



CITY COUNCIL MEETING PACKET

FOR

Tuesday, April 4, 2023

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

6:30 pm City Council Work Session

7:00 pm City Council Regular Meeting

**~~City Council Executive Session~~
~~(ORS 192.660(2)(i), Performance Evaluation)~~
~~(Following the Regular City Council Meeting)~~**

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



Home of the Tualatin River National Wildlife Refuge

6:30 PM WORK SESSION

1. **City Purchasing and Procurement**
(Ryan Adams, City Attorney)
- ~~2. **Discussion on creation of Youth Advisory Council**
(Keith Campbell, City Manager)~~

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 March 21, 2023 City Council Meeting Minutes** (Sylvia Murphy, City Recorder)
 - B. **Resolution 2023-020, Appointing Corey Capko to the Sherwood Planning Commission**
(Erika Palmer, Planning Manager)
 - C. **Resolution 2023-021, Appointing Tyler Barns to the Sherwood Planning Commission**
(Erika Palmer, Planning Manager)
 - D. **Resolution 2023-022, Appointing Zana Mays to the Sherwood Senior Advisory Board**
(Maiya Martin Burbank, Senior Center Manager)
 - E. **Resolution 2023-023, Authorizing the City Manager to Sign an IGA with City of Wilsonville for Broadband Services and Infrastructure Sharing** (Brad Crawford, IT Director)
6. **CITIZEN COMMENTS**
7. **PRESENTATIONS**
 - A. **Proclamation, Proclaiming April 10-14, 2023 as National Community Development Week**
(Mayor Rosener)
8. **NEW BUSINESS**
 - A. **Resolution 2023-024, Support of the Sherwood School District Local Option Levy, 34-323**
(Keith D. Campbell, City Manager)
9. **PUBLIC HEARINGS**

AGENDA

SHERWOOD CITY COUNCIL
April 4, 2023

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Sherwood, OR 97140

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AMENDED AGENDA, ITEM 7.A ADDED
(03.31.2023) AMENDED AGENDA: WORK SESSION AND EXECUTIVE SESSION CANCELATIONS

A. Ordinance 2023-003 Amending Title 12 of the Sherwood Municipal Code and Adopting Standards and Procedures for a Permanent Outdoor Seating Program
(Eric Rutledge, Community Development Director) *(Second Reading)*

10. CITY MANAGER REPORT

11. COUNCIL ANNOUNCEMENTS

~~12. ADJOURN TO EXECUTIVE SESSION~~

~~A. ORS 192.660(2)(i), Performance Evaluation~~
~~(Lydia McEvoy, HR Manager and Ryan Adams, City Attorney)~~

12. 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.



SHERWOOD CITY COUNCIL MEETING MINUTES
22560 SW Pine St., Sherwood, Or
March 21, 2023

WORK SESSION

1. **CALL TO ORDER:** Mayor Rosener called the meeting to order at 6:30 pm.
2. **COUNCIL PRESENT:** Mayor Tim Rosener, Council President Keith Mays, Councilors Kim Young, Doug Scott, Taylor Giles, Renee Brouse, and Dan Standke.
3. **STAFF PRESENT:** City Manager Keith Campbell, Community Services Director Kristen Switzer, HR Manager Lydia McEvoy, Police Chief Ty Hanlon, City Attorney Ryan Adams, Community Development Director Eric Rutledge, IT Director Brad Crawford, Public Works Director Craig Sheldon, Records Technician Katie Corgan, and City Recorder Sylvia Murphy.
4. **TOPICS:**

A. Discussion of HB 3115, Time, Place & Manner

Mayor Rosener reported that every city in Washington County was currently determining how to implement HB 3115 and explained that Sherwood already had a no camping ordinance and provided an overview of the impacts of the Ninth Circuit Court's decision. He noted that camping was treated as a violation in Sherwood and explained that HB 3115 codified the Ninth Circuit Court's decision and cities needed to have a new policy in place by July 1, 2023. City Attorney Ryan Adams clarified that this was a state mandated update that required cities to repeal parts of their camping code if it violated the new state law. He stated that the new code needed to be in place by July 1st. He presented the "HB 3115: State Mandated Updates to Sherwood's Camping Code" PowerPoint presentation (see record, Exhibit A) and explained that the Eighth Amendment prohibited cruel and unusual punishment as well as excessive fines and excessive bail. He provided an overview of pertinent case law related to camping code and homelessness and stated cases included Robinson v. California from 1962, Martin v. Boise from 2019, and Blake/Johnson v. Grants Pass from 2022. He stated that HB 3115 put into state law what was already federal case law and explained that if cities did not have their camping ordinances in place by July 1st, then the city could be sued, but the plaintiff had to provide a 90-day notice. He stated that cities did not want to craft policy or ordinances under the threat of litigation. Councilor Scott asked regarding prohibiting camping in the right-of-way. Mr. Adams noted that it was likely that Council would have questions that he was unable to answer because of the newness of HB 3115. He referred to Councilor Scott's question regarding camping in the right-of-way and explained that regulating camping in the right-of-way was regulated by the city because of ADA laws, but other areas, such as a park, would be harder to regulate. Mayor Rosener voiced that the strip of land between Shari's Restaurant and Highway 99W should be considered when drafting the ordinance. City Attorney Adams outlined that the city could have

regulations as long as they were objectionably reasonable and defined the term “objectionably reasonable.” He stated that in general, judges and juries determined what objectionably reasonable meant, but HB 3115 required that cities determine what it meant instead with the understanding that if the city had not been objectionably reasonable in their determination, the city could be sued. He referred to an email he had sent to Council prior to the meeting (see record, Exhibit B) which included a map of the city. He provided an overview of the maps on pages 4-6 of the presentation and explained that if the city lifted the camping ordinance, a stipulation could be put in place that prohibited camping within a quarter of a mile, a half mile, or a mile of a school. Mayor Rosener stated that he had supplied an alternative to the maps on pages 4-6 and explained that his map on page 7 of the presentation was based on Sherwood’s walk zones. Discussion occurred and Council President Mays asked what neighboring cities were doing? City Attorney Adams replied that it varied greatly between cities and reported that the City of Wilsonville had discussed the idea of creating an administrative rule to permit camping in their City Hall parking lot and noted that they did this via an administrative rule because administrative rules were easier to change if necessary. He explained that the law required that cities have somewhere someone experiencing homelessness could go. Councilor Scott commented that he liked that approach because it would be easier to manage. Mayor Rosener said that he had spoken with several people in Washington County and reported that most cities were considering following the LOC’s model which permitted camping from 7:00 pm – 7:00 am. Councilor Young commented that if a city designated a timeframe, then they also needed the appropriate staffing levels to enforce it because if the time limits were not enforced, then it evolved into a much larger issue. Councilor Brouse commented that if the city was going to follow that idea, then the city also needed to increase their staffing levels and services the city offered, and discussion occurred. Councilor Giles commented that not every place was equipped to address the multitude of services someone experiencing homelessness may need, and he would prefer getting that person to a location that had the infrastructure in place to support them and discussion occurred. Mayor Rosener commented that he did not believe that the city would receive any money from the county to provide services and asked Chief Hanlon how often the Police Department needed to enforce Sherwood’s current camping ordinance? Chief Hanlon replied that currently, it was pretty minimal and explained that most times it was someone sleeping in their car because they had a job nearby, or it was individuals camping in the woods. He explained that very few people had “taken up residency” in the woods and stated that he did not view the issue as cumbersome to the Police Department currently. He stated that he had reservations regarding designating a specific area for camping and explained that forcing everyone into a single area could pose safety risks for individuals, particularly single women, and discussion regarding enforcing the current camping ordinance occurred. Councilor Giles asked if removing the current camping policy would make the Police Department’s job more or less difficult? Chief Hanlon replied that lifting the ordinance would be a step in the right direction in addition to allowing the Police Department to individually address each occurrence as they happened. Mayor Rosener referred to the City of Portland’s recent crackdown on homeless encampments and commented that he worried that it would push people out of the city and into suburban areas. He put forward the idea of having a map of areas in Sherwood that camping would be permitted. Councilor Brouse suggested that the city repeal the ordinance and work with the YMCA, local churches, and faith-based communities to allow overnight parking on their lots. Councilor Giles asked if those locations could already offer that as it was private property? Mayor Rosener stated that the city could develop a process where a church or non-profit would be exempt from the ordinance. Councilor Scott asked if the current ordinance banned camping on private property? City Attorney Adams replied that currently, camping on private property required an exemption. Councilor Scott commented that he felt that that was not the intent of the ordinance when it was drafted, and discussion occurred. Council President Mays asked for more information on what neighboring cities were doing, including how cities were addressing camping out in the elements versus vehicle camping and asked if cities could differentiate between the two.

Councilor Scott commented that he wanted one set of rules. Councilor Giles referred to the potential issue of cars and RVs exploiting loopholes in the code and voiced that he wanted to prevent that from happening. Councilor Scott referred to Chief Hanlon's comments about the issue with designating a specific area and remarked that he had changed his mind, but he was still in favor of having a permitted timeframe in place for enforcement purposes. City Attorney Adams recapped Council's feedback and explained he would look into what different cities were doing regarding different vehicle types and he would research options for public property versus private property. He clarified that Council did not want to repeal Sherwood's portion of the camping code without first inserting additional policies, and asked if that was correct? Council commented that they wanted more information before they made a decision. City Attorney Adams replied that he would schedule a future work session to discuss the findings and potential options with Council. Council President Mays commented that Council wanted to be compassionate and helpful in their decision.

5. ADJOURN:

Mayor Rosener adjourned the work session at 7:00 pm and convened a regular session.

REGULAR SESSION

- 1. CALL TO ORDER:** Mayor Rosener called the meeting to order at 7:07 pm.
- 2. COUNCIL PRESENT:** Mayor Tim Rosener, Council President Keith Mays (left at 7:55 pm), Councilors Kim Young, Doug Scott, Taylor Giles, Renee Brouse, and Dan Standke.
- 3. STAFF PRESENT:** City Manager Keith Campbell, Community Services Director Kristen Switzer, City Attorney Ryan Adams, IT Director Brad Crawford, Community Development Director Eric Rutledge, Police Chief Ty Hanlon, HR Manager Lydia McEvoy, and City Recorder Sylvia Murphy.

4. APPROVAL OF AGENDA:

MOTION: FROM COUNCIL PRESIDENT MAYS TO APPROVE THE AGENDA. SECONDED BY COUNCILOR BROUSE. MOTION PASSED 7:0; ALL MEMBERS VOTED IN FAVOR.

5. CONSENT AGENDA:

- A. Approval of February 21, 2023 City Council Meeting Minutes**
- B. Approval of March 7, 2023 City Council Meeting Minutes**
- C. Resolution 2023-018, Adopting City Council Pillars, Goals, and Deliverables for Fiscal Year 2023-2024**

MOTION: FROM COUNCILOR BROUSE TO APPROVE THE CONSENT AGENDA. SECONDED BY COUNCILOR SCOTT. MOTION PASSED 7:0; ALL MEMBERS VOTED IN FAVOR.

6. CITIZEN COMMENTS:

Sherwood resident Neil Shannon came forward to speak on Resolution 2023-019 and the sale of the Sherwood YMCA. He stated that in general he supported the YMCA and that he appreciated Council's

efforts to negotiate a contract that encouraged the YMCA to stay in Sherwood and expand the facility. He referred to previous town hall meetings and commented that the general feedback from the community was that the \$5 million from selling the facility should be dedicated to parks and recreation. He commented that he had not seen that stipulation in the resolution and wanted to ensure that the community's wishes were heard. Mr. Shannon also commented that the \$500,000 for the five-year CIP plan and the \$15,000 maintenance costs cited in the staff report should also be dedicated to parks and recreation.

Mayor Rosener addressed the next agenda item.

7. PRESENTATIONS:

A. Recognition of Retiring TVF&R Volunteer Fire Captain Paul Spath

Mayor Rosener explained that the city wished to recognize Station 33 TVF&R Volunteer Captain Paul Spath for his excellence in serving the community for 34 years. Council President Mays stated he greatly appreciated Captain Spath's work for the community and thanked him for his time serving the Sherwood community. Councilor Brouse asked Captain Spath what some of the biggest changes had been since he started in 1989? Captain Spath replied that they used to have more volunteers but the equipment they used now was much safer. Councilor Brouse asked what his favorite aspect of the job was? Captain Spath replied that his favorite aspect was working with the volunteer crew at TVF&R as well as working with the community and the support from his family. Councilor Giles thanked Captain Spath for his knowledge, effort, and training and commented that he had participated in a fire department ride along. He asked Captain Spath what he would change or improve about the department or if there was anything the city could do to better support the department? Captain Spath replied that the city could help publicize and promote the need for more volunteer fire fighters. Councilor Young thanked Captain Spath for his service and stated that she had participated in a ride along. Councilor Scott thanked Captain Spath for his service and wished him a happy retirement. Councilor Standke thanked Captain Spath for his service to the community and the city. Mayor Rosener presented Captain Spath with a certificate on behalf of the city. TVF&R Volunteer Battalion Chief Brian Almquist introduced Captain Spath's family, TVF&R Assistant Chief Fale, TVF&R Deputy Chief of Operations Kenny Frentress, TVF&R Battalion Chief Matt Leech, Station 33 Captain Chad Ledson, and TVF&R Volunteer Captain Mike Berry. Chief Frentress came forward and recognized Captain Spath for his 34-year career and explained that 34 years was a long career and was only possible because of the support of his family. He stated that all 34 years of Captain Spath's career were spent in Sherwood and thanked him for his "selfless service, not only to the community, to the fire district, to the residents that live here" and presented Captain Spath with a plaque on behalf of the TVF&R Board of Directors, Fire Chief, and the entire fire district.

Mayor Rosener addressed the next agenda item.

B. Sherwood School District Levy Presentation

Sherwood School District Superintendent Dr. Jeremy Lyons presented the "Sherwood Education Levy" PowerPoint presentation (see record, Exhibit C) and stated that the education levy would appear on the May 16th ballot. He explained that the levy was needed in order to address the immediate financial shortfalls that were discovered in July 2022 which were created by the previous administration's revenue overestimation. He explained that the overestimation error was compounded by the loss of 400 students

and created a budget that was not sustainable for the school district. He outlined that they had wanted to address the revenue error as well as preventing something similar from happening again in the future and explained that a local option levy was proposed to address the issue. He outlined that because Sherwood property values had grown dramatically related to assessed values, a local levy option was possible. He recapped that the school board was presented with the levy information, and the board had approved putting out a levy to the community with the goal of maintaining the current level of school programs, teachers, and staff as well as adjusting for the loss of 400 students. He reported that they had arrived at the amount of \$1.50 per \$1,000 in assessed value. He referred to the chart on page 3 of the presentation and noted that Sherwood had the lowest per-pupil funding in the area. He stated that the proposed levy would bring Sherwood students up to match neighboring communities and noted that if the levy passed, Sherwood's per-pupil rate would look similar to the City of Beaverton's per-pupil rate. Dr. Lyons stated that the funds raised from the levy would stay in the community and would not be redistributed by the state. Dr. Lyons provided an overview of the levy's cost per-resident and explained that it was based on a property's assessed value, not market value. He reported that the levy would result in a maximum of \$600 per tax year, or \$50 a month for five years for a home with an assessed value of \$400,000. He commented that they estimated that it would cost the average Sherwood resident between \$30-\$70 per month. He referred to the 2016 bond levy and reported that the actual taxation rate for the bond levy had been lower than predicted when the bond levy was approved, with a rate of .70 cents per \$1,000 in assessed value. He stated that it was normal for growth-districts to have multiple bonds in addition to a local option levy. Dr. Lyons outlined the impacts of not passing the levy and explained that it would result in a reduction of 49-50 teachers and staff members for the 2023-2024 school year, there would be larger class sizes at every grade level, there would be reduced district support for extracurricular activities, and a possible "talent drain" from prospective parents choosing not to send their children to Sherwood schools. He reported that a levy rate of \$1.50 per \$1,000 in assessed value would raise approximately \$6.5 million per year for five years for the school district and would allow the school district to maintain their current standards. He commented that they recognized that they needed to reduce their costs relative to losing 400 students but with the knowledge that they would eventually regain those 400 students in time.

Mayor Rosener referred to Dr. Lyons's statement of Sherwood having the lowest per-pupil funding in the area and asked how Sherwood was ranked within the state? Dr. Lyons replied that they had not analyzed it at the state level, but Sherwood did not have the student populations that qualified for the weights that drove extra funding and commented that it was likely that Sherwood fell on the lower end. Mayor Rosener gave his kudos to Sherwood teachers for their hard work and effort in helping Sherwood have one of the highest graduation rates in the state and commented that he would hate to lose any teachers due to budget cuts. Councilor Scott asked if there would be any new programs, courses, or activities that could be started with the funds from the levy? Dr. Lyons replied that those discussions had occurred when determining the levy rate and the board had decided to address the budget shortfall and maintain what they currently had. He added that the financial report contained a multi-year strategic build-up of key reserves that would help prevent something similar from happening again in the future. Councilor Scott asked if five years was enough time to build those reserves? Dr. Lyons replied that it was. Councilor Scott asked if the same amount would be needed in perpetuity to maintain the status quo or was the levy forward-looking enough that it would add additional funds? Dr. Lyons replied that the school district was "at the mercy of the legislature" and the "economic fortunes" of the state when it came to additional school funding and commented that a local levy option helped balance out the fluctuations in state funding. He addressed Councilor Scott's question and explained that that would be a decision for the school board to make in five years and commented that the board could choose not to renew the levy. Council President Mays spoke on Sherwood's history of being "pro-schools, pro-education, pro-

families” and stated he wanted a resolution drafted supporting the levy for Council to vote on. He asked what the district’s total revenue was for this year? Dr. Lyons replied that with the overestimation of revenue, it was roughly \$61 million and 82% of that went to staff salaries. He continued that they had received \$55 million, roughly a \$10 million overestimation. Council President Mays spoke on the Governor’s proposed budget and the legislature budgeting process for schools and asked if it was possible that some years would add more to the reserve than others? Dr. Lyons replied that that was possible and spoke on potential educational funding numbers in the Governor’s budget and explained that the board had factored in several possibilities for the outcome of the state’s education budget. Councilor Young thanked the district for their transparency and voiced that regardless of the overestimation, a levy would still be needed to cover rising costs and asked if that was correct? Dr. Lyons replied that he believed that was true and commented that the community had high expectations for their schools, and the Sherwood School District was a high-performing district. Councilor Young asked what course correcting measures had the district undertaken or would take since the error was discovered? Dr. Lyons recapped that the error was discovered in July-August 2022, and by mid-August they knew they would need to make cuts. In the fall of 2022, the district made \$2.2 million in cuts, over half from cutting administrators and central office services and noted that there had been no elementary classroom disruptions from those cuts. He continued that the board was aware that the \$2.2 million in cuts would not cover the shortfall, which was why the levy was necessary. Councilor Giles reported that he had served on the Sherwood School District’s Bond Oversight Committee and confirmed that the bond dollars were separate from this issue. Dr. Lyons replied that was correct. Councilor Giles clarified that the proposed levy funds would be spent on programs and staff, not overhead. Dr. Lyons replied that was correct and explained that if the levy passed, they would implement two mechanisms to track each dollar. He explained one mechanism was the overhauling of the Sherwood School District Budget Committee to receive more comprehensive expenditure reports and revenue forecasts than those in the past. He continued that the Sherwood School District Budget Committee would track every dollar of the levy to be spent on teachers, classified staff members, and necessary reserve building, not administrators. Councilor Giles spoke on the teacher shortage in the state and the risk of being unable to re-hire teachers even if they had the budget to do so. Councilor Standke asked for clarification on if the budget shortfall was due to both the student population decrease and the state funding numbers? Dr. Lyons clarified that the shortfall was the “perfect storm” of the loss of 400 students and budgets that overestimated revenue. He spoke on the COVID-19 pandemic and ESSER (Elementary and Secondary School Emergency Relief) Funds and explained that the Sherwood School District had only received \$1.7 million in ESSER Funds due to Sherwood’s student weights and commented that the Woodburn School District had received up to \$26 million in ESSER Funds. Councilor Standke asked if student numbers had started increasing again from their lowest point? Dr. Lyons replied that student numbers had not increased, and demographer reports indicated that enrollment would be flat for the next few years, but it was highly likely that numbers would eventually increase in the future. Mayor Rosener commented that the Sherwood School District should have acted when they had noticed declining student enrollment rates several years ago and thanked Dr. Lyon for his time. Mayor Rosener asked if Council wished for staff to prepare a resolution supporting the levy? Council signaled they did.

Mayor Rosener addressed the next agenda item.

Council President Mays explained that he would recuse himself from the rest of the meeting because he served on the Board of Directors for the Columbia-Willamette YMCA and left the meeting at 7:55 pm.

8. NEW BUSINESS:

A. Resolution 2023-019, Purchase and Sale Agreement between the City of Sherwood and the Young Men's Christian Association of Columbia-Willamette, an Oregon nonprofit Corporation, doing business as YMCA of Columbia-Willamette

City Manager Keith Campbell recapped that in 1996, Sherwood residents passed a 20-year General Obligation Bond to construct a public facility and in the fall of 1998, construction was completed. He stated that the city entered into a 20-year agreement with the YMCA of Columbia-Willamette to operate the facility and in 2018, the city signed a five-year extension to that agreement. He explained that as part of the agreement, the city owned the facility and the land, and the YMCA was responsible for the operations and maintenance within the facility, while the city was responsible for the maintenance of the outside of the facility and the landscaping and upkeep of the property. In 2021, the city and the YMCA began negotiations to explore selling the land and improvements to the YMCA and on February 24, 2023, the City of Sherwood and the YMCA released a joint press release followed by two town hall meetings, on March 2nd at the YMCA and March 9th at Sherwood City Hall. Mr. Campbell reported that the Purchase and Sale Agreement was for \$5,000,000 in cash, and the sale price was based on appraisals from both the YMCA and the City of Sherwood. He noted that as part of the Purchase and Sale agreement, the city would retain the skate park and the undeveloped area adjacent to Woodhaven Commons. He stated that the city would also receive easements for the Highway 99W pedestrian bridge and access to the skate park. He reported that the agreement contained a 20-year "right of first refusal" should the YMCA decide to sell the property. Mr. Campbell stated that in addition to the \$5 million from the sale of the property, \$456,140 in planned capital improvements over the next five years would be removed from the Capital Improvement Plan. He noted that the city anticipated an additional savings of approximately \$15,000 per year in maintenance and upkeep of the land. City Attorney Adams explained that there was an issue with one of the revisions in the previous purchase and sale agreement document that previous City Attorney Josh Soper and the YMCA had drafted. He outlined that there was a declaration provision that required a 60% vote by Woodhaven property owners to remove the YMCA land from the HOA area and explained that there was concern about obligating the city to a condition that the city did not necessarily legally have control over. He reported that based on discussions held this week, it appeared that there would no longer be an issue with striking those provisions. Councilor Giles asked regarding dedicating the funds from the sale to be spent on parks and recreation. Mayor Rosener replied that Council had not officially decided what to dedicate the funds towards, but he personally felt that the funds should be oriented towards parks and discussion occurred. Councilor Young commented that Council should state that the funds would be spent on parks and recreation during this process. Mayor Rosener asked for a motion to declare that the \$5 million from the sale of the YMCA property be put into a parks fund. City Attorney Adams stated that he would need to converse with the Finance Director to determine if the funds could be obligated at this meeting. Mayor Rosener asked that a resolution be drafted that stated Council intended the funds to be used for parks.

MOTION: FROM COUNCILOR BROUSE THAT THE INTENT OF THE SALE OF THE YMCA PROPERTY WAS TO MOVE THE \$5 MILLION INTO A DESIGNATED FUND TO BE USED FOR PARKS AND RECREATION. SECONDED BY COUNCILOR YOUNG. MOTION PASSED 6:0 ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCIL PRESIDENT MAYS WAS ABSENT).

Mayor Rosener asked if people could still park in the YMCA parking lot if they were only going to use the skate park? City Attorney Adams replied that people utilizing the skate park could park in the YMCA parking lot. Mayor Rosener stated that because the skate park was built using state grants, the city was barred from selling it for a certain amount of time. Mayor Rosener asked City Manager Campbell to speak on the 150-day period. Mr. Campbell explained that the 150-day timeframe was the time in which

the city could perform their due diligence and was when the parcel would be rezoned, and it was also time for the YMCA to procure their financing. He stated that at the end of the 150-day period, and once everything was deemed as sufficient, there would be a closing period which could be up to 60 days. Councilor Scott clarified that the YMCA was scheduled to vote on the proposal on Thursday? Mr. Campbell replied that was correct. Councilor Scott recapped that this topic had been discussed at the Council level for over two years. Mayor Rosener commented that one of his concerns was that the community had a recreation facility going into the future and was happy that that had been preserved in the agreement.

MOTION: FROM COUNCILOR YOUNG TO APPROVE RESOLUTION 2023-019, APPROVING THE PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF SHERWOOD AND THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF COLUMBIA-WILLAMETTE, AN OREGON NONPROFIT CORPORATION, DOING BUSINESS AS YMCA OF COLUMBIA-WILLAMETTE. IN A FORM SUBSTANTIALLY SIMILAR AS THE ATTACHED EXHIBIT A, ON THE CONDITION THAT THE CITY ATTORNEY SHALL HAVE THE AUTHORITY TO STRIKE PROVISIONS REQUIRING CITY ACTION WITH RESPECT TO THE WOODHAVEN HOA AND HAVE FURTHER AUTHORITY TO MAKE MINOR MODIFICATIONS TO NUMBERING AND DATES THAT DO NOT AFFECT THE MATERIAL SUBSTANCE OF THE AGREEMENT. SECONDED BY COUNCILOR BROUSE. MOTION PASSED 6:0; ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCIL PRESIDENT MAYS WAS ABSENT).

Mayor Rosener addressed the next agenda item and the City Recorder read aloud the public hearing statement.

9. PUBLIC HEARINGS:

A. Ordinance 2023-003, Amending Title 12 of the Sherwood Municipal Code and Adopting Standards and Procedures for a Permanent Outdoor Seating Program (*First Reading*)

Community Development Director Eric Rutledge presented the "Outdoor Seating Program Ord. 2023-003 First Reading" PowerPoint presentation (see record, Exhibit D) and explained that the program was called the "Outdoor Seating Permit Program" and was intended for businesses using city right-of-way for long-term seating on sidewalks and on-street parking spaces. He reported that the program did not apply to county or ODOT right-of-way. He provided background on the program and outlined that the pilot program ran from March 2022-October 2022 and a Council work session was held in February 2023 to discuss making the program permanent with some changes. Mr. Rutledge recapped that the pilot program was limited to Old Town and the city had issued four permits, all for businesses located on Railroad Street and were for sidewalk use only. He outlined that the city had not received any complaints from the public on the program, but there was some concern from businesses regarding the high insurance requirements. He recapped that Council feedback from the February work session included making the program permanent, making the program available for city-wide use, allowing for sidewalk use to be permitted year-round, parking stall use to be permitted seasonally, and the ability to renew the permit annually with no renewal fee. He stated that the program would be located under Title 12 of the Sherwood Municipal Code and would have strict requirements for the location and design of the seating and required following ADA requirements. He spoke on the program being a city-wide program and noted that the permit would only be issued if the appropriate standards were met and commented that it was unlikely that many businesses would qualify outside of Old Town due to ADA requirements. Mr. Rutledge reported that parking stall use was permitted from March 1st-October 31st and could be renewed annually with no renewal fee. He provided an overview of the code structure on

page 6 of the presentation. He reported that the second reading on the proposed ordinance would be held at the April 4th City Council meeting and recapped Council alternatives. Councilor Young commented that she was pleased that the renewal fees were waived. Councilor Standke asked for clarification on parking stall use. Community Development Director Rutledge explained that the permit allowed for up to two parking stalls directly in front of the business to be used for seating if the business had such a space available. Councilor Scott commented that he felt that March 1st-October 31st was too long. Councilor Giles clarified that this program did not apply to private parking, only city-owned right-of-way. Mr. Rutledge replied that was correct. Mayor Rosener stated that this program was different than a special event permit.

Mayor Rosener opened the public hearing to receive public comment. Hearing none, Mayor Rosener closed the public hearing and asked for discussion from Council. With none received, Mayor Rosener addressed the next agenda item.

10. CITY MANAGER REPORT:

City Manager Campbell reported that Trashapalooza was scheduled for April 22nd. He reported that Bowling with a Cop would be held on March 27th at Langer's Entertainment Center and was a part of Langer's Entertainment Center's Make-a-Difference Monday series where 100% of the revenue from bowling and shoe rental would be donated to the Sherwood Police Foundation. He reported that Economic Development Manager Bruce Coleman received the "Business Leader of the Year" award from the Sherwood Chamber of Commerce. Mr. Campbell stated that Mr. Coleman was, "an outstanding coworker, an outstanding person" and congratulated Mr. Coleman on his award.

Councilor Standke referred to the well that was damaged from a falling tree and asked for an update on the repairs. Public Works Director Craig Sheldon replied that construction would start on March 22nd and explained the process of getting the repairs on the well started. Mayor Rosener asked Mr. Sheldon to speak on the fencing around the old reservoir. Mr. Sheldon explained that a band had broken on the old reservoir that was built in 1972 and reported that he was currently going through an emergency process with the city's structural, civil, and water engineers and was in the process of procuring a contractor that was capable of doing such repairs. He stated that his goal was to have the repair completed before the peak season in the summer. He explained that the fencing was put in place because the roof had been damaged.

Mayor Rosener addressed the next agenda item.

11. COUNCIL ANNOUNCEMENTS:

Councilor Standke reported that the Planning Commission did not meet last week, but at the prior meeting they had approved a conditional use permit to change the zoning from Light Industrial to Commercial for an area of land behind Walmart. He encouraged residents to volunteer for Trashapalooza.

Councilor Brouse reported that she would attend the Housing Advisory Committee meeting for Washington County. She reported that the Sherwood Police Foundation gala would be held on April 28th. She reported that a Rotarian event would be held in Sherwood on April 22nd.

Councilor Young spoke on Trashapalooza and Council's participation in the Adopt-a-Road program.

Councilor Giles reported that he attended the Library Advisory Board meeting where they discussed funding sources and the need to strengthen the Library Foundation. He encouraged residents interested in being a part of the Library Foundation to reach out to him for more information. He reported that there were two Planning Commission vacancies and encouraged residents to apply. He reported that he would participate in Trashapalooza.

Mayor Rosener reported on his recent trip to Washington D.C. with City Manager Campbell where they met with Senator Wyden, Senator Merkley, and Representative Salinas to lobby for funds for Sherwood projects that included two sewer projects, tannery site cleanup, and funds to expand Sherwood broadband services to rural areas. He reported that he served on the Metro Policy Advisory Committee and reported that they would be providing oversight and advice to the Metro Council regarding urban growth boundary expansion.

12. ADJOURN:

Mayor Rosener adjourned the regular session at 8:30 pm and convened an executive session.

EXECUTIVE SESSION

1. **CALL TO ORDER:** The meeting was called the to order at 8:40 pm.
2. **COUNCIL PRESENT:** Mayor Tim Rosener, Council President Keith Mays, Councilors Kim Young, Doug Scott, Taylor Giles, Renee Brouse, and Dan Standke.
3. **STAFF PRESENT:** HR Manager Lydia McEvoy and City Attorney Ryan Adams.
4. **TOPICS:**
 - A. **ORS 192.660(2)(i), Performance Evaluation**

5. ADJOURN:

Mayor Rosener adjourned the executive session at 10:07 pm

Attest:

Sylvia Murphy, MMC, City Recorder

Tim Rosener, Mayor

TO: Sherwood City Council

FROM: Erika Palmer, Planning Manager
Through: Keith D. Campbell, City Manager and Eric Rutledge, Community Development Director

SUBJECT: Resolution 2023-020, Appointing Corey Capko to the Sherwood Planning Commission

Issue:

Should the Council appoint Corey Capko to the Sherwood Planning Commission?

Background:

Planning Commissioner, Jake Wenborne, seated in position #2, whose term expires at the end of June 2024, resigned from the Planning Commission. The vacancy was posted, and Corey Capko submitted an application for consideration of appointment to the Planning Commission. After reviewing the application, and a subsequent interview process, the review panel of Planning Commission liaison Councilor Dan Standke, Jean Simson, Chair of the Planning Commission, and Erika Palmer, Planning Manager, recommended to Mayor Tim Rosener that Corey Capko be appointed to the Commission to fulfill position #2. Mayor Tim Rosener has recommended this appointment to Council. In accordance with Council Rules, all such appointments are subject to the approval of the City Council by resolution.

Financial Impacts:

There are no financial impacts from this proposed action.

Recommendation:

Staff respectfully recommends City Council adoption of Resolution 2023-020, appointing Corey Capko to the Sherwood Planning Commission.



RESOLUTION 2023-020

APPOINTING COREY CAPKO TO THE SHERWOOD PLANNING COMMISSION

WHEREAS, a Planning Commission vacancy exists due to the resignation of Jake Wenborne in seated position #2; and

WHEREAS, the 4-year term expires in June 2024; and

WHEREAS, the City posted a request for applications on the City website, and announced the vacancy before both the Planning Commission and the City Council; and

WHEREAS, Corey Capko applied to be appointed and was interviewed by Planning Commission liaison Councilor Dan Standke, Planning Commission Chair Jean Simson, and Planning Manager Erika Palmer; and

WHEREAS, the interview panels considered all of the candidates and recommended to Mayor Tim Rosener that Corey Capko be appointed to fill said vacancy in the Planning Commission; and

WHEREAS, Mayor Tim Rosener has recommended to Council that Corey Capko be appointed; and

WHEREAS, in accordance with Council Rules of Procedure, all such appointments are subject to the approval of the City Council by resolution.

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

Section 1. The Sherwood City Council hereby appoints Corey Capko to Position 2 to fill the remainder of the term on the Planning Commission expiring at the end of June 2024.

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

Duly passed by the City Council this 4th day of April 2023.

Tim Rosener, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

TO: Sherwood City Council

FROM: Erika Palmer, Planning Manager
Through: Keith D. Campbell, City Manager, and Eric Rutledge Community Development Director

SUBJECT: Resolution 2023-021, Appointing Tyler Barns to the Sherwood Planning Commission

Issue:

Should the Council appoint Tyler Barns to the Sherwood Planning Commission?

Background:

Planning Commissioner Greg Lampros, seated in position #5, whose 4-year term expires at the end of June 2025, recently resigned. Tyler Barns submitted an application for consideration for the appointment to the Planning Commission. After reviewing the applications of three potential candidates, and a subsequent interview process, the review panel of Planning Commission liaison Councilor Dan Standke, Jean Simson, Chair of the Planning Commission, and Erika Palmer, Planning Manager, recommended to Mayor Tim Rosener that Tyler Barns be appointed to the Commission to fulfill position #5 which term will expire in June 2025. Mayor Tim Rosener has recommended this appointment to Council. In accordance with Council Rules, all such appointments are subject to the approval of City Council by resolution.

Financial Impacts:

There are no financial impacts from this proposed action.

Recommendation:

Staff respectfully recommends City Council adoption of Resolution 2023-021, appointing Tyler Barns to the Sherwood Planning Commission.



RESOLUTION 2023-021

APPOINTING TYLER BARNES TO THE SHERWOOD PLANNING COMMISSION

WHEREAS, a Planning Commission vacancy exists due to the resignation of Greg Lampros in seated position #5; and

WHEREAS, the 4-year term expires in June 2025; and

WHEREAS, the City posted a request for applications on the City website, and announced the vacancy before both the Planning Commission and the City Council; and

WHEREAS, Tyler Barnes applied to be appointed and was interviewed by Planning Commission liaison Councilor Dan Standke, Planning Commission Chair Jean Simson, and Planning Manager Erika Palmer; and

WHEREAS, the interview panels considered all of the candidates and recommended to Mayor Tim Rosener that Tyler Barnes be appointed to fill said vacancy in the Planning Commission; and

WHEREAS, Mayor Tim Rosener has recommended to Council that Tyler Barnes be appointed; and

WHEREAS, in accordance with Council Rules of Procedure, all such appointments are subject to the approval of the City Council by resolution.

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

Section 1. The Sherwood City Council hereby appoints Tyler Barnes to Position 5 to fill the remainder of the term on the Planning Commission expiring at the end of June 2025.

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

Duly passed by the City Council this 4th day of April 2023.

Tim Rosener, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

TO: Sherwood City Council

FROM: Maiya Martin Burbank, Senior Center Manager
Through: Kristen Switzer, Community Services Director and Keith D. Campbell, City Manager

SUBJECT: Resolution 2023-022, Appointing Zana Mays to the Sherwood Senior Advisory Board

Issue:

Should the Council appoint Zana Mays to the Sherwood Senior Advisory Board?

Background:

A vacancy exists, Position 2 on the Senior Advisory Board due to a resignation. The term of office for this vacancy expires in June 2024. The City advertised the vacancy and received two applications. Zana Mays submitted an application for consideration of appointment and was interviewed by the interview panel. The interview panel consisting of Caz Thomson, Board Chair, and Renee Brouse, City Council Liaison, unanimously recommended appointment of Zana Mays to fill the vacancy. The Mayor has recommended this appointment to Council. In accordance with City Council Rules of Procedure, all such appointments are subject to the approval of City Council by resolution.

Financial Impacts:

There are no financial impacts from this proposed action.

Recommendation:

Staff respectfully recommends City Council's adoption of Resolution 2023-022, Appointing Zana Mays to the Sherwood Senior Advisory Board.



RESOLUTION 2023-022

APPOINTING ZANA MAYS TO THE SHERWOOD SENIOR ADVISORY BOARD

WHEREAS, a vacancy exists, Position 2 on the Senior Advisory Board due to a resignation; and

WHEREAS, the term of office for this vacancy expires in June 2024; and

WHEREAS, the City advertised the vacancy on the City website, The Archer, social media, and at the Senior Center; and

WHEREAS, Zana Mays applied to be appointed and was interviewed by Caz Thomson, Board Chair, and Renee Brouse, City Council Liaison; and

WHEREAS, the interview panel considered all of the applicants and recommended to the Mayor that Zana Mays be appointed to fill the vacancy; and

WHEREAS, the Mayor has recommended to Council that Zana Mays be appointed; and

WHEREAS, in accordance with Council Rules of Procedure, all such appointments are subject to the approval of the City Council by resolution.

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

Section 1. The Sherwood City Council hereby appoints Zana Mays to Position 2 on the Sherwood Senior Advisory Board for a term expiring at the end of June 2024.

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

Duly passed by the City Council this 4th day of April 2023.

Tim Rosener, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

TO: Sherwood City Council

FROM: Brad Crawford, IT Director

Through: Keith D. Campbell, City Manager, and Ryan Adams, City Attorney

SUBJECT: Resolution 2023-023, Authorizing the City Manager to Sign an IGA with City of Wilsonville for Broadband Services and Infrastructure Sharing

Issue:

Shall the City Council authorize the City Manager to sign an IGA with City of Wilsonville for broadband services and infrastructure sharing.

Background:

In 2022 the Sherwood City Council approved Resolution 2022-007 authorizing the City Manager to sign a grant agreement that provided the City \$1.665 million dollars to expand broadband services in Wilsonville, King City and a portion of SW Washington County. This project was made possible through a partnership with the City of Wilsonville who played a significant role in helping develop the project and advocating for it with our state legislators. Funding for this project was awarded from Senator Thatcher and Representative Neron.

Since being awarded this project staff has completed all the engineering and permit work necessary to begin constructing this project. Through the engineering phase staff has worked with the City of Wilsonville to gather their needs and look for areas of mutual benefit. One of those areas of mutual benefit is utilizing existing Wilsonville conduits that are in the grant project area. This IGA sets out the terms and conditions for providing access to these conduits as well as providing fiber optic cables and broadband services needed by each agency. Additionally, per the original grant agreement the City of Sherwood will provide the City of Wilsonville at least \$150k for the purpose of providing WiFi access in their parks. This amount may increase to \$200k if grant funds are available after the main fiber projects are complete.

Financial Impacts:

This IGA has minimal financial impact to the city as many of the deliverables will be provided as a part of the grant project. While the grant project could come in over budget once bid, staff feels confident that they could still meet the deliverables of this IGA by reducing the scope of work in other areas. Sherwood will be providing some services back to Wilsonville, but the cost of these services is equal to the fiber optic cables that Wilsonville will be providing to Sherwood.

Recommendation:

Staff respectfully recommends City Council approval of Resolution 2023-023, authorizing the City Manager to sign an IGA with City of Wilsonville for broadband services and infrastructure sharing.



RESOLUTION 2023-023

AUTHORIZING THE CITY MANAGER TO SIGN AN IGA WITH CITY OF WILSONVILLE FOR BROADBAND SERVICES AND INFRASTRUCTURE SHARING

WHEREAS, the City of Sherwood working with its partners at the City of Wilsonville and the City of King City were awarded a grant in the sum of \$1.665 million dollars through the American Rescue Plan Act (ARPA); and

WHEREAS, the grant funds were awarded to extend broadband infrastructure in these communities as well as a portion of rural Washington County; and

WHEREAS, the City of Wilsonville had existing infrastructure with excess capacity that can be utilized to lower the construction costs associated with the grant; and

WHEREAS, the City of Sherwood and the City of Wilsonville have an existing Memo of Understanding for the use of fiber optic cables and providing broadband services; and

WHEREAS, an Intergovernmental Agreement is needed to formalize the sharing of broadband infrastructure and providing broadband services.

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

Section 1. The City Manager is hereby authorized to execute an Intergovernmental Agreement with City of Wilsonville in a form substantially similar to the attached Exhibit A.

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

Duly passed by the City Council this 4th of April 2023.

Tim Rosener, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

INTERGOVERNMENTAL AGREEMENT ON BROADBAND SERVICES AND INFRASTRUCTURE SHARING

This Intergovernmental Agreement (“IGA”) regarding broadband services and sharing broadband infrastructure is entered into by and between the **City of Sherwood**, a municipal corporation of the State of Oregon (“Sherwood”), and, the **City of Wilsonville**, a municipal corporation of the State of Oregon (“Wilsonville”) (individually, a “Party,” and collectively, the “Parties”) as of April ____, 2023 (“Effective Date”), pursuant to ORS 190.003 to 190.110, which allows units of government to enter into agreements for the performance of any or all functions and activities which such units have authority to perform.

RECITALS

WHEREAS, Sherwood is a subrecipient of a federal grant totaling One Million Six Hundred Sixty-Five Thousand Dollars (\$1,665,000) (“Grant”), the purpose of which is to expand broadband infrastructure within Sherwood, Wilsonville, and southwest Washington County.

WHEREAS, the Parties have found many areas of mutual benefit in sharing broadband services and infrastructure; and

WHEREAS, intergovernmental cooperation between the Parties in sharing broadband services and infrastructure benefits the citizens and taxpayers of both Cities; and

WHEREAS, the Parties desire to formalize this practice of cooperation through an IGA;

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

ARTICLE 1. Definitions

- 1.1. Fiber: A thin flexible glass core which optical light can be transmitted down for the purpose of data communications.
- 1.2. Fiber Project: For purposes of this IGA, the “Fiber Project” means the design and construction of fiber optic infrastructure in and near the City of Wilsonville to strengthen and build redundancy of the Parties’ fiber optic systems. The routes of the Fiber Project are provided in **Exhibit A** attached hereto and incorporated by reference herein.
- 1.3. Grant: For purposes of this IGA, Grant shall mean that certain grant agreement by and between the State of Oregon and the City of Sherwood attached hereto as **Exhibit B**.
- 1.4. Internet connection(s): A connection provided by an Internet Service Provider that enables individual computers or other hardware components, either individually or registered within a Local Area Network, to exchange Data over the public Internet.

- 1.5. Internet Service: A service provided using broadband technology to enable Internet access.
- 1.6. Pair: Two fiber optic strands.
- 1.7. Splicing: The process of physically joining two fiber optic cables together.
- 1.8. Strand: A single fiber optic cable.
- 1.9. WiFi Project: For purposes of this IGA, the “WiFi Project” means the work that will be managed by the City of Wilsonville to improve WiFi access in Wilsonville parks, as more particularly described in Section 2.2 herein.

ARTICLE 2. Services To Be Provided by Sherwood

- 2.1. Fiber Project. Sherwood is responsible for all aspects of the Fiber Project, including, but not limited to, the following:
 - 2.1.1. Provide all project management and assistance in the construction of fiber expansion in Wilsonville for the Fiber Project in accordance with the Grant.
 - 2.1.2. Be responsible for all third-party contracting necessary to complete the Fiber Project. Sherwood will ensure that Wilsonville is named as a third-party beneficiary to all contracts where work is being performed on the behalf of, or for the benefit of, Wilsonville. Wilsonville will also be listed as an additional insured to all such contracts.
 - 2.1.3. Provide cable pulling labor and splicing to increase fiber availability and capacity where needed for the Fiber Project.
 - 2.1.4. Provide fifty percent (50%) of the fibers on any new fiber routes constructed in Wilsonville as part of the Fiber Project.
 - 2.1.5. Provide Wilsonville with two (2) fibers (one pair) that will connect Wilsonville to the City of Hillsboro’s fiber vault at or about the roundabout on Scholls Ferry Road.
 - 2.1.6. Provide up to three (3) one (1) gigabyte (“GB”) Internet connections.
 - 2.1.7. Provide splicing to Wilsonville as set forth in **Exhibit C** attached hereto and incorporated by reference herein.
- 2.2. WiFi Project. Sherwood will provide One Hundred Fifty Thousand Dollars (\$150,000) in Grant proceeds to Wilsonville for the purpose of improving WiFi access in Wilsonville parks, in accordance with Grant requirements. Sherwood will have no other WiFi Project responsibilities other than providing the Grant funding to Wilsonville. To the extent Grant requirements are met and funds remain available, Sherwood shall provide an additional Fifty Thousand Dollars (\$50,000) to Wilsonville in accordance with Grant requirements,

for a total not to exceed amount of Two Hundred Thousand Dollars (\$200,000), for the purpose of further improvements to WiFi access in Wilsonville parks.

ARTICLE 3. Services To Be Provided by Wilsonville

- 3.1. Fiber Project. To aid in the completion of the Fiber Project and in consideration of Sherwood's services provided in Article 2, Wilsonville agrees to the following:
 - 3.1.1. Allow access to Wilsonville's vaults, as identified in **Exhibit A**, for Sherwood to complete the Fiber Project and so Sherwood may install its own fiber cable in Wilsonville-owned conduit along Tooze Road, Boeckman Road, Garden Acres Road, and Kinsman Road, as shown in red on the attached **Exhibit A**. Sherwood will obtain, if it has not already obtained, any and all required permits to conduct work within Wilsonville's right-of-way and any public utility easement areas.
 - 3.1.2. Provide Sherwood two (2) fibers (one pair) from the following locations as delineated on **Exhibit A**:
 - 3.1.2.1. Corner of Boeckman/Canyon Creek vault to Wilsonville City Hall;
 - 3.1.2.2. I-5 traffic cabinet at Wilsonville Road to Wilsonville City Hall;
 - 3.1.2.3. Wilsonville Water Treatment Plant to Wilsonville City Hall;
 - 3.1.2.4. Kinsman/Barber Street vault to Wilsonville City Hall; and
 - 3.1.2.5. Walking path vault along the walking path to Wilsonville City Hall.
 - 3.1.3. Provide Sherwood four (4) fibers (two pair) from the following location as delineated on **Exhibit A**:
 - 3.1.3.1. Walking path vault along the walking path to the Kinsman/Barber Road vault.
 - 3.1.4. Allow Sherwood access to the Wilsonville-provided fibers reasonably related to the Fiber Project at existing splice cases and slack loops within the boundaries or jurisdiction of Wilsonville, upon prior written consent of Wilsonville, which consent will not be unreasonably withheld.
- 3.2. WiFi Project. Provide all necessary project, financial, and information necessary to comply with the Grant reporting requirements.

ARTICLE 4. Consideration

- 4.1. The services described in **Articles 2 and 3** above shall be provided at no cash cost, outside of the Grant funds. Neither Party may charge any fees to the other in connection with the items provided under **Articles 2 and 3** of this IGA. This includes, but is not limited to, franchise fees, utility fees, usage fees, right of way fees, or other fees that may

be levied by the Parties. The Parties agree that the exchange of services described in Articles 2 and 3 represent the true and actual consideration.

ARTICLE 5. Term, Amendment, Assignment, and Severability

- 5.1. The term of this IGA (the “Term”) shall be for ten (10) years, beginning upon the Effective Date.
- 5.2. Termination (prior to the expiration of the Term) or amendment of this IGA, or parts thereof, requires the written consent of the governing bodies of both Parties.
- 5.3. Either Party may transfer, convey, or assign its rights and responsibilities under this IGA without the consent of the other Party, provided that the assignee will execute an agreement covenanting and agreeing that it will fully perform, without change or additional costs, the responsibilities of the assignor and compliance with the Grant requirements, if any.
- 5.4. If any part of this IGA is invalidated by a court of competent jurisdiction, all remaining parts of the IGA shall be severed from the invalid parts and shall remain in full force and effect.

ARTICLE 6. Maintenance and Work on Fiber and Infrastructure

- 6.1. Sherwood shall be responsible for maintenance of the fiber and infrastructure that is either owned or leased by Sherwood. If the fiber or infrastructure is damaged, or requires relocation or replacement, Sherwood shall be responsible for those costs, unless the Parties mutually arrange a different funding agreement.
- 6.2. Wilsonville shall be responsible for maintenance of the fiber and infrastructure either owned or leased by Wilsonville. If the fiber or infrastructure is damaged, or requires relocation or replacement, Wilsonville shall be responsible for those costs, unless the Parties mutually arrange a different funding agreement.
- 6.3. Maintenance, repairs, or relocation will be done in a timely fashion in accordance with industry standards. Neither Party is liable for cost or penalty to the other. Downtime is to be limited as much as practical and in accordance with communication industry practice.
- 6.4. For purposes of this Article 6, ownership shall be determined by the specific conduits as delineated within **Exhibit A**, and not the cables within.

ARTICLE 7. Underlying Rights

- 7.1. Each Party has obtained certain rights of way and building access rights for construction and operation of their respective Sherwood Network and Wilsonville Network (the “Underlying Rights”). This IGA is subject to the terms and limitations of the Underlying Rights, and subject to the terms under which the right of way and other property interests are owned or held by the grantor of the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants

and licensees in possession. Nothing herein shall be construed as to be a representation, warranty, or covenant of either Party's right, title, or interest with respect to the right of ways or the Underlying Rights.

- 7.2. The Parties agree to use the fiber and infrastructure for which they have usage rights under this IGA only in a manner consistent with the Underlying Rights and all applicable laws, and further agree that each Party's rights shall in all respects be subject to the terms and conditions of the Underlying Rights. The Parties agree not to cause or allow to be caused any default under the Underlying Rights.

ARTICLE 8. Use of the Fiber

The Parties shall not use the fiber and infrastructure for which they have acquired usage rights under this IGA in a way that interferes in any way with or adversely affects the use of the fibers or infrastructure of any other person using the Sherwood Network or the Wilsonville Network. The Parties acknowledge that the Sherwood Network and the Wilsonville Network may include other participants and users of telecommunication systems. Wilsonville is prohibited from leasing to a private for-profit entity the fibers described in Section 2.1.5. Sherwood is prohibited from leasing to a private for-profit entity the fibers described in Sections 3.1.2 and 3.1.3.

ARTICLE 9. Notices

All notices and other communications required or permitted under this IGA shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

To Sherwood: City of Sherwood
 Attn: Brad Crawford
 22560 SW Pine Street
 Sherwood, OR 97140
 Telephone: 503.625.4203

To Wilsonville: City of Wilsonville
 Attn: Andy Stone, IT Director
 29799 SW Town Center Loop E
 Wilsonville, OR 97070
 Telephone: 503.570.1532

In addition, the Parties may provide notice of the availability or interruption of the services or a planned maintenance by electronic delivery at all of the following email addresses:

To Sherwood: crawfordb@sherwoodoregon.gov

To Wilsonville: astone@ci.wilsonville.or.us

In the case of an emergency, either Party may notify the other Party either through the email addresses set forth above, or at the telephone numbers provided above. Any such notice or other communication

shall be deemed to be effective when actually received or refused. Either Party may, by similar notice, change the address to which future notices or other communications shall be sent.

ARTICLE 10. Indemnification

To the extent permitted by the Oregon Tort Claims Act and the Oregon Constitution, each Party shall defend, indemnify, and hold harmless the other Party and its elected officials, officers, agents, volunteers, and employees against any and all liability, settlements, loss, damage, costs, and expenses arising from or in connection with any action, suit, demand, or claim resulting or allegedly resulting from the indemnifying Party's and/or the indemnifying Party's elected officials', officers', agents', volunteers', and employees' acts, omissions, activities, or services in the course of performing this IGA. A Party's activities are deemed to include those of its subcontractors. This section will survive the termination or revocation of this IGA, regardless of cause.

IN WITNESS HEREOF, the Parties hereto agree to the foregoing.

CITY OF SHERWOOD

CITY OF WILSONVILLE

By: _____
Tim Rosener
As Its: Mayor

By: _____
Bryan Cosgrove
As Its: City Manager

ATTESTED:

ATTESTED:

Sylvia Murphy, City Recorder
City of Sherwood

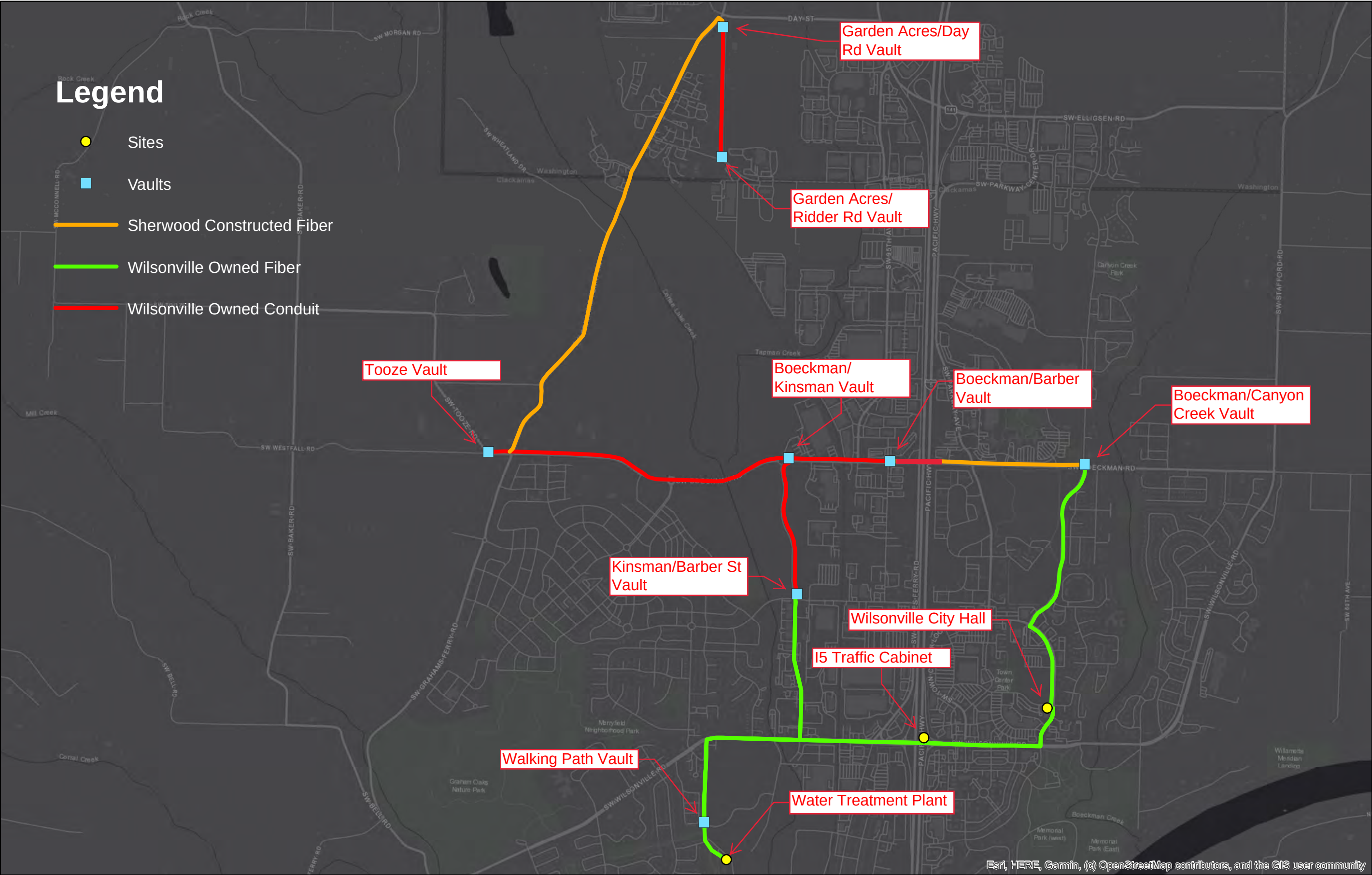
Kim Veliz, City Recorder
City of Wilsonville

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Ryan Adams, City Attorney
City of Sherwood

Amanda Guile-Hinman, City Attorney
City of Wilsonville



**CORONAVIRUS STATE FISCAL RECOVERY FUND
GRANT AGREEMENT**

Contract Number: 8106

This grant agreement (“Contract”), dated as of the date the Contract is fully executed, is between the State of Oregon, acting through its Oregon Department of Administrative Services (“DAS”), and City of Sherwood (“Recipient”). This Contract becomes effective only when fully signed and approved as required by applicable law (“Effective Date”). Unless extended or terminated earlier in accordance with its terms, this Contract shall expire **October 1, 2024**.

This Contract includes Exhibit A - Contact Information, Use of Funds/Project Description and Reporting Requirements, Exhibit B – Subcontract Insurance Requirements and Exhibit C - Federal Award Identification.

Pursuant to Oregon Laws 2021, chapter 669, section 74, DAS is authorized to distribute grant funds from funds received by the State of Oregon under the federal American Rescue Plan Act Coronavirus State Fiscal Recovery Fund (codified as 42 U.S.C. 802) for the purpose of Sherwood/Wilsonville Broadband Infrastructure Expansion as more particularly described in Exhibit A.

SECTION 1 - KEY GRANT TERMS

The following capitalized terms have the meanings assigned below.

Grant Amount: \$1,665,000.00.

Completion Deadline: June 30, 2024.

SECTION 2 - FINANCIAL ASSISTANCE

DAS shall provide Recipient, and Recipient shall accept from DAS, a grant (the “Grant”) in an aggregate amount not to exceed the Grant Amount.

DAS’s obligations are subject to the receipt of the following items, in form and substance satisfactory to DAS and its Counsel:

- (1) This Contract duly signed by an authorized officer of Recipient; and
- (2) Such other certificates, documents, opinions and information as DAS may reasonably require.

SECTION 3 - DISBURSEMENT

A. Full Disbursement. Upon execution of this Contract and satisfaction of all conditions precedent, DAS shall disburse the full Grant to Recipient.

B. Financing Availability. DAS’s obligation to make, and Recipient’s right to request disbursement under this Contract terminate on the Completion Deadline.

C. Conditions to Disbursements. DAS has no obligation to disburse Grant funds unless:

- (1) DAS has sufficient funds currently available for this Contract; and
- (2) DAS has received appropriations, limitations, allotments or other expenditure authority sufficient to allow DAS, in the exercise of its reasonable administrative discretion, to make payment, and notwithstanding anything in the Contract, occurrence of such contingency does not constitute a default.

SECTION 4 - USE OF GRANT

As more particularly described in Exhibit A, Recipient will use the Grant for the Sherwood/Wilsonville Broadband Infrastructure Expansion (the "Project"). Recipient may only use Grant funds to cover Project costs incurred during the period beginning March 3, 2021, and ending on the Completion Deadline ("Eligible Costs"). Recipient must disburse the entire Grant Amount on Eligible Costs no later than the Completion Deadline.

SECTION 5 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

Recipient represents and warrants to DAS as follows:

A. Organization and Authority.

- (1) Recipient is a public body validly organized and existing under the laws of the State of Oregon.
- (2) Recipient has all necessary right, power and authority under its organizational documents and applicable Oregon law to execute and deliver this Contract and incur and perform its obligations under this Contract.
- (3) This Contract has been authorized by an ordinance, order or resolution of Recipient's governing body if required by its organizational documents or applicable law.
- (4) This Contract has been duly executed by Recipient, and when executed by DAS, is legal, valid and binding, and enforceable in accordance with their terms.

B. Compliance with Coronavirus State Fiscal Recovery Fund. Recipient will comply with the terms, conditions and requirements of the federal Coronavirus State Fiscal Recovery Fund (codified at 42 U.S.C. 802) from which the Grant is funded, including all implementing regulations (31 CFR 35.1 *et seq.*) and other guidance promulgated by the U.S. Department of the Treasury (collectively, the "CSFRF").

C. Full Disclosure. Recipient has disclosed in writing to DAS all facts that materially adversely affect the Grant, or the ability of Recipient to perform all obligations required by this Contract. Recipient has made no false statements of fact, nor omitted information necessary to prevent any statements from being misleading. The information contained in this Contract, including Exhibit A, is true and accurate in all respects.

D. Pending Litigation. Recipient has disclosed in writing to DAS all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Grant or the ability of Recipient to perform all obligations required by this Contract.

SECTION 6 - COVENANTS OF RECIPIENT

Recipient covenants as follows:

A. Notice of Adverse Change. Recipient shall promptly notify DAS of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient related to the ability of Recipient to perform all obligations required by this Contract.

B. Compliance with Laws.

- (1) Recipient will comply with the requirements of all applicable federal, state and local laws, rules, regulations, and orders of any governmental authority, except to the extent an order of a governmental authority is contested in good faith and by proper proceedings.
- (2) Recipient is responsible for all federal or state tax laws applicable to its implementation of the Project and its use of the Grant or compensation or payments paid with the Grant.

C. Federal Audit Requirements. The Grant is federal financial assistance, and the associated Assistance Listings number is 21.027. Recipient is a subrecipient.

- (1) If Recipient receives federal funds in excess of \$750,000 in Recipient's fiscal year, it is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at its own expense submit to DAS a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Contract and shall submit or cause to be submitted to DAS the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Contract.
- (2) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Recipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the funds received under this Contract.
- (3) Recipient shall save, protect and hold harmless DAS from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Contract. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and the State of Oregon.
- (4) Recipient is authorized to use the Grant to pay itself for those administrative costs that are eligible costs under the CSFRF to implement the Project. DAS's approval of Recipient's administrative costs does not preclude the State of Oregon from later recovering costs from Recipient if the U.S. Department of the Treasury disallows certain costs after an audit.

D. System for Award Management. Recipient must comply with applicable requirements regarding the federal System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM.

E. Employee Whistleblower Protection. Recipient must comply, and ensure the compliance by subcontractors or subrecipients, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Recipient must inform subrecipients, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

F. Compliance with 2 CFR Part 200. Recipient must comply with all applicable provision of 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, including the Cost Principles and Single Audit Act requirements.

G. Federal Funds. DAS's payments to Recipient under this Grant will be paid by funds received by DAS from the United States Federal Government. Recipient, by signing this Grant certifies neither it nor its employees, contractors, subcontractors or subrecipients who will administer this Contract are currently employed by an agency or department of the federal government.

- H. Insurance. Recipient shall maintain, or cause to be maintained, insurance policies with responsible insurers, insuring against liability, in the coverages and amounts described in Exhibit B.
- I. Return of Undisbursed Grant Funds. Recipient must return to DAS any Grant funds not disbursed by the Completion Deadline.
- J. Financial Records. Recipient will cooperate with DAS to provide all necessary financial information and records to comply with CSFRF reporting requirements, as well as provide DAS the reporting required in Exhibit A. Recipient will keep proper books of account and records on all activities associated with the Grant, including, but not limited to, invoices, cancelled checks, payroll records, instruments, agreements and other supporting financial records documenting the use of the Grant. Recipient will maintain these books of account and records in accordance with generally accepted accounting principles and will retain these books of account and records until five years after the Completion Deadline or the date that all disputes, if any, arising under this Contract have been resolved, whichever is later.
- K. Inspection. Recipient shall permit DAS, and any party designated by DAS, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives, at any reasonable time, to inspect and make copies of any accounts, books and records related to the administration of this Contract. Recipient shall supply any Contract-related information as DAS may reasonably require.
- L. Notice of Event of Default. Recipient shall give DAS prompt written notice of any Event of Default, or any circumstance that with notice or the lapse of time, or both, may become an Event of Default, as soon as Recipient becomes aware of its existence or reasonably believes an Event of Default is likely.
- M. Contribution and Recipient Subcontracts.

(1) 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 a party (the "Notified Party") with respect to which the other party ("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. Either 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 the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third-Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third-Party Claim.

(ii) With respect to a Third-Party Claim for which DAS is jointly liable with Recipient (or would be if joined in the Third-Party Claim), DAS 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 DAS on the one hand and of 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 DAS 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. DAS's contribution amount in any

instance is capped to the same extent it would have been capped under Oregon law if DAS had sole liability in the proceeding.

(iii) With respect to a Third-Party Claim for which Recipient is jointly liable with DAS (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 DAS in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of DAS 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 DAS 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.

(2) Recipient Subcontracts. Recipient may enter into agreements with contractors or subcontractors (collectively, "Subcontracts") for performance of the Project.

(i) Recipient shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnatee") 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 Recipient's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the contractor from and against any and all Claims.

(ii) Recipient shall require its first-tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance of the types and in the amounts specified in Exhibit B and meeting the requirements under ADDITIONAL INSURED, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under its Subcontracts, and ii) maintain the insurance in full force throughout the duration of the Subcontracts. 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 DAS. Recipient shall not authorize contractors to begin work under the Subcontracts 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 Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall Recipient permit a contractor to work under a Subcontract when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which Recipient directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

N. Representations and Covenants Regarding Prevailing Wage.

- (1) The prevailing wage rate requirements that may apply to the Project are set forth in ORS 279C.800 through 279C.870, the administrative rules promulgated thereunder (OAR Chapter 839, Division 25) and Oregon Laws 2021, chapter 678, section 17 (collectively, state “PWR”), or, if applicable, 40 U.S.C. 3141 et seq. (federal “Davis-Bacon Act”). If applicable, Recipient shall:
 - a) comply with PWR, require its contractors and subcontractors to pay the applicable PWR or Davis-Bacon Act rates, as applicable, and to comply with all other Oregon Bureau of Labor and Industries (“BOLI”) requirements pursuant to the PWR, including on all contracts and subcontracts and in filing separate public works bonds with the Construction Contractors Board;
 - b) pay to BOLI, within the required timeframe and in the appropriate amount, the project fee required by OAR 839-025-0200 to 839-025-0230, including any additional fee that may be owed upon completion of the Project; and
 - c) unless exempt under Section 17(2) of Oregon Laws 2021, chapter 678, if Recipient is a “public body” and the Project is a “qualified project,” as those terms are defined in Section 17(3) of Oregon Laws 2021, chapter 678, Recipient shall require each contractor in a contract with an estimated cost of \$200,000 or greater to:
 - i. Enter into a project labor agreement that, at a minimum, provides for payment of wages at or above the prevailing rate of wage;
 - ii. Employ apprentices to perform 15 percent of the work hours that workers in apprenticeable occupations perform under the contract, in a manner consistent with the apprentices’ respective apprenticeship training programs;
 - iii. Establish and execute a plan for outreach, recruitment and retention of women, minority individuals and veterans to perform work under the contract, with the aspirational target of having at least 15 percent of total work hours performed by individuals in one or more of those groups; and
 - iv. Require any subcontractor engaged by the contractor to abide by the requirements set forth in subparagraphs (i), (ii) and (iii) above, if the work to be performed under the subcontract has an estimated cost of \$200,000 or greater.
- (2) Recipient represents and warrants that it is not on the BOLI current List of Contractors Ineligible to Receive Public Works Contracts and that it will not contract with any contractor on this list.
- (3) Pursuant to ORS 279C.817, Recipient may request that the Commissioner of BOLI make a determination about whether the Project is a public works on which payment of the prevailing rate of wage is required under ORS 279C.840.

SECTION 7 - DEFAULT

- A. **Recipient Default.** Any of the following constitutes an “Event of Default” of Recipient:
- (1) **Misleading Statement.** Any materially false or misleading representation is made by or on behalf of Recipient, in this Contract or in any document provided by Recipient related to this Grant.
 - (2) **Failure to Perform.** Recipient fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Contract, other than those referred to in subsection A of this section, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by DAS. DAS may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.
- B. **DAS Default.** DAS will be in default under this Contract if it fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Contract.

SECTION 8 - REMEDIES

- A. **DAS Remedies.** Upon the occurrence of an Event of Default, DAS may pursue any remedies available under this Contract, at law or in equity. Such remedies include, but are not limited to, termination of DAS’s obligations to make the Grant or further disbursements, return of all or a portion of the Grant Amount, payment of interest earned on the Grant Amount, and declaration of ineligibility for the receipt of future awards from DAS. If, as a result of an Event of Default, DAS demands return of all or a portion of the Grant Amount or payment of interest earned on the Grant Amount, Recipient shall pay the amount upon DAS’s demand. DAS may also recover all or a portion of any amount due from Recipient by deducting that amount from any payment due to Recipient from the State of Oregon under any other contract or agreement, present or future, unless prohibited by state or federal law. DAS reserves the right to turn over any unpaid debt under this Section 8 to the Oregon Department of Revenue or a collection agency and may publicly report any delinquency or default. These remedies are cumulative and not exclusive of any other remedies provided by law.
- B. **Recipient Remedies.** In the event of default by DAS, Recipient’s sole remedy will be for disbursement of Grant funds for Eligible Costs of the Project, not to exceed the total Grant Amount, less any claims DAS has against Recipient.

SECTION 9 - TERMINATION

In addition to terminating this Contract upon an Event of Default as provided in Section 8, DAS may terminate this Contract with notice to Recipient under any of the following circumstances:

- A. If DAS anticipates a shortfall in applicable revenues or DAS fails to receive sufficient funding, appropriations or other expenditure authorizations to allow DAS, in its reasonable discretion, to continue making payments under this Contract.
- B. There is a change in federal or state laws, rules, regulations or guidelines so that the uses of the Grant are no longer eligible for funding.

This Contract may be terminated at any time by mutual written consent of the parties.

SECTION 10 - MISCELLANEOUS

- A. No Implied Waiver. No failure or delay on the part of DAS to exercise any right, power, or privilege under this Contract will operate as a waiver thereof, nor will any single or partial exercise of any right, power, or privilege under this Contract preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- B. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). 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.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- C. Notices and Communication. Except as otherwise expressly provided in this Contract, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Recipient or DAS at the addresses listed in Exhibit A, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system or 2) the recipient's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

- D. Amendments. This Contract may not be altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties.
- E. Severability. If any provision of this Contract will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision.
- F. Successors and Assigns. This Contract will be binding upon and inure to the benefit of DAS, Recipient, and their respective successors and assigns, except that Recipient may not assign or transfer its rights, obligations or any interest without the prior written consent of DAS.
- G. Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

- H. Integration. This Contract (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.
- I. No Third-Party Beneficiaries. DAS and Recipient are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives or provides, or is intended to give or provide, to third persons any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- J. Survival. The following provisions, including this one, survive expiration or termination of this Contract: Sections 6 (excepting 6.H, Insurance), 7, 8, 10.B, 10.C, 10.L and 10.M.
- K. Time is of the Essence. Recipient agrees that time is of the essence under this Contract.
- L. Attorney Fees. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract will be entitled to recover from the other its reasonable attorney fees and costs and expenses at trial, in a bankruptcy, receivership or similar proceeding, and on appeal. Reasonable attorney fees shall not exceed the rate charged to DAS by its attorneys.
- M. Public Records. DAS's obligations under this Contract are subject to the Oregon Public Records Laws.

Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through its
Department of Administrative Services

CITY OF SHERWOOD

By: _____

George Naughton
DAS Chief Financial Officer

Date: _____

By: _____

Authorized Representative Signature

Kenny D. Campbell City Manager
Authorized Representative Name and Title

Date: _____

6/9/22

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

s/ Samuel B. Zeigler 2/24/2022
Samuel B. Zeigler, Senior Assistant Attorney General

EXHIBIT A

CONTACT INFORMATION, USE OF FUNDS/ PROJECT DESCRIPTION AND REPORTING REQUIREMENTS

Contact Information:

DAS

State of Oregon, acting by and through its
 Department of Administrative Services
 155 Cottage St. NE
 Salem, OR 97301-3966

Contract Administrator: Stephanie Tyrer

Telephone: 971-374-3308

Email: statefiscal.recoveryfund@das.oregon.gov

Recipient

City of Sherwood

22560 SW Pine St
 Sherwood, OR 97140

Contact: Brad Crawford

Telephone: 503 625-4203

Email: crawfordb@sherwoodoregon.gov

Use of Funds/ Project Description:

The Recipient shall extend fiber optic backbone and broadband services through southwest Washington County and the City of Wilsonville.

Reporting Requirements:

Schedule

Report Name	Frequency	Due Dates
Project Performance Plan	One-Time	45 days after the Effective Date
Quarterly Report	Quarterly	April 15 th , July 15 th , October 15 th , January 15 th
Annual Report	Annually	July 15 th

Project Performance Plan

Recipient shall submit to DAS, using a template and instructions provided by DAS, the following information in the Project Performance Plan:

1. Problem Statement
2. Goal
3. Rationales
4. Assumptions
5. Resources
6. Activities
7. Outputs
8. Short-Term Outcomes
9. Intermediate Outcomes
10. Long-Term Outcomes

Quarterly Reports

Recipient shall submit Quarterly Reports to DAS which shall include such information as is necessary for DAS to comply with the reporting requirements established by 42 U.S.C. 802, guidance issued by the U.S. Treasury, and 2 CFR Part 200 (known as the “Super Circular”). The reports shall be submitted using a template provided by DAS that includes the following information:

1. Expenditure Report
 - a) Quarterly Obligation Amount
 - b) Quarterly Expenditure Amount
 - c) Projects
 - d) Primary Location of Project Performance
 - e) Detailed Expenditures (categories to be provided by DAS)
2. Project Status Update
 - a) Status of project: not started, completed less than 50 percent, completed 50 percent or more, completed.
 - b) Progress since last update including project outputs and achieved outcomes.
 - c) Identify barriers/risks to outcomes and describe actions taken to mitigate delays/risks to the overall project goal.
 - d) Optional: Share with DAS community outreach/engagement or other positive local news stories.

Annual Reports

Recipient shall submit to DAS a report annually on the following, as applicable, using a template provided by DAS:

1. How the Project is Promoting Equitable Outcomes, if applicable
2. How the Project is Engaging with the Community, if applicable

Administrative Costs

Recipient shall also deliver to DAS no later than July 15, 2024, an accounting of all of its direct administrative costs paid by this Grant accompanied by a certification statement that all such costs comply with the CSFRF. Grant funds may not be used to pay for any costs incurred after the Completion Deadline. For any unexpended Grant funds that were allocated for administrative costs as provided in the not-to-exceed amount above, DAS will direct Recipient on how to return or expend any such funds.

EXHIBIT B – SUBCONTRACT INSURANCE REQUIREMENTS

Recipient shall require each of its first-tier contractors that are not units of local government as defined in ORS 190.003 (each a “Contractor”) to obtain, at the Contractor’s expense, the insurance specified in this Exhibit B before performing under this Contract and to maintain it in full force and at the Contractor’s own expense throughout the duration of this Contract, as required by any extended reporting period or continuous claims made coverage requirements, and all warranty periods that apply. Contractors shall obtain the following insurance from 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 DAS. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers’ Compensation. Contractors shall pay for all deductibles, self-insured retention and self-insurance, if any. Recipient shall require and ensure that each of its Contractors complies with these requirements and maintains insurance policies with responsible insurers, insuring against liability, in the coverages and amounts identified below.

WORKERS’ COMPENSATION & EMPLOYERS’ LIABILITY

All employers, including Contractors, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Recipient shall require and ensure that each of its Contractors complies with these requirements. If a Contractor is a subject employer, as defined in ORS 656.023, the Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If the Contractor is an employer subject to any other state’s workers’ compensation law, Contractor shall provide workers’ compensation insurance coverage for its employees as required by applicable workers’ compensation laws including employers’ liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

As applicable, each Contractor shall obtain coverage to discharge all responsibilities and liabilities that arise out of or relate to the Jones Act with limits of no less than \$5,000,000 and/or the Longshoremen’s and Harbor Workers’ Compensation Act.

COMMERCIAL GENERAL LIABILITY:

☒ Required ☐ Not required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. 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.

AUTOMOBILE LIABILITY INSURANCE:

☒ Required ☐ Not required

Automobile Liability Insurance covering each Contractor’s business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

A. Automobile Liability Broadened Pollution Liability Coverage Endorsement

If a Contractor is transporting any type of **hazardous materials** to implement the Project, then endorsements CA 99 48 or equivalent and MSC-90 (if the Contractor is a regulated motor carrier) are required on the Automobile Liability insurance coverage.

PROFESSIONAL LIABILITY:

☒ **Required** ☐ **Not required**

Professional Liability covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract by Contractor and the Contractor's subcontractors, agents, officers or employees in an amount not less than \$1,000,000 per claim. Annual aggregate limit shall not be less than \$2,000,000. If coverage is on a claims-made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Contractor shall provide continuous claims made coverage as stated below.

POLLUTION LIABILITY:

☒ **Required** ☐ **Not required**

Pollution Liability Insurance covering each Contractor's or appropriate subcontractor's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by the Contractor, all arising out of the Goods delivered or Services (including transportation risk) performed under this Contract is required. Combined single limit per occurrence shall not be less than \$1,000,000_. Annual aggregate limit shall not be less than \$2,000,000.

An endorsement to the Commercial General Liability or Automobile Liability policy, covering the Contractor's or subcontractor's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related clean-up cost incurred by the Contractor that arise from the Goods delivered or Services (including transportation risk) performed by the Contractor is also acceptable.

EXCESS/UMBRELLA INSURANCE

Umbrella insurance coverage in the sum of \$2,000,000 shall be provided and will apply over all liability policies, without exception, including but not limited to Commercial General Liability, Automobile Liability, and Employers' Liability coverage. The amounts of insurance for the insurance required under this Contract, including this Excess/Umbrella insurance requirement, may be met by the Contractor obtaining coverage for the limits specified under each type of required insurance or by any combination of underlying, excess and umbrella limits so long as the total amount of insurance is not less than the limits specified for each type of required insurance added to the limit for this excess/umbrella insurance requirement.

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to a Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

WAIVER OF SUBROGATION:

Each Contractor shall waive rights of subrogation which the Contractor or any insurer of the Contractor may acquire against the DAS or State of Oregon by virtue of the payment of any loss. Each Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the DAS has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

CONTINUOUS CLAIMS MADE COVERAGE:

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then the Contractor shall maintain continuous claims made liability coverage,

provided the effective date of the continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of:

- (i) The Contractor's completion and DAS's acceptance of all Services required under the Contract, or
- (i) DAS or Recipient termination of this Contract, or
- (ii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Upon request, each Contractor shall provide to DAS Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance DAS has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

Each Contractor or its insurer must provide at least 30 days' written notice to DAS before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

Recipient agrees to periodic review of insurance requirements by DAS under this Contract and to provide updated requirements as mutually agreed upon by Recipient and DAS.

STATE ACCEPTANCE:

All insurance providers are subject to DAS acceptance. If requested by DAS, Recipient shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to DAS's representatives responsible for verification of the insurance coverages required under this Exhibit B.

EXHIBIT C
FEDERAL AWARD IDENTIFICATION
(REQUIRED BY 2 CFR 200.332(A)(1))

(i) Subrecipient* Name: <i>(must match name associated with UEI)</i>	City of Sherwood
(ii) Subrecipient's Unique Entity Identifier (UEI):	055329502 (DUNS)
(iii) Federal Award Identification Number (FAIN):	SLFRP4454
(iv) Federal award date: <i>(date of award to DAS by federal agency)</i>	July 23, 2021
(v) Grant period of performance start and end dates:	Start: March 3, 2021 End: June 30, 2024
(vi) Grant budget period start and end dates:	Start: March 3, 2021 End: June 30, 2024
(vii) Amount of federal funds obligated by this Grant:	\$1,665,000.00
(viii) Total amount of federal funds obligated to Subrecipient by pass-through entity, including this Grant:	\$
(ix) Total amount of the federal award committed to Subrecipient by pass-through entity**: <i>(amount of federal funds from this FAIN committed to Recipient)</i>	\$1,665,000.00
(x) Federal award project description:	Coronavirus State Fiscal Recovery Fund
(xi) a. Federal awarding agency:	U.S. Department of the Treasury
b. Name of pass-through entity:	Oregon Department of Administrative Services
c. Contact information for awarding official of pass-through entity:	Stephanie Tyrer, COVID Fiscal Relief Mgr. statefiscal.recoveryfund@das.oregon.gov
(xii) Assistance listings number, title and amount:	Number: 21.027 Title: Coronavirus State and Local Fiscal Recovery Funds Amount: \$2,648,024,988.20
(xiii) Is award research and development?	Yes ☐ No ☒
(xiv) a. Indirect cost rate for the federal award:	
b. Is the 10% de minimis rate being used per 2 CFR § 200.414?	Yes ☒ No ☐

* For the purposes of this Exhibit C, "Subrecipient" refers to Recipient and "pass-through entity" refers to DAS.

** The total amount of federal funds obligated to the Subrecipient by the pass-through entity is the total amount of federal funds obligated to the Subrecipient by the pass-through entity during the current state fiscal year.

Resolution 2023-0
April 4, 2023, Page 23 of 23

Up-size vault to
26x36x24

Splice XX fibers
from 12ct on Tooze
to XXct from
Westfall

Pull roughly
200-300 feet of
cable from north
vault to south vault

Splice XX fibers
from north 288ct to
south 12ct

Splice XX fibers
from north 12ct to
south 288ct

Splice XX fibers
from 288ct on
Kinsman to XXct
on Wilsonville Rd.



TO: Sherwood City Council

FROM: Keith D. Campbell, City Manager

SUBJECT: Resolution 2023-024, Support of the Sherwood School District Local Option Levy, 34-323

Issue:

Shall the City Council support the Sherwood School District Local Option Levy, 34-323?

Background:

On Tuesday, March 21st the Sherwood City Council invited Dr. Jeremy Lyon from the Sherwood School District to give a presentation regarding the proposed 5 Year Local Option Levy. According to the presentation the Levy would address immediate shortfalls discovered in July of 2022 due to an overestimation of revenue. The Levy would maintain current programs, teachers, and staff, while moving the district from being last in per-pupil revenue as compared to surrounding districts. The Levy would generate school funding that would stay in Sherwood and not be captured by the state.

The proposed Levy is based on assessed value, not market value and would be assessed at \$1.50 per \$1,000 of assessed value. The Levy would raise approximately \$6.5 million for the school district starting in the 2023-24 school year. The Levy election will be held on May 16th, 2023.

Financial Impacts:

There are no additional financial impacts as a result of approval of this resolution.

Recommendation:

Staff brings forward for consideration of the City Council Resolution 2023-024, Support of the Sherwood School District Local Option Levy, 34-323.



RESOLUTION 2023-024

SUPPORT OF THE SHERWOOD SCHOOL DISTRICT LOCAL OPTION LEVY, 34-323

WHEREAS, The Sherwood School District 88J has proposed a 5 Year Local Option Levy to Maintain Teachers and Class Sizes;

WHEREAS, The proposed Levy is to address an immediate financial shortfalls;

WHEREAS, The proposed Levy will maintain current school programs, teachers, and staff;

WHEREAS, The proposed Levy will move the Sherwood School District from last in per-pupil revenue compared to surrounding districts, moving the district to funding per-pupil to equal to surrounding districts;

WHEREAS, The proposed Levy is for \$1.50 per \$1000 assessed value for five years beginning 2023-24.

WHEREAS, The City of Sherwood believes that the Sherwood School District is important to our community;

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

Section 1. The Sherwood City Council does hereby endorse and support the passage of Sherwood School District Local Option Levy, 34-323 on the ballot May 16th, 2023.

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

Duly passed by the City Council this 4th day of April, 2023

Tim Rosener, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

Agenda Item: Public Hearing (Second Reading)

TO: Sherwood City Council

FROM: Eric Rutledge, Community Development Director

Through: Keith D. Campbell, City Manager and Ryan Adams, City Attorney

SUBJECT: Ordinance 2023-003, Amending Title 12 of the Sherwood Municipal Code and Adopting Standards and Procedures for a Permanent Outdoor Seating Program

Issue: Shall the City Council adopt Ordinance 2023-003, amending Title 12 of the Municipal Code and adopting a permanent program for outdoor seating?

Background:

In Spring 2022 the City launched a pilot program that allowed Old Town businesses to occupy a portion of the public right-of-way (sidewalk or up to two on-street parking stalls) for seating customers. In February 2023 the City Council held a work session to discuss the results of the program and whether to make it permanent. Council directed staff to draft an ordinance making the program permanent with the following changes to the pilot:

- Apply program city-wide and shall not be limited to Old Town
- Sidewalk use shall be permitted year-around
- Street (parking stall) use shall only be permitted seasonally
- Allow annual renewal of permit with minimal renewal fee

Proposed Code: The proposed code language is provided as Exhibit A to Ordinance 2023-003. Strict design standards continue to apply, including those involving pedestrian and vehicle circulation, tents, and lighting. Businesses will be required to provide proof of liability insurance and valid OLCC permits (if alcohol is served) prior to receiving a permit.

Financial Impacts: Other than the cost of codification and updating the Municipal Code, there are no financial impacts to the City by adopting the proposed amendments.

Alternatives:

- Approve the ordinance and code language as written
- Approve the ordinance and code language with modifications
- Do not approve the ordinance and code language

Recommendation:

Staff respectfully recommends approval of the proposed amendments. As this is the first reading on the ordinance, staff recommends holding the first public hearing, including acceptance of public testimony, prior to issuing a final decision at the second reading.



ORDINANCE 2023-003

AMENDING TITLE 12 OF THE SHERWOOD MUNICIPAL CODE AND ADOPTING STANDARDS AND PROCEDURES FOR A PERMANENT OUTDOOR SEATING PROGRAM

WHEREAS, The City facilitated a pilot Outdoor Seating Program to provide additional opportunity for restaurant and business seating in Sherwood; and

WHEREAS, Outdoor seating refers to use of City right-of-way for service of prepared food and beverages or seating for patrons of a business licensed to provide such services; and

WHEREAS, City Council has reviewed the results of the pilot program and wishes to make the program permanent; and

WHEREAS, the proposed amendments were subject to full and proper notice and review as required by the municipal code and state law; and

WHEREAS, the Sherwood City Council held two public hearings on March 21, 2023, and April 4, 2023, to take public testimony and deliberate; and

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

Section 1. Title 12 of the Sherwood Municipal Code is amended to include a new chapter 12.03 as set forth in Exhibit A, attached to this Ordinance.

Section 2. The City Recorder is hereby directed to enter a copy of this Ordinance in the record of the proceedings of this Council and to take such other actions necessary to effectuate this addition to the Municipal Code.

Section 3. This ordinance shall become effective the 30th day after its enactment by the City Council and approval by the Mayor.

Duly passed by the City Council this April 4, 2023.

Tim Rosener, Mayor

Date

Attest:

Sylvia Murphy, MMC, City Recorder

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

Chapter 12.03 OUTDOOR SEATING PERMIT

12.03.010 Applicability.

An Outdoor Seating Permit is required for businesses seeking authorization for long term and on-going seating in City right-of-way (i.e. sidewalks and on-street parking spaces). "Outdoor seating" refers to use of City right-of-way for service of prepared food or beverages, as well as seating for patrons of a business by a business licensed to provide such services.

12.03.20 Application Requirements and Duration of Permit.

- A. Form
A request for an Outdoor Seating Permit shall be made on forms prescribed and provided by the City and shall be prepared and submitted in compliance with this Code. An application shall be reviewed against the standards and criteria effective at the time of application submittal. Signature from the abutting property owner and business owner or their legal representatives must be on the application form.
- B. Fee
Designated fee for permit based on the City of Sherwood Fee Schedule.
- C. Submittal Requirements
 - 1. Application Form
 - 2. Certificate of Liability Insurance, with limits of liability as determined by the City's Risk Manager
 - 3. Copy of Oregon Liquor Control Commission (OLCC) permits (If alcohol use is planned in the public right-of-way)
 - 4. Copy of any required Tualatin Valley Fire and Rescue (TVF&R) permit for tents
 - 5. A detailed site plan, drawn to scale, showing the following information:
 - a. Business frontage width along street
 - b. Sidewalk width
 - c. On-street parking location and width
 - d. If proposing to use on-street parking spaces, proposed location and style of barriers
 - e. Street name/address of business
 - f. Existing public infrastructure including trash cans, benches, signs, hydrants, storm drains, etc
 - g. Location of ADA parking and ADA ramps
 - h. Proposed location of tables, chairs, and related items
 - i. Location of any proposed tents or structures with sufficient detail to confirm the tent standards are met
 - j. Other related components not listed above (e.g. special equipment etc.)
- D. Duration of Permit and Annual Renewal
 - 1. Permits are valid for a period of 12-months from the date of issuance, based on the seasonal restrictions described below
 - a. A permit issued for use of the sidewalk is valid year-round and must be renewed annually
 - b. A permit issued for use of the street is valid between March 1 and October 31 of each year and must be renewed annually from the date of issuance

12.03.30 Design and Placement Standards

A. General Rules

1. Materials - The permit holder is solely responsible for the costs all equipment, materials, barricades, and signage as is required for compliance to this program.
2. Maintenance - Permittee shall maintain the permitted area, and all areas immediately adjacent to the permitted area, in a good, clean and safe condition. Upon the expiration of the permit, Permittee shall remove all personal property from the permitted area.
3. Inspection - The City may inspect all permitted areas for compliance with permit requirements and for safety at any time.
4. Right-of-Way - This program only allows use of City of Sherwood right-of-way; right-of-way owned by other jurisdictions is not eligible for use under this program. Only sidewalks and on-street parking spaces may be used; no other portions of City right-of-way (e.g. vehicular travel lanes) may be used.

B. Sidewalk Use Standards

1. Placement – A permit may only allow use of sidewalk space within the width of the applicant’s sidewalk-facing storefront. The sidewalk shall be maintained in accordance with ADA standards and shall provide a minimum 5 ft. wide clear zone for pedestrian circulation. This means a straight 5 ft. path is required down an entire sidewalk block and no seating or other obstructions is allowed in this area. If the sidewalk abutting the storefront cannot provide seating while meeting this standard, an outdoor seating permit will not be issued.
2. Structures - Sidewalk space may not have any fixtures that disturb the sidewalk material and all components must be above-ground. No overhead structures or canopies, aside from outdoor-grade fabric umbrellas, are permitted.
3. Heating and Electrical - The only lighting permitted to be used in sidewalk areas is battery-operated, tabletop lighting such as tea lights or similar used atop dining tables. Heaters may be allowed if approved by Tualatin Valley Fire & Rescue (TVF&R).

C. On-street Parking Use Standards

1. Placement
 - a. Outdoor Seating Permits allow for use of a maximum of two parking spaces directly in front of the applicant business. If one or both of the two parking spaces are in front of an adjacent business, written permission from the adjacent business owner must be obtained and included with the application.
 - b. All outdoor dining materials must be placed:
 - 1) A minimum of 20 feet from a crosswalk or a stop sign.
(Note: Overhead structures will need to be located further from a stop sign. See Overhead Structures below.)
 - 2) A minimum of 10 feet from a fire hydrant
 - 3) Without blocking drive aisles or fire lanes
 - 4) Without covering storm drains or water and gas valves in the street. In circumstances where this is impractical, the City Engineer will review and may approve on a case-by-case basis if the applicant can show that the placement will not pose a safety risk and will not unreasonably limit access.
2. Platforms

All on-street parking spaces that abut a curb and will be used for outdoor dining must include a deck that meets the following requirements:

 - a. Must bring the floor height level with the height of the public sidewalk
 - b. Must be constructed in a way that does not disturb the public right-of-way and must rest above-ground
 - c. Must have a railing
 - d. Must be designed to allow for proper draining

- e. Applicants are required to obtain stamped drawings of all structural components from a structural engineer, including decking and railing details.
- 3. Overhead Structures
Overhead structures will be allowed if they meet the following requirements:
 - a. Overhead structures must be constructed of wood, steel, outdoor-grade fabric, umbrellas, metal panels, corrugated plastic, or be properly weighted temporary weather protection such as tents or canopies.
 - b. Any side panels between the required railing and the bottom of the overhead structure must be clear.
 - c. Applicants are required to obtain stamped drawings of all structural components from a structural engineer, including decking and railing details.
 - d. Overhead structures are not permitted within the first permissible space next to a stop sign.
 - e. In circumstances where the structure will block a street sign, the City Engineer will review the design and may approve based on a case-by-case basis if the applicant can show that the placement will not pose a safety risk.
 - f. Overhead structures may not be permanently affixed to the ground and shall not cause damage to any portion of the right-of-way including the roadway or sidewalk.
- 4. Heating and Electrical
Use of heaters are permitted, with approval from Tualatin Valley Fire & Rescue (TVF&R). Electricity, if used must be that of the business and not utilize the outlets in the City Right of Way
- 5. Seasonal Removal
The applicant is responsible for removing the on-street seating by October 31 of each year. If the seating is not removed, the City may take action to remove the seating and associated improvements in accordance with section 12.03.040 below.

D. Tent Standards

- 1. For tents near intersections, the tent must be placed so as not to interfere with driver sight distance.
- 2. The maximum combined tent coverage area is 700 square feet.
- 3. All tents must be fire retardant and fire rated.
- 4. All tents must have a minimum of 8' clearance between the lowest point of the tent roof and the ground.
- 5. No staking of tents is permitted in public right-of-way.
- 6. All tent legs must be weighted as below or as otherwise recommended by manufacturer/installer:
 - a. Each leg must have a minimum of 40lbs of weight.
 - b. Ropes and straps must be in good repair and of sufficient strength rating.
 - c. Bungee and rubber straps are prohibited.
 - d. Weights must be on the ground and not dangling.
 - e. Weights and lines must not pose a hazard and must be clearly visible.
 - f. Items that make acceptable weights:
 - 1) 5 gallon bucket full of water, sand, or concrete
 - 2) 4" PVC pipe at least 36" long filled with concrete
 - 3) Large commercially available tent weights
 - 4) Sandbags or salt bags 40lbs or heavier
- 7. Tents shall be secured as soon as they are put up and brought down as soon as weight is removed. Unsecured tents shall not be left in place at any time.
- 8. Smoking is prohibited under tents.
- 9. The tent shall not block fire hydrants, storm drains, manholes, catch basins, or other similar infrastructure improvements.
- 10. No connection of the tent to any water, sanitary, or storm sewer utility shall be allowed.

11. Tents shall not obstruct pedestrian connections.
12. During permit review, tents may be subject to additional requirements for public safety by the City and TVF&R.

12.03.040 Removal of private facilities within ROW.

- A. No less than 30 days after written notice from the city, the owner of any private facilities located in the ROW (including private facilities attached to public facilities) shall, at its own expense, temporarily or permanently disconnect, remove, relocate, change, or alter the position of, any private facilities located within the ROW whenever the city has determined that such is reasonably necessary for the construction, repair, maintenance, or installation of any public improvement (regardless of whether the city or another entity is constructing said improvement) located in, or the operations of the city in, the ROW.
- B. The city retains the right and privilege to temporarily or permanently disconnect, remove, relocate, change, or alter the position of any private facilities located within the ROW (including private facilities attached to public facilities) in the event of an emergency, as the city may determine to be necessary, appropriate, or useful in response to any imminent danger to public health, safety, or property.
- C. The city retains the right and privilege to temporarily or permanently disconnect, remove, relocate, change, or alter the position of any private facilities located within the ROW (including private facilities attached to public facilities) in the event the outdoor seating remains in the street between November 1 and February 28.
- D. If the owner of any private facilities located in the ROW (including private facilities attached to public facilities) ceases to use such private facilities for a period of 30 days, the owner shall immediately remove such facilities from the ROW and restore the ROW and any other facilities located in the ROW which may be impacted by such removal. The 30-day period set forth in this subsection may be extended by written approval of the city engineer for good cause.
- E. If the owner of any private facilities located within the ROW fails to meet any of the obligations set forth in this section, in addition to any other available remedies, the city may take the actions that were the obligation of the facility owner. If the city elects to do so, the city will provide written notice to the facility owner of the action taken and the costs incurred by the city in so doing, and the facility owner will reimburse the city in full within 30 days.

12.03.050 Revocation.

The City Engineer or designee may revoke an Outdoor Seating Permit at any time for a failure to maintain liability insurance or for a violation of any standard or provision of this Chapter.

12.03.060 Violations.

- A. The city engineer, or designee, is authorized to revoke an Outdoor Seating Permit upon determining that the permit holder has violated this chapter, permit conditions, or any applicable construction or other standards.
- B. Seating or use of the ROW as described in this chapter without a valid permit, and any other violation of this chapter, permit conditions, or any applicable construction or other standards, is a class B violation. Each day on which a violation occurs shall constitute a separate violation.
- C. The municipal court may order a person responsible for a violation of this chapter to restore the property, damaged area, or street surface to the standards described in the Engineering Design and Standard Details Manual. The court may include in the order such other conditions the court deems necessary to ensure adequate and appropriate restoration. Alternatively, the municipal court may direct the city to perform, either directly or indirectly, the restoration with the costs of such restoration assessed against the person responsible for the violation.
- D. Violations of this chapter may also constitute violations of other provisions of the Sherwood Municipal Code, including but not limited to SMC 10.12.190 (Obstructing Streets).