



Home of the Tualatin River National Wildlife Refuge

CITY COUNCIL MEETING PACKET

FOR

Tuesday, November 5, 2013

**Sherwood City Hall
22560 SW Pine Street
Sherwood, Oregon**

5:00 pm City Council Executive Session
(pursuant to ORS 192.660(2)(H) & (2)(F))

5:15 pm City Council Work Session

7:00 pm City Council Regular Meeting

URA Board of Directors Meeting
(following the regular City Council meeting)



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5:00-5:15 PM EXECUTIVE SESSION

1. Legal Counsel 192.660(2)(h) & 192.660(2)(f) Exempt Public Records

5:15 PM CITY COUNCIL WORK SESSION

1. Review of City Council Rules

REGULAR CITY COUNCIL MEETING

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. CONSENT

- A. Approval of October 15, 2013 Council Meeting Minutes
- B. Resolution 2013-056 Appointing Ashley Korn to the Library Advisory Board
- C. Resolution 2013-057 Appointing James A. Forsyth Jr. to the Parks and Recreation Board
- D. Adoption of Memo, City Manager Annual Performance Evaluation

5. PRESENTATIONS

- A. Recognition of Eagle Scout Awards
- B. Recognition of the Rotary Club of Sherwood

6. NEW BUSINESS

- A. Resolution 2013-058 Authorizing an Intergovernmental Agreements (IGA) with the Oregon Department of Transportation (ODOT) to assist in the allocation of Federal grant funds to plan, design and construct the Cedar Creek Trail (Michelle Miller, Senior Planner)
- B. Resolution 2013-059 Authorizing an Intergovernmental Agreement (IGA) with Washington County to secure approval of the mid-block crossings for the Cedar Creek Trail (Michelle Miller, Senior Planner)

7. CITIZEN COMMENTS

8. COUNCIL ANNOUNCEMENTS

9. CITY MANAGER AND DEPARTMENT REPORTS

10. ADJOURN TO URA BOARD OF DIRECTORS MEETING

AGENDA

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Sherwood, OR 97140**

City Council meeting materials and agenda are posted to the City web page at www.sherwoodoregon.gov, by the Friday prior to a Council meeting. Council agendas are also posted at the Sherwood Library/City Hall, the YMCA, the Senior Center, and the City's bulletin board at Albertson's. Council meeting materials are available to the public at the Library.

To Schedule a Presentation before Council:

If you would like to appear before Council, please submit your name, phone number, the subject of your presentation and the date you wish to appear to the City Recorder Sylvia Murphy by calling 503-625-4246 or by e-mail to: murphys@sherwoodoregon.gov



SHERWOOD CITY COUNCIL MINUTES
22560 SW Pine St., Sherwood, Or
October 15, 2013

WORK SESSION

1. **CALL TO ORDER:** Mayor Bill Middleton called the meeting to order at 5:32 pm.
2. **COUNCIL PRESENT:** Mayor Bill Middleton, Council President Linda Henderson, Councilors Bill Butterfield, and Matt Langer. Councilors Dave Grant arrived at 5:35 pm, Krisanna Clark arrived at 5:38 pm and Robyn Folsom arrived at 5:43 pm.
3. **STAFF AND LEGAL COUNSEL PRESENT:** Joseph Gall City Manager, Tom Pessemier Assistant City Manager, Julie Blums Finance Director, Julia Hajduk Community Development Director, Kristen Switzer Community Services Director, Richard Sattler Utility Manager, Colleen Resch Administrative Assistant and Sylvia Murphy City Recorder. City Attorney Pam Beery.
4. **OTHERS PRESENT:** Steve Hunter, YMCA of Columbia Willamette Vice President/Chief Financial Officer.
5. **TOPICS DISCUSSED:**

A. Discussion on YMCA Financials

City Manager Joe Gall reminded the Council they met in a work session in August 2013 at which time they requested additional information on financials. He said they have received the last five years of the YMCA audits and may have additional questions.

Mayor Middleton referred to the original agreement and changes in programing and use of other YMCA facilities that are no longer available for use as they have closed down. He commented regarding Sherwood increasing the % given to the YMCA and referred to the reports, Balance Sheets Scenario 1. Mr. Hunter explained this document is a summary of what has taken place and stated documents 1, 2 & 3 give comparisons of different ways the contract can be interpreted as far as overhead contribution and how the excess is handled and calculated. He asked for clarification on the Mayor's comment of percentages increasing.

The Mayor stated our contributions to Corporate YMCA have continued to climb, except for the last two years where it decreased. He asked if the \$338,862 is what Sherwood gives to corporate per year. Mr. Hunter said for 2012, this report was done in July and the audit has not been completed yet, and this is an approximation. The \$338,000 is the 15% of the revenues described in the contract given by the

Sherwood facility to the overhead contributions to the association. The Mayor said we see a reduction almost every year in membership, so should this reduce our contributions also? He asked what the \$338,000 goes towards. Mr. Hunter said it goes to pay for overhead services that we provide and those are described later in the packet. He said it pays for HR services, Risk Management services, accounting services, billing services and IT services.

The Mayor asked for an explanation of “other services fee” on the quarterly reports, showing \$52,624 in 2008. Mr. Hunter replied “other services and fee”, this is an income statement that is strictly for the Sherwood YMCA and “other services fees” are for contract services for outside vendors, not related to services we provide in terms of our overhead services. He said our overhead services are under “Inner Branch Transfers”. He said he did not have the details but these are for outside vendors. Discussion occurred and an example was provided by Mr. Hunter, and he said on a broader sense for services at other facilities, a service of paying for referees for games.

Mayor Middleton asked for a better breakdown and referred to quarterly reports and said when they go up, our 15% continues to climb. He asked regarding “occupancy” for \$394,000. Mr. Hunter replied this includes utilities, interest and principle payments we make to the City for the debt we are helping to pay off, it includes maintenance for things done within the facility and custodial services. Mr. Hunter clarified “equipment maintenance” is for exercise equipment as opposed to building equipment. He gave the example of repair or maintenance of the HVAC system would fall under “occupancy”. Whereas exercise equipment falls under “equipment”, the Mayor asked if broken down details were available, Mr. Hunter confirmed more details are available.

Mayor Middleton referred to salaries and wages and the continual increase and said this is common, but with membership decreasing, he believes the City’s fee should be dropping dramatically as there are fewer people and we should have fewer employees. Mr. Hunter replied the fee per the contract is based on the revenues and revenues are a matter of membership fees and program fees and any adjustments in terms of these fees, as far as the fees increasing, even if membership could drop a bit, you still could have a revenue increase. He stated the contract is 15% of revenues not including the contributions. He said anything that drives revenues up, and gave examples, may offset downward movement in terms of the number of members. Mayor Middleton asked regarding types of youth programs currently available that are different from football and baseball. Council comments were received regarding types of youth programs and Councilor Clark asked for another example in terms of the referees as she has never seen the use of referees at the Sherwood YMCA. Mr. Hunter replied they are used in other facilities and is not completely acquainted with the details of the daily operations of the Sherwood facility and could come back with the information. City Manager Gall asked the Council when they would like the detail and Council Clark replied she would like to know what falls under this and what we pay for it. Council comments were received regarding getting less for what we are paying for.

Mayor Middleton asked when Sherwood has a fundraising event, where does this revenue go. Mr. Hunter replied if it’s a special event, it falls under “Special Event” and if it’s a general contribution it would go under either number 1 or 3 line items in the report. The Mayor confirmed earnings from special events held at the Sherwood facility stay with that facility, Mr. Hunter confirmed and said it’s not part of the calculation overhead. Councilor Clark asked about campaigns and Mr. Hunter replied its part of the contributions for special events. She confirmed money earned in Sherwood stays in Sherwood, Mr. Hunter confirmed. Mayor Middleton asked what this amount was for this year. Mr. Hunter referred to quarterly income statements for 2012 and for first quarter 2013 and said through fourth quarter 2012 contributions were \$67,441 and special events were \$340. Mayor Middleton asked regarding programs

available in 2001 and asked if they have remained the same. Mr. Hunter replied the Executive Director could better answer this.

Mayor Middleton asked regarding rental of equipment and if equipment is owned. Mr. Hunter replied some is owned and some is leased depending on the equipment and said leasing allows for more turnover. Councilor Clark asked who we lease from. Mr. Hunter replied a variety of financial institutions and said the most recent was from Jewels & Associates (spelling?). Mayor Middleton asked if vendor information detail will be provided in the line items of the report. Mr. Hunter replied no, not by company and said he believes this information on equipment lease is listed on line 29 and offered to clarify this information. The Mayor said he would like to know how much the leases are and this is information he would like to see.

Councilor Clark asked if there is a financial schedule on the leasing of the cardio equipment, where it times out at a certain time and then replaced at that point and asked if this is handled by Mr. Hunter or the leasing company. Mr. Hunter said they negotiate the leases which contain an end to the lease and this is worked out with the Executive Director to determine if the equipment needs to be replaced and or if they buy it out at the end of the lease. Mayor Middleton commented the budgeting is done differently at the City and referenced conferences and said this is \$15,900 and would like to see this in more detail.

Councilor Clark stated the equipment expense maintenance appears to remain fairly steady in the reports provided and said if you are timing out on leases and then deciding to own the equipment there will be times that you own the equipment and are no longer paying a lease. She said this is confusing that it continues to increase and the equipment remains the same. Mr. Hunter replied in most cases they replace the equipment and said most leases run about 5 years and technology and equipment changes and consumer demands change. He said as a general rule, equipment is turned over more often than not. Councilor Clark stated until the remodel she has been working out on the same piece of equipment for 12 years and never saw a change in any of the machinery around it. She said she would like information on when the machines were changed out and new leases maintained and by whom.

Councilor Folsom stated she recalled older equipment being donated to the high school and Mr. Hunter replied he did not know. Discussion occurred regarding the timing of this and Mr. Hunter needing to identify a specific piece of equipment. Discussion occurred regarding the age of the equipment and number of hours on the equipment and this factoring into how often equipment is changed out.

Mayor Middleton asked for a complete breakdown of the 15% contribution that Sherwood sends to corporate YMCA. Mr. Hunter asked for clarification. Mayor Middleton gave an example of the \$338,862 in overhead contributions, and said he would like to know where this money goes. He said it is an arbitrary 15% that we agreed to in 1998. He commented regarding knowing where this money goes so the City can project in the future if it would be better to assume the Y at \$338,000 rather than have it go to corporate YMCA. Mr. Hunter replied they don't allocate the overhead out to our departments within the association of services, when we have 6 departments in terms of fund raising and risk management, accounting, finance and billing services, IT and HR, the money goes into a pot to support all of these services. He said each business branch contributes to this pot and this funds all the overhead services.

Councilor Folsom asked how this is determined by corporate, is it determined by number or employees or size of facility. Mr. Hunter replied this particular branch has a contract and all the other branches, we either own the property or lease. He said this is different as we have a contract that specifies 15%. Councilor Folsom confirmed the 15% is based on revenue. Mr. Hunter confirmed 15% of the gross

revenue, adjusted gross revenues, a total of revenues less contributions, as contributions stay within the facility.

Mayor Middleton asked how does revenue increase when membership goes down. Mr. Hunter referred to scenario 1 and said from the beginning to 2008 revenues continued to increase and after 2008, revenue has declined so the 15% rate has declined along with that revenue. He said in 2008 the 15% contribution was \$382,000 and in 2009 it was \$359,000. He said to look at the adjusted gross income, that is taking the revenue minus the contributions and there was a small increase in 2010 because there was a drop in contributions and in 2011 it went down to \$350,000 and in 2012 it went down to \$338,000. He said for the last 5 years it has declined.

Mayor Middleton referred to the operating agreement where it indicates what the City is getting for our money and said some of those have gone away, specifically the other YMCA facilities. Discussion occurred with the Beaverton Hoop being an exercise facility that runs programs. Mayor Middleton stated maybe it is time to adjust our contributions if we are getting less for our money. Discussion occurred and a reference was made to a memo from Bob Hall dated June 14th. Mr. Hunter stated this memo was a memo he wrote to Bob Hall and was based upon other documents received by the Council. Mr. Hunter stated it has been their intent to adhere to the operating agreement in all points and said the operating agreement indicates the overhead charges are 15% of the revenues and this is the only thing it says about what the overhead charges are based on. He asked for clarification. Mayor Middleton asked if all the programs are still occurring in comparison to the date when the agreement was originally signed. Mr. Hunter asked to see the operating agreement that specifies the programs agreed to. Mayor Middleton referred to something from 2001 and said we don't have anything newer than that. Mr. Hunter asked if the referred to document was part of the operating agreement. Mayor Middleton stated this was the "financial and operating report" and said he didn't know if these still exist. Mr. Hunter replied programs change regularly and explained.

Discussion occurred regarding the reports provided to the Council and Mr. Hunter stated his understanding of the agreement is that they provide monthly reports of activities within the facility and a financial report through the Executive Director and these have been provided for a number of years. City Manager Gall stated he has been receiving them within the last year. Mayor Middleton stated prior to that, this is an issue with the operating agreement that if we are adhering to the operating agreement we need these reports when due per the contract.

Councilor Langer commented reports may have been lost in transition of staff and changes in the City Manager, liaison shifts to the Y Board and paper work going through that position. He stated different staff members have been assigned to the Y Board. Discussion occurred. Councilor Langer stated as the liaison to the Y Board, he did not hear the City telling him to bring these reports back to the City. He said the City has some responsibility in the reports not being on file at the City. Mr. Hunter stated they have provided annual reports for a number of years since the inception of the program. He said quarterly reports have also been provided, but due to software changes, these reports don't go back to earlier years. Discussion occurred regarding audits and the agreement and things being specific to Sherwood because of the unique contract. Mr. Hunter said specifically the calculation of the management fee and the calculation of the excess that the Y has been using for the budgeted amount for future capital needs and maintenance needs of the facility, and the calculation of that the auditor reviews as well. Councilor Clark asked regarding excess and if Mr. Hunter was addressing the 20% above operating, where it speaks to, *If the annual facility revenues covering operating expenses and the City's fee provided in paragraph c, any additional revenue shall be divided 20% to the City and 80% to the operator for*

Sherwood operations. She asked if this is the excess Mr. Hunter is speaking of. She said she does not recall ever receiving money back from the YMCA, and are you saying there was never an excess and the operating expenses always met the revenue exactly. Mr. Hunter replied the 20% if you read through that, once you get past a certain amount its split between the YMCA and the City, neither the YMCA or the City has received any of that excess and the reason for that, he referred to paragraph E, it says, *the operating budget shall include reasonable reserves for repairs and replacements of equipment and the buildings structural components which are the responsibility of the operator pursuant to this agreement and shall otherwise conform to the requirements of this agreement.* He said *the advisor Board established in section 7 shall review and approve the annual operating budget of the facility.* He said rather than putting an estimate above the net line in the budget on an annual basis for these reserves, anything that is an excess above and beyond what was paid to pay for all the expenses of the facility which includes the overhead charge, any of those excess then become that reserve. Ms. Clark asked where that reserve is listed. Mr. Hunter replied the reserve is listed in a financial statement, as the Council has, and it's the accumulation of all the positive nets, less any capital expenditures. He referred to charts he prepared and said depending on how you interpret the agreement there could be a substantial swing of up to $\frac{3}{4}$ of a million dollars in terms of what is actually set aside in those reserves. He said we could go anywhere from \$456,000 that is owed to the YMCA to a positive \$300,000 that is in reserve ready to pay for repairs and equipment within the facility. He said what we have done on a historical basis as of the end of 2012, there is about \$300,000 in that reserve because we have taken a more conservative approach. He explained it's an accumulation of the positive nets, less passed capital expenditures.

Councilor Folsom referred to this as not being part of the agreement and Mr. Hunter stated it is part of the agreement. She said it's written in the agreement that the excess would be used in that manner? Mr. Hunter explained the way the agreement is written, we are to budget for these reserves every year. Ms. Folsom replied the way you chose to budget was to use the excess? He said that was the agreement with the City Manager and others within the City at the time we started that process.

Ms. Clark asked if this is based on reasonable reserves. Mr. Hunter replied yes. She replied reasonable reserves is a flex term and is whatever you decide is reasonable. Mr. Hunter replied and gave the example of a "refresh", referring to the remodeling of the facility, and said this is where the money for a refresh comes from. Ms. Clark asked how many other times has a "refresh" been done in the years you have had the YMCA. Mr. Hunter replied he doesn't know.

Councilor Folsom stated going forward it would be prudent to have that more clearly stated in any future agreements. Mr. Hunter agreed and said if we wanted to interpret the calculation piece differently there are a number of ways we can interpret and calculate expenses. He said generally in looking at financial statements you include depreciations in expense, even though it's non cash. He said what we have chosen to do when we calculate that reserve is we have taken depreciation out of the equation. Ms. Folsom replied you would as you do not own the building. Mr. Hunter replied the depreciation is not in the building, it's in the equipment within the building that we pay for out of those reserves. Ms. Folsom confirmed they don't take the building depreciation, but take the equipment depreciation out of the calculation. Mr. Hunter confirmed this is correct and said the building depreciation is not seen anywhere on our books. He stated they have said they are using the excess funds to fund capital outlay. He explained further and stated if we went by true accounting and took it literally in how it is stated, the calculation would be that the Sherwood facility would owe the corporate YMCA \$450,000. He said by taking a more conservative view and taking the depreciation out, that leaves \$300,000+ in a reserve account for the Sherwood YMCA to use for capital expenses.

Ms. Folsom referred to comments made by Mr. Hunter to an equipment fee in another fund and this not being for treadmills but for an HVAC system. She said 3 or 4 years ago the City took over the maintenance of that. Mr. Hunter replied not the HVAC system and said he is aware of them having a contract with a company that maintains those systems and recalls the contract being \$60,000 per year. Ms. Folsom asked how did it impact our expenses with regard to the YMCA, when the City had to step in and have Craig (Public Works Director) step in and maintain the facility when that was part of the original agreement. Discussion followed with repairs to the roof, walls and grout.

Assistant City Manager Tom Pessemier replied the contract separates out different maintenance items and maintenance to the actual building walls, windows, roof type structures is the responsibility of the City because it's our asset. He said we have had conversations over time, but there is in the contract a differentiation of the different types of maintenance. He said it is not as clear as it could be.

Ms. Folsom stated we need to be clearer on the expectations of both parties.

Mayor Middleton stated he believes the contract needs to be rewritten and referred to the contract from 2008 that we go by and it not being clear. He said if Mr. Hunter and the Y are going by the 2008 contract then that makes sense and if you're not then Westside, where we were paying 7% and 8% to corporate, and if there is no Westside.....Mr. Hunter stated there is an addendum to the contract and Mayor Middleton stated its not signed and not completed. Mr. Hunter replied they have signed the addendum.

Mayor Middleton commented regarding this being a good time as the addendum not being signed or approved by us, and referred to a prior City Manager, John Morgan. He said to make this a working part of the other agreement, we need to redo the contract. He said the addendum was given to the City Manager at the time to finish and sign and he did not sign it and we now need to get this all into one package to get a contract we all understand that is simple, versus referring to two different agreements. He stated this is a good time with the new City Manager and the current Council to review the agreements. He stated the current Board of 36 members is unacceptable, he said financial wise we need to have our Finance Director, City Manager and City Council involved with the YMCA and make this a readable agreement as times have changed. Mayor Middleton commented regarding the closing of the Westside facility and losing this and it being part of the agreement. Mr. Hunter replied the Westside was there only from a supervisory perspective and was never a facility. Discussion occurred regarding this facility and Mr. Hunter stated this is why the addendum was done to transfer that supervisory responsibility. Mayor Middleton replied by stating the addendum was never signed by the City.

Mayor Middleton stated his recommendation is for the City Manager to renegotiate the agreement and come back to the City Council with one solid contract. He commented regarding the current agreement being difficult to read and not having the past financials. Mr. Hunter replied they do have the annuals of the past, but don't have the quarterlies of the past and all the financial documents are here. Discussion occurred regarding the documents and Mr. Hunter confirmed the reports were for the Sherwood facility only.

City Manager Gall asked for comments or suggestions from the Council.

Councilor Butterfield said when we do get back together we need to get the people that put this budget together back in this room. He stated Mr. Hunter can't tell us exactly what is going on and he did not put it together and recommends when we next meet we get the right people on the room.

Councilor Henderson stated she was concerned with how the maintenance was handled and said it's a unique situation that we own the building but don't maintain the inside of the building and this is the part of the building that really gets used. City Manager Gall asked for clarification on the expectation of maintenance. Ms. Henderson replied the standard of maintenance for the City is higher than what the YMCA is currently maintained at and doesn't believe the contract addresses it clearly. She commented regarding City staff already maintaining buildings and opportunities to partner with the YMCA and save money and the YMCA not always having to hire subcontractors on their own when the City has experience with vendors. She gave an example of the City purchasing playground equipment and having contracts with State agencies and saved by going through the State and purchasing through a contract as opposed to going out on the open market and paying full price. She commented regarding opportunities to partner on the maintenance and commented regarding making capital purchases of equipment, she asked who makes that decision and who decides if it's the right decision. She commented regarding the excess of 80-20 and setting money aside for expenses, less capital expenditures, she asked who makes those decisions and the capital money that comes out of that fund, how is that spent. She commented regarding not knowing who makes these decisions and it possibly being the Board, and heard that Board meetings were closed to the public. She stated she now understands that is not true and nowhere on the YMCA website is a schedule of when the Board meets, no minutes are published and for a public facility she does not think this is great transparency.

Councilor Folsom commented regarding the refresh that was recently done on the building and this being a wakeup call. She gave the example of owning property and the renters making wide scale improvements without informing the property owner. She said not only could we have partnered, we could have helped plan the process as we represent the voice of the community. She stated we want to partner with the YMCA Board to make sure we do this smoothly. She commented regarding having a fiduciary responsibility to protect the future of the facility.

Mr. Hunter replied he appreciates that and the Board represents the community as well and that is why they are there and their input is important in programs and processes and things related to things like the refresh and what's available within and outside the building as far as programming. Councilor Folsom commented regarding being responsible to the community for the facility.

Councilor Langer commented regarding sitting on the Y Board for the last few years and said it sounds like we need better communications on both sides and what the City can be doing and what the Council needs to focus on more, it may be to assign a staff member to be working with the YMCA to get this information back. He stated in regards to the refresh, in May, these were conversations at the Board over several months and there were no surprises. He stated it's all about communication and commented that the Board meetings are open for people to attend and anyone can ask him if they have questions. He commented regarding the language in the agreement and modifying the words today and said the people that wrote that document in 2008, they understood what they meant by the intent of it and understood they were familiar with the Y and the City's operations at a certain point and that document served their needs. He said he sees new people coming on, unfamiliar with the document, unfamiliar with the YMCA and operations and relationship between the City and the YMCA and thinks that a fix is only changing the document, versus it's understanding globally, both on the City side and YMCA and how they operate and getting involved. He commented regarding getting involved and this

taking time and energy, and communicating with the people to articulate through situations to get what you want and just changing the contract isn't necessarily the solution. He said this document has lasted a long time and our attorneys have advised us what we have is legally binding and it functions and if some people are unhappy with it we need to come to the table, talk about it and resolve it.

Councilor Clark stated she was on the Y Board for several years and has seen both sides and is there almost every day and has seen changes through the years. She stated she sees more of an issue with accountability and has made many suggestions and some have been heard and others have been ignored because of manager decisions. She stated it's about accountability and accountability to the citizens and accountability to the Council and the City. She stated she did not hear the City attorney say it was a great document and heard it was not a great document and believes it could help both sides with the accountability piece if they understood what they are supposed to be accountable for. She stated she believes cleaning that up and believes it's great to have a big Board and when she was on the Board it was a large Board and they spoke a lot of programming and visionary things with the YMCA. She said as far as financial accountability to the City and the citizens that really needs to be more of a small group that has a lot of representation from the City via either staff or a combination of staff and Council that represents the citizens and the Board that is a Y Board, it represents the YMCA, some are citizens of Sherwood and some are not. She stated the more volunteers the better and that is what makes a great community as we have people that are not in the City boundaries that are still in Sherwood but don't live within the City boundary and we are accountable financially to the citizens that live in the City of Sherwood. She stated she believes this is the piece that is missing in this document and as a longtime patron that has served on the Board, she sees this as missing.

Mayor Middleton stated if our legal counsel has said this is not a great agreement, then it's not and there is no reason why it can't be. He commented regarding the financials being a large amount of money and he pays taxes and the Council being accountable to the City citizens.

Councilor Grant stated he doesn't see this as being difficult to put together, the addendum that is not signed, as we have Council action on it and put it together with the original agreement to have a starting point that is mutually agreeable to everyone and from there make mutually agreed upon changes.

Mayor Middleton replied this is what we are looking for. City Manager Gall stated he believes clarity is needed from a staff standpoint as well as clarity wanted from the YMCA. He reminded that the agreement is 15 years old and needs to be improved. Discussion occurred regarding needing better communication from both parties.

Mr. Hunter stated if it's an issue of communication and the City wants additional things, communication wise, they are open to hearing those things and able to provide them.

Mayor Middleton thanked Mr. Hunter and addressed the next work session subject.

City Recorder Note: Documents referenced were not distributed at the work session and were not introduced into the record. The City Council meeting record for October 15, 2013 does not include these documents.

B. Water Rate Study

Raymond Bartlett with Economic Financial Analysis presented information to the Council, Water Utility: Financial Forecast & Water Rates (see record, Exhibit A) and explained. He stated the joint water

project with Wilsonville has left the City with an annual debt service of \$1.8 million per year for the next 26 years. He said the project came in under budget and the City will be getting back \$2 million. He said rates have been adjusted accordingly over time and as of this year we have \$6.5 million in cash, water rates are covering operating expenses but not covering most of the debt service. He said the City over the next few years will need to increase rates or increase sales to increase revenues to cover operating costs as well as debt service. He said options have been provided to the City of not passing any rate increases, adopting 2, 3 or 4% rate increases and in each case we are assuming the City grows at the rate of 1% per year. He explained past growth of the City at 4% per year. Mr. Bartlett referenced the graphs on page 9 of the exhibit and explained future options.

He informed the Council the two graphs were reversed, the heading from the top graph belongs to the graph on the bottom of the page.

He explained the graphs. He referred to Table 3 on page 5 and explained Capital Expenditures. He stated the capital improvements listed came from a Master Plan that was written before the City went to the Wilsonville Water Treatment Plant and was still on a well system. He stated when a new Master Plan is completed the projects will probably change. He said there are some projects listed without a cost and these are future construction projects pushed out past 2018. He explained risks, as growth and the City not knowing where this is going, capital expenditure and not know what they will be and the operating cost of the water treatment plant and how that gets passed on. He said we face uncertainty in the next few years.

Mr. Bartlett recommended the City make a rate adjustment this next year and reevaluate a year from that, after the completion of a Master Plan. He stated the rate adjustments of 2, 3 or 4% per year are small in comparison to other jurisdictions with 5, 10 or 15% per year because they don't have cash reserves to buffer the impacts of changes to operations and costs to operate the system.

Discussion occurred regarding the City owning the rights to 5 MGD (million gallons per day). Mr. Bartlett stated the City is set with the amount of water supply available and can grow into it. Discussion occurred regarding TVWD (Tualatin Valley Water District) maintaining the City's system in the past and with the new system, the City in 2009 taking over the system and maintaining it. Discussion occurred and Julie Blums Finance Director explained the advantages of coming away from TVWD and the City maintaining the system; monthly billing to ease rates, and timing was right to take back operations when the City ventured to go to the Willamette Treatment Plant.

Julie Blums stated the City has been working on the rate study for quite a while and because the Master Plan is being updated within the next year, her recommendation is to have a 2% increase this year in January 2014 and then reevaluate when the Master Plan is completed, see what capital projects are listed and see what our growth is this year and see if we get any partners. She stated if we get partners, that changes everything. Julie referenced the last page in the exhibit indicating rates with the 2% increase and it resulting in a little bit over \$1.00 per month. Discussion occurred regarding the reserve amounts and Mr. Bartlett explained. Discussion occurred regarding prior rate increases and the last increase occurring 2 years ago.

Councilor Folsom commented regarding citizens not being happy with rate increases and stated she would prefer to wait and obtain more information and possibly having a 3% increase next year.

Mayor Middleton replied he agreed to wait until the Master Plan was completed. Discussion occurred regarding what we would be paying TVWD and what we would be paying Portland as being on water wells did not meet the City's needs. The Council discussed owning water rights and City Attorney Pam Beery briefly spoke of the City's agreement with Wilsonville.

City Manager Gall asked if the City waited 1 year, how much would that eat into our cash. Discussion occurred and Julie referenced the chart on page 7 of the exhibit and explained. Discussion occurred regarding the completion of Water Segment 3 and the money the City will be getting back from Wilsonville. Mr. Bartlett stated the estimate he was given was approximately \$2 million.

Rich Sattler Public Works Utility Manager stated the City fronted all the cost of the final segment of the 48" transmission pipeline and we will be getting a little bit over half of this back, about \$2 million. Rich stated the project was about \$3.8 million.

Mayor Middleton clarified that the City could go one year without an increase. Discussion occurred regarding the customer paying now or later and if they would prefer a zero increase for a few years with a 5-7% increase in the future. Discussion occurred with many things being unclear at this time and potentially not having to do an increase. Discussion occurred regarding how much it would cost and Councilor Folsom stated she heard it was \$18,000, but the City dips into reserves \$1.4 million if we don't charge that \$18,000, basically its \$1 per household.

Julie Blums referred to page 7 of the exhibit and directed Council to the \$1.225 figure, the change from 2014 to 2015, this is how much we will dip into our reserves in fiscal year 2015, and this is if we do not have an increase. Discussion occurred regarding when and if an increase would occur and the manner of communicating to the community. Discussion occurred regarding ensuring staff schedules time to come back to the Council with information upon updating the Master Plan and informing of potential partners. Julie confirmed information would be coming back to the Council.

6. ADJOURN

Mayor Middleton adjourned the work session at 7:00 pm and convened to the regular Council session.

CITY COUNCIL MEETING

- 1. CALL TO ORDER:** Mayor Middleton called the meeting to order at 7:10 pm.
- 2. PLEDGE OF ALLEGIANCE:**
- 3. COUNCIL PRESENT:** Mayor Bill Middleton, Council President Linda Henderson, Councilors Dave Grant, Robyn Folsom, Bill Butterfield, Matt Langer, and Krisanna Clark.
- 4. STAFF AND LEGAL COUNSEL PRESENT:** Joseph Gall City Manager, Tom Pessemier Assistant City Manager, Jeff Groth Police Chief, Julia Hajduk Community Development Director, Julie Blums Finance Director, Bob Galati City Engineer, Administrative Assistant Colleen Resch and City Recorder Sylvia Murphy. City Attorney Pam Beery.

Mayor Middleton addressed the Consent Agenda and asked for a motion.

5. CONSENT AGENDA:

A. Approval of October 1, 2013 Council Meeting Minutes

MOTION: FROM COUNCIL PRESIDENT HENDERSON TO ADOPT THE CONSENT AGENDA, SECONDED BY COUNCILOR FOLSOM, MOTION PASSED 7:0, ALL PRESENT MEMBERS VOTED IN FAVOR.

Mayor Middleton addressed the next agenda item.

6. PRESENTATIONS:

A. Tri-met, SW Service Enhancement Plan

TriMet Service Planner Tom Mills came forward and provided a handout (see record, Exhibit B) and presented a power point "Southwest Service Enhancement Plan" (see record, Exhibit C). He said the plan is an effort to look at service in the southwest portion of the Metro area service district in ways TriMet can improve service in the short and long term. He noted the plan is out of the first phase of the SW Corridor Plan. He said Metro is looking at the high capacity potential and TriMet will be looking at the local service for this area. He commented as high capacity is developed communities want a say in what the local service will look like. He stated that it is time for a major review and it has been a long time since they have looked comprehensively at service in this portion of the region and how TriMet can make it better. He said they see themselves coming out of the recession and hope to have funds to do some new things and now is the time to start planning.

Mr. Mills said TriMet is engaged at looking at the region in sub-area levels and stated they recently completed a plan called the Westside Service Enhancement Plan, which was basically Scholls Ferry Road going north. He said this plan will be Scholls Ferry Road south swinging to the river. He noted all of the plans together will look at ways for near term and long term improvements to better serve the region. He noted much of the service in the region was designed a long time ago when the thought was everyone gets on the bus in the morning to go to downtown Portland. He stated that is not the case anymore but the service has not changed to meet that new reality and these subarea service enhancement plans will be addressing that.

Mr. Mills referred to a map of what the service looked like before they created the Westside Enhancement Plan, which can be found on the TriMet web site. He said data showed the need for more north/south and more frequent service. He referred to the outcome of the Westside Service Enhancement Plan and noted there is more north/south service and more frequent service lines and there is also a recommendation for a future high capacity line on TV Hwy. He said this is an example of what they would like to do for the Southwest Enhancement Plan and a future vision for long term service improvements and then start working toward implementing to improve transit service.

He referred to the boundaries of the study area which is essentially Scholls Ferry Road to the river, which is larger in area than the SW Corridor Plan that Metro is heading up. He said frankly transit service does not stay within boundaries. He noted the boundary also includes Wilsonville which is not in the TriMet district, but we have a lot of overlapping service and we need to work together more efficiently. He said just because we have a study area doesn't mean we won't look beyond this area.

Mr. Mills commented on the process and said it is a two prong process by looking at data collection and trip pattern data and what connections they are trying to make and then there is the outreach program and said that is why he is here tonight, to see where the community would like to see new services and improvements and what are they frustrated about. He said they will do outreach through the fall into early winter. He said they will take this information, from the data and recommendations, and will come up with some themes. He noted in the southwest portion of the region two things jump out, such as Sherwood does not have a connection with the Sherwood and Tualatin industrial area, no east/west service in this area and that is something they need look at. He referred to the TriMet system map and noted that a lot of the service in the southwest portion of the region is peak hour only service, basically commuter service and realizes that people travel all day long in this region and that will be addressed.

Mr. Mills said as they come up with themes they will develop a vision and recommendations for improved service and will develop a map just like the Westside map. He said by summer they will come back and talk to stakeholders and community groups for feedback. He commented that they will improve service but may not make everyone happy and by the end of 2014 they hope to have a document that everyone will agree on.

Mr. Mills said early implementation is important and referred to SW Corridor Process wanting changes on the ground sooner rather than later. He stated they don't want us to wait until the SW Corridor Plan makes recommendations for high capacity transit, but want changes done sooner. He mentioned they are already looking at restoring frequent bus service starting this March and commented on the recommendations for improving lines 47 and 48, and stated the improvements were done this fall. He said once they come up with a plan they will start making improvements right away. He commented it will be expensive but they want to incrementally every year show some progress.

Mayor Middleton commented that he has been involved with the Community Development Director and said that TriMet has been very cooperative, and have improved some of the service, and noted Julia Hajduk will be our contact here and asked if there were Council questions.

Council President Henderson referred to the process and asked Mr. Mills to give an idea of outreach to people who may not be riding the bus now because it may not be convenient. She said that most people want to go to Tualatin and get on WES or travel to Wilsonville.

Mr. Mills said they have identified stakeholders in all the communities that they want to reach out to, for example in Sherwood it is the Chamber of Commerce. He noted that they are considering holding community meetings where the public can come and give TriMet suggestions and said they would probably break out into groups and have the citizens design the service.

Councilor Henderson asked if part of the study will consider service within the City of Sherwood, such as a spot in Sherwood to another spot in Sherwood.

Mr. Mills said it will consider that and said that is called a "circulator" and said they typically don't do as well in terms of ridership. He said they could make a recommendation for partnering with the City as well as a nonprofit provider.

Mayor Middleton commented in terms of a circulator and asked whether Tualatin Chamber does a circulator.

Mr. Mills said that TriMet has a partnership with the Tualatin Chamber where TriMet applies for Federal funding for the circulator and they disburse the funding to a number of programs throughout the region and Tualatin Chamber is one of those recipients and that pays for the Chamber shuttle.

Mayor Middleton asked if that is something Sherwood could look into.

Mr. Mills said yes but reminded the Council that funding is hard, particularly communities on the edge of the urban growth boundary and said they are looking at finding alternative funding to do more flexible types of services. He gave an example of the City of Forest Grove where they partnered to provide a community shuttle bus where a TriMet bus would not get enough riders to make it financially feasible so they partnered with the City and ride connection to develop and community bus.

Julia Hajduk said they asked Mr. Mills to come and present this information and wants Council to be aware that this is happening and there will be opportunities to get involved and provide feedback throughout this process.

Mayor Middleton said when the Chamber meets it would be good to have the YMCA involved because a lot of people want to get to the YMCA. Mr. Mills said the YMCA is on his list and Julia also mentioned the Teen Center at the YMCA is also an attraction that people want to get to.

Councilor Folsom asked Julia how can we capture those riders from Sherwood and let them know that they need to take part in this conversation. Julia said that TriMet will do a good job at contacting riders but they are concerned about reaching the non-riders. She said they are considering stakeholders and asked Council to share any other stakeholder ideas.

Councilor Folsom referred to the publications and asked how we let people know about the data collection process and asked if the information is in the Archer or the Gazette.

Mr. Mills said he has been in touch with the Tribune and he understands that they own a lot of the local papers in Washington County. He said there is a community meeting in Tigard on November 6 and they will have an article on that and will continue to work with the Tribune to get the media attention for the meeting. He said anything on top of that would be great. Julia suggested the Archer and said at this point there are not specific meetings set but they can get the information out that the process is going on.

Councilor Folsom said as we look ahead to days and times for the meetings we need to be prepared to hit all the right buttons and referred to the Chamber being able to do media blasts.

Mayor Middleton thanked Mr. Mills and addressed the next agenda item.

7. NEW BUSINESS

A. Resolution 2013-054 Establishing the decision making structure and appointing the Local Citizen Advisory Committee for the City's Transportation System Plan (TSP) Update

City Engineer Bob Galati came forward and stated the resolution is to establish a Citizen Advisory Committee, a Technical Advisory Committee and Steering Committee for the TSP plan update. He said

we applied for and received a TGM grant to do a TSP update and we now need to define a process and structure for the public review process and decided it would be best serviced by a CAC, TAC and a Steering Committee process. He said what you see before you is a plan where we get this TSP update working. He stated they sent this out to the papers on September 23 and ran it for a week and they only received 5 applications and did not feel that was enough and wanted at least 10. He said they extended it to October 4 and received an additional 5 applicants. He said in reviewing the applicants they have a broad spectrum of interest and they asked the Planning Commission to look at the applicants and see if they had any problems with the applicants. He noted that they have not received any indication that there is problem with any of the applicants. He asked the Council to approve the resolution and to establish all 3 committees, the Steering Committee, the Technical Advisory Committee and the Citizen Advisory Committee.

With no Council comments, the following motion was received.

MOTION: FROM COUNCIL PRESIDENT HENDERSON TO ADOPT RESOLUTION 2013-054, SECONDED BY COUNCILOR BUTTERFIELD, MOTION PASSED 7:0, ALL PRESENT COUNCIL MEMBERS VOTED IN FAVOR.

Mayor Middleton addressed the next agenda item.

B. Resolution 2013-055 Creating the City Charter Review Committee

City Manager Joseph Gall reminded the Council that in the spring at their annual goal setting they discussed the formation of a City Charter Review Committee. He said the Charter was last reviewed in 2004 and it has been a number of years since there has been a comprehensive review. He said he has been working with Mayor Middleton and Council President Henderson on how to put such a committee together and the idea was a representative from each of the 6 boards and commissions and 3 at large citizens, forming a group of 9 members. He noted he anticipates that once the process gets going, if you create this committee by adopting this resolution tonight, the applications for the at large positions will be available starting tomorrow through Friday November 1, and on Tuesday November 19 they will appoint the members to the committee by resolution and their first meeting would be Thursday, December 5. He said the goal is to have the committee do its work and bring any recommendations to the Council and they will decide if they want to put anything on the ballot. He asked for any questions.

Mayor Middleton announced that Council President Henderson volunteered to head the committee. He said this would be a public process and she will discuss the intent.

Council President Henderson said it is a good practice to review your Charter every 5 years and stated that it has been 5 years and noted that they did not really review the Charter in 2005 they just changed the way we elected Councilors by position instead of at large. She said they are hoping that citizens will review the Charter and have recommendations. She referred to things being outdated in the Charter and said they would like to look again at electing Councilors and said that a lot of people would like us to have a conversation about term limits and any other suggestions that people might have that makes this document what it is, which is the constitution of our City. She said this process will be a combination of those who serve on our boards and commissions who are willing to serve, and 3 members at large who will be appointed by the Mayor and approved by the Council. She said they will meet twice a month and report back to the Council with recommendations in a timely manner with the ultimate goal of being on the May 2014 ballot, which is a primary election.

Mayor Middleton clarified that when Councilor Henderson stated that he appoints them it is really by the Council and the other groups letting us know what they want, he will not be picking three people himself, but there will be a list and they will appoint with a consensus from others. He noted this is the first step in the process.

Council President Henderson noted that citizens that are interested in serving need to have lived within the City for a year and asked City Attorney Pam Berry if they were leaving in the “qualified elector” condition and asked her to clarify.

City Manager Joseph Gall proposed that it be left in and said it is standard to run for office and noted that as she said they will be working on what is equivalent to the City’s constitution.

Pam Berry stated that a “qualified elector” is someone who is eligible to vote in elections within the City of Sherwood, which mean they have established residency and are registered to vote.

Mr. Gall commented that there would be an extra step to make sure that members meet that qualification, but we are prepared to do that.

Councilor Folsom noted the Charter is available on the City website and said it is under the City Council section and stated it would be helpful for citizens to review the Charter and it is our City’s constitution and is important and she wanted to make it clear that this group will make recommendation that will potentially go to the ballot where the entire City has the opportunity to vote on any changes. She said this is important and is grateful that we are starting this process and she said they did put a Charter revision on the ballot a couple of years ago, but they did not have this process. She stated that when she asked in the surrounding area, they all used a Charter Review Committee. She referred to potential topics and asked if they could suggest ideas to the committee.

Councilor Henderson said yes.

Mayor Middleton asked if changes would be voted on separately on the ballot.

Mr. Gall said that is how they have done it in the past. He said the best way is to let the voters vote on them as separate amendments.

Councilor Henderson said these meetings will be open to the public.

Mr. Gall noted that the meetings will take place in this room and will be videoed and placed on the website so citizen can watch the committee’s deliberations.

With no other questions or comments, the following motion was received.

MOTION: FROM COUNCIL PRESIDENT HENDERSON TO ADOPT RESOLUTION 2013-055, SECONDED BY COUNCILOR CLARK, MOTION PASSED 7:0, ALL PRESENT COUNCIL MEMBERS VOTED IN FAVOR.

Mayor Middleton addressed the next agenda item.

8. CITIZEN COMMENT

Susan Claus Sherwood resident came forward with a suggestion and stated that since Berry, Elsner and Hammond put this Charter in place, she would like outside counsel to do this project because BEH have a vested interest in guiding the Charter in the direction they want. She referred to the RFP to get new attorneys and said it was a flawed process and said that Council was going to revisit this and asked when that process to get a City Attorney would be. She reminded Council that BEH was the only proposal the City received from the RFP and asked for a good process that doesn't preclude interested people. She asked about the City Manager's review and asked if citizens could comment. Mayor Middleton said it is still in process. She said that we need a way for citizens to comment on the process and asked what the process is and she stated they used to have a public hearing, but now we don't, a night where people can come in a talk about what they want to talk about, good or bad, about the City Manager. She noted there is only one item on the ballot and said they are having trouble with the sign code again and she was hoping that would be revisited because we have some fundament flaws and said it is problem all the way around and part of the problem is the City of Sherwood has carved out for itself its own exemption. She referred to City sponsored events and they can use banners as long as they get their special permit. She said people making political statements have a more rigorous standard and this is just one of the problems with the sign code. She said there are a lot of flaws and she would like to start the process again and would like to have a separate set of attorneys because these are the attorneys that already went in there and sprinkled there acknowledgement that the sign code was alright and she said she doesn't believe it is legally right. She suggested aggressive approaches against citizens and it is not fair and said there is a need to focus on a third party neutral. She stated that BEH have been here way too long and view this as their pod and in the meantime we are being subjected to crazy rules for political speech which is unconstitutional.

Neil Shannon 23997 SW Redfern Drive came forward and said it feels like two years ago when we had a City Charter on the November ballot with a Brookman Road Annexation on the ballot. He said he appreciates the approach to the City Charter review this time around. He said 2 years ago there was a split City Council that put that Charter revision on the ballot and it was a take it or leave it approach and while it was referred to as minor changes, there were some major changes involved in Mayor's terms of office and replacing of empty seats for City Council and he appreciated the citizen comments being allowed for a right and proper review of the Charter.

Kurt Kristensen 22520 SW Fair Oaks Court came forward and said he appreciates the work of the Council and said he doesn't agree with many of their decisions but that is how democracy works. He presented information to the Council (see record) and said it is positive to review the City Charter every 5 years but he is leery of the speed that they are suggesting. He said when we review the Constitution of the US it can take several months and years. He commented this looks like it is on a fast track and he is urging caution. He referred to an article and said that Hillsboro and the Tualatin Valley Water District are not going to play ball with us and share the water being pumped through our 40 million dollar system. He said in 2005 when we had the election to get the water from the Willamette River one of the things stated by the proponents was that Sherwood would sooner or later get buy-ins from other communities which would help lower our water rates. He noted this is not happening and now they are considering increasing the rates in Sherwood. He stated he is wondering if this water system, the golden elephant that we built, is too expensive for 18,000 people. He referred to the 2005 agreement with the Tualatin Water Valley District and said there is a possibility we could allow them to annex the water system so they could take over the capital costs. He commented he can no longer afford to water his garden. He said there are other concerns they need to look at and it is imprudent to have the same

engineering firm, Murray Smith, to continue with a master plan. He stated that they were the original firm that was used to promote the 2005 ballot and has been part of the construction and he referred to the legal consultation that was mentioned early and said sometimes it is good to go outside the flock and get a different opinion. He asked for a public acknowledgement from the Council as to if the City of Sherwood has water rights to the current amount and the future amount of water that we are having expensively pumped uphill from Wilsonville. He said TVWD is making a clear statement that they are going to own the plant and own the water rights and he is not sure if we do and the voters need to know that.

Mayor Middleton said the staff will get back to him.

Jim Claus 22211 SW Pacific Hwy. came forward and said he has heard terms about owning water and referred to broadband experts now and said to be careful and that is an appropriated water right which are not something that you own the water, just a particular amount of water under very strict conditions and nobody but a fool says they own the water. He said the Willamette River is the only non-oversubscribed river in the State of Oregon but it is becoming oversubscribed and that is enough to make you alarmed. He said the reason you get referendum initiatives and recall petitions is because people lose faith in their elected officials and the way you structure government. He said there should be a citizen committee where we move to restructure this City entirely, because the City Manager form of government that we have does not work. He stated that a number of things have occurred and you are heading towards litigation, he has started in the first step and hoped he would never have to go there and realizes what it takes to get through the full court system and referred to his experience in San Diego that took 9 years. He said in the end the City regretted litigating it and said that you are in the same position because you have created multiple sets of rules and referred to issues on 99W and people violating the State building code and they can't do anything about it because it was structured around the lawyers through your staff. He cautioned that everyone up there, with the exception of two, is up there for what they can get on the side or through it, not to make it work better. He said a strong City Manager form of government only works if it is carefully monitored. He said when we find out what we are paying for water and what Sacramento and Portland are paying and you have to ask if it has failed and suggested it has failed because over and over people look at what they can do for themselves and that is a mistake. He suggested that they are getting discriminatory treatment because you have pods of people that say that if so and so got away with it I can get away with it and then we are paying you through attorney fees to defend our rights. He said that is only going to go so long then you won't have this system any longer. He stated you can't conduct this system in a fair way, it is structurally flawed and has tainted 5 Councilors in his opinion and he will find out in depositions later and he has been accused of libel and slander about Walmart and that will be part of the course of action and said they are building slowly and carefully. He said it occurs because you don't have any information channels and said it starts with the City Manager filters to staff and starts with the City Attorney and it turns out that you did over pay for your water line but we couldn't have a public hearing because the staff with its 40 percent override thought it was a good idea.

Chris West 23779 SW Shady Grove Drive came forward and said he understands that at the Washington County Board of Commissioners meeting this morning the City gave its full support for the County plan to improve Tualatin Sherwood Road, including the part to remove a light between Albertsons and Regal Cinemas. He stated given that fact and tonight you passed Resolution 2013-054 he said he hoped with the committees that will be created out of that resolution, that as they begin to work on updating and amending the TSP that we will deal with improvements to Tualatin Sherwood Hwy and there will be conscious effort among the participants on those three committees to guarantee

reasonable access for businesses effected by the TSP and he hopes that access off of 99W will be part of that Regal Center and in addition to the completion of the extension of Baler Way all before the signal is removed. He said the City required the signal be there to provide reasonable access to that development. He said now that you have signed off on the County plan you need to guarantee reasonable access to those businesses affected. He stated that there are still two unanswered concerns that need to be addressed: how does a pedestrian signal at that location improve the traffic situation and if first responders will have access to the Regal Cinema after the improvements are done. He said he appreciated Council President Henderson's comments to the TriMet representative about effective public involvement and said this situation with the signal is a prime example of the outreach because after two short weeks they have over 1000 people and that shows how much can be done through correct public involvement. He said the City, the County and TriMet need to learn how to do it. He said he hopes the City will use these 1000 people as an asset to help come up with a solution and update the TSP as opposed to disenfranchising citizens. Mayor Middleton reminded him of the meeting tomorrow night.

Meerta Meyer, Sherwood resident came forward and echoed the disappointment of Council's perceived support of removal of the signal. She said she appreciates the Council passing a resolution to review the Charter and said appointing a committee to put together recommendations will be very well received by the community. She said it would be interesting to understand what the recommendation of staff was for the formation of the committee and to understand the financial impact of the committee and potentially staff and Attorney involvement. She said it would be helpful to understand what weight or criteria will be used upon reviewing the committee's recommendations. She commented on budget review and finances and said that she agrees and supports the SW Corridor expansion and the opportunity for citizen involvement but she said it leads to a lot of question by the community particularly monetary and traffic impact and with our new Finance Director in place she referred to City commitments. She said it would be helpful for Sherwood citizens as they look at the ballot and these items that they have a clear detailed understanding of what the City of Sherwood commitments are currently in a comprehensive manner and the financial impact of what has been paid and what is still owing and where the monies will come from and how that will be impacted by the taxpayers today and in the future. She noted that it is important before citizens are asked to vote, or presented with votes, that our government and staff within the City are helping our community understand the implications behind voting. She stated that she doesn't think that we have a clear understanding of all of the City's commitments whether it is associated with a particular development, or potential annexation, or the impact the SW Corridor expansion will have on our City. She said understanding those things and having a clear detailed budget with not just the basics, but overall capital improvements would be helpful.

Mayor Middleton said the City Manager will get with Finance Director, Community Development, and Council President Henderson and get back to you.

Nancy Taylor, Sherwood resident came forward and said she was a citizen, taxpayer and voter since she was 18 years old and present here tonight and has been present every Tuesday night since she said she would start coming. She applauded the Council for wanting these two committees but said she sat through most of the Special Committee meetings only to see the work they had done flushed down the toilet. She apologized for the vulgar term but said she felt duped and felt that what happened during the time she spent in these meetings was vulgar. She reminded the Council that it is not their City, it is the City of Sherwood and belongs to the citizens of Sherwood and belongs to the majority of the taxpayer and the businesses that continue to pay here, not the future business that we are banking on, but the current businesses. She referred to the theater and taking away their light, and referred to

Albertson and Safeway and said you are going to make all kinds of changes based on one development and these companies have been here a long time. She said she does not understand. She commented that Tigard is thinking of going with the Clackamas River and not the Willamette River. She said before you make any further changes think about what Susan Claus said. She commented sometimes the City Manager and the Mayor are new and may need something new like new attorneys and a new way of looking at the finances. She said they may need new things because they are new. She supports that we look at this when we review the Charter and they need to look at when you get a new group in they may have new ways of looking at things and suggested when you have new people you should give them tools to go before the community and ask them if they want new attorneys either attorneys that only represent our City, not a lot of cities. She asked them to think about this.

Ann Reid and Katie Boedigheimer from Sherwood Rose's Bakery came forward and commented about the removal of the traffic signal or good alternatives to their space. She said they have served and supported the community for 10 years, through events, the Chamber, sports, donations and have specials for veterans, seniors and kids. She said they are a local business concerned about the accessibility to the restaurant, our 40 employees and does not understand how it can be removed without an alternative in place or at least in the plan. She stated it is something that was meant to be there at the beginning so how can it be removed. She referred to Baler Road and said it is a nice idea for helping with connectivity but is too far away and does not seem reasonable for the main access. She said the main access is valuable to many businesses and is needed for vehicle traffic and safe pedestrian crossing. She commented that we have the ability to share between the two shopping centers with other businesses and she has met many of the small business owners and she has met amazing and enthusiastic individuals and losing even one of these businesses or their employees is disheartening, even losing our business if we lose customers. She said we need to focus on the community risk from removing the light not just how it works with the road improvement plan. She suggested focusing on the right-in from 99W and asked for help on a couple things. She asked to reopen the decision to remove the signal to either keep the signal or help us gain access from the right-in from Hwy. 99W. She proposed Washington County, City of Sherwood, and the community all work together with ODOT to review the alternative option for the right-in on 99W if it proves to be a better option than the light and said she would be happy to participate in this process. She said she spoke at the meeting this morning and was told that the County supported the right-in on 99W. She stated please let us know where the City is on this and how we can help speed up this process. She noted that without our signal we need the alternative on the right-in on 99W before the removal of the signal or we may not have enough business to keep serving employees and residents in this community and said the right-in off 99W will also help with traffic flow during the construction phase.

Katie Boedigheimer reiterated what Chris West and Ann Reid said that ever since Rose's found out that the signal was going to be removed they have reached out to people who have authority to say that they are not for this and it is not good for us. She said they have reached out to the Council, the Commissioners, Special Committee and made sure that they are the spokesmen for the employees at the restaurant and customers and if the signal is going to be removed, it is frustrating because they have fought for their front door to stay in. She said that last week the City Council had not taken a stand and then they found out this morning that they are supporting it. She said if the signal is taken out we need to ensure that the access that we are given is the right-in on 99W and we need Council to support that with us. She said her front door will be taken out and we need to know that people will still come to Rose's, to the movies, Crazy Sushi and all the businesses in the complex.

Ann Reid asked the Council for their support, guidance and direction in getting a decision and working with ODOT. Mayor Middleton said this would be addressed in Council comments.

Anthony Bevel Sherwood resident approached the Council and said he has lived here since 1998 and referred to an article in the Oregonian stating that SeaTac, Washington has a living wage of \$15 an hour. He asked how they can put this on a ballot and we are told that we can't do this with the laws and he doesn't understand. He said Sherwood had a golden opportunity to do what was right and we are going to have to live with that on our conscience. He said they have safe guards for small businesses and they will vote for that on Thursday. He suggested that we revisit this and said there are a lot of similarities between Sherwood and SeaTac.

Lori Stevens 15630 Farmer Way came forward and commented about the Charter and agrees with Council President Henderson that it is time we revisit this. She said she has been in Sherwood for 17 years and hasn't seen hardly any changes or updates. She commented on the restructuring and assumed that we are keeping the structure the same as far as a Mayor Council government where the decisions are made by an elected official and not a hired official in the form of a City Manager. She referred to the three at large citizens and they would also be part of the decision making body so when we restructure it or put it in place with the recommendation for whatever it still will be the same City government. She said in the way that City governments were planned for the most part you have Mayor, Council and a Manager hired to carry out the decisions made by the City Council and the Mayor or make sure that laws are carried out and help prepare the budget, they are not the be all end all, have the veto power. She said she hoped that is the intent and the plan under the new Charter.

Mayor Middleton thanked her and said they would get back to her. Mayor Middleton addressed the next agenda item.

9. COUNCIL ANNOUNCEMENTS

Councilor Butterfield gave a hand out to everyone that helped vote in Coach Lawrence for Coach of the Region in this particular region and said he is now going onto the second tier of voting where he could possibly win Region 8 and may win money and do good things. He thanked everyone for voting and said he is a great coach and a great asset for our City.

Mayor Middleton said the Council will recognize him in the near future thanking him for what he has done for the community.

Councilor Folsom said she appreciates the questions that the citizens pose and said there is a lot of value if possible, especially for the viewers watching, if we could answer some of those questions now, specifically with the Washington County meeting this morning. She asked if this is a good time. She announced that next week, October 25 and 26, is the opening for Beauty and the Beast and she invited everyone to come and said there are tickets available but doesn't know for how long. She said it will also run on November 1 and 2. She thanked the schools and Marianne Funderhide and Jeanette Godfrey for all their help. She also announced that this weekend is the Harvest Festival at Sherwood Middle School, which is family oriented and includes Spook Alley. She noted that this week they are rehearsing at the Senior Center as Spook Alley is being built.

Councilor Folsom referred to the comments from Meerta Meyer's about the budget process and asked Julie when the Budget Committee will be meeting. Julie Blums responded that they will be meeting next

Monday at 6:30 pm in this room. Councilor Folsom said the budget meetings, in advance of the process of adopting of the budget, are when we are able to capture a lot of the questions that Meerta asked. She said a lot of the capital projects, such as the water treatment facility, when that came to the City there was a very large voter's pamphlet and said that is a good resource. She said what is great about the budget process, if you follow that along a lot of your questions can be answered.

Councilor Folsom asked Pam Beery when the last Charter update was. Pam responded 2008 but stated that her version copy was approved on March 1, 2005. She said she thought there were updates in 2008.

Council President Henderson clarified that in 2008 we removed the requirement to have an election that mandated an election to go to the Willamette River water, so we had that election and removed a line item, but we didn't make any other changes and we did not have a review committee and stated they did not have a Charter Review Committee in 2005 either. She stated the Council reviewed it but not the citizens.

Councilor Folsom noted that the Charter has gone to ballot with revisions and referred to comments of 17 years and said it has been more recent.

Pam Beery said 8 years in not unreasonable to review a Charter and commented that it is a lot of work and agreed that it is customary to have a citizen Charter Review Committee to make recommendations to the Council. She clarified that only the Council has the authority to refer and will receive recommendation from the committee.

Councilor Folsom admitted that the recommendations from the citizens are vital and referred to the last process where she voted not to send it to the ballot because citizen comments were not allowed. She said it is the constitution and representative of the citizens. She asked Mayor Middleton to address the Washington County conversation.

City Manager Gall explained that Mayor Middleton and Julia Hajduk can give you more information about the project, but he received an email from the Mayor to attend the Washington County meeting this morning and said they needed to know that the City is supporting the project, not just removing the light, but the whole project. He said he and Julia testified and confirmed that the City is in support of the project and they have similar concerns to the businesses and said they heard that the signal would not come out until Baler Way improvements are complete and that is important in terms of timing. He said the other aspect is if we should work with ODOT to push hard to get additional access to that property and he said they are willing to do that and need direction from the Council if that is what they want. He stated it was a good meeting with the County Board and there is an open house tomorrow night and there are still issues with pedestrian traffic and first responders that are important and suggested we all stay engaged. He said hearing the County staff say they would not remove the signal until Baler Way improvements were made was very important and we had not heard that until this morning.

Councilor Folsom said the signal is a small piece of the project and asked Julia to explain the scope of the project.

Julia said the overall project is \$12 million dollars and is basically through the intersection from Adams Avenue to Borchers, widening the intersection and there is a lot of local traffic but also freight and commuter traffic that goes through that section.

Councilor Folsom referred to the taxpayer's dollars and clarified with Julia that this money comes from taxes our residents pay to the region and is not part of our budget process, but it is regional money that could have gone to another community but they saw that this was a very large issue because it is incredibly crowded. She asked if Tom had something to add.

Tom Pessemier added that this regional fund was put in place in the late 1990s and it is taxpayer money and over the last 20 years most of the money that Sherwood has put in has gone elsewhere and now we are getting a proportional share back to our community. He said this \$12 million project puts us almost back to equal. He said the County is trying to address the concerns we have heard for the last 10 years that Tualatin Sherwood Road is a parking lot for a large portion of the time. He noted 99W and Tualatin Sherwood Road are both busy arterial roads and one of the highest used intersections in the State. He said they are going to extend an addition through lane from Tualatin Sherwood to Roy Rogers past Borchers before it comes back in and that should help with volume and get people through the intersection quicker. He said the other major key is additional turn lanes and said the County found it would improve the situation for 15 to 20 years, so not just short term, but has great magnitude and involves removal of the signal. He stated they have been working with the County for a long time and have had assurance at the staff level for the Baler Way improvements to be done before the signal is removed and fortunately they did this publically today and we can now focus on other things like a right-in on 99W.

Councilor Folsom asked how do we assure that Baler Way gets done before the signal is removed and possibly a right-in off 99W or some access.

Tom said they will continue to work with the County and make sure they do what they said and continue to have conversations. He stated that the City has not invested a lot of time with ODOT but if that is important to Council, staff will invest time to try to make it happen.

Mr. Gall said one suggestion is a simple motion directing staff and if it is bigger than access, such as timing of the signal, which is a challenge but is another thing we can talk about. He said a clear decision from the policy makers would be helpful for the staff when they are trying to get additional access to that site.

Councilor Folsom said she supports doing whatever we can to ensure that those businesses have great access and are very vibrant businesses.

Councilor Clark agreed and said we need to be forward thinking in addressing congestion and we are receiving \$12 million here and she moved that we direct staff to work now diligently with ODOT to get those businesses their right turn access from Hwy 99.

MOTION: FROM COUNCILOR CLARK TO DIRECT STAFF TO WORK WITH ODOT TO OBTAIN THE RIGHT TURN ACCESS FROM WHAT I WILL CALL THE REGAL CINEMA COMPLEX FOR BETTER TURN FROM HWY 99, SECONDED BY COUNCILOR GRANT, MOTION PASSED 7:0, ALL PRESENT COUNCIL MEMBERS VOTED IN FAVOR.

Mayor Middleton said staff would get back to the property owners and keep them informed. City Manager Gall confirmed.

Julia talked about the process and reiterated that it has been a long process getting to the point of making a decision on design option and there is still flux and that is what this is moving into. She said they have to look at several aspects, such as pedestrian access and emergency safety and that is what the County is working on now and staff is working on this and it is still very important to stay involved in the process and go to the meeting tomorrow night and share concerns. She said as they define the design they need to address as many issues and concerns as they can.

Mayor Middleton thanked Julia for getting involved and said now we are more informed and we will help the property owners as much as we can and this is a good project for Sherwood and said the County has really opened up to us.

City Manager Gall reiterated and said there are a lot of questions, especially from Chairman Duyck, as to why Sherwood is now concerned and from the County's perspective they have been talking about this for a while, but the reality is a lot of people just found out about it and they are now asking questions and want to understand why this is happening. He said the County is now doing something and listening.

Mayor Middleton thanked them for attending the meeting and giving our perspective on the project and said it will work a lot better than it would have had we not gotten involved to the extent that we are.

Council President Henderson suggested that after the open house tomorrow night we open a dialogue with ODOT on an access point off of Hwy 99 and asked if there is some place on the website where citizens can go for updates.

Julia said she thought there was something already on the website but she will make sure and make it easy to find.

Councilor Butterfield commented that they are all Councilors but in reality they are citizens and when they vote they vote for what they believe will benefit our community. He said even though they don't always agree, it is still a democracy and we are part of it and they work hard to try to make decisions based on good information and what is best for our community.

Councilor Clark thanked everyone that attended the Onion Festival last Saturday. She said it was an awesome event by the Chamber.

Mayor Middleton announced that there would be a Veterans Day event with more information to follow.

Mayor Middleton addressed the next agenda item.

10. CITY MANAGER REPORT

City Manager Joseph Gall reported that the Veterans Day event will be on Veterans Day, November 11, at the Sherwood High School Commons. He said he hopes that once the Community Center is built the event will be held there.

Mr. Gall addressed some of the issues he heard tonight. He said Susan Claus asked about the RFP for the City Attorney and said he is waiting for direction from the Council, as the City Attorney works at the pleasure of the Council. He stated they had an RFP this summer and only received one proposal and said nobody was happy with the process and he is looking for direction.

Councilor Folsom clarified that we received one proposal from the RFP and that was from our attorney.

Mr. Gall said that is correct. He said he has not opened the proposal. He asked if they want to do another RFP to get a better result or another option is to hire our own City Attorney. He said the attorney works directly for the Council and he is ready to go whatever route.

Mayor Middleton said that in their meetings with Mr. Gall they can express what they want and we can come up with a consensus from Council.

Mr. Gall agreed and said he is not looking for an answer now, but stated that it is important and people want to know and they deserve to know what we are going to do in that process.

Mr. Gall referred to Mr. Kristensen cautioning not to go too fast in the charter review process and he agreed that it should not be rushed.

Mr. Gall referred to Meerta's questions and based on Special Committee experience, she asked if there would be a significant cost for the Charter Review Committee and he stated there would not be. He referred to concerns of attorney support for the committee and he will speak to the Council about that. He said he does not anticipate too many costs. He said at the beginning they would need attorney support to spell out the rules, and then attorney cost at the end, but does not anticipate attorneys at every meeting. He said he will attend every meeting, but that is part of his job.

Mr. Gall commented on the reference to SeaTac and said he is not an expert in this area, and would refer to Pam Beery, but he is guessing it is the fact that it is Washington and we are Oregon. Pam Berry said she would get back to Council on that.

Mr. Gall referred to Ms. Stevens comments and he clarified that her comment that we have a Mayor Council form of government is incorrect, and stated we have a Council Manager form of government and there is a big difference. He said that is part of Charter and people can understand the relationship between the Council and the Manager form of government and he said he would meet with Ms. Stevens individually to explain this.

Mayor Middleton suggested that Beaverton has a Mayor Council form of government. Mr. Gall said that is correct, they have a strong Mayor Council form of government.

Councilor Folsom noted that he gets paid. Mr. Gall said Beaverton is the only true strong Mayor form of government in Oregon.

Mayor Middleton asked about Portland.

Mr. Gall said that Portland has a weak Mayor form with a Commission and it is more of a hybrid. He said these are things we will be talking about in the review of the Charter.

Mayor Middleton thanked Public Works for the update report and said they are very valuable.

11. ADJOURN

Mayor Middleton adjourned the regular session and reconvened to the Executive Session at 8:47 pm.

EXECUTIVE SESSION

1. **CALL TO ORDER:** Mayor Middleton called the meeting to order at 8:55 pm.
2. **COUNCIL PRESENT:** Mayor Bill Middleton, Council President Linda Henderson, Councilors Dave Grant, Robyn Folsom, Bill Butterfield and Krisanna Clark. Councilor Matt Langer was absent.
3. **STAFF AND LEGAL COUNSEL PRESENT:** City Recorder Sylvia Murphy and City Attorney Pam Beery.
4. **TOPIC:**
 - A. City Manager Performance Evaluation, pursuant to ORS 192.660(2)(i) Performance Evaluation and 192.660 (2)(f) Exempt Public Records.
5. **ADJOURN:**

Mayor Middleton adjourned the Executive Session at 9:05 pm and reconvened the regular Council session to adjourn the regular session. No other business was conducted.

Mayor Middleton adjourned the regular Council session at 9:07 pm.

Submitted by:

Sylvia Murphy, MMC, City Recorder

Bill Middleton, Mayor

TO: Sherwood City Council
FROM: Pam North, Library Manager
Through: Joseph Gall, ICMA-CM, City Manager
SUBJECT: Resolution 2013-056 Appointing Ashley Korn to the Library Advisory Board

ISSUE:

Should the Sherwood City Council appoint Ashley Korn to the Library Advisory Board?

BACKGROUND:

There is currently one seat vacant for a high school student member of the Library Advisory Board due to the graduation of Bryce Keicher. Ashley Korn has applied for the Library Advisory Board and has been endorsed by the panel of City Council President Linda Henderson, Library Board Chair Chrissie McLaughlin and Library Manager Pam North.

Although Miss Korn attends Tualatin High School for their International Baccalaureate program, she does reside within the Sherwood city limits and is extremely interested in representing the youth of Sherwood on the Library Board. Please note that it has been challenging to secure qualified and interested high school representatives.

According to Chapter 2.12 of the Sherwood Municipal Code... “the city council shall also appoint a high school representative as one of the nine voting members of the board. The term of office of the high school representative shall be for one or more years.”

RECOMMENDATION:

Staff respectfully requests City Council approve Resolution 2013-056 appointing Ashley Korn to the Library Advisory Board.



RESOLUTION 2013-056

A RESOLUTION APPOINTING ASHLEY KORN TO THE LIBRARY ADVISORY BOARD

WHEREAS, there is currently one seat vacant for a high school student member of the Library Advisory Board due to the graduation of Bryce Keicher; and

WHEREAS, Ashley Korn has applied for the Library Advisory Board; and

WHEREAS, the applicant has been endorsed by the interview panel (Council liaison, Board chair and staff liaison) and by the Mayor; and

WHEREAS, Ashley Korn is extremely interested in representing the youth of Sherwood on the Library Board.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. Ashley Korn is appointed to the Library Advisory Board for a term beginning November 2013 and ending August 2014;

Section 2: This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 5th day of November, 2013

Bill Middleton, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

TO: Sherwood City Council

FROM: Kristen Switzer, Community Services Director

Through: Joseph Gall, ICMA-CM, City Manager

SUBJECT: **Resolution 2013-057 Appointing James A. Forsyth Jr. to the Parks and Recreation Advisory Board**

ISSUE:

Should the City Council appoint James A. Forsyth Jr. to the Parks and Recreation Advisory Board?

BACKGROUND:

The Parks and Recreation Advisory Board currently has two vacancies and has been advertising the open positions. In August two applicants were interviewed. One applicant (Doug Scott) also interviewed for SURPAC and decided to accept a position on that board. The second applicant, James Forsyth, is being recommended for appointment.

City Council Liaison Bill Butterfield and the Chair of the Parks and Recreation Advisory Board David Scheirman, with assistance of staff, are recommending James A. Forsyth Jr. for appointment. According to Chapter 2.16 of the Sherwood Municipal Code, members of the Parks and Recreation Advisory Board shall be appointed by the Mayor with consent of the City Council.

RECOMMENDATION:

Staff respectfully requests City Council approve Resolution 2013-057 appointing James A. Forsyth Jr. to the Parks and Recreation Advisory Board.



RESOLUTION 2013-057

APPOINTING JAMES A. FORSYTH JR. TO THE PARKS AND RECREATION ADVISORY BOARD

WHEREAS, the Parks and Recreation Advisory Board currently has a vacancy; and

WHEREAS, City Council Liaison, Bill Butterfield and David Scheirman, Chair of the Parks and Recreation Advisory Board, with assistance of staff, are recommending James A. Forsyth Jr. for appointment; and

WHEREAS, according to Chapter 2.16 of the Sherwood Municipal Code, members of the Parks and Recreation Advisory Board shall be appointed by the Mayor with consent of the City Council for a two year term.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The Mayor is authorized to appoint James A. Forsyth Jr. to a two year term, expiring November 2015.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 5th day of November 2013.

Bill Middleton, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

TO: Sherwood City Council

FROM: Michelle Miller, Senior Planner

Through: Julia Hajduk, Community Development Director and Joseph Gall, ICMA-CM, City Manager

SUBJECT: Resolution 2013-058 authorizing the City Manager to sign IGAs with ODOT to receive funds for planning, designing and constructing the Cedar Creek Trail

Issue:

Should the City Council authorize the City Manager to sign the Intergovernmental Agreements (IGA's) with the Oregon Department of Transportation (ODOT) to receive funds to plan, design, and construct the Cedar Creek Trail?

Background:

In 2012, the City of Sherwood received grant funding for the Cedar Creek Trail project through the FY2014-15 Regional Flexible Fund. The City was awarded a Regional Flexible Fund grant as part of the Metropolitan Transportation Improvement Program (MTIP) in order to plan, design, and construct portions of the Cedar Creek Trail. The MTIP schedules spending of federal transportation funds in coordination with significant State and local funds in the Portland metropolitan region. The Oregon Department of Transportation (ODOT) administers and oversees the allocation of funds to the local jurisdictions who receive the grant.

In order to facilitate the different stages of design of the Cedar Creek Trail, the project has been divided into two separate projects. The first segment, from SW Murdock to Highway 99W is able to begin preliminary engineering design and is further described in the IGA and supporting documents of attached Exhibit 1.

The second segment of the Cedar Creek Trail project extends from Highway 99W northward to the general edge of the City terminating on Roy Rogers Road. The final alignment for this second segment has not been resolved and requires more information, public outreach, and planning. The scope of this project is further described in the IGA and supporting documents of attached Exhibit 2.

Earlier this year, the City Council approved the decision-making structure for this project via Resolution 2013-10. It was agreed that the Parks and Recreation Advisory Board, serving as the Cedar Creek Trail Implementation Committee, would assist the Council as the primary advisory board for the project. The Parks and Recreation Advisory Board would be advised by the project management team comprised of staff and consultants, a technical advisory committee comprised of local agencies, cities and transportation advocates, and a local advisory committee comprised of interested citizens.

To receive the grant funds, the City must enter into an IGA with ODOT prior to any issuance of a Notice to Proceed (NTP), or being able to expend any resources or charge against the project funds.

Financials:

By entering into the IGA with ODOT, the City commits itself to completing the project and providing City staff and resources to meet the local cost match of \$585,091. This amounts to 10.27% of the total estimated project budget of \$5,697,092. The staff time and resources necessary to provide this match are already dedicated as part of capital funds that will be reflected in the FY13-14 and FY 14-15 budgets. Portions of the match are expected to be paid for by a combination of transportation funds and the urban renewal fund.

Recommendation:

Staff respectfully requests City Council adoption of Resolution 2013-058 authorizing the City Manager to execute two IGAs with ODOT to receive grant funds and proceed with planning, design and construction of the Cedar Creek Trail.



RESOLUTION 2013-058

AUTHORIZING INTERGOVERNMENTAL AGREEMENTS (IGA) WITH THE OREGON DEPARTMENT OF TRANSPORTATION (ODOT) TO ASSIST IN THE ALLOCATION OF FEDERAL GRANT FUNDS TO PLAN, DESIGN AND CONSTRUCT THE CEDAR CREEK TRAIL

WHEREAS, the City of Sherwood was awarded a federal Metropolitan Transportation Improvement Program (MTIP) Regional Flexible Fund grant for the planning, design, and construction of the Cedar Creek Trail; and

WHEREAS, the MTIP schedules spending of federal transportation funds in coordination with significant State and local funds in the Portland metro region; and

WHEREAS, ODOT provides the oversight and administration of federal regulations regarding project eligibility, air quality impacts, environment justice and public involvement through this grant; and

WHEREAS, by the authority granted in Oregon Revised Statute (ORS) 190.110, ODOT may enter into agreements with local governments for the performance of any or all functions and activities that are a party to the agreement, its officers, or agents have the authority to perform; and

WHEREAS, Highway 99W is a part of the State highway system under the jurisdiction and control of the Oregon Transportation Commission for which a portion of the Cedar Creek Trail project will cross; and

WHEREAS, the Cedar Creek Trail has been a goal for both the Sherwood City Council and the Sherwood Parks & Recreation Advisory Board; and

WHEREAS, the Regional Transportation Plan (RTP), the City's adopted Transportation System Plan, Parks Master Plan, Stella Olsen Park Master Plan, and Metro's Ice Age Tonquin Trail Master Plan (2013) all identify a trail system within the Cedar Creek corridor between Stella Olsen Park and the National Wildlife Refuge; and

WHEREAS, the Council authorized staff through Resolution 2010-18 to pursue funding opportunities to the greatest extent possible as a means of providing a multi-use trail between Old Town and Roy Rogers Road, ultimately connecting to the West Wayside Parking Lot at the Tualatin River National Wildlife Refuge, known as the Cedar Creek Trail; and

WHEREAS, the City has previously approved special funding efforts for the Cedar Creek Trail via Resolutions 2008-030, 2005-068, 1998-773, and 1998-728; and

WHEREAS, the City must enter into an IGA with ODOT prior to any release of funds for the initiation of the work being charged to the project; and

WHEREAS, through the signing of the IGA the City is committed to plan, design and construct the Cedar Creek Trail and is also committed to providing local staff and resources to meet the required local match of \$585,091, which is 10.27% of the total estimated project cost of \$5,697,092; and

WHEREAS, the Cedar Creek Trail project has been divided into two separate projects because the trail segments were at different stages of planning and design and therefore ODOT requires two separate IGA's which are attached as Exhibit 1 and 2;

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1: City Council authorizes the City Manager to enter into two separate intergovernmental agreements (IGAs), between the City of Sherwood, a municipal corporation, and ODOT, a political subdivision of the State of Oregon, relating to the use of MSTIP funds for the planning, design and construction of the Cedar Creek Trail. Draft copies of the IGAs are attached to this resolution as Exhibit 1 and 2. Final IGAs with no substantive changes will be forwarded to the City Manager for signature after review by the City Attorney's office.

Section 2: This Resolution shall be effective as of the date of its adoption by the City Council.

Duly passed by the City Council this 5th day of November 2013.

Bill Middleton, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

**LOCAL AGENCY AGREEMENT
CONGESTION MITIGATION AND AIR QUALITY PROGRAM
CEDAR CREEK/: OR99W – MURDOCK RD**

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 the CITY OF SHERWOOD, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. Oregon Route (OR) 99W is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. SW Murdock Road, a portion of SW Oregon Street, SW Meinecke Road and SW Langer Farms Parkway are part of the Sherwood city street system under the jurisdiction and control of Agency. A portion of SW Oregon Street is a part of the County road system and under the jurisdiction and control of Washington County.
2. By the authority granted in Oregon Revised Statute (ORS) [190.110](#), [366.572](#) and [366.576](#), State may enter into cooperative agreements with counties, cities, and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. State and Agency entered into Agreement No. 726 on May 28, 2002, and Amendment No. 1 on June 27, 2003, for the purpose of realigning and signalizing the intersection of OR 99W at SW Meinecke Road/Handley Street and various other access management improvements. For the purpose of this Agreement, all maintenance and power of the traffic signal located at OR 99W and SW Meinecke Road shall remain in effect as described in Agreement No. 726.

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. Under such authority, State and Agency agree to design, permit, and construct the Cedar Creek Trail from OR 99W southwest to SW Oregon Street and Murdock Road, hereinafter referred to as "Project." The Project will provide connections between neighborhoods and land-uses. The Project will construct 1.58 miles of multi-use path beginning with safety enhancements at the existing signalized at-grade crossing of OR 99W at SW Meinecke Road. The trail will then head east into the Cedar Creek Corridor and then south to Stella Olsen Park where it connects to the existing boardwalk/trail system that runs through Old Town Sherwood and

terminates at SW Langer Farms Parkway and the railroad tracks. The Project will also extend the existing 12-foot wide concrete path east along SW Oregon Street to SW Murdock Road. The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. This Agreement is conditioned upon Agency entering into a separate agreement with Washington County to address any use or improvements on Washington County facilities. The agreement with the County shall cover but is not limited to any work performed within County right of way, on-going maintenance responsibilities, power, etc. Said agreement between Agency and Washington County shall be fully executed before commencement of the first phase of Project work.
3. This Project shall be conducted as a part of the Congestion Mitigation and Air Quality (CMAQ) Program under Title 23, United States Code. The total Project cost is estimated at \$5,232,000, which is subject to change. The CMAQ funds are limited to \$4,694,674, with Agency providing the match and non-participating costs, including all costs in excess of the available federal funds. Agency shall be responsible for determining the amount of federal funds to be applied to each phase of the Project. Agency is not guaranteed the use of unspent funds for a particular phase of work. It is Agency's responsibility to notify State in advance of State obligating the funds for a subsequent phase if Agency wants to release funds on the current authorized phase(s) of work.
4. The federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA). Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency expense.
5. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is title 20.205, Highway Planning and Construction.
6. 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, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances except for Claims arising solely from the negligent or willful acts or omissions of State, be indemnified by the contractor and subcontractor from and against any and all Claims.

7. 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 anytime 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.
8. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.
9. This Agreement may be terminated by mutual written consent of the Parties.
10. 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 Agency fails to provide payment of its share of the cost of the Project.
 - d. 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.
 - e. 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 if State is prohibited from paying for such work from the planned funding source.

11. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
12. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
13. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
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. 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.
16. 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.
17. State's Project Manager for the Agreement is Michele Thom, Local Agency Liaison, 123 NW Flanders Street, Portland, OR (503) 731-8279, michele.r.thom@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.

18. Agency's Project Manager for this Agreement is Michelle Miller, Senior Planner, 22560 SW Pine Street, Sherwood OR 97140, 503-625-4242, millerm@sherwoodoregon.gov, 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.

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

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key #18026) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

Signature page to follow

Agency/State
Agreement No. 29238

CITY OF SHERWOOD, by and through its
officials

By _____
City Manager

Date _____

By _____
Agency Recorder

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Agency Counsel

Date _____

Agency Contact:

Michelle Miller
22560 SW Pine Street
Sherwood, OR 97140
(503) 625-4242
millerm@sherwoodoregon.gov

State Contact:

Michele Thom, Local Agency Liaison
123 NW Flanders Street
Portland, OR 97209
(503) 731-8279
michele.r.thom@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
CMAQ Program Coordinator

Date _____

By _____
Region 1 Manager

Date _____

By _____
District 2B Manager

Date _____

By _____
Project Delivery Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

EXHIBIT A – Project Location Map



Map 15: Tile 9 - Cedar Creek Corridor (Southern Portion)

Ice Age Tonquin Trail Master Plan
 Preferred Alignment
 Source: Metro Data Resource Center





Map 14: Tile 8 - Tonquin Road/Oregon Street to Downtown Sherwood

Ice Age Tonquin Trail Master Plan
Preferred Alignment
 Source: Metro Data Resource Center



- | | | | | |
|--|---|---|---|---|
| <ul style="list-style-type: none"> Existing Trail Proposed Bike Lanes/Gidewalks Proposed Boardwalk Proposed Shared Roadway Proposed Shared Use Path | <ul style="list-style-type: none"> Alignment Undetermined Potential Easement or Acquisition Needed Existing Neighborhood Connection Potential Future Connection Wetland Park or Natural Area River/Stream/Drainage Ditch | <ul style="list-style-type: none"> Proposed Grade-Separated Crossing Proposed At-Grade Crossing (Signalized) Proposed At-Grade Crossing (Unsignalized) Potential Wayfinding Sign Location | <ul style="list-style-type: none"> Art, Educational or Interpretive Opportunity Proposed Trailhead Existing Parking or Trailhead | <ul style="list-style-type: none"> Prospectus Segment Prospectus: Cedar Creek Trail Project 1 |
|--|---|---|---|---|

**ATTACHMENT NO. 1 to Agreement No. 29238
SPECIAL PROVISIONS**

1. Agency or its consultant shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, assist State with acquisition of necessary right of way and/or easements, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates.
2. Upon State's award of the construction contract, Agency, or its consultant, shall be responsible to perform all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract.
3. State may make available Region 1's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the consultant and make funds available to the State for payment of those services. All eligible work shall be a federally participating cost and included as part of the total cost of the Project.
4. The indemnification language in Attachment No. 2, Federal Standard Provisions, Paragraphs 46 and 47; and Paragraph 4 in regards to tort claims, shall be replaced with the following language:
 - a. 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.
 - b. With respect to a Third Party Claim for which 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 State had sole liability in the proceeding.

- c. 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.
 - d. 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.
5. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.
 6. In the event that illumination is included and upon completion of the Project, Agency shall, at its own expense, maintain and supply power for Project illumination.
 7. Maintenance and power responsibilities shall survive any termination of this Agreement.

ATTACHMENT NO. 2
FEDERAL STANDARD PROVISIONS
JOINT OBLIGATIONS
PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

PRELIMINARY & CONSTRUCTION ENGINEERING

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow [Title 23 Code of Federal Regulations \(CFR\) 172](#), [Title 49 CFR 18](#), ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in [Title 49, CFR, Part 26](#), which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in [Title 49, CFR, Part 26](#), have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with [Title 49, CFR, Part 26](#), to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of [Title 49, CFR, Part 26](#), in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of [ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270](#), incorporated herein by reference and made a part hereof; [Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide \(FAPG\)](#).

STATE OBLIGATIONS

PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The

program shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.
12. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. State will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.

PROJECT ACTIVITIES

13. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
14. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
15. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.
16. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
17. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

RIGHT OF WAY

18. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.
19. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
20. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
21. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
22. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
23. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

AGENCY OBLIGATIONS

FINANCE

24. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.
25. Agency's estimated share and advance deposit.
 - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has

written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.

- b) Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
 - c) Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
 - d) Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
26. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.
27. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
28. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
29. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which

the local agency participates. The cost of this audit can be partially prorated to the federal program.

30. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
31. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title [23 CFR](#) Parts [1.11](#), [140](#) and [710](#), Final billings shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) 2) last payment for right of way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
32. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition ([Title 49 CFR 18.42](#)).
33. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
 - a) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
 - b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
 - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
34. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

RAILROADS

35. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

UTILITIES

36. Agency shall follow State established Statutes, Policies and Procedures when impacts occur to privately or publicly-owned utilities. Only those utility relocations, which are eligible for federal-aid participation under, the FAPG, Title 23 CFR 645A, Subpart A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.
37. The State utility relocation policy, procedures and forms are available through the appropriate State's Region Utility Specialist or State Utility Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison.

STANDARDS

38. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "[State Highway Design Manual](#)" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "[Oregon Standard Specifications for Highway Construction](#)".
39. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "[Oregon Bicycle and Pedestrian Design Guide](#)", unless otherwise requested by Agency and approved by State.
40. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
41. All plans and specifications shall be developed in general conformance with the current "[Contract Plans Development Guide](#)" and the current "[Oregon Standard Specifications for Highway Construction](#)" and/or guidelines provided.

42. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

GRADE CHANGE LIABILITY

43. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
44. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
45. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by [ORS 373.050\(1\)](#) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

CONTRACTOR CLAIMS

46. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.
47. Notwithstanding the foregoing defense obligations under Paragraph 46, neither Agency nor any attorney engaged by Agency 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 anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency 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 any claims it may have against Agency if the State of Oregon elects to assume its own defense.

MAINTENANCE RESPONSIBILITIES

48. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

WORKERS' COMPENSATION COVERAGE

49. 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.

LOBBYING RESTRICTIONS

50. Agency certifies by signing the Agreement that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 36, 37, and 48 are not applicable to any local agency on state highway projects.

DRAFT: October 25, 2013

**INTERGOVERNMENTAL/PLANNING AGREEMENT
CEDAR CREEK TRAIL: ROY ROGERS RD – OR 99W**

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 the CITY OF SHERWOOD, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. Oregon Route (OR) 99W is a part of the State highway system under the jurisdiction and control of the Oregon Transportation Commission. SW Roy Rogers Road and SW Eddy Road are a part of the County road system under the jurisdiction and control of Washington County. Agency will coordinate with Washington County on use of the County's roadway.
2. By the authority granted in Oregon Revised Statute (ORS) [190.110](#), State agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
3. Agency desires to enter into this Agreement in order to develop a project for the Metropolitan Transportation Improvement Program (MTIP). The MTIP schedules spending of federal transportation funds in coordination with significant State and local funds in the Portland metro region. It demonstrates how these projects relate to federal regulations regarding project eligibility, air quality impacts, environmental justice and public involvement.
4. State, as the state agency responsible for pass-through Federal-Aid Congestion Mitigation and Air Quality (CMAQ) funds, is therefore a Party to this Agreement.
5. State and the Portland Urbanized Area Metropolitan Planning Organization (Metro), have entered into Intergovernmental Agreement No. 24862, ODOT/MPO/Transit Operator Agreement, and Intergovernmental Agreement No. 29435, State Fiscal Year 2014 Unified Planning Work Program (UPWP), wherein State and Metro cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. The project that is the subject of this Agreement is listed in the UPWP, as well as Metro's and State's respective roles and responsibilities. Metro is not a party to this Agreement due to the existence of Agreement No. 24862 and the UPWP, and any Metro responsibilities mentioned in this Agreement are based on its obligations in these two agreements.
6. By the authority granted in ORS [366.425](#), State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.

Key No. 18280

Resolution 2013-058, Exhibit 2
November 5, 2013, Page 1 of 30

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. State and Agency agree that Agency shall conduct a feasibility study to reinforce safety improvements and passage for bicycle and pedestrian crossing between neighborhoods and land-uses throughout the City of Sherwood, which are currently incomplete or obstructed by major arterial and collector road barriers, especially along OR 99W, SW Edy Road and SW Roy Rogers Road, hereinafter referred to as "Project," as described in Exhibit A (scope, schedule, budget summary and vicinity map) , attached hereto and by this reference made a part hereof.
2. This Agreement is conditioned upon Agency entering into a separate agreement with Washington County to address any use or improvements on Washington County facilities. The agreement with the County shall cover, but not be limited to, any work performed within County right-of-way, on-going maintenance responsibilities, power, etc. Said agreement shall be fully executed before commencement of the first phase (planning phase) of the Project work.
3. A personal services contractor, hereinafter referred to as "Consultant," shall be selected by Agency, pursuant to the process established by ORS 279C.125 and Oregon Administrative Rule (OAR) 137-048-0260, to perform the Project. It is the intent of the Parties that State will enter into a personal services contract directly with Consultant, and Agency will manage and direct the Consultant's work in accordance with this Agreement.
4. This Project shall be conducted as a part of the Congestion Mitigation and Air Quality (CMAQ) Program under Title 23, United States Code. The total Project cost is estimated at \$467,000, which is subject to change. The CMAQ funds are limited to \$419,039, with Agency providing the matching funds, which are estimated to be \$47,961. Agency shall also be responsible for all non-participating costs. Any unused funds shall be moved to the next phases of work for this Project.
5. The term of this Agreement shall begin on the date all required signatures are obtained and the Federal Highway Administration (FHWA) has given written notification to State of its approval of the use of federal funds on the Project. Upon approval by FHWA, State shall send a Notice to Proceed (NTP) to Agency indicating that FHWA approval has been received. This Agreement shall terminate on completion of the Project and final payment, or two (2) calendar years following the date of the NTP, whichever is sooner. This Agreement may be amended only upon mutual written consent of all Parties.
6. The federal funding for this Project is contingent upon approval by FHWA. Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency's expense.
7. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.

AGENCY OBLIGATIONS

1. Agency shall be responsible for the performance of its share of the work described in Exhibit A.
2. Agency has confirmed with Metro that sufficient funds from Metro's Federal Urban CMAQ allocation are available and authorized for expenditure to pay the costs of the Project. Agency certifies that sufficient funds are available and authorized to pay the required match to the Federal CMAQ allocation. Agency is responsible for the required match funds and any non-participating costs beyond the federal reimbursement.
3. Agency shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from the State, forward to State an advance deposit or irrevocable letter of credit for the amount of \$47,961, for Agency's estimated match requirement, as described above under Terms of Agreement, paragraph 4.
4. Metro's project manager for this Project is Ted Leybold, Principal Transportation Planner, 600 NE Grand Avenue, Portland, OR 97232, ted.leybold@oregonmetro.gov, (503) 797-1759.
5. Pursuant to the contract to be entered into between State and Consultant, upon receiving invoices and required supporting documentation from Consultant, Agency shall review the invoices and required supportive documentation regarding specific tasks and the progress on said tasks as shown in Exhibit A. Agency shall send its recommendation of approval or rejection directly to State's Project Manager for review and approval.
6. The invoices and required supportive documentation set forth under Agency Obligations, paragraph 5 shall be submitted for periods of not less than one (1) month duration, based on actual eligible expenses incurred. Invoices shall display one hundred (100) percent of total eligible expenses incurred during the period of the invoice, and identify any matching amounts if applicable. Invoices shall also display a categorical breakdown of costs, such as personnel costs (salary and benefits), other direct charges, and indirect charges that are appropriate for this Project. Documentation must be received and reviewed by Metro before payment will be made and must include copies of receipts for expenditures of system-generated accounting reports that document actual expenses incurred.
 - a. Eligible Project expenses are those deemed allowable by OMB Circular A-87.
 - b. In the event the invoice is not approved, State shall request corrective action be taken and accomplished prior to approval and payment of the invoice. The invoice shall be resubmitted with documentation supporting completion of the corrective action.
7. Agency shall keep accurate cost accounting records. The cost records and accounts pertaining to the work covered by this Agreement shall be retained by Agency for a period of six (6) years following final payment. Copies shall be made available upon request to State and State may request a copy of Agency's records pertaining to this Project at any

time. When the actual total cost of the Project has been computed, Agency shall furnish State with an itemized statement of final costs.

8. If Agency determines that another personal services contractor(s) besides Consultant is necessary to accomplish any work described in Exhibit A, then Agency and State shall follow a similar process as described in Terms of Agreement, paragraph 4, to select the contractor.
9. 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 279B.220, 279B.225, 279B.230, 279B.235 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.
10. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
11. 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 the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
12. 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.
13. Agency's Project Manager for this Project is Michelle Miller, Senior Planner, 22560 SW Pine Street, Sherwood OR 97140, (503) 625-4242, millerm@sherwoodoregon.gov, or assigned designee upon individual's absence. Agency shall notify State's Project Managers in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State shall be responsible for obtaining FHWA approval to obligate the CMAQ funds for this Project.
2. Upon approval by FHWA, State shall send a NTP to Agency and copy Metro.

3. State shall be responsible for the performance of its share of the work described in Exhibit A as a Project expense chargeable against the Project.
4. In consideration for the services performed, and upon receipt of monthly Agency reimbursement requests that were approved by Metro for services performed by Consultant, State shall review for approval and make payment to Consultant for eligible costs. Said payment shall be within forty-five (45) days of receipt by State of the Project invoices and shall not exceed a maximum amount of \$467,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed in accordance with the current rules of the State of Oregon Department of Administrative Services.
5. State shall, upon execution of the agreement, forward to Agency a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$47,961 for payment of Agency's estimated match requirement, as described above under Terms of Agreement, paragraph 5. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete Project.
6. Upon completion of the Project, State shall either send to Agency a bill for the amount which, when added to Agency's advance deposit, will equal 100 percent of the total state costs for Project or State will refund to Agency any portion of said advance deposit which is in excess of the total State costs for Project.
7. State has no monetary obligation under this Agreement other than in its role as a "pass-through Agency" to distribute CMAQ funds for the Project outlined in Exhibit A.
6. State will enter into a personal services contract directly with Consultant and State will ensure the contract outlines the Consultant's responsibilities with regards to the Agency so that Agency can perform its obligations under this Agreement, and it will include language that the Agency will manage and direct the Consultant's work in accordance with this Agreement.
7. State will ensure that the Consultant contract states that the Consultant will submit invoices and required supportive documentation regarding specific tasks and the progress on said tasks as shown in Exhibit A (i.e. monthly progress statement) for 100 percent of actual eligible costs incurred by Consultant on behalf of the Project directly to the Agency, Metro, and State. Invoices and required supportive documentation shall be presented for a period of not less than one (1) month duration, based on actual eligible expenses incurred. Invoices shall display one hundred (100) percent of total eligible expenses incurred during the period of the invoice, and identify any matching amounts if applicable. Invoices shall also display a categorical breakdown of costs, such as personnel costs (salary and benefits), other direct charges, and indirect charges that are appropriate for this Project. Eligible Project expenses are those deemed allowable by OMB Circular A-87.
8. In the event the invoice is not approved, State shall request corrective action be taken and accomplished prior to approval and payment of the invoice. The invoice shall be resubmitted with documentation supporting completion of the corrective action.

9. State's Project Manager for this Agreement is Michele Thom, 123 NW Flanders Street, Portland, OR 97209, (503) 731-8279, michele.r.thom@odot.state.or.us, or assigned designee upon individual's absence. State shall notify Agency's Project Manager 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 Agency fails to provide payment of its share of the cost of the Project.
 - d. 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.
 - e. 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. 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, including Consultant, complies with these requirements.
5. As federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency representative.
6. Both Parties shall require their 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 the other Party, 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, caused, or alleged to be caused, in whole or in part, by the acts or omissions of either Party's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the Agency and State, shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Agency or State, be indemnified by the contractor and subcontractor from and against any and all Claims.

7. Any such indemnification shall also provide that neither the 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 anytime 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.
8. 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.
9. With respect to a Third Party Claim for which 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 State had sole liability in the proceeding.

10. 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.
11. 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.
12. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
13. 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.
14. 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 their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key #18280) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

CITY OF SHERWOOD, by and through its official

By _____
City Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Agency Counsel

Date _____

STATE OF OREGON, by and through its Department of Transportation

By _____
Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____
CMAQ Program Coordinator

Date _____

By _____
District 2B Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

AGENCY Contact:

Michelle Miller, Senior Planner
City of Sherwood
22560 SW Pine Street
Sherwood, OR 97140
(503) 625-4242
millerm@sherwoodoregon.gov

STATE Contact:

Michele Thom, Local Agency Liaison
ODOT – Region 1
123 NW Flanders Street
Portland, OR 97209
(503) 731-8279
michele.r.thom@odot.state.or.us

EXHIBIT A STATEMENT OF WORK

Project 2: Cedar Creek Trail: Roy Rogers Road-Oregon 99W

General Considerations

Abbreviations:

PM: City Project Manager

PMT: Project Management Team, comprised of City staff, ODOT and no more than 3 consultant staff

PAC: Project Advisory Committee (Sherwood Parks Board)

LTAC: Local Trail Advisory Committee (Neighborhood Citizen Advisory Committee)

TAC: Technical Advisory Committee (regional and local jurisdictional staff/active transportation advocates)

PIP: Public Involvement Plan

Project Purpose

This is a local federal aid project to determine the final alignment and prepare the construction documents for the northern segment of the Cedar Creek Trail, SW Roy Rogers Road-Highway 99W. The project will require a detailed analysis of the environmental constraints within the Cedar Creek corridor to help inform the decision-making. The project will involve a public outreach component specific to the neighboring property owners within the corridor as well as providing general information about the alignment to the public through at least two open houses.

Expectations for Written and Graphic Deliverables

Consultant shall prepare project deliverables and circulate them to the Project Management Team (PMT) and committees (LTAC and TAC) members for review and comment. Consultant shall provide a draft of all written deliverables to the Project Manager (PM) for review at least two weeks prior to broader distribution. PM will review the deliverables and submit comments to Consultant within one week. Conflicting comments must be resolved by the PMT. Consultant shall incorporate PM comments into amended deliverables for broader distribution e.g. the public, or the Project Advisory Committee (PAC).

Electronic versions must be in Microsoft Word or an editable format agreed by the PM. Consultant shall prepare and provide maps and graphic deliverables in GIS and PDF format.

Consultant shall develop the trail alignment using GIS and CAD (.dwg). The detailed alignment map must include typical cross sections for the final alignment, any anticipated design exceptions and at locations where standards may need to be modified. Details should include what the trail will look like in various areas, (ie. next to road, mid-block crossings, stream crossings, and next to the vegetated corridor)

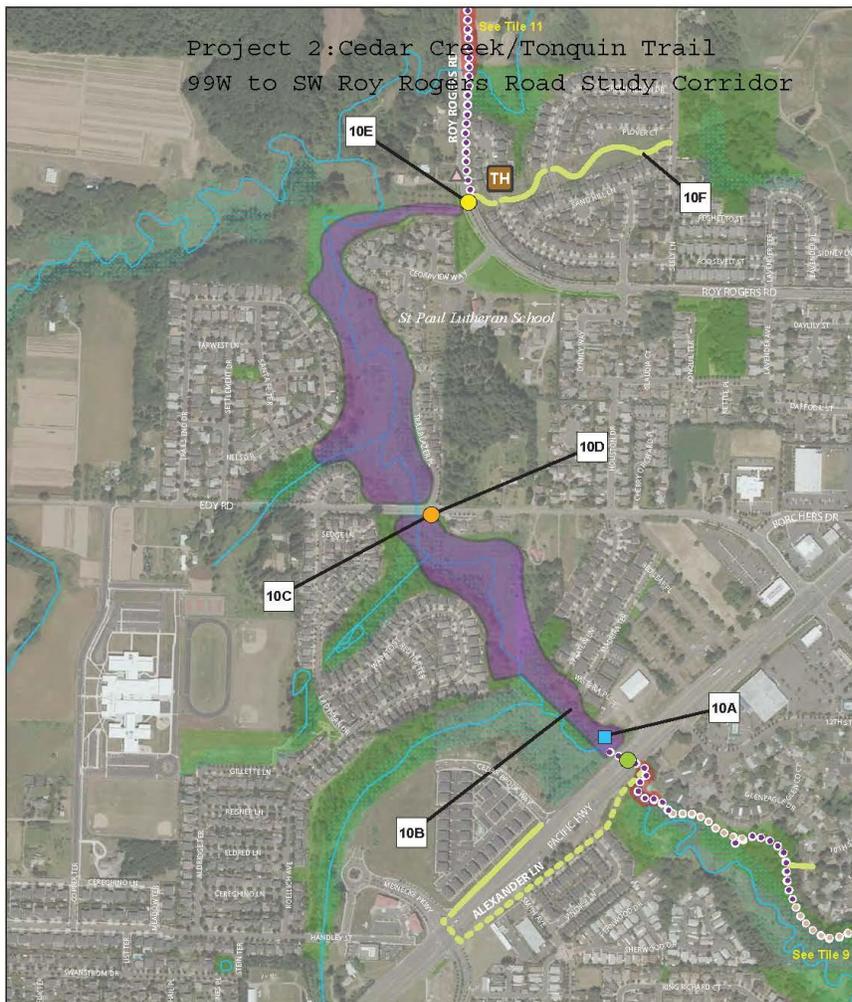
Expectations about Public Involvement

Public involvement must comply with Statewide Planning Goal 1 (Citizen Involvement), which calls for the "opportunity for citizens to be involved in all phases of the planning process." The PM and City shall be responsible for a bulk of the Citizen Involvement component.

The City has formed the Local Trail Advisory Committee; (LTAC). This committee is comprised of neighbors and stakeholders within Sherwood who are interested in the project. The LTAC will provide recommendations to the Parks Board(PAC) on the alignment, especially north of 99W, and address some trail design elements like safety, parking, and other trail amenities.

PMT will finalize an approve content for outreach materials, print, and mail or otherwise distribute as needed materials, including postcards, newsletters, newsfeeds, and power point presentations. Specific information is listed under the appropriate task. Other outreach will include meetings, LTAC meetings, and web updates.

Project Area



SCOPE OF WORK

SCOPE OF WORK OUTLINE

Task 0-Refine Scope/Contract (Pre-Contract Activity)

Task 1-Project Management

Task 2-Public Involvement

Task 3-Prepare Base Maps and Existing Conditions

Task 4-Review Collected Data and Provide Two Alignment Options

Task 5-Develop and Revise Selected Option

Task 6- Develop Construction Documents for Project based on Selected Option

SCHEDULE	
Key Deliverables and Project Milestones	Months from Notice to Proceed
1. Kick Off Project	1
2. Public Involvement Plan	1
3. Base Maps and Existing Conditions	3
4. Summary Report of Two Alignment Options	5
5. Report and Map of Selected Option	7
6. 30 % Construction Documents of Selected Option	9

Task 0-Refine Scope/Contract

Facilitate Project kick-off meeting, discuss desired project outcomes, and clarify scope of work. Review project time-line, milestones and deliverables. Discuss the roles of the agency and consultants. Establish lines of communication and decision-making and internal review processes. Review preliminary work and data collected by City of Sherwood, including maps, reports, contact information, and past plans and studies.

Task 0.0 Deliverables:

- a. Scoping Meeting with Appropriate Parties
- b. Written Meeting Summary outlining agreements/understandings reach submitted to the PM Team for Review and Approval
- c. Scope of Work and Contract signed and approved by ODOT upon written NTP

Task 1: Project Management

Consultant shall review the project process, technical review and interagency coordination necessary for successful development of the project. Consultant shall coordinate roles and responsibilities between PMT, agencies, consultant team and the various advisory committees established by the PMT. Review and revise as need existing project organizational structure as developed by City.

PM Responsibilities

- Selection of PMT consisting of key PM staff to help oversee project strategy, management and manage deliverable reviews
- Select a PAC consisting of Sherwood Parks Board members
- Select a LTAC consisting of local residents and property owners

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Agreement No. 29237

- Select a TAC consisting of regional and local agency staff and advocacy organization members
- Review project invoices and supporting documentation and approve all deliverables
- Schedule PMT, LTAC, TAC and PAC, arrange venues, provide notice, equipment and participate in all meetings

Consultant Tasks:

1.1 General Project Administration-consult with PM on schedule, supervise and coordinate project work with consultant staff; maintain project files and records; and monitor work tasks, budgets, and schedules

- Invoicing: prepare and submit monthly electronic invoices to PM and ODOT
- Biweekly Reports: Produce reports that document expenditures and task percent of completion
- Maintain project file for all documentation, written and electronic

Task 1.1 Deliverables

- Electronic monthly invoices by the 20th of each month to PM and Metro for duration of project
- Electronic bi-weekly budget progress reports to PM for duration of project
- Project files and records maintained and delivered to PM within thirty days of any written request
- Prepare detailed project schedule within two (2) weeks of Notice to Proceed (NTP) using MS Project software.

1.2 Project Meetings- conduct and or participate in all project meetings as listed below. In general, consultant shall coordinate with PM to schedule, provide agendas, review goals, produce materials, summary notes, and facilitation services for up to 10 PMT meetings, 4 PAC, LTAC, and TAC meetings. PM is responsible for logistics. The Kick-Off meeting is the first meeting. One start up meeting with the committees will be conducted after the Kick-Off meeting. The remaining meetings will coincide with the key project deliverables.

1.2.1 Project Kick -Off Meeting: Key purpose includes an introduction to the project, goals and objectives, discussion of the schedule, scope, tasks and deliverables, identify contacts and line of communication, and internal review process.

Task 1.2.1 Deliverables

- Plan Kick-off meeting within one month from NTP
- Meeting Agendas-within 5 days of meeting
- Meeting Records-within 5 days after meeting
- Meeting guidelines

1.2.2 Project Management Team (PMT) Meetings- consultant PM shall chair monthly meetings. The Consultant PM and at least one other consultant team member shall attend.

Task 1.2.2 Deliverables

- Meeting Agendas-within 5 days of meeting
- Meeting Records- within 5 days after meeting

1.2.3 Project Advisory Committee Meetings-PM shall attend the PAC meetings and prepare all necessary materials.

Task 1.2.3 Deliverables

- Meeting Agendas-within 5 days of meeting
- Meeting Records- within 5 days after meeting

1.2.4 LTAC and TAC Committee Meetings-PM shall attend the LTAC and TAC meetings and prepare all necessary materials.

Task 1.2.4 Deliverables

- Meeting Agendas-within 5 days of meeting
- Meeting Records- within 5 days after meeting

Task 2.0 Public Involvement

Consultant shall review City public involvement plan to engage the local community, committees and stakeholders to help advance the project and provide information at critical milestones throughout the project.

PM Responsibilities

- Finalize and approve content for outreach materials, web site, print materials, and mail or otherwise distribute (as needed) materials, including postcards, newsletters, newsfeeds, power points, and web-based public surveys (Task 2.1).
- Create and maintain a database and mailing list of stakeholder contact information that includes direct stakeholders, and key property owners and tenants adjacent to the Trail Corridor
- Provide coordination between the LTAC, TAC and PAC
- Provide and maintain project web site
- Provide consultant with Draft Public Involvement Plan

Consultant Tasks:

2.1 Public Involvement Plan (PIP) Consultant shall finalize one (1) final public involvement plan that includes strategies and desired outcomes for engaging key stakeholders and the general public in the project. The PIP is used to guide all aspects of public and stakeholder involvement, roles and responsibilities, planned outreach events and deliverables, and outreach approaches and materials. The PIP must be reviewed and approved by PM and must include:

- Strategies and processes for measuring the success of outreach activities.
- Initial recommendations for the type, frequency, location, format, and targeted audiences for outreach events (see Task 2.3).
- Recommendations for media engagement strategies, including identification of relevant social media, newspaper, and other outlets, and deadlines for submission to same, as well as

recommendations for appropriate outreach display materials, including large format informational displays referred to under Task 2.2.

- Provide a process for amending the PIP, particularly relating to the type, frequency, locations and audiences for outreach events, subject to the initial Existing Conditions findings, stakeholder interview outcomes, and land ownership findings.

Task 2.1 Deliverables

- Final PIP (electronic format) incorporating all review comments within ten (10) days of receipt of review comments.

2.2 Outreach Materials and Media. Consultant shall prepare a range of public involvement materials as listed below, primarily for use at events concurrent with or immediately following three (3) project milestones: upon conclusion of the Existing Conditions task, upon conclusion of the two alignment options, and development of the final trail alignment. These materials may be amended at least once, at the conclusion of the draft Plan sub-task and, if needed, at the second milestone described above. Materials and media may include, but are not limited to:

- Draft content for one (1) project informational postcard, one (1) newsletter article, one (1) newsfeed release, one (1) power point presentation, and one (1) public web-based survey.
- Project website content
- One (1) set of large format informational displays, as defined by the PIP.

Task 2.2 Deliverables

- Contribute web site content. Actual web site will be provided by PM
- Draft content for public outreach materials, including one (1) set of large format informational displays as defined by the accepted PIP.
- One (1) set of up to three (3) large format Project maps for display at outreach events.

2.3 Outreach Events. Events shall be held at the three milestones: Event #1 (after existing conditions) Event #2 (after Two Options Developed) will be held as a stand-alone public open house. Event #3 (after draft plan) will be held as stand-alone event or in conjunction with a community event. Consultant staff members shall attend open house Event #2. Final number of public event dates and locations will be jointly determined by consultant and PM. Note: Consultant is not responsible for any outreach event logistical expenses or costs such as public notices, equipment rental, venue rental, or refreshments.

Subject to the accepted PIP, outreach events must be held in conjunction with the following Project milestones:

- Conclusion of Existing Conditions.
- Conclusion of Two Alignment Options.
- Completion of the Final Alignment Approval.

Subject to the accepted PIP, outreach events associated with Milestone 2 are approximately two (2) hours in length and consist of presentations on Project outcomes and findings and a facilitated Q&A

session, followed by participant interaction in an “open house” setting. At least one (1) but no more than two (2) senior or specialist public involvement Consultant team members shall participate in open house outreach events. PM and collaborative agencies will present and participate in all outreach events.

Task 2.3 Deliverables

- Outreach events, as identified above and in the approved PIP. Note: content, format, number and timing of outreach events may vary based on the accepted final PIP.

Task 3: Land Surveying

Consultant shall provide land surveying services necessary to prepare a base map and digital terrain model (DTM). The base map and DTM will be used to identify up to two Design Option Alternatives.

Control Network – The horizontal datum shall be based on the Oregon State Plane Coordinate System (NAD 83/98). The vertical control shall be NAVD 88. Consultant shall establish Global Positioning System (GPS) control for the horizontal position of up to five (5) control points and run levels over all control points to provide for the topographic survey. All coordinates will be provided in International Feet (SI) and elevations will be provided in U.S. Feet.

PM Responsibilities

- City to provide access to City owned property

Consultant Task

3.1 Topographic Survey Base Map – Consultant shall provide topographic information on all general features within 200-foot wide corridor of up to two proposed trail alternative alignments. The topographical information will be used to prepare a Project base map for developing the alternative alignments. The base map shall include land ownership, topography, utility easements and utilities, existing trail, sidewalk and street locations. The base map will also be used to identify environmental and permitting requirements within the Project corridor. This is expected to include mapping of existing wetlands, floodplain, dominant vegetation, and related boundaries.

The text and blocks in the base map shall be scaled for plotting at a scale of 1" = 50'. The base map shall include:

- Calculations to locate the existing lot lines and easements for up to five parcels the trail crosses.
- Locations of structures, man-made and natural features; such as fence lines, curbs, edge of pavements, signs.
- Location of significant trees and type (6" in diameter or greater).
- Locations of water, gas mains and other utilities in the vicinity of the property.
- Location, size, depth, and direction of flow of sanitary sewers, combination sewers, storm drains and culverts serving or on property.
- Location of catch basins and manholes and inverts of pipe at each.
- Visible utility lines and facilities showing inverts and rim elevation, as available.
- Existing ground shots, including any grade breaks, as required to define the existing ground surface.

- Delineated wetlands.

Consultant shall use surveyed elevations to develop a Digital Terrain Model (DTM) for contour generation and design use, in Microstation and Inroads XM.

Consultant shall request that existing utilities in the Project corridor be marked through the Oregon Utility Notification Center's One-Call System. Utility record maps shall also be requested. Consultant shall survey marks and accessible utility structures, then map the utilities from the field information and record information. This information shall be used to coordinate this Project with utility companies under Task 3.3.

Task 3.1 Deliverables

- Topographic survey and base mapping

Assumptions:

Base mapping will be at a scale as requested with an associated terrain model sufficient to define contours at 1.0 foot interval contours to a typical accuracy of plus or minus one-half contour interval. No potholing of underground utilities will be performed.

Deliverables and Schedule:

Title reports within three weeks of NTP.

Easement memorandum to be submitted with the title reports.

Task 4. Data Collection and Analysis of Constraints and Opportunities

Consultant shall collect relevant data, analyze the data and prepare memoranda that summarize the constraints and opportunities related to each activity. The related activities for data collection and analysis are identified in each of the following subtasks.

Consultant Task

4.1 Hydraulic Analysis – Consultant shall provide a reconnaissance level hydraulic investigation for the Project. The purpose of the investigation is to provide a concise understanding of: the flooding conditions within the project area; the regulatory requirements associated with development within the floodplain; the need for bank/bed stabilization; and the need for stormwater detention/treatment.

Consultant shall conduct a review of available information necessary for conducting the work. This information should include aerial photos, flood photos, topography maps, hydrologic models, hydraulic models, FEMA flood insurance studies, and local floodplain stormwater ordinances. The contractor shall review available information related to flooding conditions in the vicinity of the project site.

Consultant shall conduct a site inspection/investigation. Observations shall be recorded for the following:

- Lateral channel stability- note any signs of stream migration that could affect stability for hydraulic structures (bridges or culverts)

- Degradation (headcutting) or aggradation (deposits) in the channel. Document conditions with color photographs.
- Manning's "n" value for the main channel and overbank areas. Document with color photographs.
- Determine size of existing riprap; note any riprap failure.
- Determine bed material size by visual inspection as required for values for variables in scour prediction.
- Note evidence of scour.
- Hydraulic controls from channel constrictions, dams, etc.
- Apparent or observed high water marks.
- Evidence of debris.
- Conversations with local residents, and/or City/County/CWS about flooding.

Observation of existing stream and floodplain crossings within the developed portions of the trail located north of the project site will be made to help understand the type and magnitude of impacts that may occur as a result of the proposed project.

Task 4.1 Deliverables

- Preliminary report documenting the methods, data, assumptions, and results of the reconnaissance level hydraulic investigation effort will be prepared. Produce and deliver to the Contract Administrator three (3) hardcopies and one electronic copy of the Draft Report within one month after the alternative alignments have been developed.
- Three (3) hardcopies and one electronic copy of the Final Report shall be delivered within five business days after review comments have been received on the draft report.

4.2 Wetland Reconnaissance and Environmental Compliance Assessment – Consultant shall review published references and perform a field inspection in order to identify the approximate location and extent of wetlands, water features, and ordinary high water marks of all potentially regulated wetlands and water features within the project area. Based on the preliminary mapping of these wetlands and waters, consultant will identify the likely extent of "Vegetated Corridors" as defined and regulated by Clean Water Services (CWS) and "Impact Areas" as defined and regulated by the City of Hillsboro Significant Natural Resources Overlay.

Consultant shall provide recommendations for avoiding and minimizing impacts to wetlands and vegetated corridors and estimate unavoidable project impacts to these resources based on the preferred alignment. For unavoidable impacts, Consultant shall identify permitting requirements and mitigation strategies in light of current local, state, and federal regulations. Consultant shall first consider on-site mitigation. If opportunities for on-site mitigation appear marginal, Consultant shall identify the need to consider off-site mitigation and the approximate credit needed to offset project impacts. This task excludes the identification or assessment of off-site mitigation sites, and mitigation design.

Task 4.2 Deliverables

- Wetland Reconnaissance Memoranda
- Environmental Compliance Assessment Memoranda

4.3. Utility Coordination – Identify all utilities and utility easements in the project limits, their locations and issues related to trail alignment and construction. Contact public utilities to request as-built drawings of their facility. Determine any constraints or impacts of the project on utilities, and any adjustments, mitigation or guidelines for compliance. Identify preliminary issues and costs associated with utility easements.

Task 4.3 Deliverable:

- Preliminary utility memoranda

4.4 Historic and Archaeological Investigations – Identify archaeological, cultural, or historical resources that may be located in the study area. Funding will be with federal Congestion Mitigation Air Quality (CMAQ) funds provided under the Metropolitan Transportation Improvement Program (MTIP). A reconnaissance-level cultural resources study will be done to determine the extent of additional fieldwork and research that may be needed to meet the federal standards under Section 106 of the National Historic Preservation Act. The proposed study will provide recommendations for additional work needed to meet state laws protecting significant archaeological sites (ORS 358.910) and significant buildings and structures that are publicly owned (ORS 358.653). The work will be directly supervised or performed by Consultant's staff meeting the Secretary of Interior's Professional Qualifications Standards in Archaeology and Historic Preservation. Due to the federal funding, the Agency will review the technical reports.

Archaeological Reconnaissance-Level Study – A literature review and records search will verify information regarding previous sites that have been identified and inventories that may have been conducted within the project area. This task will include gathering information at the State Historic Preservation Office (SHPO), reviewing reports for studies done nearby, and inspecting historic-period maps and documents such as General Land Office maps of the area.

A reconnaissance-level field inspection of the project Area of Potential Effect (APE) will be conducted to determine the level of formal survey work needed to meet federal and state requirements for the protection of significant archaeological sites. The creek raises the possibility for the presence of prehistoric cultural resources along the stream banks and in adjacent areas. A summary of the results of the records search and field inspection will be prepared in the form of a technical report that will provide recommendations for tasks or studies needed to meet federal and state compliance requirements for the protection of significant archaeological resources.

Historic Resource Reconnaissance-Level Assessment – Reconnaissance-level research of the proposed project area will be conducted to determine if previously recorded historic resources are present within the area of potential effect. A field inspection of the project area will be conducted to determine if any historic resources are within the project APE that are over 45 years in age that will need to be documented and evaluated. Consultant shall provide a preliminary evaluation of up to two historic resources.

The results of the field visit and a review of existing historical documents, historic maps and photographs, tax assessor's files, and local library and museum sources will be prepared in the form of a technical report with a summary of the results of the research and recommendations for any formal documentation and assessment of historic resources identified within the APE. The summary report will identify any additional steps needed to meet federal and state compliance requirements for the protection of significant historic resources.

Task 4.4 Deliverables:

- Summary report of historic resource reconnaissance level assessment.

4.5 Level 1 Hazardous Material Assessment – Consultant understands that a Design Options Analysis will be completed to select an alignment of the trail. The assessment is intended to identify potential sources of contamination that could impact the Project, and assist with the recognition of hazardous materials, if they exist, that could significantly affect alignment options for the trail. Based on this information, Consultant shall complete the following subtasks:

Site Visit (Reconnaissance) and Historic Research – A qualified environmental professional will conduct a reconnaissance of the Project Corridor to observe the corridor and any structures located on the corridor to the extent not obstructed by bodies of water, adjacent buildings, or other obstacles. The periphery of the corridor, and all structures on the corridor, will be observed on site and from adjacent public property.

The Project Corridor will be inspected for obvious visual signs of contamination or other environmental problems. Adjacent parcels will be viewed and existing uses will be reviewed for potential environmental impacts. Color photographs will be used to document the condition of the Project Corridor at the time of the inspection. Color copies of selected photographs will be included in the report.

Consultant shall attempt to identify the obvious uses of the Project Corridor from the present, to at least 1940. Consultant shall review one or more of the following standard historical sources, when the records are reasonably ascertainable: aerial photographs, fire insurance maps, property tax files, recorded land title records, United States Geologic Survey (USGS) topographic maps, city directories, building department records, zoning/land use records, or other historical sources.

Consultant shall review reasonable ascertainable recorded land title records and lien records filed under federal, state, local, tribal law to identify environmental liens or activity use limitations (AULs) imposed by judicial authorities.

Records Research and Review - Regulatory searches shall be conducted for the Project Corridor, which will include a review of publicly available environmental records obtained from the EPA and Oregon Department of Environment Quality (ODEQ). The following federal, state, and tribal lists will be reviewed: National Priorities List (NPL), Comprehensive Environmental Recovery, Compensation, and Liability Information System (CERCLIS), Resource Conservation and Recovery Act (RCRA) Transport, Storage, and Disposal (TSD), RCRA generators, Environmental Response Notification

System (ERNS), Underground Storage Tank (UST), leaking UST, Hazardous Materials (HAZMAT), and landfill sites. Listed properties within the minimum search distances specified by E 1527-05 will be identified. Consultant shall review the records and make conclusions based on the data.

In addition, Consultant shall contact the county assessor, environmental health, fire, building, and planning departments for pertinent environmental information pertaining to the Project Corridor. If necessary, Consultant shall review available files at the ODEQ office in Portland for additional records pertaining to the Project Corridor and surrounding properties.

Consultant shall obtain current USGS topographic maps and current aerial photographs (if available) of the Project Corridor. Consultant shall also review published information regarding soils, geology, and hydrogeology of the Project Corridor and region.

Data Analysis and Report – Consultant shall prepare a Level I HMCA report for the Project Corridor that summarizes the findings of the investigations. The report shall include all supporting documentation used to develop conclusions, including photographic documentation. Recommendations will be provided for further action, if deemed necessary by the data. The report will be signed by a professional qualified according to AASHTO guidelines and will be stamped by an Oregon Registered Geologist.

Task 4.5 Deliverable

- Level I MHCA Report.

4.6. Threatened and Endangered Species Act Documentation – Conduct preliminary investigation of any federally listed or proposed species in the project area. Consultant will review USFWS and NMFS web sites and will submit a site-specific database search from Oregon Natural Heritage Information Center (ORNHIC). Contact ODFW and, if warranted, contact USFWS and NMFS under Section 7 of the Endangered Species Act. Identify potential for a no-effect memo or biological assessment for ESA species.

Task 4.6 Deliverable

- Preliminary report regarding potential occurrence of and impacts to federally listed or proposed threatened and endangered species. Report will summarize whether the project will require a “no-effects” document or a biological assessment.

4.7 Design Two Alignment Options-Consultant shall explore potential trail alignments and develop up to two alignments utilizing information and data collected above. The alignment options will minimize impacts to adjacent residential neighborhoods, sensitive areas, trees and utilities to the greatest extent practicable.

Task 4.7. Deliverable

- Base map of up to two alignment alternatives
- Vertical profiles for up to two alignment alternatives

4.7.1 Consultant shall prepare a Design Options Alternative memorandum that identifies the design criteria and design features including but not limited to, structures (boardwalks, bridge crossings, and retaining walls), bridge foundations, and trail characteristics (curvature, maximum and minimum vertical gradients, and typical section). The memo shall summarize issues and impacts of each alternative, including the following:

- Connections with existing trails and access points
- Environmental impacts
- Ease of implementation
- Aesthetics and trail user experience
- Compatibility with existing plans, adjoining land uses
- Public support
- Cost and funding considerations

Task 4.7.1 Deliverable

- Draft design options alternative memorandum
- Cost Estimate – Summarize the preliminary construction cost estimate of each alignment alternative.

Task 5: Final Trail Alignment

Consultant shall develop the final alignment based on feedback received from the public outreach, LTAC, TAC and PAC. The preferred alignment and various aspects of the trail features shall be presented at the second public meeting under Task 4.7.

Consultant Tasks:

5.1. Alignment Refinement – Design refinements shall be made to the trail geometry as necessary. Representative design elements for various aspects of the trail features shall be developed in collaboration with the City and detailed cost estimates prepared of these features.

Task 5.1 Deliverable-

- Map of the Final Trail Alignment

5.2 Refinement Cost Estimate – Refinement of the cost estimate prepared under Task 4.7 shall be completed by the Consultant on the selected option.

Task 5.2 Deliverable

- Final Cost Estimate based on the selected option

5.3. Preliminary Maintenance Plan-Develop an annual short and long-term maintenance plan on selected trail alignment.

Task 5.3 Deliverable

- Preliminary Maintenance Plan

Task 6: 30 % Construction Documents of Selected Option.

Consultant shall prepare a Project Prospectus following the prospectus format used by the Agency. The three-part prospectus includes the following:

- Part 1: Project request with cost estimate
- Part 2: Project Details
- Part 3: Project Environmental Classification, including region environmental checklists

Task 6.1 Prepare 30 % Construction Documents- Consultant shall use the information gathered under Task 3 and consultations as required with regulatory agencies to ensure that issues specific to the Project are understood and noted in the prospectus.

Upon completion of a draft prospectus, Consultant shall provide a copy to the City and Agency for review and comment. Upon receipt of written comments, Consultant shall prepare a final prospectus for the submittal to the Agency and City. Consultant shall submit the final prospectus in electronic form using Microsoft Office software.

Task 6.1 Deliverable

- Standard three-part ODOT prospectus in draft and final forms.
- Final prospectus

For purposes of Exhibits B and C, references to Department shall mean State, references to Contractor shall mean Agency, and references to Contract shall mean Agreement.

EXHIBIT B (Local Agency or State Agency)

CONTRACTOR CERTIFICATION

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

DEPARTMENT OFFICIAL CERTIFICATION

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

Exhibit C
Federal Provisions
Oregon Department of Transportation

CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it and its principals:

AGENCY/STATE
Agreement No. 29237

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-2710) to which this proposal is being submitted

for assistance in obtaining a copy of those regulations.

6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction

knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered

transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a

prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without

liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

During the performance of this Contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of

subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.

2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
 5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
 6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor

may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

DBE POLICY STATEMENT

DBE Policy. It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

Required Statement For USDOT Financial Assistance Agreement. If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

DBE Obligations. The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the Contractor to carry out these

requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Department deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Contract.

Records and Reports. Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

DBE Definition. Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL 0 %

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING DEPARTMENT'S DBE PROGRAM REQUIREMENT CONTACT OFFICE OF CIVIL RIGHTS AT (503)986-4354.

TO: Sherwood City Council

FROM: Michelle Miller, Senior Planner

Through: Julia Hajduk, Community Development Director and Joseph Gall, ICMA-CM, City Manager

SUBJECT: **Resolution 2013-059 authorizing the City Manager to sign an IGA with Washington County to secure approval of the design and construction of the Cedar Creek Trail within the County right-of-way**

Issue:

Should the City Council authorize the City Manager to sign an Intergovernmental Agreement (IGA) with Washington County to secure approval to design and construct portions of the Cedar Creek Trail within the County right-of-way?

Background:

In 2012, the City received grant funding for the Cedar Creek Trail project through the FY 2014-15 Regional Flexible Fund. The City was awarded a Regional Flexible Fund grant as part of Metropolitan Transportation Improvement Program (MTIP) in order to plan, design and construct portions of the Cedar Creek Trail. The MTIP schedules spending of federal transportation funds in coordination with significant State and local funds in the Portland metro region. The Oregon Department of Transportation (ODOT) administers and oversees the allocation of funds to the local jurisdictions who receive the grant.

The alignment of the Cedar Creek Trail will include mid-block crossings at several Washington County roadways including SW Oregon Street, SW Edy Road and SW Roy Rogers Road. Washington County staff will need to review and approve of the proposed design, location, and ultimately construction of the mid-block crossings.

ODOT as part of their administration of the project requires the City to enter into an IGA with Washington County in order to agree to secure the County's approval to occupy the County right-of-way, and to construct any portion of the project and related improvements within the right-of-way.

Financials:

By entering into the IGA with ODOT, the City commits itself to completing the project. The total estimated project budget is \$5,697,092. This IGA is limited to the cost of coordinating the design and ultimately obtaining the permits from the County for constructing trail improvements within their right-of-way. This cost is considered in the cost of construction as part of the project budget.

Recommendation:

Staff respectfully requests City Council adoption of Resolution 2013-059 authorizing the City Manager to execute an IGA with Washington County to proceed with planning, designing and construction of the Cedar Creek Trail.



RESOLUTION 2013-059

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH WASHINGTON COUNTY TO SECURE APPROVAL OF THE MID-BLOCK CROSSINGS FOR THE CEDAR CREEK TRAIL

WHEREAS, the City of Sherwood was awarded a federal Metropolitan Transportation Improvement Program (MTIP) Regional Flexible Fund grant for the planning, design, and construction of the Cedar Creek Trail; and

WHEREAS, the MTIP schedules spending of federal transportation funds in coordination with significant State and local funds in the Portland metro region; and

WHEREAS, ODOT provides the oversight and administration of federal regulations regarding project eligibility, air quality impacts, environment justice and public involvement through this grant; and

WHEREAS, by the authority granted in Oregon Revised Statute (ORS) 190.110, ODOT may enter into agreements with local governments for the performance of any or all functions and activities that are a party to the agreement, its officers, or agents have the authority to perform; and

WHEREAS, it is understood that the alignment of the Cedar Creek Trail will require at grade crossings on Washington County roadways; and

WHEREAS, ODOT as part of their administration of the project requires the City to enter into a separate IGA with Washington County in order to secure the County’s approval to temporarily occupy the County right-of-way, design, and construct any portion of the project as it relates to the mid-block crossing to Washington County’s specifications.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1: City Council authorizes the City Manager to enter into an Intergovernmental Agreement (IGA), between the City of Sherwood and Washington County, relating to the use of County right-of-way for the design and construction of the Cedar Creek Trail. A draft copy of the IGA is attached to this resolution as Exhibit A. Upon final review and approval of the IGA by the City Attorney, a final IGA will be forwarded to the City Manager for signature.

Section 2: This Resolution shall be effective as of the date of its adoption by the City Council.

Duly passed by the City Council this 5th day of November 2013.

Bill Middleton, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
Washington County and the City of Sherwood**
**FOR CONSTRUCTING THE ICE AGE TONQUIN TRAIL/
CEDAR CREEK TRAIL**

THIS INTERGOVERNMENTAL AGREEMENT is entered into between Washington County, a political subdivision of the State of Oregon, hereinafter referred to as "COUNTY"; and the City of Sherwood, a municipal corporation, hereinafter referred to as "CITY."

RECITALS

1. CITY desires to construct a segment of the Ice Age Tonquin Trail within the City's corporate limits, hereinafter referred to as the "PROJECT".
2. CITY has identified a preliminary alignment for the PROJECT that intersects and crosses SW Roy Rogers Road, SW Edy Road, and SW Oregon Street.
3. SW Roy Rogers Road, SW Edy Road and SW Oregon Street are COUNTY roads subject to COUNTY's jurisdiction.
4. The preliminary alignment projects the trail crossing the COUNTY roads mid-block, rather than at established intersections, hereinafter referred to as the "Mid-Block Crossings."
5. COUNTY has an established policy regarding the location and construction of Mid-Block Crossings on COUNTY roadways.
6. CITY is required to secure COUNTY approval to occupy the COUNTY right of way and to construct PROJECT-related improvements within the right of way.
7. ORS 190.010 authorizes CITY and COUNTY to enter into an agreement for the performance of any or all functions and activities either party has the authority to perform.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth below, the parties hereto agree as follows:

1. COUNTY OBLIGATIONS

- 1.1 COUNTY shall assign a project manager responsible to coordinate with the CITY during the design and construction administration phases of the PROJECT.
- 1.2 COUNTY shall review and provide comments on the Mid-Block Crossing application(s) submitted by the CITY under Paragraph 2.4 below within fifteen (15) working days of receiving the application(s).
- 1.3 COUNTY shall review and provide comments on the 50%, 75% and 100% plans for the PROJECT within fifteen (15) working days of receipt of plans from CITY.
- 1.4 COUNTY shall provide an estimate of the deposit for the Mid-Block Crossing application(s) including construction plan review and construction administration costs.

2. CITY OBLIGATIONS

- 2.1 CITY shall assign a project manager to coordinate with COUNTY during the design and construction administration phases of the PROJECT, and to oversee all design, bidding, and construction administration activities for PROJECT.
- 2.2 CITY is responsible for the following PROJECT tasks:
 - Project Management
 - Planning and Public Involvement
 - Mid-Block Crossing application(s)
 - Preliminary Design
 - Land Use Approval and Permitting
 - Environmental Permits
 - Right-of-Way Acquisition
- 2.3 CITY is responsible for all costs for the PROJECT, including COUNTY costs related to review of the Mid-Block Crossing application(s), construction plan review, and construction administration costs.
- 2.4 CITY shall deposit funds with the COUNTY to cover COUNTY expenses associated with review of the Mid-Block Crossing application(s) and construction plans prior to submitting the Mid-Block Crossing application(s).
- 2.4 CITY shall provide COUNTY with at least fifteen (15) working days to review the 50%, 75% and 100% plans.

- 2.5 CITY shall require all contractors to include "Washington County, its elected and appointed officials, officers, agents, employees and volunteers" as additional insureds on insurance coverage required for construction work performed in completing the PROJECT.
- 2.6 CITY shall require all contractors to provide worker's compensation coverage pursuant to ORS for all subject workers performing work in connection with this Agreement.

3. FINANCIAL OBLIGATIONS

- 3.1 COUNTY and CITY will each bear the cost of performing their respective obligations under this AGREEMENT.

4. GENERAL PROVISIONS

4.1 LAWS OF OREGON

The parties shall comply with all applicable laws and regulations regarding the budgeting and expenditure of public funds related to the PROJECT. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon. All relevant provisions required by ORS Chapter 279A and 279C to be included in public contracts are incorporated and made a part of this Agreement as if fully set forth herein.

4.2 DEFAULT

Time is of the essence in the performance of the Agreement. Either party shall be deemed to be in default if it fails to comply with any provisions of this Agreement. The non-defaulting party shall provide the other party with written notice of default and allow thirty (30) days within which to cure the defect.

4.3 INDEMNIFICATION

This Agreement is for the benefit of the parties only. Each party agrees to indemnify and hold harmless the other party, and its officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or arising out of services performed, the omissions of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees and agents. To the extent applicable, the above indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). In addition, each party shall be solely

responsible for any contract claims, delay damages or similar items arising from or caused by the action or inaction of the party under this agreement.

4.4 MODIFICATION OF AGREEMENT

No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by both parties.

4.5 DISPUTE RESOLUTION

The parties shall attempt to informally resolve any dispute concerning any party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A neutral third party may be used if the parties agree to facilitate these negotiations. In the event of an impasse in the resolution of any dispute, the issue shall be submitted to the governing bodies of both parties for a recommendation or resolution.

4.6 REMEDIES

Subject to the provisions in paragraph 4.5, any party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The parties, by signature of their authorized representatives below, consent to the personal jurisdiction of that court. If legal action is instituted under the terms of this Agreement, each party shall be responsible for its own attorney fees, costs and expenses.

4.7 EXCUSED PERFORMANCE

In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delay or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of GOD, governmental restrictions imposed on or mandated by governmental entities other than the parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control to the party to be excused.

4.8 SEVERABILITY

If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired in any way.

4.9 INTEGRATION

This Agreement is the entire agreement of the parties on its subject and supersedes any prior discussions or agreements regarding the same subject.

5. TERM OF AGREEMENT

5.1 This Agreement becomes effective on the last date signed below and shall terminate three (3) years from the effective date except as provided in Paragraph 5.2 below.

5.2 This Agreement may be amended or extended for periods of up to one (1) year by mutual written consent of the parties. It may be canceled or terminated at any time and for any reason by either party. Termination or cancellation shall be effective thirty (30) days after written notice to the other party, or at such time as the parties may otherwise agree. The parties shall, in good faith, agree to such reasonable provisions for winding up the PROJECT as necessary.

DATED this _____ day of _____, 2013.

CITY OF SHERWOOD, OREGON

WASHINGTON COUNTY, OREGON

Joseph Gall,
CITY MANAGER

CHAIR,
BOARD OF COUNTY COMMISSIONERS

ATTEST:

Sylvia Murphy, CITY RECORDER

RECORDING SECRETARY

APPROVED AS TO FORM:

APPROVED AS TO FORM:

CITY ATTORNEY

COUNTY COUNSEL

Community Development Department – Monthly update

October 25, 2013

The City of Sherwood Community Development Division consists of three departments which, provides quality current and long range planning, building and engineering services to support the infrastructure, livability, well-being and economic development of the community. The following is a summary of the key projects or tasks each department routinely does for the community and an update on current projects or status.

Planning:

Current Planning- Projects in Review

- Pacific Dental Parking Expansion (Dr. Doyle parking lot) – Hearing Officer public hearing held 10/24. Record left open for 21 days for submittal of written testimony (7 days for anyone to submit new testimony, 7 day to respond, 7 days for applicant to provide final comments).
- Wright Conditional Use Permit/Minor Land Partition in Old Town
- Sherwood Industrial Park Phase II
- Sherwood Community Center - Approved by Planning Commission 10/22
- Washington County TSP amendment (Baler extension)
- Washington County TSP amendment (Adams Avenue north extension)
- Rothsport Conditional Use Permit (Auto-oriented)
- Brownstone text and map amendment
- Brookman annexation – Approved by Council to place on November ballot.

For approved projects or more detail, check out “projects” under “more resources” on the website

Long Range Planning

- SW Corridor Plan
- Cedar Creek Trail (Regional Flexible Fund grant)
- TSP Update (TGM grant funded)
- Sherwood West Concept Planning (CET grant funded)
- Washington County industrial sites planning effort (CET grant funded)

Other

- Business license review and Home Occupation permits (30 Type II home occupation permits issued this year)
- Street tree permits (46 permits issues this year with 12 more currently in review)
- Assist code compliance officer as needed with sign and property enforcement

Engineering:

Capital (City or URA) projects

- **Villa Road water quality facility retaining wall** construction is underway and will be completed in the next 1 to 2 weeks. Structural improvements completed, planting in progress.
- **Columbia Street water quality facility** – Engineering is managing the project; AKS is contracted to do the design and permitting

- **Community Center** – Design team working on contract documents and specifications. Plan on issuing bid package on November 5th with bid submittals scheduled for around November 21st.
- **Tonquin Employment Area Sanitary Sewer upgrade**- Engineering designed and obtained necessary permits and is now managing the construction contract and inspections. Majority of construction completed. Due to wet weather setting in, the last leg of the pipeline is under 3 to 5 feet of water. With no expectation that the water level will be low enough to construct this portion of the line within the next 9 months, this section of the pipeline will be installed next summer. Request for permit extension is being submitted to DEQ, USACE, and CWS.
- **Brookman Sanitary Phase 1 Extension:** Performing 2-year maintenance period inspection. Project has some issues with I&I and will need addition maintenance remediation repairs before system can be approved for acceptance by City and release of maintenance bonds. Staff working on punch list identifying all items in need of repair, and will be contacting and coordinating with contractor for repairs.

Private Development:

- Finished review comments for Denali 3 lot partition.
- Finished review comments for 2nd Street partition. Review of SDC credits pending.
- Developer has submitted SDC/TDT request for 3 separate buildings on Langer Phase 7 site development project. Calculations have taken significant amount of time due to the complexity of multiple projects occurring simultaneously with multiple deferral and credit options.
- Langer Phase 7 (under construction)
- Sentinel storage (new facility)
- Adams Avenue (Langer Farms Parkway north of Tualatin Sherwood road) under construction. Some minor design changes at the Home Depot entrance has occurred. Review of the Sentinel Storage facility relocation bids underway.
- McFall subdivision (under construction) Erosion sediment control issues and some design issues have been corrected via correspondence with contractor.
- Daybreak subdivision (in design review/approval process) Project being released for construction within the next week. Pre-construction process being set up and coordinated with developer and contractor.

Other projects:

- Transportation system Plan update: Meeting #1 for TAC and CAC was held October 21st. Review of existing conditions and the policies and plans sections of the TSP document was the focus of discussion for this first meeting.
- Right of Way permits: 7 active ROW permits. \$2100 in ROW permit fees collected within current year reporting period.
- Addressing: Two addresses were issued for new single family homes this month.
- Oversee SDC fee calculations on private development projects: Currently working on SDC fee and SDC credit calculations for Wal-Mart, Sentinel Storage, 2nd Street Partition, and Daybreak Subdivision projects.
- Erosion control inspections: Had recent meeting with CWS regarding upcoming audit by EPA. Working with CWS to update and maintain inspection criteria, documentation, and reporting processes. Also included meeting with CWS regarding plan review process and same EPA audit process. City may be included as part of EPA audit process. Short notice by EPA of audit will require immediate staff allocation.
- Traffic Control Management Planning: In response to numerous requests from residents, a letter was sent to residents in the Lynnly neighborhood and adjacent streets notifying them of proposed signage and lane divider installation as a first step in calming traffic in the neighborhood. This is a coordinated response between CDD, Public Works, Police, Finance and Admin. We will determine how to proceed after receipt of comments. Stop signage installed within Lynnly, Daffodil, and Daylily streets per approved plans. Installation of lane divider domes pending future discussions.

We are also In process of developing guidance policy draft for future traffic calming requests. This will be an on-going discussion and no formal action will be taken until conversations with City Council are held.

- RTP update process – Staff from Community Development are working with Metro on the Regional Transportation System Plan. It is important that the RTP have accurate and up to date project lists for transportation projects from local communities. Projects identified in the RTP are eligible for regional and federal funding. . City updated RTP list and submitted to WACO on Friday, October 18th. Future discussion of project prioritization is pending.
- Capital 5-year Plan Review and Update – Staff will review existing 5-year CIP and make adjustments based on finance revenue projections and engineering department staffing allocations.
- Washington County Coordinating Committee – Staff attends both the WCCC meeting and the WCCC Technical Advisory Committee meetings to coordinate throughout Washington County on transportation related issues.

Building:

Permits issued and under construction

- McDonald's Remodel- Interior finish work completed. Final inspections soon.
- Gramor Development (AKA Langer Phase 7) GRADING/SITE WORK-Work in process.
- Sentinel Storage Grading/Site Work- Work in process.
- Sentinel Storage Buildings 1-8- Work in process-frame bld. 1-5 in process, footings bld. 6 in process.
- Cannery Row Apartments- East building finish work in process, West building. Sheetrock in process.
- NW Natural Gas- Work in process. Sheetrock in office areas completed.
- The Springs Addition-Phase 1 complete, Phase 2 complete, building final approved.
- U-Haul Remodel- Work in process.
- Bambuza T/I- Completed, building final approved
- DR Horton Sub-Division (Daybreak) GRADING- Work in process.
- Safeway (tenant improvement) Completed, final approved.
- Wells Fargo (tenant improvement) (inside Safeway) Framing completed, starting sheetrock.
- Railroad Street Antique Mall remodel – in process
- S&M Moving (tenant improvement)-Permits issued
- Mathnasium T/I-Permits issued
- 14 Single Family Homes
- 10 Structural Residential Additions/Remodels/Misc.
- Multiple plumbing/mechanical/misc. permits issued

Permits in review

- U-Haul Storage
- Sentinel Storage Buildings 9-13
- NW Natural Hazardous Materials Storage Building
- Wal-Mart
- 2 Single Family Homes in review, 2 ready to issue.

Other updates:

Tualatin-Sherwood Road improvement project – This is a County project, but staff has been actively working with the County and the business owners regarding the Tualatin-Sherwood road widening project especially in light of recent increased concern being expressed by business owners. Julia and Joe attending a Washington County Board of Commissioners meeting, Julia and Bob attended the County's open house on 10/16 and Julia attended a Chamber Community Affairs meeting with business owners, the County and chamber members.

Julia attended League of Oregon Cities conference. One of the biggest highlights for her included a half day seminar on public engagement which left her with a better way to easily gain perspective and effectively communicate when newly engaged people come to a project in the middle or towards the end of completion.

Julia attended the Emerging Local Government Leader's (ELGL) seminar on October 4th. There were many highlights from this seminar because of the energy, enthusiasm and optimism that this group perpetuates however the biggest impact was listening to former Governors Kulongoski and Gregoire discuss how they got into politics and their "lessons learned" in making the tough decisions required for their job.

Bob is attending the Public Works conference (APWA) in Bend the week of October 22nd through the 25th. This conference will provide required Professional Development Hours to maintain his Engineering certificate and will also allow him to learn more about newest practices and ideas in the field of engineering and public works.

Brad attended a transportation seminar on September 16, 2013 regarding the implementation of new federal and state regulations as they apply to transportation improvement, funding, and research.

Brad also attended a 1-day Fair housing seminar put on by HUD on Thursday, October 17, 2013. The seminar was provided to discuss the new Fair housing rules expected later this year by HUD.

Michelle attended the monthly Friends of the Refuge Board meeting. Michelle is on the Friends of the Refuge board and serves as an excellent liaison between the board and the City.

Andy and Craig (in Engineering) attended a leadership training class offered at the Police Department. They learned a variety of tools (or ideas) away from the training that has already been utilized with great success.

Police Department – Monthly Update

September 2013

The Sherwood Department consists of three sections that provide department administration and leadership, 24-hour patrol response and crime prevention and support functions including investigations, school safety, training and records management.

The following is a summary of the key projects or tasks each section either completed or is working on, as well as activities police department staff routinely does for the community.

Administration:

- Worked to complete parking permit program
- Continued 1-on-1 check-in interviews with police officers
- Attended Chamber breakfast & Mixer
- Attended the Oregon Accreditation Board meeting
- Attended a 1-day Budget & Financial Management training at the police academy (DPSST)
- Participated in the Finance Director interviews
- Attended work/planning session w/Superintendent Heather Cordie for school board meeting on drug K-9
- Worked on Washington County Consolidated Communication Agency (WCCCA) agency fee allocation
- Met with resident Ray Shipley
- Attended the Youth Substance Abuse Team meeting
- Attended and spoke at Sherwood School Board Work Session about narcotics K-9
- Spoke with Oregonian regarding YSAT and narcotics K-9
- Attended monthly Washington County Law Enforcement Council meeting
- Attended 1 City Council meeting
- Attended FBI-NA luncheon
- Attended Sherwood Police Foundation Board meeting
- Visited Allied Systems in Sherwood and met with representatives to discuss commercial thefts and crime prevention
- Attended 2-day Leadership training in Sherwood
- Began work with police staff to update police department strategic plan
- Met with Sherwood residents Diane Buckingham, Jamie Koslosky & Alexis Koslosky
- Met with Chief Bill Snyder of North Plains PD to discuss WCCCA user fees and structure
- Met with police staff to discuss increasing number of volunteers in police department and followed up with Jennifer Ortiz regarding same
- Had regular check-in meeting with Superintendent Heather Cordie and CM Joe Gall
- Attended weekly Senior Leadership meetings
- Monitored patrol activities through dispatch data
- Reviewed and analyzed recently released 2012 Crime report from FBI
- Spoke with owner of Pride Disposal about commercial thefts and increased police resources

- Coordinated with League of Oregon Cities-Oregon Local Leadership Institute to finalize completion of Local Government Management Certificate
- Assisted with customer service at front counter, making copies, faxing police reports, performing records checks and answering phones more than usual due to report workload
- Provided support to Chief and Captains
- Provided set-up for staff and department meetings
- Processed photo red light dismissal letters
- Worked extensively on getting permit parking program forms completed, processing applications and ordering permits
- Worked on accounts payable/Navision/WORKS, processing invoices
- Processed timesheets for each pay period
- Assisted with training registrations and logistics
- Managed the scheduling for public use of the police community room, biggest users were Washington County and Sherwood School District
- Coordinated the police volunteers, managed hours
- Attended meeting with Chief and Captain Hanlon to discuss using more volunteers
- Began advertising for October community events
- Prepared and processed outgoing mail and inter-office mail
- Archived records in accordance with records retention
- Assisted with the clean-up of old evidence case files and reports
- Received a total of 108.25 hours from police volunteers
- Received eleven (11) visits to the Sherwood Police Facility by Chaplain
- Had Chaplain responded and assist police officers with one (1) Unattended Death call

Patrol:

- Patrol officers handled 484 public demand calls for service
- Patrol officers initiated 2,645 activities
- Patrols officers pulled 150 new case numbers
- Ongoing supervision and leadership of patrol section, including direct supervision of patrol sergeants
- Assist Chief of Police in producing patrol statistical reporting
- Responded to customer service requests at police department as needed
- Assisted patrol units by responding to larger calls or when staffing is low due to transport or other issues
- Reviewed and approved all personnel forms, including time-off requests and timesheets for patrol staff
- Managed patrol schedule to maintain minimum coverage, approve patrol related overtime
- Maintained manage of the police fleet and scheduled all unanticipated vehicle repairs with public works
- Made adjustments in police fleet and vehicle assignments based on repair
- Coordinated with IT to manage all in-car computer equipment
- Trained all patrol Sergeants on the use of Hansen so they are able to make vehicle repair requests directly to public works
- Provided direct patrol supervision when Sergeants are not on duty
- Reviewed all police reports written by Sergeants

- Assisted in special traffic enforcement details
- Managed the photo red light citation review process and reviewed all violations committed by emergency vehicles
- Coordinated with Portland Police Bureau to obtain drugs to be used as training aids for the narcotic K-9
- Completed audit of all AED's for number and reliability.
- Coordinated with TVFR to purchase used AED from them when available
- Processed community traffic complaints and assigned focused patrols as needed to police officers
- Completed audit of emergency operations center and facilitated re-stocking of necessary items and equipment used in EOC
- Coordinated with local Ham radio and ARES member Neil Shannon to maintain Ham radio in the EOC
- Coordinated and scheduled for the recertification of all police radar and Lidar speed measuring devices
- Attended the Police User Group and Technical Advisory Committee meetings at WCCCA
- Attended YMCA board meeting as representative of police department
- Attended Robin Hood Festival meeting
- Attended and represented Sherwood at the regional Urban Area Security (UASI) Initiative meeting
- Attended meeting with Allied Systems regarding commercial thefts
- Attended Sherwood School Board meeting about narcotics K-9
- Attended Sherwood Planning Commission meeting
- Acted as PIO in Captain Hanlon's absence
- Reviewed several special event permit applications
- Reviewed several OLCC permit applications
- Departed for FBI National Academy
- Facilitated six (6) patrol ride alongs

Patrol Supervisors

- Provided supervision of patrol officers
- Assisted on calls for service and completed police reports as needed
- Approved all police reports written by patrol officers
- Managed the Taser inventory and training
- Conducted patrol officer evaluations as needed
- Reviewed patrol timesheets
- Conducted shift briefings and maintained communication with patrol officers
- Conducted audit of vehicle checkout logs
- Supervised special traffic details relating to cell phone use and crosswalks
- Completed specific employee work plans as needed to improve performance
- Supervise the field training program for new police officers
- Assisted Bill Collins with evidence review of old case files
- Attended 2-day Leadership training in Sherwood
- Assisted with audit of all AED's and assisted in repairing 2 units
- Attended traffic and criminal court trials as subpoenaed and needed
- Provided on-site coordination for the recertification of all radar and Lidar speed measuring devices

- Assigned traffic related directed patrol
- Assisted Captain Hanlon with the monthly evidence audit
- Managed temporary holding facility to include regular inspections and log checks
- Assisted with coordination of car safety seat clinic
- Served as on-call supervisor
- Conducted performance follow-up with patrol officer by providing 1-on-1 coaching once a week and riding with officer once a month
- Attended the meeting with Allied Systems to discuss commercial thefts

Support:

- Conducted SRO program review with SHS Principal Ken Bell
- Attended Washington County Consolidated Communications Agency (WCCCA) annual Board meeting; topics included user fees, new radio system and new C.A.D. system.
- Completed police logs for Gazette
- Completed monthly audit of property/evidence room
- Attended 2 day leadership class in Sherwood
- Attended regional Public Information Officer's meeting
- Prepared the Fall in-service training schedule
- Managed equipment and supply
- Assisted patrol when needed on large calls
- Facilitated annual Law Enforcement Data System (LEDS) audit
- Attended Accreditation meeting
- Supervised, and assisted as needed, Detective Deb Smith
- Attended 1 City Council meeting
- Reviewed and documented numerous referrals (cross reports) from Department of Human Services (DHS) regarding possible child abuse reports
- Conducted follow-up on sex offender found out of compliance in McDonalds play area-charges filed
- Conducted follow-up, as time allowed, on seven (7) cases of cars being broken into in Sherwood-charges filed
- Conducted follow-up on two possible Rape cases-investigation is ongoing
- Conducting ongoing follow-up on no less than six (6) additional criminal cases

Public Works Department

Monthly Update – October 2013

Water:

- Begin work on Water Master Plan updates
- Replace 2" Service Lines and 2" Testable Water Meters , If time allows
- Install Water Services for Sherwood Town Center (Sentinel Storage, Walmart and various pads)
- Install Water Services for Adams North
- Adjust operations of lower water demands to maintain water quality (chlorine residuals), coordinate with WRWTP new seasonal water take schedule
- Publish RFP for AMI; award in Jan/Feb or 2014
- Inspection of Adams North water line installation and Sherwood Town Center
- Utility maps edits (GIS)
- Maintenance bond for Langer Parkway
- Semi-annual chlorine analyzer maintenance
- Bid and/or renew maintenance contracts
- Installation of Segment 3 Pipeline
- WRWC
- RWPC

Storm

- Clean catch basins (1665) and water quality manholes (80); inspect catch basins (300)
- Prep work for Leaf program which will begin on November 1st
- Quarterly reports to CWS
- Utility map edits (GIS)
- Coordinate with R2R for tree planting at Murdock Park
- Coordinate with R2R and CWS on Woodhaven Park brush removal
- Inspection of Langer Parkway for maintenance bond
- Storm swale and pond maintenance
- Fence repairs at King Richard Water Quality Facility
- Bid and/or renew maintenance contracts
- Start preparing for Fall/Winter storm events at end of month

Sanitary

- Inspections for Brookman Sanitary and Langer Parkway maintenance bonds
- Grease interceptor inspections
- Utility map edits (GIS)
- Bid and/or renew maintenance contracts

Parks/Sports Fields

- Landscaping of Parks (on going)
- Weekly playground inspections
- Mowing of all sports fields (on going)
- Striping of sports fields for fall sports
- Aerating of all sports fields and parks
- Liming of all sports fields
- Close out Snyder Park turf replacement project
- Manage landscape contracts
- Trail repairs
- Begin GPS of irrigation system while winterizing system
- Purchase playground equipment for Murdock Park
- Bid and/or renew maintenance contracts
- Pick up and deliver onions for Onion festival
- Open space tree removal and removal of deadwood and trees at Veteran's Park
- Field lights at Laurel Ridge and Middle school (waiting on funding to begin land use process)

Streets

- Install traffic control devices on Lynnly, Lavender and Wildflower subdivision
- Begin sign maintenance
- Perform quarterly street light inspections (end of the month)
- Sidewalk Program full replacement repairs and inspections
- Begin update of road-rating system (PCI)
- Close out 2013 Slurry Seal program
- Update Pavement Management database with street projects completed during the summer (slurry, crack sealing and paving)
- Prep for tree trimming program
- Bid and/or renew maintenance contracts
- Start preparing for Fall/Winter storm events at end of month

School District

- Landscaping and maintenance at all school properties (on going)
- Trimming trees at the High School

Fleet/Equipment

- Fleet Maintenance PM's (on going)
- Take City vehicles (24) through DEQ
- Spec and bid Leaf Vacuum equipment for purchase (in progress)

Facilities

- Weekly walk through of all buildings and miscellaneous repairs (on going)
- Reupholster Library chairs (in progress)
- Pour concrete pad and install Elections box
- Room set up for Council, Planning, Court, Library events (etc.)
- Close out painting project at Public Works
- Removal of tree at Morback House
- Start process for tree removal of plum trees in front of ADA parking at YMCA (replacement trees may not be replanted until spring) in partnership with YMCA to address safety issues.
- Bid door closers for Senior Center restrooms
- Air duct cleaning at Senior Center
- Manage and inspect facility maintenance contracts
- Bid and/or renew maintenance contracts
- Work on Facility Asset Management plan
- Start preparing facilities for Fall/Winter

Utility Billing

- Start surveys/analysis of residential accounts in commercial zones (confirm proper billing)
- Start survey/analysis of properties in City limits with no account
- Total number of customer service calls for Month of September (both UB and Public Works) 2049 (average 102 calls per day; does not include email or walk in customers)
- Produce weekly utility bills on schedule
- As of 10/9/13 total number of customers signed up for On-line bill pay = 2546; total number of paperless accounts = 1198; total number of auto pay customers 1028

Solid Waste

- Working on commercial food scrap pilot program for solid waste with Washington County and Pride Disposal

Maintenance Management Systems (GIS/Hansen)

- Refine administrators maintenance access (Sherwood Maps 2.0)
- Work with Planning on workflow automation for RLIS updates
- Support citywide users
- Refresh RLIS Data
- CWS data export automation
- Street Saver Integration and Update
- GPS new assets per development
- Test latest IPS 8.3 patch in Hansen
- Regression test Hansen to 8.2.3.201308 the first part of the month
- Upgrade patch in Hansen to 8.2.3.201308 toward the end of the month
- Work on Inventory module in Hansen

Urban Renewal Agency – Update

October 25, 2013

The City of Sherwood Urban Renewal Agency (URA) provides oversight and management of Urban Renewal projects and assets in the Urban Renewal District (URD). While many resources are shared with City Staff it is a separate legal entity and has a separate Board of Directors. The Board of Directors is supported by the Sherwood Urban Renewal Agency Policy Advisory Committee (SURPAC). In 2012 the Agency completed a major modification to the [URA plan](#). This plan guides the direction and policies of the Agency. The following is a summary of the key projects or tasks that the Urban Renewal Agency is completing. The last portion of this update is a current Urban Renewal Financial Reporting.

Capital Projects:

Community Center

- Planning Commission approved major modification to site plan on October 22nd. Appeal period ends at 5pm on November 7th.
- The project is approximately 10% over desired budget but well within the maximum indebtedness left in the district (see attached financial report). The project team does not feel that a Value Engineering exercise is necessary and believes a competitive bidding process will bring this project in close to the desired budget of \$4M.
- Bid documents are being finalized and are expected to be sent out on November 12, 2013. Bid opening is scheduled for December 5, 2013. This schedule has not changed since May of 2013 which is almost unheard of. Ankrom Moisan and the Project Management Team have done a lot of good and hard work, to keep this project on schedule.
- Construction is tentatively expected to begin in mid-January with the facility opening in winter of 2014.
- Building Permit plans were submitted in late September and are under review. The first round of comments is expected during the week of November 4, 2014. Preliminary comments center on exiting concerns that may need to be modified to meet building codes.
- The schedule can be impacted by numerous variables including appeal of the Planning Commission Decision, Building Permit Approvals, Bidding issues etc..... It is expected we will have a solid construction schedule shortly after the Contract is executed
- The URA Board will be asked to approve modified Contracting Rules to allow bidders to meet specific qualifications for the project on November 19th.
- The URA Board will be asked to approve the Contract and Construction Management services sometime in December
- Community Services Department and Public Works are developing an Operating Plan and costs to operate the facility.
- Community Services is developing an RFQ for grant solicitations and that is expected to go out the week of October 28th with a decision in late November.
- Commercial leasing services will become necessary beginning in November. A decision on whether to hire Capstone or go out for an RFQ will be made in early November. Commercial leasing efforts will begin in February.

- Signage for the building is beginning to be considered. At this point we are beginning to discuss location, types of signage and the look of the signs. This can wait until the project is well along and the options are to hire a signage company directly or to hire Ankrom to do preliminary design services in the next few months. The project management team will discuss and make a decision.
- Fixtures Furnishings and Expendables (FFE) decisions will be required in the spring. FFE items are anything that is not permanently attached to the building. The project management team has decided to utilize Ankrom Moisan for these services. Separate funds have been set aside for these items and are not included in the financial report below because they are not URA funds. The effort to complete this will probably start in January or February considering the other items that take priority from a timing perspective.

Downtown Streetscapes

- This project is substantially complete but there are some outstanding items relative to landscaping that will be finished in the spring. The project is in the warranty period so inspections will be completed after a year to make sure that things are performing as expected. There are always some items that need to be modified but will be small in nature.

Cannery Square Plaza

- This project is substantially complete but there are some warranty items that are still being worked on. Specifically the valve system for the waterfalls is still not operating as designed. A decision will be made this winter on whether to replace them with manual valves or resolve the issues with the electric valves.

Columbia Street Water Quality Facility

- The lot line adjustment for the facility has been completed and design is underway. The URA portion of the project has been finished but there are agreements with Clean Water Services that need to be met that impact the URA so this project will remain on the URA list until finished.

Cedar Creek Trail

- The Urban Renewal Agency committed to funding preliminary design services. This work is over 50% completed and the project is expected to move into the design and construction phases. Additional Urban Renewal commitments are not expected.

Century Drive

- Preliminary cost estimates show that the construction costs incurred by the developer above building a parking area will be close to the \$500,000 estimate from years ago. When fully reviewed and constructed the URA will compensate the developer as outlined in the development agreement.

URA Operations:

SURPAC

- SURPAC has not met for a few months. The meeting for October was cancelled at the last minute due to quorum issues. We have already received confirmations that November 14th will have most members present
- The URA Board will be asked to approve the recommendations of Doug Scott and Meerta Meyer to SURPAC as the selection committee has requested their appointment after completing interviews.
- Economic Development efforts and SURPAC will continue to be discussed to determine if they are the appropriate group to continue advising City Council and the URA Board on economic development

Asset Management

- Main Street – property line has been adjusted and will home will be ready to sell shortly.
- Red House on First Street – Demolition of this attractive nuisance is scheduled for some time this spring. Removal of Asbestos will have to happen first and then demolition will commence
- RFQ for residential real estate services is being prepared and should be sent out in November after discussing with SURPAC and the URA Board
- RFQ for commercial real estate services will follow the RFQ for residential services
- Asset Management Plan – This plan has been presented to the URA Board and SURPAC. Residential and Commercial services will be retained to advise on how and when to divest the URA of the assets owned.

Business Development

- Business visits continue to happen in Old Town on a bi-weekly basis. With the restructuring of Main Streets there is not a major organized effort for business development in Old Town. SURPAC will be taking this issue up at future meetings and preparing a recommendation for the URA Board

Finances

- Attached to this update are the current financial reports for the URA. The report was not updated since May 2013 because there were many moving pieces on Capital Projects. The May report showed approximately \$500,000 in remaining Maximum Indebtedness (MI) after commitments and this report shows almost \$900,000 in remaining MI. The difference is due to cost savings on Downtown streetscapes and is offset by some higher costs relative to the Community Center. Overall the amount went up which gives a healthier contingency for existing commitments. Given the small amount Staff still recommends not committing those funds until the center is almost complete. It is expected after construction of the community center there will be a conversation about if and how to spend the remaining MI monies.

Sherwood Urban Renewal Agency
 SURPAC Meeting October 17, 2013
 Financial Results as of September 30, 2013

Chart 1

Total Maximum Indebtedness Expended	
MI Expended through January 2012*	\$ 33,195,402
MI Expended Feb 2012 through September 2013	4,444,236
Total MI Expended	\$ 37,639,638
Note: Maximum Indebtedness	\$ 45,133,469
*see Ord 2012-005, E. Howard Report p.2	

Chart 2

Projects	Committed Open Projects: Expenditures To Date		As of 9/30/13	
	Budget	Paid to Date	% of Budget Spent	Budget Remaining
Downtown Streetscapes Phase 2 - Construction	\$ 2,208,122	\$ 2,061,568	93%	\$ 146,554
Community Center	7,403,114	1,681,224	23%	5,721,890
Cedar Creek Trail Design & Construction	115,000	45,025	39%	69,975
Century Drive Extension	500,000	-	0%	500,000
Total Committed Project Budgets	\$ 10,226,236	\$ 3,787,817		\$ 6,438,419

Chart 3

Calculation of Uncommitted Maximum Indebtedness	
Maximum Indebtedness (Ord 2012-005)	\$ 45,133,469
MI Expended through January 2012*	(33,195,402)
Adjust E. Howard Report for Comm Cntr & Downtown St. **	219,985
Completed Project Costs from Feb 2012 - Sept 2013	
Cannery Site Development	(41,778)
Plaza	(324,946)
Columbia St Property	(56,421)
Add Program Revenue	559,948
Committed Future Costs:	
Downtown Streetscapes Phase 2	2,208,122
Community Center	7,403,114
Cedar Creek Trail	115,000
Century Drive Extension	500,000
Administration	1,200,000
Total Committed Project Remaining Budgets	(11,426,236)
Uncommitted MI	\$ 868,619
* see ORD 2012-005, E. Howard Report p.2	
**removes CC Bldg & Downtown St expenses through Jan 2012	

Chart 4

Future Project List: Uncommitted Projects Prioritized by SURPAC on ?		
	Project Budget	Remaining MI
		\$ 868,619
Cedar Creek Trail Construction	\$ 400,000	\$ 468,619
Sidewalk Improvements in Old Town	\$ 100,000	\$ 368,619
Property Acquisition	\$ 260,000	\$ 108,619
Old Town Branding/Signage	\$ 100,000	\$ 8,619
Old Town Alley conversion to walk ways	\$ 400,000	\$ (391,381)
Traffic Re-routing Study/Plans for Old Town	\$ 100,000	\$ (491,381)
Main Street Program	\$ 100,000	\$ (591,381)
Oregon Street Improvements	\$ 3,290,000	\$ (3,881,381)
Lincoln Street	\$ 734,000	\$ (4,615,381)
Parking Study	\$ 50,000	\$ (4,665,381)
Redevelopment of Public Land into Parking Lots	\$ 221,000	\$ (4,886,381)