

**Resolution No. 17-08**

**RESOLUTION OF SOUTH OGDEN CITY AMENDING AN AGREEMENT WITH COBB, FENDLEY & ASSOCIATES FOR 40TH STREET PROJECT PROPERTY ACQUISITION SERVICES, AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING AND FINAL PASSAGE.**

**WHEREAS**, the City Council finds that the City of South Ogden ("City") is a municipal corporation duly organized and existing under the laws of Utah; and,

**WHEREAS**, the City Council finds that in conformance with Utah Code ("UC") § 10-3-717 the governing body of the city may exercise all administrative powers by resolution including, but not limited to regulating the use and operation of municipal property and programs; and,

**WHEREAS**, the City Council finds that the City has previously approved an Agreement with Cobb, Fendley & Associates, to provide as part of the City's 40th street widening project, 40th Street Project Property acquisition with related services; and,

**WHEREAS**, the City Council finds that the city staff recommends that the city approve an Amendment to the Agreement with Cobb, Fendley & Associates, to accommodate additional and unanticipated costs related to the City's 40th street widening project, in particular 40th Street Project Property acquisition costs and related services; and,

**WHEREAS**, the City Council finds that approving an amended agreement with Cobb, Fendley & Associates will materially assist in providing services and activities in the form of 40th Street Project Property Acquisition Services efforts related to its 40th street widening project; and,

**WHEREAS**, the City Council finds that City now desires to further those ends by approving an amended agreement with Cobb, Fendley & Associates to provide for such 40th Street Project Property acquisition Services; and,

**WHEREAS**, the City Council finds that the public convenience and necessity requires the actions contemplated,

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF SOUTH OGDEN AS FOLLOWS:**

**SECTION II - South Ogden City Arts Council Created**

The Cobb, Fendley & Associates "Cost Proposal" Agreement, Amended As Of 15 March 2017, Is Adopted As Set Out In Attachment "A", Attached Hereto And Incorporated Fully By This Reference, And The City Manager Is Authorized Is Authorized To More Fully Negotiate Any Remaining Details Under The Agreement On Behalf Of The City And Then To Sign Any Documents Necessary To Give Effect

To These Actions And The City Recorder Is Authorized To Attest, Any And All Documents Necessary To Effect This Authorization And Approval.

### **SECTION III - PRIOR ORDINANCES AND RESOLUTIONS**

The body and substance of all prior Resolutions, with their provisions, where not otherwise in conflict with this Resolution, are reaffirmed and readopted.

### **SECTION IV - REPEALER OF CONFLICTING ENACTMENTS**

All orders, and Resolutions regarding the changes enacted and adopted which have been adopted by the City, or parts, which conflict with this Resolution, are, for such conflict, repealed, except this repeal shall not be construed to revive any act, order or resolution, or part repealed.

### **SECTION V - SAVINGS CLAUSE**

If any provision of this Resolution shall be held or deemed or shall be invalid, inoperative or unenforceable such shall not have the effect of rendering any other provision or provisions invalid, inoperative or unenforceable to any extent whatever, this Resolution being deemed the separate independent and severable act of the City Council of South Ogden City.

### **SECTION VI - DATE OF EFFECT**

This Resolution shall be effective on the 21<sup>st</sup> day of March, 2017, and after publication or posting as required by law.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF SOUTH OGDEN CITY,  
STATE OF UTAH, on this 21<sup>st</sup> day of March, 2017**

**SOUTH OGDEN CITY**

\_\_\_\_\_  
James F. Minster  
Mayor

**ATTEST:**

\_\_\_\_\_  
Leesa Kapetanov, CMC  
City Recorder

# **ATTACHMENT "A"**

## **Resolution No. 17-08**

Resolution Of South Ogden City Amending An Agreement With Cobb, Fendley & Associates  
For 40th Street Project Property Acquisition Services, And Providing That This Resolution  
Shall Become Effective Immediately Upon Posting And Final Passage.

21 Mar 17

**Cost Proposal – South Ogden City– Washington Blvd. to Gramercy Ave. 40<sup>th</sup> Street Project - Pin 880022**

**Cost and Price-Amended 3/15/2017**

Cobb, Fendley & Associates costs associated with the right of way relocation and acquisition services for the City of South Ogden (“the City”) for the Washington Blvd. to Gramercy Ave road improvement project to include the relocation and acquisition of four (4) residential owner(s)/tenant(s), four (4) commercial owner(s), and one (1) re-determination to the City are as follows:

SERVICES PROVIDED	DESCRIPTION	TOTAL
Residential Relocation / Acquisition	4 parcels @ \$2,300 each	\$9,200
Commercial Relocation / Acquisition	4 parcels @ \$2,800 each	\$11,200
One Residential Relocation Re-determination	1 parcel @ \$1,620 each	\$1,620
Direct Charges	Not to exceed*	\$2,040*
Public Meetings / Project Meetings	Not to exceed*	\$3,240**
<b>Total</b>		<b>\$ 27,300</b>

Cobb Fendley will invoice on a per parcel basis (50% upon issuance of the 90 Day Notice and 50% upon clearing the parcel) for relocation and acquisition services a total of \$21,480 upon the scope of work not exceeding eight(8) parcels and one re-determination as noted above. Direct costs are estimated at a not to exceed amount of \$2,040 (10% of consulting budget). There are three proposed project meetings and one proposed public meeting for an estimated 12 hours (3 hours each) in addition to an unknown number of project conference calls and email communication with the project management at the City, estimated 12 hours, at a rate of \$135 per hour or a not to exceed figure of \$3,240 (24 hours @ \$135/hour). In total, the not to exceed budget for the eight parcels, one re-determination, direct charges, and estimated time for public and project meetings/conference calls/email status updates is a not to exceed figure of \$27,300.

DIRECT CHARGES			
Copies	@ \$0.10 each	Mileage*	@ \$0.54/mile
Postage   FedEx	@ Cost	Other Expenses	@ Cost + 15%
Rental/MLS Data	@ Cost + 15%		

\*Or current IRS allowable

**GENERAL TERMS AND CONDITIONS OF THE AUTHORIZATION FOR PROFESSIONAL SERVICES**

**1. DIRECT EXPENSES**

CobbFendley’s direct expenses shall be those costs incurred on or directly for the City’s project, including but not limited to necessary transportation costs including mileage at the current IRS rate, copies, postage/certified mail, rental/MLS data or other expense as noted in the table above. These direct expenses shall be billed with associated invoices in support of the charges as needed.

**2. OUTSIDE SERVICES**

When technical or professional services are furnished by an outside source, when approved by the City, an additional amount shall be added to the cost of these services by CobbFendley to cover CobbFendley’s administrative costs, as provided in the attached CobbFendley rate schedule.

**3. COST PROJECTIONS**

If included in CobbFendley’s scope of services, opinions or estimates of probable construction costs are prepared on the basis of CobbFendley’s experience and qualifications and represent CobbFendley’s judgment

as a professional generally familiar with the industry. However, since CobbFendley has no control over the cost of labor, materials, equipment or services furnished by others, over contractor's methods of determining prices, or over competitive bidding or market conditions, CobbFendley cannot and does not guarantee, represent or warrant that proposals, bids, or the actual construction cost will not vary from CobbFendley's opinions or estimates of probable construction cost.

#### **4. PROFESSIONAL STANDARDS**

CobbFendley agrees to perform its services in accordance with the standard of professional care used by other practicing professional engineers of ordinary prudence in the same field of engineering and performing the same type of work in the City's community under the same or similar circumstances. CobbFendley makes no other warranty, expressed or implied.

#### **5. TERMINATION**

Either the City or CobbFendley may terminate this authorization by giving 30 days written notice to the other party. In such event, the City shall forthwith pay CobbFendley in full for all work previously authorized and performed prior to effective date of termination. If no notice of termination is given, the relationships and obligations created by this Authorization shall be terminated upon completion of all applicable requirements of this Authorization. Failure by the City to make payments when due shall be cause for suspension of services or, ultimately, termination, unless and until CobbFendley has been paid in full all amounts due for services, expenses and other related charges, including interest on past due amounts.

#### **6. OWNERSHIP OF DOCUMENTS**

All documents prepared or furnished by CobbFendley pursuant to this Agreement are instruments of CobbFendley's professional service, and CobbFendley shall retain an ownership and property interest therein, including all copyrights. CobbFendley grants the City a license to use instruments of CobbFendley's professional service for the purpose of constructing, occupying or maintaining the project. Reuse or modification of any such documents by the City, without CobbFendley's written permission, shall be at the City's sole risk, and the City agrees to indemnify and hold CobbFendley harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by the City or by others acting through the City.

#### **7. USE OF ELECTRONIC DOCUMENTS**

Copies of documents that may be relied upon by the City are limited to the printed copies (also known as hard copies) or fully-scaled PDF files that are signed and sealed by CobbFendley's authorized design professionals. Files in electronic formats, or other types of information furnished by CobbFendley to the City such as text, data or graphics, are only for convenience of the City. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic formats, CobbFendley makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by CobbFendley at the beginning of this project.

#### **8. HAZARDOUS ENVIRONMENTAL CONDITIONS**

CobbFendley shall have no liability or responsibility for the discovery, presence, handling, removal, disposal, cleanup, or exposure of persons or other property to underground substances, hazards, or conditions or other latent substances, hazards or conditions (including but not limited to contaminants, pollutants, chemicals or other hazardous or toxic solids, liquids or gases of any kind), the City acknowledges that CobbFendley is performing professional services for the City and CobbFendley is not and shall not be required to become an "arranger," "operator," "generator" or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA)

#### **9. FORCE MAJEURE**

Neither party shall be deemed in default of this agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its negligence.

#### **10. CONSTRUCTION PHASE SERVICES**

If this Agreement provides for any construction phase services by CobbFendley, it is agreed that the Contractor, not CobbFendley, is responsible for the construction of the project, and that CobbFendley is not responsible for the acts or omissions of any contractor, subcontractor or material supplier; for safety precautions, programs or

enforcement; or for construction means, methods, techniques, sequences and procedures employed by the Contractor. CobbFendley shall not be obligated to make exhaustive or continuous on-site inspections to check the quality or adequacy of construction or to verify that the work or materials of any contractor, subcontractor or materials supplier is in compliance with the plans and specifications.

#### **11. LIMITATION OF LIABILITY FOR DAMAGES**

**IN THE EVENT THAT THE CITY SHALL MAKE ANY CLAIM OR FILE ANY SUIT FOR DAMAGES AGAINST COBBFENDLEY ARISING OUT OF OR RELATED TO COBBFENDLEY'S PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES TO BE PROVIDED UNDER THIS AGREEMENT, COBBFENDLEY'S LIABILITY TO THE CITY FOR ANY SUCH DAMAGES SHALL BE LIMITED TO ACTUAL AND DIRECT DAMAGES TO AN AMOUNT NOT TO EXCEED THE AMOUNT FEES CHARGED BY COBBFENDLEY TO THE CITY HEREUNDER. COBBFENDLEY SHALL HAVE NO LIABILITY FOR ANY CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST BUSINESS OPPORTUNITIES, ADDITIONAL OVERHEAD, OR DAMAGES FOR LOSS OF USE OR LOSS OF PRODUCTION.**

#### **12. INDEMNIFICATION**

Notwithstanding anything in this document to the contrary, CobbFendley hereby assumes responsibility for and agrees to reimburse City for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fees) of whatsoever kind and nature, imposed on, incurred by or asserted against City that in any way relate to or arise out of a claim, suit or proceeding, based in whole or in part upon the negligent conduct of CobbFendley, its officers, employees and agents, or arose out of service provided by CobbFendley to City, to the maximum extent permitted by law.

#### **13. ALTERNATIVE DISPUTE RESOLUTION**

In the event that any dispute shall arise between the City and CobbFendley regarding the parties' rights or obligations under this Agreement, the parties shall, as a condition precedent to taking any action against one another make a good faith effort to resolve such disagreements by negotiation and/or non-binding mediation.

#### **14. LEGAL EXPENSES**

In the event that legal action is brought by the City or CobbFendley against the other party to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for fees, costs and expenses as may be set by the court.

#### **15. PAYMENT TO COBBFENDLEY**

Monthly invoices will be issued by CobbFendley for all work performed under the terms of this agreement. Invoices are due and payable upon receipt. Interest at the rate of 0.5% per month may be charged on all amounts not paid within thirty (30) days after receipt, unless not permitted by law, in which case, interest will be charged at the highest amount permitted by law.

If the City is not the OWNER, the City agrees to pay CobbFendley within 10 working days of receipt of payment from OWNER.

Pending resolution of any dispute concerning any portion of any invoice submitted by CobbFendley, all undisputed portions shall be paid in accordance with this paragraph.

Progress payments on CobbFendley fees for percentage of project complete and out-of-pocket expenses incurred will be due and payable upon receipt of invoice at the end of each month. Should invoices not be paid within thirty (30) days from date of invoice, interest thereon at a rate equal to 0.5% per month on the unpaid balance shall be added each month to the sum shown as due by the invoice beginning with the date of invoice.

If payment is not received within 60 days from date of invoice, CobbFendley retains the right to cease further work on the project until such time that the overdue invoices are paid. CobbFendley also retains the right to withhold final approved plans and other deliverables until all overdue invoices are paid.

#### **16. AUTHORIZATION OF OWNER**

The City hereby authorizes CobbFendley to enter upon the property for the purpose of conducting CobbFendley services thereon. If the City is not the Owner of the property, the City agrees to obtain such authorization from the Owner and provide same in writing to CobbFendley.

**17. CONTRACT DOCUMENTS**

This signed Authorization, together with the outlined General Terms and Conditions of the Authorization for Professional Services and CobbFendley Rate Schedule noted above represents the entire and integrated agreement between the City and CobbFendley and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may only be amended by written instrument signed by both parties.

**18. SALES TAX**

To the extent that state sales taxes apply to any of the services or materials to be provided hereunder, such taxes are in addition to and are not included in the proposed fees of this Authorization.

**19. BENEFICIARIES AND ASSIGNMENT**

This agreement is made for the sole benefit of the City and CobbFendley and nothing in this agreement shall create a contractual relationship or cause of action in favor of any third party against either the City or CobbFendley. This agreement may not be assigned without the written consent of both the City and CobbFendley.

**20. Project Unknowns**

The project has been scoped but there are unknowns associated with the ongoing effort needed to provide the project management, acquisition and relocation services. Unknowns could include multiple relocations if more than one family lives in the home, rental studies completed for owners who cannot qualify for financing, and landlord and tenant rental studies if the homes are income properties. These situations could change the scope of work and require multiple studies and claims. This would be an additional cost.

## **Scope of Work**

CobbFendley is required to provide right of way services for the City for the Project listed below. CobbFendley may not modify any of the City's standard right of way documents. CobbFendley will follow the Uniform Relocation Act; Right of Way Operation Manual; Design Manual, and will comply with all applicable Utah and federal laws and Administrative Rules in all real estate services provided for this project.

Pin #: **880022**

Project Name: Washington Blvd. to Gramercy Ave. 40<sup>th</sup> Street Project

CobbFendley will be responsible for supervising staff and CobbFendley agents who are specialized in one or more of the following fields, if applicable: appraisal of real property, appraisal review, and real property acquisition or relocation assistance. The City's Right of Way Project Lead will delegate work assignments, monitor quality of work and will provide input on performance. CobbFendley will provide consultation, make recommendations, give appropriate advice, and perform the necessary services.

This is not an all-inclusive list of possible duties to be performed by CobbFendley. CobbFendley may be expected to perform other duties as assigned for the above referenced project or for other City projects. The City will determine the hours of work to meet the needs of the project.

**Task 1 Administrative Support**

**1.1 Scheduling and Coordination:** If directed by the City, CobbFendley will schedule and coordinate the Home Inspection, Appraisal, Review Appraisal, and Title Reports. Once the review appraisal is completed CobbFendley will submit the appraisal & review to the City's Manager for Approval of Just Compensation.

1.2 Approval Procedures QA/QC: CobbFendley will perform quality review and quality checks of all reports, documents, acquisition files and condemnation files before they are submitted to the City for final review/approval. QA/QC procedures will follow City Policy and Procedures.

1.3 Special Conditions: All information for appraisal, acquisitions and condemnations will be scanned and entered into Project Wise. The files will be named and attributed in accordance with "Right of Way Projectwise Guide".

1.4 Weekly meetings: Weekly meeting will be conducted upon the request of the City Manager.

1.5 Invoices: Prepare and submit monthly invoices and progress Reports.

1.6 Deliverables: Monthly invoices and weekly updates.

1.7 General Tasks: CobbFendley will ensure QA/QC plan is followed.

1.8 Closing Tasks: CobbFendley will verify all acquisitions closing at a title company have the following scanned into Projectwise for each parcel:

- a. Copy of the recorded deed;
- b. Copy of the final signed HUD Settlement Statement; and
- c. Input all recording information into ePM.

## **Task 2 Acquisition Services**

2.1 Acquisition package: The City will provide CobbFendley with an acquisition file that contains the following material:

- a. Ownership Report;
- b. Copies of Deeds, Easements, etc.;
- c. Right of Way Map on each parcel;
- d. Appraisal; and
- e. Review appraisal / stamped by ROW Lead for Just Compensation approval.

2.2 Negotiations: CobbFendley will contact each owner personally. For those owners out of state or those living in remote places, owners are to be contacted by registered mail. CobbFendley will present to the owner the following, but not limited to:

- a. Brochure "Acquiring Property for Utah's Transportation System";
- b. Offer to Purchase;
- c. Ownership Report;
- d. Statement of Just Compensation;
- e. Right of Way Contract;
- f. Deed(s) and/or Easement(s);
- g. Right of way map covering the parcels that need to be acquired on each subject ownership;
- h. Executive Summary of Property Owner's Rights; and
- i. Appraisal.

2.3 Logs: It will be CobbFendley's responsibility to maintain and post entries into the Agent's Log within 24 hours after each and every contact or attempted contact with the property owner. Each entry will contain the date of each contact or attempted contact with the owner and a summary of each conversation and negotiation. The Agent will be responsible to follow City policy and procedures in every acquisition. Agent is expected to make bi-weekly contact with the owner at a minimum.

2.4 Weekly updates: CobbFendley is responsible to email weekly updates to the City Manager every Thursday.



2.5 Contracts and documents: CobbFendley will be provided the necessary contracts and all other forms required in the acquisition process and will be responsible for completing these forms.

- a. If other information is needed, such as construction maps, etc., contact the City Manager.
- b. CobbFendley is authorized and will negotiate based on the approved compensation value. If they cannot reach a settlement, CobbFendley will contact the City Manager for all other approvals.
- c. If a tenant or lessee occupies the subject property under an agreement of leasehold interest, CobbFendley is required to have, both, the property and tenant/lessee sign the right of way contract.
- d. Any additions and/or alterations to standard contract verbiage must be approved in writing (e-mail) by the City Manager. A copy of these e-mail approvals must be submitted with the completed package.

2.6 Failed negotiations: If CobbFendley is unable to settle with the property owner within a 30 day negotiation period, CobbFendley shall contact the City Manager to discuss issues and solutions which may include:

- a. 4 Options Letter which must be approved by the City Manager
  - i. This will be a 3 Options Letter if the ROO is already signed.
  - ii. CobbFendley will have two weeks from the date of delivery of the 4/3 options letter to discuss the Property Owner's decision concerning ROO.
- b. Right of Occupancy (ROO)
  - i. ROO must be turned in with an outline of the issues and an action plan with dates and solutions.
  - ii. CobbFendley is required to have weekly contact with the property owner to try and resolve the issues.
  - iii. File must be turned in to the City Manager with either a signed contract or a complete condemnation file.
- c. Condemnation - CobbFendley is required to have the condemnation file completed within 120 of the signed ROO if negotiations are not successful.

2.7 Construction features: Any construction features agreed upon, other than those shown in the construction plans, must have approval by the City Manager and City Engineer in charge of design to be included in the ROW contract.

2.8 Final File: The final acquisition or condemnation packet will be completed and delivered to the City as agreed in this scope of work. A final acquisition file is either a completed acquisition package with signed contract or a submitted condemnation file. Two copies are required if a condemnation file is submitted.

2.9 FEES: CobbFendley's fee for work done pursuant to this agreement shall be billed at the rates outlined in this contract. The obligation to pay CobbFendley's fee is in no way conditional on the approved compensation value or the final negotiated amount. CobbFendley's fee includes all costs incurred by CobbFendley in presenting the offer and concluding the negotiations. The amount does not include any testimony by CobbFendley at trial, deposition, hearing or pre-trial consultations. If CobbFendley fails to follow all these procedures as outlined or fails to perform the necessary services, CobbFendley waives his/her rights to payment.

2.10 Deliverables:

- a) Completed acquisition package with signed contract or a complete condemnation file (2 copies) shall be promptly delivered to the City.
- b) Completion delays beyond the control of CobbFendley or delays resulting from the actions of the City may require a re-negotiated due date. CobbFendley shall provide prompt written notice of unexpected conditions or other reasons that might cause a delay to the City.

- c) All files will be placed in Projectwise and named and attributed in accordance with the City's "Right of Way Projectwise Guide".

### **Task 3 Relocation Services**

**3.1 Relocation Study:** For relocation work, the Agent will follow and comply with the Uniform Relocation Assistance and Real Property Acquisition Policy of 1970 as Amended and the New Rules Modification, 02/03/05 (URA). The Agent will personally interview each displace and prepare a relocation study for Agency approval. The agent will present the relocation study package to the displacee with the following documentation:

- a) Relocation Brochure
- b) Housing study Grid with comparable homes
- c) Grid Analysis
- d) Housing study
- e) Moving expenses work sheet
- f) Incidental expenses worksheet/example
- g) Notice of Eligibility
- h) 90 day notice to vacate

**3.2 Study Approval:** Agent will prepare the relocation study and submit the study, memo, 90 day notice, notice of eligibility to Lead Agent for approval prior to discussing the amounts with the property owner.

**3.3 Hours:** The Agent is to keep a log of total hours spent on relocation activities to support the fee invoiced.

**3.4 Owner contact:** The agent will remain in contact with the displacee throughout the relocation process and assist the displacee with advisory services and completing claim forms.

**3.5 Deliverables:** Completed relocation package with all notices, studies, and submitted claims. The due date for the relocation packet shall be negotiated.

**3.6 Project Unknowns:** The number of relocations has been identified but there may be additional work associated with the relocation services. This may include rental studies for owners who may not qualify for financing or more than one family that lives in the home. If there are multiple studies and claims, CobbFendley may incur additional costs.

### **General**

#### **Project Unknowns:**

**Fee Type:** The contract between the Subcontractor and the City will be a cost plus fixed-fee with a not to exceed amount as outlined in the attached cost estimate. If at any time during the project, additional items are deemed necessary, a modification may be prepared to ensure all parties are in agreement with any necessary changes. No work will occur unless it is covered within an approved work plan and cost estimate.

**Change Procedures:** Changes to completed or partially completed work products shall be controlled. Any changes which may require a change to the project scope, schedule or budget are to be brought to the attention of and approved, in writing, by the City Manager.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

City of South Ogden

Cobb, Fendley & Associates, Inc.



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Signature

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Signature

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Print Name

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Todd Keizer

Print Name

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Title

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Right of Way Manager

Title