



REGULAR MEETING

**JOINT SAND CITY COUNCIL AND
SUCCESSOR AGENCY OF THE
REDEVELOPMENT AGENCY**

TUESDAY, AUGUST 15, 2023

5:30 PM

AGENDA
JOINT SAND CITY COUNCIL AND SUCCESSOR AGENCY OF THE REDEVELOPMENT
AGENCY

Regular Meeting - Tuesday, August 15, 2023
5:30 PM

THIS MEETING WILL BE HELD VIRTUALLY AND IN PERSON, IS COMPLIANT WITH ASSEMBLY BILL (“AB”) 2449, SIGNED INTO LAW ON SEPTEMBER 13, 2022, WHICH AMENDS GOVERNMENT CODE SECTION 54953 TO PROVIDE AUTHORITY FOR PUBLIC AGENCIES TO CONTINUE TO HOLD VIRTUAL MEETINGS AND REMAIN IN COMPLIANCE WITH THE BROWN ACT (GOV. CODE §§ 54950 ET SEQ.).

TO PARTICIPATE IN THE ZOOM COUNCIL MEETING LIVE:

<https://us02web.zoom.us/j/4614728829>

Meeting ID: 461 472 8829

To participate telephonically by calling the number below:

(669) 900-6833

Meeting ID: 461 472 8829#

If prompted to enter a participant ID, press #

TO PARTICIPATE IN PERSON:

City Hall Council Chamber

1 Pendergrass Way

Sand City, CA

How to submit written Public Comments:

If any member of the public would like to provide written comments at the meeting, please do as set forth below.

Written: All comments received before 8:00 am the day of the meeting will be posted on the City’s website as “Correspondence” under the relevant agenda item and provided to the City Council members at the meeting. Please email your comments to: cityclerk@sandcityca.org.

Read Aloud During the Meeting: Email your comments to cityclerk@sandcityca.org. When the Mayor opens the public comment period for the relevant agenda item; please indicate the agenda item and title in your email subject line. If you want your comment read aloud, prominently write “Read Aloud at Meeting” at the top of the email and your comments will be read into the record (not to exceed three minutes at staff’s cadence).

DURING EACH MEETING, members of the public may participate by calling and speaking live during the designated time(s), subject to time limits that may be imposed pursuant to the Brown Act at the number provided above. Please use the "raise your hand" option on Zoom, and the City Clerk will call on your name.

1. ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. INVOCATION

4. ANNOUNCEMENT BY MAYOR, CITY ATTORNEY, AND CITY MANAGER

5. COMMUNICATIONS

Members of the public may address the City Council/Successor Agency on matters not appearing on the City Council/Successor Agency Agenda at this time for up to three minutes. In order that the City Clerk may later identify the speaker in the minutes of the meeting, it is helpful if speakers state their names. Public comments regarding items on the scheduled agenda will be heard at the time the item is being considered by the City Council/Successor Agency.

The City Council Chambers podium is equipped with a portable microphone for anyone unable to come to the podium. If you need assistance, please advise the City Clerk as to which item you would like to comment on and the microphone will be brought to you.

6. CONSENT CALENDAR

The Consent Agenda consists of routine items for which City Council approval can be taken with a single motion and vote. A Council member may request that any item be placed on the Regular Agenda for separate consideration.

- 6A. Approve the City Council Special Closed Session and Regular Meeting Minutes for August 1, 2023

[Closed Session Minutes](#)

[Regular Meeting Minutes](#)

- 6B. Approve a Resolution Authorizing a Professional Services Agreement With Polaris Land Surveying, Inc. in an Amount Not to Exceed \$30,000 for a Three-Year Period

[Staff Report](#)

[Resolution](#)

[Professional Services Agreement](#)

[Fee Schedule](#)

- 6C. Approve a Resolution Authorizing a Two-Year Service Agreement for Financial Auditing Services by CliftonLarsonAllen, LLP for Fiscal Year 2022-2023 and Fiscal Year 2023-2024 at a Cost not to Exceed \$114,500

[Staff Report](#)

[Resolution](#)

[Proposal Letter](#)

[Master Services Agreement](#)

7. CONSIDERATION OF ITEMS PULLED FROM CONSENT CALENDAR

8. PUBLIC HEARING

- 8A. Introduce and Hold First Reading of an Ordinance Amending Sand City Municipal Code Section 2.08.010 Providing For an Increase in the Salary of the Mayor

[Staff Report](#)

[Ordinance](#)

9. NEW BUSINESS

- 9A. Approve a Resolution Approving an Increase to the Physical Fitness Incentive and CalPers 457 Deferred Compensation City Match for City Employees and Councilmembers

[Staff Report](#)

[Resolution](#)

- 9B. Direction From Council regarding Proposed Changes to the 6th Cycle Housing Element Public Review Draft

[Staff Report](#)

[Association of Bay Area Governments Technical Assistance for Local Planning Housing](#)

10. ADJOURNMENT

The current agenda is available in PDF format on our website at:
www.sandcity.org

If you have a request for a disability-related modification or accommodation, including auxiliary aids or services, which will allow you to participate in a Sand City public meeting, please call the City Clerk at (831) 394-3054 extension 220, or give your written request to the City Clerk at 1 Pendergrass Way, Sand City, CA 93955 at least 48 hours prior to the scheduled meeting to allow the City Clerk time to arrange for the requested modification or accommodation.

**AGENDA ITEM
6A.**

**Approve the City Council Special Closed
Session and Regular Meeting Minutes for
August 1, 2023**

MINUTES
JOINT SAND CITY COUNCIL AND SUCCESSOR AGENCY OF THE REDEVELOPMENT
AGENCY

Special Meeting - Tuesday, August 1, 2023 4:00 PM

As allowed by Assembly Bill AB2449, this meeting was conducted in person and by
teleconference

Mayor Carbone called the meeting to order at 4:00 PM

1. ROLL CALL

Present: Mayor Carbone
Vice Mayor Blackwelder
Councilmember Diaz
Councilmember Hawthorne
Councilmember Sofer

Staff: City Manager Vibeke Norgaard
Interim City Attorney Adam Lindgren
City Clerk Kerry Lindstrom

2. COMMUNICATIONS

No public comment received.

3. CLOSED SESSION

3A.

City Council/Successor Agency Board to Adjourn to Closed Session Conference with labor negotiator pursuant to Government Code Section 54957.6. Negotiator: Adam Lindgren, Interim City Attorney Employee: Unrepresented Employee

3B.

Re-adjourn to Open Session to report any action taken at the conclusion of Closed Session in accordance with California Government Code section 54957.1

Interim City Attorney Adam Lindgren reported Council received information from staff and provided direction; Council took no reportable action.

ADJOURNMENT

Council adjourned the meeting at approximately 4:30 PM

Kerry Lindstrom, City Clerk

MINUTES
JOINT SAND CITY COUNCIL AND SUCCESSOR AGENCY OF THE REDEVELOPMENT
AGENCY

Regular Meeting - Tuesday, August 1, 2023 5:30 PM

As allowed by Assembly Bill AB2449, this meeting was conducted in person and by
teleconference

Mayor Carbone called the meeting to order at 5:30 PM

1. ROLL CALL

Present: Mayor Carbone
Vice Mayor Blackwelder
Councilmember Diaz
Councilmember Hawthorne
Councilmember Sofer

Staff: City Manager Vibeke Norgaard
Chief David Honda
Interim City Attorney Adam Lindgren
City Clerk Kerry Lindstrom

2. PLEDGE OF ALLEGIANCE

Chief David Honda led the Pledge of Allegiance.

3. INVOCATION

Reverend Robert Hellam led the invocation.

4. ANNOUNCEMENT BY MAYOR, CITY ATTORNEY, AND CITY MANAGER

Mayor Carbone announced:

Monterey One Water is proposing to collect fees through property taxes instead of sending out bi-monthly statements and is looking for feedback from Monterey County residents regarding billing. 68,000 postcards were mailed out to residents. Monterey One Water will also hold town hall meetings to spread the information.

Saturday, August 5, 2023 the Mayor's for Peace will hold the 9th annual Hiroshima-Nagasaki Remembrance Day in Pacific Grove, CA.

Community Human Services is providing tours of their facilities.

Provided copies of various articles and handouts available to the public.

City Manager Vibeke Norgaard:

Provided updates on Calabrese Park, moving ahead as planned. Regarding South of Tioga, PG&E is still scheduled to work on power lines in August. The park at South of Tioga will be moving forward in late fall or early winter. The Independent applied for a temporary encroachment permit to use for Post No Bills. Staff is in communication with

the new owners of The Independent to discuss the use of the downstairs area. Regarding the stormwater improvement project on Catalina and Contra Costa, the land surveyor is following up on surveying and no parking signs will be posted.

The restroom at the end of Playa has been vandalized again the recommendation is to have it removed because it is a huge cost to the City to replace the restrooms each time they are vandalized.

The parking Plan will come back for full adoption in September.

Staff has been in contact with Lucky's regarding gull abatement methods.

Final details are being sorted out regarding the Flock camera system.

Community Events: The Bicycle Criterium received good press. The West End Festival is at the end of the month and Steve Vagnini is here to provide an update.

The Art Committee is in the process of narrowing down the muralists for the Art Mural Festival.

5. COMMUNICATIONS

Public comment received from Kevin Lairson.

6. CONSENT CALENDAR

No public comment received.

Upon motion by Vice Mayor Blackwelder and seconded by Councilmember Diaz, Council voted to approve the Consent Calendar.

Motion carried 5-0, by the following vote:

AYES: Mayor Carbone, Vice Mayor Blackwelder, Councilmembers Diaz, Hawthorne, and Sofer.

NOES: None.

ABSENT: None.

ABSTAIN: None.

6A. Approved the City Council Special Closed Session and Regular Meeting Minutes for July 18, 2023

6B. Approved Resolution SC 23-40 commending Kelly Morgan, Retired City Manager for exemplary and dedicated service to the City of Sand City.

6C. Approved Resolution SC 23-41 authorizing the City Manager to enter into a Master Funding Agreement between the Transportation Agency for Monterey County and the City of Sand City for the allocation of certain state funds for transportation projects.

7. CONSIDERATION OF ITEMS PULLED FROM CONSENT CALENDAR

8. PRESENTATION

8A. Received West End Celebration Update: Steve Vagnini

No public comment received.

8B. Received Trucks and Taps Presentation: Amy Sheehan

No public comment received.

9. NEW BUSINESS

9A. Discussion and Direction on a Draft Ordinance Amending Sand City Municipal Code Section 2.08.010 and Providing for an Increase in Salary of the Mayor

Public comment was received from Meli Hill and Kye Ricks.

Upon motion by Vice Mayor Blackwelder and seconded by Councilmember Hawthorne, Mayor Carbone abstained, the Council discussed and provided direction to staff to bring back a first reading of an ordinance amending Sand City Municipal Code Section 2.08.010 providing for an increase in salary of the Mayor.

Motion carried 4-0-1, by the following vote:

AYES:	Vice Mayor Carbone, Councilmembers Diaz, Hawthorne, and Sofer.
NOES:	None.
ABSENT:	None.
ABSTAIN:	Mayor Carbone.

9B. Comments by Councilmembers on Items of Interest to Sand City

Councilmember Hawthorne stated the Art Committee recently met and had a meeting with Talking Walls, the new art curator, and is impressed with the group of artists they have pulled together to choose from for the Art Festival.

Councilmember Sofer mentioned the TAMC Bike Committee will meet tomorrow August 2, 2023 at 6:00 PM, and stated the bike committee has grant funds available.

ADJOURNMENT

Council adjourned the meeting at approximately 6:56 PM.

Kerry Lindstrom, City Clerk

**AGENDA ITEM
6B.**

**Approve a Resolution Authorizing a
Professional Services Agreement With
Polaris Land Surveying, Inc. in an Amount
Not to Exceed \$30,000 for a Three-Year
Period**



City of Sand City

STAFF REPORT

TO: Honorable Mayor and City Council
FROM: Vibeke Norgaard, City Manager
SUBJECT: Consideration of Contract Not to Exceed \$30,000 for a Three-Year Term for City's Land Surveyor
DATE: August 15, 2023

BACKGROUND/DISCUSSION: Ms. Lynn Kovack, President of Polaris Land Surveying, Inc., has been providing land surveying services to the City of Sand City since 1999. She is a professional licensed land surveyor who staff has found to provide work of consistently high quality.

This item is a consideration of continuing the land surveying services provided by Ms. Kovach by approval of a three-year contract in an amount not to exceed \$30,000 and a term ending on June 30, 2026.

CEQA: This action does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) guidelines section 15378.

FISCAL IMPACT: The proposed contract is for \$30,000 for three years. The current year's budget (FY 23-24) has \$2,100 allocated for land surveying services. If the City's needs exceeded that amount, budget line 5020-11 would need to be amended.

RECOMMENDATION: Approve the attached City Surveying Service Agreement and authorize the City manager to execute it in substantially the same form as that attached.

ATTACHMENTS:

1. Resolution
2. Agreement
3. Scope of work
4. Fee schedule

**CITY OF SAND CITY
RESOLUTION SC____, 2023**

**RESOLUTION OF THE CITY COUNCIL OF SAND CITY AUTHORIZING A
PROFESSIONAL SERVICES AGREEMENT WITH POLARIS LAND SURVEYING,
INC. IN AN AMOUNT NOT TO EXCEED \$30,000 FOR A THREE-YEAR PERIOD**

WHEREAS, Polaris Land Surveying, Inc., a land surveying firm, has been providing highly qualified surveying services to the City of Sand City since 1999; and

WHEREAS, Ms. Lynn Kovach has served as a professional licensed land surveyor under the direction of the City Engineer/Public Works Director since 1999 and is qualified to continue to provide surveying services to the City of Sand City; and

WHEREAS, City staff has determined the proposed Professional Services Agreement, attached to this resolution meets the land surveying needs of the City of Sand City.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Sand City does hereby authorize the following:

1. The attached City Professional Services Agreement (Exhibit A), Scope of Work (Exhibit B), and Fee Schedule (Exhibit C) are accepted and approved.
2. The City Manager is directed and authorized to execute the attached Professional Services Agreement in substantially the same form as the attached documents.
3. The term of the Professional Services Agreement will be for a three-year period beginning July 1, 2023 through June 30, 2026.
4. Polaris Land Surveying, Inc. will maintain a current Sand City Business License throughout the term of the Service Agreement.

PASSED AND ADOPTED by the City Council of Sand City this _____ day of August, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Mary Ann Carbone, Mayor

ATTEST:
DATED: _____

Kerry Lindstrom, City Clerk

PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF SAND CITY AND POLARIS LAND SURVEYING, Inc.
(Professional)

THIS AGREEMENT for consulting services is made by and between the City of Sand City, a California municipal corporation ("City"), and Polaris Land Surveying, Inc., a California Corporation ("Professional") as of August ____ 2023.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Professional shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

Section 2. TERM. The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2026. Professional shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 10. The time provided to Professional to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 11.

Section 3. STANDARD OF PERFORMANCE.

- 3.1 Standard of Performance. Professional shall perform all services and prepare all work products required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Professional is engaged in the geographical area in which Professional practices its profession.
- 3.2 Assignment of Personnel. Professional shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Professional shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

Section 4. COMPENSATION. City hereby agrees to pay Professional a sum not to exceed thirty thousand dollars (\$30,000), notwithstanding any contrary indications that may be contained in Professional's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Professional's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail.

Professional and City acknowledge and agree that compensation paid by City to Professional under this Agreement is based upon Professional's costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Professional. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Professional and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 4.1 Invoices. Professional shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date, which describe the work performed by Professional. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Professional.
- 4.4 Reimbursable Expenses. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 4.5 Payment upon Termination. In the event that the City or Professional terminates this Agreement pursuant to Section 10, the City shall compensate the Professional for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Professional shall maintain adequate logs and timesheets in order to verify costs incurred to that date.
- 4.6 Authorization to Perform Services. The Professional is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 5. FACILITIES AND EQUIPMENT. Except as set forth herein, Professional shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Professional only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

Section 6. INSURANCE REQUIREMENTS. Professional shall comply with the insurance requirements contained in Exhibit C and shall procure, at its own cost and expense all insurance coverages listed in Exhibit C before beginning any work under this Agreement.

Section 7. INDEMNIFICATION.

- 7.1 General Requirement. Professional shall indemnify, defend with counsel selected by the City, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Professional or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Professional shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Professional or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Professional to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the

California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Professional from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Professional acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

7.2 PERS Indemnification. In the event that Professional or any employee, agent, or subcontractor of Professional providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System ("PERS") to be eligible for enrollment in PERS as an employee of City, Professional shall indemnify, defend, and hold harmless City for the payment of any and all employee and/or employer contributions for PERS benefits on behalf of Professional or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City, and any attorneys' fees and costs incurred by the City to enforce this Section.

7.3 Design Professional. Notwithstanding Section 8.1 and 8.2, to the extent that the services under this Agreement include design professional services subject to California Civil Code Section 2782.8, as may be amended from time to time, Professional's duty to indemnify shall only be to the maximum extent permitted by California Civil Code Section 2782.8.

Section 8. STATUS OF PROFESSIONAL.

8.1 Independent Contractor. At all times during the term of this Agreement, Professional shall be an independent contractor as defined in Labor Code Section 3353, and shall not be an employee of the City. Nothing contained in this Agreement shall be construed to be inconsistent with the foregoing relationship or status. City shall have the right to control Professional only insofar as the results of Professional's services rendered pursuant to this Agreement; however, otherwise City shall not have the right to control the means and methods by which Professional accomplishes services rendered pursuant to this Agreement. Professional shall have no power or authority by this Agreement to bind the City in any respect. All employees and agents hired or retained by Professional are employees and agents of Professional and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Professional by any such employees or agents, or any other person resulting from performance of this Agreement.

Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Professional and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits. Professional shall not allow any employee, agent or subcontractor to become eligible for a claim for PERS benefits.

- 8.2 Professional Not an Agent. Except as City may specify in writing, Professional shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Professional shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 9. LEGAL REQUIREMENTS.

- 9.1 Governing Law. The laws of the State of California shall govern this Agreement.
- 9.2 Compliance with Applicable Laws. Professional and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder. Professional's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 9.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Professional and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 9.4 Licenses and Permits. Professional represents and warrants to City that Professional and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Professional represents and warrants to City that Professional and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Professional and any subcontractors shall obtain and maintain a valid Business License from City during the term of this Agreement.
- 9.5 Nondiscrimination and Equal Opportunity. Professional shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Professional under this Agreement. Professional shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Professional thereby. Professional shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 10. TERMINATION AND MODIFICATION.

- 10.1 Termination. City may cancel this Agreement at any time and without cause upon written notification to Professional. Professional may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation. In the event of termination, Professional shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Professional delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Professional or prepared by or for Professional or the City in connection with this Agreement.
- 10.2. Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Section 2. Any such extension shall require a written amendment to this Agreement, as provided for herein. Professional understands and agrees that, if City grants such an extension, City shall have no obligation to provide Professional with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Professional for any otherwise reimbursable expenses incurred during the extension period.
- 10.3 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties.
- 10.4 Assignment and Subcontracting. City and Professional recognize and agree that this Agreement contemplates personal performance by Professional and is based upon a determination of Professional's unique personal competence, experience, and specialized personal knowledge. Professional may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Professional shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 10.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Professional shall survive the termination of this Agreement.
- 10.6 Options upon Breach by Professional. If Professional materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 10.6.1 Immediately terminate the Agreement;
 - 10.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Professional pursuant to this Agreement;
 - 10.6.3 Retain a different Professional to complete the work described in Exhibit A not finished by Professional; or

- 10.6.4 Charge Professional the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Professional pursuant to Section 4 if Professional had completed the work.

Section 11. KEEPING AND STATUS OF RECORDS.

- 11.1 Records Created as Part of Professional's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Professional prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Professional hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Professional agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.
- 11.2 Professional's Books and Records. Professional shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Professional pursuant to this Agreement.
- 11.3 Inspection and Audit of Records. Any records or documents that Section 11.2 of this Agreement requires Professional to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City.

Section 12. MISCELLANEOUS PROVISIONS.

- 12.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 12.2 Venue. In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Monterey or in the United States District Court for the Central District of California.

- 12.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 12.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 12.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 12.6 Conflict of Interest. Professional may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Professional in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*
- Professional shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*
- Professional hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Professional was an employee, agent, appointee, or official of the City in the previous twelve months, Professional warrants that it did not participate in any manner in the forming of this Agreement. Professional understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Professional will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Professional will be required to reimburse the City for any sums paid to the Professional. Professional understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code §1090 and, if applicable, will be disqualified from holding public office in the State of California.
- 12.7 Solicitation. Professional agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 12.8 Contract Administration. This Agreement shall be administered by City Manager of Sand City ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 12.9 Notices. Any written notice to Professional shall be sent to:
Lynn Kovach, Polaris Land Surveying, Inc.,
P.O. Box 1378,
Carmel Valley, CA 93924

Any written notice to City shall be sent to:
Attention City Manager, 1 Pendergrass Way, Sand City, CA 93955

- 12.10 Professional Seal. Where applicable in the determination of the contract administrator or when required by law, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 12.11 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, the compensation schedule attached hereto and incorporated herein as Exhibit B, and the insurance requirements attached hereto and incorporated herein as Exhibit C represents the entire and integrated agreement between City and Professional and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 12.12 IRS Form W-9. Professional shall complete and submit Internal Revenue Service Form W-9 to the City before execution of this Agreement. The City's Finance Director shall have authority to waive this requirement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above, which date shall be considered by the Parties to be the effective date of this Agreement.

CITY OF SAND CITY

PROFESSIONAL

Vibeke Norgaard, City Manager

[NAME, TITLE]

Date: _____

Date: _____

Attest:

Kerry Lindstrom, City Clerk

Date: _____

Approved as to Form:

Adam Lindgren, City Attorney

Date: _____

EXHIBIT A

SCOPE OF SERVICES

SCOPE OF WORK

Polaris Land Surveying, Inc. proposes to provide the services generally described in this Scope of Work. To provide these services, Polaris will draw on the experience gained in working with other public agencies and private developers. When undertaking each work assignment, the project requirements will first be evaluated by the Principal Land Surveyor. The Principal Land Surveyor will determine how to accomplish the work and produce the required product efficiently. The work approach will be reviewed with the City Manager before initiating the project assignment.

The scope of work for this contract will vary as need arises and will be at the discretion of the City. CONCSULTANT will provide surveying services for various projects at the request of City Staff or at the request of the City Engineer. Survey requests may be, but not limited to, topographic surveys, construction staking, property line surveys, easement surveys, and manhole invert surveys. Survey data may be provided directly to City Staff or to a separate design consultant. Construction staking requests may be needed within a 48-hour notification. Surveying may be needed in difficult terrain. The main categories of work will include:

Surveys

- Review Tentative Maps and Tract Maps for survey requirements in conformance with City Conditions of Approval, Ordinances, and the Subdivision Map Act.
- Check subdivision and parcel maps for compliance with State Subdivisions Map Act requirements. Stamp & sign subdivision maps, parcel maps, lot line adjustments, and other documents as necessary, as City Surveyor.
- Determine locations of property lines, boundaries, easements and rights-of-way
- Construction surveys for improvement projects
- Establish and adjust benchmarks
- Establish and monument street center lines
- Traditional topographic surveys and aerial topographic surveys to determine locations and elevations of existing improvements, structures, and topographic features
- Perform research and survey work related to property divisions and mergers
- Perform research and survey work related to public and private land ownership, public and private easements, public improvements, construction, and historic information
- Do all survey related and some engineering related computations and drawings using traditional methods and/or using computer methods currently available within the City
- Prepare and interpret deeds and descriptions
- Develop legal descriptions and plat maps

- Other survey-related tasks as necessary

G. Plan Checking (Public and Private Construction)

1. Participate in City's staff meetings, as requested, either in Sand City, or by telephone conference call.
2. Prepare reports to the City Manager and City Council.
3. Coordinate with and assist the City's Planning Department, Public Works Department, other City Departments, and other contract consultants.
4. Assist in preparing Staff Reports and Ordinances for consideration by the City Manager and City Council, as requested.

J. Sub-Consultants:

1. When the services of other consultants or experts are required, such as surveying, architectural, geotechnical, structural, electrical or other engineering and public works services, Polaris Land Surveying, Inc. will obtain proposals for said work and arrange for these services on a sub-consultant basis, up to a maximum cost of \$20,000 with approval of the City Manager. The fee for these services will be 5% based on the consultant's invoice.

If the sub-consultant costs exceed \$20,000, then approval of the City Council will be required or a separate contract arranged directly with the City.

K. Fee Schedule:

1. The attached Exhibit C - Fee Schedule will be used in the provision of the above land surveying services. These fees may be adjusted periodically based on the adjusted change of the Consumer Price Index and/or proposed new fee schedule as submitted by the Consultant. Any new fee schedule will be subject to review and approval by the City Council. Any specialized fee that is not listed on the attached Fee Schedule shall be subject to negotiation and agreement between the parties.

EXHIBIT B

POLARIS LAND SURVEYING, INC.
FEE SCHEDULE

City of Sand City – City Surveying Services
FY 2023/2024

DRAFT

EXHIBIT B
COMPENSATION SCHEDULE

DRAFT

EXHIBIT C

Insurance Requirements

Before beginning any work under this Agreement, Professional, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Professional and its agents, representatives, employees, and subcontractors. Professional shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Professional shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Professional's bid. Professional shall not allow any subcontractor to commence work on any subcontract until Professional has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Professional shall maintain all required insurance listed herein for the duration of this Agreement.

1. Workers' Compensation. Professional shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Professional. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Professional may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Professional, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Professional shall notify City within fourteen (14) days of notification from Professional's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

The requirement to maintain Statutory Worker's Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Professional does not have any employees.

2. Commercial General and Automobile Liability Insurance.
 - 2.1 General requirements. Professional, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00). The commercial general liability and automobile

liability insurance shall be per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a commercial general liability insurance or an automobile liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

- 2.2 Minimum scope of coverage. Commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.
- 2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:
- a. City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Professional, including the insured's general supervision of Professional; products and completed operations of Professional; premises owned, occupied, or used by Professional; and automobiles owned, leased, or used by the Professional. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.
 - b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
 - c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
 - d. Any failure of Professional to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
 - e. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Professional shall notify City within

fourteen (14) days of notification from Professional's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

3. Professional Liability Insurance. Professional, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.
 - 3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.
 - 3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
 - 3.3 The following provisions shall apply if the professional liability coverages are written on a claims-made form:
 - a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
 - c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Professional must provide extended reporting coverage for a minimum of five (5) years after completion of the Agreement or the work. The City shall have the right to exercise, at the Professional's sole cost and expense, any extended reporting provisions of the policy, if the Professional cancels or does not renew the coverage.
 - d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.
4. All Policies Requirements.
 - 4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
 - 4.2 Verification of coverage. Prior to beginning any work under this Agreement, Professional shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized

by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

4.3 Subcontractors. Professional shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4 Deductibles and Self-Insured Retentions. Professional shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Professional may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Professional procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

4.5 Waiver of Subrogation. Professional hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Professional, its employees, agents, and subcontractors.

4.6 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Professional shall provide written notice to City at Professional's earliest possible opportunity and in no case later than five (5) days after Professional is notified of the change in coverage.

5. Remedies. In addition to any other remedies City may have if Professional fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Professional's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Professional to stop work under this Agreement or withhold any payment that becomes due to Professional hereunder, or both stop work and withhold any payment, until Professional demonstrates compliance with the requirements hereof; and/or

- Terminate this Agreement.

**Request for Taxpayer
Identification Number and Certification**

Give form to the
requester. Do not
send to the IRS.

Print or type See Specific instructions on page 2.	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership ☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ----- ☐ Exempt payee ☐ Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
or
Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt From Backup Withholding

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

Exempt payees. Backup withholding is not required on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),

2. The United States or any of its agencies or instrumentalities,

3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,

4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or

5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,

7. A foreign central bank of issue,

8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,

9. A futures commission merchant registered with the Commodity Futures Trading Commission,

10. A real estate investment trust,

11. An entity registered at all times during the tax year under the Investment Company Act of 1940,

12. A common trust fund operated by a bank under section 584(a),

13. A financial institution,

14. A middleman known in the investment community as a nominee or custodian, or

15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt recipients except for 9
Broker transactions	Exempt recipients 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt recipients 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt recipients 1 through 7

¹See Form 1099-MISC, Miscellaneous Income, and its instructions.

²However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt recipients, see *Exempt From Backup Withholding* on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ³
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see Special rules for partnerships on page 1.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN.
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.consumer.gov/idtheft or 1-877-IDTHEFT(438-4338).

Visit the IRS website at www.irs.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

POLARIS LAND SURVEYING, INC.

FEE SCHEDULE – CITY OF SAND CITY

Position/Title	Hourly Rate	
		2023 & 2024
Principal/Owner		\$170.00
Expert Witness (Court testimony, deposition, preparation time)		\$475.00
Project Manager		\$160.00
Project Surveyor		\$150.00
Survey/GIS Technician		\$130.00
CAD Technician		\$90.00
Clerical		\$45.00
Field Survey Crew (1 or 2 person)		\$275.00
Field GPS Survey Crew (1 or 2 person)		\$275.00
Fee increases in subsequent years will be 5%, unless otherwise agreed.		

Reimbursable Items to be Billed	Estimated Cost Bills	
	Total Cost	% of Markup Calculated
Specialty printing	Actual cost /page	5%
Travel Reimbursables-Lodging, Gas, Meals (over 120 miles of travel)	Standard per diem rates	

**AGENDA ITEM
6C.**

Approve a Resolution Authorizing a Two-Year Service Agreement for Financial Auditing Services by CliftonLarsonAllen, LLP for Fiscal Year 2022-2023 and Fiscal Year 2023-2024 at a Cost not to Exceed \$114,500



City of Sand City

STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: VIBEKE NORGAARD, CITY MANAGER & JENNIFER POPE, FINANCE MANAGER

SUBJECT: APPROVE A TWO-YEAR AGREEMENT WITH CLIFTONLARSONALLEN, LLP FOR ANNUAL AUDITING SERVICES

DATE: AUGUST 15, 2023

FOR: AUGUST 15, 2023, COUNCIL MEETING

BACKGROUND/DISCUSSION:

The City of Sand City is required to obtain the services of an independent qualified auditor to perform annual audits for the City and the Successor Agency. CliftonLarsonAllen (CLA), LLP (formerly Hayashi & Wayland) has performed an audit on behalf of the City and the Successor Agency (formerly the Redevelopment Agency), from Fiscal Year 1995-1996 through Fiscal Year 2021-2022.

CLA submitted a new Proposal Letter (attachment 1) dated June 25, 2023, that offers the City two options moving forward: a single year agreement totaling \$67,000 and a two year agreement totaling \$114,500 (FY 2022-2023 at \$61,000 and FY 2023-2024 at \$53,500). The two-year option offers savings of \$7,500 for FY 2023-2024 in which staff will prepare the Streets Report and the Report of Financial Transactions. The total savings for the two-year agreement will be \$19,500. See below for the proposed scope of services for FY 2022-2023 and FY 2023-2024.

Professional Services Fees	Fiscal Year 2022-2023	Fiscal Year 2023-2024
Financial Statement Audit	\$49,000	\$50,000
Annual Street Report	\$3,000	*
Annual Report of Financial Transactions	\$5,500	*
TAMC Measure X-Examination	\$2,000	\$2,000
Appropriations Limit	\$1,500	\$1,500
Total	\$61,000	\$53,500

- Sand City staff will complete these reports for FY 23/24.

The Administrative staff for the City of Sand City has reviewed the scope of services and found that the services to be provided are satisfactory and necessary to perform the required audit and State and County reports for Fiscal Year 2022-2023 and Fiscal Year 2023-2024.

CEQA:

This action does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) guidelines section 15378.

FISCAL IMPACT:

The total cost of the two-year contract is \$114,500 (Finance account #5410-03). The cost for Fiscal Year 2022-2023 is \$61,000. The 2022-2023 budget will need to be amended to include an additional \$21,000.

RECOMMENDATION:

Staff has been satisfied with the expertise, accuracy, and completeness of the work performed by CliftonLarsonAllen, LLP (formerly Hayashi & Waylan) and recommends approval of a two-year contract allowing CliftonLarsonAllen, LLP to perform an audit on behalf of the City and the Successor Agency.

ATTACHMENTS:

1. Resolution
2. Proposal Letter
3. Master Services Agreement

**CITY OF SAND CITY
RESOLUTION SC ___, 2023**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAND CITY
AUTHORIZING A TWO-YEAR SERVICE AGREEMENT FOR FINANCIAL AUDITING
SERVICES BY CLIFTONLARSONALLEN, LLP FOR FISCAL YEAR 2022-2023 AND
FISCAL YEAR 2023-2024 AT A COST NOT TO EXCEED \$114,500**

WHEREAS, the City of Sand City is required to obtain the services of an independent qualified auditor to perform annual audits of City/Successor Agency accounts; and

WHEREAS, CliftonLarsonAllen, LLP (formerly Hayashi & Wayland) has performed an audit on behalf of the City and the Successor Agency (formerly the Redevelopment Agency), every fiscal year from Fiscal Year 1995-1996 through Fiscal Year 2021-2022 and has submitted a letter dated July 25, 2023 that proposes a two year agreement with a scope of services for performing the audit for Fiscal Year 2022-2023 and Fiscal Yer 2023-2024; and

WHEREAS, the City Council has been satisfied with the expertise, accuracy, and completeness of the work performed by CliftonLarsonAllen, LLP; and

WHEREAS, the Administrative staff for the City of Sand City has reviewed the scope of services attached hereto as Exhibit A and found that the services to be provided are satisfactory and necessary to perform the required audits for Fiscal Year 22/23 and Fiscal Year 2023-2024 to prepare the required State and County reports.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sand City that:

1. The attached service agreement as proposed by CliftonLarsonAllen, LLP is hereby accepted;
2. Said authorization is conditioned upon the contractor performing the service at a cost not to exceed \$114,500 as specified in the attached June 25, 2023 letter;
3. Any additional work that may be required or requested of CliftonLarsonAllen, LLP will be billed at the standard hourly rates as listed in the proposal to include costs associated with proper accounting and audit procedures under the Governmental Accounting Standards Board;
4. The City Manager is authorized and directed to enter into the attached Service Agreement with CliftonLarsonAllen, LLP, Certified Public Accountants, to perform the scope of services outlined in Exhibit A for the City of Sand City;
5. CliftonLarsonAllen, LLP will maintain a current Sand City Business License.

PASSED AND ADOPTED by the City Council of the City of Sand City on this 15th day of August 2023, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

ATTEST:

Mary Ann Carbone, Mayor

Kerry Lindstrom, City Clerk



CliftonLarsonAllen LLP
1188 Padre Drive, Suite 101
Salinas, CA 93901

phone 831-759-6300 fax 831-759-6380
CLAconnect.com

July 25, 2023

Vibeke Norgaard
City Manager, Sand City
1 Sylvan Park
Sand City, California 93955

Dear Vibeke,

Thank you for inviting us to propose our services to you and the City Council. We gladly welcome the opportunity to share our approach to continue helping Sand City (City) meet its need for professional services. The enclosed proposal responds to your request for audit and other professional services for the years ended June 30, 2023 and 2024.

We are confident that our extensive experience serving Sand City and other similar governmental entities, bolstered by our client-oriented philosophy and depth of resources, will make CLA a top qualified candidate to fulfill the scope of your engagement. The following differentiators are offered for the City's consideration:

- **Industry-specialized insight and resources.** As one of the nation's leading professional services firms, and one of the largest firms who specialize in regulated industries, CLA has the experience and resources to assist the City with their audit needs. In addition to your experienced local engagement team, the City will have access to one of the country's largest and most knowledgeable pools of regulated industry resources.
- **Strong methodology and responsive timeline.** In forming our overall audit approach, we have carefully reviewed the City's financial reporting needs and considered our experience performing similar work for other cities. Our local government clients are included amongst the more than 4,100 governmental organizations we serve nationally. Our staff understands your complexities not just from a compliance standpoint, but also from an operational point of view. We have developed a work plan that takes into consideration your unique needs as a governmental entity in California. The work plan also minimizes the disruption of your staff and operations and provides a blueprint for timely delivery of your required reports.
- **Communication and proactive leadership.** The City will benefit from hands-on service from our team's senior professionals. We can provide this level of service because, unlike other national firms, our principal-to-staff ratio is similar to smaller firms – allowing our senior level professionals to be involved and immediately available throughout the entire engagement process. Our approach helps members of the engagement team stay abreast of key issues at the City and take an active role in addressing them.



CliftonLarsonAllen LLP
1188 Padre Drive, Suite 101
Salinas, CA 93901

phone 831-759-6300 fax 831-759-6380
CLAconnect.com

- **A focus on providing consistent, dependable service.** We differ from other national firms in that our corporate practice focuses on the needs of non-SEC clients, thus allowing us to avoid the workload compression typically experienced by firms that must meet public companies' SEC filing deadlines. CLA is organized into industry teams, affording our clients with specialized industry-specific knowledge supplemented by valuable local service and insight. Therefore, the City will enjoy the service of members of our state and local government services team who understand the issues and environment critical to governmental entities.

We are confident that our technical approach, insight, and resources will result in unsurpassed client service for the City.

We are eager to work with you and welcome the chance to present our proposal to you and the City Council. If you have any questions about our offerings, please do not hesitate to contact either Mike Nolan or Rich Gonzalez via the information below.

Sincerely,

CliftonLarsonAllen LLP

Mike Nolan, CPA, CFE, CGMA
Principal
831-759-6324
Mike.nolan@claconnect.com

CliftonLarsonAllen LLP

Rich Gonzalez, CPA
Principal
916-677-5760
Rich.gonzalez@claconnect.com



CliftonLarsonAllen LLP
1188 Padre Drive, Suite 101
Salinas, CA 93901

phone 831-759-6300 fax 831-759-6380
CLAAconnect.com

Exhibit A

We have provided two different options. The first option is for a single year contract. The second option is for a two year contract and reflects an overall discount in the total fees.

Option 1

Professional Service Fees	Year 2023
Financial Statement Audit Sand City	\$53,000
Annual Street Report	\$3,200
Annual Report of Financial Transactions	\$5,900
TAMC Measure X-Examination Attest Report	\$2,500
Appropriations Limit-Agreed Upon Procedures Attest Report	\$2,500
Total Fees	\$67,100

Option 2

Professional Service Fees	Year 2023	Year 2024
Financial Statement Audit Sand City	\$49,000	\$50,000**
Annual Street Report	\$3,000	*
Annual Report of Financial Transactions	\$5,500	*
TAMC Measure X-Examination Attest Report	\$2,000	\$2,000
Appropriations Limit-Agreed Upon Procedures Attest Report	\$1,500	\$1,500
Total Fees	\$61,000	\$53,500

* Management has indicated they will complete these reports themselves in 2024.

**Does not anticipate the impact of any changes to accounting or auditing standards that may be approved in the future.



Master Services Agreement

City Of Sand City
1 Pendergrass Way, Sand City, CA, 93955, United States
MSA Date: August 3, 2023

This master service agreement (“MSA”) documents the terms, objectives, and the nature and limitations of the services CliftonLarsonAllen LLP (“CLA,” “we,” “us,” and “our”) will provide for City Of Sand City (“you,” or “your”). The terms of this MSA will apply to the initial and each subsequent statement of work (“SOW”), unless the MSA is changed in a communication that you and CLA both sign or is terminated as permitted herein.

1. Scope of Professional Services

CLA will provide services as described in one or more SOW that will reference this MSA. The SOW will describe the scope of professional services; the nature, limitations, and responsibilities related to the specific services CLA will provide; and the fees for such services.

If modifications or changes are required during CLA’s performance of requested services, or if you request that we perform any additional services, we will provide you with a separate SOW for your signature. Such SOW will advise you of the additional fee and time required for such services to facilitate a clear understanding of the services.

Our services cannot be relied upon to disclose all errors, fraud, or noncompliance with laws and regulations. Except as described in the scope of professional services section of this MSA or any applicable SOW, we have no responsibility to identify and communicate deficiencies in your internal controls as part of any services.

2. Management responsibilities

You acknowledge and understand that our role is to provide the services identified in an SOW and that management, and any other parties engaging CLA, have responsibilities that are fundamental to our undertaking to perform the identified services.

3. Fees and terms

See the applicable SOW for the fees for the services.

Work may be suspended if your account becomes 60 days or more overdue and will not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagements will be deemed to have been completed even if we have not completed the services. You

will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket expenditures through the date of termination.

Payments may be made utilizing checks, Bill.com, your online banking platform, CLA's electronic payment platform, or any other client-initiated payment method approved by CLA. CLA's electronic online bill pay platform claconnect.com/billpay accepts credit card and Automated Clearing House (ACH) payments. Instructions for you to make direct bank to bank wire transfers or ACH payments will be provided upon request.

4. Other Fees

You agree to compensate us for reasonable time and expenses, including time and expenses of outside legal counsel, we may incur in responding to a subpoena, a formal third-party request for records or information, or participating in a deposition or any other legal, regulatory, or other proceeding relating to services we provide pursuant to a SOW.

5. Finance charges and collection expenses

You agree that if any statement is not paid within 30 days from its billing date, the unpaid balance shall accrue interest at the monthly rate of one and one-quarter percent (1.25%), which is an annual percentage rate of 15%. In the event that any collection action is required to collect unpaid balances due us, reasonable attorney fees and expenses shall be recoverable.

6. Dispute Resolution

Any disagreement, controversy, or claim ("Dispute") that may arise out of any aspect of our services or relationship with you shall be submitted to non-binding mediation by written notice ("Mediation Notice") to the other party. In mediation, we will work with you to resolve any differences voluntarily with the aid of an impartial mediator.

The mediation will be conducted as specified by the mediator and agreed upon by the parties (i.e., you and CLA). The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the Dispute.

Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

7. Limitation of remedies

These limitation of remedies provisions are not applicable for any audit or examination services provided to you.

Our role is strictly limited to the services described in an SOW, and we offer no assurance as to the results or ultimate outcomes of any services or of any decisions that you may make based on our communications with you. You agree that it is appropriate to limit the liability of CLA, its partners, principals, directors, officers, employees, and agents (each a "CLA party").

You further agree that you will not hold CLA or any other CLA party liable for any claim, cost, or damage, whether based on warranty, tort, contract, or other law, arising from or related to this MSA,

the services provided under an SOW, the work product, or for any plans, actions, or results of an SOW, except to the extent authorized by this MSA. In no event shall any CLA party be liable to you for any indirect, special, incidental, consequential, punitive, or exemplary damages, or for loss of profits or loss of goodwill, costs, or attorney fees.

The exclusive remedy available to you shall be the right to pursue claims for actual damages that are directly caused by acts or omissions that are breaches by a CLA party of our duties owed under this MSA and the specific SOW thereunder, but any recovery on any such claims shall not exceed the fees actually paid by you to CLA pursuant to the SOW that gives rise to the claim.

8. Time limitations

The nature of our services makes it difficult, with the passage of time, to gather and present evidence that fully and fairly establishes the facts underlying any dispute that may arise between you and any CLA party. The parties (you and CLA) agree that, notwithstanding any statute or law of limitations that might otherwise apply to a dispute, including one arising out of this MSA or the services performed under an SOW, for breach of contract or fiduciary duty, tort, fraud, misrepresentation or any other cause of action or remedy, any action or legal proceeding by you against any CLA party must be commenced as provided below, or you shall be forever barred from commencing a lawsuit or obtaining any legal or equitable relief or recovery. An action to recover on a dispute shall be commenced within these periods ("Limitation Period"), which vary based on the services provided, and may be modified as described in the following paragraph:

Service	Time after the date we deliver the services or work product*
Audit, review, examination, agreed-upon procedures, compilation, and preparation services other than those related to prospective financial information	24 months
All Other Services	12 months

* pursuant to the SOW on which the dispute is based

If the MSA is terminated or your ongoing relationship with CLA is terminated, then the applicable Limitation Period is the lesser of the above periods or 12 months after termination of MSA or your ongoing relationship with CLA. The applicable Limitation Period applies and begins to run even if you have not suffered any damage or loss, or have not become aware of the existence or possible existence of a dispute.

9. Confidentiality

Except as permitted by the "Consent" section of this MSA, CLA will not disclose any of your confidential, proprietary, or privileged information to any person or party, unless you authorize us to do so, it is published or released by you, it becomes publicly known or available other than through disclosure by us, or disclosure is required by law, regulation, or professional standard. This confidentiality provision does not prohibit us from disclosing your information to one or more of our

affiliated companies in order to provide services that you have requested from us or from any such affiliated company. Any such affiliated company shall be subject to the same restrictions on the use and disclosure of your information as apply to us. You also consent to our disclosure of information regarding the nature of services we provide to you to another independent network member of CLA Global, for the limited purpose of complying with professional obligations regarding independence and conflicts of interest.

The Internal Revenue Code contains a limited privilege for confidentiality of tax advice between you and our firm. In addition, the laws of some states likewise recognize a confidentiality privilege for some accountant-client communications. You understand that CLA makes no representation, warranty or promise, and offers no opinion with respect to the applicability of any confidentiality privilege to any information supplied or communications you have with us, and, to the extent that we follow instructions from you to withhold such information or communications in the face of a request from a third party (including a subpoena, summons or discovery demand in litigation), you agree to hold CLA harmless should the privilege be determined not to apply to particular information or communications.

The workpapers and files supporting the services we perform are the sole and exclusive property of CLA and constitute confidential and proprietary information. We do not provide access to our workpapers and files to you or anyone else in the normal course of business. Unless required by law or regulation to the contrary, we retain our workpapers and files in accordance with our record retention policy that typically provides for a retention period of seven years. After this period expires, our workpapers and files will be destroyed. Furthermore, physical deterioration or catastrophic events may shorten the time our records are available. The workpapers and files of our firm are not a substitute for your records.

Pursuant to authority given by law, regulation, or professional standards we may be requested to make certain workpapers and files available to a regulator for its regulatory oversight purposes. We will notify you of any such request, if permitted by law. Access to the requested workpapers and files will be provided to the regulator under the supervision of CLA personnel and at a location designated by our firm. Furthermore, upon request, we may provide copies of selected workpapers and files to such regulator. The regulator may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

10. Other provisions

You agree that CLA will not be assuming any fiduciary responsibility on your behalf during the course of this MSA, except as may be assumed in an SOW.

CLA may, at times, utilize external web applications to receive and process information from our clients; however, any sensitive data, including protected health information and personally identifiable information, must be redacted by you to the maximum extent possible prior to uploading the document or file. In the event that you are unable to remove or obscure all sensitive data, please contact us to discuss other potential options for transmitting the document or file.

CLA and certain owners of CLA are licensed by the California State Board of Accountancy. However,

CLA has owners not licensed by the California State Board of Accountancy who may provide services under this MSA. If you have any questions regarding licensure of the personnel performing services under this MSA, please do not hesitate to contact us.

During the course of the engagement, there may be communication via fax or email. You are responsible to ensure that communications received by you or your personnel are secured and not shared with unauthorized individuals.

11. Subcontractors

CLA may, at times, use subcontractors to perform services under this MSA, and they may have access to your information and records. Any such subcontractors will be subject to the same restrictions on the use of such information and records as apply to CLA under this MSA.

12. Technology

CLA may, at times, use third-party software applications to perform services under this MSA. You acknowledge the software vendor may have access to your data.

13. Termination of MSA

This MSA shall continue for five years from August 3, 2023, unless terminated earlier by giving appropriate notice. Either party may terminate this MSA at any time by giving 30 days written notice to the other party.

Upon termination of the MSA, the provisions of this MSA shall continue to apply to all services rendered prior to termination.

14. Agreement

We appreciate the opportunity to be of service to you and believe this MSA accurately summarizes the significant terms of our relationship. This MSA, along with the applicable addendum(s) and SOW(s), constitute the entire agreement regarding services to be performed and supersedes all prior agreements (whether oral or written), understandings, negotiations, and discussions between you and CLA. If you have any questions, please let us know. If you agree with the terms of our relationship as described in this MSA, please sign, date, and return.

CliftonLarsonAllen LLP

Rich Gonzalez, CPA and Mike Nolan, CPA, CFE, CGMA

Principal

916-677-5760 and 831-759-6324

rich.gonzalez@claconnect.com and mike.nolan@claconnect.com

Response:

This MSA correctly sets forth the understanding of City Of Sand City.

CLA

Client

CLA

City Of Sand City



SIGN:

Rich Gonzalez, CPA, Principal

Vibeke Norgaard, City Manager

SIGNED 8/4/2023, 2:46:54 PM PDT

DATE:

CLA



Mike Nolan, CPA, CFE, CGMA, Principal

SIGNED 8/4/2023, 2:52:48 PM PDT

**AGENDA ITEM
8A.**

**Introduce and Hold First Reading of an
Ordinance Amending Sand City Municipal
Code Section 2.08.010 Providing For an
Increase in the Salary of the Mayor**



City of Sand City

STAFF REPORT

TO: Honorable Mayor and City Council
FROM: Vibeke Norgaard, City Manager
SUBJECT: First reading of Ordinance Amending Sand City Municipal Code Sections 2.08.010 and Providing for an Increase in Salary of the Mayor
DATE: August 15, 2023

BACKGROUND/DISCUSSION:

Section 2.08.010 of the Sand City Municipal Code establishes the salaries for City Councilmembers and the Mayor. The City Council last adjusted salaries for City Councilmembers and the Mayor in August of 1985. Sand City Municipal Code Section 2.08.010 sets the Mayor's current salary at \$300 per month, the same as Council Members.

In addition to salary received as a Council Member, Government Code Section 36516.1 allows the Mayor to receive additional compensation as established by Council ordinance. The amount of this compensation is not regulated by the Government Code, and an increase may be enacted at any time, including mid-term of office.

On July 18, 2023, Council directed staff to prepare a draft ordinance to increase the Mayor's stipend for its consideration due to the considerable duties and commitments the Mayor performs on behalf of the City. On August 8, Council discussed the amount of such an increase and directed staff to draft an ordinance reflecting an increase of \$500 to a total of \$800 for the Mayor's monthly stipend.

It should also be noted that while the Council's \$300 stipend is established by State law based on the population size of Sand City, a newly-enacted State law will allow cities statewide that have populations in the same range as Sand City to increase city council salaries to up to \$950 per month, and will allow higher salaries for council members in larger cities.

CEQA:

This action does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) guidelines section 15378.

FISCAL IMPACT:

The proposed increase in the Mayor's salary will result in a fiscal impact of an additional \$6,000 (Account 5110-01) which is already accounted for in the FY 23-24 budget.

RECOMMENDATION:

Staff recommends the following motions:

1. Waive reading of the Ordinance in full and read by title only.
2. Introduce the ordinance Amending Sand City Municipal Code Section 2.08.010 to increase the Salary for the Mayor

ATTACHMENTS:

1. Ordinance

**CITY OF SAND CITY
ORDINANCE NO. ___, 2023**

**AN ORDINANCE AMENDING SAND CITY MUNICIPAL CODE SECTION 2.08.010
PROVIDING FOR AN INCREASE IN THE SALARY OF THE MAYOR**

WHEREAS, Ordinance No. 82-09 established salaries for the Mayor of Sand City, as amended by Ordinance No. 85-05; and

WHEREAS, Sand City Municipal Code section 2.08.010 provides that “The monthly salary for each City Councilmember shall be three hundred dollars (\$300.00) per month and the monthly salary for the mayor shall be three hundred dollars (\$300.00) a month”; and

WHEREAS, Government Code Section 36516.1 provides that a directly elected Mayor may be compensated in addition to that compensation received as a Councilmember; and

WHEREAS, The salary paid to the Mayor has not been increased since 1985; and

WHEREAS, The City Council wishes to increase the Mayor’s salary in consideration of the substantial demands of the job.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAND CITY DOES
ORDAIN AS FOLLOWS:**

SECTION 1: Amendment of Municipal Code.

Chapter 2.08.010 of the Sand City Municipal Code is hereby amended to read in its entirety as follows:

“The monthly salary for each Council member shall be \$300 per month. The monthly salary for the Mayor shall be the same monthly salary paid to each Council member plus an additional \$500 each month.”

SECTION 2: Effective Date.

Within fifteen (15) days after adoption, this Ordinance shall be published in full in a newspaper of general circulation printed and published in Monterey County and circulated in Sand City, in accordance with Government Code section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

PASSED AND ADOPTED, by the City Council of Sand City, this ___ day of September 2023 by the following vote:

AYES:

NOES:
ABSTAIN:
ABSENT:

APPROVED:

ATTEST:
DATED: _____

Kerry Lindstrom, City Clerk

Mary Ann Carbone, Mayor

**AGENDA ITEM
9A.**

**Approve a Resolution Approving an
Increase to the Physical Fitness Incentive
and CalPers 457 Deferred Compensation
City Match for City Employees and
Councilmembers**



City of Sand City

STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: VIBEKE NORGAARD, CITY MANAGER
SUBJECT: RESOLUTION CITY APPROVING AN INCREASE TO THE PHYSICAL FITNESS INCENTIVE AND CALPERS 457 DEFERRED COMPENSATION CITY MATCH
DATE: AUGUST 15, 2023
FOR: AUGUST 15, 2023, COUNCIL MEETING

BACKGROUND/DISCUSSION:

The City offers an employee benefits package to all full-time employees and councilmembers. The CalPERS 457 deferred Compensation Plan City match has not increased in over 13 years (resolution SC 10-75) and the Sand City Physical Fitness Incentive has not increased in over 21 years (resolution SC 02-53).

Currently, the City offers every full-time employee and councilmember a CalPERS 457 deferred compensation plan in which the City matches 50% of a contribution to the plan up to \$100 per month. In addition, the City offers employees and councilmember's a Physical Fitness Incentive of \$30 per month for an employee/councilmember's single membership and \$60 per month for an employee/councilmember's family membership.

This resolution would increase the fitness incentive and deferred compensation plan match for all employees and councilmembers. Updating the City's employee benefits helps ensure that Sand City is competitive with other local cities which will help attract and retain high quality City employees.

The resolution would also increase the CalPERS 457 deferred compensation plan by increasing the City's match of an employee's/councilmember's contribution up to \$300 at a 100% match. Council further directed staff to increase the Physical Fitness Incentive to \$100 per month for an employee/council members single membership and \$150 per month for an employee/council member's family membership.

CEQA:

This action does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) guidelines section 15378.

FISCAL IMPACT:

While the exact fiscal impact to the City depends upon the number of employees who take advantage of the fitness incentive and deferred compensation plan, the maximum

total annual cost for increasing the CalPERs 457 City match and Physical Fitness Incentive is \$110,400.

RECOMMENDATION:

Staff recommends approving an increase to the CalPERs 457 Deferred Compensation City Match and Physical Fitness Incentive.

Attachments:

1. Resolution

**CITY OF SAND CITY
RESOLUTION SC 23-___, 2023**

**RESOLUTION OF THE CITY COUNCIL OF SAND CITY APPROVING AN INCREASE
TO THE PHYSICAL FITNESS INCENTIVE AND CALPERS 457 DEFERRED
COMPENSATION CITY MATCH FOR CITY EMPLOYEES AND COUNCIL MEMBERS**

WHEREAS, the City of Sand City provides employee benefits to employees and council members; and

WHEREAS, the City Council of Sand City wishes to maintain a positive and effective working relationship with Sand City employees; and

WHEREAS, the Sand City Physical Fitness Incentive of \$30 per month for an employee/council member and \$60 per month for employee/council member and family has not been increased in over 21 years (Resolution SC 02-53); and

WHEREAS, the Sand City CalPERS 457 deferred compensation plan in which the City matches 50% of an employee's/council member's contribution up to \$100 per month has not been updated in over 13 years (Resolution SC 10-75) and the City Council of Sand City wishes to increase the amount the City matches an employee/councilmember's contribution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Sand City as follows:

1. The City will match 100% of an employee's and a council member's contribution to the CalPERS 457 deferred compensation plan up to a maximum City contribution of \$300 per month.
2. The Physical Fitness Incentive is increased to \$100 per month for an employee/council member only and \$150 per month for employee/council member and family when they show proof of a fitness membership.
3. Sand City Administrative Staff is directed and authorized to take all necessary actions to provide the above benefits beginning, August 1, 2023.

PASSED AND ADOPTED by the City Council of Sand City this 15th day of August, 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Mary Ann Carbone, Mayor

ATTEST:

DATED: _____

Kerry Lindstrom, City Clerk

**AGENDA ITEM
9B.**

**Direction From Council regarding
Proposed Changes to the 6th Cycle
Housing Element Public Review Draft**



City of Sand City

STAFF REPORT

TO: Honorable Mayor and City Council
FROM: Ande Flower, AICP, EMC Planning Group
SUBJECT: Direction from Council regarding proposed changes to the 6th Cycle Housing Element Public Review Draft
DATE: August 15, 2023

BACKGROUND

State law requires that local jurisdictions update their General Plan Housing Element on a regular eight-year basis consistent with the Regional Housing Needs Allocation (RHNA). The City last updated the Housing Element for the 5th Cycle planning period of 2015-2023. The 6th Cycle planning period is 2023-2031, and the City's RHNA is 260 new housing units. The Housing Element includes policies, programs, incentives and objectives to achieve the City's housing goals and the statutory deadline for completing the update of the 6th Cycle Housing Element for the 2024-2032 planning period is December 31, 2023. There are no City Council or Commission approval requirements prior to the initial draft submittal to the California Department of Housing and Community Development (HCD).

ANALYSIS

Public Review Draft

On May 5, 2023, the Public Review Draft of the 6th Cycle Housing Element was released for a 30-day public review period. The Housing Element Public Review Draft is 228 pages and is available at the following link [638188981658200000 \(sandcity.org\)](https://www.sandcity.org/government/city-departments/planning-department/2023-2031-housing-element-update-2-0). On May 16, 2023 a City Council meeting was held to discuss the Public Review Draft. Staff received comments from the Council and the public at the meeting.

The public review period ended on June 5th 2023. Over the last few weeks, staff and consultants EMC Planning Group have been reviewing comments received during the City meeting, through the dedicated project webpage, <https://www.sandcity.org/government/city-departments/planning-department/2023-2031-housing-element-update-2-0>, and via email.

Additionally, EMC staff met with State Housing and Community Development (HCD) staff on June 26th and conducted a walking tour of the City, highlighting potential housing sites listed in the Housing Element Public Draft Sites Inventory – Appendix C.

Based on feedback from the public, City Council at the May 26, 2023 meeting, feedback from HCD staff, and additional analysis, the following changes to the Sites Inventory and Programs are recommended to help Sand City meet the RHNA goal of 260 units as described below.

Vacant and Available Sites Inventory

The following changes to the Sites Inventory are recommended below for Council consideration.

1. Sites to Remove: East Dunes- Sites B, C, and H; and Site D
2. Sites to Amend: "Site I" –Collection of Properties
3. Reconsider Developer Agreement for South of Tioga
4. New Potential Site to Add: 800 Scott St. – Salvation Army site
5. New Potential Site to Add: Scott St. Undeveloped Right-of-Way
6. Focused Art Park Site for Live/ Work Artists' Lofts

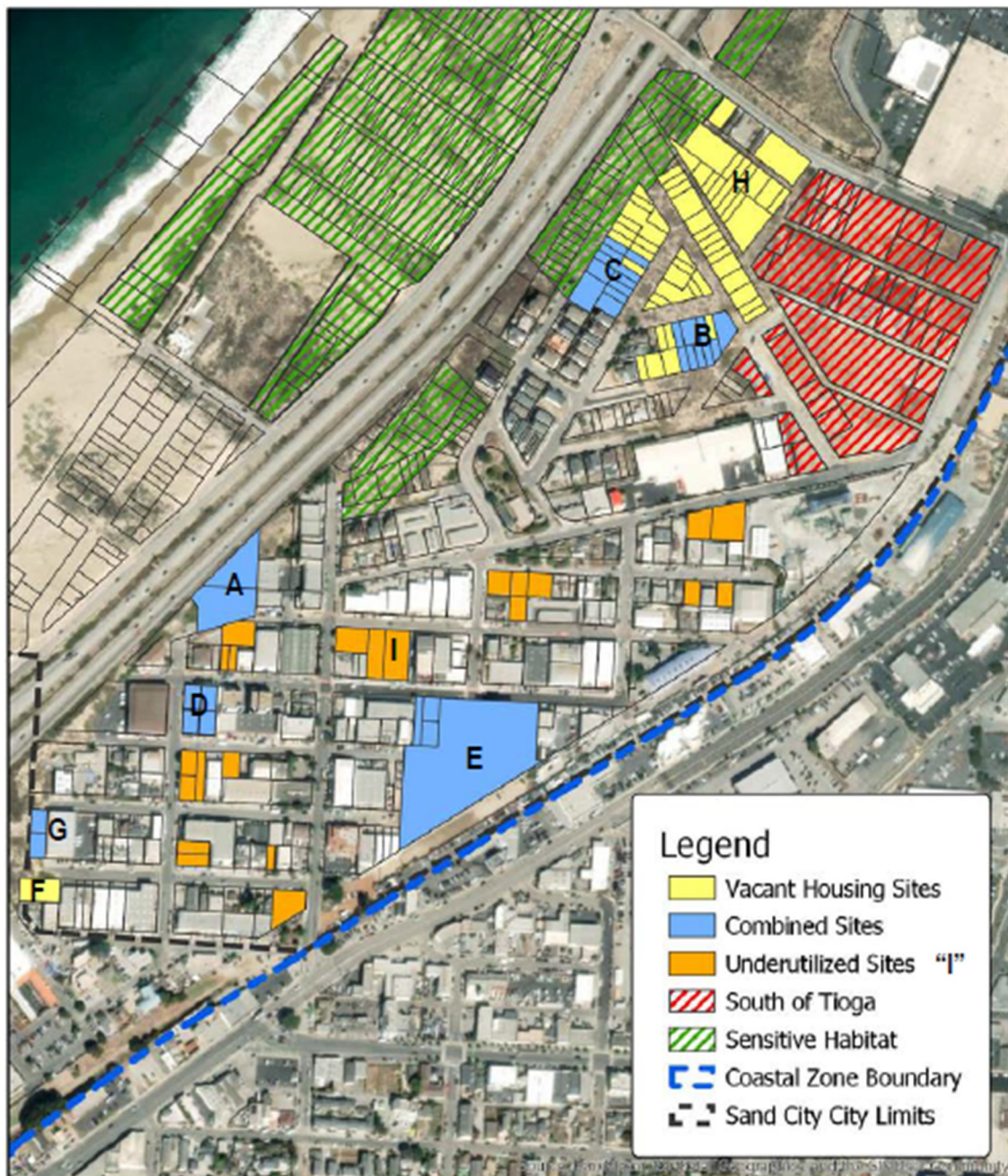
It is also important to note that the City is located within the Airport Influence Area (AIA) of the Monterey Regional Airport. Consistency with the Monterey Airport Land Use Commission (ALUC) Land Use Plan is required for any new or updated Sand City land use policy. The purpose of the Monterey Airport Land Use Commission (ALUC) is to ensure that new land uses around public use airports do not create excessive noise and safety hazards for the public. The draft Housing Element Update will be reviewed by the ALUC on October 23, 2023 to ensure consistency with ALUC policies.

1. Sites to Remove: *East Dunes - Sites B, C, and H; and Site D*

Sites B, C, and H are a collection of properties that are either located immediately adjacent or within the East Dunes area. Due to the lack of public infrastructure, fragmented ownership, proximity and presence of environmental sensitive habitat area, and the presence of environmentally sensitive species protected under Federal and State regulations that would require incidental take permits, it's unlikely these sites would develop during the 2023-2031 Housing Element period.

Site D is removed because it was recently redeveloped.

Figure 1: Public Review Draft version of Sites Inventory (for #1 and #2)



Recommendation: Remove Sites B, C and H and Site D from the Sites Inventory

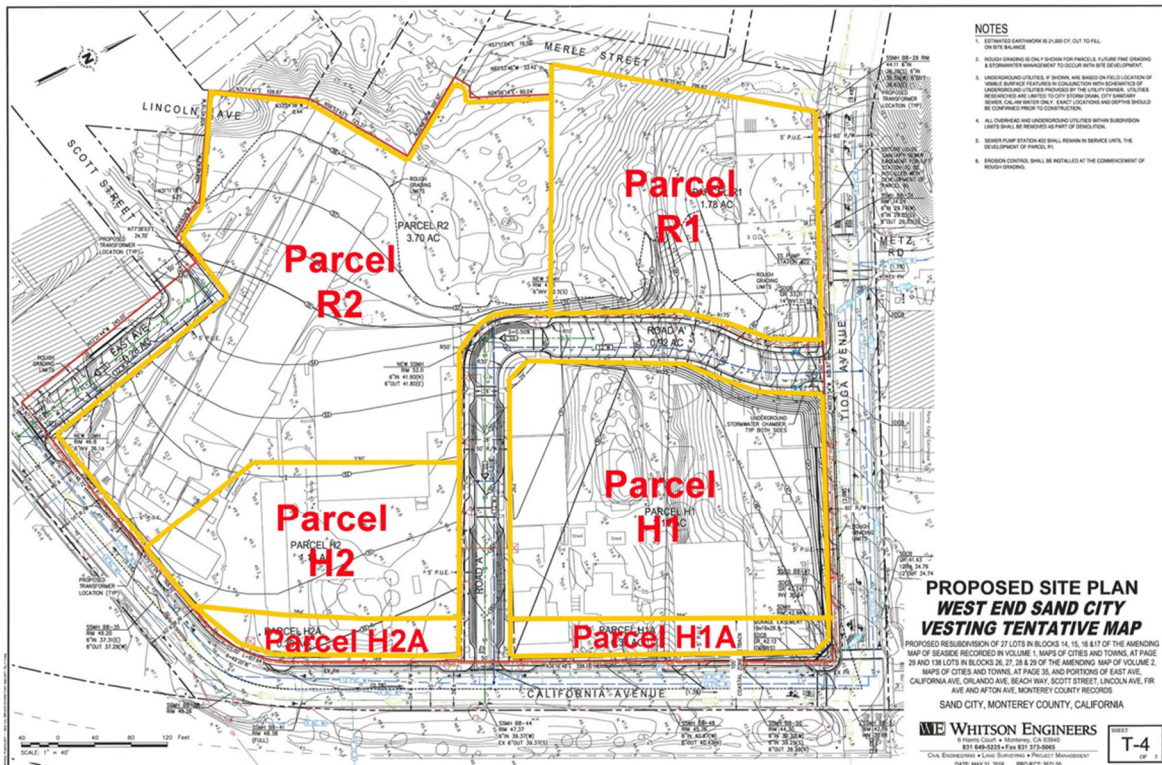
2. Sites to Amend: "Site I" –Collection of Properties

"Site I" is a collection of 22 properties located in the West End east of Highway 1. Many current uses include light and heavy commercial/industrial uses but also include some single-family and public properties including the Art Park. In order to decrease displacement possibilities of existing residents, the occupied single-family properties are recommended for removal from the Public Draft Housing Element site selection list and

the Art Park (and adjacent properties) are recommended to be referred to as a separate site (discussed below). Removal of properties, especially occupied single-family, doesn't undermine the ability to redevelop in the future should an owner wish to do so. It simply removes the property reference from the Housing Element.

Recommendation: Remove occupied single-family and public properties from Site I.

Figure 2: Proposed South of Tioga Site Plan (for #3)



3. Reconsider Developer Agreement for South of Tioga

The South of Tioga (SOT) site is included in the Housing Element Sites Inventory. SOT includes residential sites R1 and R2 with a total of three residential buildings with an overall unit count of 356 units, 52 of which are income restricted units as follows: 9 Very-Low, 7 Low, 18 Moderate and 18 Workforce (note that Workforce units count towards the City's Above Moderate RHNA unit count) per an approved Development Agreement. The current owner is actively marketing the residential sites to developers in an effort to have the units constructed. Given the current economic climate, it may be difficult for most developers to finance the project for a number of reasons, including the mixed income (deed-restricted units) requirement and the typology of the building that is characterized by a concrete podium base parking garage with units built on top for a total of five stories.

In an effort to support near-future residential development, the City can indicate to potential developers, particularly those who specialize in developing 100% affordable housing, that Sand City is willing to explore options and allow flexibility and potential amendments to the Development Agreement. Incentives could include: allowing construction of the affordable units in a stand-alone building, increasing the number of affordable units and therefore density, and/or waiving, reducing, or decoupling parking (the project is within 0.5 miles of the Playa/Sand City Station) for the affordable units.

Recommendation: Continue to include the SOT site in the Sites Inventory and consider the option to alter the Developer Agreement via an amendment by ordinance to include incentives to increase the viability of financing the project including but not limited to:

- Separating the affordable and market rate units,
- Increasing the number of affordable units and therefore density,
- Waiving, reducing, decoupling parking requirements, and/or removing the concrete base parking from the podium style building structure.

These options would be listed as part of a separate new program to be listed in Chapter 2 of the Housing Element update.

Figure 3: Salvation Army Site (for #4)



4. New Potential Sites to Add: 800 Scott St. – Salvation Army site

On June 16, 2023 a property owner interest form was received from the Salvation Army indicating a desire to possibly develop transitional housing units on the property by converting the rental units of 801A and 801B on California Ave. There is a great need

for transitional housing which typically includes services and supports for residents with the goal to have residents move into permanent housing within two years. The Salvation Army current operates a facility in Seaside and has seen a tremendous need for more transitional housing units. Additionally, the current Salvation Army Day facility serves approximately 75-100 families per day with food assistance, showers, laundry and other services including on-site caseworkers.

Recommendation: Include the Salvation Army site on the Sites Inventory as a potential property to accommodate Very-Low income transitional housing units.

Figure 4: Scott Street Site (for #5)



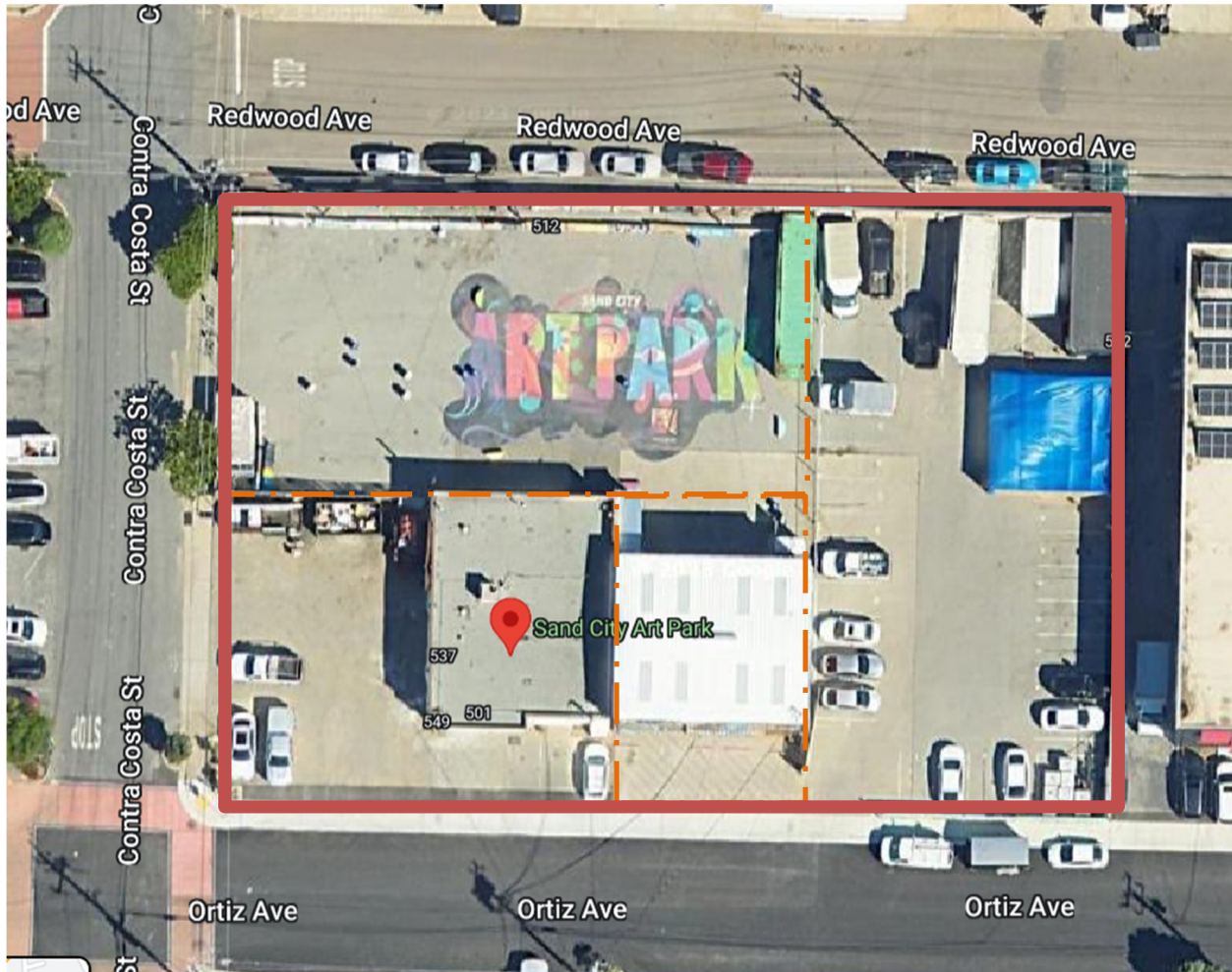
5. New Potential Sites to Add: Scott St. Undeveloped Right-of-Way

The City owns the undeveloped Scott St right-of-way between East Ave. and Ocean View Ave. This potential site would require further exploration with City Council. One possibility could include a partnership with a non-profit such as the Salvation Army for transitional or permanent supportive housing, or an affordable housing development group to develop Extremely-Low or Very-Low income housing units. Units at the low end of the affordability spectrum are the most difficult to finance without some type of financial support from a local municipality such as additional funding grants or low cost land leases.

Recommendation: Include the vacant and undeveloped City-owned Scott St. right-of-way between East Ave. and Ocean View Ave. on the Sites Inventory as potential

property to develop up to 21 Very-Low income housing units, or more if the state density bonus were to be applied.

Figure 5: Proposed Art Park Focused Site (for #6)



6. Focused Art Park Site for Live/ Work Artists' Lofts

The City's Art Park, located at 525 Ortiz Ave. was included in the initial site selection as part of "Site I," which was collection of 22 sites. The City-owned Art Park site presents an opportunity to design residential units (including artist live/work lofts) and community space together and potentially incorporate adjacent lots into a mixed-use project. The City could partner with affordable housing developers to construct new residential units on (either above or adjacent to) the Art Park site and the new residential units could be developed as affordable live/work units marketed to artists to expand upon the spirit and activity of the existing Art Park. For instance, the First Friday events could include studio gallery walk among the participating lofts. Control of how the site would be developed and operated would be in the hands of City decision-makers. For instance, if a goal for this site is to maintain central open space, then housing may surround the space open

to the sky. Grants through the Prohousing Community Designation may additionally increase opportunities to fund residential construction of this site.

Recommendation: Retain the Art Park open space, but itemize the property in the Sites Inventory as a separate site for potential affordable housing targeting artists and expand it to include adjacent parking lots as adjacent lots become available for sale.

Proposed Program Recommendations

Information related to the draft policies and programs may be found in Chapter 2 of the Public Draft Housing Element. Review of the current policies and programs are described and evaluated in Appendix D of the draft. The following changes are recommended:

7. West End Housing Diversity Overlay
8. Minimum Density of 20 dwelling units per acre (du/ac) for Sites in Inventory
9. Objective Design Standards (ODS)
10. Additional Programs

Figure 6: Boundary for the Proposed West End Housing Diversity Overlay (for #7)



7. West End Housing Diversity Overlay

Program 1.1.B in the Public Draft will include the following edits, intended to simplify development review and include specific development standards to increase transparency, including the allowance of a 250 percent density increased allowance for all multi-family and mixed-use housing development, including Above-Moderate market rate housing. The intent is to incentivize housing of all income ranges. This was formerly an incentive only available through lot consolidation:

~~1.1.B Program 1.C Mixed-Use and Planned (MU-P) Unit Development West End Housing Diversity Overlay~~

The City will continue to encourage diverse and innovative housing design and “smart growth” strategies through its Mixed-use district and planned unit development MU-P zoning district. policies in the Zoning Ordinance. Current development standards are unclear or are overly regulatory, including but not limited to; discretionary setbacks, Conditional Use permit requirements for multi-family developments and height increases from 60 ft to 85 ft; and a complex local density bonus system. In order to further catalyze new development, the City will create an Overlay that will supersede requirements for the underlying zoning within the West End. amend and simplify the MU-P Zoning-District (see section 18.13.060.) by.

Market-rate and affordable housing in multi-family, mixed-use and planned unit development construction shall be encouraged with the use of the following Overlay incentives:

- *Apply the MU-P incremental density bonus dependent on lot size, and replacing it with one as a single standard that grants to MU-P lots of any size a 250 percent density bonus (81 dwelling units/acre), provided 15 percent of the units are affordable to Very-Low, Low and Moderate-income households. By doing so, the potential number of units will be significantly increased and will function to incentivize redevelopment of underutilized properties into multi-family and mixed-use housing;*
- *Continue to assist developers and property owners with lot consolidation in instances where proposed developments would further the objectives of the General Plan as well as provide exemplary mixed-use development;*
- *Replace discretionary setbacks with specific setback dimensions, including reducing front and side setbacks to zero to encourage a variety of multi-family housing types including townhomes and apartments, per Government Code Section 65583 and 65583.2;*
- *Allow multi-family residential uses as a permitted use;*
- *Expedite permit processing;*

- Reduce or eliminate parking standards for developments that include affordable senior, disabled housing units or for units within half a mile of a major transit stop according to Government Code Sections 65585 and 65863.2; (show a map); and
- Implement a By Right non-discretionary approval process per Government Code 65583.2(c). This will simplify the permitting process, reduce fees and potential permit appeals. By Right means a jurisdiction shall not require:
 - o A Conditional Use Permit;
 - o A Planned Unit Development permit;
 - o Design review other than Objective Development Design Standards; or
 - o Other discretionary, local government review or approval that would constitute a “project” as defined in Section 21100 of the Public Resources Code (California Environmental Quality Act “CEQA”).

8. Minimum Density of 20 dwelling units per acre for Sites in Inventory

Sites selected for the Sites Inventory will be required to have a minimum density when redeveloped, with the following additional program language:

Set minimum densities of 20 dwelling units per acre (du/ac) to encourage a higher multi-family unit yield and allow housing development projects up to 85 feet By Right, by eliminating the Conditional Use permit requirements;

By setting a minimum density for these specific sites, the City can more confidently assert that the projected new residential unit capacity itemized in the Sites Inventory is realistic. At 20 du/ac, HCD will accept that the site may develop with affordable housing (per the HCD Site Inventory Guidebook). Also, a minimum density supports an economic development marketing advantage because it will contribute to pragmatic site studies and renderings intended to attract residential construction.

The average site size in the Public Draft San Diego City Sites Inventory (excluding outliers like SOT and The Independent sites) equals 0.13 acres which is considered small. At 20 du/ac, a total of two (2) units would be a required minimum. The only prohibited use would be to demolish and construct a new single-family home, for those sites included with the Sites Inventory.

Recommendation: Modify Programs to include the minimum density language.

9. Objective Design Standards

The lack of Objective Design Standards (ODS) poses a constraint to residential development. Subjective design guidelines increase uncertainty and risk for housing

developers. Objective Design Standards provide a measure of clarity that proposed developments will be measured against, and provide the community with assurance that developments will conform with measurable objective standards. Additionally, ODS allow the City to retain some control over design should a multi-family residential development be submitted under any of the following scenarios:

Recycled Sites from the 5th Cycle:

Approximately a third of the Sites Inventory are sites that were previously identified in the 5th Cycle Housing Element and did not redevelop. These sites are now subject to By Right non-discretionary approval process per Government Code 65583.2.c, when 20% of proposed units are deed-restricted affordable. This means that no Conditional Use or Planned Unit Development permit processes may be required. Design review is allowed; however, only subject to Objective Design Standards which the City has not yet adopted.

SB-35: In California, 28 cities and counties have met their lower and above moderate income RHNA. For the 298 jurisdictions, including Sand City, which have not created enough housing to meet their above moderate income RHNA, housing projects in these jurisdictions can qualify for SB 35 housing 10% of housing units are devoted to below market rate housing. SB-35 (Government Code Section 65913.4) allows qualifying development projects with certain minimum affordable housing to be reviewed by a ministerial approval process, only. This means that no Conditional Use or Planned Unit Development permit processes may be required. Design review is allowed; however, only subject to Objective Design Standards which the City has not yet adopted.

AB-423: This bill would expand SB-35 requirements into Coastal Zone areas. It would also require prevailing wages, use a workforce participating in an apprenticeship, or provide health care expenditures, though these requirements do not apply to a project that consists of 10 or fewer units and is not otherwise a public work.

Builders Remedy: The Housing Accountability Act allows housing project developments in cities that are not in compliance with HCD, anywhere that residential is an allowed use, at any density. For these projects, affordable housing is required and only Objective Design Standards may be applied.

Recommendation: Either include the following program to develop Objective Design Standards (ODS) for multi-family affordable developments, OR complete and adopt a draft ODS document in tandem with development of the Housing Element Update.

Sand City's design guidelines date from 2001 and the City's Vibrancy Plan references another specific set of design guidelines for the West End neighborhood. The current West End Design Guidelines include many objective

standards but are older, and like the 2001 design guidelines, should be reviewed and updated given the age of the document and recent state legislation surrounding design guidelines.

The lack of recent Objective Design Standards poses a constraint to residential development. Guidelines that are overly subjective and/or out of date increase uncertainty and risk for housing developers. Objective Design Standards provide a measure of clarity that proposed developments will be measured against, and provide the community with assurance that developments will conform with measurable objective standards. The City will develop and adopt Objective Design Standards for multi-family developments.

(A specific timeline must be determined for the above program)

Additional Programs and changes

In addition to the major policy items listed above, a number of programs were added to the Draft document to ensure consistency with state laws and guidance:

- SB 35 Checklist and Procedures in conformance with Government Code section 65913.4 allows qualifying development projects with a specified proportion of affordable housing units to move more quickly through the local government review process and restricts the ability of local governments to reject these proposals;
- AB 2097 compliance to recognize Sand City Station located on Playa Avenue as a “Major Transit Stop”; and
- Universal Design to encourage accessible housing for persons with disabilities.

Next Steps and Project Schedule

Based on Council direction and public comment, the Draft Housing Element will be revised and submitted to HCD for the State’s 90-day review period. After receiving comments from HCD, the Draft Housing Element will be revised and resubmitted for certification. Any substantive changes in policy would be brought back to the City Council for consideration prior to resubmitting for certification. Once notification from HCD that the Housing Element is in substantial compliance with state law, the final document will be presented to City Council for adoption.

Highlights of the proposed schedule include:

- June 5 – Aug 30: Prepare HCD Draft with Public Comments Incorporated
- Aug 15: Council direction
- Sept 8- Dec 8 HCD 90-day Initial Review
- Oct. 23: Airport Land Use Commission
- Dec 8: HCD comment letter received

- Dec. 31: *HCD Certification Deadline*
- January: City Council Direction Consideration
- Jan-Mar: Housing Element revisions (if needed)

There is a strong possibility that the City's Housing Element will not be certified by HCD prior to the December 31, 2023 deadline. Sometimes, the HCD Reviewer makes themselves available for a mid-cycle review (45-day). EMC Planning Group would incorporate any new information or narrative requested at that time. Prior to certification, all properties within the City that allow residential use will be subject to the "Builders Remedy" from December 31, 2023 until the Housing Element is certified (see Attachment A) which allows proposed development with affordable units to be approved at any density (beyond allowable maximum), By Right which means without a Conditional Use or Planned Unit permit process, and only objective design standards may be used.

The likelihood that a developer would initiate a project in Sand City under the "Builders Remedy" is low because this path has generally only been pursued by developers frustrated by local review processes for project designs that have been crafted prior to the Builders Remedy effective date. Multiple jurisdictions within the State, in particular in Southern California and the Bay Area, have not received certification by the HCD deadline and very few developers have implemented the "Builders Remedy," and instead choose to continue to work with communities and the legislative framework.

Public Participation

Public participation is an important component of the Housing Element update process and HCD places an emphasis on meaningful participation. Staff and consultants have reached out and continue to reach out to community members—renters, land owners, business owners, housing advocates, and others—to gather opinions, ideas, and information. The City Manager has had City initiated meetings with affordable housing developers, builders, and advocates; met with landowners and has done training on affordable housing financing.

A limited number of surveys were returned to the City and letters from LandWatch and the Salvation Army were received. In an effort to garner more community feedback the community online survey remains open and a City booth at the Sand City West End Celebration is planned, for this August 2023 event.

FISCAL IMPACT

There is no direct fiscal impact associated with the discussion of the 6th Cycle Housing Element update process. There is, however, an impact on staff resources, as they work with the planning consultant to prepare the update. Further, there is an immediate need

to prepare and fund Objective Design Standards, which will have a fiscal impact – preliminary estimates suggest an additional cost of approximately \$95,000. This includes EMC Planning Group review facilitation process for a sub-consultant to develop Objective Design Standards.

CEQA

Staff and consultant anticipate that the ultimate adoption of the 6th cycle Housing Element will require analysis pursuant to the California Environmental Quality Act (CEQA). At this time, it is anticipated that an Initial Study or possibly an Exemption will be prepared to analyze the potential impacts that the adoption of the Housing Element could have on the environment. This anticipated outcome could change over the course of the Housing Element preparation, and staff will keep the City Council informed as the process proceeds.

RECOMMENDATION

This item seeks policy direction from the City Council regarding potential changes to the Public Draft prior to submittal to HCD as outlined in the Analysis section.

ATTACHMENTS

Attachment A – Association of Bay Area Governments Technical Assistance for Local Planning Housing

RESOURCES

Both the Public Draft and the online surveys can be found at the Housing Element Update webpage:

<https://www.sandcity.org/government/city-departments/planning-department/2023-2031-housing-element-update-2-0>

**Sand City
Stakeholder Survey**



**Sand City 2023-2031
Housing Element Update**





Association of Bay Area Governments



Technical Assistance
for Local Planning

HOUSING

DISCLAIMER: This document is intended solely as a technical overview of the provisions of certain provisions of the Housing Accountability Act. It is not intended to serve as legal advice regarding any jurisdiction's specific policies or any proposed housing development project. Local staff should consult with their city attorney or county counsel when determining the applicability of these provisions to any proposed housing development project in their jurisdiction.

The “Builder’s Remedy” and Housing Elements

There have recently been press reports regarding the so-called “Builder’s Remedy” that can be used to avoid local zoning requirements when a locality’s housing element does not substantially comply with state law. These reports have stated that, if a locality has a noncompliant housing element the city or county must approve the housing development project, regardless of the local zoning.

The “Builder’s Remedy” arises from the Housing Accountability Act (Government Code Section 65589.5¹; the HAA). This paper describes the provisions of the HAA that constitute the “Builder’s Remedy” and how they may apply to a proposed housing development project.

How Does the “Builder’s Remedy” Work?

The HAA requires that cities and counties make one of five findings to deny, or to apply conditions that make infeasible, a housing development project “for very low, low- or moderate-income households” or an emergency shelter. (Section 65589.5(d).) A housing development project with 20 percent of the total units available to lower income households or with all of the units available for moderate or middle income households may qualify as housing “for very low, low- or moderate income households” (see detailed description below). The five findings which would allow denial of an eligible project can be summarized as follows:

1. The city or county has met or exceeded its Regional Housing Needs Allocation (RHNA) for the proposed income categories in the development.
2. The housing development or emergency shelter would have a specific adverse impact on public health and safety, and there is no way to mitigate or avoid the impact without making the development unaffordable. The impact must be based on objective, written public health or safety standards in place when the application was deemed complete.
3. The denial or condition is required to meet state or federal law, and there is no feasible method to comply without making the development unaffordable.
4. The project is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agriculture or resource preservation or there are not adequate water or sewage facilities to the serve the project.

¹ All future references are to the Government Code unless otherwise specified.



Regional Housing Technical Assistance Program

5. The project is inconsistent with both the zoning ordinance and the land use designation as specified in any general plan element. **However, a city or county cannot make this finding if it has not adopted a housing element in substantial compliance with state law.**

If a locality has not adopted a housing element in substantial compliance with state law, developers may propose eligible housing development projects that do not comply with either the zoning or the general plan. The term “Builder’s Remedy” is used to describe the situation where a local agency may be required to approve an eligible housing development project because it cannot make one of the other four findings.

Are Projects Using the “Builder’s Remedy” Exempt from CEQA Review?

The HAA contains no exemptions from the California Environmental Quality Act. The HAA states specifically that nothing relieves the local agency from making the required CEQA findings and otherwise complying with CEQA. (Section 65589.5(e).) A project may be exempt from CEQA under other provisions of CEQA, other state laws, or the CEQA Guidelines.

When Does a Housing Element No Longer Comply with State Law? Is There a Grace Period If the Housing Element Is Not Adopted by the Due Date?

Housing elements are required to comply with current state housing element law on the established due date (**January 31, 2023** in the ABAG region). State law has changed significantly since fifth cycle housing elements were adopted, and it would be unlikely that a fifth cycle housing element would substantially comply with current state law. If a sixth cycle element has not been adopted by the due date, the housing element would likely be out of compliance with state law until a complying sixth cycle housing element is adopted. **There is no grace period**, even for the period when a housing element is being reviewed by the Department of Housing and Community Development (HCD).

HCD approval is not required for a housing element to be found substantially compliant with state law. State law provides that a city or county may adopt its own findings explaining why its housing element is substantially compliant with state law despite HCD’s findings. (Section 65585(f).) However, HCD is authorized to refer agencies to the Attorney General if it finds a housing element out of compliance with state law. (Section 65585(j).)

Are a Local Agency’s Development Standards Null and Void If the Housing Element is Not in Compliance with State Law?

No, the local agency’s development standards are not null and void if the housing element is not in substantial compliance with state law. The “Builder’s Remedy,” however, may require a local agency to approve an eligible housing development project despite its noncompliance with local development standards. Conversely, other projects may be challenged because a finding of general plan consistency cannot be made if the general plan is out of compliance with state law.

What Projects Are Eligible to Use the “Builder’s Remedy”?

The “Builder’s Remedy” applies only to a housing development project “for very low, low- or moderate-income households” and to emergency shelters. The HAA defines a “housing development project” as either:

- Residential units only;
- Mixed-use developments with at least two-thirds of the square footage designated for residential use; or



Regional Housing Technical Assistance Program

- Transitional housing or supportive housing.² (Section 65589.5(h)(2).)

“Housing for very low, low-, or moderate-income households” includes either:

- 20% of the total units sold or rented to lower income households;
- 100% of the units sold or rented to moderate income households; or
- 100% of the units sold or rented to middle income households.³

Monthly housing costs for lower income households cannot exceed 30 percent of 60 percent of median income, adjusted for household size, and the units must remain affordable for 30 years. Monthly housing costs for moderate income households cannot exceed 30 percent of 100 percent of median income. There are no standards in the HAA for housing costs for middle income households. (Sections 65589.5(h)(3), (h)(4).)

An emergency shelter is housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay. (Section 65582(d); Health & Safety Code Section 50801(e).)

² As defined in Section 65582.

³ Those earning no more than 150 percent of median income.