: Kim Yamashita

Name: Keith Oldewurtel

Name: City Manager



APPENDIX A  
DEFINITIONS

- A.1. "Adequate Nutrients" means plant influent nitrogen, phosphorous, and iron contents proportional to BODs in the ratio of five (5) parts nitrogen, one (1) part phosphorous, and one-half (0.5) part iron for each one hundred (100) parts BODs.
- A.2. "Base Fee" means the compensation paid by Owner to VEOLIA for the base services defined in Appendix B of this Agreement for any year of the Agreement. The Base Fee is specified in Appendix E.1 and will be adjusted annually in accordance with Base Fee Formula specified in Appendix E.3. This compensation does not include payments for Requests by Owner that are incidental to or outside the Scope of Services.
- A.3. "Biologically Toxic Substances" means any substance or combination of substances contained in the plant influent in sufficiently high concentrations so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge requirements of Owner's NPDES permit. Biologically Toxic Substances include but are not limited to heavy metals, phenols, cyanides, pesticides, and herbicides.
- A.4. "BOD" means Biochemical Oxygen Demand over a five (5) day period.
- A.5. "Change in Law" means any of the following acts, events or circumstances to the extent that compliance with the change materially changes the Direct Cost of performing the work: the adoption, amendment, promulgation, issuance, modification, specifically changed by any local, state, federal or other governmental body. VEOLIA and Owner shall negotiate a mutually agreeable change in VEOLIA's Base Fee for any change in law which results in a significant change to the Direct Cost incurred to perform the scope of services. If the change results in a decrease in price, VEOLIA and Owner shall negotiate the change and apply a credit to the Base Fee.
- A.6. "Change in the Scope" are defined in Appendix B.4.
- A.7. "Commencement Date" shall mean March 1, 2019.
- A.8. "Cost" means the total of all Direct Cost and indirect cost determined on an accrual basis in accordance with Generally Accepted Accounting Principles (GAAP).
- A.9. "Direct Cost" means the actual cost incurred for the direct benefit of the Project, including but not limited to, expenditures for Project management labor, employee benefits, chemicals, lab suppliers, repairs, repair parts, maintenance parts, safety supplies, gasoline, oil, equipment rental, legal and professional services, quality assurance, travel, office supplies, other supplies, uniforms, telephone, postage, utilities, tools memberships and training supplies
- A.10. "Major Repairs" mean those Repairs that significantly extend equipment or facility service life and cost more than Two Thousand Dollars (\$2,000.00).
- A.11. "Preventive Maintenance" means those routine and/or repetitive activities required or recommended by the equipment or facility manufacturer or VEOLIA to maximize the service life of the equipment, sewer, vehicles, and facility.

A.12. "Project" means all equipment, vehicles, grounds, and facilities described in Appendix D and where appropriate, the operations, maintenance, and management of such.

A.13. "Repairs" means those non-routine/non-repetitive activities required for operational continuity, safety, and performance generally resulting from failure or to avert a failure of the equipment, sewer, vehicle, or facility or some component thereof. However, if the need for the repair is caused by VEOLIA negligent or misuse, such expenditure will not be a "repair" under this agreement, will not be deducted from the Repair Limit and will be VEOLIA's sole responsibility.

Scheduled replacement per manufacturer's recommendations of the following specific consumables shall not be considered Repairs and the cost for same (excluding labor for installation) shall be the responsibility of the City:

- Effluent disc filter media cloth covers
- Ultraviolet disinfection system lamps, ballasts, wipers and sleeves

A.14. "TSS" means total suspended solids.

A.15. "Unforeseen Circumstances" means an event or condition which has an effect on the rights or obligations of the parties under this Agreement, or upon the Project, which is beyond the reasonable control of the party relying thereon and constitutes a justification for a delay in or non-performance of action required by this Agreement, including but not limited to (i) an act of God, landslide, lightening, earthquake, tornado, fire, explosion, flood, failure to possess sufficient property rights, acts of the public enemy, war blockade, sabotage, insurrection, riot or civil disturbance or a pandemic event; (ii) labor disputes, strikes, work slowdowns or work stoppages, but excluding labor disputes, strike or work slowdowns or stoppages by employees of VEOLIA; (iii) the presence of Biologically Toxic Substances in the influent or the presence of hazardous wastes, materials or liquids in the influent or raw water supply, which detrimentally affect the machinery, infrastructure or processes at the Project; and (iv) loss of or inability to obtain service from a utility necessary to furnish power for the operation and maintenance of the Project.

**APPENDIX B  
SCOPE OF SERVICES**

VEOLIA SHALL:

**B.1. GENERAL**

- B.1.1. Subject to the Maintenance and Repairs Limit, alter as needed, the process and/or facilities to achieve the objectives of this Agreement; provided, however, that no alteration shall be without Owner's written approval if alteration shall cost in excess of One Thousand Dollars (\$1,000.00).
- B.1.2. Operate, maintain and/or monitor the Project such that the Project is staffed at least Monday through Friday, eight (8) hours per day and a reduced but sufficient number of hours per day (Saturday, Sunday, Holidays) as necessary to meet operational needs. VEOLIA shall be responsive to alarms and emergency calls 24 hours per day, 7 days per week, within one (1) hour of its occurrence. VEOLIA shall designate, as a minimum, one staff member as standby to respond to such calls.
- B.1.3. Staff the Project with a sufficient number of qualified employees who possess the managerial, administrative, and technical skills to perform the services specified in this Agreement, and where appropriate, the certification requirements mandated by the State.
- B.1.4. Pay all Costs incurred in normal Project operations except as otherwise included in Article 2 - Owner's Responsibilities.
- B.1.5. Perform Preventative Maintenance and Repairs for the Project, subject to the Repairs Limit.
- B.1.6. Maintain aesthetics of the facilities:
  - B.1.6.1. In general, maintain the WTP and WWTP site and grounds in a clean, neat, and orderly fashion to present a positive image of the facility and program.
  - B.1.6.2. Administrative and other occupied spaces shall be kept clean, dry, and habitable
  - B.1.6.3. Other spaces and floors shall be free of sewage, screenings, sludge, debris, etc.
  - B.1.6.4. Equipment, tools, and material will be properly stored
  - B.1.6.5. Trees and shrubs shall be kept trimmed, grass shall be maintained, and other grounds shall be free of noxious weeds
  - B.1.6.6. Maintain plant and site grounds at Hudson Rd. Pump Station and Revenue Ave. Reservoir per the scope of work and schedule in Appendix G. VEOLIA will present a plan for site and ground maintenance by April 1, 2019 with proposed costs. The plan will be agreed upon by both Parties, and the costs shall be billed to Owner in accordance Appendix E.1.1.3.
- B.1.7. Place at each permanently staffed Project facility, a copy of VEOLIA's Corporate Safety Program and provide all employees training specific to this Program, within forty-five (45) days from the Commencement Date of this Agreement. The cost of any capital improvement

required at the Project to bring the facilities within OSHA compliance will be paid by the Owner.

- B.1.8. Provide job related training for personnel in the areas including but not limited to operation, quality, maintenance, safety, supervisory skills, laboratory, and energy management. All such training shall be fully documented. Where employees are required by law or regulation to hold current licenses, certificates or authority to perform the work required of their respective positions, VEOLIA shall provide the training and agree with the employee to a reasonable time frame for the employee to qualify for such certificate, license or authority.
- B.1.9. In any emergency affecting the safety of persons or property, VEOLIA shall act without written amendment or change order, at VEOLIA's discretion, to prevent threatened damage, injury or loss; provided however, that VEOLIA shall obtain prior Owner approval for any emergency expenditure in excess of Five Thousand Dollars (\$5,000.00). VEOLIA will notify Owner as soon as reasonably possible and shall be compensated by Owner for any such emergency work notwithstanding the lack of written amendment or change order. VEOLIA will invoice Owner the amount mutually agreed to by the Parties for the emergency expenditure.
- B.1.10. Utilize Owner provided security devices during VEOLIA's hours of operation to protect against any losses resulting from theft, damage or unauthorized use of the Project. Existing security devices include: fencing, lockable structures, and limited intrusion alarm. Upon exiting the Project, VEOLIA shall make sure that all Project gates and structures are locked and that any security alarms are activated.
- B.1.11. Comply with all Federal and OR-OSHA regulations relating to bloodborne pathogens, confined space entry, fall protection, and any other applicable occupational health and safety requirements.
- B.1.12. Review the existing plant emergency action plan and provide an updated plan (if needed).
- B.1.13. VEOLIA shall provide Owner with a listing of any recommended Major Repairs that VEOLIA believes will be required for any of the facilities covered under the contract. Owner may choose to act on these recommendations upon review with Owner's Consulting Engineer. If Owner agrees with any of the recommendations provided, Owner shall attempt to budget for the necessary expenditure(s) in the next regularly scheduled biennial budget preparation cycle. However, VEOLIA shall not be relieved of its responsibilities to perform if the recommendations are not implemented and the City will be responsible for any fines, penalties or regulatory actions or consequences incurred if it can be demonstrated that such occurred as a result of these recommendations not being implemented. If VEOLIA believes the recommendation is necessary to perform its responsibilities and Owner continues to disagree, VEOLIA may terminate the Agreement pursuant to Section 4.3

## B.2. WASTEWATER TREATMENT PLANT

- B.2.1. Within the design capacity and capability of the Wastewater Treatment Plant (the "WW Plant"), manage, operate, and maintain the WW Plant so that effluent discharged from the WW Plant meets of the Clean Water Act and the requirements specified in NPDES Permit No. 102492 issued January 23, 2010 (copy attached), and other applicable/related permits issued by EPA, the State or local authorities, unless one or more of the following occurs: (1) WW Plant

influent does not contain Adequate Nutrients to support operation of the WW Plant's biological processes and/or contains Biologically Toxic Substances that cannot be removed by the existing processes and facilities; (2) dischargers into Owner's sewer system violate any or all regulations as stated in Section 13.12.080 of the Sandy Municipal Code; and (3) the flow, influent biochemical demand (BODs,) and/or total suspended solids (TSS) exceeds the WW Plant's design parameters that exceed the plants Maximum Allowable Headworks Loadings in which case Appendix C specifies responsibilities and remedies.

- B.2.2. Within the design capacity and capability of the WW Plant, operate the WW Plant in a manner such that odor and noise are minimized.
- B.2.3. Operate and maintain effluent filtration and UV disinfection systems. Replace disk filter media and UV system components per manufacturer's schedule
- B.2.4. Operate sodium hypochlorite disinfection system and recycled water pump station during land application season.
- B.2.5. Prepare and submit to appropriate agencies, all regulatory reports pertaining to routine operation and maintenance of the facilities specified herein. Veolia shall comply with all current local, State and Federal notice and reporting requirements, regarding violations, upsets, excursions, or emergencies related to the Plant.
- B.2.6. Assist the Owner with the NPDES permit renewal process by providing Project information within VEOLIA's possession and control. Any additional assistance requested by the Owner will be handled as a Change in Scope.
- B.2.7. Operate and maintain, to its design capacity and capability, the solids handling system, including polymer addition and pH adjustment, in compliance with the Bio-Solids handling plan and regulatory requirements.
- B.2.8. Provide hauling and disposal of screenings, grit, scum, sludges (including lime stabilized sludge cake), and biosolids (collectively, "Residuals") to existing disposal sites for land application. The Parties shall negotiate responsibility for additional costs associated with Residual removal due to unexpected loss of available permitted sites, or unforeseen mechanical failures which prohibit removal of solids from the facility to permitted sites. However, Veolia shall be solely responsible for costs that resulted from VEOLIA's negligent actions, inactions, or factors within VEOLIA's control; for example, unavailable truck drivers, repairs not completed in a timely manner, or similar.
- B.2.9. Where land application is used as the method for disposal of biosolids, VEOLIA shall comply with the State and Federal 40 CFR 503 regulations applicable to such method. Specifically, VEOLIA shall assist Owner in securing all permits and land use agreements, and perform soils and biosolids testing, and report the volume and quantity of biosolids land applied. VEOLIA may use the existing Owner secured permits and land application sites.
- B.2.10. Maintain positive working relationships with existing sludge disposal site owners and seek out new sludge disposal sites as needed.

- B.2.11. Provide computerized maintenance, process control and laboratory management systems for the Project and provide a monthly statistical summary of performance to Owner by the tenth (10th) of each month. Owner shall have the right to inspect these records during normal business hours. The maintenance program will include documentation of spare parts inventory. This system shall be capable of providing historical data.
- B.2.12. Perform all laboratory testing and sampling for process control and as currently required by the State and Federal Clean Water Act, NPDES permit NPDES referenced documents and all Federal or State issued permits. Develop, follow and maintain a QAJQC program for laboratory equipment processes and procedures and comply with all OR-OSHA and other applicable laboratory and chemical safe handling requirements. Additional laboratory testing and sampling requested by the Owner will be provided on a fee per test basis to be determined at the time of the request.
- B.2.13. Provide and document all Preventive Maintenance for the WW Plant. Owner shall have the right to inspect these records during normal business hours.
- B.2.14. Provide and document Repairs for the WW Plant. The Repairs Limit described in Appendix E shall not include the salary cost of VEOLIA's onsite personnel assigned to the project making such repair. However, due to the size, complexity, technical nature, or timing for completion of such repairs, VEOLIA may subcontract or provide VEOLIA personnel outside of the project to make such repairs and charge such services to the Repairs budget. VEOLIA will provide Owner with a monthly report on the expenditures of Repairs.
- B.2.15. Monitor wastewater pump station alarms reported to the WWTP SCADA computer and auto-dialer and convey this information to Owner personnel immediately. Owner and VEOLIA will develop a more detailed protocol for reporting and conveying this information after execution of the contract.
- B.2.16. Owner will be responsible for all power costs at the Wastewater Treatment Plant during the term of the Agreement. VEOLIA will be responsible for all other utility costs, (telephone, SCADA circuits, satellite internet) at the facility. The master water and wastewater SCADA computer is located at the water treatment plant and telephone lines are used for communications between the facilities. Solid waste disposal (trash and bar screenings) are collected by the Owner's solid waste franchisee at no cost to the project.

### B.3. WATER TREATMENT PLANT

- B.3.1. Within the design capacity and capability of the Water Treatment Plant (WTR Plant), manage, operate, and maintain the WTR Plant, as set forth in this Section B.3.1, so that finished water discharged from the WTR Plant meets the requirements specified by the State of Oregon and U.S. EPA for Public Water Systems and National Primary Water Treatment Regulations as required by the Safe Drinking Water Act and as outlined in Appendix C.
- B.3.1.1. For raw water sourced from Portland Water Bureau:

- Operate and maintain booster pumps;
- Set booster pump start/stop setpoints; and
- Operate and maintain Revenue Avenue transfer pumps including start/stop setpoints.

Operation and maintenance of the chemical feed system and the carbon filter stream is not included as part of the scope, and will be negotiated by the Parties at a later date.

**B.3.1.2. For the Alder Creek Water Treatment Plant:**

- Operate and maintain diversion dam and intake screens. Seasonally remove or install splash boards as necessary to provide positive suction head at raw water booster pump station;
- Operate and maintain raw water booster pump station and variable frequency drives;
- Operate and maintain streaming current monitors and chemical mixing and feed system.
- Operate and maintain clarifiers and filters; and
- Operate and maintain finished water pumps and set pump start/stop setpoints to maintain reservoir levels and adequate filter backwash water supply;
- Operate and maintain the on-site diesel generator, including all expendables (fuel, oil, etc.). Perform load bank testing at least bi-annually. This includes the diesel generator at the Terra Fern reservoir and pump station.

Maintenance of the underground piping of any diameter at this site will be performed by the Owner

**B.3.1.3. For Brownell Springs:**

- Operate and maintain chemical feed equipment;
- Maintain disinfectant inventory at the site by safely transporting and transferring small quantities of disinfectant to the site; and
- Maintain plant equipment, building and components.

Maintenance of the underground piping of any diameter at this site will be performed by the Owner

**B.3.1.4. For Hudson Road Booster Pump Station and Revenue Ave. Transfer Pump Station:**

- Operate and maintain the on-site diesel generator, including all expendables, (fuel, oil, etc.) at the Hudson Rd. site and the natural gas generator at Revenue Ave. site including all expendables. Perform load bank testing at least biannually. Owner will be responsible for natural gas service at the Revenue Ave. site.
- Maintenance of the underground piping of any diameter at this site will be performed by the Owner

B.3.1.5. VEOLIA shall be responsible for meeting potable water quality limitations established therein unless the raw water supply contains substances, materials or liquids contained in the raw water supply, which detrimentally affect the machinery, infrastructure or processes at the WTR Plant.

B.3.2. Assist the Owner with the disposal of Residuals to permitted disposal sites. Any Cost of this service due to permitting requirements, increased or unusual quantities of material, or increases in landfill rates, hauling costs, or tipping fees shall constitute a change in scope and give cause for an adjustment in fee. Owner and VEOLIA agree that Owner is the Generator of the Residuals.

B.3.3. Perform all laboratory testing and sampling currently required by the State and Federal Safe Drinking Water Regulations at the entry point and upstream as shown in Appendix V. Develop, follow and maintain a QA/QC program for laboratory equipment process and procedures. Comply with OR-OSHA and all applicable laboratory and chemical handling safety requirements. Additional laboratory testing and sampling requested by the Owner will be provided on a fee per test basis to be determined at the time of the request.

B.3.4. Provide and document all Preventive Maintenance for the WTR Plant. Owner shall have the right to inspect these records during normal business hours.

B.3.5. Provide and document Repairs for the WTR Plant. The Repairs Limit described in Appendix E shall not include the salary cost of VEOLIA's onsite personnel assigned to the project making such repair. However, due to the size, complexity, technical nature, or timing for completion of such repairs, VEOLIA may subcontract or provide VEOLIA personnel outside of the project to make such repairs and charge such services to the Repairs budget. VEOLIA will provide Owner with a monthly report on the expenditures of Repairs.

B.3.6. Provide and document Repairs for the WTR Plant in a mutually-agreed format by the tenth (10th) day of each month.

B.3.7. Provide monthly water production, peak day and regulatory compliance data by source in a mutually-agreed format by the tenth (10th) day of each month.

B.3.8. Owner will be responsible for all power costs at the Water Treatment Plant and associated sites during the term of the Agreement. VEOLIA will be responsible for all other utility costs, (telephone, SCADA circuits, satellite internet, solid waste disposal) at the facility. The master water and wastewater SCADA computer is located at the water treatment plant and telephone lines are used for communications between the facilities

#### B.4. SCOPE CHANGES



- B.4.1. A Change in Scope of services shall occur when and as VEOLIA's costs of providing services under this Agreement change as a result of:
- B.4.1.1. Any change in Project operations, personnel qualifications, required certification, staffing or other cost which is a result of an Unforeseen Circumstance. VEOLIA will invoice Owner the amount mutually agreed to by the Parties. The undisputed invoice will be due and payable by Owner commencing the month following when the Change in Scope occurs.
  - B.4.1.2. The current WWTP NPDES permit is being renewed. Any change in Project operations, personnel qualifications, required certification, staffing or other cost as a result of the issuance of new Permit or permit renewal shall constitute a Change in Scope. Increases or decreases of not less than ten percent (10%) in the Wastewater Plant influent flow or loadings, as set forth in Appendix C, as demonstrated by a twelve month floating average compared to the twelve month period ending on the Commencement Date of this Agreement. The Parties must mutually agree upon compensation for the Changes in Scope.
  - B.4.1.3. Increases or decreases of not less than ten percent (10%) in the Water Plant average daily production, as set forth in Appendix C, as demonstrated by a twelve month floating average compared to the twelve month period ending on the Commencement Date of this Agreement. VEOLIA will invoice Owner the amount mutually agreed to by the Parties. The undisputed invoice will be due and payable by Owner commencing the month following when the Change in Scope occurs. Owner's request of VEOLIA, and VEOLIA's consent, to provide additional services. Owner and VEOLIA shall negotiate an increase in VEOLIA's Base Fee for these Changes in Scope
- B.4.2. At any time, the Owner may request VEOLIA to provide support services for Owner's capital projects. In this case VEOLIA shall propose a scope of services, schedule and budget identifying direct costs and overhead/profit charges. VEOLIA shall not proceed with any such capital project services without express written authorization of Owner.

**APPENDIX C  
CAPACITY AND CHARACTERISTICS**

**C.1. CAPACITY AND CHARACTERISTICS OF WASTEWATER TREATMENT PLANT**

C.1.1. Wastewater Treatment Plant Design Capacity is described as follows:

Parameter	Plant
Flow, million gallons/day	1.25
BODs, pounds per day	2,220
TSS, pounds per day	2,330
Daily Peaking Factor	2.0

All parameters shall be based on the design average dry weather flow with the Daily Peaking Factor being the multiplier applied to the design average dry weather flow. VEOLIA will measure and update actual Plant Design Capacity within ninety (90) days of the Commencement Date and provide Owner in writing with any changes to this Section C.1.1.

C.1.2. In the event any one of the Project influent characteristics, suspended solids, BODs, or flow, exceeds the design parameters stated above, VEOLIA shall take commercially reasonable efforts to return the plant effluent to the characteristics required by the NPDES permit in accordance with the following schedule after Project influent characteristics return to within design parameters.

<u>Characteristics Exceeding Design Parameters By:</u>	<u>Recovery Period Maximum</u>
10% or Less	5 days
Above 10% Less than 20%	10 days
20% and Above	30 days

Notwithstanding the above schedule, if the failure to meet effluent quality limitations is caused by the presence of Biologically Toxic Substances or the lack of Adequate Nutrients in the influent, then VEOLIA will have a thirty (30)-day recovery period after the influent is free from said substances or contains Adequate Nutrients.

C.1.3. VEOLIA shall not be responsible for fines or legal action as a result of discharge violations within the period that influent exceeds design parameters, does not contain Adequate Nutrients, contains Biologically Toxic Substances, and the subsequent recovery period. Notwithstanding anything to the contrary, Owner retains all liability, fines or legal action as a result of discharge violations within the period that influent exceeds design parameters, does not contain Adequate Nutrients, contains Biologically Toxic Substances, and the subsequent recovery period.

C.1.4. The Base Fee for services under this Agreement is based on the following Project influent characteristics as determined by a 12 month average (January- December of previous year):

Parameter	Plant
Avg flow, million gallons/day	1.62
BODs, pounds per day	2,362
TSS, pounds per day	2,289

## C.2. RAW WATER QUALITY AND FINISHED WATER REQUIREMENTS OF WATER TREATMENT PLANT

C.2.1. The facilities shall be operated and maintained in accordance with all applicable federal, state and local regulations pertaining to water treatment, contaminant monitoring, and reporting. All analytical methods used to demonstrate compliance shall be in accordance with methods approved by the Owner and State Agencies, as applicable. In the event the parameter does not have a method approved by Federal and State Agencies, VEOLIA will utilize alternate test methods approved by EPA in 40 CFR, 141, Subpart C.

### C.2.2. System Demand

VEOLIA shall assume an average day demand (ADD) for water of 1.098 mgd and a peak daily demand of 1.79 mgd at the commencement of this agreement. VEOLIA acknowledges that the Owner has the right to demand up to 3.5 mgd (including 0.5 mgd from the Portland Water Bureau source) on any day and VEOLIA shall undertake, as and when needed, the necessary arrangements to assure that sufficient personnel are available to satisfy additional demand overtime. If Owner communicates any changes in the average daily demand for water as listed above, this will constitute a Change in Scope, and an appropriate adjustment of fee shall be negotiated.

The Base Fee is based on the assumption that the supply of raw water for treatment shall be Brownell Springs and Alder Creek. VEOLIA shall accept 500,000 gallons/day of treated water from the City of Portland source, but any additional costs to treat Portland Water or the impacts associated with Portland Water is not covered in this Scope.

C.2.3. VEOLIA shall be responsible for meeting the water treatment performance standards established in Appendix B and C, but shall not be responsible for events outside the control of VEOLIA, which include but are not limited to:

- C.2.3.1. Materials or liquids contained in the raw water supply, which detrimentally affect the machinery, infrastructure or processes at the Project;
- C.2.3.2. Raw water supply is insufficient to meet demand;
- C.2.3.3. The demand for water exceeds the design capacity of the facilities specified in Appendix C;
- C.2.3.4. Vandalism; and/or
- C.2.3.5. Unforeseen Circumstances.

C.2.4. The estimated cost for services under this Agreement is based on an average day demand (ADD) of 1.098 mgd. Any change of ten percent (10%) in the average daily production based upon the prior calendar year (January–December of previous year) will constitute a Change in Scope.

Temporary increases in water production necessitated by equipment failure or to recover low reservoir levels shall not be included in these calculations.

**APPENDIX D  
LOCATION OF PROJECT**

VEOLIA agrees to provide the services necessary for the operation, maintenance, and management of the facilities described herein:

- D.1. All equipment, grounds, and facilities now existing within the current property boundaries of or being used to operate Owner's Wastewater Treatment Plant located at:

Wastewater Treatment Plant, 33400 SE Jarl Rd

- D.2. All equipment, grounds, and facilities now existing within the current property boundaries of or being used to operate Owner's Water Treatment Plant located at:

Facility	Address
Alder Creek Water Treatment Plant	52500 Hwy 26
Terra Fern Rd. Reservoir and Pump Station	51515 Terra Fern Dr.
Brownell Springs	48205 SE Dowling Rd.
Sandercock Reservoir	44334 Sandercock Ln.
Vista Loop Rd. Reservoir	41225 SE Vista Loop Dr.
Hudson Road Booster Pump Station	39175 Hudson Road
Revenue Avenue Reservoir and Transfer Station	17160 Revenue Ave.

APPENDIX E  
COMPENSATION, PAYMENT AND BASE FEE ADJUSTMENT FORMULA

E.1. COMPENSATION

E.1.1. Calculation of Compensation

- E.1.1.1. Owner shall pay to VEOLIA as compensation for services performed under this Agreement a Base Fee of **Five Hundred Fifty-Four Thousand Three Hundred Seventy-Six Dollars (\$554,376)** for the Wastewater Services and **One Hundred Eighty-Two Thousand Nine Hundred Twenty-Two Dollars (\$182,922)** for the Water Services for the first year of this Agreement. Subsequent years' base fees shall be determined as specified in Appendix E.3. The Base Fee includes the following cost incurred for the direct or indirect benefit of the Project: expenditures for Project management labor, employee benefits, chemicals, lab supplies, safety supplies, gasoline, oil, equipment rental, legal and professional services, quality assurance, travel, office supplies, other supplies, uniforms, telephone, postage, utilities (excluding electricity, which shall be paid by Owner), tools, memberships, training and training supplies. The Base Fee is based on the assumption of treatment at the existing wastewater plant listed in Appendix D.2 and the characteristics listed in Appendix C.1.4. Any limitations on these expenditures as set forth in Appendix E.1.2.
- E.1.1.2. Owner expects to commence construction of an expansion to the existing WWTP during the term of this agreement. Owner will involve and consult with VEOLIA operations staff during planning and design of the new facilities. Additional labor or other costs attributable to construction of new WWTP facilities can be expected. Owner and VEOLIA will negotiate a Change in Scope for any additional services or expenses resulting from construction. Once a new wastewater plant has been constructed and completed acceptance testing and is online, the Parties agree to renegotiate the Base Fee.
- E.1.1.3. The services provided under this Agreement assume overtime for normal breakdowns or services required after hours. Any additional expenses including straight or overtime wages caused by Unforeseen Circumstances will be billed to the Owner for reimbursement. All additional expenses for water or wastewater treatment services shall be tracked and invoiced separately.

E.1.2. Limitations

- E.1.2.1. The total amount VEOLIA will be required to pay for Repairs and Maintenance will not exceed the annual Repairs Limit of Thirty Thousand (\$30,000.00) for the Wastewater services and Twenty Five Thousand (\$25,000.00) for the Water Services for the contract year identified under Appendix E.1.1 All repairs over \$2,000.00 will be deducted from the Repair Limit for the respective facilities.
- E.1.2.2. VEOLIA will bill the Owner for repairs over \$2,000 should the Repair Limit for a facility be exceeded prior to the end of the contract year or the Owner may choose to complete these repairs. Repairs (including labor) below the \$2,000 limit will be considered incidental to the project and included in the Base Fee. VEOLIA shall provide Owner with a detailed invoice of Repairs over the annual Repairs Limit,

and Owner shall pay VEOLIA for all Repairs performed by VEOLIA in excess of such limit. Any loss, damage or injury resulting from Owner's failure to provide for Repairs in excess of the Repairs Limit shall be the sole responsibility of Owner. VEOLIA shall rebate to Owner the entire amount that the cost of Repairs is less than the annual Repairs Limit. VEOLIA will ask for Client consent before any Repair expenditure over \$5,000.00

E.1.2.3. Repairs charged to the Repair Limit shall not include labor costs for VEOLIA personnel assigned to the Sandy project. Repairs charged to the Repairs Limit using VEOLIA staff not assigned to the Sandy project may include labor costs.

E.1.2.4. The repair or replacement budget shall be used for individual repairs on discrete pieces of equipment or process components. Repair expenses related to discrete failure events or separate and unrelated pieces of equipment not required to make a piece of equipment operable may not be aggregated or combined in order to surpass the \$2,000 threshold.

E.1.2.5. Any loss, damage or injury resulting from VEOLIA's negligence, misconduct or negligent maintenance shall be the sole responsibility of VEOLIA

#### E.1.3. Changes in Compensation

E.1.3.1. The Base Fee will be adjusted annually using the Base Fee Adjustment Formula shown in Appendix E.3, with an annual escalation not to go below two percent (2%) or exceed five percent (5%). Upon each contract year renegotiation, VEOLIA shall continue to invoice Owner at the previous amount until written agreement between the Parties as to the new contract year Base Fee, upon which VEOLIA shall issue an invoice retroactively adjusting the previous contract year Base Fee amount

E.1.3.2. The Parties will negotiate the Repairs Limit each year, three (3) months prior to anniversary of the Commencement Date hereof in accordance with Appendix E.1.3.1. Should Owner and VEOLIA fail to agree, the Repairs Limit will be determined by the prior year's Repairs Limit Amount plus application of the Consumer Price Index (CPI) component of the Base Fee Adjustment Formula shown in Appendix E.3.

E.1.3.3. The Parties will negotiate compensation for Changes in Scope in accordance with Appendix B.

#### E.2. PAYMENT OF COMPENSATION

E.2.1. One-twelfth (1/12th) of the Base Fee for the current year and any charges against the repairs limit occurring in the subject month be invoiced on the first of the month for each month that services are provided. Repairs will be reconciled quarterly.

E.2.2. Invoices, (including repairs expenses and out-of-scope services) for services at the Plant shall be identified as such on the invoice. Invoices, (including repairs expenses, and out-of-scope services) for services at the WTR Plant shall be identified as such on the invoice.

- E.2.3. All other compensation to VEOLIA is due on receipt of VEOLIA's invoice and payable within thirty (30) calendar days, unless disputed by Owner.
- E.2.4. All payments due Owner under Section E.1.2 above shall be due and payable within ninety (90) days following the end of the applicable contract year.
- E.2.5. Owner shall pay interest at an annual rate equal to 8% or such other percentage as may be allowed by statute, said amount of interest not to exceed any limitation provided by law, on payments not paid and received within thirty (30) calendar days, such interest being calculated from the due date of the payment.
- E.2.6. In the event of a contested billing, Owner may only withhold the contested portion from payment. The Owner will pay Veolia the undisputed portion in accordance with Appendix E.2.2.

### E.3. BASE FEE ADJUSTMENT FORMULA

$$ABF = BF \times AF$$

Where:

ABF = Adjusted Base Fee

BF = Base Fee specified in Appendix E.1.1

AF = Adjustment Factor as determined by the formula:

$$[((ECI).70 + (CPI).30)] + 1.02$$

Where:

ECI = The twelve month percent change (from the third quarter of the prior year to the third quarter in the current year) in the Employment Cost Index for Total Compensation for Private Industry Workers in the Pacific Census Division as published by U.S. Department of Labor, Bureau of Labor Statistics in the Detailed Report Series ID: CIU201000000249I.

CPI = The twelve month percent change (from September of the prior year to September of the current year) in the Consumer Price Index for All Urban Consumers: Water and Sewer and trash collection services (CUUR0000SEHG01) but not less than zero (0%).

APPENDIX F  
PROJECT VEHICLES AND EQUIPMENT

The Project includes all vehicles, rolling stock, and other equipment as follows:

Year	Make	Model/Description	Equipment/Vehicle ID No.
2002	Ford	1/2T 4x4 PU	
1994	Ford	C-9000 sludge spreader	
xxxx	Kubota	R 420 wheel loader	



## Appendix G

### HUDSON ROAD BPS AND REVENUE AVE. TPS LANDSCAPE MAINTENANCE REQUIREMENTS AND SPECIFICATION

#### SECTION A - SUMMARY

1. Contractor shall furnish all labor, tools, material and equipment required to maintain landscaped areas per the following sections during the term of the Agreement.
2. Contractor shall determine the number and frequency of visits required to maintain the landscaping per the specifications. It is assumed that the frequency of visits will vary depending on the season.
3. Project areas are shown on the attached landscape plans. Each site plans shows the tree, plant and shrub species on the sites. There is an irrigation plan for the Revenue Ave. site but not for the Hudson Rd. site. Manuals for the irrigation systems and irrigation programs are available at each site.

#### SECTION B - HERBICIDE PROGRAM

1. All herbicides shall be applied by or under the supervision of a currently licensed herbicide applicator. Notify the City of herbicide application type and schedule prior to seasonal application. Submit a record of rates, quantities and types applied conforming to Federal, State and Local regulations and submit copy to City.

#### SECTION C - PRODUCTS

Fertilizer, when required shall be Webfoot Organic deluxe 10-10-5 or Webfoot 5-15-10 cottonseed meal based fertilizer.

#### SECTION D - EXECUTION

**Fertilizing trees:** Fertilize individual trees or shrubs located outside of planting beds on an as-needed basis based on tree/shrub vigor or appearance.

**Weeding:** Planting beds are shown on the landscape sheets. Maintain clean, weed-free planting beds by pulling and removing all weeds from beds. Check beds for weeds at each scheduled mowing and during all other visits. Dispose of weeds removed off-site in an approved manner.

Weed other areas at each site per Section 6.

**Pruning:** Prune to shape plantings as needed or to conform to the natural growth patterns of each species. Remove all dead and diseased wood from the plantings.

**Mulching:** Maintain a two-inch mulch of sterile, commercial garden mulch (no

bark dust) on planting beds at all times. This includes the areas on both sides of the access drive outside the gate at the Revenue Ave. site. First application of new mulch shall be on or before April 1<sup>st</sup> of even-numbered contract years thereafter. Rake existing mulch in spring before applying new cover in order to break "crust" of old mulch.

**NOTE:** The access drive and parking areas at the Revenue Ave. and Hudson Rd. sites are made of permeable asphalt. No materials (mulch, sand, topsoil, etc.) may spilled, placed or stored on this surface.

**Spraying:** Spraying shall only be performed by a currently licensed applicator.

**Watering:** Per specified irrigation program. One-inch per week is sufficient during the growing season on established plantings. For areas watered with drip irrigation adjust watering as needed to maintain a one-inch per week equivalent. Contractor is encouraged to suggest changes to the irrigation schedule in order to conserve water and maintain landscape health. Review any changes to irrigation schedule with City prior to implementation.

Winterize irrigation system no later than November 1<sup>st</sup> of each year (earlier if threat of freezing weather exists) and start up irrigation system by June 1<sup>st</sup> (earlier if unusually warm or dry weather exists) of each year.

**Debris, clippings and trimmings:** Remove all debris, clippings and trimmings from weeding, pruning and general clean-up operations and dispose of in a legal manner off-site.

**Dead or dying plant materials:** Notify City of any damaged, dead or dying plant materials.

### **Field Grass / Low Wildflower Mix Maintenance**

Field Grass / Low Wildflower Mix areas are identified on the landscape plan. The seed mix at the Hudson Rd. site consists of Pro-Time PT 706 mix. The seed mix at the Revenue Ave. site consists of Pro-Time PT 710 mix. Neither site requires mowing however, cutting with a weed eater or string trimmer during the growing season is necessary when the height is greater than 6" - 8". Typically, this is twice annually, once in the spring and once again in June or July.

Selectively apply herbicide weed control by a licensed applicator sufficient to control invasive broadleaf weeds and grasses. Employ hand weeding methods where herbicide application would damage wildflowers or grasses.

Utilize clean, sharpened cutting equipment, free of bacteria, fungus, chemicals, etc. prior to use on project site. Collect clippings from cutting operations and dispose of in a legal manner off-site.

### **Water Quality Facility Area**

The Revenue Ave. site includes a water quality facility approximately 500 sq. ft.

in area. Do not mow water quality facility areas. Trim/prune native plants, sedges groundcover and grasses as needed. Do not apply herbicides in water quality facility areas. Remove weeds by hand only. Apply mulch as necessary until groundcover has filled in the pond side slopes.

Keep area around pond inlet and outlet piping clear.

Monitor runoff conditions in water quality facility; notify City of drainage or erosion problems.

### **Access Drive and Parking Areas**

The access drive and parking areas at the Revenue Ave. and Hudson Rd. sites are made of permeable asphalt. No materials (mulch, sand, topsoil, etc.) may spilled, placed or stored on this surface.

Police and sweep pedestrian walkways after mowing and during leaf season to maintain clean, safe surfaces, remove accumulated clippings and plant debris from walkways and entrances. Clean any paved surfaces soiled by landscape maintenance operations.

### **Weed Eradication**

Weed eradication shall include eradication by herbicide and non-herbicide methods (hand-pulling, mechanical cutting, etc.). Weed eradication program shall include but is not limited to the following noxious species:

- Cirsium arvense (Canadian Thistle)
- Convolvulus spp. (Morning Glory)
- Cytisus scoparius (Scots Broom)
- Dipsacus sylvestris (Common Teasel)
- Eichornia crassipes (Water Hyacinth)
- Festuca arundinaceae (Tall Fescue)
- Hedera helix (English Ivy)
- Holcus lanatus (Velvet Grass)
- Lolium spp. (Rye Grasses)
- Lotus corniculatus (Bird's Foot Trefoil)
- Lythrium salicaria (Purple Loose Strife)
- Melilotus spp. (Sweet Clover)
- Myriophyllum spicatum (Eurasian Milfoil)
- Phalaris arundinaceae (Reed Canary Grass)
- Rubus discolor (Himalayan Blackberry)
- Solanum spp. (Nightshade)
- Trifolium spp. (Clovers)
- Vicia spp. (Vetches)

Herbicide application shall be by manual 'spot spraying', wicking, or backpack methods per manufacturer's specifications. Herbicide use in waterways or swale areas shall be subject to approval by City and be strictly applied per manufacturer's recommendations.

Selective hand removal by non-herbicide methods shall be utilized if herbicide application threatens native plantings. All native plantings damaged by herbicide application shall be replaced immediately at no cost to City.  
Protect the site and waterways at all times from erosion and siltation.

### **Irrigation System Inspection and Maintenance**

The Contractor shall irrigate to maintain all plantings in a healthy, thriving condition.

Start irrigation when plants require supplemental water due to dry weather during the active growing season.

Flush and winterize system by November 1<sup>st</sup> of each year or earlier if weather exhibits threat of freezing. Verify that system is free of water in all components subject to freeze damage.

City will be responsible for backflow device testing on the irrigation systems at each site.

Adjust nozzles, heads, emitters and valves to provide consistent water application avoiding over or under-watering throughout native planting areas. Contractor is encouraged to suggest changes to the irrigation schedule in order to conserve water and maintain landscape health. Changes to irrigation system schedule must be reviewed and approved by City.

Notify City of irrigation system problems that cannot be addressed by adjustment or replacement of heads or emitters.

-----End Specification Section-----

**PLANT LIST**

SYMBOL	SCIENTIFIC NAME	COMMON NAME	SIZE	SPACING	QUANTITY
EV	EVERGREEN TREES				
FR	FRASER FIR	FRASER FIR	6'-8" B&B	10' OC	16
LY	LEWIS AND CLARK CYPRUS	LEWIS AND CLARK CYPRUS	6'-8" B&B	10' OC	17
PS	PSUEDOTSUGA MENZIESII	DOUGLAS-FIR	10'-12" B&B	20' OC	17
EX	EXCELSA RED CEDAR	EXCELSA RED CEDAR	6'-8" B&B	8' OC	19
WA	WATSONG CEDAR	WATSONG CEDAR	6'-8" B&B	8' OC	27
WH	WESTERN HEMLOCK	WESTERN HEMLOCK	10'-12" B&B	20' OC	11
VM	VINE MAPLE (CLUMP)	VINE MAPLE (CLUMP)	5 OC	AS SHOWN	14
BM	BIGLEAF MAPLE	BIGLEAF MAPLE	5 OC	AS SHOWN	6
GV	GREEN ARBOR VITAE	GREEN ARBOR VITAE	5'-8" B&B	3' OC	28
GR	GOLDEN ARBOR VITAE	GOLDEN ARBOR VITAE	5'-8" B&B	5' OC	54
CR	CRINKLE-LEAF CREEPER	CRINKLE-LEAF CREEPER	4" POT	36" OC	1,000
EC	ECLAWN	ECLAWN			
SE	SEED MIX A - ECLAWN	SEED MIX A - ECLAWN			
SM	SUNSHINE "FOX PLUS" MIX	SUNSHINE "FOX PLUS" MIX			
SE	SEED AT A RATE OF 100 LBS/ACRE	SEED AT A RATE OF 100 LBS/ACRE			
SE	SEED MIX B - EROSION CONTROL	SEED MIX B - EROSION CONTROL			
RE	"REGEN" - STERILE WINTER WHEAT	"REGEN" - STERILE WINTER WHEAT			
SE	SEED AT A RATE OF 90 LBS/ACRE	SEED AT A RATE OF 90 LBS/ACRE			
ET	EXISTING TREES TO REMAIN	EXISTING TREES TO REMAIN			
EX	EXISTING TREES TO BE REMOVED	EXISTING TREES TO BE REMOVED			

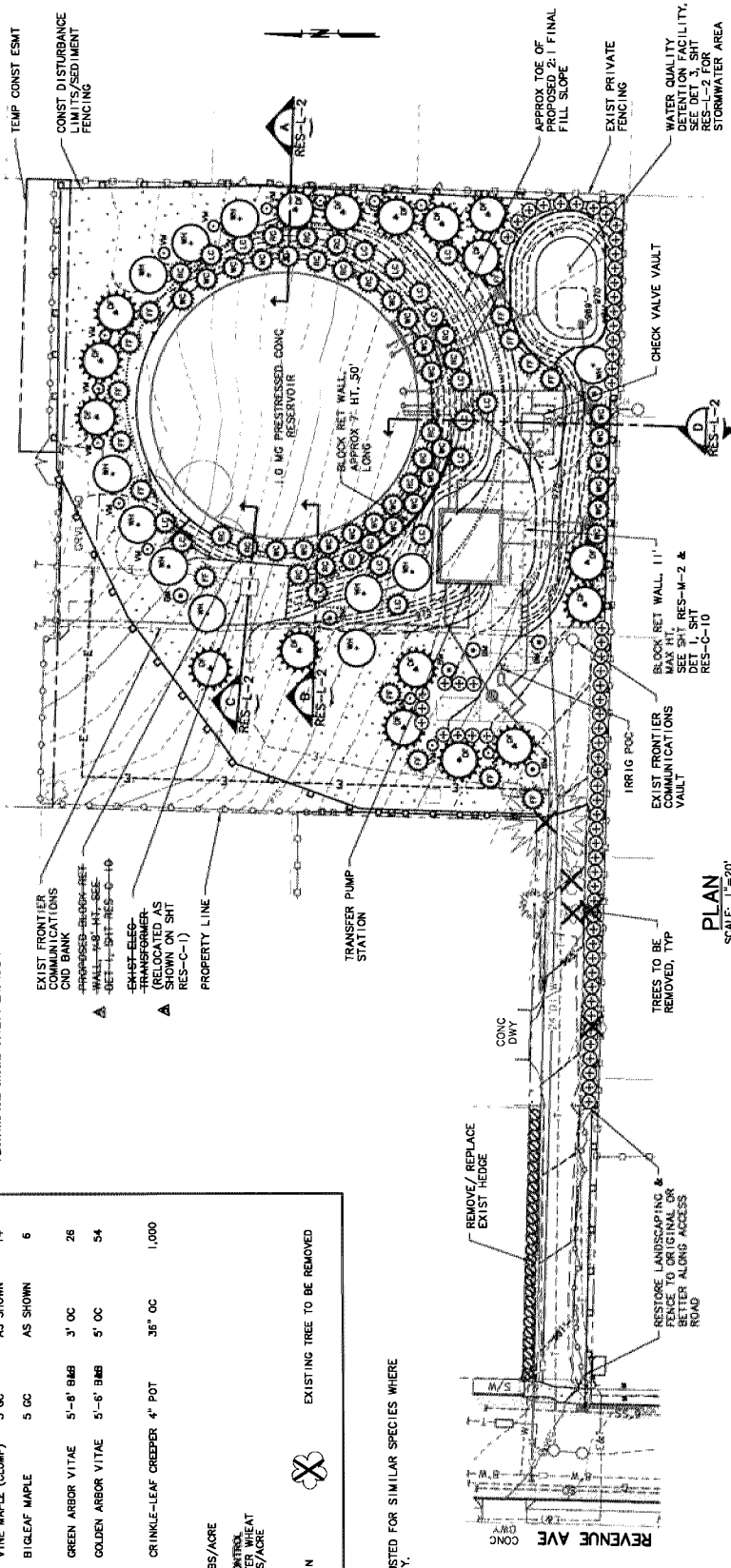
NOTE: LANDSCAPING WAS ADJUSTED FOR SIMILAR SPECIES WHERE REQUIRED DUE TO AVAILABILITY.

**NOTES**

- LANDSCAPE SITE WORK:**
- REMOVE EXISTING TREES PERMITTED TO REMAIN FROM ALL CONSTRUCTION OPERATIONS. DO NOT ENCROACH UPON, FILL, OR OTHERWISE DISTURB THE AREA WITHIN THE DRIPLINE OF TREES TO BE PRESERVED.
  - STOCKPILED TOPSOIL IS AVAILABLE FOR USE IN LANDSCAPE WORK. SURGRADE SOIL NOT ACCEPTABLE FOR USE IN PLANT PITS OR BEDS.
  - JOE MATTING TO BE INSTALLED ON ALL SLOPES 2:1 AND STEEPER.
  - SEED MIX B (SEE SCHEDULE B) TO BE APPLIED TO ALL AREAS TO BE PLANTED. SEED MIX A (SEE SCHEDULE A) TO BE APPLIED TO PLANTING AREAS. SEPARATE JOE MATTING STRANDS TO PLANT GROUND COVER.
- IRRIGATION:**
- DESIGN, PROVIDE, AND INSTALL AUTOMATIC IRRIGATION SYSTEM TO MEET INDUSTRY STANDARDS. SUBMIT PROPOSED SYSTEM LAYOUT TO ENGINEER AND OWNER FOR REVIEW.
  - VERIFY CONDITIONS AND DIMENSIONS PRIOR TO STARTING WORK. NOTIFY ENGINEER OF CONDITIONS THAT ARE A HINDRANCE TO COMPLETING WORK.
  - MAKE NECESSARY ADJUSTMENTS AND PROVISIONS FOR SLOPE CONDITIONS SO SYSTEM PERFORMS OPTIMALLY. ALL TREE PLANTING AND GROUND COVER AREAS ARE TO BE IRRIGATED.

**PLANTING**

- CHECK AND CONFIRM PLANT MATERIAL QUANTITIES. NO SUBSTITUTIONS WILL BE ALLOWED. CONTRACTOR TO SECURE AVAILABILITY OF PLANT MATERIALS SIX MONTHS PRIOR TO COMMENCEMENT OF WORK.
- PLANT TREES AND SHRUBS IN LOCATIONS SHOWN SPACED TO COMPLETELY FILL BEDS WITH THE QUANTITIES INDICATED IN THE PLANT LIST. RETAIN ALL LABELS ON PLANT MATERIAL UNTIL FINAL ACCEPTANCE.
- A WYDORHIZAE ADDITIVE IS REQUIRED FOR ALL SEEDING AND PLANTING.
- 60% CONIFER TREES PLANTED ON SLOPES AS SHOWN IN DETAIL.
- ALL TREES AND SHRUBS TO BE INSTALLED WITH GUARDS AS DETERMINED TO PROTECT FROM DAMAGE. GUARDS TO BE REMOVED PRIOR TO PLANTING. TREES OR SHRUBS WITH STAKE FASTENERS SHALL BE PROTECTED WITH ANIMAL GUARD.
- METHOD OR PRODUCT FOR REVIEW PRIOR TO PLANT INSTALLATION.
- MULCH ALL NEW PLANTING BEDS AND MINIMUM 24-INCH DIAMETER AROUND EACH TREE WITH 3" DEPTH COMPOSTED GARDEN MULCH PRODUCT BARK CHIPS OR BARK DUST ARE NOT ACCEPTABLE.
- GUARANTEE GERMINATION OF SEED PRIOR TO OCTOBER 1. PREFERRED PLANTING SEASONS ARE MARCH 15 TO JUNE 1 AND SEPTEMBER 15 TO NOVEMBER 1.
- PLANT MATERIAL WILL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD AND GUARANTEED AFTER COMPLETION OF THE PROJECT FOR A PERIOD OF 2 YEARS.



**PLANTING**  
SCALE: 1"=20'

**RECORD DRAWING**  
SEE DISCLAIMER, SHEET 1, VERSION 4.1, 12-9-97

**DESIGNED:** SD  
**CHECKED:** SD

**DATE:** 11/29/12  
**BY:** [Signature]

**REVISIONS:**

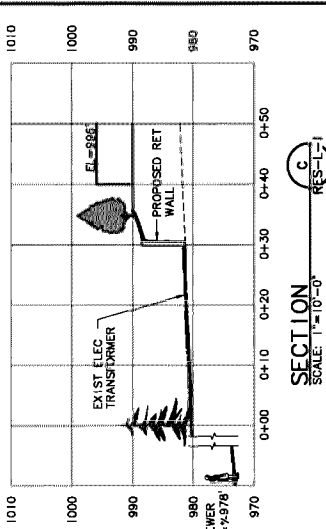
NO.	DATE	BY	REVISION
1	11/29/12	SD	RECORD DRAWING
2			APPENDIX 2

**MSA**  
Murray Smith & Associates, Inc.  
Engineers/Planners  
100 S. 1st Avenue, Suite 200  
Portland, Oregon 97204  
TEL: 503-252-9622  
FAX: 503-252-9622

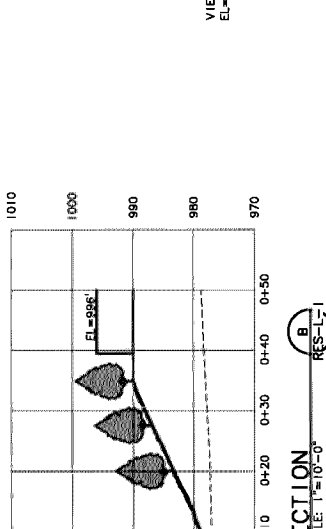
**CITY OF GANDY**  
**PWB INTERMEDIATE PROJECT**  
**SCHEDULE B**  
**1.0 MG RESERVOIR AND**  
**TRANSFER PUMP STATION**

**RES-L-1**

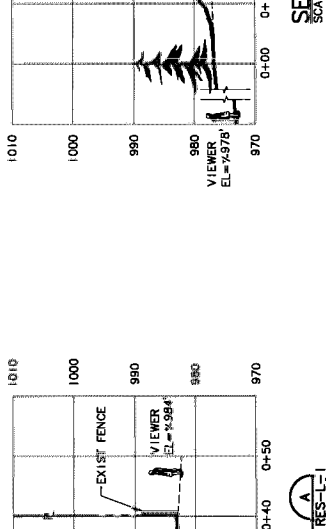
PROJECT NO.: 11-1-026  
SCALE: AS SHOWN  
DATE: NOVEMBER 2012



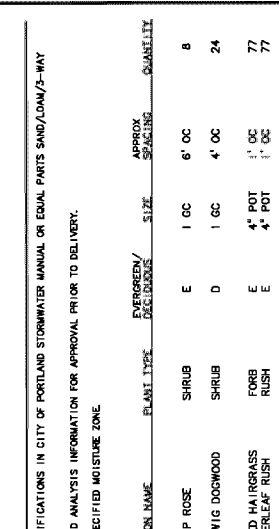
SECTION A  
SCALE: 1"=10'-0"  
RES-L-1



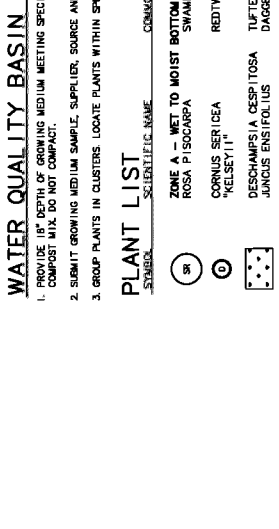
SECTION B  
SCALE: 1"=10'-0"  
RES-L-1



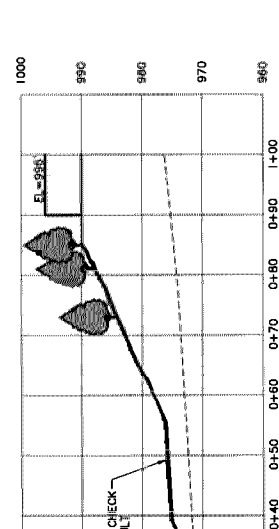
SECTION C  
SCALE: 1"=10'-0"  
RES-L-1



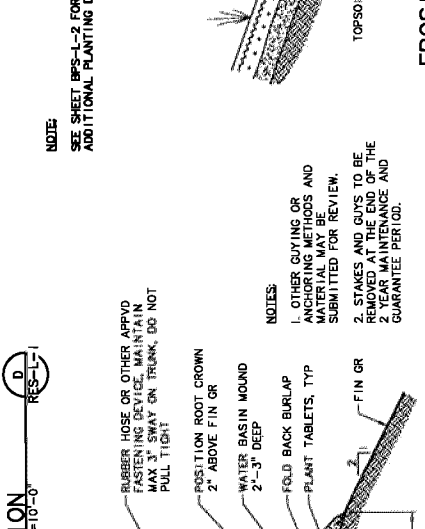
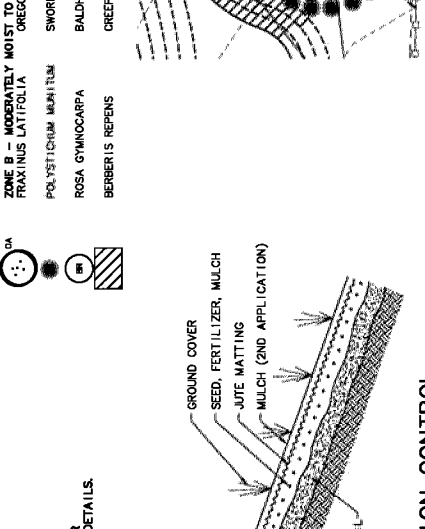
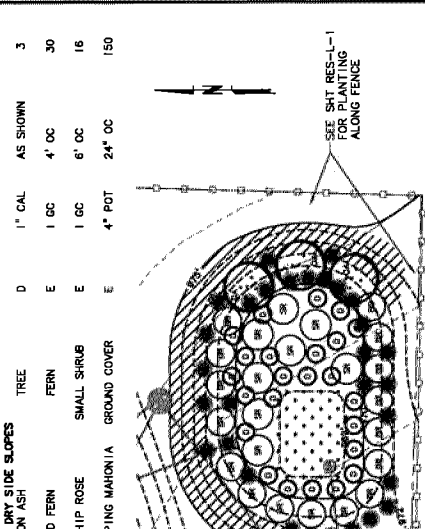
SECTION D  
SCALE: 1"=10'-0"  
RES-L-1



SECTION E  
SCALE: 1"=10'-0"  
RES-L-1



SECTION F  
SCALE: 1"=10'-0"  
RES-L-1



**WATER QUALITY BASIN**

1. PROVIDE 1/4" DEPTH OF GRANULAR MEDIUM MEETING SPECIFICATIONS IN CITY OF PORTLAND STORMWATER MANUAL OR EQUAL PARTS SAND/LUM/2-WAY COMPOST WITH 0% FINE PARTICLES.

2. SUBMIT GROWING MEDIUM SAMPLE, SUPPLIER, SOURCE AND ANALYSIS INFORMATION FOR APPROVAL PRIOR TO DELIVERY.

3. GROUP PLANTS IN CLUSTERS LOCATE PLANTS WITHIN SPECIFIED MOISTURE ZONE.

**PLANT LIST**

SYMBOL	SCIENTIFIC NAME	COMMON NAME	PLANT TYPE	PERMANENT/TEMPORARY	SIZE	APPROX QUANTITY
BR	ZONE A - WET TO MOIST BOTTOM					
○	ROSA PISDARPA	SWAMP ROSE	SHRUB	E	1 GC	6' OC
○	CORNUS SERICEA	REDTWIN DOGWOOD	SHRUB	D	1 GC	4' OC
○	DESCHAMPSIA CAESPITOSA	TUFTED HAIRGRASS	FORB	E	4" POT	1' OC
○	JUNCUS ENSIFOLIUS	DAGGERLEAF RUSH	RUSH	E	4" POT	1' OC
○	ZONE B - MODERATELY MOIST TO DRY SIDE SLOPES					
○	FRAXINUS LATIFOLIA	OREGON ASH	TREE	D	1" CAL	AS SHOWN
○	POLYPODIUM MUNITUM	SWORD FERN	FERN	E	1 GC	4' OC
○	ROSA GYMNOCARPA	BALDHIP ROSE	SHRUB	E	1 GC	6' OC
○	BERBERIS REPENS	CREeping MAHONIA	GROUND COVER	E	4" POT	24" OC

**EVERGREEN TREE PLANTING ON SLOPES**  
SCALE: 1"=10'-0"  
RES-L-1

**EROSION CONTROL MATTING INSTALLATION**  
SCALE: 1"=10'-0"  
RES-L-1

**WATER QUALITY BASIN**  
SCALE: 1"=10'-0"  
RES-L-1

**NOTE:**  
SEE SHEET BRP-L-2 FOR ADDITIONAL PLANTING DETAILS.

**NOTES:**  
1. OTHER GUYING OR ANCHORING METHODS AND SUBMITTED FOR REVIEW.  
2. STAKES AND GUYS TO BE REMOVED AT THE END OF THE GUARANTEE PERIOD.

**RECORD DRAWING**  
SEE DISCUSSION SHEET 1, VERSION 4.1  
12-9-97

**NOTICE**  
IF THIS BAR DOES NOT MATCH THE DRAWING, IT IS NOT TO SCALE

**REVISION**

NO.	DATE	BY	REVISION
1	06/14	JPF	RECORD DRAWING
2	11/26/13	DAM	ADDENDUM 2

**CITY OF SANDY PWB INTERTIE PROJECT SCHEDULE B 1.0 MG RESERVOIR AND TRANSFER PUMP STATION**

**RESERVOR SITE LANDSCAPING SECTIONS AND DETAILS**

RES-L-2

PROJECT NO. 11-1222 SCALE: AS SHOWN DATE: NOVEMBER 2013

10

Item # 3.





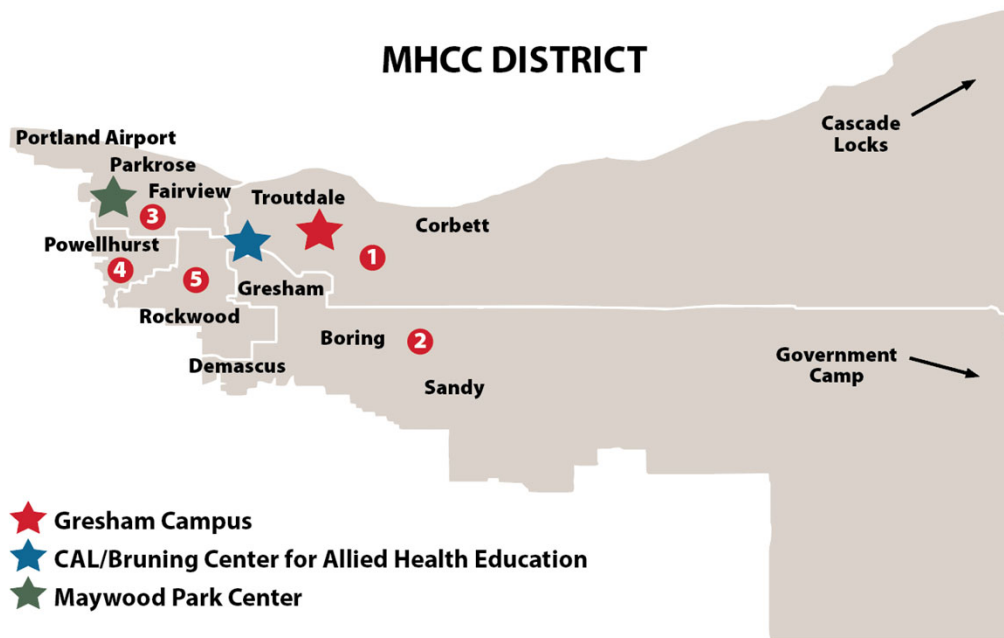


# MHCC Bond 2024





# WHO WE ARE



- Founded in 1966
- Serves Multnomah, Hood River, and Clackamas counties
- 3 campuses
- 1,053 employees
- 950 square miles
- 246,742 Registered Voters

# WHO WE ARE

## Programs

- Head Start
- High school dual credit
- Adult basic education, English as a Second Language, GED
- 100+ career technical programs
- Two-year transfer degrees
- Bachelor of applied science degree - Cybersecurity
- Community education
- SBDC and business training
- Apprenticeships



# ACCOMPLISHMENTS

- 4th in the US for quality education at an affordable price
- More than a million students served
- \$423.4 million impact to our local economy each year



Ranked 4th in WalletHub's  
Top 25 Community Colleges





# OUR STUDENTS

## 2022-2023 numbers

- 18,501 students
- 36% BIPOC
- 77% part-time
- Median age is 28



# MHCC and OREGON TRAIL SCHOOL DISTRICT

	<b>Dual Enrolled Students</b> <i>(students still in high school)</i>	<b>Students Enrolled</b> <i>(from any year excluding dual enrolled)</i>
2023-24*	176*	338*
2022-23	187	353
2021-22	178	375
2020-21	137	437
2019-20	206	552

\*Data as of mid-April, 2024

## MHCC and SANDY

**596**

Students

**27**

Employees

# WHAT IS A BOND ELECTION?

Colleges can borrow funding to pay for the construction, expansion and renovation of grounds and buildings.

Voters must approve these funds through a bond election on the ballot.

MHCC is looking to put a bond measure on the November 2024 ballot.

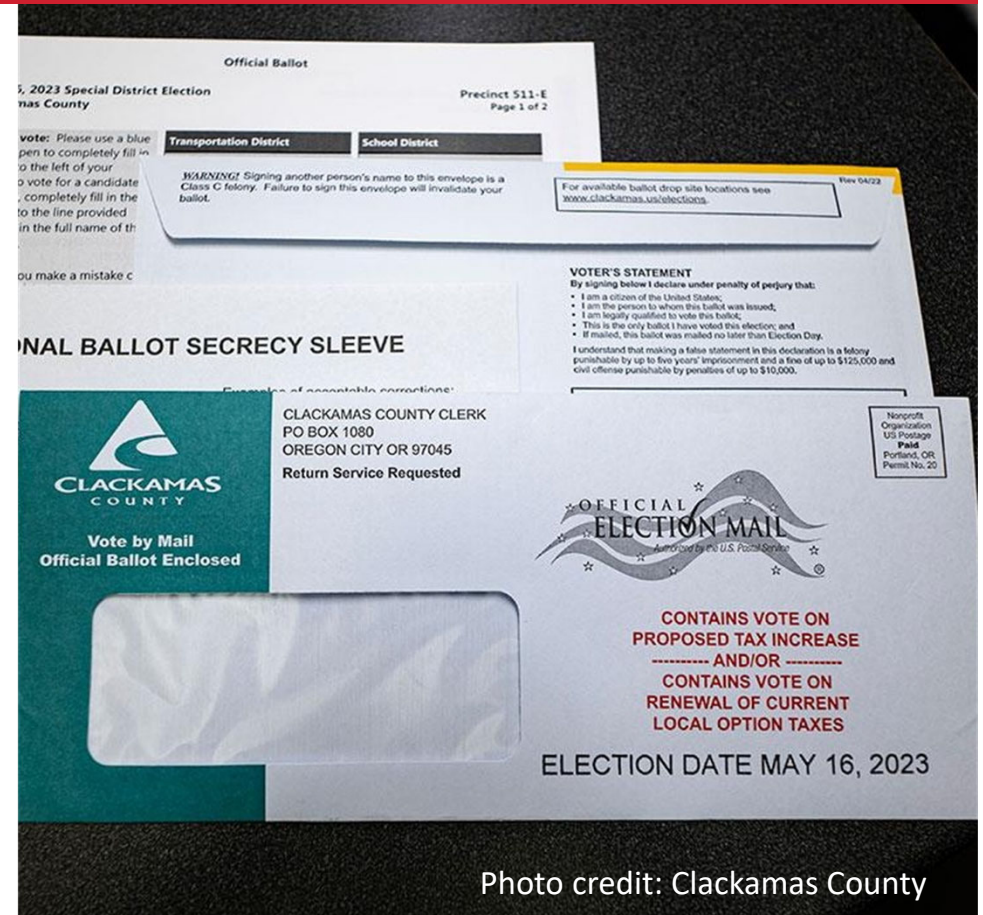


Photo credit: Clackamas County



# DETERMINING THE 2024 PROPOSED BOND

## Bond History

1965 Passed \$6.5 million

1974 Passed \$6 million

2024 Possible bond





# DETERMINING THE 2024 PROPOSED BOND

## Identifying the Need

- Strategic Plan
- Academic Plan
- Enrollment Plan
- Comprehensive Facility Plan

**Total Need: \$201 million**



# DETERMINING THE 2024 PROPOSED BOND

## Bond Development Work Group

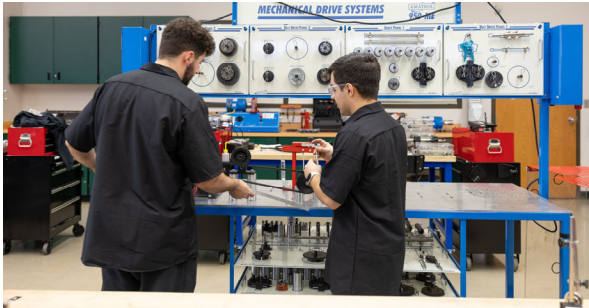
Stayce Blume, Salvador Blume Properties LLC  
 Jonath Colon, Centro Cultural  
 Dan Corcoran, McDonald Wetle  
 Ana Gonzalez Munoz, Latino Network/Reynolds SD  
 James Hiu, Gresham Barlow School District  
 Mark Kralj, MHCC Foundation  
 Renee Laborde, Soroptimist International  
 Dan Malinaric, Microchip  
 Willy Myers, Columbia Pacific Building Trades  
 Ken Richardson, David Douglas School District  
 Jairo Rios-Campos, Play East!/City of Fairview  
 Dave Robertson, Port of Portland  
 Christine Sanders, Greater New Hope  
 Lisha Shrestha, Division Midway  
 Ashton Simpson, Metro Council  
 Patricia Smith, Soroptimist International  
 Bess Wills, Gresham Ford

Pualani Derman, FT faculty (MHCC)  
 Dawn Loomis, Community Education and Workforce Dev.,  
 Apprenticeships (MHCC)  
 Jennifer McNeil, Career Planning Center (MHCC)  
 Colleen Meacham, Head Start (MHCC)  
 Emily Phoun, ASMHCC (student) Vice President  
 Marilyn Pitts, PT faculty (MHCC)

Lisa Skari, MHCC President  
 Al Sigala, VP College Advancement  
 Jennifer DeMent, VP Finance and Administration  
 Andrew Speer, MHCC Board Chair  
 Diane McKeel, MHCC Board Vice Chair  
 Annette Mattson, MHCC Board Member  
 Jeremy Wright, Wright Public Affairs  
 Sarah Lechner, Coraggio Group  
 Ben Patinkin, Patinkin Research

# THEMES AND PROJECTS:

The bond will positively impact our community and students in three ways



## PREPARE



Prepare students for success by creating learning spaces that are safe and offer cross disciplinary training



## INVEST



Invest in needed long term repairs, update and maintain assets



## CONNECT



Connect the college with our community

**Total Proposed Bond Measure: \$131 Million**

# PREPARE:

Prepare students for success by creating learning spaces that are safe and offer cross disciplinary training



## Establish a Center for Health Professions

- Supports some of the most in-demand programs
- Re-purposes existing space to create a Center for Health Professions
- Improves collaboration, training, and cross-disciplinary learning

## Modernize Science Labs

- Ensures safety
- Provides technology to help students engage with subject matter
- Supports student completion as part of the skilled workforce.

## Securing the safety of students and staff

- Improves safety and security on all three campuses
  - Lockdown abilities
  - Fire safety
  - Seismic retrofit
- Increases accessibility for people with disabilities





**INVEST:** Invest in needed long term repairs, update and maintain assets



## Renovate Aging Learning Spaces

- Renovates student study and interior spaces
- Modernizes learning spaces for today's hybrid and online learning needs

## Update, Repair and Preserve College Assets

- Updates, maintains, and repairs aging facilities
- Upgrades our aging computer labs and networks
- Installs energy efficiency upgrades
- Replaces outdated and inefficient central heating and cooling components



## CONNECT: Connect the college with our community

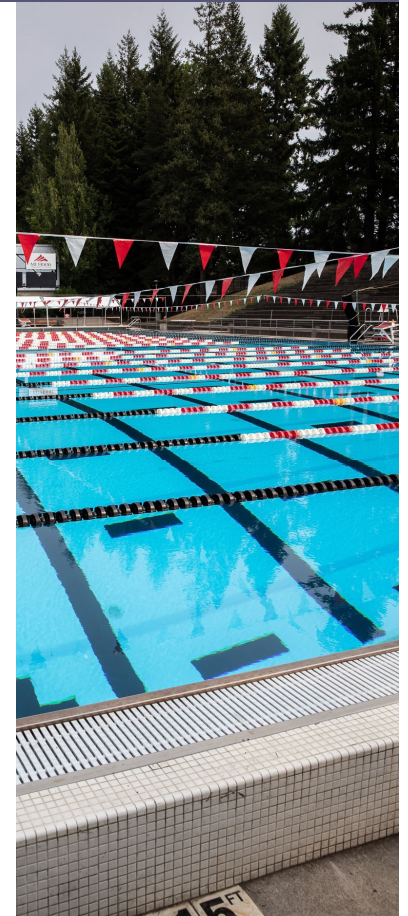


### Athletic and Community Pool Improvements

- Addresses community needs
- Updates athletic facilities to ensure equal athletic opportunities
- Installs retractable cover to allow for year-round use
  - Brings events to East County
  - Leverages state and local contributions

### Accessibility

- Ensures every student, staff, and visitor has access MHCC campus
- Improves existing elevators
- Makes all toilets on campus accessible



## BOND MEASURE COST

**Total bond proposal: \$131 Million**

Estimated cost =  
25 cents/\$1,000 of assessed value.

Average assessed house in district  
= \$5 a month



# BOND TIMELINE

1 Initial Internal Planning

2 Comprehensive Bond Planning and Development

3 Community Input – “Tell Us What You Think”

4 Board Action – to Place on Ballot

5 Bond Campaign – Educate, Motivate and Inspire





**FEEDBACK:**

***Bond@mhcc.edu***





# STAFF REPORT

---

**Meeting Type:** City Council  
**Meeting Date:** June 17, 2024  
**From:** Jenny Coker, Public Works Director  
**Subject:** Ordinance 2024-15: Authorizing Wastewater Revenue Bonds (WIFIA Loan Agreement)

---

**DECISION TO BE MADE:**

Whether to adopt an ordinance to fund Sandy Clean Waters program.

**PURPOSE / OBJECTIVE:**

This ordinance delegates authority to staff to issue bonds to pay for wastewater system improvement projects. A resolution will follow the ordinance after at least 30 days to approve the form of the WIFIA 1 Loan Agreement which provides the terms under which the City will issue wastewater bonds under the authority of the ordinance in an approximate amount of \$24,738,640, plus additional amounts to pay capitalized interest.

**BACKGROUND / CONTEXT:**

The Sandy Clean Waters Program (SCWP) is completing a series of wastewater system improvement projects to bring operations of the City’s wastewater collection, treatment, and discharge facilities into compliance with federal and state effluent discharge regulations. The current SCWP project involves repair/replacement/maintenance projects to improve reliability of the existing wastewater treatment facility; planning and permitting for a new Sandy River outfall; design and construction of collection system improvements; and program management and project management of planning, design, permitting, and construction activities. The SCWP scope will be finalized after the Wastewater Facilities Plan Amendment is completed, reviewed and approved by City Council and EPA/DEQ.

The SCWP is funded by multiple sources, including an EPA congressionally directed Grant, the ARPA Grant, the full faith and credit bond for sewer lateral repairs, SRF Loan#1, SRF Loan #2, by SRF Loan #3, and by the proposed WIFIA revenue bonds.

WIFIA bonds are expected to be issued in two sets, this first set to complete projects at the WWTP, Collection System, and permitting and investigation work for the Sandy River Outfall. The final financing package will come from a second WIFIA loan package, that cannot be issued until environmental investigation work is completed for the Sandy River Outfall in this current bond package.

Different funding sources have different restrictions, for instance, no permitting work associated with Tickle Creek or Sandy River may be paid for by SRF loans but can be paid for by WIFIA funds.

Table 1 summarizes the Clean Waters Program Wastewater Improvements Financing Package plans.

The total cost of the program is not yet known, as the Facility Plan Amendment is still underway.

With the WIFIA 1 loan package, the City will have secured approximately \$109 million in grants and low interest loan funds, of which \$79 million is remaining. Currently, the City is prioritizing spending the grant funding on Consent Decree investigative requirements, comprehensive capacity analysis required to continue to unlock more ERUs, maintaining permit compliance, and increasing capacity at both collection system and WWTP pinch points. SRF loan three is being held for the major WWTP upgrade which will begin once the Facility Plan Amendment is approved.

**Table 1: Sandy Clean Waters Program Wastewater Improvements Current and Proposed Financing**

Project	Loan/Grant	Lender	Status	Loan/Grant Amount	Funds Remaining	Project Phase
WWTP Facility Reliability/Expansion Improvements, Outfall to Sandy River, Collection System Improvements	SRF Loan R80491 See Note 1	Oregon DEQ	Complete	\$799,425	\$0	Facility Planning
	Full Faith and Credit Bond		Complete	\$1,695,000	\$0	Private Laterals Basins 2/8 and 6/7
	SRF Loan 2 R80492	Oregon DEQ	Complete	\$20,700,000	\$966,000	Design and Construction Phase 1A
	ARPA Grant	Business Oregon	Complete	\$14,700,000	\$7,500,000	Planning, Design, Construction
	EPA Grant	EPA	Complete	\$1,000,000	\$536,785	Design, Construction MH Grouting, CCTV inspections
	SRF Loan 3 R80493 See Note 2	Oregon DEQ	Design Funding Secured	\$7,300,000 [\$46,000,000]	\$46,000,000	Design and Construction WWTP expansion
	Revenue Bond	WIFIA (US EPA)	In Process	\$24,738,640	\$24,738,640	Design and Construction Collections, WWTP and Sandy River Planning/Permitting

	Revenue Bond TBD See Note 3	WIFIA (US EPA)	TBD	TBD	TBD	All other items needed, Sandy River Outfall construction
<b>Total Financing Package to Date</b>				\$109,633,065	\$79,741,425	

**Table Notes**

**Note 1:** R80491 was secured and expended for facility planning work that was completed prior to the start of Sandy Clean Waters Program (SCWP) and will not be utilized to fund SCWP improvements. It is included in this table as one of the debts that is secured by wastewater revenues, as are the other loans listed in the table.

**Note 2:** DEQ has authorized R80493 for a total loan amount of \$46,000,000, of which to date \$7,300,000 has been approved. DEQ has stated its intent to approve the remaining amount of the loan when the City has completed its planning and identified the scope of the remaining improvements. This amount is being held for upgrades to the Sandy WWTP.

**Note 3:** After the update to the Wastewater Facilities Plan October 2019 is completed, City anticipates applying for a second WIFIA loan to complete SCWP funding.

**KEY CONSIDERATIONS / ANALYSIS:**

The funding package for this project involves loans that will be repaid over time from wastewater system rate revenue.

Although the interest rate on the currently proposed WIFIA loan is a market rate, the WIFIA program offers other critical features that significantly reduce the impact of that debt repayment obligation on ratepayers.

- First, unlike standard revenue bonds where the full bond amount is delivered and starts accruing interest upon issuance, interest costs on the WIFIA loan will be accrued more slowly because it is set up to be disbursed over time on a reimbursement basis as expenses are incurred. Closing of this loan is anticipated by July 2024, but disbursement of the funds will take place over multiple years and is not expected to occur until 2025 and 2026.
- Second, the WIFIA program allows for the commencement of loan repayment to be deferred up to 5 years after substantial completion of the project in 2028. For this loan, that means that the 30-year repayment period is not expected to commence until late 2033.

Accrued interest on the deferred payments is added to the loan amount (referred to as “capitalized interest”). The combination of those two features allows increases in wastewater rates to be phased in over a longer period and spreads the impact of those rate increases over what is expected to be a larger customer base over time.

Because DEQ has designated SRF Loan #2 as being state-funded, the City’s WIFIA application has designated a portion of those loans (\$7,569,728) to satisfy the WIFIA requirement for a non-federal match.

**BUDGET IMPACT:**

WIFIA is offering a loan in the maximum amount of loan draws of \$24,738,640, with payments over a 30-year period starting in 2033. The interest rate will be established on the date of closing, calculated at the interest rate on closing day for a 30-year Treasury bond plus one basis point. The Authorized Representative will determine the final rate, along with other terms of the wastewater bonds under the authority granted in the Ordinance. Repayment is made from wastewater water rate revenues and is included in the rate model.

**RECOMMENDATION:**

Staff recommends approval of Ordinance 2024-15.

**SUGGESTED MOTION LANGUAGE:**

"I move to approve Ordinance 2024-15."

**LIST OF ATTACHMENTS / EXHIBITS:**

- Ordinance 2024-15





**ORDINANCE NO. 2024-15**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF WASTEWATER REVENUE BONDS FOR WASTEWATER PROJECTS AND RELATED MATTERS**

**WHEREAS**, the City of Sandy (the “City”) is authorized to issue revenue bonds for a public purpose under Oregon Revised Statutes (“ORS”) 287A.150 and related statutes (the “Act”); and

**WHEREAS**, the Act permits the City to authorize revenue bonds by enacting a nonemergency ordinance. Revenue bonds issued under the Act and by nonemergency ordinance may be secured by the revenues or other property of the public body that is described in the nonemergency ordinance; and

**WHEREAS**, the City may not sell those revenue bonds until the period for referral of the ordinance has expired. If the nonemergency ordinance is referred to a vote during that referral period, the City may not sell those revenue bonds described in the ordinance unless the voters approve issuance of the revenue bonds; and

**WHEREAS**, the City finds it is in the best interests of the City to authorize the issuance of revenue bonds under the Act in order to provide for planning for and capital improvements to the City’s sewer system, also referred to as the City’s wastewater system (the “Wastewater System”), and related expenditures under the Wastewater System Facilities Plan as may be amended (the “Projects”), fund reserves for borrowings backed by Wastewater System revenues, finance capitalized interest, and to pay costs of issuance of the revenue bonds; and

**WHEREAS**, on or about August 1, 2017, the City entered into the Clean Water State Revolving Fund Loan Agreement No. R80491 with the State of Oregon acting by and through its Department of Environmental Quality (“DEQ”), as amended January 2, 2019, January 6, 2020, and July 12, 2021, in a final principal amount of \$799,425 as may be amended, which is currently outstanding in the principal amount of \$359,423, and is secured by the net revenues of the Wastewater System (“DEQ Loan R80491”); and

**WHEREAS**, on or about April 13, 2021, the City entered into the Clean Water State Revolving Fund Loan Agreement No. R80492 with DEQ, as amended August 24, 2021, in a principal amount of \$20,700,000, as may be amended, of which \$19,724,339 has been drawn and is currently outstanding with \$500,000 expected to be forgiven, and is secured by the net revenues of the Wastewater System (“DEQ Loan R80492”); and

**WHEREAS**, on or about August 2, 2023, the City entered into the Clean Water State Revolving Fund Loan Agreement No. R80493 with DEQ in an expected principal amount not to exceed \$7,300,000, as may be amended, of which none has been drawn, and is secured by the net revenues of the Wastewater System (“DEQ Loan R80493” together with DEQ Loan R80492 and DEQ Loan R80491, the “DEQ Loans”); and

**WHEREAS**, the DEQ Loans provide that the City may not issue any other obligations which have a parity or superior pledge or lien on the net revenues of the Wastewater System without the written permission of DEQ; and

**WHEREAS**, the City has applied for a loan from the United States Environmental Protection Agency, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “WIFIA Lender”), under the Water Infrastructure Finance and Innovation Act (“WIFIA”) program to finance costs of the Projects; and

**WHEREAS**, the City finds it in the best interests of the City to authorize the issuance of revenue bonds under the Act to utilize the WIFIA program financing and/or other sources for the costs of the Projects and enacts this ordinance to authorize the issuance and sale of wastewater revenue bonds as provided herein.

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

**Section 1: Revenue Bonds for Projects Authorized.**

- 1.1 The City hereby authorizes the issuance of revenue bonds pursuant to the Act in an amount that is sufficient to provide proceeds of up to \$24,738,640 to pay for costs of the Projects, fund reserves, and to pay costs of issuance of the revenue bonds, plus additional amounts to pay capitalized interest. The City estimates that the total principal amount of revenue bonds required for this purpose will not exceed \$34,738,640. The bonds shall be issued and sold in accordance with the Act.
- 1.2 The bonds authorized by this ordinance shall be special obligations of the City that are secured by and payable solely from the City’s Wastewater System net revenues, a reserve account, and related amounts that the City pledges to pay the bonds. The bonds authorized by this ordinance shall be secured by a lien on the net revenues of the Wastewater System on a parity with the lien on the net revenues of the Wastewater System securing the DEQ Loans.
- 1.3 No bonds authorized by Section 1.1 of this ordinance may be sold and no loan or purchase agreement for any of the bonds authorized by Section 1.1 of this ordinance may be executed until the period for referral of this nonemergency ordinance has expired. If this ordinance is referred, the City may not sell the bonds authorized by Section 1.1 of this ordinance unless the voters approve the issuance of those bonds.

**Section 2: Issuance of Refunding Bonds.**

The City hereby authorizes the issuance of refunding bonds pursuant to applicable Oregon statutes to refinance any bonds that are issued pursuant to Section 1.1 of this ordinance to provide interim financing. The refunding bonds authorized by this Section 2 may be issued in an aggregate principal amount sufficient to refund any bonds selected by the Authorized Officer (defined below), plus amounts required to pay costs related to the refunding bonds.

**Section 3: Delegation.**

When and if this ordinance takes effect, the City Manager, the Deputy City Manager, the Public Works Director, the Finance Director, a designee of either of those officials, or other designee of the City Council (each of whom is referred to in this ordinance as an “Authorized Officer”) is designated by the City Council to act on behalf of the City under this ordinance, including to:

- 3.1 Issue the revenue bonds authorized by this ordinance (the “Wastewater Bonds”) in one or more

series, which may be sold at different times, with lien on the net revenues of the Wastewater System on a parity with the lien on the net revenues of the Wastewater System securing the DEQ Loans.

- 3.2 Issue the Wastewater Bonds as long term bonds, or short or intermediate term bonds to provide interim financing for the Projects, and enter into documents which permit the City to draw Wastewater Bonds over time.
- 3.3 Determine the method of sale and negotiate, execute and deliver the Wastewater Bonds, term sheets, purchase agreements and/or loan agreements in connection with such sale, including as may be appropriate for borrowings under the WIFIA Lender's WIFIA program.
- 3.4 Establish the final principal amounts, lien status, maturity schedules, interest rates, sale prices, capitalized interest, redemption terms, payment terms and dates, record dates, fees, costs, covenants, lien status, draw-down provisions, amortization schedules, and other terms for each series of Wastewater Bonds.
- 3.5 Prepare, execute and deliver one or more documents that specify the terms under which Wastewater Bonds are issued and the administrative provisions that apply to the Wastewater Bonds.
- 3.6 Enter into covenants with owners, trustees, lenders, or credit enhancement providers, including covenants required by the WIFIA Lender.
- 3.7 Make contributions to Wastewater Bond reserve accounts from the proceeds of the Wastewater Bond and/or other funds of the City, and determine the reserve requirement, if any, for each series of Wastewater Bonds.
- 3.8 Select bonds to be refunded, refund any Wastewater Bonds that are issued to provide interim financing or other short, intermediate, or long-term bonds.
- 3.9 Select one or more purchasers, lenders and underwriters, approve and execute term sheets, and approve, execute, and deliver a bond purchase and/or loan agreement and any additional documents necessary or convenient to accomplish the issuance of the Wastewater Bonds.
- 3.10 Appoint and enter into agreements with paying agents, trustees and other professionals and service providers.
- 3.11 Issue any of the Wastewater Bonds as "taxable bonds" bearing interest that is includable in gross income under the Code. Issue any of the qualifying Wastewater Bonds as "tax-exempt bonds" bearing interest that is excludable from gross income under the Internal Revenue Code of 1986, as amended (the "Code"), enter into covenants to maintain the excludability of interest on those series from gross income under the Code, and designate any qualifying series of Wastewater Bonds as "qualified tax-exempt obligations" pursuant to section 265(b)(3) of the Code, if applicable.
- 3.12 Apply for and obtain one or more credit ratings for any series of the Wastewater Bonds.



- 3.13 Apply for and purchase municipal bond insurance, reserve sureties or other credit enhancement, negotiate and enter into agreements with providers of credit enhancers.
- 3.14 If the federal government approves subsidy payments or tax credits for municipal bonds and those subsidies or tax credits are estimated to reduce the net debt service payments for the Wastewater Bonds, issue any series of Wastewater Bonds as eligible for those federal subsidies or tax credits, and enter into related covenants to maintain the eligibility of such series of Wastewater Bonds for those subsidies or tax credits.
- 3.15 Appoint and enter into agreement with paying agents, trustees, and other professionals and service providers for the Wastewater Bonds.
- 3.16 Execute and deliver any documents and amendments and take any other action in connection with the Wastewater Bonds, which the Authorized Officer finds will be advantageous to the City.

**Section 4: DEQ Loans.**

The Authorized Representative is authorized to negotiate, determine, and execute amendments, agreements, and any other documents in connection with the DEQ Loans, obtain required consents for the Wastewater Bonds, and take any other action in connection with the DEQ Loans that the Authorized Representative determines to be advantageous to the City.

**Section 5: Appointment of Bond Counsel.**

The City appoints Foster Garvey P.C. to serve as bond counsel to the City in connection with the issuance of the Wastewater Bonds.

**Section 6: Effective Date.**

This ordinance shall take effect on the 30<sup>th</sup> day after its enactment.

This ordinance is enacted by the City Council of the City of Sandy this \_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_

Stan Pulliam, Mayor

ATTEST:

\_\_\_\_\_

Jeffrey Aprati, City Recorder



# STAFF REPORT

---

**Meeting Type:** City Council  
**Meeting Date:** June 17, 2024  
**From:** Jenny Coker, Public Works Director  
**Subject:** Purchase Authorization: Street Sweeper for Public Works Department

---

## DECISION TO BE MADE:

Whether to authorize the City Manager to procure a street sweeper for the Public Works Department.

## BACKGROUND / CONTEXT:

Street sweeping services for the City of Sandy have been contracted out to Great Western Sweeping for many years. However, the last few years have seen rapidly escalating costs of services due to pricing for labor and materials, leading staff to work on a method to manage rising costs. The conversation around bringing this service in-house has been done in the past, and it appears that the timing is now right to do so.

Great Western performs street cleaning services during the last two weeks of each month unless requested for special or unplanned services. The monthly service takes approximately four days and includes hauling and disposal services. The biennial budget for street sweeping (Contractual Services) for fiscal years 2024-2025 is \$805,000. The actual expense has risen from \$342,730 in biennium 2019-2021 and \$428,537 in biennium 2021-2023.

In the last year, the department has attempted to reduce street sweeping services to every other month in an effort to reduce sweeping costs. However, the department was only able to skip 1 out of 6 scheduled sweeping events and maintain the expected level of services. Therefore, minimizing the number of sweeping services is not a viable option for reducing expenses. As a result, the department moved forward analyzing the feasibility of taking over street sweeping services.

## KEY CONSIDERATIONS / ANALYSIS:

Staff has conducted an internal analysis of the concept of bringing street sweeping services in-house. This included interviewing other agencies, as well as soliciting three quotes from Sourcewell vendors (only two responded) and conducting onsite demonstrations of the equipment. Please see the attached memo from our Public Works Superintendent for additional information.

### Cost Considerations

Staff universally prefers the Owen Equipment Elgin RegenX street sweeper model, which was also the lowest cost quote at \$324,956.

There will be additional costs with running the street sweeper, including brush replacement, mechanical servicing, fuel, and sweeping disposal. Staff currently estimates these costs to be in the range of \$75,000 per year.

The street sweeper model is currently available, and with the remaining funds available in the contractual services line, staff estimates finishing the year on budget, even with the purchase.

### Staffing Considerations

In order to bring street sweeping services in-house, staff will need to reassign a utility worker for 40-hours per month, which will further limit staff capacity. Once this service is brought in-house, a staffing analysis will be conducted to determine if the current volume of work can be handled with existing staff, or if an additional full-time employee (FTE) needs to be added to the public works staff in the next biennium.

With contracting out median maintenance and the assistance of the seasonal employee, staff believes we can accommodate extra street sweeping for the next year with maintaining basic service levels.

### Anticipated Savings

Moving forward (accounting for the possibility of an extra FTE and disposal costs) this line item would likely drop from \$805,000 per biennium to \$405,000 per biennium. This would result in a savings of \$400,000 per biennium.

Switching to internal street sweeping, and accounting for the possibility of an increase in staffing will bring additional savings to the Street fund, and allow for better service for Sandy citizens. Additionally, if an additional FTE were allocated, this employee would be able to assist with additional street sweeping and right of way maintenance needs. The return on investment appears to be only a single year. If approved, staff will give 30-days' notice of termination to Great Western Sweeping and will plan to assuming street sweeping duties in August 2024.

### **BUDGET IMPACT:**

The Elgin RegenX street sweeper has a purchase price of \$324,956 and can be accommodated by the current Street Fund Budget. By terminating our Street Sweeping Contract with Great Western, the street sweeper may be purchased using reallocated funds within the Operations Department of the Street Fund. It is expected that this purchase will result in large savings in future biennial budgets compared to the rising costs of street sweeping services.

### **RECOMMENDATION:**

Authorize the City Manager to procure the Elgin RegenX street sweeper from Owen Equipment Company for the Public Works Department.”

### **SUGGESTED MOTION LANGUAGE:**

“I move to authorize the City Manager to procure an Elgin RegenX street sweeper from Owen Equipment Company for the Public Works Department.”

**LIST OF ATTACHMENTS / EXHIBITS:**

- Street Sweeping Operations Analysis Memo
- SWS A7 Equipment Quote
- Owen RegenX Equipment Quote

Jenny Coker

Public Works Director  
City of Sandy  
39250 Pioneer BLVD  
Sandy, OR 97055

Date: May 30, 2024

Re: Internal Street Sweeping Operational Analysis

Jenny,

Sandy Public Works has analyzed the feasibility of bringing street sweeping services in-house to combat rising contractual service costs, along with the desire to better control street sweeping frequencies. In moving to internal street sweeping maintenance, Sandy Public Works needed to evaluate several factors to determine whether the operational change best fits the needs of our community and the capabilities of our staff. Across the region there is an even blend of municipalities that perform sweeping maintenance in-house vs. having the service outsourced. Sandy has probed some of our neighboring agencies to aide in answering questions that are related to switching operations strategy and forecasting budgetary impacts.

### Background

The street sweeping services for the City of Sandy have been contracted to Great Western Sweeping (GWS) for many years. The contractor performs street cleaning services during the last two weeks of each month unless requested for special or unplanned service. GWS has a large metal bin staged at the City's operation facility that is periodically swapped out as the contractor fills each bin. The monthly service usually lasts for three to four days as they have two to three vehicles each day moving throughout our community removing gutter debris.

GWS has performed outstanding service for Sandy. Over the past several years, there have been incremental increases in the contractor's fee structure. The hourly fees have gotten high enough that it has triggered a feasibility analysis that has looked at procuring a City owned sweeper. Sweeping the streets is half the service provided by the current contractor, the second part is related to hauling and disposal of the swept materials. The monthly combined invoices are averaging twenty-five thousand dollars. Given the recent increases, it is projected that the hourly fees will continue to increase five percent annually.

### Equipment Procurement

Sandy Public Works has preliminarily reached out to street sweeper distributors to learn more about equipment technology, sizing, availability, and high-level cost. The City has the option to lease/finance or purchase outright the equipment. Sandy is a member of Sourcewell, a co-operative purchasing collective that allows for a simplified procurement process. After internal discussions and reviewing the needs and goals of our street management program, it has led to the targeting of a regenerative air sweeper with a six-to-eight-yard tank capacity.

### Auxiliary Considerations

Labor – After reviewing historic invoicing and speaking to other agencies, it has been identified that it will require forty hours of staff labor to meet the current service level that is provided by the contractor. Sandy Public Works can meet this demand with current operations staffing. During the next budget planning cycle, PW will complete a staffing evaluation to assess future staffing levels that will include sweeping labor.

Hauling & Disposal – Staff has identified a dump site at the City’s Sunset St. property. The City could stockpile swept materials here until an alternative strategy is developed. The City could sift the materials to remove leafy organics. These materials could be donated to nurseries or mulch facilities that could re-use the debris. The City could also re-claim road sand that is used during winter weather response. Staff will also reach out to our franchise solid waste provider to see if they could provide drop box service for the swept debris. If the previously stated strategies prove inefficient, staff could stockpile the sweepings and make quarterly haul outs to local landfills.

### Financial Implications

At our current spend down rate, it is anticipated that Sandy will spend three hundred and fifty thousand dollars on sweeping and hauling services during the remaining fourteen months of our budget cycle. The Street Department Contractual Services line code has a Variance Favorable that would cover the cost to procure the equipment and the material handling associated. If moving to internal sweeping is enacted, the remaining streets budgeted funds allocated to contractual services will be transferred to the street’s equipment fund and the professional services fund.

### Qualifying

Public Works staff solicited quotes from three sweeper vendors utilizing Sandy’s membership in the cooperative procurement agency Sourcewell. Qualifying quotes were received from two equipment suppliers, Owen Equipment and SWS Equipment. The third supplier did not submit a quote. The SWS quote was for a Schwarze A7 sweeper for a purchase price of \$393,485.50. The Owen quote was for an Elgin RegenX sweeper for \$324,956.00.

Recommendation

Sandy staff requested product demonstrations from both suppliers. City Operators were able to inspect both machines and take the sweepers around town to witness each machines capability. After crew discussions and calling other agencies who use these machines, we determined that the Owen Equipment – Elgin RegenX machine will best meet the City’s needs.

Ryan Wood

Digitally signed by Ryan  
Wood  
Date: 2024.05.30  
12:01:08-07'00'

Ryan Wood  
Public Works Superintendent  
City of Sandy  
[rwood@ci.sandy.or.us](mailto:rwood@ci.sandy.or.us)  
503-489-0928



## SWS Equipment, LLC.

PO Box 13040 Spokane WA 99213  
 All Correspondence remit to: P.O. Box 13040, Spokane, WA 99213

971-219-1648 1-800-892-7831 F 509-533-1050  
[www.swsequipment.com](http://www.swsequipment.com)

## QUOTE

Quote #: CFGYQ2002-01

Date: 04/25/24

Sales Rep: Chris Young

FOB: SWO

Ship Via: BESTWAY

Est. Ship Date:

Terms: Net 30

### Quote To:

City of Sandy  
 Jenny Coker  
 39250 Pioneer Blvd  
 Sandy OR 97055  
 (503) 668-5533

### Ship To:

City of Sandy  
 Jenny Coker  
 39250 Pioneer Blvd  
 Sandy OR 97055  
 (503) 668-5533

### We are pleased to propose the following for your consideration

Qty	Description	Unit Price	Ext. Price
1.0	Sourcewell Contract # 093021-SWZ awarded to the City of Sandy Acct # 97344		
1.0	Schwarze A7 Tornado Twin Engine 134HP John Deere Tier IVF	\$393,485.50	\$393,485.50
	Standard Options:		
	<b>SWEEPER ENGINE:</b> John Deere 4045 Tier 4 engine. Fuel water separator. 3-point safety engine shutdown device. Battery and 50 gallon fuel tank shared with chassis. 90 amp alternator. 2 year warranty on Aux Engine.		
	<b>HYDRAULIC SYSTEM:</b> 25 gallon vented hydraulic reservoir, w/shut-off valves. Tank mounted level and temperature indicator. Hydraulic pressure, 2500 psi. In-tank 10 micron return filter with in-cab indicator. 9000 BTU oil to air radiator type oil cooler. 12-volt DC hydraulic backup system.		
	<b>DUST SEPERATOR:</b> Centrifugal dust separator, 29000 cu in. with 1680 sq in door.		
	<b>HOPPER:</b> Mild Steel, 8.4 CuYd, 7 CuYd usable Capacity. Screens - 5615 square inches, saw tooth design. Twin dumping cylinders, 51 degrees. Rear door hydraulically opened, closed and locked. Dual 20 in X 32 in watertight inspection doors, 1 left, 1 right. External weatherproof dump switches. Shroud enclosing the auxiliary engine.		
	<b>BLOWER:</b> Closed face turbine 10 curved blades, 32.75 in dia. by 5 in wide. 500 Brinell hardness abrasion resistant steel. Fully balanced within 1.5 grams on both sides. Vacuum enhancer, w/indicator in cab. Remote grease lines for fan bearing.		



Qty	Description	Unit Price	Ext. Price
	<p><b>PICKUP HEAD:</b>            90 in x 36 in Sweeping Head with Rubber Blast Orifice.            3/8 in thick, 14 in dia Pressure hose, 14 in Suction Hose            Sweeps-in-Reverse.            Doublewide full length carbide drag shoes Warranted against wear-out, two years/2000 hours, prorated.</p> <p><b>DUST CONTROL SYSTEM:</b>            Twin Electric diaphragm water pumps with inlet restriction indicator.            60 PSI, 6.0 gpm. Water tank capacity 250 gallons, polyethylene.            25-foot long fire hydrant fill hose.            50 mesh cleanable filter, with shut off valve.            Water spray nozzles shall be provided as follows:            Five at pickup head, two nozzles inside hopper.            Two at gutter broom, per option selected.            Two nozzles in suction tube, two at front axle.            An air purge system for flushing water lines.</p> <p><b>OPERATING CONTROLS AND INSTRUMENTS:</b>            Aux engine control with full color display on console:            Keyed ignition, electronic throttle, leaf bleeder.            Oil pressure gauge, water temperature gauge.            Voltmeter, tachometer, and hour meter.            Diagnostic gauge for Aux Engine, overweight warning.            Selectable sweep or lift in reverse, system standby, in-cab tilt, variable speed brooms.            All other STD sweeper function switches to be included for standard and options selected.            Swiveling console for left or right sweeping.</p> <p><b>SAFETY EQUIPMENT:</b>            Two body props to lock hopper in raised position.            Rear Amber LED Strobe With Guard.            2 rear yellow alternating LED flashing lights.            Slow moving vehicle emblem, backup alarm.            5-lb fire extinguisher, and a warning triangle kit.</p>		
1.0	Standard Sweeping Head w/rubber blast orifice		
1.0	Gutter Broom, Dual W/Power Tilt		
1.0	Gutter Broom, GEO Dual		
1.0	Gutter Broom, In-Cab Down Pressure		
1.0	Standby, Full w/Throttle Ramp		
1.0	Variable Speed Gutter Broom(S)		
1.0	10 point remote grease manifold		
1.0	Camera System, Four w/ Split Screen (Location of camera 2, 3, 4 in notes)		
1.0	Water Tank, W/ Add. 350G*		
1.0	Water Tank Sight Gauge side of tank		

Qty	Description	Unit Price	Ext. Price
1.0	Water Tank Low Level Alarm & Ind.		
1.0	Spray Bar, Hopper Add. 4 Nozzles		
1.0	High Pressure Washdown Wand W/ Pump		
1.0	Auto Drop Down Screens		
1.0	Dual Hopper Drain, 6" (SS)		
1.0	Hopper Dump Assist Shaker		
1.0	Hand Hose- None		
1.0	Hopper Deluge, 4 Nozzle, Conical Spray		
1.0	Load Weight Alarm & Indicator		
1.0	Hopper Up Alarm & Indicator		
1.0	Hopper Aux. Engine Screen Cover		
1.0	Hopper Door Open Indicator		
1.0	Hopper, High Strength Stainless Steel ~LIFETIME WARRANTY~		
1.0	Low Hydraulic Level Indicator In-Cab		
1.0	Strobe, Rear W/Guard LED (Std) 1 ea		
1.0	Strobe, Cab W/Guard Cabover LED		
1.0	Paint, Standard		
1.0	Decal Kit		
1.0	IH MV607 200HP Cummins Dual Steer '24		
1.0	International MV (187") ~ Under Cab Exhaust		
1.0	IH Mirror, 12" Parabolic, Set		
1.0	Schwarze Warranty: STANDARD- 1 Year or 1200 hours		
1.0	7 Spray Front Spray Bar - Add on to Stock Truck		
1.0	Delivery		
1.0	Pre-Delivery Inspection		
1.0	One Day Training		
1.0	Account Managed by Chris Young		

**Order Total            \$393,485.50**

Please contact me if I can be of further assistance.

**QUOTE VALID FOR 10 DAYS**

**PRICING IS SUBJECT TO CHANGE BASED ON CURRENT MATERIALS AND AVAILABILITY  
APPLICABLE SALES TAX NOT INCLUDED UNLESS OTHERWISE NOTATED - AMOUNT BASED ON FINAL INVOICE DATE  
ANY IMPLIED WARRANTY AS PER MANUFACTURER'S STANDARD WRITTEN WARRANTY  
PAYMENT DUE UPON COMPLETION OF WORK OR AS SPECIFIED ABOVE**

*Due to a high level of uncertainty with regards to pricing changes from our vendors and the freight industry, the price and freight charges on this document may be adjusted prior to shipping.*

Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_



Presents a

# Proposal Summary

## RegenX®- OWEN STOCK UNIT

Easy to use, easy to clean, easy to maintain.  
Mid-Dump Regenerative Air Sweeper.

### For

City of Sandy, OR  
Sourcewell Contract# 093021-ELG



### RegenX

---

Sidebrooms/Steering	Dual Sidebroom/Dual Steering
Domicile	Continental USA
Size of Sidebroom	42
Fuel Type	Diesel

### Basic Chassis Info

---

Source	Elgin
Chassis Brand/Model	2024 M2 Dual Steer
Chassis Mounting Charge	Chassis Mounting Charge

### Chassis Equipment

---

Seating Options	(Standard) Right Hand Air-ride Cloth Hi-Back
Cab Mounted Convex Mirrors	12" Non-Heated Convex Mirrors
Horn Options	Standard Electric

### Brooms

---

Sidebroom Tilt Option Right Hand	Yes
Sidebroom Tilt Option Left Hand	Yes
Dual Sidebroom Scrubbing position	Yes
Variable Speed brooms	Dual

### Conveyance & Hopper

---



<b>6" Drain</b>	Yes
<b>In-Cab Hopper Dump</b>	Yes
<b>Hopper Deluge</b>	Yes
<b>Hopper Coating Systems</b>	Lifeline Hopper System
<b>Right Mounted Wandering Hose</b>	Yes
<b>Inspection Doors-Right</b>	Right Hand Door

### Dust Control & Flush Systems

---

<b>Fill Hose Length</b>	16'8"
<b>Front Spray Bar</b>	Yes

### Gauges and Indicators

---

<b>Broom Hour Meter Gauge</b>	Yes
<b>Hydraulic Oil Level Gauge W/Thermometer on Tank</b>	Yes

### Component Protection

---

<b>Auxiliary Hydraulic Pump</b>	Yes
<b>Turbo II Precleaner</b>	Yes
<b>Hydraulic Temperature Shutdown</b>	Yes
<b>Extra Key Auxiliary Engine</b>	1





### Lighting & Compliance

<b>Lighting</b>	LED Beacons Cab/Front; (2) Hopper Rear with LED Arrowstick
<b>Work and Flood Lights; Individual Rocker Switches</b>	Dual Sidebroom and Dual Rear Lights-LED
<b>Miscellaneous Lighting</b>	(2) Alternating Flashing Rear LED Lights
<b>LED Stop/Tail/Turn</b>	Yes

### Manuals and Warranty

<b>Sweeper Warranty</b>	1 Year Parts and Labor
<b>Sweeper: Operators Manuals</b>	1
<b>Sweeper: Parts Manuals</b>	1
<b>John Deere Operators Manuals</b>	1
<b>John Deere Parts Manuals</b>	1

### Tools/Toolbox

<b>Right Hand Lockable Toolbox</b>	Yes
<b>Fire Extinguishers</b>	2.5 lbs.

### Paint, Decal and Freight

<b>Paint Sweeper</b>	Standard White
<b>Paint Chassis</b>	Standard White
<b>Elgin Logo</b>	Red Logo
<b>Freight</b>	Freight to Oregon





**Chassis Notes:**

<b>Owen Stock Unit:</b>	\$335,006.00
<b>Sourcewell Discount:</b>	- \$10,050.00
<b>Total Price:</b>	\$324,956.00

Price indicated includes approved Special Request  
Price valid for 30 Days from date of 05-16-2024

Product Model: RegenX  
Proposal Date: 05-16-2024  
Quote Number: 2024-73495  
Price List Date: 05-01-2024

QTY: 1 Customer Initials \_\_\_\_\_

**Proposal Notes:**

- Multiple unit orders will be identical to signed proposal. Changes or deviations to any unit of a multiple unit order will require a new signed proposal.
- Chassis specifications and data codes for customer supplied chassis must be submitted to and approved by ELGIN prior to submittal of customer purchase order.
- All prices quoted are in US Dollars unless otherwise noted.
- This proposal incorporates, and is subject to, Elgin's standard terms and conditions attached hereto and made a part hereof.

**Signed By:**  
\_\_\_\_\_

**Date:**  
\_\_\_\_\_







## LIMITED WARRANTY

**Limited Warranty.** Each machine manufactured by ELGIN SWEEPER COMPANY ("ESCO" or the "Company") is warranted against defects in material and workmanship for a period of 12 months, provided the machine is used in a normal and reasonable manner and in accordance with all operating instructions. If sold to an end user, the applicable warranty period commences from the date of delivery to the end user. If used for rental purposes, the applicable warranty period commences from the date the machine is first made available for rental by the Company or its representative. This limited warranty may be enforced by any subsequent transferee during the warranty period. This limited warranty is the sole and exclusive warranty given by the Company.

**Exclusive Remedy.** Should any warranted product fail during the warranty period, ESCO will cause to be repaired or replaced, as the Company may elect, any part or parts of such machine that the Company's examination discloses to be defective in material or factory workmanship. Repairs or replacements are to be made at the selling Elgin distributor's location or at other locations approved by ESCO. In lieu of repair or replacement, the Company may elect, at its sole discretion, to refund the purchase price of any product deemed defective. The foregoing remedies shall be the sole and exclusive remedies of any party making a valid warranty claim.

The ESCO Limited Warranty shall not apply to (and ESCO shall not be responsible for):

1. Major components or trade accessories that have a separate warranty from their original manufacturer, such as, but not limited to, trucks, engines, hydraulic pumps and motors, tires and batteries.
2. Normal adjustments and maintenance services.
3. Normal wear parts such as, but not limited to, brooms, oils, fluids, filters, broom wire, shoe runners, rubber deflectors and suction hoses.
4. Failures resulting from the machine being operated in a manner or for a purpose not recommended by ESCO.
5. Repairs, modifications or alterations without the express written consent of ESCO, which in the Company's sole judgment, have adversely affected the machine's stability, operation or reliability as originally designed and manufactured.
6. Items subject to misuse, negligence, accident or improper maintenance.

\*NOTE\* The use in the product of any part other than parts approved by ESCO may invalidate this warranty. ESCO reserves the right to determine, in its sole discretion, if the use of non-approved parts operates to invalidate the warranty. Nothing contained in this warranty shall make ESCO liable for loss, injury, or damage of any kind to any person or entity resulting from any defect or failure in the machine.

THIS WARRANTY SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE DISCLAIMED.

This warranty is in lieu of all other obligations or liabilities, contractual and otherwise, on the part of ESCO. For the avoidance of doubt, ESCO shall not be liable for any indirect, special, incidental or consequential damages, including, but not limited to, loss of use or lost profits. ESCO makes no representation that the machine has the capacity to perform any functions other than as contained in the Company's written literature, catalogs or specifications accompanying delivery of the machine. No person or affiliated company representative is authorized to alter the terms of this warranty, to give any other warranties or to assume any other liability on behalf of ESCO in connection with the sale, servicing or repair of any machine manufactured by the Company. Any legal action based hereon must be commenced within eighteen (18) months of the event or facts giving rise to such action.

ESCO reserves the right to make design changes or improvements in its products without imposing any obligation upon itself to change or improve previously manufactured products.

ELGIN SWEEPER COMPANY  
1300 W. Bartlett Road  
Elgin, Illinois 60120



11-20-2007







# TERMS AND CONDITIONS

**ORDERS:** All orders are subject to acceptance by Elgin Sweeper, Inc. (hereafter referred to as Elgin). Orders for products not normally carried in stock or requiring special engineering or manufacturing is in every case subject to approval by Elgin's Management.

**PRICES:** All orders are subject to current prices in effect at the time of order acknowledgment. F.O.B. Point: Unless otherwise stated, all prices listed are F.O.B. factory. Elgin reserves the right to increase the order price set forth in this Proposal Summary at any time before delivery to Buyer to reflect any increase in Elgin's costs to manufacture or deliver the ordered product due to any factor beyond the reasonable control of Elgin. Elgin shall provide Buyer with prompt electronic notice of any such price increase. Buyer shall have five days from receipt of such notice to cancel its order, absent which Buyer shall be deemed to have consented to the price increase.

**PAYMENT TERMS:** The company's payment terms are due upon receipt, unless otherwise stated. However, until such time as Elgin receives full payment, Elgin shall maintain a purchase money security interest in the product.

**CANCELLATION:** Orders cannot be canceled except upon terms that will compensate Elgin for any loss or damage sustained. Such loss will be a minimum of 10% of the purchase price.

**SHIPMENT:** All proposals are based on continuous and uninterrupted delivery of the order upon completion, unless specifications distinctly state otherwise. In the event that agreement is reached for Elgin to store completed items, they will be immediately invoiced to the customer and become due and payable. Storage shall be at the risk of the customer and Elgin shall be liable only for ordinary care of the property.

**STORAGE CHARGES:** Elgin shall charge the customer at current rates for handling and storing customer's property (e.g. truck chassis) held for more than thirty (30) days after notification of availability for shipment. All customer's property, or third party's property, that is stored by Elgin is at the customer's or other party's risk. Elgin is not liable for any loss or damage thereto caused by fire, water, corrosion, theft, negligence, or any caused beyond its reasonable control.

**PERFORMANCE:** Elgin shall not be liable for failure to complete the contract in accordance with its terms if failure is due to wars, strikes, fires, floods, accidents, delays in transportation or other causes beyond its reasonable control.

**EXPERIMENTAL WORK:** Work performed at customer's request such as sketches, drawings, design, testing, fabrication and materials shall be charged at current rates.





SKETCHES, ENGINEERING DRAWINGS, MODELS, and all preparatory work created or furnished by Elgin, shall remain its exclusive property; and no use of same shall be made nor may ideas obtained therefrom be used except with the consent of and on terms acceptable to Elgin.

TAXES: Buyer's final cost shall include all applicable sales and use taxes, including all sales and use taxes attributable to any changes made to Buyer's initial order placed hereunder or to any changes to applicable sales and use tax laws. However, Elgin Manufacturing, Inc. shall be responsible for Federal Excise Tax(F.E.T.) unless it is separately stated on the invoice and added to the selling price. If F.E.T. is not separately stated on the invoice it has not been included in the price and Elgin will pay any F.E.T. due itself and bear the cost of the tax. Any refunds or adjustments to the F.E.T. in such cases belong to Elgin.

PRODUCT IMPROVEMENTS: Elgin reserves the right to change manufacturing specifications and procedures in accordance with its product improvement policy.

MOUNTING PRICES: Mounting prices assume normally factory installation on a truck chassis suitable for the unit purchased. Relocation of batteries, fuel tanks, mufflers, air tanks, etc. will be an additional charge, billed at the standard factory labor rate.

WARRANTY: Elgin warrants its products to be free from defects in material and workmanship for a period of 12 months, subject to the limitations and conditions set forth in its current published warranty. Other than those expressly stated herein. THERE ARE NOT OTHER WARRANTIES OF ANY KIND EXPRESS OR IMPLIED, AND SPECIFICALLY EXCLUDED BUT NOT BY WAY OF LIMITATION, ARE THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MECHANABILITY.

IT IS UNDERSTOOD AND AGREED THE ELGIN'S LIABILITY WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY IN NEGLIGENCE OR OTHERWISE SHALL NOT EXCEED THE RETURN OF THE AMOUNT OF THE PURCHASE PRICE PAID BY THE PURCHASER AND UNDER NO CIRCUMSTANCES SHALL ELGIN BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. THE PRICES STATED FOR THE EQUIPMENT IS A CONSIDERATION IN LIMITING ELGIN'S LIABILITY. NO ACTION REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTION OF THE AGREEMENT MAY BE BROUGHT BY PURCHASER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS OCCURRED.

ELGIN'S MAXIMUM LIABILITY SHALL NOT EXCEED AND BUYER'S REMEDY IS LIMITED TO EITHER (I) REPAIR OR REPLACEMENT OF THE DEFECTIVE PART OF PRODUCT, OR AT ELGIN'S OPTION (II) RETURN OF THE PRODUCT AND REFUND OF THE PURCHASE PRICE AND SUCH REMEDY SHALL BE BUYER'S ENTIRE AND EXCLUSIVE REMEDY.

CHOICE OF LAW: These Terms and Conditions shall be construed according to the laws of the State of Illinois. Failure at any time by Elgin to exercise any of its rights under this agreement shall not constitute a waiver thereof nor prejudice Elgin's right to enforce it thereafter.





COMPLETE AGREEMENT: These terms and conditions, contain the complete and final agreement between the parties hereto and no other agreement in any way modifying any of these terms and conditions will be binding on Elgin unless in writing and agreed to by an authorized representative of Elgin. All proposed terms included in Buyer's purchase order or other standard contracting documents are expressly rejected.

I agree with the above terms and conditions:

Signed By: \_\_\_\_\_

Date: \_\_\_\_\_

