



Home of the Tualatin River National Wildlife Refuge

CITY COUNCIL MEETING PACKET

FOR

Tuesday, May 7, 2024

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

6:00 pm City Council Work Session

7:00 pm City Council Regular Meeting

This meeting will be live streamed at
<https://www.youtube.com/user/CityofSherwood>



Home of the Tualatin River National Wildlife Refuge

6:00 PM WORK SESSION

1. **Murdock Park Master Plan Update**
(Kristen Switzer, Assistant City Manager)
2. **Development Code Audit to promote Economic Development**
(Eric Rutledge, Community Development Director)

7:00 PM REGULAR SESSION

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. APPROVAL OF AGENDA

5. CONSENT AGENDA

- A. **Approval of April 10, 2024, City Council Meeting Minutes** (Sylvia Murphy, City Recorder)
- B. **Approval of April 16, 2024, City Council Meeting Minutes** (Sylvia Murphy, City Recorder)
- C. **Resolution 2024-018, Authorizing the City Manager Pro Tem to Execute a Construction Contract with the Apparent Low Bid Contractor for the Cedar Creek Greenway Fence & Landscaping Restoration Project** (Jason Waters, City Engineer)
- D. **Resolution 2024-027, Approving a Grant Agreement with the State of Oregon to Receive \$4 Million in State Lottery Funds for the Hwy 99W Pedestrian Bridge Project**
(Jason Waters, City Engineer)
- E. **Resolution 2024-028, Authorizing the City Manager to Sign a One-Year Extension to the On-Call Building Plan Review and Inspection Services Contract with Clair Company**
(Scott McKie, Building Official)
- F. **Resolution 2024-029, Approving an Employment Agreement with Sebastian Tapia to Serve as Interim City Attorney** (Ryan Adams, City Attorney)

6. CITIZEN COMMENTS

7. PRESENTATIONS

- A. **Proclamation, Proclaiming May 12-18, 2024 as National Police Week and May 15, 2024 as National Police Officers Memorial Day** (Mayor Rosener)

8. PUBLIC HEARING

- A. **Ordinance 2024-001, Vacating City Public Right-of-Way located on an unnamed street within the Tonquin Employment Area east of SW Tonquin Road** (Jason Waters, City Engineer) *(First Reading)*

AGENDA

SHERWOOD CITY COUNCIL May 7, 2024

6:00 pm City Council Work Session

7:00 pm City Council Regular Session

**Sherwood City Hall
22560 SW Pine Street
Sherwood, OR 97140**

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<https://www.youtube.com/user/CityofSherwood>**

9. CITY MANAGER REPORT

10. COUNCIL ANNOUNCEMENTS

11. ADJOURN

How to Provide Citizen Comments and Public Hearing Testimony: Citizen comments and public hearing testimony may be provided in person, in writing, or by telephone. Written comments must be submitted at least 24 hours in advance of the scheduled meeting start time by e-mail to Cityrecorder@Sherwoodoregon.gov and must clearly state either (1) that it is intended as a general Citizen Comment for this meeting or (2) if it is intended as testimony for a public hearing, the specific public hearing topic for which it is intended. To provide comment by phone during the live meeting, please e-mail or call the City Recorder at Cityrecorder@Sherwoodoregon.gov or 503-625-4246 at least 24 hours in advance of the meeting start time in order to receive the phone dial-in instructions. Per Council Rules Ch. 2 Section (V)(D)(5), Citizen Comments, "Speakers shall identify themselves by their names and by their city of residence." Anonymous comments will not be accepted into the meeting record.

How to Find out What's on the Council Schedule: City Council meeting materials and agenda are posted to the City web page at www.sherwoodoregon.gov, generally by the Thursday prior to a Council meeting. When possible, Council agendas are also posted at the Sherwood Library/City Hall and the Sherwood Post Office.

To Schedule a Presentation to the Council: If you would like to schedule a presentation to the City Council, please submit your name, phone number, the subject of your presentation and the date you wish to appear to the City Recorder, 503-625-4246 or Cityrecorder@Sherwoodoregon.gov

ADA Accommodations: If you require an ADA accommodation for this public meeting, please contact the City Recorder's Office at (503) 625-4246 or Cityrecorder@Sherwoodoregon.gov at least 48 hours in advance of the scheduled meeting time. Assisted Listening Devices available on site.



**SHERWOOD CITY COUNCIL MEETING MINUTES
21920 SW Sherwood Blvd., Sherwood, Or
Sherwood School District Administration Office
(Joint City Council and Sherwood School District Board Meeting)
April 10, 2024**

WORK SESSION

- 1. CALL TO ORDER:** Chair Abby Hawkins called the meeting to order at 6:05 pm.
- 2. COUNCIL PRESENT:** Mayor Tim Rosener, Council President Kim Young, Councilors Renee Brouse, Doug Scott, Dan Standke, and Taylor Giles (via Zoom). Councilor Keith Mays was absent.

STAFF PRESENT: City Manager Pro Tem Craig Sheldon, Assistant City Manager Kristen Switzer, Police Chief Ty Hanlon, and Senior Planner Joy Chang.

SCHOOL DISTRICT BOARD: Chair Abby Hawkins, Director Krista Thorne, Director Harmony Carson, Director Hans Moller, SSD Executive Team: Superintendent Jeremy Lyon, Executive Assistant to the Superintendent Christine Andregg. Director Matt Thornton was absent. Additional staff or community members were in attendance. The meeting live stream was viewed by two viewers. No media was present.

3. WELCOME AND INTRODUCTIONS

Chair Hawkins welcomed participants and audience in attendance; all participants introduced themselves. The pledge of allegiance was recited.

4. UPDATE FROM THE CITY OF SHERWOOD

Mr. Sheldon provided an update on behalf of the City of Sherwood. Topics included the pedestrian bridge project, as well as paving and gas line replacement near Archer Glen Elementary, Middleton Elementary, and the Meinecke roundabout. There was additional discussion about a traffic study conducted by the City and potential projects identified through that study. Chair Hawkins and Vice Chair Thorne shared areas of potential traffic issues based on their own observations.

5. UPDATE FROM SHERWOOD SCHOOL DISTRICT

Dr. Lyon provided an update on behalf of the Sherwood School District. Topics included his collaboration with the City Interim Manager and Assistant Manager and the need for that work to continue with the next superintendent, busy spring schedules in schools, and new principal hires. There was additional discussion about the school district's budget development for the upcoming school year.

6. SHERWOOD WEST UPDATE

Ms. Chang provided an update on the topic of the Sherwood West Development, (see record, Exhibit A). She reviewed the accepted concept plan, as well as the variety of residential, employment, and hospitality land uses represented within the plan. Ms. Chang reviewed the overall project timeline, noting the UGB expansion application had been submitted to Metro, with an expected decision in late 2024 or early 2025. She discussed the annexation process and additional planning processes that would begin following the potential approval by Metro.

Mayor Rosener provided additional information about the need for the master planning process and the influence of regulations on project timelines. Councilor Giles asked about planning for future school properties, and Dr. Lyon replied that funding for any additional school buildings would be part of a future bond. There was additional discussion about how land for future schools might be identified within the planning process.

7. SAFE ROUTES TO SCHOOL UPDATE

Ms. Chang provided an update on the Safe Routes to School Program (see record, Exhibit A). She reviewed work completed to-date as well as plans for future work near Middleton Elementary to improve safety for the SW Sunset Blvd crossing, and discussed the grant application process to seek funding for that work. Ms. Chang additionally discussed the planned "Bike & Roll to School Day" scheduled for May 8, 2024. She clarified that the selected location near Middleton had been identified for the grant based on the recent traffic study findings and the number of pedestrians crossing SW Sunset Blvd, and there was additional discussion related to the choice of a flashing beacon for the intersection versus a traffic light system.

8. SUPERINTENDENT SEARCH UPDATE

Chair Hawkins provided an update on the topic of the school district's superintendent search. She discussed the use of a survey and a community forum to gather stakeholder feedback, and she reviewed upcoming steps in the hiring process timeline. She additionally discussed the confidentiality of the process in order to encourage the best applicants to apply without compromising their current positions. There was additional general discussion about the logistics and importance of the superintendent hiring process.

9. DEMOGRAPHICS REPORT

Dr. Lyon shared information on the school district's demographics and enrollment projections (see record, Exhibit B). He discussed the connection between enrollment and school funding, noting that the residential growth discussed in the Sherwood West plan could cause the District to approximately double in size. Dr. Lyon reviewed enrollment history as well as current projections, noting how the pandemic impacted typical enrollment patterns for school districts. He discussed residential developments currently in planning or implementation and the impact of those developments on school district enrollment. Dr. Lyon also discussed the boundary of the school district, sharing a map representing the widespread rural areas within the District's boundary line. Gary Bennett, CFO, noted that planned developments played a significant role in the District's enrollment projections. Councilor Giles asked about updating school boundaries based on proximity with neighboring communities, and Dr. Lyon responded that taxation within boundaries also plays

a role in “locking” boundary lines. Director Carson added that some boundary areas existed prior to current schools being built closer to those areas, and the importance of maintaining boundaries for tax revenues. Councilor Standke asked about the impact of the pandemic on attendance, and Dr. Lyon confirmed that chronic absenteeism has been a documented issue in Oregon schools, as well as changing attitudes about “compulsory attendance.” He added that the Sherwood School District was actually doing well with attendance rates when compared to other regional school districts, and discussed efforts and incentives to improve attendance. There was general discussion about the impacts to learning that occur through frequent absences. Chair Hawkins discussed the District’s communication efforts to parents related to student attendance. There was additional discussion about student mental health.

10. ROUNDTABLE

Chair Hawkins invited participants to share any general questions or topics. Councilor Giles shared information he had learned about youth councils in nearby areas, and noted the importance of continuing to engage youth in community projects. Chair Hawkins concurred and added the importance of committing to mentoring youth through the completion of intended projects. Councilor Standke discussed the condition of the practice fields for youth baseball, and the contributions of the youth baseball league to maintain the fields. Jim Rose, Chief Operations Officer for the District, discussed the agreement between the District and the league that involved the league doing a portion of the field maintenance in exchange for a discount on their reservation feeds. Mr. Rose also discussed the work completed by the District on the fields in question. Councilor Scott asked why middle school campuses included sports facilities if school districts are not offering middle school level athletics. Dr. Lyon discussed the use of those facilities for physical education and the community use of those facilities outside of school hours. There was additional general discussion related to the need for ongoing communication between organizations related to athletic facilities, and the District’s efforts to collaborate with youth sports organizations. Mayor Rosener added that sports facilities were being considered as part of the Sherwood West planning. Vice Chair Thorne thanked the Sherwood Police Department for their responsiveness and presence in schools. Councilor Scott recommended a discussion about the effectiveness of the SRO program for a future joint meeting topic. There was additional discussion about efforts to support the youth baseball program and an upcoming grant opportunity to provide additional non-profit funding through the Community Enhancement Program (CEP).

11. ADJOURNED:

Chair Hawkins thanked the meeting participants and adjourned the meeting at 7:43 p.m.

Attest:

Sylvia Murphy, MMC, City Recorder

Tim Rosener, Mayor

Record Note: Minutes transcribed by Christine Andregg, Sherwood School District Executive Assistant to the Superintendent.



SHERWOOD CITY COUNCIL MEETING MINUTES
22560 SW Pine St., Sherwood, Or
April 16, 2024

EXECUTIVE SESSION

1. **CALL TO ORDER:** The meeting was called to order at 5:46 pm.
2. **COUNCIL PRESENT:** Mayor Tim Rosener, Council President Kim Young, Councilors Doug Scott and Renee Brouse. Councilor Keith Mays attended remotely. Councilors Taylor Giles and Dan Standke were absent.
3. **STAFF PRESENT:** City Attorney Ryan Adams, City Manager Pro Tem Craig Sheldon, Assistant City Manager Kristen Switzer, City Engineer Jason Waters, Senior Civil Engineer Craig Christensen, and IT Director Brad Crawford.

4. **TOPICS:**

- A. **ORS 192.660(2)(f), Exempt Public Records and ORS 192.660(2)(h), Legal Counsel**

5. **ADJOURN:**

The executive session was adjourned at 6:31 pm and a work session was convened.

WORK SESSION

1. **CALL TO ORDER:** Mayor Rosener called the meeting to order at 6:32 pm.
2. **COUNCIL PRESENT:** Mayor Tim Rosener, Council President Kim Young, Councilors Doug Scott, and Renee Brouse. Councilor Keith Mays attended remotely. Councilors Taylor Giles and Dan Standke were absent.
3. **STAFF PRESENT:** City Manager Pro Tem Craig Sheldon, City Attorney Ryan Adams, Assistant City Manager Kristen Switzer, Community Development Director Eric Rutledge, Finance Director David Bodway, IT Director Brad Crawford, City Engineer Jason Waters, Public Works Utility Manager Rich Sattler, Records Technician Katie Corgan, and City Recorder Sylvia Murphy.

4. **TOPICS:**

- A. **5 Year CIP**

City Manager Pro Tem Craig Sheldon presented the “FY 24-25 Engineering Five Year Capital Improvement Plan” spreadsheet (see record, Exhibit A) and recapped that there had not been many changes from last year’s CIP list, but some items had been moved around, and many items did not currently have funding. He explained that it was good to list unfunded projects so that the city could go after grants/other funding if it became available. He addressed the “Oregon St Improvements & Regional WQF Design” project and explained that this project would eventually butt up against the tannery site project and would serve the new Public Works facility, adjacent properties, the road improvement project, and the untreated stormwater basin. He addressed the “Tualatin-Sherwood Road Widening Coordination with County” project and reported that the city was still coordinating with Washington County on this project. He addressed the “Sidewalk on Meinecke/Washington North Side from Stella Olsen Park to Lee Dr” project and reported that this project was likely to be eligible for Safe Routes to School funding. He addressed the “Arrow Street” project and reported that Washington County had helped design this project and construction was slated to begin after Washington County had completed their construction. He addressed the “Oregon St @ Tonquin Rd & Murdock Rd Improvements” project and reported that this was mostly a county project, but the city had set aside some funds for this project. City Manager Pro Tem Sheldon addressed the “Cedar Creek Trail – Supplemental Work and SW Alexander Lane Fence” project and explained that this project had been pushed out due to high bids from contractors. He addressed the “Cedar Creek Trail – Grade Separated Crossing of 99W & FEMA/FIRM Map Correction” project and reported this project would commence next budget year. He addressed the “Transportation System Plan (TSP) Update” and noted that this project was a Council goal and reported that there was a state grant available for this project. He explained that if the city were awarded the grant, the state would then take ownership of the project and city staff were looking into whether or not this would be a good grant to go after for Sherwood’s TSP. He explained that the TSP process would go out to bid in July for September and would likely take 18-24 months to complete the project. He noted that updating the city’s Storm and Sanitary Master Plan was listed in the following year, but depending on if the city went out for the state grant, staff may recommend completing the Storm and Sanitary Master Plan prior to completing the TSP update in order to incorporate Sherwood West. Mr. Sheldon addressed the “Edy Road Improvements from Borchers to Trails End – MSTIP 3F” project and reported that there was no funding currently available for this project, but it was included in the MSTIP. Mayor Rosener recapped that the WCCC had recommended MSTIP funding for the project and the project would soon be voted on by the Washington County Board of Commissioners. City Manager Pro Tem Sheldon addressed the “Sunset-Timbrel Crosswalk Enhancements & RRFB” and reported that the city had applied for Safe Routes to School funding for this project. He commented that if the city did not receive that grant, then there would be no money available for this project. He addressed the “Traffic Safety and Calming” project and reported that the city had applied for \$38,000 in MSTIP funding for this project. He explained that if the city did not get the MSTIP grant for this project, then the \$38,000 would be taken from the city’s Traffic Calming Fund, which was a part of the Operations Fund. He stated that the “Pine Street Phase II,” “Elwert Road Improvements from Haide/Handley to Edy,” “Brookman Road Improvements from 99W to Ladd Hill Rd,” “Cedarbrook Way Improvements from Meinecke to Elwert,” and “Langer Farms Parkway North from 99W to Roy Rogers” projects did not currently have funding available but were listed in order to take advantage of potential grant opportunities. He addressed the three Cedar Creek Trail design projects and explained that \$150,000 was set aside each year for the city to extend its trail system, and if Council wanted to, the city could determine a design for connecting the Cedar Creek Undercrossing project to the existing trail system. He referred to the Cedar Creek Trail design projects and reported that these projects were eligible for grants. Mr. Sheldon addressed the “Brookman Area SS Trunkline Extension Design” and the “Brookman Area SS Trunkline Extension Construction” projects and explained that these projects were in partnership with CWS and would be completed over a two-year period. He explained that the city would ask to see if the city could pay at the end of the project, but if that was not an option, the payments would be spread out over five years. Mr. Sheldon addressed the “2nd and Park Storm Water Facility Rehabilitation” and “Gleneagle Dr Regional Storm Water New Facility (extended detention basin)” projects and reported that this project had already begun and was

an ongoing project. He noted that the “Sanitary System Master Plan and SDC Fee Update” and the “Stormwater Master Plan and SDC Fee Update” timelines could be moved up if the city did not receive any MSTIP funding. He addressed the “TVWD Capacity Improvements 6.2 to 9.7 mgd” project and reported that the city still needed to purchase this upgrade. He addressed the “WRWTP – 20.0 MGD Expansion” project and reported that there was roughly \$200,000 worth of work to be completed in FY 24-25 and the project would likely be completed in early fall. City Manager Pro Tem Sheldon addressed the “Water Master Plan and SDC Fee Update” project and reported that the project would commence near the end of 2025 and would continue through FY 26/27. He addressed various projects in the Brookman area and stated that funding for these projects was in FY 28/29 or beyond and noted the possibility of developers coming into the area. Mr. Sheldon addressed the “TEA Expansion Loop with Existing Oregon St Mains (M30, M31 & M33) *Funded with Ice Age Drive Improvements” project and explained that no money had been earmarked for this project and the project would be removed from the final CIP list since most of it had been built by developers. He referred to the various Tier 1 Backbone projects and noted that Oregon Street would be tied in with this project. He explained that the Tier 1 Backbone projects were a part of the city’s resiliency plan. He addressed the “Murdock Park Improvements and Restroom” project and reported that the \$30,000 was to be used to complete the community outreach for the Murdock Park Master Plan update. He noted that if Council chose to move forward with constructing a restroom at that park, those funds were allocated in FY 25/26. He addressed the “Skate Park Restrooms” project and explained that this was more expensive than the restroom at Murdock Park because it was further away from utilities. He noted that this project could be moved up in the timeline if Council chose and explained that construction would be paid for from the sale of the YMCA building. He addressed the “Moser Pass PUD Restroom” and reported that this project could be moved further out if Council chose. Mr. Sheldon addressed the “Universally Accessible Destination Play Area (Inclusive) Infill Project” and explained that this was listed to take advantage of potential grant opportunities. He addressed the “Trail Network Expansion Improvements Infill Project” and explained that the yearly amount of \$150,000 was paid for out of SDCs and was the recommended amount in the Parks Master Plan. He addressed the “Tannery Site Cleanup (Part of Regional Storm Project)” project and explained that the city had applied for a \$5 million EPA grant as well as \$2.5 million in federal grants. He explained that the \$675,000 would allow the city to continue to work with DEQ and the city’s environmental consulting firm. Mr. Sheldon addressed the “Adjacent Lot to Arts Center” project and reported that \$100,000 was set aside for this project and had been carried over from last year. He explained that the creation of a strategic Old Town Master Plan was not listed in the CIP but was listed in the budget, and staff recommended \$120,000 for the completion of that project. He addressed the “New Public Works Facility” project and explained that there was no funding available for this project because the tannery site needed to be cleaned up first. He addressed the “Ice Age Drive” and “99W Pedestrian Bridge” projects and provided an overview of the funding and construction timelines. Mayor Rosener asked if the new Public Works facility would be a part of the URA and Mr. Sheldon replied that it would be. He presented the “FY 24-25 Public Works Five Year Capital Improvement Plan Maintenance Projects” spreadsheet (see record, Exhibit B) and provided an overview of the city’s street maintenance program and recapped that previous City Council had asked for Sherwood’s roads to be at 80 PCI (Pavement Condition Index) or above. He reported that the city’s overall PCI was 86 and next year it would be 84. He explained that staff had moved \$650,000 a year out of the Street Operation budget and into the CIP for road repair and replacement and an additional \$100,000 for traffic calming. He referred to Exhibit B and outlined that most of the listed projects were grind and overlay projects. He referred to the “Timbrel from Middleton to Sunset (grind and overlay)” project and explained that the gas company would be relocating the gas lines in that area. He addressed the “Schamburg from Division to End of Road (reconstruct AND Sanitary improvement)” project and explained that \$600,000 of the cited \$1,061,159 was coming from the Sanitary Fund, with the rest coming from Sanitary and Streets Funds. Councilor Mays referred to the projects on Edy Road and asked if those projects were only for the city’s portion of that street and Mr. Sheldon confirmed that it was. Mr. Sheldon referred to page 3 of Exhibit B and explained that the “Old Town Laterals” project would be moved to the Operations budget because the city completed repairs as they arose. He

addressed the “Stella Olsen Park Drainage Swale Upgrade” project and explained that this was finishing up work done in prior years. He addressed the projects listed under “Water” on page 3 of Exhibit B and stated that most of these were refurbishment/resiliency projects. He addressed the “Routine Waterline Replacement Program” and reported that the city typically put aside \$50,000 each year for this program. Mr. Sheldon presented the “DRAFT FY 24-25 CIP projects summary table” (see record, Exhibit C) and explained that these items were the projects the city would be working on for the one-year CIP. He outlined that the city was still in the design phase of the “Park Row to Division Waterline Upgrade” project and reported that because of the cost and size of the project, city staff were looking to complete the project inhouse as a training opportunity with Public Works Utility staff. Mr. Sheldon outlined that more definitive figures would be available after the city’s budget cycle was completed.

5. ADJOURN:

Mayor Rosener adjourned the work session at 6:54 pm and convened a regular session.

REGULAR SESSION

1. **CALL TO ORDER:** Mayor Rosener called the meeting to order at 7:02 pm.
2. **COUNCIL PRESENT:** Mayor Tim Rosener, Council President Kim Young, Councilors Doug Scott, and Renee Brouse. Councilor Keith Mays attended remotely. Councilors Taylor Giles and Dan Standke were absent.
3. **STAFF PRESENT:** City Manager Pro Tem Craig Sheldon, Assistant City Manager Kristen Switzer, IT Director Brad Crawford, Finance Director David Bodway, Police Captain Jon Carlson, City Attorney Ryan Adams, Public Works Utility Manager Rich Sattler, Volunteer Coordinator Tammy Steffens, HR Director Lydia McEvoy, and City Recorder Sylvia Murphy.

4. APPROVAL OF AGENDA:

MOTION: FROM COUNCIL PRESIDENT YOUNG TO APPROVE THE AGENDA. SECONDED BY COUNCILOR BROUSE. MOTION PASSED 5:0; ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR STANDKE AND COUNCILOR GILES WERE ABSENT).

Mayor Rosener addressed the next agenda item.

5. CONSENT AGENDA:

- A. **Approval of April 2, 2024, City Council Meeting Minutes**
- B. **Resolution 2024-023, Authorizing the City Manager Pro Tem to apply for and sign a Broadband Deployment Program Grant application through the State of Oregon**
- C. **Resolution 2024-024 Authorizing the City Manager Pro Tem to Enter into an Agreement with Sherwood School District and Washington County Cooperative Library Services for a Student Data Load Project**
- D. **Resolution 2024-025 Authorizing the City Manager Pro Tem to Execute a Construction Contract with Lee Contractors, LLC for the Cedar Creek Greenway Feeder Trail Pro**

MOTION: FROM COUNCILOR BROUSE TO APPROVE THE CONSENT AGENDA. SECONDED BY COUNCILOR SCOTT. MOTION PASSED 5:0; ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR STANDKE AND COUNCILOR GILES WERE ABSENT).

Mayor Rosener addressed the next agenda item.

6. CITIZEN COMMENT:

There were no citizen comments and Mayor Rosener addressed the next agenda item.

7. PRESENTATIONS:

A. TVF&R Annual State of the District Presentation

TVF&R’s Director of Government and Public Affairs Cassandra Ulven presented the “2024 State of the District” PowerPoint presentation (see record, Exhibit D). She outlined how TVF&R handled the major emergency operations for 2023, which included triple the call volume during the winter storm. She reported that in Sherwood in 2023, there were 2,051 incidents, including five structure fires and 89 motor vehicle crashes. She reported that Station 33 responded to 72% of Sherwood’s incident calls, which indicated that the station was strategically located. She outlined that the King City station, Tualatin station, North Wilsonville station, and Newberg station also responded to calls in Sherwood and spoke on mutual aid agreements. She spoke on Multnomah County and EMS services and explained that this was a national issue, largely caused by the COVID pandemic and a decrease in people entering the field. Director Ulven spoke on the franchise agreement with Washington County and explained that TVF&R had wanted system improvements to help alleviate the burden caused by TVF&R responding to emergency medical care incidents. She reported that an EMS alliance was formed in partnership with TVF&R, Washington County, fire agencies, and private ambulance participants to evaluate how the franchise could improve accountability, provide additional units, and create better communication. She reported that the EMS alliance had been successful in its endeavors. Councilor Mays commented that he disliked that TVF&R provided services to Yamhill County. He stated that he felt it had a negative impact on Sherwood when the fire engine was dispatched to Yamhill County as it left Sherwood with less coverage. Director Ulven reported that TVF&R was making progress on their search for a new station in rural Yamhill County, which would add an additional unit. She spoke on HB 4081, which would modernize and add transparency to the EMS system and TVF&R’s new community paramedic pilot program to assist with servicing high utilizers of the system. She provided an overview of the updates to the training center. Director Ulven spoke on Measure 34-332, the local option levy, and explained that the current levy expired in 2025 and funded 92 firefighters, paramedics, and support staff. She stated that the new levy would maintain that staffing and add 36 personnel to existing stations to assist with the rise in call volume. She reported that the replacement levy had a rate of 69 cents per \$1,000 of assessed valuation for five years. She explained that the levy funds would also be used to purchase medical and firefighting equipment and vehicles. She explained that if the levy did not pass, there would be significant staff reductions. Mayor Rosener asked for more information on the existing levy rate versus the replacement levy. Director Ulven replied that the current levy was 45 cents per \$1,000 of assessed valuation and the replacement levy was 69 cents per \$1,000 of assessed valuation. She reported that for a home assessed at \$305,000, it would be a \$6.11 monthly increase. She noted that TVF&R expected to maintain that rate for 10 years. Council President Young asked if any of the new staff hired from the replacement levy would receive mental health training. Director Ulven reported that TVF&R were not planning on hiring mental health clinicians, but they had been working with their county partners as they recognized the need for them to do more in that space. Mayor Rosener asked if TVF&R charged fees when they provided EMS transport services when private transport was not available. She replied that TVF&R recovered the fees based on the county rate.

Mayor Rosener addressed the next agenda item.

B. Washington County Family Justice Center Annual Update

Board of Directors President Judy Willey and Executive Director Rachel Schutz of the Family Justice Center came forward and presented the “2023 Annual Report” (see record, Exhibit E). She reported that the Family Justice Center had acquired property with better access to public transit in the Tanasbourne area and the new center would offer child abuse support and a forensic clinic. Ms. Willey stated that the Family Justice Center was looking to grow their Board of Directors and welcomed recommendations from Council. She reported their fundraising event would be held on May 18th. Executive Director Schutz spoke on the different services the new building would provide. She reported that in 2023, the Family Justice Center had provided the most services in their history and stated that they had also expanded the services that they provided. Ms. Schutz reported that in 2023, the Family Justice Center had served over 5,600 survivors and had provided over 10,000 services. She reported that Sherwood residents had received 47 services in 2023. Council thanked the Family Justice Center for their work and spoke on the importance of the services they provided. Ms. Schutz asked if there were any areas of Sherwood that needed additional support or outreach. Council commented that the Family Justice Center’s information should be readily available at city facilities like the Police Department, Library, Senior Center, at the school district, and on the city’s website.

Mayor Rosener addressed the next agenda item.

C. Proclamation, Proclaiming April 26, 2024 as Arbor Day

Mayor Rosener read the proclamation aloud which stated that the first Arbor Day was observed in Nebraska in 1872, with the planting of more than a million trees. He stated that Sherwood had been a Tree City USA since 2005 and was committed to urban forestry as a partner in Clean Water Services’ Tree for All campaign. He stated that the City was committed to partnering with local schools to teach students that trees that were properly planted and cared for were a source of community environment that assisted in mental and peaceful renewal and provided many comforts such as shade, clean air, beauty, and increasing property values and declared April 26, 2024 as Arbor Day in the City of Sherwood.

Mayor Rosener addressed the next agenda item.

D. Proclamation, Proclaiming April as National Volunteer Appreciation Month

Mayor Rosener read the proclamation aloud which stated that the volunteering of an individual’s time and resources was an essential part of the Sherwood community spirit, and individuals and communities were at the center of social change, discovering their power to make a difference. He stated that National Volunteer Week was established in 1974 and had grown exponentially each year, drawing endorsements from all US presidents since 1974, as well as recognition from governors, mayors, and other elected officials. He stated that, “we have never needed the volunteer spirit more than we do today,” and stated that volunteers developed new skills, built their personal and professional networks, forged a deeper connection with their communities, and experienced the joy of serving a larger cause. He stated that Sherwood continued to rely on the efforts of dedicated volunteers to enrich their community. He recognized the volunteer sector as a third partner with government and business in building strong communities. Mayor Rosener thanked Sherwood volunteers for donating their time, energy, knowledge, and abilities. He proclaimed April 2024 as Volunteer Appreciation Month in Sherwood and called upon all citizens to help to renew and sustain the Sherwood community spirit by committing themselves to address the needs of the community through voluntary action. Mayor Rosener addressed the next agenda item.

8. NEW BUSINESS:

A. Resolution 2024-026, Adopting a Supplemental Budget for fiscal year 2023-24 and making appropriations

Finance Director David Bodway recapped the staff report and Mayor Rosener explained that this was transferring money from one fund to another fund. With no other comments or questions, the following motion was received.

MOTION: FROM COUNCIL PRESIDENT YOUNG TO APPROVE RESOLUTION 2024-026, ADOPTING A SUPPLEMENTAL BUDGET FOR FISCAL YEAR 2023-24 AND MAKING APPROPRIATIONS. SECONDED BY COUNCILOR BROUSE. MOTION PASSED 5:0; ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILORS GILES AND STANDKE WERE ABSENT).

Record note: Due to a failure of the recording system, a portion of the April 16, 2024 City Council regular meeting was not recorded.

Mayor Rosener addressed the next agenda item.

9. CITY MANAGER REPORT:

City Manager Pro Tem Craig Sheldon reported that the 2024 State of the City address would be held on April 17th at the Sherwood Center for the Arts. He reported that Trashpalooza would be held on April 20th. He spoke on the ADA community survey.

Mayor Rosener addressed the next agenda item.

10. COUNCIL ANNOUNCEMENTS:

Councilor Brouse reported on the Cruisin’ Sherwood event.

Council President Young reported on her attendance at the most recent WCCC meeting. She reported she attended the LOC Policy Advisory Committee meeting. She reported on the Chamber of Commerce breakfast. She reported on the most recent CDBG meeting.

Mayor Rosener reported on the National LOC meeting and LOC Telecom meeting. He spoke on a letter to Metro regarding Sherwood’s UGB expansion request.

11. ADJOURN:

Mayor Rosener adjourned the regular session at 8:15 pm.

Attest:

Sylvia Murphy, MMC, City Recorder

Tim Rosener, Mayor

TO: Sherwood City Council

FROM: Jason Waters, P.E., City Engineer
Through: Craig Sheldon, City Manager Pro Tem and Ryan Adams, City Attorney

SUBJECT: **Resolution 2024-018, Authorizing the City Manager Pro Tem to Execute a Construction Contract with the Apparent Low Bid Contractor for the Cedar Creek Greenway Fence & Landscaping Restoration Project**

Issue:

Shall the City Council authorize the City Manager Pro Tem to sign a Construction Contract with the Apparent Low Bid Contractor for the Cedar Creek Greenway Fence & Landscaping Restoration Project per the Posted Public Notice of Intent to Award a Contract.

Background:

Resolution 2024-018 previously came before the City Council at the March 19, 2024 meeting. Due to bids received being over the City Engineer's estimate, staff requested the Council take "no action" on the resolution to allow time to rebid the project. The project has been rebid with some modifications to the scope, and staff is now bringing the slightly amended resolution back for Council's consideration. The purpose of this project is to restore to like- or better-kind the previous 6' tall pre-molded-concrete paneled-fence that was removed by the federally funded Cedar Creek trail project. The trail project didn't complete the fence replacement or landscaping restoration work because the federal funds were already fully spent and it would've required construction to be officially stopped and the ROW acquisition phase to re-commence, so the fence and landscaping restoration work was deferred to the City for completion as a local project, which design plans & bid documents have been prepared for bidding.

The City's plans and bid documents call for a more substantial type of Aesthetic Barrier Fence that is slightly taller with 7' and 8' sections to improve or increase the barrier protection and aesthetically pleasing and looks new. The City is not seeking to replace the fence with a more costly certified Sound Wall system similar to the concrete walls along SW Roy Rogers Rd, although some Aesthetic Barrier Fences have a similar look.

This project will also extend the 4' tall chain link fence that was installed by the federally funded trail project, near the mailbox cluster boxes, down to SW Meinecke Pkwy to provide a more continuous fence system along this corridor with no major gaps or openings to the highway.

Lastly, this project will restore to like or better kind the landscaping at the north end of SW Alexander Lane and install new City owned/operated irrigation systems separate from the HOA's systems. The City, not the adjacent townhome HOA, will own & maintain the new fence and obtain the necessary permits from ODOT to construct, own & operate the Aesthetic Barrier Fence system within ODOT right-of-way, similar to the new paved trail within 99W that the City operates & maintains.

The City advertised the project for bids in the Oregon DJC on April 15th and 17th, 2024 and opened bids on May 7th, 2024. The City reviewed bids to determine the lowest responsive bidder and prepared and delivered to all bidders the Notice of Intent to Award Letter and posted a copy on the City's webpage.

<https://www.sherwoodoregon.gov/engineering/page/invitation-bid-cedar-creek-greenway-fence-landscaping-restoration-project>

The Notice of Intent to Award Letter includes a summary of the bid results and other information required for the City to award a Contract including the base-bid Contract Amount authorized by this Resolution, the contingency funds authorized, and name of the apparent low-bid contractor.

Scheduling information will be posted online and sent out with general construction notifications with details pending the contractor's detailed schedule and confirmation on the delivery lead-time for the fence materials. City staff expects the pre-construction meeting being held by the end of May 2024 and erosion control measures installed & inspected during the first 2 weeks of June. The contractor will complete the work during the summer months when school is out with only the installation of trees, shrubs and plants occurring after the dry season in late-September into October when the project will be completed, and the plant establishment & warranty period begins.

Financial Impacts:

The engineer's estimated range of probable cost for this contract is \$400,000 to \$460,000. Funding for the project was included in the FY23-24 budget and comes from the same transportation funding sources as the local matching funds used for the federally funded regional trail project that impacted the fence and landscaping (TDT, Street SDC). Based on the revised project schedule and risks, staff anticipates the total project costs being expended equally over the current and pending fiscal years (\$200k-\$230k spent in both FY23/24 and FY24/25).

Recommendation:

Staff respectfully recommends adoption of Resolution 2024-018, authorizing the City Manager Pro Tem to Execute a Construction Contract with the Apparent Low Bid Contractor for the Cedar Creek Greenway Fence & Landscaping Restoration Project per the Posted Public Notice of Intent to Award a Contract.



RESOLUTION 2024-018

AUTHORIZING THE CITY MANAGER PRO TEM TO EXECUTE A CONSTRUCTION CONTRACT WITH THE APPARENT LOW BID CONTRACTOR FOR THE CEDAR CREEK GREENWAY FENCE & LANDSCAPING RESTORATION PROJECT

WHEREAS, the City has identified the 6’ tall pre-molded acoustic paneled fence along SW Alexander Lane recently removed by the federally funded trail project to be directly related to the recent construction of the regional trail and in need of replacement and landscaping restored to like or better kind; and

WHEREAS, the City completed the design, produced bid documents and solicited contractors using a competitive bidding process per ORS 279C, OAR 137-049; and

WHEREAS, the City has budgeted for the construction cost of this project in the approved city budget for the current fiscal year (FY23/24) and projections for the pending fiscal year (FY24/25) using the same local transportation funds used as matching funds for the federal grant for the regional trail; and

WHEREAS, the City Council authorizes the City Manager to execute a Construction Contract with the low-bid Contractor for the base-bid amount posted in the Public Notice of Intent to Award a Contract.

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

Section 1. The City Manager Pro Tem is hereby authorized to execute a Construction Contract upon the completion of the seven (7) day bid protest period with the low responsive bidder for the base-bid amount posted in the Public Notice of Intent to Award a Contract.

Section 2. The City Manager Pro Tem is hereby authorized to execute Contract Change Orders up to 12% of the initial base-bid Contract Amount.

Section 3. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 7th day of May 2024.

Tim Rosener, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

TO: Sherwood City Council

FROM: Jason Waters, P.E., City Engineer

Through: Craig Sheldon, City Manager Pro Tem and Ryan Adams, City Attorney

SUBJECT: Resolution 2024-027, Approving a Grant Agreement with the State of Oregon to Receive \$4 Million in State Lottery Funds for the Hwy 99W Pedestrian Bridge Project

Issue:

Shall the City Council authorize the City Manager Pro Tem to sign a Grant Agreement with the State of Oregon to receive \$4 million in state lottery funds for the construction of the Hwy 99W Pedestrian Bridge Project?

Background:

The Oregon legislature authorized, through House Bill 5050 (2019) and House Bill 5534 (2021), the allocation of \$4 million in state lottery bond proceeds to build a pedestrian bridge-system over SW Pacific Highway (OR 99W), SW Elwert Rd., and SW Kruger Rd. that provides a continuous grade-separated-crossing corridor between the YMCA parking lot and high school.

The primary use of the \$4 million in state lottery funds is to create a new public transportation facility, specifically a series of five (5) bridge-structures set atop concrete bent-columns traversing over a state highway and two county roads, and the State of Oregon requires lottery funds for transportation projects to be administered by and through the Oregon Department of Transportation (ODOT) per the Grant Agreement.

The Grant Agreement contains a few criteria and terms worth noting and comment:

- This is a reimbursement fund grant with the grant funds held & controlled by ODOT; City staff will submit monthly reimbursement request to ODOT.
- No reimbursements for eligible work completed or project expenses incurred prior to the execution of the Grant Agreement (no reimbursements prior to the Effective Date).
- Grant Fund reimbursement requests can be submitted for up to three (3) years after the Effective Date.
- ODOT has up-to forty-five (45) calendar days to process requests and issue payment.

City staff has reviewed the draft Grant Agreement and routed the draft agreement to the City Attorney's office for the form approval. There are no immediate concerns, no red flags or major issues to note in regard to the actual bridge construction. There is well over \$20 million in eligible grant work still pending on the project and it will all be completed within the next 16-18 months.

Financial Impacts:

Considering it will take another 4-6 weeks for ODOT to execute the counterpart grant agreement in June and that there are well over \$4 million in grant eligible expenses identified in the city budget for this project in FY24/25 (\$9M+), it's safe to assume that 100% of the \$4 million will be expended on the project in FY24/25 and City staff should plan on submitting the 1st fund reimbursement request for this project to ODOT in late August for eligible project expenses made in July 2024. In summary, the entire \$4 million will be entirely expended and reimbursed within the pending fiscal year, FY24-25.

Recommendation:

Staff respectfully recommends adoption of Resolution 2024-027, approving a Grant Agreement with the State of Oregon to receive \$4 million in State Lottery Funds for the Hwy 99W Pedestrian Bridge Project.



RESOLUTION 2024-027

APPROVING A GRANT AGREEMENT WITH THE STATE OF OREGON TO RECEIVE \$4 MILLION IN STATE LOTTERY FUNDS FOR THE HWY 99W PEDESTRIAN BRIDGE PROJECT

WHEREAS, the state legislature, through House Bill 5050 (2019) and House Bill 5534 (2021), authorized \$4 million in state lottery funds for a grade-separated crossing over the state highway and county roads between the YMCA and high school; and

WHEREAS, the City of Sherwood is delivering the pedestrian-bridge project on behalf-of and in-partnership with the Sherwood Urban Renewal Agency (URA) and construction is underway; and

WHEREAS, the City anticipates being able to submit reimbursement request for the entire \$4 million within the pending fiscal year, between July 1, 2024 and June 30, 2025; and

WHEREAS, City staff reviewed the Grant Agreement to ensure all information was current including City staff contact information, and recommends approval of the agreement with authority to execute granted to the City Manager Pro Tem.

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

Section 1. The City Manager Pro Tem is hereby authorized to sign a Grant Agreement with the State of Oregon in a form substantially similar to the attached Exhibit 1, including amendments.

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

Duly passed by the City Council this 7th day of May 2024.

Tim Rosener, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

**GRANT AGREEMENT
OREGON DEPARTMENT OF TRANSPORTATION
HB 5534 (2021)**

**Oregon Laws 2021, chapter 682, section 17
Project Name: OR99W: Sunset & Elwer Pedestrian Crossing**

This Grant Agreement (“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” or “ODOT”, and **City of Sherwood**, acting by and through its Governing Body, (“Recipient”), both referred to individually or collectively as “Party” or “Parties.”

0. Recitals

- a. Pursuant to Oregon Laws 2021, chapter 682, section 17 (HB 5534), the Oregon legislature authorized the issuance of lottery bonds in an amount that produces \$4 million in net proceeds for distribution by ODOT to Recipient for a pedestrian bridge across State Highway 99W at Sunset Boulevard, also known as the OR99W: Sunset & Elwer Pedestrian Crossing, as more particularly described in Exhibit A (the “Project”).
- b. The Project is part of the city street system under the jurisdiction and control of the Recipient. The construction and maintenance elements that cross OR99W, an ODOT facility, will be addressed in a separate Cooperative Improvement Agreement number 73000-00028858 between the Parties.

1. Effective Date. This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law (the “Effective Date”). The availability of Grant Funds (as defined in Section 3) shall end three (3) years after the Effective Date (the “Availability Termination Date”).

2. Agreement Documents. This Agreement consists of this document and the following documents:

- a. Exhibit A: **Project Description**
- b. Exhibit B: **Recipient Requirements**
- c. Exhibit C: **Subagreement Insurance Requirements**

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

3. Project Cost; Lottery Funds. The total estimated Project cost is \$4,000,000. In accordance with the terms and conditions of this Agreement, ODOT shall provide Recipient funds in a total amount not to exceed \$4,000,000. Recipient will be responsible for all Project costs not covered by the Funds.

4. Project.

- a. Use of Grant Funds.** The Grant Funds shall be used solely for the Project as defined in Recital (a) above and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless ODOT approves such changes by amendment pursuant to Section 4.c.
- b. Eligible Costs.** Recipient may seek reimbursement for its actual costs to develop the Project, consistent with the terms of this Agreement (“Eligible Costs”).
- i. Eligible Costs are actual costs of Recipient to the extent those costs are:
- A.** reasonable, necessary and directly used for the Project;
 - B.** permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by the State, to be capitalized to an asset that is part of the Project; and
 - C.** eligible or permitted uses of the Grant Funds under the Oregon Constitution, the statutes and laws of the state of Oregon, and this Agreement.
 - D.** capital expenditures for federal income tax purposes within the meaning of Section 1.150-1(b) of the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations, (the “Code”).
- ii. Eligible Costs do NOT include:
- A.** operating and working capital or operating expenditures charged to the Project by Recipient;
 - B.** loans or grants to be made to third parties;
 - C.** any expenditures incurred before the Effective Date or after the Availability Termination Date;
 - D.** costs associated with the Project that substantially deviate from Exhibit A, Project Description, unless such changes are approved by ODOT by amendment of this Agreement;
 - E.** internal costs charged to the Project by Recipient or payments made to Related Parties. Related Parties shall mean, in reference to governmental units or 501(c)(3) organizations, members of the same controlled group within the meaning of Section 1.150-1(e) of the Code, and in reference to any person that is not a governmental unit or a 501(c)(3) organization, a related person as defined in Section 144(a)(3) of the Code;

- F. payment of principal due on interim financing for the Project unless the Recipient has received prior written consent of the Department of Administrative Services (“DAS”); or
- G. payment of interest due on interim financing for the Project.

c. Project Change Procedures.

- i. If Recipient anticipates a change in scope or Availability Termination Date, Recipient shall submit a written request to their ODOT Contact. The request for change must be submitted before the change occurs.
- ii. Recipient shall not proceed with any changes to scope or Availability Termination Date before the execution of an amendment to the Agreement executed in response to ODOT’s approval of a Recipient’s request for change. A request for change may be rejected at the sole discretion of ODOT.

5. Reimbursement Process

- a. ODOT shall reimburse Recipient for Eligible Costs up to the Grant Fund amount provided in **Section 3**. ODOT shall reimburse Eligible Costs within forty-five (45) days of ODOT’s receipt and approval of a request for reimbursement from Recipient. Recipient must pay its contractors, consultants and vendors before submitting a request for reimbursement to ODOT for reimbursement.
- b. Each reimbursement request shall be submitted on letterhead to the ODOT Contact and include the Agreement number, the start and end date of the billing period, and itemize all expenses for which reimbursement is claimed.
- c. Upon ODOT’s receipt of the final reimbursement request, ODOT will conduct a final on-site review of the Project. ODOT will withhold payment of the final reimbursement request until on-site review is conducted and the Project is approved by the ODOT Contact or designee.
- d. ODOT’s obligation to disburse Grant Funds to Recipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - i. ODOT has received funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the disbursement;
 - ii. Recipient is in compliance with the terms of this Agreement; and
 - iii. Recipient’s representations and warranties set forth in **Section 6** are true and correct on the date of disbursement.

- e. Recovery of Grant Funds.
 - i. Recovery of Mis-expended Funds. Any Grant Funds disbursed to Recipient under this Agreement that are expended in violation of one or more of the provisions of this Agreement (“Mis-expended Funds”) must be returned to ODOT. Recipient shall return all Mis-expended Funds to ODOT no later than fifteen (15) days after ODOT’s written demand for the same.
 - ii. Recovery of Grant Funds upon Termination. If this Agreement is terminated under any of Sections 9.b.i., 9.b.ii., 9.b.iii. or 9(b)(vi), Recipient shall return to ODOT all Grant Funds disbursed to Recipient within 15 days after ODOT’s written demand for the same.

6. Representations and Warranties of Recipient. Recipient represents and warrants to ODOT as follows:

- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient’s Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.
- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors’ rights generally.
- c. **No Solicitation.** Recipient’s officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. **No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify ODOT immediately if it is debarred, suspended or otherwise excluded from any federally

assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

- e. **Compliance with Oregon Taxes, Fees and Assessments.** Recipient is, to the best of the undersigned(s) knowledge, and for the useful life of the Project will remain, current on all applicable state and local taxes, fees and assessments.
- f. **Representations and Covenants Regarding the Tax-Exempt Status of Bonds.**
 - i. Recipient acknowledges that the State of Oregon issued certain bonds (the "Bonds") in part to fund this grant and that the interest paid on the Bonds is excludable from gross income for federal income tax purposes. Recipient further acknowledges that the uses of the Grant Funds and the Project by Recipient during the term of the Bonds may impact the tax-exempt status of the Bonds. Accordingly, Recipient agrees to comply with all applicable provisions of the Code necessary to protect the exclusion of interest on the Bonds from federal income taxation.
 - ii. Recipient shall not, without prior written consent of ODOT, permit more than five percent (5%) of the Project to be used in a "private use" by a "private person" (as defined in the Code) if such private use could result in the State of Oregon, receiving direct or indirect payments or revenues from the portion of the Project to be privately used.

This subsection 6.f. shall survive any expiration or termination of this Agreement.

The warranties set forth in this Section 6 are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

7. Records Maintenance and Access; Audit.

- a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall ensure that each of its subrecipients and subcontractors complies with these requirements. ODOT, the Secretary of State of the State of Oregon (the "Secretary") and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the Grant Funds, or the Project for the purpose of making audits and examinations. In addition, ODOT, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODOT and the Secretary to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment

purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.

- b. Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records, that are directly related to this Agreement, the funds or the Project until the date that is three (3) years following the later of the final maturity or earlier retirement of all of the Bonds funding the Grant (including the final maturity or redemption date of any obligations issued to refund the Bonds), or such longer period as may be required by other provisions of this Agreement or applicable law, following the Availability Termination Date. Because the Bonds were issued on May 4, 2022 as 20 year Lottery Revenue Bonds, Recipient should anticipate retaining project records until at least April 2046. It is recommended that the Recipient consult with ODOT before the final destruction of any Project records. If there are unresolved audit questions at the end of the period described in this section, Recipient shall retain the records until the questions are resolved.
- c. Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by ODOT under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOT to verify how the Grant Funds were expended.

This Section 7 shall survive any expiration or termination of this Agreement.

8. Recipient Subagreements and Procurements

Recipient may enter into agreements with subrecipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project. If Recipient enters into a contract for performance of work under this Agreement, Recipient agrees to comply with the following:

a. Subagreements.

- i. All subagreements must be in writing, executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
- ii. Recipient shall require all of its contractors performing work under this Agreement to name ODOT as a third-party beneficiary of Recipient's subagreement with the Contractor.
- iii. Recipient shall provide ODOT with a copy of any signed subagreement, as well as any other purchasing or contracting documentation, upon ODOT's request at any time. This paragraph shall survive expiration or termination of this Agreement.
- iv. Recipient must report to ODOT any material breach of a term or condition of a subagreement within ten (10) days of Recipient discovering the breach.

b. Subagreement Indemnity.

- i. Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State of Oregon, the Oregon Transportation Commission and its members, the Department of Transportation, their officers, agents and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.***
- ii.** Any such indemnification shall also provide that neither Recipient's subrecipient(s), contractor(s) nor subcontractor(s), nor any attorney engaged by Recipient's subrecipient(s), contractor(s) nor subcontractor(s) shall defend any claim in the name of ODOT or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's subrecipient is prohibited from defending the State, or that Recipient's subrecipient is not adequately defending the State's interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so. The State reserves all rights to pursue claims it may have against Recipient's subrecipient if the State of Oregon elects to assume its own defense.

c. Subagreement Insurance.

- i.** If the Project or Project work is on or along a state highway, Recipient shall require its contractor(s) to meet the minimum insurance requirements provided in Exhibit C. Recipient may specify insurance requirements of its contractor(s) above the minimum insurance requirements specified in Exhibit C. Recipient shall verify its contractor(s) meet the insurance requirements in Exhibit C.
- ii.** Recipient shall determine insurance requirements, insurance types and amounts, as deemed appropriate based on the risk of the work outlined within the subagreement. Recipient shall specify insurance requirements and require its contractor(s) to meet the insurance requirements. Recipient shall obtain proof of the required insurance coverages, as applicable, from any contractor providing services related to the subagreement.

- iii. Recipient shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risks of the subcontracted work.
- d. Recipient shall include provisions in each of its subagreements requiring its contractor(s) to comply with the indemnification and insurance requirements in Paragraph 8.b. and 8.c.
- e. Procurements. Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code, Oregon Revised Statute (ORS) 279 A, B, and C, and rules, ensuring that:
 - i. All applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement; and
 - ii. All procurement transactions are conducted in a manner providing full and open competition.
- f. **Self-Performing Work.** Recipient must receive prior approval from ODOT for any self-performing work.
- g. **Conflicts of Interest.**
 - i. Recipient's public officials shall comply with Oregon's government ethics laws, ORS 244.010 *et seq.*, as those laws may be subsequently amended, if applicable.

9. Termination

- a. **Mutual Termination.** This Agreement may be terminated by mutual written consent of the Parties.
- b. **Termination by ODOT.** ODOT may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by ODOT in such written notice, under any of the following circumstances:
 - i. If Recipient fails to perform the Project within the time specified in this Agreement, or any extension of such performance period;
 - ii. If Recipient takes any action pertaining to this Agreement without the approval of ODOT and which under the provisions of this Agreement would have required ODOT's approval;
 - iii. If Recipient fails to perform any of its other obligations under this Agreement, and that failure continues for a period of 10 calendar days after the date ODOT delivers Recipient written notice specifying such failure. ODOT may agree in writing to an

- extension of time if it determines Recipient instituted and has diligently pursued corrective action;
- iv. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement;
 - v. If Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - vi. If the Project would not produce results commensurate with the further expenditure of funds.
- c. Termination by Either Party.** Either Party may terminate this Grant Agreement upon at least ten (10) days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Grant Agreement.
- d. Rights upon Termination; Remedies.** Any termination of this Grant Agreement shall not prejudice any rights or obligations accrued before termination. The remedies set forth in this Grant Agreement are cumulative and are in addition to any other rights or remedies available at law or in equity.

10. GENERAL PROVISIONS

a. Contribution.

- i. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
- ii. Except as otherwise provided in Paragraph 10.b. below, with respect to a Third Party Claim for which ODOT is jointly liable with Recipient (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses,

judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT'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 ODOT had sole liability in the proceeding.

- iii. Except as otherwise provided in Paragraph 10.b. below, with respect to a Third Party Claim for which Recipient is jointly liable with ODOT (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

This Section 10.a. shall survive any expiration or termination of this Agreement.

- b. **Contract-related Indemnification.** Subject to any limitations imposed by State law and the Oregon Constitution, Recipient agrees to the following contract-related indemnification for all projects authorized under this Agreement: Where Recipient contracts for services or performs project management for a project, Recipient shall accept all responsibility, defend lawsuits, indemnify, and hold State harmless, for all contract-related claims and suits. This includes but is not limited to all contract claims or suits brought by any contractor, whether arising out of the contractor's work, Recipient's supervision of any individual project or contract, or Recipient's failure to comply with the terms of this Agreement. This Section 10.b. shall survive any expiration or termination of this Agreement.
- c. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

- e. **Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third-Party Beneficiaries.** ODOT and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- g. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email or mailing the same, postage prepaid, to Recipient Contact or ODOT Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 10(g). Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
- h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between ODOT (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- i. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation

statutes, rules and regulations. Recipient agrees to comply with the requirements of ORS 366.514, Use of Highway Fund for footpaths and bicycle trails.

- j. Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services 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. Employer's Liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- k. Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of ODOT. Recipient has no right or authority to incur or create any obligation for or legally bind ODOT in any way. ODOT cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of ODOT, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- m. Counterparts.** This Agreement may be executed in two or more counterparts, each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- n. Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. Recipient, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.
- o. Electronic Signatures.** Signatures showing on PDF documents, including but not limited to PDF copies of the Agreement, Work Orders, and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents.

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

Recipient, City of Sherwood, by and through its elected officials

By _____
(Legally designated representative)

Name _____
(printed)

Date _____

By _____

Name _____
(printed)

Date _____

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

By _____
Recipient's Legal Counsel

Date _____

Recipient Contact:

Craig Sheldon
City Manager, Pro-Tem
22560 SW Pine St.
Sherwood, Oregon 97140
503-625-4200
Sheldonc@sherwoodoregon.gov

STATE OF OREGON, by and through its Department of Transportation

By _____
Delivery and Operations Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By email Sam Zeigler
Assistant Attorney General

Date: Jan. 22, 2024

State Contact:

Stephanie Turner
123 NW Flanders Street
Portland, Oregon 97209
503-964-0962

Stephanie.turner@odot.oregon.gov

EXHIBIT A

Project Description
Agreement No. 73000-00023169
Project Name: 99W Sunset / Elwer

A. PROJECT DESCRIPTION

The project consists of constructing a pedestrian bridge that crosses over Pacific Highway 99W (99W), SW Elwert Road, and SW Kruger Road to allow pedestrian access from the YMCA property on the east side of 99W to the Sherwood High School on the north side of SW Kruger Road.

The project includes an approximate 790 –foot-long by 14 foot-wide pedestrian bridge. As currently planned, the bridge will consist of five major bridge spans with lengths ranging from about 100 feet to 194 feet long, running from the west abutment on the north side of SW Kruger Road to Bent 5 on the east side of 99W that supports the bridge span over 99W. Four smaller spans ranging in length from 28 feet to 32 feet long are planned parallel to the east side of the YMCA building. Fills on the order of 18 feet and 12 feet tall will be required to raise grades for the west and east bridge approaches, respectively. Approach fills will be supported by the bridge abutment walls up to about 18 feet tall, along with additional site retaining walls up to about 9 feet tall planned along portions of the embankment slopes and/or embankment side slopes of 3H:1 (Horizontal to Vertical) or flatter. A stairway is proposed running parallel to the east side of 99W that will connect Bent 5 with 99W near the northwest corner of the YMCA building.

Recipient acknowledges that such Project improvements funded under this Agreement may trigger other Recipient responsibilities under the Americans with Disabilities Act. Recipient agrees that it is solely responsible for ensuring Americans with Disabilities Act compliance pursuant to Exhibit B, Recipient Requirements, Section

B. PROJECT KEY MILESTONES AND SCHEDULE

The Project has two (2) Key Milestone(s). Key Milestones are used for evaluating performance on the Project as described in the Agreement. Neither Key Milestone 1, Planning, design, permitting and land acquisition, nor Key Milestone 2, Project completion, can be changed without an amendment to the Agreement.

If Recipient anticipates either that Key Milestone 1 will require material changes or that Key Milestone 2 will be delayed by more than ninety (90) days, Recipient shall submit a Request for Change Order, as described in Section 4(c) of the Agreement, to SRTSPProgramMailbox@odot.state.or.us as soon as Recipient becomes aware of any possible change or delay. Recipient must submit the Request for Change Order before materially changing the project scope (Key Milestone 1) or delaying the Project completion (Key Milestone 2).

Table 1: Key Milestones

Key Milestone	Description	Estimated Due Date
1	Planning, design, permitting and land acquisition.	June 2024
2	Project completion (Project must be completed within 3 years of agreement execution.)	November 2025

EXHIBIT B Recipient Requirements

1. Recipient shall comply with all applicable provisions of ORS 279C.800 to 279C.870 pertaining to prevailing wage rates and including, without limitation, that workers on the Project shall be paid not less than rates in accordance with ORS 279C.838 and 279C.840 pertaining to wage rates and ORS 279C.836 pertaining to having a public works bond filed with the Construction Contractors' Board.
2. Recipient shall notify ODOT's Contact in writing when any contact information changes during the Agreement.
3. Recipient shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation or service demand or both. The Parties agree that the useful life of the Project is defined as twenty (20) years from its completion date (the "Project Useful Life"). For the useful life of the project, Recipient shall reinvest any proceeds from the sale of improvements in similar improvements. After the Project Useful Life, maintenance of the Project shall conform to any maintenance agreement in place between the Parties. If no maintenance agreement exists, ODOT will maintain that portion of the Project that is within its jurisdiction unless otherwise provided in Exhibit A to this Agreement.
4. Recipient shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. If the Project or any portion is destroyed, insurance proceeds will be paid to ODOT, unless Recipient has informed ODOT in writing that the insurance proceeds will be used to rebuild the Project.

5. Americans with Disabilities Act Compliance

- a. **State Highway:** For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):
 - i. Recipient shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Recipient shall follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;

- iii. At Project completion, Recipient shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/ADA/Pages/asset-inspection.aspx>

- iv. Recipient shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Recipient and prior to release of any Recipient contractor.
- v. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days prior to the start of construction.

b. Local Roads: For portions of the Project located on Recipient roads or facilities that are not on or along a state highway:

- i. Recipient shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
- ii. Recipient may follow its own processes or may use ODOT's processes for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

<https://www.oregon.gov/ODOT/ADA/Pages/asset-inspection.aspx>

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Recipient's use and convenience.

- iii. Recipient assumes sole responsibility for ensuring that the Project complies with the ADA, including when Recipient uses ODOT forms and processes. Recipient acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.

- iv. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.
- c. Maintenance obligations in this Section 5 shall survive termination of this Agreement.

6. Work Performed within ODOT's Right of Way

- a. Prior to the commencement of work, Recipient shall obtain, or require its contractor to obtain, permission in writing from the appropriate ODOT District Office to work on or along the state highway. This Agreement does not provide permission to work on or along the state highway.
- b. ODOT may charge for review of work to be performed on or along the state highway. The estimated cost to Recipient will be determined by ODOT in advance and shall be subject to the approval of Recipient prior to the services being rendered.
- c. If the Project includes traffic control devices (see ODOT's Traffic Manual, Chapter 5, for a description of traffic control devices) on or along a state highway, Recipient shall, pursuant to Oregon Administrative Rule (OAR) 734-020-0430, obtain the approval of the State Traffic Engineer prior to design or construction of any traffic control device being installed.
- d. Recipient shall enter into a separate traffic signal agreement with ODOT to cover obligations for any traffic signal being installed on a state highway.
- e. Recipient shall ensure that its electrical inspectors possess a current State Certified Traffic Signal Inspector certificate before the inspectors inspect electrical installations on state highways. The ODOT's District Office shall verify compliance with this requirement before construction. The permit fee should also cover the State electrician's supplemental inspection.

7. General Standards

The Project shall be completed within industry standards and best practices to ensure that the functionality and serviceability of the Program's investment meets the intent of the application and the Program.

8. Land Use Decisions

- a. Recipient shall obtain all permits, "land use decisions" as that term is defined by ORS 197.015(1) (2020), and any other approvals necessary for Recipient to complete the

Project by the Project completion deadline identified in Exhibit A (each a “Land Use Decision” and collectively, “Land Use Decisions”).

- b.** If at any time before the Availability Termination Date identified in Section 1 of this Agreement ODOT concludes, in its sole discretion, that Recipient is unlikely to obtain one or more Land Use Decisions before the Availability Termination Date, ODOT may (i) suspend the further disbursement of Grant Funds upon written notice to Recipient (a “Disbursement Suspension”) and (ii) exercise any of its other rights and remedies under this Agreement, including, without limitation, terminating the Agreement and recovering all Grant Funds previously disbursed to Recipient.
- c.** If after a Disbursement Suspension ODOT concludes, in its sole discretion and based upon additional information or events, that Recipient is likely to timely obtain the Land Use Decision or Decisions that triggered the Disbursement Suspension, ODOT will recommence disbursing Grant Funds as otherwise provided in this Agreement.
- d.** This Section 8 is in addition to, and not in lieu of, ODOT’s rights and remedies under Section 5.e (“Recovery of Grant Funds”) of this Agreement.

9. Website

Recipient shall provide ODOT a link to any website created about the Project identified in Exhibit A before any costs being considered eligible for reimbursement. Recipient shall notify the ODOT Contact in writing when the link changes during the term of this Grant Agreement.

EXHIBIT C

Subagreement Insurance Requirements

1. GENERAL.

- a. If the Project is on or along a state highway, Recipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, (each, a “contractor”) to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, “TAIL” COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODOT. Recipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, “first tier” means a subagreement in which the Recipient is a Party.
- b. The insurance specified below is a minimum requirement that the contractor within the subagreement shall meet. Recipient may determine insurance types and amounts in excess to the minimum requirement as deemed appropriate based on the risks of the work outlined within the subagreement.
- c. Recipient shall require the contractor(s) to require that all of its subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing Services related to the Contract.

2. TYPES AND AMOUNTS.

- a. **WORKERS’ COMPENSATION AND EMPLOYER’S LIABILITY.**
All employers, including the Recipient’s contractors, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide Workers' Compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer’s Liability insurance with limits not less than \$500,000 each accident. The contractors shall require compliance with these requirements in each of their subcontractor contracts.

b. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability insurance shall be issued on an occurrence basis covering bodily injury, property damage, personal and advertising injury, products and completed operations, and contractual liability. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the contractor shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Amounts below are a minimum requirement as determined by ODOT:

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

c. AUTOMOBILE LIABILITY.

Automobile Liability insurance covering the contractor’s business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property damage. Amount below is a minimum requirement as determined by ODOT:

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

d. EXCESS/UMBRELLA LIABILITY.

A combination of primary and Excess/Umbrella Liability insurance may be used to meet the required minimum limits of insurance. If any Excess/Umbrella Liability policies are in place, they must be provided on a true “follow form” or broader coverage basis, with coverage at least as broad as provided on the underlying insurance.

e. ADDITIONAL INSURED.

The Commercial General Liability insurance and Automobile Liability insurance must include the **“State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees”** as an **endorsed** Additional Insured but only with respect to the contractor’s activities to be performed under the Subcontract. Coverage shall be primary and noncontributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations.

Excess/Umbrella Liability policies must endorse the **““State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees”** as an **endorsed** Additional Insured.

Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Recipient.

f. “TAIL” COVERAGE.

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

g. NOTICE OF CANCELLATION OR CHANGE.

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

h. CERTIFICATE(S) OF INSURANCE.

Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) **“State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees”** as an endorsed Additional Insured in regards to the Commercial General Liability and Automobile Liability policies and ii) that all liability insurance coverages shall be primary and noncontributory with any other insurance and self-insurance, with exception of Workers’ Compensation/Employer’s Liability.

The Recipient shall immediately notify ODOT of any change in insurance coverage.

Agenda Item: Consent Agenda

TO: Sherwood City Council

FROM: Scott McKie, Building Official
Through: Eric Rutledge, Community Development Director, Craig Sheldon, City Manager Pro Tem and Ryan Adams, City Attorney

SUBJECT: **Resolution 2024-028, Authorizing the City Manager to Sign a One-Year Extension to the On-Call Building Plan Review and Inspection Services Contract with Clair Company**

Issue:

Shall the City Council authorize the City Manager to sign a one-year extension to the contract with Clair Company for on-call building plan review and inspection services?

Background:

In 2019, the City went through a formal Request for Proposals (RFP) for a 3-year contract for building plan review and inspection services. Clair Company was selected as the City's on-call firm, along with New World Plan Review LLC which is no longer in business. Council authorized a one-year extension of the contract with Clair Company in May 2022 and May 2023 with the most current contract expiring on May 21, 2024. Staff is proposing to extend their contract by an additional year until May 21, 2025.

Clair's fee is competitive within the industry and is based on a percentage of the value of the plan review fee, similar to other firms. Staff is recommending continuing the contract for an additional year to ensure there is no gap in service. It is likely staff will release an RFP for a new multi-year contract in summer or fall 2024 which Clair Company can respond to if desired. The Building Department is also actively recruiting for an in-house commercial plans examiner and if a qualified candidate is hired, the need for on-call services will be limited.

Financial Impacts:

There are no immediate financial impacts associated with entering into on-call services contracts. As services are needed, fees associated with these services will be paid from a percentage of the building permit and plan review fees that are collected at the time of building permit application.

Recommendation:

Staff respectfully recommends City Council approval of Resolution 2024-028, Authorizing the City Manager to sign a one-year extension to the on-call building plan review and inspection services contract with Clair Company.

Attachments:

- A. Scope of Work
- B. Fee Schedule

Scope of Work

Consultant will serve, as needed, for building plan review and/or building inspection services for City at City's direction. These services may involve building, fire/life/safety, mechanical, fire sprinkler/alarm, and other associated plan review of commercial projects, on-site building inspections, and coordination with City, permit applicants, and project design professionals as needed.

Scott McKie, Building Official, will authorize specific projects through work orders with requisite approvals from the Sherwood Community Development Director or the Sherwood City Manager as necessary. City will determine the scope of specific projects on a case-by-case basis.

When an on-call need arises, City will contact the firm best matching City's needs based on the firms review time-line and qualifications. In the event that there are multiple qualified firms, the City will evaluate each project and determine which consultant will best meet the need, and issue a work order for the specified work.

Clair Company, Inc. – Rates

Clair proposes to provide inspection and plan review services based on the following schedule. We are happy to discuss other cost models which can be can be negotiated if desired by the City.

Inspections

We propose to provide inspection services on a time and materials basis, from our Corvallis office, with a 2-hour minimum.

Plan Review

Plan review services can be provided under a variety of cost models. Following the cost model that works best for most of our jurisdictional clients, we propose to offer plan review services for 65% of the plan review fees collected by the City for scopes of work assigned to Clair. The City would retain the remaining 35% of the plan review fees, and 100% of the permit fees. Clair charges for time and materials associated with plan reviews beyond first back check, review of construction document revisions, and deferred submittals. Typically, these fees will be billed to the City as a pass-through cost to the applicant to be paid at time of document pickup, and payable to the City for payment to Clair.

Services included in “in-scope plan review services” are as follows.

- Plan review services provided by certified plans examiners and technical support through first back check
- Administrative services for document control, etc. related to services listed above
- Accounting services including invoicing and cost tracking, and individual permit budget management
- Project management including overview of staff assignments, scheduling, and budget management
- Direct communication with project owner, permit applicant, design professional, contractor, other stakeholder agencies and City personnel
- Pickup and delivery of plans back to the City is included in the rates billed by Clair

Our proposed fee schedule for time and materials services, such as inspections and reviews beyond the first back check, is presented below. We are open to further review and refinement of certain rates and fees, as necessary to accommodate specific client needs or project conditions.

Classification	Base Rate
Project Manager / Program Administrator Support	\$ 115.00 / hr.
Residential Plans Examiner / Technical Support	\$ 80.00 / hr.
Commercial Plans Examiner / Technical Support	\$ 90.00 / hr.
Licensed Engineer / Structural Technical Support	\$110.00 / hr.
Inspector (all residential, commercial building/mech)	\$ 90.00 / hr.
Commercial Inspector (Electrical / Plumbing)	\$104.00 / hr.
Project Administration / Document Control	\$ 60.00 / hr.
Overtime, if applicable	1.5 x Base Rate
Direct overhead for Supplies and Services	Cost
Mileage	Current IRS Mileage Rate



Clair Company, Inc. – Rates

Our inspection cost rates have been updated to offset portal to portal travel costs for inspection assignments. We are happy to discuss a reduction in hourly rates associated with these services if the City chooses to negotiate travel cost reimbursement.

Clair is available to start work as soon as a contract is executed. We understand the work schedule for the required services will be the City's normal business hours of 8:00 a.m. and 5:00 p.m. Hours outside of this time may be needed for rare situations. The City will give notice of anticipated needs prior to 5:00 p.m. the prior business day, unless it is unavoidable due to unforeseen circumstances. We understand the City will pay a minimum of two (2) hours for any scheduled inspection work assignment and 15-minute increments over two (2) hours. City will pay a minimum of one (1) hour for any scheduled plan review.

We understand a City vehicle may be provided for inspections. If a vehicle is not available, the City will pay the current IRS mileage rate as defined at www.gsa.org for use of private or Clair vehicles. Travel within city limits will be capped at 22 miles per day per inspector. Daily mileage to and from portal locations will be negotiated and capped.





RESOLUTION 2024-028

AUTHORIZING THE CITY MANAGER PRO TEM TO SIGN A ONE-YEAR EXTENSION TO THE ON-CALL BUILDING PLAN REVIEW AND INSPECTION SERVICE CONTRACT WITH CLAIR COMPANY

WHEREAS, in 2019, the City conducted a formal request for proposals (“RFP”) process and selected Clair Company for on-call building plan review and inspection services; and

WHEREAS, the RFP permits one-year extensions to the contract after the initial three year term; and

WHEREAS, in May 2022 and May 2023 a one-year extension to the contract was granted via Resolution 2022-028 and 2023-032; and

WHEREAS, Clair Company has provided timely and thorough plan reviews which has helped the City in achieving its economic development goals; and

WHEREAS, an additional one-year extension to the contract will ensure that there is no gap in service which could impact the City’s ability to provide timely building permit reviews.

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

Section 1. The City Council accepts the Community Development Director and Building Official's recommendation to extend the contract with Clair Company, Inc. for an additional year.

Section 2. The City Manager Pro Tem is hereby authorized to sign a one-year extension to the existing contract.

Section 3. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 7th day of May 2024.

Tim Rosener, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

TO: Sherwood City Council

FROM: Ryan Adams, City Attorney

SUBJECT: Resolution 2024-029, Approving an Employment Agreement with Sebastian Tapia to Serve as Interim City Attorney

Issue:

Shall the City Council approve an Employment Agreement with Sebastian Tapia to serve as the City's Interim City Attorney?

Background:

Ryan Adams, the City Attorney, has been called to active military service overseas. The City began the process of searching for an interim City Attorney in March 2024. The position was advertised on the City's website and other recruiting webpages. After carefully evaluating each of the applications and conducting multiple rounds of interviews, Sebastian Tapia was determined to be the top candidate for the position. Tapia previously served as the Deputy City Attorney for Salem, Oregon.

This resolution would approve an Employment Agreement to hire Sebastian Tapia as Sherwood's Interim City Attorney. Under the terms of the agreement, Tapia would begin his employment on May 13, 2024.

Financial Impacts:

No significant financial impacts are anticipated as a result of approval of this resolution.

Recommendation:

Staff respectfully recommends City Council approval of Resolution 2024-029, Approving an Employment Agreement with Sebastian Tapia to serve as Interim City Attorney.



RESOLUTION 2024-029

APPROVING AN EMPLOYMENT AGREEMENT WITH SEBASTIAN TAPIA TO SERVE AS INTERIM CITY ATTORNEY

WHEREAS, City Attorney Ryan Adams has been called to active military service; and

WHEREAS, the City requires an interim City Attorney to fill the role of City Attorney; and

WHEREAS, after a thorough evaluation process, Sebastian Tapia was determined to be the top candidate for the position; and

WHEREAS, the City has prepared a proposed Employment Agreement to hire Sebastian Tapia as interim City Attorney for the City of Sherwood during the City Attorney’s period of military service, which requires Council approval.

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

Section 1. The Mayor is hereby authorized to sign an Employment Agreement with Sebastian Tapia in a form substantially similar to the attached Exhibit 1.

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

Duly passed by the City Council this 7th day of May 2024.

Tim Rosener, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

EMPLOYMENT AGREEMENT (Interim City Attorney)

This Employment Agreement is made and entered into effective May 13, 2024, by and between the City of Sherwood, Oregon (“City”) and Sebastian Tapia (“Attorney”).

RECITALS

WHEREAS, the Sherwood City Attorney (“City Attorney”) has been called to military service necessitating the need for an interim City Attorney for the term of his absence; and

WHEREAS, City desires to employ Attorney as the Interim City Attorney of the City of Sherwood and Attorney is willing to accept said appointment; and

WHEREAS, City and Attorney desire a written agreement to establish and set the terms and conditions of the employment of Attorney as the Interim City Attorney;

NOW THEREFORE, in consideration of the mutual covenants contained herein as well as for the other consideration described, City and Attorney mutually agree as follows:

1. DUTIES

City agrees to employ Attorney as Interim City Attorney, to perform the functions and duties described in Section 35 of the Sherwood City Charter, Sherwood Municipal Code, and state law, and as the City Council shall, from time to time, assign to the Interim City Attorney consistent with the professional role and responsibility of the Interim City Attorney. The Attorney agrees that, during the term of this Agreement, the legal work of the City is his highest professional priority, and no other work, pro bono or otherwise, shall interfere with the completion of legal work for the City.

2. HOURS AND PLACE OF WORK

It is recognized that Attorney must devote a great deal of time to work outside of normal office hours to the business of the City and, to that end, Attorney will be allowed to make reasonable adjustments as he shall deem appropriate during normal office hours. Any extended reasonable adjustments shall be subject to consultation with the City Manager and Mayor. Attorney’s primary place of work shall be at Sherwood City Hall, however, Attorney shall be allowed to work remotely at reasonable times and when circumstances so require.

3. ORGANIZATIONAL STRUCTURE

Attorney shall be an at will employee of the City Council of Sherwood in accordance with Section 35 of the Sherwood City Charter. Notwithstanding the foregoing, prior to the City Attorney’s departure for military service, and upon the City Attorney’s return from military service, Attorney shall be an employee of the City Attorney’s office and shall report to the City Attorney.

4. TERM

The term of this Agreement shall commence on May 13, 2024 (the “Effective Date”) and, unless earlier terminated consistent with the terms hereof, continue until September 13, 2025.

5. COMPENSATION

A. Salary

Commencing on the Effective Date, the City agrees to pay Attorney One-Hundred and Fifty-Five Thousand dollars (\$155,000.00) as a yearly base salary, to be paid in installments at the same interval as City pays its other employees who are not subject to a collective bargaining agreement (“Unrepresented Employees”). Attorney shall also be entitled to receive a Cost of Living Adjustment (COLA) to his salary in the same percentage amount and on the same schedule as may be provided to the City's Unrepresented Employees.

B. Retirement

City agrees to contribute into the Oregon Public Employees Retirement System on Attorney's behalf an amount equal to the same percentage of salary contributed for the City's Unrepresented Employees.

C. Cellular Phone

The City shall provide a cellular phone to Attorney for use for City business, consistent with applicable City policies.

D. Taxes

All compensation described in this Agreement shall be subject to withholding of income taxes and shall be subject to employment taxes required with respect to compensation paid by the City to an employee.

E. Reward Programs

Attorney shall be issued a purchase card by the City and shall use that card, to the extent practicable, to make necessary purchases on behalf of the City. When it is not practicable to use the purchase card, Attorney may use a personal credit card to make purchases on behalf of the City and may seek reimbursement from the City. As part of his compensation package, Attorney may keep any points or rewards accrued while using his personal credit card.

6. LEAVE BENEFITS

A. Management Leave

It is understood by the parties that the Attorney is exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) and that the position of City Attorney may frequently require irregular hours and far in excess of a standard 40-hour work week to accomplish the duties of the position. It is also understood that paid time off is essential to employee well-being and that the City expects the Attorney to take substantial time away from work. In lieu of the Paid Time Off (PTO) and Administrative leave provisions applicable to other Unrepresented Employees, the Attorney shall be permitted to take paid management leave of reasonable duration and frequency, as City business permits, without a fixed maximum or accrual rate. Management leave may be used for any purpose which would be a permitted use of PTO or Administrative leave under the City's policies. Management leave has no cash value upon separation from employment.

B. Sick Leave

Attorney shall be entitled to the same sick leave benefits as Unrepresented Employees.

C. Holidays

Attorney shall be subject to the policies regarding City observed holidays that are applicable to Unrepresented Employees.

7. INSURANCE AND OTHER BENEFITS

A. Health Insurance

Attorney may, at his discretion, choose to utilize insurance benefits provided to other Unrepresented Employees.

B. Life Insurance

City shall pay, on behalf of Attorney, the premium cost for a term life insurance policy in the amount of three hundred thousand dollars (\$300,000.00).

C. Other Benefits

Except as otherwise provided in this Agreement, Attorney shall receive all other employee benefits provided by the City to Unrepresented Employees.

8. PROFESSIONAL DUES AND DEVELOPMENT

To the extent funds are available and budgeted by the City Council, Attorney may participate, as he deems appropriate, in professional associations, short courses, seminars, conferences, and other similar professional development opportunities. Expenses will be reimbursed consistent with City policy applicable to the City's Unrepresented Employees.

A. The City agrees to budget and to pay for the professional dues of the City Attorney for membership in the Oregon State Bar and sections of government law and land use, the City Attorney's Association, the International Municipal Law Officer's Association, and other national, regional, state, and local government groups and committees thereof on which employee may serve as a member and/or have been approved by the City.

B. The City agrees to maintain the necessary legal library as agreed upon by Attorney and the City.

9. TERMINATION

Attorney is an at-will employee and shall serve at the pleasure of the City Council. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of Attorney at any time, for any reason whatsoever, with or without cause, prior to expiration of this Agreement, subject only to the provisions set forth in this Section. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Attorney to resign at any time from his position prior to expiration of this Agreement, subject only to the provisions set forth in this Section.

A. Termination for Cause

If Attorney is terminated prior to the expiration of this Agreement for cause, City shall have no obligation with respect to the severance pay described in this Section. For the purposes of this Agreement, "cause" is defined to include any of the following:

- i. Attorney fails or refuses to comply with the laws and written policies and regulations of the City that are now in existence or are from time to time established.
- ii. Attorney fails to perform his duties as Interim City Attorney or abandons his

- position as Interim City Attorney.
- iii. Attorney has his Oregon State Bar license suspended or terminated.
 - iv. The City has substantial evidence to believe Attorney has committed fraud, breach of fiduciary responsibilities, dishonesty, or gross negligence; misappropriated City funds, goods, or services to either his own or some other private third party's benefit; or committed other acts of misconduct which the City Council believes, in its sole discretion, is or would be detrimental to the City or its interests.

B. Termination Without Cause

If City terminates Attorney without cause prior to the expiration of this Agreement, and the Attorney is then willing and able to perform all of the duties of the Interim City Attorney under this Agreement, the City shall pay a cash severance payment to Attorney equal to six (6) months' of the Attorney's monthly base salary, the calculation of which shall not include any added benefits or allowances (such as a vehicle allowance). The severance payment shall be calculated using the monthly salary in effect at the time of the termination, minus any state or federal withholdings, and shall be paid in six (6) monthly increments commencing no later than fifteen (15) calendar days after the effective date of termination. The right to said payment shall cease if, during the period of the scheduled payments, Attorney accepts employment with another employer (including self-employment). Attorney has an affirmative obligation to notify City upon acceptance of other employment. In the event Attorney fails to notify City of his employment, City shall have the right (but not the obligation) to seek recovery from Attorney of any and all amounts improperly received as well as recovery of any cost(s) or fee(s) (including attorney fees) City incurs in pursuit thereof. Termination without cause, as used in this Section, means the Attorney's discharge or dismissal by the City, for any reason other than the reasons specified in Subsection 8(A) above, and shall also include discharge or dismissal by the City during the six (6) month period immediately following the official seating of one or more newly elected Council members for reasons other than those set out above in Subsection 8(A) of this Section, notwithstanding Attorney's willingness and ability to perform his duties.

C. Voluntary Resignation

In the event the Attorney voluntarily resigns prior to the expiration of this Agreement, the Attorney shall give the City written notice thereof a minimum of forty-five (45) days in advance, unless the parties mutually agree otherwise. In the event of the Attorney's voluntary resignation, the Attorney shall not be entitled to severance pay as provided herein.

D. Disability

If Attorney is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity, or health that exceeds exhaustion of allowed state and federal family medical leaves, the City shall have the option to terminate this Agreement and, in that case, Severance will be equal to six (6) months of wages, but will cease to be paid as soon as disability insurance proceeds begin to be received, if such payments occur sooner than the expiration of the six (6) month severance period.

10. GENERAL PROVISIONS

A. Professional Liability. The City agrees to defend, hold harmless, and indemnify the

Attorney from all demands, claims, suits, actions, and legal proceedings brought against Manager in his individual capacity or in his official capacity as agent and employee of the City, consistent with the terms of the Oregon Tort Claims Act (ORS 30.260 to 30.300).

- B. Amendments. No amendment to this Agreement shall be valid unless in writing and signed by the Attorney and an authorized representative of the City after approval by the City Council.
- C. Applicable Law. This Agreement is construed under the laws of the State of Oregon, the City of Sherwood Charter, and the Sherwood Municipal Code. Venue shall be in Washington County Circuit Court or, only if there is no state court jurisdiction, U.S. District Court for the District of Oregon.
- D. Counterparts. This Agreement may be executed in duplicate original counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.
- E. Compliance with Laws. Attorney shall perform his duties in accordance with all applicable laws, ordinances, rules, and regulations applicable to his position.
- F. Entire Agreement. This Agreement constitutes the entire Agreement between the parties on the subject matter hereof and supersedes all prior written or oral discussions or agreements regarding the same subject. The provisions of this Agreement are solely for the benefit of the parties and not for the benefit of any other person, persons, or legal entities.
- G. Inducements and Representations. The Attorney acknowledges that he has not been induced to enter into this Agreement by any representations or statements, oral or written, not expressly contained herein or guarantees, expressed or implied, other than the expressed representations, warranties, and guarantees contained in this Agreement.
- H. Assignment. This Agreement may not be assigned by either the City or the Attorney.
- I. Representation. The City has been represented by Ryan Adams, its City Attorney, in the preparation of this Agreement. Attorney acknowledges that he has the right to independent counsel at his own expense regarding the preparation of this Agreement.
- J. Arbitration. In the event the parties have a dispute concerning the terms of this Agreement, the terms and conditions of the employment relationship, or the violation of any federal, state, or local law relating to the employment relationship and they have not otherwise resolved the matter through any attempted mediation, conciliation, or other voluntary dispute resolution process they choose to use prior to the initiation of arbitration, then the dispute shall be resolved by binding arbitration in accordance with the then effective arbitration rules of (and by filing a claim with) Arbitration Service of Portland, Inc., and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. Each party shall bear equally the expense of the arbitrator and all other expenses of conducting the arbitration. Each party shall bear its own expenses for witnesses, depositions, and attorneys.

- K. Severability. It is understood and agreed by the parties that if any part, term, portion, or provision of this Agreement is held by the courts to be illegal or in conflict with the laws of the State of Oregon, the validity of the remaining portion of this Agreement shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, portion, or provision.

IN WITNESS WHEREOF, the **CITY OF SHERWOOD, OREGON**, has caused this Agreement to be signed and executed by its Mayor, Tim Rosener, and Sebastian Tapia has signed and executed this Agreement, on the date noted below each signature.

CITY OF SHERWOOD

SEBASTIAN TAPIA

Tim Rosener, Mayor

Sebastian Tapia

DATED THIS 7th day of May 2024.

APPROVED AS TO FORM:

Ryan Adams, City Attorney

Agenda Item: Public Hearing (*First Reading*)

TO: Sherwood City Council

FROM: Jason M. Waters P.E, City Engineer
Through: Craig Sheldon Public Works Director, Ryan Adams, City Attorney and Craig Sheldon, City Manager Pro Tem

SUBJECT: Ordinance 2024-001, vacating city public right-of-way located on an unnamed street within the Tonquin Employment area east of SW Tonquin Road

Issue:

Should the City release the public's interest in an unnamed street right-of-way located east of SW Tonquin Road approximately 280 feet southeast of SW Oregon Street?

Background:

This Ordinance is being submitted as a public request of Schnitzer Properties, LLC, who have ownership of the Sherwood Commerce Center LLC for which property in Document No. 2024-004454 is owned by. Attached are exhibits showing the location of the right-of-way to be vacated in reference to surrounding properties and streets.

Title to the vacation of the unnamed right-of-way will revert back to the original property from which it was originally dedicated, in the case of the right-of-way between SW Tonquin Road and SW Commerce Court, the property will revert back to Cascade Civil Development, Inc. (Doc. No. 2023-043257), in the case of the right-of-way east of SW Commerce Court, the property will revert back to Sherwood Commerce Center LLC (Doc. No. 2024-004454), in conformance with ORS 271-140. ORS 271 describes the criteria and processes for vacating public right-of-way and easements, which includes public noticing of the proposed action and a public hearing in which the governing body may grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest.

The unnamed street right-of-way petitioned to be vacated was recently transferred from a Washington County right-of-way to a city right-of-way upon the annexation of the adjacent properties within the Tonquin Employment Area. The right-of-way was originally for access to existing homes in the area which have now been demolished and therefore is no longer needed. Also, SW Commerce Court and SW Industrial Way are nearing completion which will provide access to surrounding developments in the area.

Vacation of this right-of-way has been reviewed by and deemed acceptable by City of Sherwood Public Works Department and Community Development Department. A public storm and sanitary sewer easement has been recorded over the entirety of the right-of-way between SW Tonquin Road and SW Commerce Court for the city to operate and maintain storm sewer and sanitary sewer facilities located within the right-of-way to be vacated. The Community Development Director determined that a pedestrian interconnect through this unnamed street right-of-way between SW Tonquin Road and SW Commerce Court is not necessary. Maintenance access to city storm sewer and sanitary sewer will be constructed, within the unnamed street right-of-way to be vacated, by surrounding developments.

Vacation of the unnamed street right-of-way east of SW Commerce Court will allow for the property to the east to obtain full development potential.

Currently there are existing overhead franchise utilities within the unnamed street right-of-way. The adjacent development is currently in the process of getting these overhead facilities relocated to the PUEs along SW Commerce Court and SW Industrial Way. Since a PUE is not being maintained over the right-of-way to be vacated, existing overhead utilities will need to be relocated and the existing overhead facilities removed prior to recording of this right-of-way vacation.

Vacation of this right-of-way will not have an adverse effect on any adjacent property values, whereas redevelopment of this land may actually increase the property value of adjacent properties.

City Council adoption of Ordinance 2024-001, vacating the unnamed street right-of-way shown and described in the attached Exhibit "A", causes no negative impacts to City owned infrastructure. Vacation of the unnamed street right-of-way will enhance Sherwood livability, and promote Resident well-being.

Financial Impacts:

There are no future costs to the City associated with vacation of this right-of-way and the applicant has paid a deposit ensuring that the full cost of this request is paid for by them. Vacation of the right-of-way comprises the release of the public's interest in right-of-way that is no longer needed. This unnamed street right-of-way vacation does not extend to any right-of-way dedications or easements granted to the city since the most recent section of the unnamed right-of-way annexed into the City on March 15, 2022. Vacation of this right-of-way will add property in private ownership and thereby add to the taxable land base.

Recommendation:

City staff respectfully recommends that City Council hold a public hearing for Ordinance 2024-001, vacating city public right-of-way located on an unnamed street within the Tonquin Employment area east of SW Tonquin Road.

EXHIBIT

TAX LOT 00400
TAX MAP 2S128C0
WASHINGTON COUNTY
FACILITIES MANAGEMENT

TAX LOT 00600
TAX MAP 2S128C0
SHERWOOD COMMERCE CENTER, LLC

TAX LOT 00500
TAX MAP 2S128C0
SHERWOOD COMMERCE CENTER, LLC

DOC. NO.
2023-043257

DOC. NO.
2024-004454

TAX LOT 00100
TAX MAP 2S133BB
CASCADE CIVIL DEVELOPMENT, LLC

TAX LOT 00201
TAX MAP 2S13300
SHERWOOD COMMERCE CENTER, LLC

TAX LOT 02500
TAX MAP 2S13300
UNITED STATES OF AMERICA
DEPARTMENT OF INTERIOR

TAX LOT 00400
TAX MAP 2S13300
WOODBURN INDUSTRIAL CAPITAL GROUP

RIGHT-OF-WAY
TO BE VACATED

RIGHT-OF-WAY
TO BE VACATED

SW OREGON STREET

SW TONQUIN ROAD

COMMERCE COURT

INDUSTRY LANE

25.00' ROW DEDICATION
PER BK 804, PG 898

25.00' ROW DEDICATION
PER BK 926, PG 721

64.00'

64.00'

200'

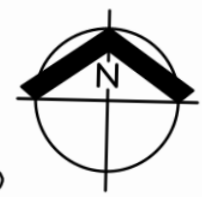
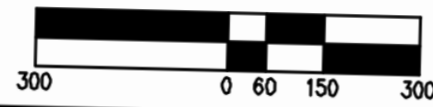
200'

200'

200'

400'

SCALE: 1" = 300 FEET



12/14/2022

DRWN: WCB
CHKD: MSK
AKS JOB: 9749
EXHIBIT

RIGHT-OF-WAY VACATION
EXHIBIT



AKS ENGINEERING & FORESTRY, LLC
12965 SW HERMAN RD, STE 100
TUALATIN, OR 97062
503.563.6151 WWW.AKS-ENG.COM
DWG: 9749_20221212_EXHIBIT | EXBT



ORDINANCE 2024-001

VACATING UNNAMED CITY RIGHT-OF-WAY LOCATED EAST OF SW TONQUIN ROAD IN THE TONQUIN EMPLOYMENT AREA

WHEREAS, the City has received a petition to vacate an unnamed street right-of-way located east of SW Tonquin Road in the Tonquin Employment Area being more particularly described and shown on the attached Exhibit “A” (Legal Description) and Exhibit “B” (Survey Map); and

WHEREAS, the petition for vacation included the written consent of the owners of all abutting properties and not less than two-thirds of the area of the real property affected thereby, as defined in ORS 271.080; and

WHEREAS, the City posted a notice of the vacation request at the point of the intersection of the unnamed right-of-way with SW Tonquin Road and mailed notification to property owners within 1000 feet of the vacation area and published the notice in a local newspaper on two separated dates, March 21 and March 28, 2024 in, all in accordance with ORS 271.110; and

WHEREAS, title to the vacated right-of-way will revert back to the original property from which it was originally dedicated, in the case of the right-of-way between SW Tonquin Road and SW Commerce Court, the property will revert back to Cascade Civil Development, Inc. (Doc. No. 2023-043257), in the case of the right-of-way east of SW Commerce Court, the property will revert back to Sherwood Commerce Center LLC (Doc. No. 2024-004454) per ORS 271.140; and

WHEREAS, the homes that were previously served by the unnamed street have been demolished; and

WHEREAS, new right-of-way and PUE have been dedicated in this area for new streets known as SW Commerce Court and SW Industry Way which are currently nearing completion of construction and will provide access to the property previously using the unnamed street; and

WHEREAS, the existing unnamed street right-of-way east of SW Commerce Court is no longer needed for any present or future purposes; and

WHEREAS, the existing unnamed street right-of-way between SW Tonquin Road and SW Commerce Court has been determined by city staff to only be needed for storm sewer and sanitary sewer purposes for which an easement has been granted to the City; and

WHEREAS, adjacent developments will be constructing necessary maintenance access for City maintenance access to storm sewer and sanitary sewer facilities located within the right-of-way to be vacated; and

WHEREAS, the vacating of the right-of-way does not extend to any right-of-way dedications or easements granted to the city since the most recent section of the unnamed right-of-way annexed into the City on March 15, 2022; and

WHEREAS, there are existing overhead franchise utilities located within the unnamed street right-of-way that are in process of being located underground along the newly constructed streets of SW Commerce Court and SW Industry Way, which will need to be completed along with the removal of the existing overhead franchise utilities prior to recording of this right-of-way vacation.

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

Section 1: After full and due consideration of this right-of-way vacation application and the City Staff Report, the City Council finds that the consent of the owners of the requisite area has been obtained, notice has been duly given and the public interest will not be prejudiced by the proposed vacation.

Section 2: The City Council authorizes the vacation of the unnamed street right-of-way from SW Tonquin Road to its eastern terminus upon relocation and removal of the existing overhead franchise utilities located within the unnamed street right-of-way.

Section 3: This ordinance will become effective the 30th day after its enactment by the City Council and approved by the Mayor.

Duly passed by the City Council this 7th day of May, 2024.

Tim Rosener, Mayor

Date

Attest:

Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Standke	_____	_____
Giles	_____	_____
Scott	_____	_____
Mays	_____	_____
Brouse	_____	_____
Young	_____	_____
Rosener	_____	_____



AKS ENGINEERING & FORESTRY, LLC
12965 SW Herman Road, Suite 100, Tualatin, OR 97062
P: (503) 563-6151 | www.aks-eng.com

AKS Job #9749

OFFICES IN: BEND, OR - KEIZER, OR - TUALATIN, OR - VANCOUVER, WA

EXHIBIT A

Right-of-Way Vacation

A tract of land located in the Northwest One-Quarter of Section 33, Township 2 South, Range 1 West, Willamette Meridian, City of Sherwood, Washington County, Oregon, and being more particularly described as follows:

Commencing at the north one-quarter corner of said Section 33; thence along the north line of said Section 33, North 88°43'56" West 654.51 feet to the east line of a 25.00 foot wide Right-of-Way Dedication per Book 926, Page 721, Washington County Deed Records, and the Point of Beginning; thence along said east line, South 01°09'31" West 25.02 feet to the south line of said Deed; thence along said south line, North 88°43'49" West 654.27 feet to the south line of a 25.00 foot wide Right-of-Way Dedication per Book 804, Page 898, Washington County Deed Records; thence along said south line, North 88°50'36" West 557.79 feet to the northeasterly right-of-way line of SW Tonquin Road (37.00 feet from centerline); thence along said northeasterly right-of-way line on a non-tangent curve to the right (with a radial bearing of North 66°17'15" East) with a Radius of 264.84 feet, a Central Angle of 05°50'02", an Arc Length of 26.97 feet, and a Chord of North 20°47'44" West 26.95 feet to the north line of said Book 804, Page 898; thence along said north line, South 88°50'36" East 567.75 feet to the north line of said Book 926, Page 721; thence along said north line, South 88°43'56" East 654.38 feet to the Point of Beginning.

The above described tract of land contains 30,441 square feet, more or less.

The Basis of Bearings for this description is based on Survey Number 34,413, Washington County Survey Records.

12/12/2022

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JANUARY 12, 2016
MICHAEL S. KALINA
89558PLS

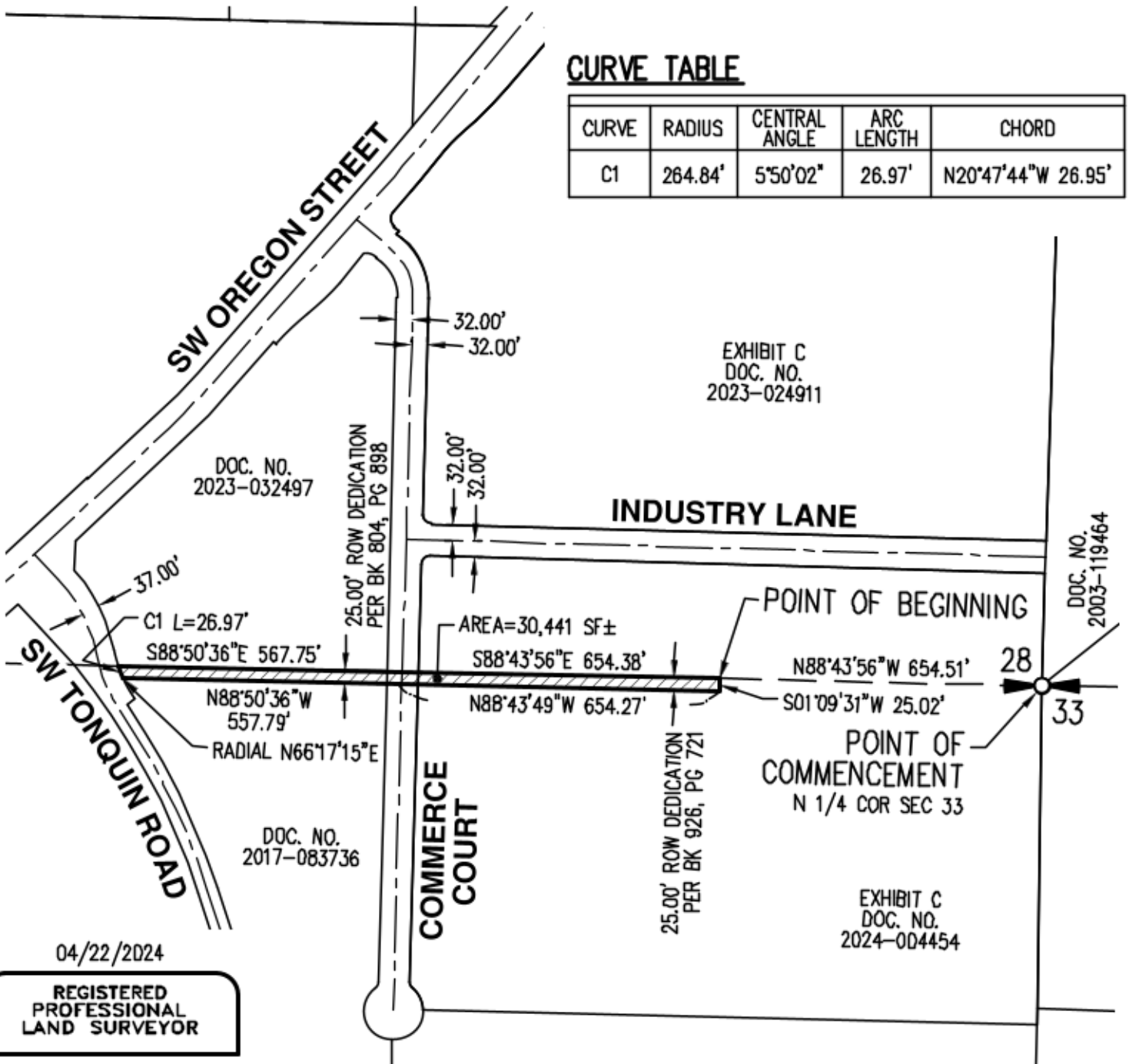
RENEWS: 6/30/23

EXHIBIT B

A TRACT OF LAND LOCATED IN THE NORTHWEST 1/4 OF SECTION 33,
 TOWNSHIP 2 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN,
 CITY OF SHERWOOD, WASHINGTON COUNTY, OREGON

CURVE TABLE

CURVE	RADIUS	CENTRAL ANGLE	ARC LENGTH	CHORD
C1	264.84'	5°50'02"	26.97'	N20°47'44"W 26.95'

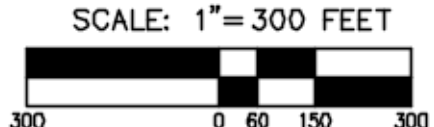


04/22/2024

**REGISTERED
 PROFESSIONAL
 LAND SURVEYOR**

Michael S. Kalina

OREGON
 JANUARY 12, 2016
 MICHAEL S. KALINA
 89558PLS
 RENEWS: 6/30/25



AKS ENGINEERING & FORESTRY, LLC
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RIGHT-OF-WAY VACATION

PUBLIC RIGHT-OF-WAY	
DRWN: WCB	CHKD: MSK
AKS JOB: 9749	EXHIBIT B