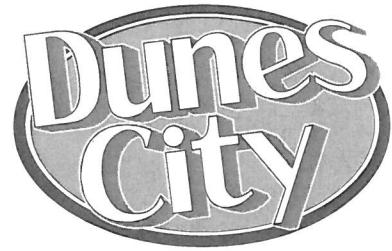


## **Dunes City Council ~ Regular Meeting**

**Wednesday, June 13, 2018 ~ 6:00 pm**

*The meeting will adjourn not later than 9:00 pm. If agenda items are not completed, the meeting will continue the next Wednesday at 6:00 pm.*



### **AGENDA**

- 1. Call to Order..... Mayor Robert Forsythe**
- 2. Roll Call ..... City Administrator**
- 3. Pledge of Allegiance to the Flag..... Mayor Robert Forsythe**
- 4. Motion to Approve the Agenda..... Action Item**
- 5. Consent Agenda..... Action Item**

*All items listed here are considered to be routine by the Dunes City Council and will be enacted by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the consent agenda and considered.*

- A. City Council Special Session Meeting Minutes from May 7, 2018
- B. City Council Regular Meeting Minutes from May 9, 2018
- C. Bills of the Session through June 6, 2018
- D. Receipts of the Session through June 6, 2018

#### **6. Announcements / Correspondence**

- A. A public hearing before the Planning Commission is scheduled for Thursday, June 28, 2018, for consideration of Ordinance No. 247, regarding requiring individuals desiring to conduct a marijuana production operation or a recreational marijuana business to obtain a Conditional Use Permit.
- B. A public hearing before the City Council is scheduled for Wednesday, July 11, 2018, for consideration of Ordinance No. 247, regarding requiring individuals desiring to conduct a marijuana production operation or a recreational marijuana business to obtain a Conditional Use Permit.
- C. On July 17, 2018, Dunes City is hosting a FEMA workshop on common problems, suggested solutions, and best management practices related to construction of residential structures on the Pacific Northwest Coast. This workshop lasts from 8:30 a.m. to 4:00 p.m.

#### **7. Old Business**

- A. City Building Program..... Discussion

Dunes City Hall is accessible to the disabled. If special accommodations are needed, please contact the City Recorder at 541-997-3338 at least 48 hours in advance of the meeting so that appropriate assistance may be arranged.

Phone (541) 997-3338 • Fax (541) 997-5751 • PO Box 97, Westlake, OR 97493  
82877 Spruce St • [www.dunescity.com](http://www.dunescity.com)

B. Reavis v. Dunes City update..... Discussion

**8. Executive Session** None.

**9. Citizen Input on Items not listed on the Agenda**

*Maximum time 20 minutes: Speakers will be limited to three minutes. If the number wishing to testify exceeds seven speakers, each speaker's time may be reduced to fit within 20 minutes.*

**10. New Business**

A. Volunteer of the Year Selection..... Discussion/**Action Item**

B. Presentation of \$250 award to winner of most volunteers  
at the 2018 Oregon Dunes Triathlon..... Mayor Robert Forsythe

C. Small City Allotment Agreement for award of ODOT  
grant for work on Huckleberry Lane and Fir Street..... Discussion/**Action Item**

D. Proposal from the HD Fowler Company for drive by  
Meter reading hardware..... Discussion/**Action Item**

E. Amendment to Master Agreement #644 between  
Dunes City and the Department of Corrections for  
Work crews from Shutter Creek Correctional Institution.... Discussion/**Action Item**

F. Resolution Series 2018, No. 9 (06/13/2018)  
Regarding City Services rendered..... Discussion/**Action Item**

G. Ordinance No. 248, amending Chapter 120 of the  
Dunes City Code to require business licenses of all  
Businesses doing business within the City Limits.  
First Reading ..... Discussion/**Action Item**

H. Ordinance No. 249, amending Chapter 141 of  
the Dunes City Code regarding Erosion Control by  
adding provisions that apply to all residential  
construction within the City Limits  
First Reading ..... Discussion/**Action Item**

**11. Public Hearings**

A. Type III Procedure hearing on an application for  
Conditional Use Permit for hobby beekeeping in the  
R-1 Zone..... Discussion/**Action Item**

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- B. Resolution No. 6, adoption of the Fiscal Year  
2018-2019 Budget..... Discussion/**Action Item**
- C. Resolution No. 7, referring to the voters of Dunes  
City a measure for adoption of an amendment to  
Section 21 of the Dunes City Charter to allow the  
City to contract for services of a Municipal Judge and  
allow for Court to be held outside the City limits..... Discussion/**Action Item**
- D. Resolution No. 8, referring to the voters of Dunes City  
a measure to assess an ad valorem tax in the amount  
of \$.005 per \$1,000 in property valuation..... Discussion/**Action Item**

## 12. Reports

- A. Mayor's Report..... R. Forsythe
- B. Community Center Report..... D. Wells
- C. Water Quality Report ..... S. Meyer
- D. Public Works Maintenance Supervisor's Report..... J. Mills
- E. Emergency Services Report..... J. Mills
- F. City Administrator/Recorder/Planning/Staff Report..... J. Mills

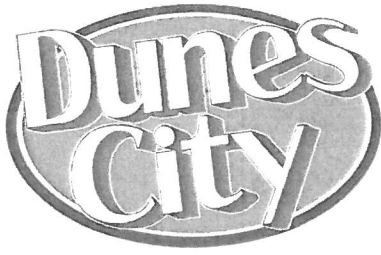
## 13. For the Good of the Order

## 14. Adjournment

*The meeting will adjourn not later than 9:00 pm. If agenda items are not completed, the meeting will continue on the following Wednesday at 6:00 pm.*

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82877 Spruce St • [www.dunescity.com](http://www.dunescity.com)



**CITY COUNCIL SPECIAL SESSION MEETING MINUTES ~ DRAFT  
MAY 7, 2018 AT 3:30 PM**

City Hall ~ 82877 Spruce St., Westlake, OR

*These proceedings of the Dunes City Council were recorded and are on file at Dunes City Hall. Upon approval by the City Council, these minutes will be available online at [www.DunesCity.com](http://www.DunesCity.com)*

**1. CALL TO ORDER**

Mayor Robert Forsythe called the May 7, 2018, Special Session of the Dunes City Council to order at 3:30 pm.

**2. ROLL CALL**

Roll Call was taken by City Administrator/Recorder Jamie Mills.

**Present:** Mayor Robert Forsythe, Council President Sheldon Meyer, Councilor Duke Wells, and Councilor Tom Mallen.

**Absent and Excused:** Councilors Susan Snow and Alan Montgomery.

**Also Present:** Administrative Assistant Rapunzel Oberholtzer.

**3. PLEDGE OF ALLEGIANCE**

All who were present stood for the Pledge of Allegiance.

**4. APPROVAL OF THE AGENDA**

**Councilor Wells made a motion to approve the Agenda. Councilor Mallen seconded the motion. The motion passed by unanimous vote.**

**5. ANNOUNCEMENTS AND CORRESPONDENCE**

City Administrator/Recorder Mills read aloud from the list of announcements on the Agenda:

- A. A meeting with local contractors regarding the issue of the impending shut down of the City's building permit program will be held following this session at 6:00 pm.
- B. We are looking for volunteers for the Oregon Dunes Triathlon and Duathlon. Please notify Dunes City if you are willing to help.



6  
**5. EXECUTIVE SESSION**

- A. Held pursuant to ORS 192.660(2)(h) to consult with legal counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed

Mayor Forsythe announced that he would close the Special Session to go into Executive Session held pursuant to ORS 192.660(2)(h) to consult with legal counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed, and that only representatives of the news media and designated Staff would be allowed to attend Executive Session.

Mayor Forsythe closed the Special Session at 3:37 pm. He announced that the Council reserved the right to reconvene the Special Session after Executive Session.

Councilor Robert Orr arrived at 3:45 pm and joined the Executive Session in progress.

Mayor Forsythe reconvened the Special Session at 4:56 pm.

7  
**6. NEW BUSINESS**

Mayor Forsythe announced that after hearing advice of City Counsel, he would entertain a motion to direct the City Administrator to contact counsel for the League of Oregon Cities and inform her that Dunes City would like to seek legal action against the State and BCD.

**Councilor Mallen made the motion. Councilor Wells seconded the motion. The motion passed by unanimous vote.**

8  
**7. FOR THE GOOD OF THE ORDER**

City Administrator/Recorder Mills announced that the City received an appraisal of the property the City is seeking a grant to purchase but the appraisal needs to be reviewed and the cost to do so is about \$900. She requested authority to move forward with the review.

**Council President Meyer made a motion to authorize City Administrator Mills to execute the agreement for review of the appraisal. Councilor Wells seconded the motion. The motion passed by unanimous vote.**

9  
**8. ADJOURNMENT**

Mayor Forsythe adjourned the meeting at 5:00 pm. There was no motion and no vote.

(Signatures below.)

**APPROVED BY THE DUNES CITY COUNCIL ON THE 13<sup>th</sup> DAY OF JUNE 2018.**

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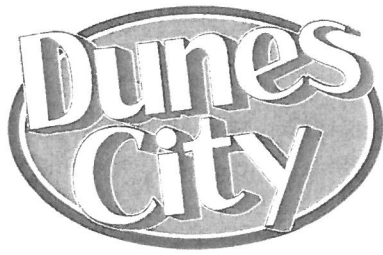
Robert Forsythe, Mayor

ATTEST:

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Jamie Mills, City Administrator/Recorder





**CITY COUNCIL MEETING MINUTES ~ DRAFT  
MAY 9, 2018 AT 6:00 PM**

City Hall ~ 82877 Spruce St., Westlake, OR

These proceedings of the Dunes City Council were recorded and are on file at Dunes City Hall. Upon approval by the City Council, these minutes will be available online at [www.DunesCity.com](http://www.DunesCity.com)

**1. CALL TO ORDER**

Mayor Robert Forsythe called the Wednesday, May 9, 2018, meeting of the Dunes City Council to order at 6:00 pm.

**2. ROLL CALL**

Roll Call was taken by City Administrator/Recorder Jamie Mills.

**Present:** Mayor Robert Forsythe, Council President Sheldon Meyer, Councilor Susan Snow, Councilor Duke Wells, Councilor Tom Mallen, and Councilor Robert Orr. Councilor Alan Montgomery arrived at 6:04 pm.

**Also Present:** Administrative Assistant Rapunzel Oberholtzer and several Dunes City residents.

**3. PLEDGE OF ALLEGIANCE**

All who were present stood for the Pledge of Allegiance.

**4. APPROVAL OF THE AGENDA**

**Councilor Mallen made a motion to approve the Agenda. Councilor Wells seconded the motion. The motion passed by unanimous vote.**

**5. APPROVAL OF THE CONSENT AGENDA**

**Councilor Orr made a motion to approve the Consent Agenda. Councilor Mallen seconded the motion. The motion passed by unanimous vote.**

**6. ANNOUNCEMENTS / CORRESPONDENCE**

City Administrator/Recorder Mills read from the list of announcements on the Agenda:

- A. A Budget Committee meeting is scheduled for May 15, 2018, at 5:00 pm at which time the Budget Message and the proposed Budget will be presented.

- B. The 6<sup>th</sup> Annual Oregon Dunes Triathlon will be held this Saturday, May 12, in Dunes City. We can still use some volunteers to help staff the race courses. Please call Rapunzel at City Hall to register.

## **7. OLD BUSINESS**

### **A. City Building Program**

City Administrator/Recorder Mills referred Councilors to a copy of a draft letter to the Enforcement Manager of the Building Codes Division (BCD) written by Mrs. Mills on behalf of the City to request an extension of time to respond to BCD's April 23, 2018, letter and notice with a list of questions. She asked Councilors to review the letter.

Councilors agreed that the letter was well written and authorized City Administrator/Recorder Mills to send it.

Mayor Forsythe explained that the Council had met with attorneys for Dunes City and the League of Oregon Cities (LOC) in an Executive Session on May 7 to review legal options available to cities in the wake of BCD's notices that several cities are violating rules of the BCD's building program. He went on to note that, following the Executive Session, the Council instructed City Administrator/Recorder Mills to inform the attorney for the LOC that Dunes City intended to take legal action against the State and BCD. He noted that it would likely take several weeks for the lawsuits to unfold; he will provide updates as they become available. (00:06:50) Mayor Forsythe encouraged everyone in the audience and watching the video of the meeting to make their government representatives aware of their objections to the State's and BCD's actions.

### **B. Agreement with CwM-H2O for Installation of Metering Device on Woahink Creek**

City Administrator/Recorder Mills explained that the Agreement with CwM included in Councilors' meeting packets was for the installation of a metering device at the weir on Woahink Lake. She went on to explain that the owner of the property where the weir is located has agreed to allow the City and CwM to access the property to install the meter and to maintain it when necessary, and the agreements between Dunes City and the property owner are being prepared and reviewed by the City Attorney.

City Administrator/Recorder Mills noted the CwM's cost was less than \$10,000, within the amount the City has budgeted for the project.

Mayor Forsythe asked City Administrator/Recorder Mills to have the City Attorney review the Limitation of Liability paragraph on page two of the Terms and Conditions. He was concerned that the aggregate liability of CwM, according to the T&C, was only \$25,000 which might not be enough if anything happened to contaminate the drinking water supply or if any other damages were to occur.

City Administrator/Recorder Mills mentioned that the City will no longer be entitled to receive shared revenue from State entities because it has never levied any city taxes. During discussion, Councilors agreed that the City should further discuss the issue of levying a small tax and whether or not the tax could be on the November ballot.

**Council President Meyer made a motion authorizing the City Administrator/Recorder to move forward with the CwMH2O agreement, pending review of the limits of liability by the City Attorney. Councilor Orr seconded the motion. The motion passed by unanimous vote. (00:17:50)**

## **8. EXECUTIVE SESSION**

There was none.

## **9. NEW BUSINESS**

### **A. Litter Cleanup/Signage on Canary Road/Possible New Committee**

Mayor Forsythe recognized Ms. Kath Cook, a Dunes City resident. Ms. Cook thanked the Council for including this subject on the Agenda for further discussion after she broached it in the April meeting. Ms. Cook asked why Dunes City no longer had volunteer committees. Council President Meyer explained that the reason that many of the City's standing committees were dissolved was because volunteers stopped participating and attending meetings but, if there is a need, the City could reinstate a committee at any time. Ms. Cook offered to try to recruit volunteers for a committee to focus on road cleanup.

## **10. PUBLIC HEARINGS**

There were none.

## **11. CITIZEN INPUT ON ITEMS NOT LISTED ON THE AGENDA**

There was none.

## **12. REPORTS**

- A. Mayor's Report: Mayor Forsythe provided an update on the BCD issues earlier in the meeting. He again encouraged citizens to write or call their elected State and federal officials about their objections to BCD's draconian and overreaching rule changes.
- B. Community Center Report: Councilor Wells reminded everyone that the Triathlon will be this weekend.

- C. Water Quality Report: Council President Meyer reported that the test results were still very good. He noted that the Oregon Health Authority has issued new limits for levels of cyanotoxins in water.
- D. Public Works Maintenance Supervisor's Report: City Administrator/Recorder Mills reported that the City's grant application for repairs to Huckleberry Lane and Wright Road was approved by ODOT. She went on to thank the County roads department for all their work on brushing and sweeping the County roads in Dunes City in preparation for the Triathlon.
- E. Emergency Services Report: City Administrator/Recorder Mills reported that she attended the April WLEOG meeting. Of particular note, she went on to explain, is that SVFR is expecting this summer to be very, very dry and reminds everyone to make sure that their defensible space is clear. Council President Meyer mentioned that he'd heard that the State is warning of a higher than normal tick season because of the dry and warm weather and urges citizens to use appropriate safeguards outside and to check for ticks when returning inside.
- F. City Administrator/Recorder/Planning/Staff Report: City Administrator/Recorder Mills reported that: there were six building permits and three public works permits issued in April; the Planning Commission will hold a public hearing on a Conditional Use Permit on May 29 beginning at 6:00 pm; and, the majority of her time in the past month has been spent on investigating and participating in discussion about the City's building program as well as working on three versions of a budget to present to the Budget Committee.

### 13. FOR THE GOOD OF THE ORDER

Councilor Wells noted that BCD's actions of late were one of the biggest assaults on the City in its history, and the actions would impact not only Dunes City but, eventually, every city in the State. He went on to encourage residents to write or call their government representatives to protest.

Council President Meyer noted that Senator Roblan and Representative McKeown, among others, are working to force a delay in the implementation of BCD's new rules until comments and testimony can be heard in the next legislative session.

### 14. ADJOURNMENT

**Councilor Mallen made a motion to adjourn. Councilor Wells seconded the motion. The motion passed by unanimous vote.**

Mayor Forsythe adjourned the meeting at 6:41 pm.

(Signatures next page.)

**APPROVED BY THE DUNES CITY COUNCIL ON THE 13<sup>th</sup> DAY OF JUNE 2018**

---

Robert Forsythe, Mayor

ATTEST:

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Jamie Mills, City Administrator/Recorder





**BILLS OF THE SESSION: 5/08/2018 thru 6/06/2018**

Campbell Productions		\$390.00
Cardinal Services		\$1,490.11
Central Lincoln P.U.D. (City Hall)		\$107.14
Central Lincoln P.U.D. (Street Lights)		\$1,787.57
Century Link		\$304.66
Charter Business		\$70.00
CIS Trust (Insurance)		\$4,440.74
Coast Computer Services		\$225.00
County Transfer & Recycling		\$25.34
DCBS Fiscal Services		\$858.96
Florence Shipping Solutions		\$85.02
Appraisal & Consulting Group		\$900.00
MCI/Verizon		\$51.76
Northwest Code Professionals		\$1,077.00
Oregon Water Resources Department (WMCP)		\$1,040.00
Petty Cash		\$270.21
Quill		\$51.98
Robert Ybarra		\$80.00
Siuslaw School District		\$0.00
Speer Hoyt LLC General	\$299.20	
Speer Hoyt LLC Building Program Issue	\$280.50	
Speer Hoyt LLC Reavis v DC	\$1,888.70	
Speer Hoyt LLC Property Acquisition	\$93.50	
Speer Hoyt LLC Street Repair	\$392.70	
	Speer Hoyt Total (estimated)	\$2,954.60
U S Bank		\$774.00
	Office Supplies	\$620.10
	Admin Asst Day	\$35.90
	Building Codes	\$118.00
University of Washington		\$31.91
Wells Fargo Financial Leasing, Inc		\$185.25
Staff Wages		\$5,349.85
Employer share of payroll taxes		\$609.67
Employer PERS		\$748.73
	Total Employee Costs	\$6,708.25
<hr/>		
Above bills in the amount of	\$29,161.08	approved per motion, <b>TOTAL <u>\$29,161.08</u></b>

ATTEST: \_\_\_\_\_

Mayor / Council President

**RECEIPTS OF THE SESSION: 5/3/2018 thru 6/05/2018**

Building Rental	\$0.00
Business License	\$255.00
Copy Charges	\$30.25
Donations	\$0.00
Triathlon Sponsorships	\$4,000.00
Franchise Fee, Cable TV	\$5,644.22
Franchise Fee, PUD	\$7,297.00
Franchise Fee, Telephone	\$0.00
Interest	\$0.00
Lien Searches	\$175.00
Permits, Conditional Use	\$250.00
Permits, Boundary Line Adjustment (PUD)	\$0.00
Permits, Electrical	\$1,030.00
Permits, Excavating & Grading & Driveway	\$37.00
Permits, Manufactured Home Fees	\$0.00
Permits, Mechanical	\$234.00
Permits, Other (Inspections, LUCS, No Brushing, etc.)	\$292.95
Permits, Penalties	\$0.00
Permits, Plan Check Fees	\$636.35
Permits, Plumbing	\$396.00
Permits, Right of Way Use	\$0.00
Permits, Structural	\$1,032.00
Permits, Building Surcharge	\$255.05
Permits, State Surcharge	\$316.44
Permits, Vegetation / Tree Removal	\$100.00
PERMITS TOTAL	\$4,579.79
RTMP Grant	\$0.00
Septic Inspections	\$550.00
Tax, Cigarette	\$321.79
Tax, Liquor (OLCC)	\$3,996.32
Tax, Oregon State Highway Apportionment	\$8,266.52
Tax, Lane County Motel Fund	\$483.68
Tax, School Excise	\$0.00
Water Rights Application Fees	\$0.00
Water Admin Fees	\$0.00
<b>TOTAL</b>	<b>\$35,599.57</b>



# Oregon

Kate Brown, Governor

Department of Consumer and Business Services  
Building Codes Division  
1535 Edgewater Street NW  
P.O. Box 14470  
Salem, OR 97309-0404  
503-378-4133  
Fax: 503-378-2322  
bcd.oregon.gov

May 18, 2018

**Delivered by Regular Mail and email**

City of Dunes City  
NW Code Pros, Building Official  
Jamie Mills, City Administrator  
82877 Spruce St  
Westlake OR 97493

**RE: Withdrawal of April 24, 2018 Letter**

The division has taken the following actions today:

- Rescinded all of the temporary rules adopted on April 23, 2018 related to program delegation.
- Adopted new rules requiring all municipalities appoint a building official who is employed by a jurisdiction. New temporary rule, enclosed effective immediately.
- Changed your program renewal date to July 1, 2019.
- Requested a formal Attorney General opinion in the matter of third party building inspection programs and minimum standards for state delegated building inspection programs.

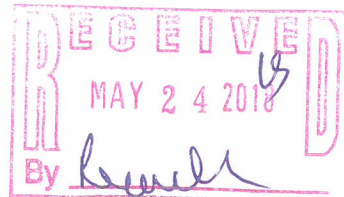
Based on these actions, the division formally withdraws its letter to you regarding a potential investigation and rescinds any other related guidance provided to you from April 24, 2018, to date. Based on newly adopted rules, your current program will remain delegated to your municipality through June 30, 2019. Your renewal date has been extended. In order for the program to be renewed next year, your municipality will need to employ or contract with a municipality that directly employs a building official and meet all other legal requirements. You will receive a reminder towards the end of the year to submit a new renewal application by January 1, 2019, for the four year period beginning July 1, 2019.

We will notify you when we receive the formal Attorney General opinion and of any subsequent rules adopted based on the that opinion.

In the mean time, we are providing you a copy of the Department of Justice (DOJ) advice memorandum and our new temporary rules. While we await new advice, there may be program and permit validity risks. We recommend you review those risks, the new rules, and the DOJ advice memorandum, and obtain advice from your counsel.

*Andrea Simmons*

Andrea Simmons  
Enforcement Manager  
Building Codes Division  
(503) 373-2160



**TEMPORARY FILING  
INCLUDING STATEMENT OF NEED & JUSTIFICATION**

Department of Consumer and Business Services, Building Codes Division			918
Agency and Division Name			Administrative Rules Chapter Number
Richard J. Baumann		Richard.J.Baumann@oregon.gov	503-373-7559
Rules Coordinator		Email	Telephone
Richard J. Baumann	PO Box 14470, Salem, OR 97309	Richard.J.Baumann@oregon.gov	503-373-7559
Filing Contact	Address	Email	Telephone

**FILING CAPTION**

Building program delegation rules.

Not more than 15 words that reasonably identify the subject matter of the agency's intended action.

Effective Date: May 18, 2018 through October 19, 2018

**RULEMAKING ACTION**

*List each rule number separately (000-000-0000).*

*Attach clean text for each rule at the end of the filing, including a Rule Summary for each rule.*

**ADOPT:**

**AMEND:** 918-020-0090, 918-020-0095, 918-090-0105

**SUSPEND:** 918-020-0097, 918-090-0010, 918-090-0110, 918-090-0120, 918-090-0200, 918-090-0210, 918-090-0300, 918-090-0310, 918-090-0400, 918-308-0010, 918-308-0180

Stat. Auth.: ORS 183.355, 455.030, 455.062, 455.148, 455.150, 455.150, 455.156, 455.160, 455.185, 455.455, 455.457, 455.459, 455.461, 455.463, 455.467, 455.469, 479.730, 479.855

Other Auth.: 183.335

Stats. Implemented: ORS 455.062, 455.148, 455.150, 455.152, 455.156, 455.455, 455.457, 455.459, 455.461, 455.463, 455.467, 455.469, 479.855

## STATEMENT OF NEED AND JUSTIFICATION

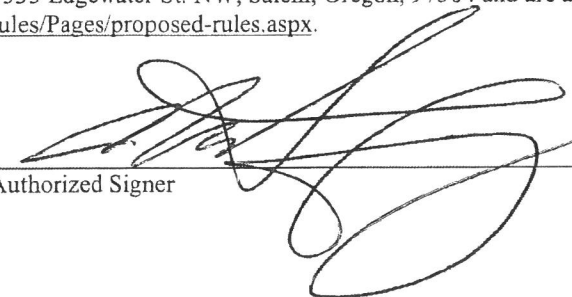
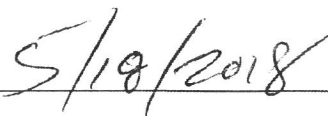
### Need For the Temporary Rule(s):

The Building Codes Division (the division) adopted temporary rules April 23, 2018, to address program delegation standards based on advice from the Department of Justice (DOJ). Those rules have been repealed. The division has been directed to seek a formal opinion from DOJ to clarify program delegation constitutional issues. These rules replace the repealed rules while the division awaits additional DOJ advice, and are needed to address those communities that would otherwise need to renew their building program operation period effective July 1, 2018.

### Justification of Temporary Rule(s):

The Building Codes Division (the division) adopted temporary rules April 23, 2018, to address program delegation standards based on advice from the Department of Justice (DOJ). Those rules have been repealed. The division has been directed to seek a formal opinion from DOJ to clarify program delegation constitutional issues. These rules are justified to address those communities that would otherwise need to renew their building program operation period effective July 1, 2018, and to create clarity for cities and counties while the division awaits additional legal guidance.

**Documents Relied Upon and Where They Are Available:** Rules are available from the division's rules coordinator located at 1535 Edgewater St. NW, Salem, Oregon, 97304 and are available on the division's web site: <http://www.oregon.gov/bcd/laws-rules/Pages/proposed-rules.aspx>.

	Mark Long	
Authorized Signer	Printed name	Date

**918-020-0090**

**Program Standards**

Every municipality that administers and enforces an approved building inspection program must establish and maintain the minimum standards, policies, and procedures set forth in this section.

(1) Administrative Standards. A building inspection program must:

(a) Provide adequate funds, equipment, and other resources necessary to administer and enforce the building inspection program in conformance with an approved operating plan;

(b) Document in writing the authority and responsibilities of the building official, plan reviewers, and inspectors based on an ordinance or resolution that authorizes the building official on behalf of the municipality to administer and enforce a building inspection program;

(c) Establish a local process to review appeals of technical and scientific determinations made by the building official regarding any provision of the specialty codes the municipality administers and enforces, to include a method to identify the local building official or designee and notify the aggrieved persons of the provisions of ORS 455.475;

(d) Account for all revenues collected and expenditures made relating to administration and enforcement of the building inspection program, and account for the electrical program revenues and expenditures separately when administered by the municipality.

(A) Prepare income and expense projections for each code program it will administer and enforce during the reporting period; and

(B) Describe how general administrative overhead costs and losses or surpluses, if any, will be allocated.

(e) Establish policies and procedures for the retention and retrieval of records relating to the administration and enforcement of the specialty codes it administers and enforces;

(f) Make its operating plan available to the public;

(g) Establish a process to receive public inquiries, comments, and complaints;

(h) Adopt a process to receive and respond to customers' questions regarding permitting, plan review, and inspections;

(i) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will receive and respond to customers' questions;

(j) Post its jurisdictional boundary, types of permits sold and hours of operation at each permit office it operates;

(k) Identify all persons in addition to the building official to whom notices issued pursuant to these rules should be sent;

(l) Return a completed data request form to and as provided by the division annually; and

(m) Execute a memorandum of agreement with and as approved by the division for initial building inspection program approval and assumption, for building program expansion approval and assumption, and thereafter when seeking approval to renew a program under OAR 918-020-0105.

**(n) Directly employ the individual appointed as the building official pursuant to ORS 455.148(3) or 455.150(3) as follows:**

**(A) The individual employed pursuant to this section must be certified by the division as a building official under OAR chapter 918, division 98; and**

**(B) For the purposes of this section, to be directly employed the person must be subject to the provisions of ORS 316.162 to 316.221 and have completed a withholding exemptions certificate required by ORS 316.162 to 316.221.**



**(o) Notwithstanding section (1)(n) of this rule, two or more municipalities may combine in the appointment of a single building official for the purposes of administering a building inspection program within their communities.**

(2) Permitting Standards. A building inspection program must:

(a) Provide at least one office within its jurisdictional boundary where permits may be purchased;

(b) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will make permits available for purchase;

(c) Establish policies and procedures for receiving permit applications, determining whether permit applications are complete and notifying applicants what information, if any, is required to complete an application;

(d) Set reasonable time periods within which the municipality will:

(A) Advise permit applicants whether an application is complete or requires additional information; and

(B) Generally issue a permit after an application has been submitted and approved.

(e) Establish policies and procedure for issuing permits not requiring plan review, emergency permits, temporary permits, master permits, and minor labels;

(f) Provide a means to receive permit applications via facsimile; and

(g) Require proof of licensing, registration, and certification of any person who proposes to engage in any activity regulated by ORS chapters 446, 447, 455, 479, 693, and 701 prior to issuing any permit.

(3) Plan Review Standards. A building inspection program must:

(a) Establish policies and procedures for its plan review process to:

(A) Assure compliance with the specialty codes it is responsible for administering and enforcing, including any current interpretive rulings adopted pursuant to ORS 455.060 or 455.475;

(B) Make available checklists or other materials at each permitting office it operates that reasonably appraises persons of the information required to constitute a complete permit application or set of plans;

(C) Inform applicants within three working days of receiving an application, whether or not the application is complete and if it is for a simple residential plan. For the purposes of this rule and ORS 455.467, a "complete application" is defined by the division, taking into consideration the regional procedures in OAR chapter 918, division 50. If deemed a simple residential plan, the jurisdiction must also inform the applicant of the time period in which the plan review will generally be completed;

(D) Establish a process that includes phased permitting and deferred submittals for plan review of commercial projects for all assumed specialty codes, taking into consideration the regional procedures in OAR chapter 918, division 50. The process may not allow a project to proceed beyond the level of approval authorized by the building official. The process must:

(i) Require the building official to issue permits in accordance with the state building code as defined in ORS 455.010 provided that adequate information and detailed statements have been submitted and approved with pertinent requirements of the appropriate code. Permits may include, but not be limited to: excavation, shoring, grading and site utilities, construction of foundations, structural frame, shell, or any other part of a building or structure.

(ii) Allow deferred submittals to be permitted within each phase with the approval of the building official; and



(iii) Require the applicant to be notified of the estimated timelines for phased plan reviews and that the applicant is proceeding without assurance that a permit for the entire structure will be granted when a phased permit is issued.

(E) Verify that all plans have been stamped by a registered design professional and licensed plan reviewer where required;

(F) Verify for those architects and engineers requesting the use of alternative one and two family dwelling plan review program that all plans have been stamped by a registered professional who is also a residential plans examiner. This process must require the building official to:

(i) Establish policies and procedures in their operating plan for this process;

(ii) Waive building inspection program plan review requirements for conventional light frame construction for detached one and two family dwellings; and

(iii) Establish an appropriate fee for processing plans submitted under this rule.

(G) Establish a process for plan review if non-certified individuals review permit applications under OAR 918-098-1010.

(b) Employ or contract with a person licensed, registered, or certified to provide consultation and advice on plan reviews as deemed necessary by the building official based on the complexity and scope of its customers' needs;

(c) Maintain a list of all persons it employs or contracts with to provide plan review services including licenses, registrations, and certifications held by each plan reviewer and evidence of compliance with all applicable statutory or professional continuing education requirements;

(d) Designate at least three licensed plan reviewers from whom the municipality will accept plan reviews when the time periods in subsection (e) of this section cannot be met; and

(e) Allow an applicant to use a plan reviewer licensed under OAR 918-090-0210 and approved by the building official when the time period for review of "simple one- or two-family dwelling plans" exceeds 10 days where the population served is less than 300,000, or 15 days where the population served is 300,000 or greater.

(4) For the purposes of these rules, "simple one- or two-family dwelling plans" must:

(a) Comply with the requirements for prescriptive construction under the Oregon Residential Specialty Code; or

(b) Comply with the Oregon Manufactured Dwelling Installation Specialty Code and the requirements in OAR chapter 918, division 500; and

(c) Be a structure of three stories or less with an enclosed total floor space of 4,500 square feet or less, inclusive of multiple stories and garage(s).

(5) "Simple one- or two-family dwelling plans" may:

(a) Include pre-engineered systems listed and approved by nationally accredited agencies in accordance with the appropriate specialty code, or by state interpretive rulings approved by the appropriate specialty board, that require no additional analysis; and

(b) Be designed by an architect or engineer and be considered a simple one- and two-family dwelling if all other criteria in this rule are met.

(6) The following are considered "simple one- or two-family dwelling plans":

(a) Master plans approved by the division or municipality or under ORS 455.685, which require no additional analysis; and

(b) Plans that include an engineering soil report if the report allows prescriptive building construction and requires no special systems or additional analysis.

(7) A plan that does not meet the definition of "simple" in this rule is deemed "complex". In order to provide timely customer service, a building official may accept a plan review performed by a licensed plan reviewer for a complex one- or two-family dwelling.

(8) Inspection Standards. A building inspection program must:

(a) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will provide inspection services or alternative inspection schedules agreed to by the municipality and permittee;

(b) Unless otherwise specified by statute or specialty code, establish reasonable time periods when inspection services will be provided following requests for inspections;

(c) Establish policies and procedures for inspection services;

(d) Leave a written copy of the inspection report on site;

(e) Make available any inspection checklists;

(f) Maintain a list of all persons it employs or contracts with to provide inspection services including licenses, registrations, and certifications held by persons performing inspection services and evidence of compliance with all applicable statutory or professional continuing education requirements;

(g) Vest the building official with authority to issue stop work orders for failure to comply with the specialty codes the municipality is responsible for administering and enforcing; and

(h) Require inspectors to perform license enforcement inspections as part of routine installation inspections.

(i) Where a municipality investigates and enforces violations under ORS 455.156 or in accordance with the municipality's local compliance program, the municipality's inspectors must require proof of compliance with the licensing, permitting, registration, and certification requirements of persons engaged in any activity regulated by ORS Chapters 446, 447, 455, 479, 693, and 701. Inspectors must report any violation of a licensing, permitting, registration, or certification requirement to the appropriate enforcement agency.

(9) Compliance Programs. A municipality administering a building inspection program may enact local regulations to create its own enforcement program with local procedures and penalties; utilize the division's compliance program by submitting compliance reports to the division; elect to act as an agent of a division board pursuant to ORS 455.156; or develop a program that may include, but not be limited to, a combination thereof. A building inspection program must establish in its operating plan:

(a) Procedures to respond to public complaints regarding work performed without a license or permit or in violation of the specialty codes the municipality is responsible for administering and enforcing;

(b) Procedures requiring proof of licensure for work being performed under the state building code utilizing the approved citation process and procedures in OAR 918-020-0091.

(c) Policies and procedures to implement their compliance program;

(d) Policies and procedures regarding investigation of complaints, where the municipality chooses to investigate and enforce violations pursuant to ORS 455.156; and

(e) Policies and procedures regarding issuance of notices of proposed assessments of civil penalties, where the municipality chooses to act as an agent of a board pursuant to ORS 455.156. Penalties under such a program are subject to the limitations set in 455.156 and 455.895.

(10) Electrical Programs. Municipalities that administer and enforce an electrical program must demonstrate compliance with all applicable electrical rules adopted pursuant to ORS 479.855.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.355, 455.030, 455.062, 455.148, 455.150, 455.156, 455.467 & 455.469

Stats. Implemented: ORS 455.062, 455.148, 455.150, 455.156, 455.467 & 455.469

Hist.: BCD 9-1996, f. 7-1-96, cert. ef. 10-1-96; BCD 14-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 11-2000, f. 6-23-00, cert. ef. 7-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 16-2002, f. & cert. ef. 7-1-02; BCD 27-2002, f. & cert. ef. 10-1-02; BCD 6-2004, f. 5-21-04, cert. ef. 7-1-04; BCD 11-2004, f. 8-13-04, cert. ef. 10-1-04; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 7-2013(Temp), f. 7-26-13, cert. ef. 8-1-13 thru 12-31-13; BCD 9-2013, f. 12-16-13, cert. ef. 1-1-14; BCD 13-2014(Temp), f. & cert. ef. 11-14-14 thru 5-12-15; BCD 4-2015(Temp), f. & cert. ef. 5-12-15 thru 11-1-15; BCD 9-2015(Temp), f. 10-30-15, cert. ef. 11-1-15 thru 1-1-16; BCD 11-2015, f. 12-11-15, cert. ef. 1-1-16; BCD 8-2018(Temp), f. & cert. ef. 4-23-18 thru 10-19-18

## **918-020-0095**

### **Program Assumption Procedures**

(1) Assumption of building inspection programs shall be approved only under ORS Chapters 455 and 479 and these rules, for municipalities meeting the following minimum standards. Municipalities requesting to assume new programs or additional parts of a program must provide a full-service program as described in ORS Chapter 455. The municipality shall prepare an assumption plan demonstrating its ability to:

(a) Administer the program for at least four years;

(b) Maintain or improve upon service levels presently provided to the area, including identifying proposed staffing, service contracts and intergovernmental agreements for at least the first two years;

(c) Operate a program that is financially feasible for at least two years without unduly increasing short-term and long-term costs of services to the public, in the areas administered by the municipality. Information showing how the program will be financially feasible shall include an estimate of anticipated revenues and expenditures, the assumptions on which the estimates are based, and an explanation of how losses, if any, will be funded; and

(d) Transition the program from the previous service provider including developing a method for:

(A) Transferring responsibility for existing buildings, open plan reviews, permits and inspections and corresponding revenues for completion of outstanding work;

(B) Transferring any pending enforcement actions;

(C) Informing contractors and others of the change of inspecting jurisdictions, jurisdictional boundaries and requirements for plan review, permits and inspections; and

(D) Transferring any affected employees consistent with ORS 236.605.

**(e) Directly employ the individual appointed as the building official pursuant to ORS 455.148(3) or 455.150(3) as follows:**

**(A) The individual employed pursuant to this section must be certified by the division as a building official under OAR chapter 918, division 98; and**

**(B) For the purposes of this section, to be directly employed the person must be subject**

**to the provisions of ORS 316.162 to 316.221 and have completed a withholding exemptions certificate required by ORS 316.162 to 316.221.**

**(f) Notwithstanding section (1)(e) of this rule, two or more municipalities may combine in the appointment of a single building official for the purposes of administering a building inspection program within their communities.**

(2) A municipality requesting to administer and enforce a new full-service building inspection program under ORS 455.148, or part of a building inspection program to become full-service under ORS 455.148 and 455.150 shall, by October 1:

(a) Submit a completed division program request form describing the specialty codes the municipality intends to administer effective July 1 of the following year, and provide the following:

- (A) An assumption plan as required in ORS 455.148 and Section (1) of this rule;
- (B) An operating plan as described in OAR 918-020-0090;
- (C) A schedule, including the date, time, place and subject matter, of any proposed meetings of public or advisory bodies, where public comments will be received concerning their proposal to assume a full-service program or part of a program;
- (D) Evidence of compliance with the notice and consultation requirements of this section; and
- (E) When a municipality reapplies to assume administration of a program that was previously revoked, the application shall include an explanation of how past deficiencies were corrected and how they will be prevented in the future, and it shall meet the requirements of ORS 455.148 and 455.150 including timelines and full-service coverage.

(b) Consult with the jurisdiction from whom the program will be assumed, to:

- (A) Notify them of the intent to assume the program;
- (B) Discuss with them any impacts on their existing program;
- (C) Attempt to resolve any negative impacts; and
- (D) Attempt to reach agreement on the method of providing services in the area.

(3) Upon receipt of an application for program assumption from a municipality, the division shall, by October 15, notify in writing all persons on the division maintained interested party mailing list.

(4) Objections to proposed program assumptions, including or related to, claims of economic impairment by the division or the municipality potentially losing the program, shall be received within 30 days of notice and shall include:

- (a) An explanation of the objection to the proposed program assumption;
- (b) Identification of the required program standard that is believed not to be met; and
- (c) When related to economic impairment, the information provided shall include projected impact on the existing building inspection program revenues, expenses, and staffing levels and the ability to continue carrying out remaining portions of the affected program.

(5) When reviewing the objections, the division shall consider the criteria established in ORS 455.152 and whether the objections relate to the ability of the municipality to effectively carry out the program and meet the required standards of applicable statutes and rules.

(6) The municipality requesting administration of a program shall confirm its intent to proceed with its application and submit final information to the division by January 1.

(7) By April 1 the division shall approve or deny the request. A request may be denied when the municipality failed to meet any of the standards and timelines for assumption set forth in ORS Chapters 455 and 479 and the rules adopted thereunder, or when a claim of economic impairment is not resolved to the satisfaction of the director.

(8) Municipalities approved to assume programs may do so effective July 1.

(9) By September 1, the municipality shall submit a final approved copy of all applicable ordinances and fee schedules.

Stat. Auth.: ORS 455.148, 455.150, 455.152 & 479.855

Stats. Implemented: ORS 455.148, 455.150, 455.152 & 479.855

Hist.: BCD 16-2002, f. & cert. ef. 7-1-02; BCD 12-2016(Temp), f. & cert. ef. 9-29-16 thru 3-27-17; Administrative correction, 6-5-17; BCD 8-2018(Temp), f. & cert. ef. 4-23-18 thru 10-19-18

## **918-020-0105**

### **Renewal of Existing Programs**

(1) Existing programs may continue to administer full-service or partial programs as permitted by ORS Chapter 455. Any municipality requesting to assume an additional program shall do so in accordance with ORS Chapter 455 and these rules.

(2) Depending on the respective reporting period outlined in OAR 918-020-0180 municipalities administering existing programs upon notification shall submit the following to the division by January 1:

(a) A completed division form describing the specialty codes the municipality will continue to administer and enforce beginning July 1 of the next reporting period;

(b) A list of current staff, including contract providers, and their applicable certifications;

(c) An updated copy of the municipality's operating plan as described in OAR 918-020-0090; and

(d) A narrative describing any changes to the plan.

(3) Requests to extend the January 1 date as authorized in ORS 455.148(4) and 455.150(4) shall be filed with the division no later than December 21.

**(4) Notwithstanding OAR 918-020-0180, all building programs shall apply for renewal of their building program for a new reporting period beginning July 1, 2019.**

**(a) Municipalities that submitted applications for a reporting period that would have begun July 1, 2018 will have their reporting period extended and shall apply for renewal for the reporting period beginning July 1, 2019;**

**(b) All municipalities shall follow the schedule under this rule to apply for renewal of their building program by January 1, 2019, for renewal effective July 1, 2019.**

**(c) Renewal applications submitted pursuant to this section shall identify how the municipality complies with OAR 918-020-0090(1)(n) and OAR 918-020-0095(1)(e).**

Stat. Auth.: ORS 455.148 & 455.150

Stats. Implemented: ORS 455.148 & 455.150

Hist.: BCD 16-2002, f. & cert. ef. 7-1-02; BCD 8-2018(Temp), f. & cert. ef. 4-23-18 thru 10-19-18

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LANE  
125 E. 8th Ave. Eugene Oregon 97401  
541-682-4020 <http://courts.oregon.gov/lane>

May 30, 2018

JOHN A WOLF  
SPEER HOYT LLC  
975 OAK ST STE 700  
EUGENE OR 97401

Re: Gerald Reavis, Donna Reavis vs City of Dunes City, Bruce Montgomery, Alan Montgomery,  
AMP II LLC  
Case #: 16CV26295 Injunctive Relief

**NOTICE OF SCHEDULED COURT APPEARANCE**

Scheduled Proceeding: Trial - Court  
Room: Courtroom 306

Date	Time
09/05/2018	9:30 AM

Additional information: Stip.

**IMPORTANT NOTICE: PLEASE READ**

Failure to appear at the time and place noted above may result in an order or judgment being entered against you in the case.

**Interpreter:** If you need an interpreter, you must tell the court at least **4 business days before** your appearance date. Go to [www.courts.oregon.gov/ScheduleAnInterpreter](http://www.courts.oregon.gov/ScheduleAnInterpreter) to get an interpreter.

**Intérprete:** Si Ud. necesita un intérprete, debe notificar al tribunal por lo menos 4 días laborales antes de la fecha de su comparecencia. Para conseguir un intérprete, siga el siguiente enlace: [www.courts.oregon.gov/ScheduleAnInterpreter](http://www.courts.oregon.gov/ScheduleAnInterpreter)



## Volunteer of the Year Nomination Form

Dunes City, Oregon



Nominee information (please print or type)

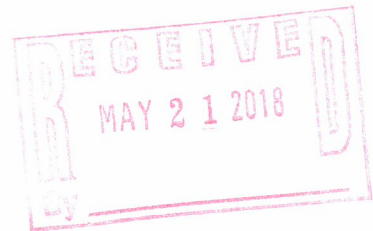
Name	Stan Anderson & Ann Gough
Address	5262 Boy Scout Road
City	Dunes City
State	OR
ZIP Code	97439
Telephone (home)	541 997-3526

Describe why you feel the recipient be nominated for the award (250 words or less)

Ann and Stan are the new Boy Scout Camp Bater managers.
This year they were instrumental in bringing 20 Boy Scouts and team leaders to the annual Oregon Dunes Triathlon. These 20 volunteers helped Dunes City meet the minimum number of volunteers required for the first time in the history of the event!!!
Ann and Stan were tireless recruiters and then provided outstanding organizational and logistical talent to make sure the Scouts knew where and when to report and what to do.

DEADLINE FOR SUBMISSION-May 31

Thank you!



A051-G041918

2018 SMALL CITY ALLOTMENT AGREEMENT  
Huckleberry Lane and Fir Street - Improvements  
City of Dunes City

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and CITY OF DUNES CITY, acting by and through its elected officials, hereinafter referred to as "Agency," each herein referred to individually as "Party" and collectively as "Parties."

**RECITALS**

1. Huckleberry Lane and Fir Street are part of the city street system under the jurisdiction and control of Agency.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.800 and 366.805, there has been withdrawn from State Highway Funds appropriated for allocation to cities of the State of Oregon the sum of \$2,500,000 and an additional \$2,500,000 available to the Oregon Department of Transportation from the State Highway Fund. These sums have been set up in a separate account to be administered by the Department of Transportation for the Small City Allotment (SCA) Program. The \$5,000,000 shall be allotted each year by State for use upon city streets that are not a part of the state highway system, that are within cities with populations of 5,000 or fewer persons, and that are inadequate for the capacity they serve or are in a condition detrimental to safety. No single project may receive more than \$50,000 in SCA funds.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**TERMS OF AGREEMENT**

1. By the authority granted in ORS 366.805(2), Agency has requested monies from this account for Huckleberry Lane and Fir Street: Intersection of Wright Road to just pass the cul-de-sac; Fir Street to drainage at Alder Drive, hereinafter referred to as "Project." Said Project improvements shall consist of asphalt; two (2) new culverts; and widening travel lane. The total estimated cost of this Project is \$75,300.
2. State has considered Agency's request for the Project and has determined that this Project is eligible for funding under the Small City Allotment (SCA) Program.



3. The Parties hereto mutually agree and understand that the cost of the Project will be paid for with SCA funds and by Agency as follows:
  - a. SCA funds will pay for eligible Project costs up to an amount not to exceed \$50,000.
  - b. Agency shall pay all Project costs in excess of the SCA funds.
  - c. State may, upon request by Agency, after execution of this Agreement and after providing concurrence on the Project plans and specifications, advance to Agency up to \$25,000 in SCA funds.
  - d. State shall issue payments after January 1, 2018. Only work begun after the effective date of this Agreement is eligible for reimbursement with SCA funds.
4. Documented cost of preliminary engineering and construction engineering services performed by the Agency, or the Agency's consultant, are eligible Project costs.
5. The term of this Agreement will begin upon execution and will terminate two (2) years following the date of final execution unless extended by an executed amendment.

#### **AGENCY OBLIGATIONS**

1. Agency shall conduct all right of way activities in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, Federal-Aid Policy Guide, Code of Federal Regulations (CFR) and the ODOT Right of Way Manual, and Title 23 CFR Part 710 and Title 49 CFR Part 24.
2. Agency shall assume management and financial responsibility for the acquisition of all right of way. Right of way may be acquired by Agency or on behalf of Agency (by consultants or State) at Agency's choice. If State performs the acquisition, a right of way services agreement shall be executed setting forth the responsibilities of each party.
3. Agency shall assume management and financial responsibility (at no expense to State) for the adjustment, reconstruction, and relocation of utility installations, including all privately or publicly owned utility conduits, lines, poles, mains, pipes and all other facilities of every kind and nature where such relocation or reconstruction is required for project completion.
4. Agency shall prepare, or cause to be prepared, the plans and specifications for the Project, advertise the Project, contract the work, perform the construction engineering, and make the necessary contract payments.

5. Agency shall, during the course of the work, accumulate and retain documentation of all Project costs.
6. Agency shall, upon completion of Project, certify to State that Project is complete and in substantial conformance with the plans and controlling specifications. Agency shall submit an invoice for the remaining eligible costs of Project which, when added to any amount previously advanced by State, shall not exceed the actual total cost of Project or \$50,000, whichever is less.
7. Agency shall assume management and financial responsibility for the ongoing maintenance of Project following construction completion.
8. Agency understands those streets or portions of streets, upon which SCA funds have been expended, are not eligible for additional SCA funds for a period of ten (10) years following the approval for such funds.
9. Agency understands that if Project is canceled by Agency after Agency has received payment of any SCA funds from State, or not completed within the time requirements or in accordance with the terms of this Agreement, Agency shall immediately repay to State the full amount of SCA funds received by Agency.

**10. Americans with Disabilities Act Compliance:**

- a. Agency shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained to comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008 (together, "ADA").
- b. Agency may follow its own processes or may use ODOT's processes for design, modification, upgrade, or construction of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:  
<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx>;

Additional ODOT resources are available at:

<http://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

ODOT has made its forms, processes, and resources available for Agency's use and convenience.

- c. Agency assumes sole responsibility for ensuring that the Project complies with the ADA, including when Agency uses ODOT forms and processes. Agency

acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.

- d. Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route.
  - e. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
    - i. Pedestrian access is maintained as required by the ADA,
    - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
    - iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are completed by Agency or abutting property owner pursuant to applicable local code provisions,
    - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
    - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
  - f. Maintenance obligations in this section shall survive termination of this Agreement.
11. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
12. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS [279C.505](#), [279C.515](#), [279C.520](#), [279C.530](#) and [279B.270](#) incorporated herein by reference and made a part hereof. Without



limiting the generality of the foregoing, Agency expressly agrees to comply with (i) [Title VI of Civil Rights Act of 1964](#); (ii) [Title V and Section 504 of the Rehabilitation Act of 1973](#); (iii) the [Americans with Disabilities Act of 1990](#) and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

13. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
14. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
15. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 (Claims), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of State, be indemnified for all Claims caused or alleged to be caused by the contractor or subcontractor.
16. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may

have against Agency's contractor if the State of Oregon elects to assume its own defense.

17. Agency's Project Manager for this Project is Jamie L. Mills, City Administrator, Dunes City, PO Box 97, Dunes City, Oregon 97493; phone: (541) 997-3338; email: admin@dunescityor.com, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **STATE OBLIGATIONS**

1. State shall administer the funds in the SCA Account in the following manner:
  - a. After January 1, 2018, at Agency's request, State may, upon execution of this Agreement, and after providing concurrence on the Project plans and specifications, forward to the Agency an advance payment of SCA funds not to exceed \$25,000.
  - b. State shall make final payment to Agency for all remaining eligible Project costs upon satisfactory final inspection of the Project by State using State's approved inspection form, and after receipt of the certification of acceptance of work by the Agency accompanied by documentation of all Project costs. Total payments to Agency, including any advance deposit payment, shall not exceed the actual total cost of the Project or \$50,000, whichever is less.
2. State's Project Manager for this Project is Shelly White-Robinson, Special Program Coordinator, ODOT Region 2, 455 Airport Road SE, Building B, Salem, Oregon 97301; phone: (503) 986-6925; email: shelly.white-robinson@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **GENERAL PROVISIONS**

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to

correct such failures within ten (10) days or such longer period as State may authorize.

- c. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
- 3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
  - 4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
  - 5. With respect to a Third Party Claim for which the State is jointly liable with Agency (or would be if joined in the Third Party Claim ), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if the State had sole liability in the proceeding.
  - 6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in

settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. Agency maintenance responsibilities shall survive termination of this Agreement if Project is completed and accepted.
9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
10. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that its signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The Project was approved on January 12, 2018, by the Program and Funding Services Manager.

**CITY OF DUNES CITY**, by and through  
its elected officials

By \_\_\_\_\_  
City Administrator

Date \_\_\_\_\_

**LEGAL REVIEW APPROVAL**  
(If required in Agency's process)

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**

Jamie L. Mills, City Administrator  
City of Dunes City  
PO Box 97  
Dunes City, Oregon 97493  
(541) 997-3338  
admin@dunescityor.com

**State Contact:**

Shelly White-Robinson  
Special Program Coordinator  
ODOT Region 2  
455 Airport Road SE, Building B  
Salem, Oregon 97301  
shelly.white-robinson@odot.state.or.us

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Region 2 Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 2 Planning and Development  
Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 2 Special Program Coordinator

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_