



CITY COUNCIL MEETING

Monday, March 04, 2024 at 7:00 PM

Virtual via Zoom

AGENDA

TO ATTEND THE MEETING ONLINE VIA ZOOM:

Please use this link: <https://us02web.zoom.us/j/88968711244>

Or by phone: (253) 215-8782; Meeting ID: 88968711244

PLEDGE OF ALLEGIANCE

ROLL CALL

CHANGES TO THE AGENDA

PUBLIC COMMENT (3-minute limit)

The Council welcomes your comments 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 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

1. [City Council Minutes: February 20, 2024](#)
2. [Resolution 2024-06: Loan Funding for Alder Creek Water Treatment Plant Raw Water Conveyance, Storage, and Pumping Improvements](#)
3. [Grant Agreement Approval: ODOT Funding for Transit Department](#)

OLD BUSINESS

4. [Creation of an Advanced Financing Reimbursement District for 362nd and Bell Street Construction](#)

NEW BUSINESS

5. [Deer Pointe Park Concept Planning](#)

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.



CITY COUNCIL MEETING

Tuesday, February 20, 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 (attending virtually)
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: February 5, 2024
2. Delegation of Authority to Approve Solid Waste Franchise Rate Adjustments
3. Contract Amendment: Operations, Maintenance and Management Services for the Drinking Water and Wastewater Treatment Plants

MOTION: Adopt the consent agenda

Motion made by Councilor Hokanson, 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

NEW BUSINESS

4. Clear and Objective Code Audit (Land Use File No. 23-046 DCA)

Abstentions

(none)

Conflicts of Interest

(none)

Staff Report

The Development Services Director summarized the staff report in the agenda packet, acknowledged the efforts of all involved in the project, and introduced the consultant Kate Rogers with MIG. Presentation slides were delivered, which were included in the agenda packet. During the presentation, the Council sought clarification on the change to the affordable housing chapter in response to public comment. Following the presentation, Council Members expressed thanks for the thorough review performed by the Planning Commission.

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: 7-0Council Discussion

The Council sought clarification on whether allowing a discretionary path would introduce problems by setting precedents. The City Attorney advised that almost all cities find it useful to have discretionary paths, and that because each case is different the risk of precedent setting is minimal as long as the City does not act arbitrarily.

MOTION: Approve the first reading of Ordinance 2024-01

Motion made by Councilor Walker, 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**MOTION: Approve the second reading of Ordinance 2024-01**

Motion made by Councilor Mayton, 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

REPORT FROM THE CITY MANAGER

- Note that other municipal code update projects are proceeding at the staff level
- Recap on the status of the City's legislative funding requests in Salem
 - Updates provided by the City's government relations consultant, Nellie deVries
- Update on the effort to secure County financial support for the Hoodland Library rent; recap on the City's current negotiating position and the growing frustrations and disappointment with the County's lack of movement on the issue
 - Explanation of the confusion at the County between the issue of rent assistance versus the issue of operational versus capital spending
 - Concerns about lack of equity and fairness
 - Appeal for the County to be a productive partner on this issue

COMMITTEE / COUNCIL REPORTS

Councilor Hokanson

- Appreciation for the extension of the Veolia contract

Councilor Exner

- Concern about running of red lights in town

Councilor Walker

- Mt. Hood Territory grant opportunities are upcoming
- Overview of Tickle Creek restoration efforts after the January storm
 - Over 100 trees are down; hazard trees are still leaning
 - Collaboration is occurring including National Forest staff as well as AntFarm fuel reduction and fire prevention grant funding
 - Overview of the permitting challenges involved

Councilor Sheldon

- Thanks to staff for the work on the Clear and Objective Audit

Council President Smallwood

- Open house events will occur in March and April to gather public input on plans for Deer Pointe Park

Councilor Mayton

- The Economic Development Advisory Board reviewed Block 3 goals and polices for the comprehensive plan update project; they also discussed comparable cities for the retail market analysis project

Mayor Pulliam

- Recap of recent advocacy efforts on behalf of the City's funding requests in Salem
- Reminder on the upcoming Estacada CCA dinner

STAFF UPDATES

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

ADJOURN

DRAFT



STAFF REPORT

Meeting Type: City Council
Meeting Date: March 4, 2024
From: Jenny Coker, Public Works Director
Subject: Loan Funding for Alder Creek Water Treatment Plant Raw Water Conveyance, Storage, and Pumping Improvements

DECISION TO BE MADE:

Whether to adopt Resolution 2024-06, authorizing the City Manager to execute Loan Agreement B24004 with Business Oregon to fund project management, membrane procurement, engineering/design services, construction bid services, construction management, and reporting for Alder Creek Water Treatment Plant Raw Water Conveyance, Storage, and Pumping Improvements.

PURPOSE / OBJECTIVE:

To secure sufficient financing for the Alder Creek Water Treatment Plant Raw Water Conveyance, Storage, and Pumping Improvements project.

BACKGROUND / CONTEXT:

The City of Sandy Water Master Plan was adopted by Council into the City’s Comprehensive Plan on April 3, 2023. Key next steps to deliver the Drinking Water Reinvestment Program include securing debt financing and addressing immediate stabilization repairs and upgrades needed to keep Alder Creek Water Treatment Plant operational.

Table 1 summarizes the Drinking Water Reinvestment Program Financing Package. Initial estimates from the program team baselined the budget of the Drinking Water Reinvestment Program at approximately \$70 Million. To date, \$25,417,120 in financing has been secured through Business Oregon Special Public Works Fund Loans, and this State Revolving Fund Loan. The Program team will next work on securing the larger construction loan needed for the Portland to Sandy Filtration Plant Transmission System Construction Project, as well as other grant funding now that initial funding is secured for smaller construction projects and design engineering.

The Water / Wastewater System Improvements Oversight Committee reviewed this funding at their meeting on February 1, 2024.

Table 1: Sandy Drinking Water Reinvestment Program Financing Package

Lender	Project	Council Approval	Status	Loan Amount	Project Phase
SPWF (Business Oregon)	Sandercock Reservoir	4/3/2023	Complete	\$871,420	Construction Complete
SPWF (Business Oregon)	Portland to Sandy Filtration Transmission System Design	6/20/2023	Complete	\$7,000,000	Predesign
SPWF (Business Oregon)	Alder Creek Water Treatment Plant Immediate Needs Project	11/20/2023	Complete	\$2,016,600	Predesign
SPWF (Business Oregon)	Alder Creek Membrane Improvement Project	2/5/2023	Complete	\$9,500,000	PreDesign Pre-Award On-going
DW State Revolving Fund	Alder Creek Conveyance Improvements	3/04/2024	Closing	\$6,029,100	
(WIFIA loan or Bond)	Portland to Sandy Filtration Transmission System Construction		Not Started	\$33,000,000	
Program Reserve Funds	Contingency		Not Started	\$11,582,880	
Total Financing Package				\$70,000,000	

KEY CONSIDERATIONS / ANALYSIS:

Alder Creek Water Treatment Plant is the primary water supply for the City of Sandy and the most economical source of water. The treatment plant is at the end of its useful life and is in critical need of immediate upgrades to remain operational. These improvements were identified in the 2022 completed Water Master Plan, and were refined in a Conceptual Design Report completed by Stantec in 2023. The improvements must be in place prior to September 30, 2027 in the event connection to the new Portland Filtration Plant is delayed, Alder Creek can provide the majority of Sandy's non-peak season water demands.

BUDGET IMPACT:

The Safe Drinking Water Revolving Fund, administered by Business Oregon is offering a loan totaling \$6,029,100 at an interest rate of 2.9% over 30 years. Repayment is made from water rate revenues and is included in the rate model. In addition, this loan award includes \$180,000 of loan forgiveness.

Safe Drinking Water Revolving Fund Loans provide below market interest rates which makes this source of funding preferable over regular market-rate loans.

RECOMMENDATION:

Adopt Resolution 2024-06, authorizing the City Manager to execute Loan Agreement S24005.

SUGGESTED MOTION LANGUAGE:

"I move to adopt Resolution 2024-06."

LIST OF ATTACHMENTS / EXHIBITS:

- Resolution 2024-06
 - Business Oregon Loan Packet
 - Opinion of Counsel



RESOLUTION NO. 2024-06

A RESOLUTION AUTHORIZING A LOAN FROM THE SAFE DRINKING WATER REVOLVING LOAN FUND BY ENTERING INTO A FINANCING CONTRACT WITH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY

WHEREAS, The City of Sandy (the Recipient) is a community or nonprofit non-community water system as defined in Oregon Administrative Rule 123-049-0010; and

WHEREAS, The Safe Drinking Water Act Amendments of 1996, Pub. L. 104-182, as amended (the “Act”), authorize any community or nonprofit non-community water system to file an application with the Oregon Infrastructure Finance Authority of the Business Development Department (“OBDD”) to obtain financial assistance from the Safe Drinking Water Loan Fund; and

WHEREAS, The Recipient has filed an application with the OBDD to obtain financial assistance for a “safe drinking water project” within the meaning of the Act, and the OBDD has approved the Recipient’s application for financial assistance; and

WHEREAS, The Recipient is required, as a prerequisite to the receipt of financial assistance from the OBDD, to enter into a Financing Contract with OBDD, number S24005, substantially in the form attached hereto as Exhibit 1. The project is described in Exhibit C to the Financing Contract (the “Project”); and

WHEREAS, Notice relating to the Recipient’s consideration of the adoption of this Resolution was published in full accordance with the Recipient’s charter and laws for public notification.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANDY:

Section 1: Financing Loan Authorized The City Council authorizes the City Manager (the “Authorized Officer”) to execute on behalf of the Recipient the Financing Contract and such other documents as may be required to obtain financial assistance (the “Financing Documents’), including a loan from the OBDD, on the condition that the principal amount of the loan from the OBDD to the Recipient is not more than \$6,029,100 with \$180,000 eligible for principal forgiveness if contract conditions are met and the interest rate is not more than of 2.90%. The proceeds of the loan from the OBDD will be applied solely to the “Costs of the Project” as such term is defined in the Financing Contract.

Section 2: Sources of Repayment Amounts payable by the Recipient are payable from the sources described in Section 4 of the Financing Contract and the Oregon Revised Statutes Section 285A.213(5) which include: a) Revenue from Recipient’s water system, including special assessment revenue; b) Amounts withheld under subsection 285A.213(6); c) The General Fund of the City of Sandy; d) Any combination of sources listed in paragraphs (a) to (c) of this subsection; or e) Any other source.

Section 3: Additional Documents The City Manager is hereby authorized to enter into any agreements and to execute any documents or certificates which may be required to obtain financial assistance from the OBDD for the Project pursuant to the Financing Documents.

Section 4: Tax-Exempt Status The Recipient covenants not to take any action or omit to take any action if the taking or omission would cause interest paid by the Recipient pursuant to the Financing Documents not to qualify for the exclusion from gross income provided by Section 103(a) of the Internal Revenue Code of 1986, as amended. The City Manager may enter into covenants on behalf of the City of Sandy to protect the tax-exempt status of the interest paid by the Recipient pursuant to the Financing Documents and may execute any Tax Certificate, Internal Revenue Service forms or other documents as may be required by the OBDD or their bond counsel to protect the tax-exempt status of such interest.

This resolution is adopted by the City Council of the City of Sandy this 4th day of March, 2024.

Stan Pulliam, Mayor

ATTEST:

Jeffrey Aprati, City Recorder

SAFE DRINKING WATER REVOLVING LOAN FUND
FINANCING CONTRACT

Project Name: Alder Creek Water Treatment Plant: Raw Water Conveyance, Storage and Pumping Improvements

Project Number: S24005

This financing contract (“Contract”), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through its Oregon Infrastructure Finance Authority of the Oregon Business Development Department (“OBDD”), and the City of Sandy (“Recipient”) for financing of the project referred to above and described in Exhibit C (“Project”). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

Exhibit A	General Definitions
Exhibit B	Loan Security
Exhibit C	Project Description
Exhibit D	Project Budget
Exhibit E	Information Required by 2 CFR § 200.332(a)(1)
Exhibit F	Certification Regarding Lobbying

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

“Estimated Project Cost” means \$6,029,100.

“Forgivable Loan Amount” means \$180,000.

“Section 2A. Loan Amount” means \$5,849,100.

“Interest Rate” means 2.90% per annum.

“Maturity Date” means the 29th anniversary of the Repayment Commencement Date.

“Payment Date” means December 1.

“Project Closeout Deadline” means 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

“Project Completion Deadline” means 36 months after the date of this Contract.

“Repayment Commencement Date” means the first Payment Date to occur after the Project Closeout Deadline.

SECTION 2 - FINANCIAL ASSISTANCE

The OBDD shall provide Recipient, and Recipient shall accept from OBDD, financing for the Project specified below:

- A. A non-revolving loan in an aggregate principal amount not to exceed the Section 2.A. Loan Amount.
- B. A non-revolving loan in an aggregate principal amount not to exceed the Forgivable Loan Amount.

“Loan” means, collectively and individually without distinction, as the context requires, the loans described in this section 2.

Notwithstanding the above, the aggregate total of Financing Proceeds disbursed under this Contract shall not exceed the Costs of the Project.

SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Financing Proceeds shall be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an OBDD-provided or OBDD-approved disbursement request form (“Disbursement Request”). Recipient shall include the Loan Fee as an expense in the first Disbursement Request. The Loan Fee shall be paid from the principal of the Loan (but retained by OBDD rather than disbursed to Recipient).
- B. Financing Availability. The OBDD’s obligation to make, and Recipient’s right to request, disbursements under this Contract terminates on the Project Closeout Deadline.
- C. Payment to Contractors. The OBDD, in its sole discretion, may make direct payment to suppliers, contractors and subcontractors and others for sums due them in connection with construction of the Project, instead of reimbursing Recipient for those sums.
- D. Order of Disbursement. OBDD shall allocate any disbursement equally between the Section 2.A. Loan and the Forgivable Loan. Notwithstanding the preceding sentence, those portions of the Forgivable Loan indicated in the budget line-items for Labor Standards Compliance and Project Management remain dedicated to those specific line-item activities and not affected by any equal division allocation.

SECTION 4 - LOAN PAYMENT; PREPAYMENT; FORGIVENESS

- A. Promise to Pay. The Recipient shall repay the Loan and all amounts due under this Contract in accordance with its terms. Payments required under this Contract are, without limitation, payable from the sources of repayment described in the Act and this Contract, including but not limited to Exhibit B, and the obligation of Recipient to make all payments is absolute and unconditional. Payments will not be abated, rebated, set-off, reduced, abrogated, terminated, waived, postponed or otherwise modified in any manner whatsoever. Payments cannot remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of purpose, any change in the laws, rules or regulations of the United States of America or of the State of Oregon or any political subdivision or governmental authority, nor any failure of OBDD to perform any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project or this Contract, or any rights of set off, recoupment, abatement or counterclaim that Recipient might otherwise have against OBDD or any other party or parties; provided further, that payments hereunder will not constitute a waiver of any such rights.
- B. Interest. Interest accrues at the Interest Rate on each disbursement from the date of disbursement until the Loan is fully paid. All unpaid interest accrued to the Repayment Commencement Date is (in addition to the first regular installment payment due) payable on the Repayment Commencement Date. Interest is computed by counting the actual days occurring in a 360-day year.

The Recipient authorizes OBDD to calculate accrued interest as necessary under this Contract, including for purposes of determining a loan amortization schedule or determining the amount of a loan prepayment or loan payoff. Absent manifest error, such calculations will be conclusive.

- C. Loan Fee. Recipient shall pay a fee of \$89,100 (“Loan Fee”) to OBDD that has been imposed by the Oregon Infrastructure Authority as part of the funding Award for financing the Project. The Loan Fee shall be included in the principal of the Section 2.A. Loan Amount.
- D. Loan Payments. Starting on the Repayment Commencement Date and then on each succeeding Payment Date, Recipient shall make level installment payments of principal and interest, each payment sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date, on which date the entire outstanding balance of the Loan is due and payable in full.
- E. Loan Prepayments.
- (1) Mandatory Prepayment. The Recipient shall prepay all or part of the outstanding balance of the Loan as required by this Contract.
 - (2) Optional Prepayment. The Recipient may prepay all or part of the outstanding balance of the Loan on any day except a Saturday, Sunday, legal holiday or day that banking institutions in Salem, Oregon are closed.
- F. Application of Payments. Regardless of any designation by Recipient, payments and prepayments by Recipient under this Contract or any of the Financing Documents will be applied first to any expenses of OBDD, including but not limited to attorneys’ fees, then to unpaid accrued interest (in the case of prepayment, on the amount prepaid), then to the principal of the Loan. In the case of a Loan prepayment that does not prepay all the principal of the Loan, OBDD will determine, in its sole discretion, the method for how the Loan prepayment will be applied to the outstanding principal payments. A scheduled payment received before the scheduled repayment date will be applied to interest and principal on the scheduled repayment date, rather than on the day such payment is received.
- G. Forgiveness. Subject to satisfaction by Recipient of any special conditions in Exhibit C, if Recipient completes the Project by the Project Completion Deadline in accordance with the terms of this Contract, and provided that no Event of Default has occurred, OBDD shall, 90 days after the Project Completion Date, forgive repayment of the Forgivable Loan Amount and any interest accrued thereon and cancel the Forgivable Loan. The Forgivable Loan Amount and any interest forgiven remain subject to the requirements of OAR 123-049-0050, incorporated by this reference.

SECTION 5 - CONDITIONS PRECEDENT

- A. Conditions Precedent to OBDD’s Obligations. The OBDD’s obligations are subject to the receipt of the following items, in form and substance satisfactory to OBDD and its Counsel:
- (1) This Contract duly signed by an authorized officer of Recipient.
 - (2) A copy of the ordinance, order or resolution of the governing body of Recipient authorizing the borrowing and the contemplated transactions and the execution and delivery of this Contract and the other Financing Documents.
 - (3) An opinion of Recipient’s Counsel.
 - (4) Such other certificates, documents, opinions and information as OBDD may reasonably require.

- B. Conditions to Disbursements. As to any disbursement, OBDD has no obligation to disburse funds unless all following conditions are met:
- (1) There is no Event of Default.
 - (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
 - (3) The OBDD, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
 - (4) Recipient delivers to OBDD an estimated schedule for Disbursement Requests for Project design, covering anticipated number, submission dates, and amounts. Prior to beginning construction, Recipient must also deliver to OBDD an estimated schedule for Disbursement Requests for construction, covering anticipated number, submission dates, and amounts.
 - (5) The OBDD (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as OBDD may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
 - (6) The Recipient has delivered documentation satisfactory to OBDD that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
 - (7) Any conditions to disbursement elsewhere in this Contract or in the other Financing Documents are met.

SECTION 6 - USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit C and according to the budget in Exhibit D. The Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of OBDD.
- B. Costs of the Project. The Recipient shall apply the Financing Proceeds to the Costs of the Project in accordance with the Act and Oregon law, as applicable. Financing Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit C.
- C. Costs Paid for by Others. The Recipient may not use any of the Financing Proceeds to cover costs to be paid for by other financing for the Project, whether from OBDD or from another State of Oregon agency or any third party.

SECTION 7 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to OBDD:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in section 1, and the Project is fully funded. The Recipient will have adequate funds available to repay the Loan, and the Maturity Date does not exceed the usable life of the Project.

B. Organization and Authority.

- (1) The Recipient (a) is a Municipality under the Act, and validly organized and existing under the laws of the State of Oregon, and (b) owns a community water system, as defined in the Act and OAR 123-049-0010.
- (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract and the other Financing Documents, (b) incur and perform its obligations under this Contract and the other Financing Documents, and (c) borrow and receive financing for the Project.
- (3) This Contract and the other Financing Documents executed and delivered by Recipient have been authorized by an ordinance, order or resolution of Recipient's governing body, and voter approval, if necessary, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.
- (4) This Contract and the other Financing Documents have been duly executed by Recipient, and when executed by OBDD, are legal, valid and binding, and enforceable in accordance with their terms.

C. Full Disclosure. The Recipient has disclosed in writing to OBDD all facts that materially adversely affect the Project, or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract and the other Financing Documents is true and accurate in all respects.

D. Pending Litigation. The Recipient has disclosed in writing to OBDD all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.

E. No Events of Default.

- (1) No Events of Default exist or occur upon authorization, execution or delivery of this Contract or any of the Financing Documents.
- (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.

F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract and the other Financing Documents will not: (i) cause a breach of any agreement, indenture, mortgage, deed of trust, or other instrument, to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) cause the creation or imposition of any third party lien, charge or encumbrance upon any property or asset of Recipient; (iii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iv) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.

G. Governmental Consent. The Recipient has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and

performance of its obligations under this Contract and the other Financing Documents, for the financing or refinancing and undertaking and completion of the Project.

SECTION 8 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify OBDD of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to make all payments and perform all obligations required by this Contract or the other Financing Documents.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract or the other Financing Documents, the Project and the operation of the System of which the Project is a component. In particular, but without limitation, Recipient shall comply with the following, as applicable:
- (1) Federal procurement requirements of 2 CFR part 200, subpart D.
 - (2) State labor standards and wage rates found in ORS chapter 279C, and federal prevailing wage provisions in accordance with the federal Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 to 3144, 3146 and 3147 (2002).
 - (3) The Recipient is required to place a sign at construction sites supported under this Loan displaying the U.S. Environmental Protection Agency (“EPA”) logo in a manner that informs the public that the Project is funded in part or wholly by the EPA. The sign must be placed in a visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period. Recipient is required to comply with EPA signage requirements at:
https://www.epa.gov/sites/default/files/2015-01/documents/signage_required_tc.pdf
 - (4) SAFE DRINKING WATER IN OREGON: Program Guidelines & Applicant’s Handbook for the Federally Funded Safe Drinking Water Revolving Fund & Drinking Water Protection Loan Fund (September 2023) (“Safe Drinking Water Handbook”), available at
<https://www.oregon.gov/biz/Publications/SDWhandbook.pdf>.
 - (5) Federal Crossing-Cutting Authorities. All federal laws, executive orders and government-wide policies that apply by their terms to projects and activities receiving federal financial assistance, regardless of whether the Act makes them applicable (“Cross-Cutting Authorities”). The Safe Drinking Water Handbook contains a link to a list of the Cross-Cutting Authorities.
 - (6) Lobbying. The Recipient acknowledges and agrees that the Costs of the Project will not include any Lobbying costs or expenses incurred by Recipient or any person on behalf of Recipient, and that Recipient will comply with federal restrictions on lobbying at 40 C.F.R. Part 34 and will not request payment or reimbursement for Lobbying costs and expenses. “Lobbying” means influencing or attempting to influence a member, officer or employee of a governmental agency or legislature in connection with the awarding of a government contract, the making of a government grant or loan or the entering into of a cooperative agreement with such governmental entity or the extension, continuation, renewal, amendment or modification of any of the above. The Recipient shall submit to OBDD a Certification Regarding Lobbying, the form of which is attached as Exhibit F, and any applicable quarterly disclosure statement of covered lobbying activity. The Recipient will cause any entity, firm or person receiving a contract or subcontract utilizing Loan proceeds in excess of \$100,000 to complete the same certification and any applicable disclosure statement, and submit them to Recipient. The Recipient shall retain such

certifications and make them available for inspection and audit by OBDD, the federal government or their representatives. The Recipient shall forward any disclosure statements to OBDD.

- (7) Federal Audit Requirements. The Loan is federal financial assistance, and the Catalog of Federal Domestic Assistance (“CFDA”) number and title is “66.468, Capitalization Grants for Drinking Water State Revolving Funds.” Recipient is a sub-recipient.
- (a) If Recipient receives federal funds in excess of \$750,000 in the Recipient’s fiscal year, it is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at its own expense submit to OBDD a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Contract and shall submit or cause to be submitted to OBDD the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Contract.
- (b) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Recipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the funds received under this Contract.
- (c) Recipient shall save, protect and hold harmless OBDD from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Contract. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and the State of Oregon.
- (8) Disadvantaged Business Enterprises. The Recipient will implement the good faith efforts for solicitation and contracting with Disadvantaged Business Enterprises (“DBE”) described in the Safe Drinking Water Handbook. This applies to all solicitation and contracting for construction, equipment, supplies, engineering or other services that constitute the Project financed by this Contract. The Recipient will maintain documentation in a Project file and submit the required forms, as described in the Safe Drinking Water Handbook. The Recipient will ensure that all prime contractors implement the good faith efforts for solicitation and contracting, and comply with all DBE procurement forms, statements, and reporting requirements.
- The Recipient will ensure that each procurement contract includes the following term and condition:
- “The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”
- (9) Property Standards. Recipient shall comply with 2 CFR 200.313 which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.

- (10) Contract Provisions. The contract provisions listed in 2 CFR Part 200, Appendix II are obligations of Recipient, as applicable, and must be included, as applicable, by Recipient in its contracts related to the Project.
- (11) Iron and Steel Products. Pursuant to the 2016 Consolidated Appropriations Act (P.L. 114-113), none of the Financing Proceeds may be used for any part of the Project unless all of the iron and steel products used in the project are produced in the United States. “Iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- (12) Incorporation by Reference. The above state and federal laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

C. Project Completion Obligations. The Recipient shall:

- (1) When procuring professional consulting services, provide OBDD with copies of all solicitations at least 10 days before advertising, and all contracts at least 10 days before signing.
- (2) Provide OBDD with copies of all Oregon Health Authority – approved plans and specifications relating to the Project, and a timeline for the construction bidding / award process, at least ten (10) days before advertising for bids.
- (3) Provide a copy of the bid tabulation, notice of award, and contract to OBDD within ten (10) days after selecting a construction contractor.
- (4) Complete an environmental review in accordance with the state environmental review process and in compliance with state and federal environmental laws prior to any construction work on the Project.
- (5) Permit OBDD to inspect the Project at any time.
- (6) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
- (7) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by OBDD in writing.
- (8) Obtain and maintain as-built drawings for all facilities constructed as part of the Project.

D. Ownership of Project. During the term of the Loan, the Project is and will continue to be owned by Recipient. The Project will be operated by Recipient or by a person under a management contract or operating agreement with Recipient. Any such management contract or operating agreement will be structured as a “qualified management contract” as described in IRS Revenue Procedure 97-13, as amended or supplemented.

E. Operation and Maintenance of the Project. The Recipient shall operate and maintain the Project in good repair and operating condition so as to preserve the long term public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements during term of the Loan. On or before the Project Closeout Deadline, Recipient shall adopt a plan acceptable to OBDD for the on-going operation and maintenance of the Project without reliance on OBDD financing and furnish OBDD, at its request, with evidence of such adoption. The plan must

include measures for generating revenues sufficient to assure the operation and maintenance of the Project during the usable life of the Project.

- F. Insurance, Damage. The Recipient shall maintain, or cause to be maintained, insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. Nothing in this provision precludes Recipient from asserting a defense against any party other than OBDD, including a defense of immunity. If the Project or any portion is destroyed, any insurance proceeds will be paid to OBDD and applied to prepay the outstanding balance on the Loan in accordance with section 4.D.(1), unless OBDD agrees in writing that the insurance proceeds may be used to rebuild the Project.
- G. Sales, Leases and Encumbrances. Except as specifically described in Exhibit C, Recipient shall not sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in the Project or any system that provides revenues for payment or is security for the Loan, unless worn out, obsolete, or, in the reasonable business judgment of Recipient, no longer useful in the operation of the Project. Nevertheless, OBDD may consent to such disposition if it has received 90 days' prior written notice from Recipient. Such consent may require assumption by transferee of all of Recipient's obligations under the Financing Documents and payment of OBDD's costs related to such assumption, and receipt by OBDD of an opinion of Bond Counsel to the effect that such disposition complies with applicable law and will not adversely affect the exclusion of interest on any Lottery Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code. The term "Bond Counsel" means a law firm determined by OBDD to have knowledge and expertise in the field of municipal law and whose opinions are generally accepted by purchasers of municipal bonds. In the case of sale, exchange, transfer or other similar disposition, Recipient shall, within 30 days of receipt of any proceeds from such disposition, prepay the entire outstanding balance on the Loan in accordance with section 4.D.(1), unless OBDD agrees otherwise in writing. If Recipient abandons the Project, Recipient shall prepay the entire outstanding balance of the Loan immediately upon demand by OBDD.
- H. Condemnation Proceeds. If the Project or any portion is condemned, any condemnation proceeds will be paid to OBDD and applied to prepay the outstanding balance of the Loan in accordance with section 4.D.(1).
- I. Financial Records. The Recipient shall keep accurate books and records for the revenues and funds that are the source of repayment of the Loan, separate and distinct from its other books and records, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. The Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.
- J. Inspections; Information. The Recipient shall permit OBDD, and any party designated by OBDD, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as OBDD may reasonably require. In addition, Recipient shall, upon request, provide OBDD with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating

to any other bonds, notes or other indebtedness of Recipient that are issued after the date of this Contract.

- K. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project, or the Financing Proceeds for a minimum of six years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Closeout Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.
- L. Economic Benefit Data. The OBDD may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by OBDD.
- M. Professional Responsibility. A professional engineer or architect, as applicable, registered and in good standing in Oregon, will be responsible for the design and construction of the Project. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty. The Recipient shall follow standard construction practices, such as bonding requirements for construction contractors, requiring errors and omissions insurance, and performing testing and inspections during construction.
- N. Notice of Event of Default. The Recipient shall give OBDD prompt written notice of any Event of Default, or any circumstance that with notice or the lapse of time, or both, may become an Event of Default as soon as Recipient becomes aware of its existence or reasonably believes an Event of Default is likely.
- O. Contributory Liability and Contractor Indemnification.
- (1) If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (“Third Party Claim”) against a party (the “Notified Party”) with respect to which the other party may have liability, the Notified Party must promptly notify the other party in writing and deliver a copy of the claim, process, and all legal pleadings related to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. The foregoing provisions are conditions precedent for either party’s liability to the other in regards to the Third Party Claim.

If the parties are jointly liable (or would be if joined in the Third Party Claim), the parties shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable in such proportion as is appropriate to reflect their respective relative fault. The relative fault of the parties shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Each party’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if that party had sole liability in the proceeding. This Section shall survive termination of this Contract.
 - (2) Recipient shall take all reasonable steps to require its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys’ fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused,

in whole or in part, by the negligent or willful acts or omissions of Recipient's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the contractor from and against any and all Claims. This Section shall survive termination of this Contract.

- P. Further Assurances. The Recipient shall, at the request of OBDD, authorize, sign, acknowledge and deliver any further resolutions, conveyances, transfers, assurances, financing statements and other instruments and documents as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Contract and the other Financing Documents.
- Q. Exclusion of Interest from Federal Gross Income and Compliance with Code.
- (1) The Recipient shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any Lottery Bonds from gross income for purposes of federal income taxation, as governed by Section 103(a) of the Code. OBDD may decline to disburse the Financing Proceeds if it finds that the federal tax exemption of the Lottery Bonds cannot be assured.
 - (2) The Recipient shall not take any action (including but not limited to the execution of a management agreement for the operation of the Project) or omit to take any action that would cause any Lottery Bonds to be "private activity bonds" within the meaning of Section 141(a) of the Code. Accordingly, unless Recipient receives the prior written approval of OBDD, Recipient shall not permit in excess of ten percent (10%) of either (a) the Financing Proceeds or (b) the Project financed or refinanced with the Financing Proceeds to be directly or indirectly used in any manner that would constitute "private business use" within the meaning of Section 141(b)(6) of the Code, including not permitting more than one half of any permitted private business use to be "disproportionate related business use" or private business use unrelated to the government use of the Financing Proceeds. Unless Recipient receives the prior written approval of OBDD, Recipient shall not directly or indirectly use any of the Financing Proceeds to make or finance loans to persons other than governmental units, as that term is used in Section 141(c) of the Code.
 - (3) The Recipient shall not directly or indirectly use or permit the use of any of the Financing Proceeds or any other funds, or take any action or omit to take any action, which would cause any Lottery Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.
 - (4) The Recipient shall not cause any Lottery Bonds to be treated as "federally guaranteed" for purposes of Section 149(b) of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to "federally guaranteed" obligations described in Section 149(b) of the Code. For purposes of this paragraph, any Lottery Bonds will be treated as "federally guaranteed" if: (a) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (b) five percent (5%) or more of the proceeds of the Lottery Bonds will be (i) used in making loans if the payment of principal or interest is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (ii) invested directly or indirectly in federally insured deposits or accounts, and (c) none of the exceptions described in Section 149(b)(3) of the Code apply.

- (5) The Recipient shall assist OBDD to ensure that all required amounts are rebated to the United States of America pursuant to Section 148(f) of the Code. The Recipient shall pay to OBDD such amounts as may be directed by OBDD to satisfy the requirements of Section 148(f) applicable to the portion of the proceeds of any tax-exempt bonds, including any Financing Proceeds or other amounts held in a reserve fund. The Recipient further shall reimburse OBDD for the portion of any expenses it incurs related to the Project that is necessary to satisfy the requirements of Section 148(f) of the Code.
- (6) Upon OBDD's request, Recipient shall furnish written information regarding its investments and use of the Financing Proceeds, and of any facilities financed or refinanced therewith, including providing OBDD with any information and documentation that OBDD reasonably determines is necessary to comply with the arbitrage and private use restrictions that apply to the Lottery Bonds.
- (7) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on any Lottery Bonds, the covenants contained in this subsection will survive the payment of the Loan and the Lottery Bonds, and the interest thereon, including the application of any unexpended Financing Proceeds. The Recipient acknowledges that the Project may be funded with proceeds of the Lottery Bonds and that failure to comply with the requirements of this subsection could adversely affect any exclusion of the interest on the Lottery Bonds from gross income for federal income tax purposes.
- (8) Neither Recipient nor any related party to Recipient, within the meaning of 26 C.F.R. § 1.150-1(b), shall purchase any Lottery Bonds, from which proceeds were used to finance the Project, in an amount related to the amount of the Loan.

SECTION 9 - DEFAULTS

Any of the following constitutes an “Event of Default”:

- A. The Recipient fails to make any Loan payment when due.
- B. The Recipient fails to make, or cause to be made, any required payments of principal, redemption premium, or interest on any bonds, notes or other material obligations, for any other loan made by the State of Oregon.
- C. Any false or misleading representation is made by or on behalf of Recipient, in this Contract, in any other Financing Document or in any document provided by Recipient related to this Loan or the Project or in regard to compliance with the requirements of section 103 and sections 141 through 150 of the Code.
- D. (1) A petition, proceeding or case is filed by or against Recipient under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against Recipient, Recipient acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal;
- (2) The Recipient files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts;
- (3) The Recipient becomes insolvent or bankrupt or admits its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors;

- (4) The Recipient applies for or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of Recipient or any substantial portion of its property; or
 - (5) The Recipient takes any action for the purpose of effecting any of the above.
- E. The Recipient defaults under any other Financing Document and fails to cure such default within the applicable grace period.
- F. The Recipient fails to perform any obligation required under this Contract, other than those referred to in subsections A through E of this section 9, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by OBDD. The OBDD may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 10 - REMEDIES

- A. Remedies. Upon any Event of Default, OBDD may pursue any or all remedies in this Contract or any other Financing Document, and any other remedies available at law or in equity to collect amounts due or to become due or to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
- (1) Terminating OBDD's commitment and obligation to make any further disbursements of Financing Proceeds under the Contract.
 - (2) Declaring all payments under the Contract and all other amounts due under any of the Financing Documents immediately due and payable, and upon notice to Recipient the same become due and payable without further notice or demand.
 - (3) Barring Recipient from applying for future awards.
 - (4) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract, pursuant to ORS 285A.213(6) and OAR 123-049-0040.
 - (5) Foreclosing liens or security interests pursuant to this Contract or any other Financing Document.
 - (6) Exercising any remedy listed in OAR 123-049-0040.
- B. Application of Moneys. Any moneys collected by OBDD pursuant to section 10.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by OBDD; next, to pay interest due on the Loan; next, to pay principal due on the Loan, and last, to pay any other amounts due and payable under this Contract or any of the Financing Documents.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to OBDD is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract or any of the Financing Documents shall preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The OBDD is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 9 of this Contract.
- D. Default by OBDD. In the event OBDD defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of OBDD's obligations.

SECTION –1 - MISCELLANEOUS

- A. Time is of the Essence. The Recipient agrees that time is of the essence under this Contract and the other Financing Documents.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
 - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
 - (3) This Contract will be binding upon and inure to the benefit of OBDD, Recipient, and their respective successors and permitted assigns.
 - (4) The Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract or any other Financing Document without the prior written consent of OBDD. The OBDD may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to OBDD, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of OBDD's Counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of OBDD beyond those in this Contract or other Financing Documents, nor does assignment relieve Recipient of any of its duties or obligations under this Contract or any other Financing Documents.
 - (5) The Recipient hereby approves and consents to any assignment, sale or transfer of this Contract and the Financing Documents that OBDD deems to be necessary.
- C. Disclaimer of Warranties; Limitation of Liability. The Recipient agrees that:
- (1) The OBDD makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
 - (2) In no event are OBDD or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.
- D. Notices and Communication. Except as otherwise expressly provided in this Contract, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Recipient or OBDD at the addresses set forth below, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system or 2) the recipient's

confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

If to OBDD: Deputy Director
Oregon Business Development Department
775 Summer Street NE Suite 200
Salem, OR 97301-1280

If to Recipient: Public Works Director
City of Sandy
39250 Pioneer Blvd.
Sandy, OR 97055

- E. No Construction against Drafter. This Contract is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- G. Amendments, Waivers. This Contract may not be amended without the prior written consent of OBDD (and when required, the Department of Justice) and Recipient. This Contract may not be amended in a manner that is not in compliance with the Act. No waiver or consent is effective unless in writing and executed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- H. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to OBDD by its attorneys. The Recipient shall, on demand, pay to OBDD reasonable expenses incurred by OBDD in the collection of Loan payments.
- I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- J. Integration. This Contract (including all exhibits, schedules or attachments) and the other Financing Documents constitute the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.
- K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

The Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through its
Oregon Business Development Department



CITY OF SANDY

By: _____
Chris Cummings, Deputy Director

By: _____
Tyler Deems, City Manager

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ Wendy Johnson as per email dated 15 February 2024
Wendy Johnson, Senior Assistant Attorney General

EXHIBIT-A - GENERAL DEFINITIONS

As used in this Contract, the following terms have the meanings below.

“Act” means “Safe Drinking Water Act,” 42 U.S.C. Sec. 300f, and all subsequent amendments, including the Amendments of 1996, Public Law 104-182.

“Award” means the award of financial assistance to Recipient by OBDD dated «DateofAward».

“C.F.R.” means the Code of Federal Regulations.

“Code” means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Financing Proceeds under applicable state or federal statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, OBDD or Recipient.

“Financing Documents” means this Contract and all agreements, instruments, documents and certificates executed pursuant to or in connection with OBDD’s financing of the Project.

“Financing Proceeds” means the proceeds of the Section 2.A. Loan and the Forgivable Loan.

“Forgivable Loan” means the forgivable Loan described in section 2.B.

“Section 2.A. Loan” means the Loan described in section 2.A. of this Contract.

“Lottery Bonds” means any bonds issued by the State of Oregon that are special obligations of the State of Oregon, payable from unobligated net lottery proceeds, the interest on which is exempt from federal income taxation, together with any refunding bonds, used to finance or refinance the Project through the initial funding or refinancing of all or a portion of the Loan.

“Municipality” means any entity described in ORS 285B.410(9).

“ORS” means the Oregon Revised Statutes.

“Project Completion Date” means the date on which Recipient completes the Project.

“System” means Recipient’s drinking water system, which includes the Project or components of the Project, as it may be modified or expanded from time to time.

EXHIBIT B – LOAN SECURITY

- A. Full Faith and Credit Pledge. The Recipient pledges its full faith and credit and taxing power within the limitations of Article XI, sections 11 and 11 b, of the Oregon Constitution to pay the amounts due under this Contract. This Contract is payable from and secured by all lawfully available funds of Recipient.
- B. Pledge of Net Revenues of the System
- (1) All payment obligations under this Contract and the other Financing Documents are payable from the revenues of Recipient's System after payment of operation and maintenance costs of the System ("Net Revenues"). The Recipient irrevocably pledges and grants to OBDD a security interest in the Net Revenues to pay all of its obligations under this Contract and the other Financing Documents. The Net Revenues pledged pursuant to the preceding sentence and received by Recipient will immediately be subject to the lien of this pledge without physical delivery, filing or any other act, and the lien of this pledge is superior to and has priority over all other claims and liens, except as provided in subsections 2 and 3 of this section B, to the fullest extent permitted by ORS 287A.310. The Recipient represents and warrants that this pledge of Net Revenues complies with, and is valid and binding from the date of this Contract as described in, ORS 287A.310. The lien of the pledge made under this subsection 1 is hereinafter referred to as the "OBDD Lien".
 - (2) The Recipient shall not incur, without the prior written consent of OBDD, any obligation payable from or secured by a lien on and pledge of the Net Revenues that is on parity or superior to the OBDD Lien.
 - (3) Notwithstanding the requirements of subsection 2 of this section B, loans previously made and loans made in the future by OBDD to Recipient that are secured by the Net Revenues may have a lien on such Net Revenues on parity with the OBDD Lien; provided that nothing in this paragraph will adversely affect the priority of any of OBDD's liens on such Net Revenues in relation to the lien(s) of any third party(ies).
 - (4) The Recipient shall charge rates and fees in connection with the operation of the System which, when combined with other gross revenues, are adequate to generate Net Revenues each fiscal year at least equal to 120% of the annual debt service due in the fiscal year on the Loan and any outstanding obligation payable from or secured by a lien on and pledge of Net Revenues that is on parity with the OBDD Lien.
 - (5) The Recipient may establish a debt service reserve fund to secure repayment of obligations that are payable from or secured by a lien on and pledge of Net Revenues that is on parity with the OBDD Lien, provided that no deposit of the Net Revenues of the System into the debt service reserve fund is permitted until provision is made for the payment of all debt service on the Loan and any other obligations payable from or secured by a lien on and pledge of Net Revenues that is on parity with the OBDD Lien (including any obligations described in subsection 3 above) for the 12-month period after such deposit.

EXHIBIT C - PROJECT DESCRIPTION

Recipient will, with the assistance of a professional engineer licensed in Oregon, make raw water conveyance, storage, and pumping improvements to the Alder Creek Water Treatment Plant. These improvements will include, but are not limited to, the following:

- Installation of new electrical power generators and control equipment
- Upgrades to existing raw water pump station, including new raw water feed pumps, static mixer and vault and variable frequency drives
- Installation of new 12" PVC raw water piping
- Installation of on-site liquid storage and treated water storage and pumping
- Supporting improvements to standby power supplies, chemical storage, instrumentation upgrades, supervisory control and data acquisition (SCADA) integration and sitework

EXHIBIT D - PROJECT BUDGET

Line Item Activity	OBDD Funds	Other / Matching Funds
Planning	\$50,000	\$0
Design/Engineering	\$550,000	\$0
Construction	\$4,533,475	\$0
Construction Contingency	\$376,525	\$0
Construction Management	\$400,000	\$0
Labor Standards	\$15,000	\$0
Project Management/Federal Requirements Assistance	\$15,000	\$0
Loan Fee	\$89,100	\$0
Total	\$6,029,100	\$0

EXHIBIT–E - INFORMATION REQUIRED BY 2 CFR § 200.332(A)(1)

Federal Award Identification:

- (i) Subrecipient* name (which must match registered name in SAM): City of Sandy
 - (ii) Subrecipient’s Unique Entity Identifier (SAM): RPCMHNGRWDD1
 - (iii) Federal Award Identification Number (FAIN): 98009022
 - (iv) Federal Award Date: 21 September 2022
 - (v) Sub-award Period of Performance Start and End Date: 36 months after the date of this Contract
 - (vi) Sub-award budget period start and end dates: 36 months after the date of this Contract
 - (vii) Total Amount of Federal Funds Obligated by this contract action: \$6,029,100
 - (viii) Total Amount of Federal Funds Obligated by the initial Contract and any amendments: \$6,029,100
 - (ix) Total Amount of Federal Award committed to the pass-through entity: \$11,064,000
 - (x) Federal award project description: Oregon’s Drinking Water State Revolving Fund: This Fund increases the capacity of Oregon to ensure that its public water systems continue to provide safe drinking water. This is done by (1) continuing loan financing to public water systems and support for newly proposed priority projects, (2) providing grant support for covering administrative expenses, small public water system technical assistance, State program management and local assistance, and (3) continuation of the loan fund to finance source water protection project initiatives, including acquiring conservation easements.
 - (xi) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
 - (a) Name of Federal awarding agency: U.S. Environmental Protection Agency
 - (b) Name of pass-through entity: Oregon Business Development Department
 - (c) Contact information for awarding official of the pass-through entity: Edward Tabor, Infrastructure and Program Services Director, 503-949-3523
 - (xii) CFDA Number, Title, Amount: 66.468 Safe Drinking Water State Revolving Fund, Amount: \$6,029,100
 - (xiii) Is Award R&D? No
 - (xiv) Indirect cost rate for the Federal award: N/A
- * For the purposes of this Exhibit E, “Subrecipient” refers to Recipient and “pass-through entity” refers to OBDD.

EXHIBIT F - CERTIFICATION REGARDING LOBBYING

(Awards in excess of \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Signed _____

Title City Manager, City of Sandy

Date _____

February [21], 2024

Oregon Infrastructure Finance Authority
775 Summer Street NE Suite 200
Salem OR 97301-1280

Re: City of Sandy – Project No. S24005 – Alder Creek

To Whom It May Concern:

I am the City Attorney for the City of Sandy (the “Recipient”), which has entered into a Financing Contract (as hereinafter defined) with the Oregon Infrastructure Finance Authority of the Oregon Business Development Department (“OBDD”) pursuant to Sections 285B.410 through 285B.482 of the Oregon Revised Statutes (the “Act”), and have acted as such in connection with the authorization, execution and delivery by the Recipient of the Contract (as hereinafter defined). Capitalized terms not otherwise defined in this letter shall have the meanings assigned to them by the Contract.

In so acting I have examined the Constitution and laws of the State of Oregon and the Recipient’s Charter, if any. I have also examined originals, or copies certified or otherwise identified to my satisfaction, of the following:

- A. The Financing Contract by and between the OBDD and the Recipient, number S24005, signed by Recipient on _____, 2024, in the principal loan amount of \$6,029,100.00, executed by the Recipient (collectively, the “Contract”).
- B. Proceedings of the governing body of the Recipient relating to the approval of the Contract and the execution, issuance and delivery thereof on behalf of the Recipient, and the authorization of the undertaking and completion of the Project as defined in the Contract;
- C. All outstanding instruments relating to bonds, notes or other indebtedness of or relating to the Recipient.

I have also examined and relied upon originals, or copies certified or otherwise authenticated to my satisfaction, of such other records, documents, certificates and other instruments, and made such investigation of law as in my judgment I have deemed necessary or appropriate to enable me to render the opinions expressed below.

Based upon the foregoing, I am of the opinion that:

- 1. The Recipient is a duly formed and operating municipality described in ORS 285B.410(9), with the legal right to own and operate the Project.

2. The Recipient has full legal right and authority to execute and deliver the Contract and to observe and perform its duties, covenants, obligations and agreements thereunder and to undertake and complete the Project.
3. Amounts due to the OBDD pursuant to the Contract are payable from the sources described in Section 4 of the Contract.
4. The Ordinance (the “Ordinance”) of the Recipient approving the Contract and authorizing their execution, issuance and delivery on behalf of the Recipient, and authorizing the Recipient to undertake and complete the Project has been duly and lawfully adopted and authorized in accordance with the Recipient’s Charter, if any, the Act and other applicable Oregon law, and the Ordinance was adopted at a meeting or meetings which were duly called with public notice and held in accordance with the Recipient’s Charter, if any, and applicable Oregon law, and at which quorums were present and acting throughout.
5. The Contract has been duly authorized, executed and delivered by the authorized officers of the Recipient and constitutes the legal, valid and binding obligation of the Recipient enforceable in accordance with its terms; subject, however, to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors’ rights or remedies generally (“Creditor’s Rights Limitations”) heretofore or hereafter enacted and the application of equitable principles.
6. To the best of my knowledge, after such investigation as I have deemed appropriate, the authorization, execution and delivery of the Contract by the Recipient, the observation and performance by the Recipient of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions contemplated therein and the undertaking and completion of Project, do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Recipient or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond ordinance, resolution, trust agreement, indenture, mortgage, deed of trust or other agreement to which the Recipient is a party or by which it, the Project, or its property or assets is bound.
7. To the best of my knowledge, after such investigation as I have deemed appropriate, all approvals, consents or authorizations of, or registrations of or filings with, any governmental or public agency, authority or person required to date on the part of the Recipient in connection with the authorization, execution, delivery and performance of the Contract and the undertaking and completion of the Project have been obtained or made.
8. To the best of my knowledge, after such investigation as I have deemed appropriate, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State or Federal) questioning the creation, organization or existence of the Recipient or of the validity, legality or enforceability of the Contract or the undertaking or completion of the Project.

This opinion is rendered on the basis of the laws of the State of Oregon, including the Act, as enacted and construed on the date hereof. I express no opinion as to any matter not set forth in the numbered paragraphs herein.

Sincerely,

UNSIGNED DRAFT

Ashleigh K. Dougill

AKD/kkb



STAFF REPORT

Meeting Type: City Council
Meeting Date: March 4, 2024
From: Andi Howell, Transit Director
Subject: Grant Agreement Approval: ODOT Funding for Transit Department

DECISION TO BE MADE:

Whether to authorize the City Manager to execute Oregon Department of Transportation (ODOT) Grant Agreement #35631.

PURPOSE / OBJECTIVE:

This grant agreement will increase the Transit Department’s revenue by \$338,000. The funds become available upon signature of the contract and can be used to reimburse SAM for costs of operations on the SAM Gresham route (\$228,000) and the SAM rides (dial-a-ride) service (\$110,000).

BACKGROUND / CONTEXT:

In June 2023, the Public Transit Division of ODOT accepted grant applications for the last round of competitive projects for the CARES ACT funds which were awarded to Oregon for COVID recovery. Sandy Transit submitted a grant application for funds to offset the rising costs of operations post pandemic. These funds can be used to cover contractor costs, fuel and parts and maintenance, all of which have risen significantly. In September 2023, Sandy Transit was awarded \$338,000 through this grant solicitation.

KEY CONSIDERATIONS / ANALYSIS:

These funds were not included in Sandy Transit’s original 2023-2025 budget. These are additional funds with no match requirement.

Nearly all aspects of Sandy Transit operations costs are eligible for reimbursement including contractor costs which pays driver, dispatch, general manager, maintenance coordinator and utility worker wages. The funds are distributed through the Federal 5311 grant program, a program from which Sandy Transit already receives funding and is very familiar with the requirements.

BUDGETARY IMPACT:

\$338,000 in revenue. No match required.

RECOMMENDATION:

Staff recommends that the Council authorize the City Manager to execute Oregon Department of Transportation (ODOT) Grant Agreement #35631.

SUGGESTED MOTION LANGUAGE:

"I move to authorize the City Manager to execute Oregon Department of Transportation (ODOT) Grant Agreement #35631."

LIST OF ATTACHMENTS / EXHIBITS:

- Grant Agreement #35631

PUBLIC TRANSPORTATION DIVISION OREGON DEPARTMENT OF TRANSPORTATION

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through its Department of Transportation, Public Transportation Division, hereinafter referred to as "State," and **City of Sandy**, hereinafter referred to as "Recipient," and collectively referred to as the "Parties."

AGREEMENT

1. **Effective Date.** This Agreement shall become effective on the later of **February 1, 2024** or the date when this Agreement is fully executed and approved as required by applicable law. Unless otherwise terminated or extended, Grant Funds under this Agreement shall be available for Project Costs incurred on or before **January 31, 2026** (the "Expiration Date"). No Grant Funds are available for any expenditures after the Expiration Date. State's obligation to disburse Grant Funds under this Agreement shall end as provided in Section 10 of this Agreement.
2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: Project Description and Budget

Exhibit B: Financial Information

Exhibit C: Subagreement Insurance Requirements and Recipient Insurance Requirements

Exhibit D: Summary of Federal Requirements, incorporating by reference Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements ("Certifications and Assurances") and Federal Transit Administration Master Agreement

Exhibit E: Information required by 2 CFR 200.332(a), may be accessed at <https://www.oregon.gov/odot/RPTD/Pages/index.aspx>, Oregon Public Transit Information System (OPTIS), as the information becomes available

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit D; Exhibit E; this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C.

3. **Project Cost; Grant Funds; Match.** The total project cost is estimated at **\$338,000.00**. In accordance with the terms and conditions of this Agreement, State shall provide Recipient an amount not to exceed **\$338,000.00** (the "Grant Funds") for eligible costs described in Section 6.a. hereof. Recipient shall provide matching funds for all Project Costs as described in Exhibit A. Recipient will be responsible for all Project Costs not covered by the Grant Funds.
4. **Project.** The Grant Funds shall be used solely for the project described in Exhibit A (the "Project") and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by State by amendment pursuant to Section 11.a hereof.
5. **Progress Reports.** Recipient shall submit quarterly progress reports to State no later than 45 days after the close of each quarterly reporting period. Reporting periods are July through September, October through December, January through March, and April through June. Reports must be in a format acceptable to State and must be entered into the Oregon Public Transit Information System (OPTIS), which may be accessed at <https://www.oregon.gov/odot/RPTD/Pages/index.aspx>. If Recipient is unable to access OPTIS, reports must be sent to ODOTPTDReporting@odot.state.or.us. Reports shall include a statement of revenues and expenditures for each quarter, including documentation of local match contributions and

expenditures. State reserves the right to request such additional information as may be necessary to comply with federal or state reporting requirements.

6. Disbursement and Recovery of Grant Funds.

a. **Disbursement Generally.** State shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Funds amount provided in Section 3. Reimbursements shall be made by State within 30 days of State's approval of a request for reimbursement from Recipient using a format that is acceptable to State. Requests for reimbursement must be entered into OPTIS or sent to ODOTPTDReporting@odot.state.or.us. Eligible costs are the reasonable and necessary costs incurred by Recipient, or under a subagreement described in Section 9 of this Agreement, in performance of the Project and that are not excluded from reimbursement by State, either by this Agreement or by exclusion as a result of financial review or audit.

b. **Conditions Precedent to Disbursement.** State's obligation to disburse Grant Funds to Recipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- i. State has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to make the disbursement.
- ii. Recipient is in compliance with the terms of this Agreement including, without limitation, Exhibit D and the requirements incorporated by reference in Exhibit D.
- iii. Recipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- iv. Recipient has provided to State a request for reimbursement using a format that is acceptable to and approved by State. Recipient must submit its final request for reimbursement following completion of the Project and no later than 60 days after the Expiration Date. Failure to submit the final request for reimbursement within 60 days after the Expiration Date could result in non-payment.

c. Recovery of Grant Funds.

- i. Recovery of Misexpended Funds or Nonexpended Funds. Any Grant Funds disbursed to Recipient under this Agreement that are either (i) disbursed but unexpended as of the Expiration Date ("Unexpended Funds") or (ii) expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") must be returned to State. Recipient shall return all Misexpended Funds to State no later than 15 days after State's written demand. Recipient shall return all Unexpended Funds to State within 15 days after the earlier of expiration or termination of this Agreement.
- ii. Recovery of Funds upon Termination. If this Agreement is terminated under either Section 10(a)(i) or Section 10(a)(v) below, Recipient shall return to State all funds disbursed to Recipient within 15 days after State's written demand for the same.

7. Representations and Warranties of Recipient. Recipient represents and warrants to State as follows:

a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient

of this Agreement.

- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. **No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements, except as permitted by applicable law. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. **No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from this federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify State immediately if it is debarred, suspended or otherwise excluded from this federally-assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

The warranties set in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. Records Maintenance and Access; Audit.

- a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall require that each of its subrecipients and subcontractors complies with these requirements. State, the Secretary of State of the State of Oregon (Secretary), the United States Department of Transportation (USDOT), the Federal Transit Administration (FTA) and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, State, the Secretary, USDOT, FTA and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of State, the Secretary, USDOT and FTA to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.
- b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, including, without limitation, records relating to capital assets funded by this Agreement, the Grant Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the Expiration Date. If there are unresolved audit questions at the end of the six-year period, Recipient shall retain the records until the questions are resolved.
- c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by State under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit State to verify how the Grant Funds were expended.
- d. **Audit Requirements.**
 - i. If Recipient expends \$750,000 or more in federal awards during the Recipient's fiscal year, the Recipient must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR Part 200, Subpart F (Audit Requirements). Recipient, if subject to this requirement, shall at Recipient's own expense submit to State, Public Transportation Division, 555 13th Street NE, Suite 3, Salem, Oregon, 97301-4179 or to ODOTPTDReporting@odot.oregon.gov, a copy of, or electronic link to, its annual audit subject to this requirement covering the

funds expended under this Agreement and shall submit or cause to be submitted, the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Agreement.

- ii. Recipient shall indemnify, save, protect and hold harmless State from the cost of any audits or special investigations performed by the Secretary with respect to the funds expended under this Agreement. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and State.

This Section 8 shall survive any expiration or termination of this Agreement.

9. Recipient Subagreements and Procurements

- a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project.
 - i. All subagreements must be in writing executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
 - ii. Recipient shall require all of its contractors performing work under this Agreement to name State as a third-party beneficiary of Recipient's subagreement with the contractor and to name State as an additional or "dual" obligee on contractors' payment and performance bonds.
 - iii. Recipient shall provide State with a copy of any signed subagreement, as well as any other purchasing or contracting documentation, upon request by State. This paragraph 9.a.iii. shall survive expiration or termination of this Agreement.
 - iv. Recipient must report to State any material breach of a term or condition of a subagreement within ten (10) days of Recipient discovering the breach.
- b. Recipient shall review the *Best Practices Procurement Manual*, a technical assistance manual prepared by the FTA, available on the FTA website: www.fta.dot.gov/grants/13054_6037.html
- c. **Subagreement indemnity; insurance**
 - i. ***Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.***
 - ii. **Any such indemnification shall also provide that neither Recipient's subrecipient(s), contractor(s) nor subcontractor(s) (collectively "Subrecipients"), nor any attorney engaged by Recipient's Subrecipient(s), shall defend any claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's Subrecipient is prohibited from defending State or that Recipient's Subrecipient is not adequately defending State's**

interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Recipient's Subrecipient if State elects to assume its own defense.

- iii. Recipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance requirements provided in Exhibit C to this Agreement. Recipient may specify insurance requirements of its contractor(s) above the minimum insurance requirements specified in Exhibit C. Recipient shall verify its contractor(s) meet the insurance requirements in Exhibit C.
- d. **Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, as applicable, including all applicable provisions of the Oregon Public Contracting Code and rules, and in conformance to FTA Circular 4220.1F, Third Party Contracting Requirements including:
 - i. All applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement;
 - ii. All procurement transactions are conducted in a manner providing full and open competition;
 - iii. Procurements exclude the use of statutorily or administratively imposed in-state or geographic preference in the evaluation of bids or proposals (with exception of locally controlled licensing requirements);
 - iv. Construction, architectural and engineering procurements are based on Brooks Act procedures unless the procurement is subject to ORS 279C.100 to 279C.125.
- e. **Conflict of Interest.** Recipient's public officials shall comply with Oregon's government ethics laws, ORS 244.010 et seq., as those laws may be subsequently amended.

10. Termination

- a. **Termination by State.** State may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by State in such written notice, if:
 - i. Recipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Recipient is, for any reason, rendered improbable, impossible, or illegal; or
 - ii. State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - iv. The Project would not produce results commensurate with the further expenditure of funds; or
 - v. Recipient takes any action pertaining to this Agreement without the approval of State and which under the provisions of this Agreement would have required the approval of State.
- b. **Termination by Recipient.** Recipient may terminate this Agreement effective upon delivery of written notice of termination to State, or at such later date as may be established by Recipient in such written notice, if:
 - i. The requisite local funding to continue the Project becomes unavailable to Recipient; or
 - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.

- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.

11. General Provisions

- a. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

- b. **Contribution.**

- i. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
- ii. Except as otherwise provided in Paragraph 11.c below, with respect to a Third Party Claim for which State is jointly liable with Recipient (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
- iii. Except as otherwise provided in Paragraph 11.c below, with respect to a Third Party Claim for which Recipient is jointly liable with State (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

- c. **Indemnification.**

- i. Subject to any limitations imposed by State law and the Oregon Constitution, Recipient agrees to the following contract-related indemnification for all projects authorized under this Agreement:
- ii. Where Recipient contracts for services or performs project management for a project, Recipient shall accept all responsibility, defend lawsuits, indemnify, and hold State harmless, for all contract-related claims and suits. This includes but is

not limited to all contract claims or suits brought by any contractor, whether arising out of the contractor's work, Recipient's supervision of any individual project or contract, or Recipient's failure to comply with the terms of this Agreement.

Sections 11.b and 11.c shall survive termination of this Agreement.

- d. **Insurance.** Recipient shall meet the insurance requirements within Exhibit C.
- e. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- f. **Responsibility for Grant Funds.** Any recipient of Grant Funds, pursuant to this Agreement with State, shall assume sole liability for that recipient's breach of the conditions of this Agreement, and shall, upon recipient's breach of conditions that requires State to return funds to the FTA, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the recipient of Grant Funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- g. **Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- h. **No Third Party Beneficiaries.** State and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Recipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Recipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the this Agreement.

- i. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to Recipient Contact or State Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this subsection. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against State, such facsimile transmission must be confirmed by telephone notice to State Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
- j. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between State (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any

Claim or from the jurisdiction of any court. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.

- k. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, as applicable to Recipient, including without limitation as described in Exhibit D. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- l. **Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of State. Recipient has no right or authority to incur or create any obligation for or legally bind State in any way. State cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of State, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- m. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- n. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- o. **Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Recipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.
- p. **Survival.** The following provisions survive termination of this Agreement: Sections 6.c., 8 and 11.

The Parties, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

The Oregon Transportation Commission on October 20, 2010, approved Delegation Order Number OTC-01, which authorizes the Director of the Oregon Department of Transportation to administer programs related to public transit.

On March 1, 2012, the Director approved Delegation Order Number DIR-04, which delegates the authority to approve this Agreement to the Public Transportation Division Administrator.

SIGNATURE PAGE TO FOLLOW

City of Sandy, by and through its

State of Oregon, by and through its
Department of Transportation

By _____
(Legally designated representative)

By _____
Suzanne Carlson
Public Transportation Division Administrator

Name _____
(printed)

Date _____

Date _____

APPROVAL RECOMMENDED

By _____

By _____ Arla Miller

Name _____
(printed)

Date _____ 01/23/2024

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

(For funding over \$150,000)

APPROVED AS TO LEGAL SUFFICIENCY

(If required in local process)

By _____
Assistant Attorney General

By _____
Recipient's Legal Counsel

Name _____ Sam Zeigler by email
(printed)

Date _____

Date _____ 02/01/2023

Recipient Contact:

Andi Howell
16610 Champion Way
Sandy, OR 97055
1 (503) 4890925
ahowell@ci.sandy.or.us

State Contact:

Arla Miller
555 13th St SE
Salem, OR 37301
1 (503) 949-5415
Arla.MILLER@odot.state.or.us

Signed Agreement Return Address: ODOTPTDReporting@odot.state.or.us

EXHIBIT A
Project Description and Budget

Project Description/Statement of Work

Project Title: COVID 5311 City of Sandy 35631				
P-23-6012-01 Item #1: EMER RELIEF - OPERATING 100%				
	Total	Grant Amount	Local Match	Match Type(s)
	\$228,000.00	\$228,000.00	\$0.00	
P-23-6012-02 Item #1: EMER RELIEF - OPERATING 100%				
	Total	Grant Amount	Local Match	Match Type(s)
	\$110,000.00	\$110,000.00	\$0.00	
Sub Total	\$338,000.00	\$338,000.00	\$0.00	
Grand Total	\$338,000.00	\$338,000.00	\$0.00	

1. BACKGROUND

The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, Coronavirus Response and Relief Supplemental Appropriations (CRRSAA) Act, and American Rescue Plan Act (ARP), provide emergency assistance and health care response for individuals, families, and businesses affected by the COVID-19 pandemic and provides emergency appropriations to support agency operations during the pandemic. Funds provided under the CARES, CRRSAA and ARP Acts are available for transit agencies to maintain service and lost revenue, including the purchase of protective equipment and paid administrative leave.

2. PROJECT DESCRIPTION

This agreement provides financial support for general public transportation services in the state of Oregon to provide relief from expenses incurred in response to the COVID-19 pandemic. This agreement includes the following activities and not to exceed \$338,000.00 in COVID grant funds.

Operating Expenses

Gresham Commuter Service

This project would support the SAM Gresham service. Project funding would cover contractual costs. Contracted services includes drivers, dispatch, supervisors, maintenance coordinator and bus washers. This proposal would also be used for maintenance and fuel costs. Not to exceed \$228,000.00.

SAM Rides Demand Response Service

This project would support the SAM rides service. Project funding would cover contracted services costs. Contracted services includes drivers, dispatch, supervisors, maintenance coordinator and bus washers. This proposal would also be used for maintenance and fuel costs. Not to exceed \$110,000.00.

3. PROJECT DELIVERABLES and EXPENSE TYPES

Funding may be used for projects to prevent, prepare for, and respond to COVID-19. Although operational expenses are the priority, all expenses normally eligible under the Federal Transit Administration (FTA) Section 5311 Formula Grants to Rural Areas Program incurred on or after January 1, 2021 are considered to be in response to economic or other conditions caused by COVID-19 and thus are eligible under this Agreement. Normally-eligible expenses include those for operating, preventive maintenance, project administration, contracted services, and capital purchases. There is no limit to the percentage of funds that may be used for any category of expense.

Specific eligible expenses under the CARES Act include operating costs to maintain service, lost revenue due to the COVID-19 public health emergency, purchase of personal protective

equipment associated with response to the pandemic, administrative leave salaries for personnel, and cleaning and sanitizing equipment and supplies.

Ineligible expenses under the Section 5311 program may be reimbursed if an FTA waiver is obtained. Waiver requests are managed by State and results are posted on State's website. Waivers may be implemented during the Agreement period.

Operating Expenses

In general, operating expenses are those costs necessary to operate, maintain, and manage a public transportation system. Operating expenses include such costs as driver salaries, fuel, and items having a useful life of less than one year, including personal protective equipment and cleaning supplies. See Chapter III of the FTA Circular 9040.1G (Formula Grants for Rural Areas) for more information on eligible operating expenses.

4. PROJECT ACCOUNTING and MATCHING FUNDING

CRRSAA and ARP Act funds are being made available to support operating expenses generally eligible under urbanized area and rural area formula programs to prevent, prepare for, and respond to COVID-19, are included in this Agreement. CARES Act funds are being made available to support operating, capital and other expenses generally eligible under urbanized area and rural area formula programs to prevent, prepare for, and respond to COVID-19.

Projects funded with CRRSAA, ARP and CARES Act funds must be used to provide relief from expenses incurred in response to the COVID-19 pandemic. All expenses must be incurred on or after January 1, 2021 to be eligible for reimbursement.

Projects funded under this Agreement will be reimbursed at 100 percent. There is no local match requirement.

Generally accepted accounting principles and Recipient's own accounting system determine those costs that are to be accounted for as gross operating expenses. Recipient may not count the same costs twice if they have multiple agreements for which these costs may be eligible. The contractor may use capital equipment funded from USDOT- or State-source grants when performing services rendered through a contract funded by this Agreement. Depreciation of capital equipment funded from USDOT- or State-source grants is not an eligible expense.

Recipient will subtract revenue from fares, tickets, and passes, either pre-paid or post-paid, from the gross operating expense of service.

If Recipient receives federal funding, directly or indirectly, from insurance proceeds, the Federal Emergency Management Agency, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or a different federal agency for any portion of a project activity funded under this Agreement, Recipient will provide written notification to State. State will then deduct that amount from this Agreement to reimburse FTA for that federal share that duplicates funding provided by FEMA, another federal agency, or an insurance company.

5. REPORTING and INVOICING REQUIREMENTS

Reimbursement requests may be submitted no more frequently than monthly. Grant Funds provided under this Agreement must be expended by the Expiration Date. The Expiration Date may be extended if local circumstances change; however, there is no guarantee of an extension.

Recipient will request reimbursement for covered expenses incurred during each period as prescribed by State and described in Recipient's submitted preventive maintenance plan for this Agreement. Recipient must maintain and provide supporting documents detailing the total expenses for allowable maintenance activities incurred during the period. Recipient may list costs on a form provided by State, or provide vendor invoices.

Copies of invoices for vendor charges must be submitted with reimbursement requests. In-house charges may be documented in a spreadsheet or with copies of timesheets showing time

specifically associated with the project. In addition, Recipient must submit a cover letter or summary of the total expenses for work performed.

Expenses incurred will not be reimbursed if the project's scope is changed or altered without the necessary approval and amendment by State.

EXHIBIT B
FINANCIAL INFORMATION

The information below will assist auditors to prepare a report in compliance with the requirements of 2 CFR part 200, subpart F.

This Agreement is financed by the funding source indicated below:

Federal Program 49 U.S.C. 5311	Federal Funding Agency U.S. Department of Transportation Federal Transit Administration 915 Second Avenue, Suite 3142 Seattle, WA 98174	CFDA Number 20.509 (5311)	Total Federal Funding \$338,000.00
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Administered By
Public Transportation Division
555 13th St SE
Salem, OR 37301

EXHIBIT C

Insurance Requirements

1. GENERAL.

1. a. GENERAL REQUIREMENTS

Recipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Recipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which the Recipient is a Party.

2. TYPES AND AMOUNTS.

a. WORKERS COMPENSATION.

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

b. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability - Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy.

Amounts below are a minimum requirement as determined by State:

Coverage shall be written on an occurrence basis in an amount of not less than **\$1,000,000** per occurrence.

Annual aggregate limit shall not be less than **\$2,000,000**.

c. AUTOMOBILE LIABILITY.

Automobile Liability Insurance covering Contractor's business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property. Amount below is a minimum requirement as determined by State:

Coverage shall be written with a combined single limit of not less than **\$1,000,000**.

This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).

d. EXCESS/UMBRELLA LIABILITY.

A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required limits of insurance.

e. ADDITIONAL INSURED.

The liability insurance coverages, except Professional Liability or Workers' Compensation/Employer's Liability, if included, must include the **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees"** as an **endorsed** Additional Insured but only with respect to the contractor's activities to be performed under the Subagreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations. Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Recipient.

f. "TAIL" COVERAGE.

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance or pollution liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subagreement, for a minimum of twenty-four (24) months following the later of : (i) the contractor's completion and Recipient's acceptance of all Services required under the Subagreement or, (ii) the expiration of all warranty periods provided under the Subagreement. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and State may grant approval of the maximum "tail " coverage period reasonably available in the marketplace. If State approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

3. NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s). **The Recipient shall immediately notify State of any change in insurance coverage.**

4. CERTIFICATE(S) OF INSURANCE.

Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

Recipient Insurance Requirements

1. GENERAL.

a. GENERAL REQUIREMENTS

Recipient shall obtain at Recipient's expense the insurance specified in this exhibit prior to performing under this Agreement and shall maintain it in full force and at its own expense throughout the duration of this Agreement, as required by any extended reporting period or continuous claims made coverage requirements, and all warranty periods that apply. Recipient shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Recipient shall pay for all deductibles, self-insured retention and self-insurance, if any.

b. INSURANCE REQUIREMENT REVIEW.

Recipient agrees to periodic review of insurance requirements by State under this Agreement and to provide updated requirements as mutually agreed upon by Recipient and State.

2. TYPES AND AMOUNTS.

a. WORKERS COMPENSATION.

All employers, including Recipient, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Recipient shall require and ensure that each of its subcontractors complies with these requirements. If Recipient is a subject employer, as defined in ORS 656.023, Recipient shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Recipient is an employer subject to any other state's workers' compensation law, Contactor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

b. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury, death, and property damage and shall include personal and advertising injury liability, products and completed operations and contractual liability coverage. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability - Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Commercial General Liability Insurance shall not be less than the following amounts as determined by State:

Coverage shall be written on an occurrence basis in an amount of not less than **\$1,000,000** per occurrence.

Annual aggregate limit shall not be less than **\$2,000,000**.

c. AUTOMOBILE LIABILITY.

Automobile Liability Insurance covering business-related automobile use on all owned, non-owned or hired vehicles for bodily injury and property. Automobile Liability Insurance shall not be less than the following amount as determined by State:

Coverage shall be written with a combined single limit of not less than **\$1,000,000**.

This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).

d. EXCESS/UMBRELLA LIABILITY.

A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required limits of insurance.

e. ADDITIONAL INSURED.

The liability insurance coverages, except Professional Liability or Workers' Compensation/Employer's Liability, if included, must include the "**State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees**" as an **endorsed** Additional Insured but only with respect to the Recipient's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations. Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Recipient.

f. WAIVER OF SUBROGATION.

Recipient shall waive rights of subrogation which Recipient or any insurer of Recipient may acquire against the department or State of Oregon by virtue of the payment of any loss. Recipient will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the State has received a waiver of subrogation endorsement from the Recipient or the Recipient's insurer(s).

g. CONTINUOUS CLAIMS MADE COVERAGE:

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then Recipient shall maintain continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of:

- i. Recipient's completion and State's acceptance of all project work required under the Agreement, or
- ii. State or Recipient termination of this Agreement, or
- iii. The expiration of all warranty periods provided under this Agreement.

3. NOTICE OF CANCELLATION OR CHANGE.

Recipient or its insurer must provide 30 days' written notice to State before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

4. CERTIFICATE(S) AND PROOF OF INSURANCE.

Recipient shall provide to State Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Agreement. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Agreement. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance State has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Agreement.

5. STATE ACCEPTANCE.

All insurance providers are subject to State acceptance. If requested by State, Recipient shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to State's representatives responsible for verification of the insurance coverages required under this **Exhibit C**.

EXHIBIT D

Summary of Federal Requirements and Incorporating by Reference Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements ("Certifications and Assurances") and Federal Transit Administration Master Agreement ("Master Agreement")

Recipient and Recipient's subrecipient(s), contractor(s), or subcontractor(s), at any tier, if any, must comply with all applicable federal requirements contained in the Certifications and Assurances available at www.transit.dot.gov. The Certifications and Assurances, including as they may be changed during the term of this Agreement, are by this reference incorporated herein.

Recipient further agrees to comply with all applicable requirements included in the Master Agreement that is signed and attested to by State. This Master Agreement is incorporated by reference and made part of this Agreement. Said Master Agreement is available upon request from State by calling (503) 986-3300, or at www.transit.dot.gov. Without limiting the foregoing, the following is a summary of some requirements applicable to transactions covered by this Agreement and the funds described in Exhibit A:

1. Recipient shall comply with Title VI of the Civil Rights Act of 1964 (78 State 252, 42 U.S.C. § 2000d) and the regulations of the United States Department of Transportation (49 CFR 21, Subtitle A). Recipient shall exclude no person on the grounds of race, religion, color, sex, age, national origin, or disability from the benefits of aid received under this Agreement. Recipient will report to State on at least an annual basis the following information: any active lawsuits or complaints, including dates, summary of allegation, status of lawsuit or complaint including whether the Parties entered into a consent decree.
2. Recipient shall comply with FTA regulations in Title 49 CFR 27 Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance which implements the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, 49 CFR 37, and 49 CFR 38.
3. Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. Recipient's DBE program, if applicable, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to State of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
4. Recipient must include the following language in each subagreement Recipient signs with a subcontractor or subrecipient:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The contractor, subrecipient, or subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor, subrecipient, or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Recipient deems appropriate.

5. Recipient and contractors receiving in excess of \$100,000 in federal funds, other than Indian tribes, must certify to State that they have not and will not use federal funds to pay for influencing or attempting to influence an officer or employee of any federal department or Agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement or any other federal award. If non-federal funds have been used to support lobbying activities in connection with the Project, Recipient

shall complete Standard Form LLL, Disclosure Form to Report Lobbying and submit the form to State at the end of each calendar quarter in which there occurs an event that requires disclosure. Restrictions on lobbying do not apply to influencing policy decisions. Examples of prohibited activities include seeking support for a particular application or bid and seeking a congressional earmark.

Meeting Type: City Council
Meeting Date: March 4, 2024
From: Jennifer Coker, Public Works Director
AJ Thorne, Assistant Public Works Director
Subject: Creation of an Advanced Financing Reimbursement District for 362nd and Bell Street Construction

DECISION TO BE MADE:

Whether to direct staff to pursue establishment of an Advanced Financing Reimbursement District (AFRD) to recoup City Utility funds invested to build the 362nd and Bell Streets Extension Improvements Project.

BACKGROUND / CONTEXT:

Completion of the street capital project of the extension and connection of 362nd and Bell streets achieved a 30-year goal for the Sandy City Council. The project was completed with a total project cost of \$12.94 million, including all construction, engineering and right-of-way acquisition.

As discussed during the February 5th Council meeting, the City has an option to create an Advanced Financing Reimbursement District (AFRD) to recoup a portion of the project costs. An AFRD will benefit the City by creating a mechanism for future development to pay a share of the cost for the project. Development also benefits, as their portion of the public improvements are available at a substantially discounted price.

Based on feedback from the last meeting, Council is potentially interested in an AFRD but prefers a balanced approach that favors incentives for development. Staff believes council concurs with the approach of using the area apportionment methodology to assign costs.

The decisions before City Council are as follows:

1. Should the City create an AFRD to recover a portion of the project cost?
2. What percentage of the project cost should be sought with this district?
3. What should the term and interest of the district be?

Per the Council's request at the February 5th, 2024 meeting, some additional information was gathered to provide context in the decision making process. These requests included:

- Examples of other reimbursement districts
- Estimated property values for the properties included in the district
- Potential use of Urban Renewal funds to offset a portion of this cost
- Potential of creating reimbursement Street SDCs

Exploration of a reimbursement SDC requires a shift in the current update to the Transportation SDC (TSDC) methodology. This information will be included in an upcoming council session specifically related to the TSDC. Potential use of Urban Renewal funds to offset costs is a feasible option and can also be a subject for future meetings.

ADDITIONAL INFORMATION REQUESTED BY COUNCIL:**AFRD Examples**

Table 1 presents a compilation of AFRDs for City of Sandy, as well as an example from Gresham and Sherwood. The term generally appears to be 20 years, although Gresham had an example of 10 years, with the option for their Council to renew for another 10 years. The interest rates are variable and range from zero interest to 6% interest.

Table 1: AFRD Examples

District	Facility	Total	Term	Interest
Sherwood	Sewer	\$500,964.00	None	4%Fee
Gresham	Sewer	\$335,000.00	10 + 10	None
Sandy (Tom Orth)	Street/Utilities	\$345,559.00	20	1.57% Simple
Sandy (4J)	Street/Utilities	\$1,226,336.00	20	None
Sandy	Street/Utilities	\$408,510.00	20	6% Simple

Assessed Land Values

Table 2 below displays property values based on Tax Assessor data.

Table 2: Assessed Land Values

Property	Assessed Land Value	Acres	Zoning	\$/Ac
16370 Royal Ln*	\$423,614	14.18	C2	\$29,874
16200 Royal Ln	\$866,996	7.16	R2	\$121,089
16210 Royal Ln	\$790,994	6.37	R2	\$124,175
16220 Royal Ln	\$689,153	5.45	R2	\$126,450
36405 Hwy 26	\$12,701,710	66.4	C2	\$191,291
36145 Hwy 26	\$1,750,828	16.7	C2	\$104,840

* This property is in farm deferral which keeps assessment artificially low. When land use changes, the property will be reassessed.

Figure 1 is a map showing the location of each property included in the district.

Figure 1. Properties Included In AFRD



KEY CONSIDERATIONS / ANALYSIS:

The total cost of the project was \$12.94 Million. If we subtract the cost of the sewer fund contribution (\$250,128) and the water fund contribution (\$286,212), that leaves a street fund total contribution of \$12.4M. Due to the cost of this project being substantially more than planned, the City needed to apply all of the Street Fund operations surplus of \$2,300,000 in order to afford the project. Recovery of the street operations surplus is a reasonable target for the City to recover as it will allow for necessary and expected street maintenance to continue in Sandy.

The value of this proposed reimbursement district is \$2.48M. This represents a reimbursement value around 20% of the total project costs, which is a substantial discount to property developers over the total cost of building the road, stormwater, sewer and water improvements.

Table 3 below represents an example AFRD for 20% of the project cost using the area apportionment method, and the impact in terms of dollars as well as a percentage of the property value from tax assessor maps. As a reminder, it is likely that tax assessor maps undervalue the properties, and the AFRD is not payable unless the property develops. The largest property most likely to develop would have 11% of its value due in AFRD payment in this proposal.

Table 3 - Example: AFRD at 20% of Street Fund Project Cost, Area Method

Property Address	AFRD Payable Amount	% Property Value
16370 Royal Ln	\$339,915	80%
16200 Royal Ln	\$180,891	21%
16210 Royal Ln	\$162,914	21%
16220 Royal Ln	\$140,381	20%
36405 Hwy 26	\$1,430,871	11%
36145 Hwy 26	\$225,963	13%
TOTAL	\$2,480,935	

Per Council request, Clackamas County tax assessor maps have been used to provide a rough estimate of property values. The values presented in this report are likely lower than the market values of the properties impacted by this reimbursement district, and thus the percentages of property values shown are likely high. Additionally, the values presented are land only values.

Interest Rate Considerations

The Sandy Municipal Code prescribes that reimbursement districts have a 9% simple interest and that Council has discretion to determine an interest rate. This is a simple interest rate, not compounded. Table 4 presents three interest rates and the impact to each property after 1 year and at 20 years (the potential term of the district). These values are based on the 20% reimbursement values. Further interest rates can be demonstrated at the Council meeting.

Table 4 – Example: Interest Rates and AFRD Payable Amounts

Interest Rate		3%		4%		5%	
Property	Initial Valuation	Year 1	Year 20	Year 1	Year 20	Year 1	Year 20
16370 Royal Ln	\$339,915	\$350,112	\$543,864	\$353,512	\$611,847	\$356,911	\$679,830
16200 Royal Ln	\$180,891	\$186,318	\$289,426	\$188,127	\$325,605	\$189,936	\$361,783
16210 Royal Ln	\$162,914	\$167,802	\$260,663	\$169,431	\$293,246	\$171,060	\$325,829
16220 Royal Ln	\$140,381	\$144,592	\$224,609	\$145,996	\$252,685	\$147,400	\$280,761
36405 Hwy 26	\$1,430,871	\$1,473,797	\$2,289,393	\$1,488,105	\$2,575,567	\$1,502,414	\$2,861,741
36145 Hwy 26	\$225,963	\$232,742	\$361,541	\$235,002	\$406,733	\$237,261	\$451,926

ALTERNATIVE REIMBURSEMENT VALUATIONS

The Council also expressed interest in considering different alternatives for total reimbursement valuation for this district. It was requested that 10%, 20% and 30% total valuations be explored in this meeting. Table 5 below shows the total reimbursement amounts for these scenarios for the Street Fund total project contribution of \$12.4M (not the total project of \$12.94M which included water and sewer contributions). Staff will be able to provide quick calculations in the meeting if further alternatives are to be explored.

Table 5 – Alternative Reimbursement Values

Reimbursement %	10%	20%	30%
16370 Royal Ln	\$169,958	\$339,915	\$509,873
16200 Royal Ln	\$90,446	\$180,891	\$271,337
16210 Royal Ln	\$81,457	\$162,914	\$244,372
16220 Royal Ln	\$70,190	\$140,381	\$210,571
36405 Hwy 26	\$715,435	\$1,430,871	\$2,146,306
36145 Hwy 26	\$112,981	\$225,963	\$338,944
Total	\$1,240,468	\$2,480,935	\$3,721,403

BUDGET IMPACT:

Creation of an AFRD will have a positive impact on the Street Fund and will cost little to administer, although it is uncertain which properties will develop and on what timeline. Without replenishment of the Street Operations Fund, Sandy will be unable to meet the growing needs of the Street maintenance without either increased fees, or an influx of additional funding. Development of one of these properties in the next year would result in a replenishment of the Street operations fund in the next biennial budget.

RECOMMENDATION:

Staff recommends creation of a reimbursement district for the 362nd and Bell Street project. It is recommended that this district is valued at \$2,480,935 a 20% reimbursement, which will recover the funds transferred from Street operation, a 20 year district, and a 5% simple interest.

SUGGESTED MOTION LANGUAGE:

“I move to direct the City Manager to prepare a Resolution for the creation of an Advance Financing Reimbursement District for the construction of 362nd and Bell streets, for consideration at a City Council public hearing. The District is to be valued at \$_____ (\$2,480,935), and is to use the _____ (Area) apportionment methodology. The District is to expire after ____ (20) years and use a simple interest rate of _____(5) %.”

LIST OF ATTACHMENTS / EXHIBITS:

- Presentation slides



362nd & Bell Street Project AFRD Consideration

Sandy City
Council
March 4, 2024



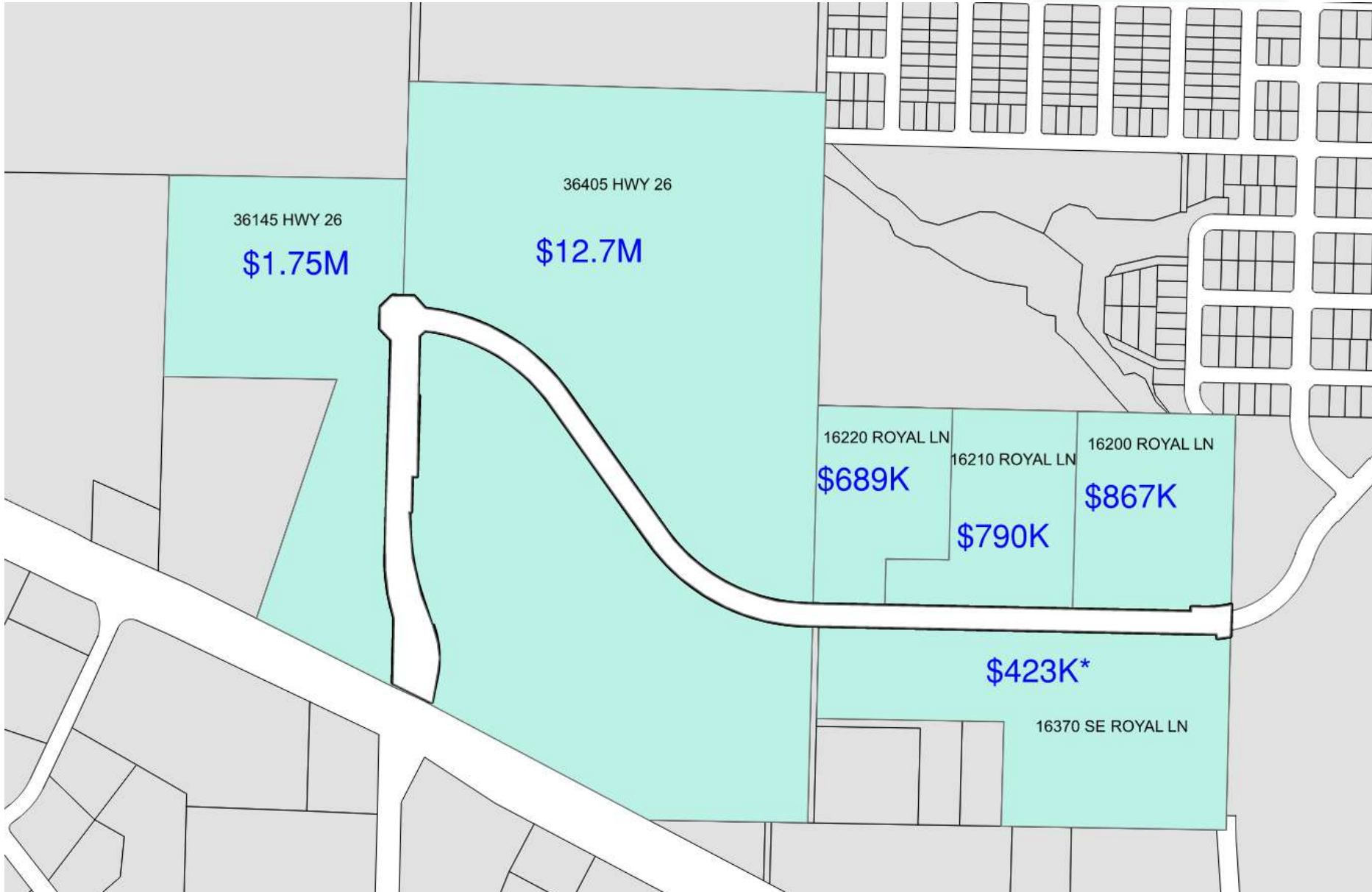
Background

- **Reviewed at Feb 5th Council Meeting**
- **Information Requested:**
 - Value of Properties
 - Example AFRDs
 - Interest Rate Examples



What Are These Properties Worth?

Item # 4.



Values presented based on the County tax assessor's data for land only values



Example AFRDs

District	Facility	Total	Term	Interest
Sherwood	Sewer	\$ 500,964	N/A	4% Fee
Gresham	Sewer	\$ 335,000	10 + 10	None
Sandy (Tom Orth)	Street/Utilities	\$ 345,559	20	1.57% Simple
Sandy (4J)	Street/Utilities	\$ 1,226,336	20	None
Sandy	Street/Utilities	\$ 408,510	20	6% Simple

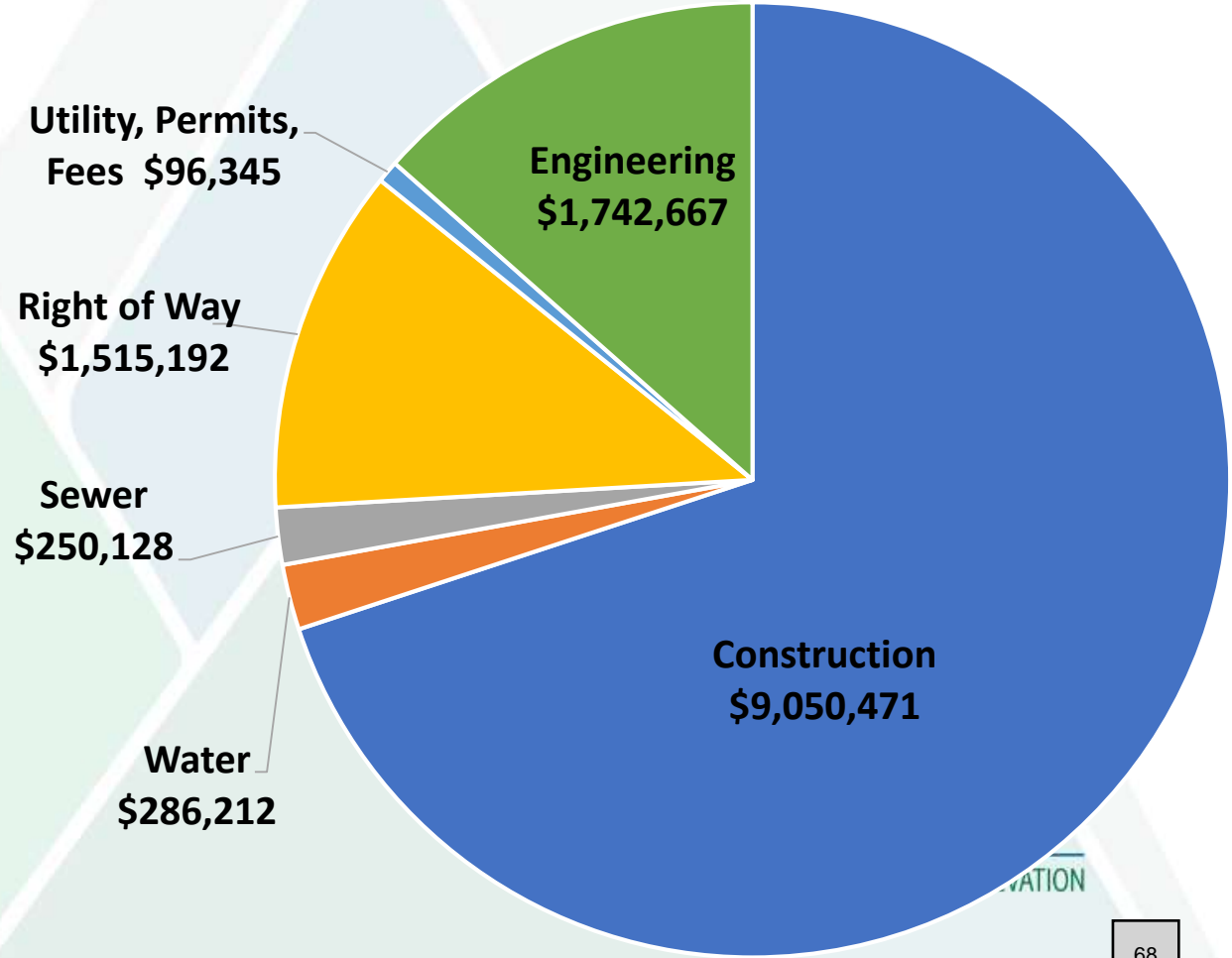
Interest Rate Growth

Interest Rate		3%		4%		5%	
Property	Initial Valuation	Year 1	Year 20	Year 1	Year 20	Year 1	Year 20
16370 Royal Ln	\$ 339,915	\$ 350,112	\$ 543,864	\$ 353,512	\$ 611,847	\$ 356,911	\$ 679,830
16200 Royal Ln	\$ 180,891	\$ 186,318	\$ 289,426	\$ 188,127	\$ 325,605	\$ 189,936	\$ 361,783
16210 Royal Ln	\$ 162,914	\$ 167,802	\$ 260,663	\$ 169,431	\$ 293,246	\$ 171,060	\$ 325,829
16220 Royal Ln	\$ 140,381	\$ 144,592	\$ 224,609	\$ 145,996	\$ 252,685	\$ 147,400	\$ 280,761
36405 Hwy 26	\$ 1,430,871	\$ 1,473,797	\$ 2,289,393	\$ 1,488,105	\$ 2,575,567	\$ 1,502,414	\$ 2,861,741
36145 Hwy 26	\$ 225,963	\$ 232,742	\$ 361,541	\$ 235,002	\$ 406,733	\$ 237,261	\$ 451,926



What Should Be the Value of the AFRD?

Construction	\$ 9,050,471
Water	\$ 286,212
Sewer	\$ 250,128
Right of Way	\$ 1,515,192
Utility, Permits, Fees	\$ 96,345
Engineering	\$ 1,742,667
Project TOTAL	\$ 12,941,014

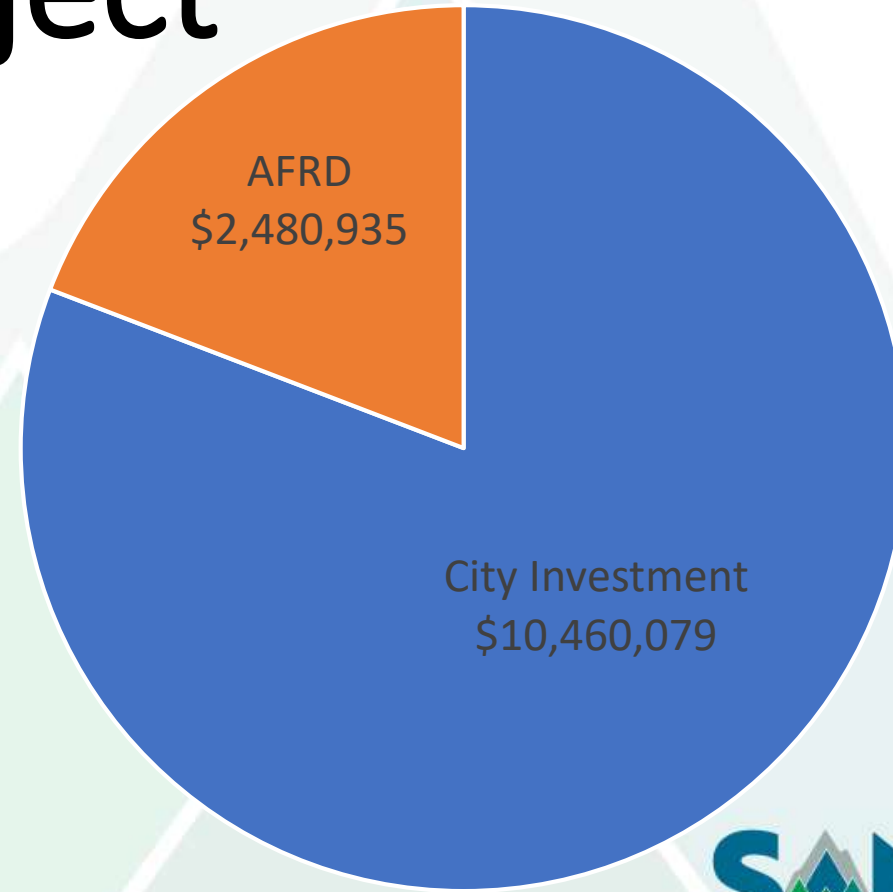


Project Total used for reimbursement district is **\$12,404,675**. This represents the total cost paid by the street fund

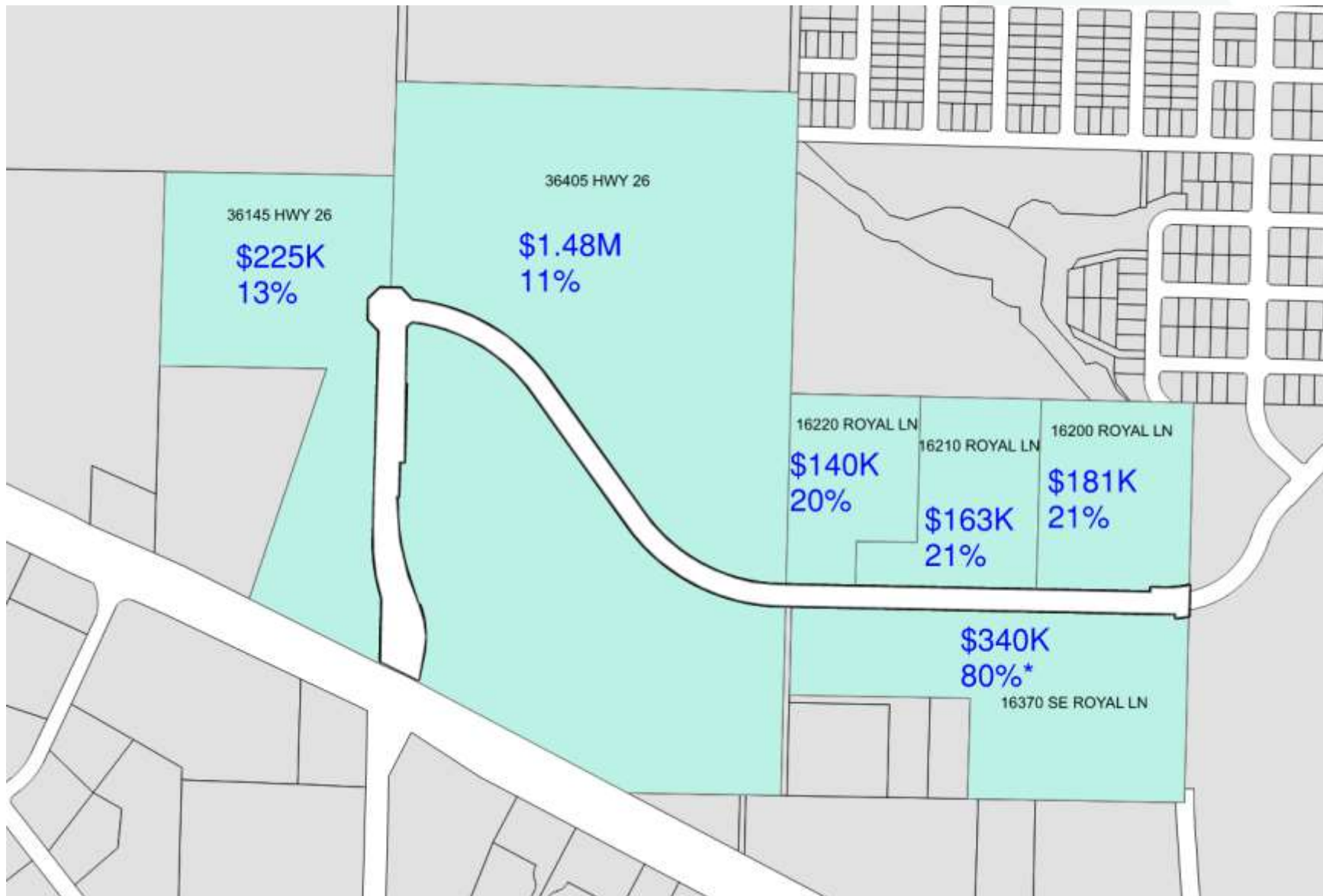
AFRD Proposed - 20% of Street Fund contribution to Project

Item # 4.

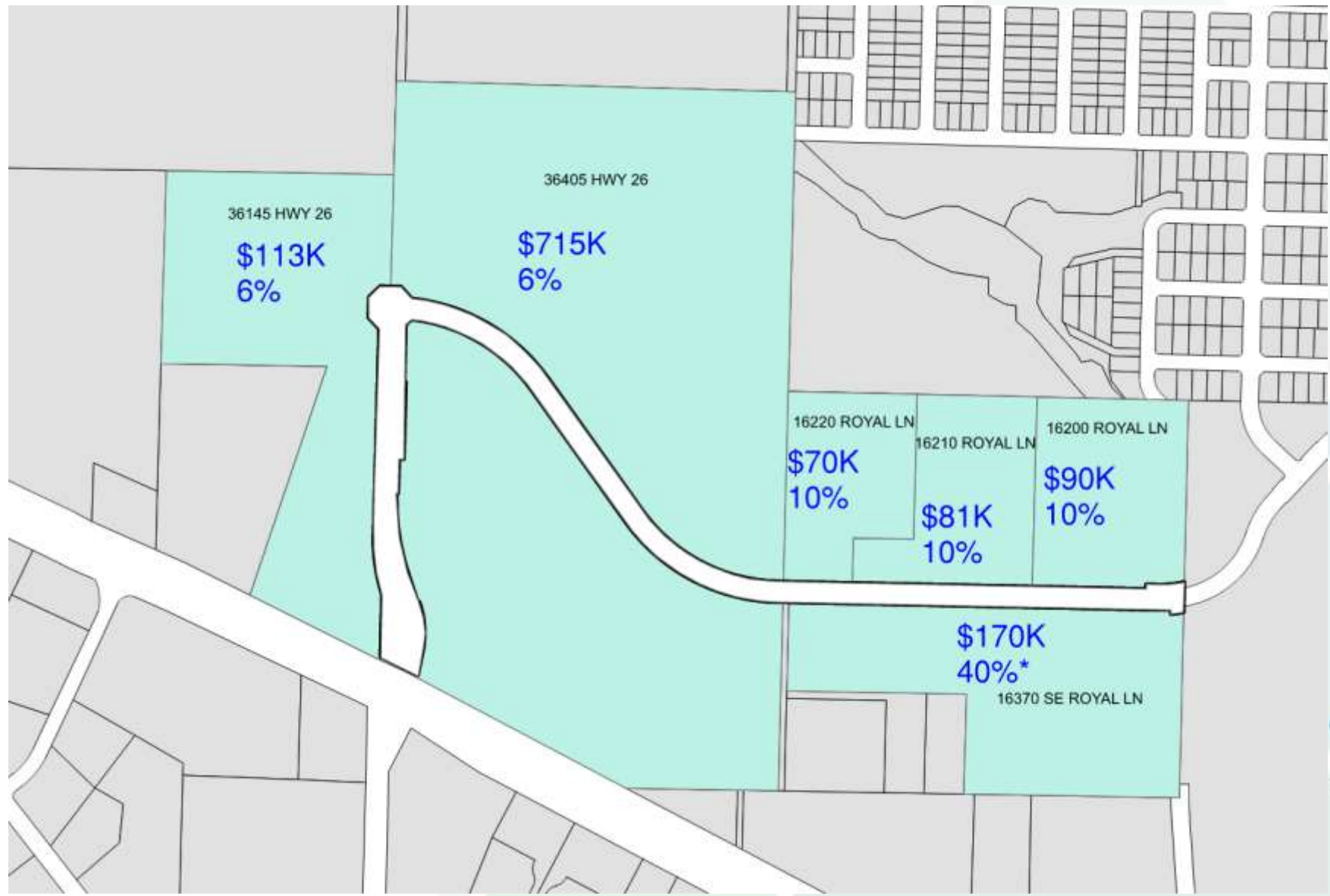
- Recoups funds from Street Fund operating budget
- Eliminates Water and Sewer Contribution
- Keeps economic development incentives
- Total AFRD **\$2.48M**



20% AFRD Impact to Properties



10% AFRD Impact to Properties



Alternative Reimbursement Percentages

Reimbursement %	10%	20%	30%
16370 Royal Ln.	\$ 169,958	\$ 339,915	\$ 509,873
16200 Royal Ln.	\$ 90,446	\$ 180,891	\$ 271,337
16210 Royal Ln.	\$ 81,457	\$ 162,914	\$ 244,372
16220 Royal Ln.	\$ 70,190	\$ 140,381	\$ 210,571
36405 Hwy 26	\$ 715,435	\$ 1,430,871	\$ 2,146,306
36145 Hwy 26	\$ 112,981	\$ 225,963	\$ 338,944



Interest Rate and Term Options

- Municipal code prescribes 9% simple interest rate
- The funding spent for this project would earn **5% compound interest**
- Standard length of reimbursement districts is **20 years, option could be 10 years with option to renew another 10 years.**

Decision(s) to be made

- 1) Does the council desire a reimbursement district?**
- 2) What should be the value of the district?**
- 3) Interest rate and term limit?**

Staff Recommendation

- **Create AFRD valued at 20% of the Street Funded cost of the project \$2.48M**
- **District term of 20 Years**
- **Interest rate 5% simple interest**
- **Calculation based on Area Method**

Timeline

- Council direct staff by motion if AFRD desired
- Public Notice with terms
- Public Hearing and Resolution to Council
- Council to pass Resolution (as early as March 18th)



Questions?

Thank you!



Meeting Type: Sandy City Council
Meeting Date: March 4, 2024
From: Rochelle Anderholm-Parsch, Parks and Recreation Director
Subject: Deer Pointe Neighborhood Park Concept Planning

DECISION TO BE MADE:

Receive the presentation from Lango Hansen Landscape Architects and provide input regarding the Deer Pointe Neighborhood Park Concept Planning.

PURPOSE / OBJECTIVE:

The purpose of this report is to present conceptual plans for the development of Deer Pointe Neighborhood Park to the City Council for input and decision-making. The objective is to advance the planning process in accordance with the [Parks and Trails Master Plan](#) and City Council goals.

BACKGROUND / CONTEXT:

Deer Pointe Park is located on the east side of the city of Sandy and is identified as a priority park in the Parks and Trails Master Plan. The park property spans 3.165 acres, including land dedicated as part of the adjacent Bull Run Terrace development. The City Council has established a goal to develop this park, and tonight's discussion aims to expand on the conceptual plans outlined in the master plan.

The Parks and Trails Advisory Board initiated the visioning process for Deer Pointe Park on [Jan. 10, 2024](#), and subsequently provided input on three concepts presented by Lango Hansen Landscape Architects on [Feb. 14, 2024](#). The conceptual plans presented this evening incorporate feedback received from the Parks Board.

Next steps in the planning process include gathering input from the Council during this meeting, followed by two public open houses scheduled for March 6, 2024, and April 18, 2024. Invitations have been sent to approximately 200 neighboring residents to encourage community engagement. Funding for the park project has been allocated in the 2023-25 Fiscal Year budget, supported by system development charges.

KEY CONSIDERATIONS / ANALYSIS:

The proposed development of Deer Pointe Park is in line with the City Council's goals and the priorities outlined in the Parks and Trails Master Plan. These considerations include aligning park features with community needs, enhancing recreational opportunities, and ensuring accessibility for all residents. Additionally, the park's design should reflect the desired character and amenities outlined in the master

plan to meet the long-term goals of the city for park development and the community's level of service needs.

BUDGET IMPACT:

Funding for the Deer Pointe Park project has been allocated in the 2023-25 Fiscal Year budget, utilizing Systems Development Charge fees.

RECOMMENDATION:

Staff recommends that the City Council review the three conceptual plans for Deer Pointe Park presented in this report and provide input to guide the further development of the park design.

LIST OF ATTACHMENTS / EXHIBITS:

1. Deer Pointe Park Concept Presentation: Lango Hansen Landscape Architects

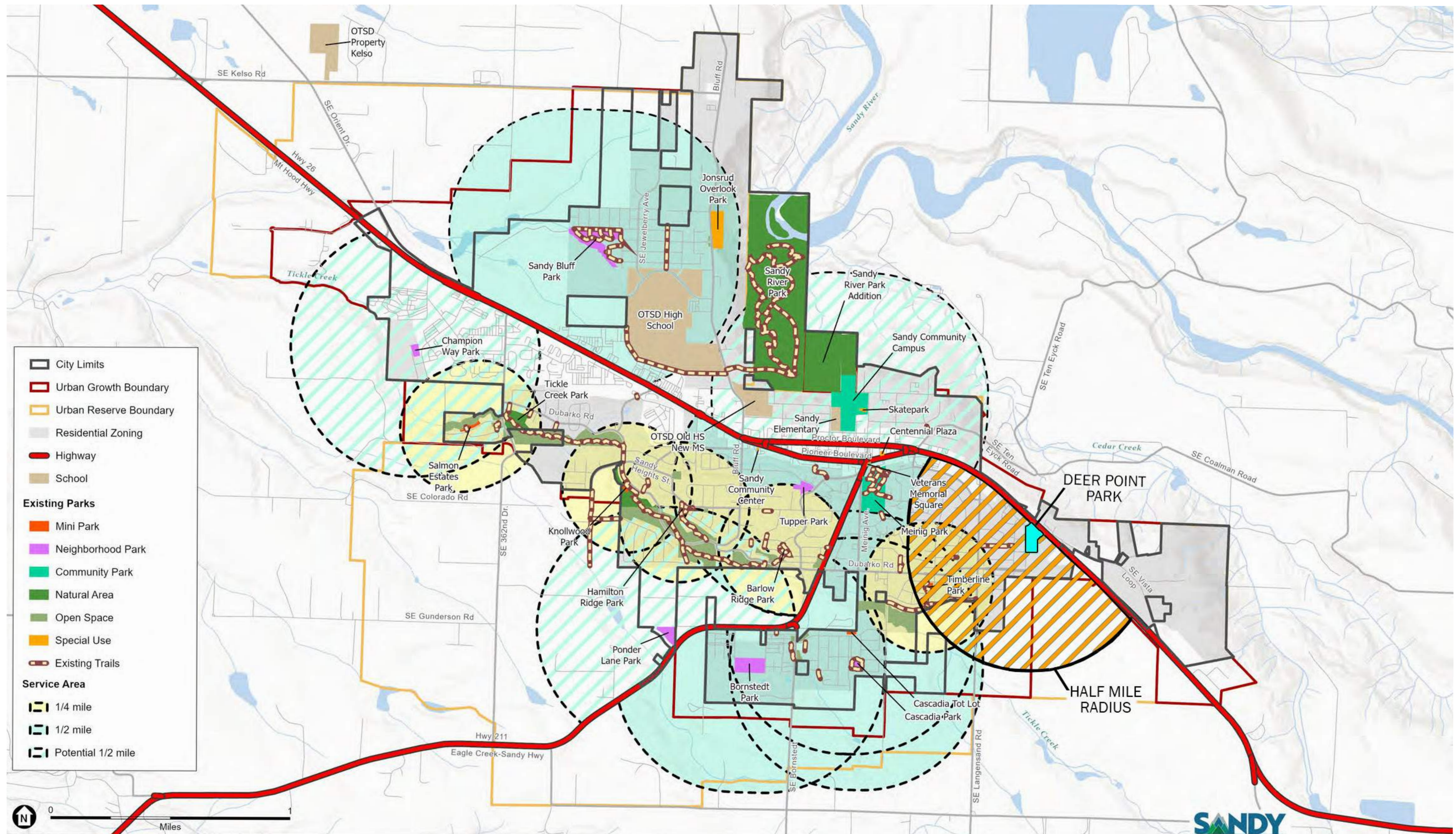
Deer Pointe Neighborhood Park

City Council Meeting #1

March 04, 2024



EXISTING PARK CONTEXT



DEER POINTE PARK

lango hansen LANDSCAPE ARCHITECTS



NEIGHBORHOOD PARKS

Neighborhood parks provide close-to-home recreation opportunities, primarily for passive and non-organized recreation activities.

- Safe and easy access for walking and biking
- Serves multiple user groups within the surrounding neighborhood
- Enhances the geographical dispersion of park features
- Commonly features park amenities like playgrounds, sport courts, and versatile open lawn areas
- Generally 2 to 5 acres in size
- Normally no parking Lots
- Typically no restrooms

PROJECT BACKGROUND

The City of Sandy Parks and Trails Master Plan (PTMP) included a preliminary concept plan for Deer Pointe Neighborhood Park.

The conceptual plan was developed to introduce preliminary design features aimed at enhancing the potential of this underdeveloped neighborhood park.

The City of Sandy is seeking to enlarge the concept by incorporating a more comprehensive public engagement and community outreach strategy.



SITE CONTEXT



DEER POINTE PARK

lango hansen LANDSCAPE ARCHITECTS



EXISTING CONDITIONS

- 3.165 ACRE PARK
- 25' ELEVATION CHANGE ACROSS LENGTH OF SITE
- MIX OF DOUGLAS FIR, CEDAR, MAPLE, AND OTHER TREE SPECIES
- EXISTING DRAINAGE FACILITIES
- PORTION OF SITE CONSUMED BY OVERGROWN BLACKBERRIES AND OTHER INVASIVE SPECIES
- LARGE OPEN LAWN AREA



POTENTIAL PARK ELEMENTS:

Walking Paths/Sidewalks

Playground

Sport Court

Picnic Shelter

Lawn Areas

Natural Areas

Disc Golf

Habitat Improvements

Seating Areas

Other Park Elements?





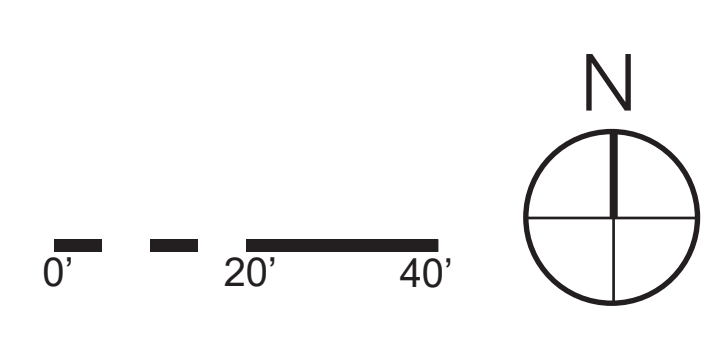
PARK AMENITIES

- 1** Playground
- 2** Shelter
- 3** Sport Court
- 4** Open Lawn
- 5** Shrubs and Groundcover

Option 1

DEER POINTE PARK

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Option 2

DEER POINTE PARK

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PARK AMENITIES

- 1** Playground
- 2** Shelter
- 3** Sport Court
- 4** Open Lawn
- 5** Shrubs and Groundcover

Option 3

DEER POINTE PARK

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