



Home of the Tualatin River National Wildlife Refuge

## RESOLUTION 2012-028 046

### A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AGREEMENTS WITH WASHINGTON COUNTY FOR A COMMUNITY DEVELOPMENT BLOCK GRANT FOR IMPROVEMENTS TO THE MARJORIE STEWART SENIOR CENTER

**WHEREAS**, in October of 2011 the City of Sherwood submitted a grant proposal to Washington County for consideration in the Community Development Block Grant Program to improve the restrooms and lobby at the Marjorie Stewart Senior Center; and

**WHEREAS**, in February of 2012 Washington County notified the City of Sherwood that the grant proposal had been approved for funding; and

**WHEREAS**, in addition to the Agreement, Washington County now requires both a promissory note and trust deed to be executed by the grantee in favor of the grantor; and

**WHEREAS**, in addition to the required Trust Deed and Promissory Note for the current project, Washington County has also requested that the City of Sherwood sign a promissory note and trust deed for the last project that was approved in 2010, Project #1214; and

**WHEREAS**, the total project cost for this project is \$221,263, of which the Community Development Block Grant will provide \$179,600 worth of funding; and

**WHEREAS**, the Friends of the Senior Center have committed \$5,000 towards the project and the remainder of the project will be funded by the City of Sherwood through in-kind services, such as project management.

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

**Section 1** The City Council of the City of Sherwood authorizes the City Manager to sign attached agreements for CDBG Project #4228 (Exhibit A), Promissory Note for Project #4228 (Exhibit B), Trust Deed for Project #4228 (Exhibit C), Promissory Note for Project #1214 (Exhibit D), Trust Deed for Project #1214 (Exhibit E) as required by Washington County.

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

**Duly passed by the City Council this 21<sup>st</sup> day of August 2012.**

  
Keith S. Mays, Mayor

Attest:

  
Sylvia Murphy, CMC, City Recorder

Resolution 2012-028 046

August 21, 2012, Page 1 of 1, with 5 Exhibits: A (IGA, 34 pgs), B (Promissory Note for CDBG Project #4228, 7 pgs), C (Trust Deed for CDBG Project #4228, 8 pgs), D (Promissory Note for CDBG Project #1214, 7 pgs), E (Trust Deed for CDBG Project #1214, 8 pgs)

AGREEMENT  
between  
WASHINGTON COUNTY  
and  
City of Sherwood

This Agreement, entered into this \_\_\_ day of \_\_\_\_\_, 2012, between Washington County, a municipality of the State of Oregon (hereinafter referred to as the "County"), and the City of Sherwood, (hereinafter referred to as the "City"):

RECITALS

- A. The County is an urban county applicant for Block Grant funds under the Housing and Community Development Act of 1974 (the Act), 42 USC 301 et seq as amended, and the National Affordable Housing Act of 1990, and will receive Block Grant funds for the purpose of carrying out eligible community development and housing activities under the Acts and under regulations promulgated by the Department of Housing and Urban Development (HUD) at 24 CFR Part 570;
- B. The County and various cities within the County, including the City, have agreed to cooperate in the undertaking of essential community development and housing activities;
- C. The County desires to have certain services performed by the City as described within this Agreement for the purpose of implementing eligible activities under the Act and HUD regulations;
- D. It is appropriate and mutually desirable that the City be designated by the County to undertake the aforementioned eligible activities, so long as the requirements of the Act, HUD regulations, state law and local law are adhered to, as provided for herein;
- E. The purpose of this Agreement is to provide for the cooperation between the County and the City, as the parties in this Agreement, in implementing such eligible activities in the manner described above;
- F. The parties are authorized and empowered to enter into this Agreement by ORS 190.010 et seq., by the Constitution of the State of Oregon; and
- G. Therefore, in consideration of the payments, covenants, and agreements hereinafter mentioned and to be made and performed by the parties hereto, the parties mutually covenant and agree as provided for in this Agreement.

046

CITY

WASHINGTON COUNTY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Chairman, Board of County  
Commissioners

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
DUNS Number *(this field required)*

\_\_\_\_\_  
CCR Number *(this field required)*

\_\_\_\_\_  
Tax Identification Number *(this field required)*

APPROVED AS TO FORM

\_\_\_\_\_  
Attorney for the Washington County Office of Community  
Development

## INDEX TO AGREEMENT

### PART I. GENERAL CONDITIONS

1. Scope of Agreement and Applicability to Terms and Conditions of this Agreement
2. Scope of Work
3. Commencement and Termination of Projects
4. Administration
5. Operating Budget
6. Compensation and Method of Payment
7. Reversion of Assets and Interest in Property
8. Funding Alternatives and Future Support
9. Amendments
10. Assignment and Subcontracting
11. Insurance
12. Hold Harmless and Indemnification
13. Conflict of Interest
14. Default
15. Enforcement
16. Appeal
17. Termination
18. Prohibition on the Use of Debarred Contractors
19. Applicable Law, Venue, Attorney Fees and Costs
20. Extensions

21. Survival

PART II. FEDERAL, STATE AND LOCAL PROGRAM REQUIREMENTS

1. Uniform Administrative Requirements
2. Procurement Standards
3. Environmental Review
4. Nondiscrimination
5. Property Management
6. Labor Standards
7. Acquisition and Relocation
8. Architectural Barriers
9. Nonparticipation in Political Activities
10. Nonsubstitution for Local Funding
11. Public Information
12. Uniform Administrative Requirements and Cost Principles
13. Certification Regarding Lobbying
14. Certification Regarding Use of Excessive Force
15. Eligibility Restrictions For Certain Resident Aliens

Part III. EVALUATION AND RECORD KEEPING

1. Evaluation
2. Audits and Inspections
3. Records
4. Retention of Records
5. Access To Records

**PART IV SPECIAL CONDITIONS**

**PART V. EXHIBITS**

- A. Project Description, Scope of Activities and Anticipated Accomplishments
- B. Authorized Signature Card
- C. Budget Summary

## PART I. GENERAL CONDITIONS

### 1. SCOPE OF AGREEMENT AND APPLICABILITY TO TERMS AND CONDITIONS OF THIS AGREEMENT

- A. This Agreement shall consist of the signature page, the general and special conditions; the federal, state and local program requirements; the evaluation and record keeping requirements; each and every project exhibit incorporated in the Agreement; all matters and laws incorporated by reference herein; and any written amendments made according to the general conditions. This Agreement supersedes any and all former agreements applicable to projects which are the subject of this Agreement.
- B. Depending upon the specific nature of the project, services or purposes for which Block Grant funds are being provided pursuant to this Agreement, certain terms and conditions contained herein may be made inapplicable by their express citation in Part IV, Special Conditions. Except as so expressly excluded, all terms and conditions contained herein have full application, force and effect.

### 2. SCOPE OF WORK

- A. The City shall perform and carry out in a satisfactory and proper manner the project or services set forth in Exhibit A attached hereto which specifies work to be performed. The Agreement may be amended from time to time in accordance with the general conditions for the purpose of amending the scope of work or for any other lawful purpose.
- B. Any conflict or dispute that may arise with regard to any aspect of CDBG activities for the project shall be resolved by the County's interpretation of the specifications contained in the original project proposal, the current Program Policies, and the County's Office of Community Development CDBG Procedures Manual. Any such determination made by the County shall be final.

### 3. COMMENCEMENT AND TERMINATION OF PROJECTS

- A. Upon release of project-related funds by HUD pursuant to 24 CFR Part 58 Subpart H, the County shall furnish the City with written notice to proceed. No work on the project shall occur prior to the receipt of written notice to proceed from the County.
- B. All project funds shall be obligated and expended within the Project Year unless the County and the City agree to an amendment extending project

activities beyond the Project Year. For the purposes of this Agreement, "Project Year" shall mean the period from July 1, 2012 through June 30, 2013.

- C. Any property acquired or improved in whole or in part with CDBG funds in excess of \$25,000 shall be used to meet one of the national objectives set forth in 24 CFR 570.208 for a period of twenty (20) years or until June 30, 2033 unless otherwise modified in writing by the parties to this Agreement.

#### 4. ADMINISTRATION

- A. The Agency shall comply with all applicable uniform administrative requirements as described in 24 CFR 570.502.
- B. The City shall appoint a liaison person who shall be responsible for overall administration of Block Grant funded project(s) and coordination with the County's Office of Community Development. The name of the liaison person shall be specified in writing and submitted to the County's Office of Community Development. The City shall also designate one or more representatives who shall be authorized by the City to sign the Voucher Request and any other forms which may be required. The names of these representatives shall be specified in Exhibit B.
- C. This Agreement is subject to and supplemental to the Agreement of Intergovernmental Cooperation entered into between the County and participating municipalities.

#### 5. OPERATING BUDGET

- A. The City shall expend the funds received from the County under this Agreement in accordance with the budget summary submitted by the City to, and approved by, the County. Such budget summary is attached to this Agreement as Exhibit C. No line item expense in the approved budget shall be changed without a budget revision approved by the County's Office of Community Development. The budget revision shall specifically state the reasons for the requested increase and a justification for the corresponding decrease in another line item. Budget revision(s) must be approved by OCD before any costs are incurred by the City.
- B. The difference between the approved budget amount on a budget line item and a lower or higher bid or quote, in any line item, shall be reported to the County. Excess funds generated by a lower bid or quote shall be considered surplus. The City may submit a budget revision requesting the use of any such surplus, which shall be approved or denied at the discretion of the OCD.



- C. Matching funds identified in Exhibit C shall mean all funds from non-CDBG sources, including in-kind contributions of staff and materials, other grant sources, charitable contributions, volunteer labor, donated materials and services, and similar items of value to the project. Matching funds shall be used for project purposes, and shall be included within the scope of Audits and Inspections conducted under Part III, Section 2 of this Agreement. Increases in matching funds shall be reported to County and the Operating Budget shall be revised accordingly by the OCD.
- D. No later than 90 days from the date the County approves the proposed list of activities, which includes this project, the City shall submit to the County's Office of Community Development written evidence that substantiates the matching funds pledged by the City are available. The availability of pledged funds means all approvals, guarantees, or third party commitments from subrecipients or cosponsors, have been received and will enable the City to officially obligate those matching funds. In the event the City fails to submit such evidence or the evidence is deemed by the County to be unacceptable, the County may exercise its termination options under Part I Section 14 of this Agreement.

6. COMPENSATION AND METHOD OF PAYMENT

A. Subject to the availability of funds from HUD, the County shall reimburse the City for the services specified in Exhibit A. Reimbursement shall be requested by the City by submitting a Community Development Voucher Request (OCD Form 2) and a Program Accomplishments reporting form (OCD Form 3); the forms are to be signed by the City's authorized representatives in a manner prescribed by the County.

B. The County will make payment to the City within two (2) weeks or as soon as practicable after said invoice is received and approved by the Washington County Office of Community Development.

7. REVERSION OF ASSETS AND INTERESTS IN PROPERTY

A. Reversion of Assets - In accordance with HUD Regulation 24 CFR, 570.503(b)(7), upon expiration or termination of this agreement the City shall transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds.

B. Real Property - Real property under the City's control that was acquired or improved in whole or in part in excess of \$25,000 will be used to (1) meet its original national objective for the time period specified in Part I Section 3.C of this agreement; or (2) disposed of in a manner that results in reimbursement to the County in the amount equal to the current fair market value less any portions

attributable to expenditure of non-CDBG funds for acquisition of, or improvement to, the property.

C. Personal Property - Any personal property on hand at the time of the expiration of the project year of this Agreement shall be disposed of in accordance with 24 CFR 85.32.

D. Program Income

- (1) The City shall record the receipt and expenditure of program income as defined in 24 CFR 570.500(a) of the financial transactions of the project(s) funded under this Agreement. Program income shall be reported with each voucher request and substantially disbursed for the benefit of the specific project(s) funded by this Agreement in accordance with the principles of 24 CFR 570.504 (b)(2)(i) and (ii).
- (2) The City may retain program income for the benefit of the specific projects funded by this Agreement, provided it is used in accordance with regulations in 24 CFR 570.504, the provisions of this Agreement, and pursuant to adopted local CDBG program policies. Program income which is not used to continue or benefit such project(s) shall revert back to the Block Grant Fund for reallocation by the County. The County shall determine whether income is being used to continue or benefit a project or projects authorized by this Agreement.
- (3) Program income on hand when the Agreement expires and received after the Agreement's expiration must be used by the City to meet its original national objective for the time period specified in Part I Section 3.C. of this Agreement. The County may transfer the program income to the City, upon its termination of urban county participation provided the City has become an entitlement grantee and agrees to use the program income in its own CDBG entitlement program.

E. Appraisals, Promissory Note and Trust Deed

- (1) For any real property acquired, constructed or rehabilitated with CDBG funds, the City shall provide the County with an appraisal of the property. The appraisal shall be conducted by a certified appraiser whose services shall be paid for by the City. The purpose of such an appraisal is to: (a) conform to any federal real property acquisition requirements, and/or (b) to establish a baseline figure for the purpose of entering into a promissory note and trust deed as specified below. The appraisal shall be conducted within 45 days of notification to do so by the County.

- (2) City shall execute a Promissory Note and Trust Deed for any facility constructed, acquired or rehabilitated with Community Development Block Grant funds. The Promissory Note and Trust deed shall be executed at such time as required by the County.
- (3) City agrees to comply with all agreements, covenants and restrictions contained in the Promissory Note and Trust Deed, and all applicable federal, state and local regulations during the terms of the Promissory Note and Trust Deed.
- (4) City agrees to pay all escrow fees including all costs associated with the recording of Trust Deed or other legal instruments necessary for the County to protect its interest in the project.
- (5) For infrastructure improvement projects, the City shall only be required to execute a Promissory Note in favor of the County securing compliance with the terms of this Agreement. Upon completion of the project required herein, the County shall surrender the Promissory Note to the City.

8. FUNDING ALTERNATIVES AND FUTURE SUPPORT

- A. The County makes no commitment to future support and assumes no obligation for future support of the activities contracted for herein, except as expressly set forth in this Agreement.
- B. Should anticipated sources of revenue not become available to the County for use in the Community Development Program, the County shall immediately notify the City in writing, and the County will be released from all contracted liability for any portion of the Agreement covered by funds not received by the County.

9. AMENDMENTS

This Agreement shall be modified by the parties only upon written amendment signed by each of the parties.

10. ASSIGNMENT AND SUBCONTRACTING

- A. The City shall not enter into any contracts assigning any interest under this Agreement without the written approval of the County. Such consent shall be requested 15 days prior to the date of any proposed assignment.
- B. The County shall assume no liability for acts and omissions of contractors or subcontractors employed or hired by the City.

## 11. INSURANCE

- A. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including its officers, agents, and employees, against all claims, demands, actions and suits (including all attorney fees and costs) arising from the indemnitor's performance of this Agreement where the loss of the claim is attributable to the negligent acts or omissions of that party.
- B. Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this Agreement.
- C. Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.269 through 30.274.

## 12. HOLD HARMLESS AND INDEMNIFICATION

The City agrees to defend, save, hold harmless and indemnify the County, its officers, employees and agents from and against any and all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out of or resulting from City's own negligence, performance of or failure to perform the obligations of this Agreement and any agreement resulting from this Agreement.

### 13. CONFLICT OF INTEREST

- A. General – In the procurement of supplies, equipment, construction and services by City, the conflict of interest provisions in 24 CFR 85.36 and 84.42, respectively shall apply. In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of 24 CFR 570.611 shall apply.
- B. Interest of Officers, Employees, or Agents - No officer, employee, or agent of the County or City who exercises any functions or responsibilities in connection with the planning and carrying out of the Block Grant Program, or any other person who exercises any functions or responsibilities in connection with the Program, shall have any personal financial interest, direct or indirect, in this Agreement and the County and City shall take appropriate steps to assure compliance.
- C. Interest of Subcontractor and Their Employees - The City agrees that it will incorporate into every subcontract required to be in writing and made pursuant to this Agreement the following provision:

"The Contractor covenants that no person who presently exercises any functions or responsibilities in connection with the Block Grant Program, has any personal financial interest, direct or indirect, in this Agreement. The Contractor further covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of the Contractor or his employees must be disclosed to the City and Washington County."

### 14. DEFAULT

- A. Each of the following events shall constitute a default on the part of the City:
- (1) Material noncompliance with the terms of this Agreement, the Award, Promissory Note, Trust Deed or any and all applicable state or federal laws and regulations;
  - (2) Mismanagement or improper use of Award funds;
  - (3) Failure to obligate required funds or to provide work or services required by this Agreement;

- (4) Failure to submit reports, supplying incomplete or inaccurate reports required by Part III herein.

B. Each of the following events shall constitute a default on the part of the County:

- (1) Material noncompliance with the terms of this Agreement, the Award, any and all applicable state and federal laws and regulations;
- (2) Failure to provide funding for projects or services rendered as required by this Agreement.

15. ENFORCEMENT

A. In the event the City is found in default under the terms of this Agreement the County may:

- (1) Withhold any or all of any pending or future payments until the default is cured;
- (2) Terminate or suspend all or part of this Agreement or Award herein in accordance with 24 CFR 85.43;
- (3) Prohibit the City from incurring additional obligations of funds until the County notifies the City in writing that the default is cured;
- (4) Disallow or deny both the use of funds and matching credit of the activity or action not in compliance;
- (5) Take any and all other legal or equitable remedies available.

B. Any costs attributed to the program which were lawfully incurred prior to any suspension or termination will be considered properly incurred. Any costs attributed to the program during or after any suspension or termination are specifically not allowed without express written consent by the County.

16. APPEAL

In the event the County takes an action to enforce the terms of this Agreement, the Award or to enforce compliance with applicable state and federal law, the City may appeal such action in the manner provided in this section as follows:

- (1) The County shall provide the City with written notice of the default and the right to cure, if any;

- (2) The City may pursue an informal appeal by contacting the Manager of the Office of Community Development.
- (3) The City may appeal the informal decision of the Manager by submitting a written objection of the enforcement action directly to the Community Development Policy Advisory Board (PAB).
  - (a) The PAB may consider oral argument, written testimony and any other such evidence it considers relevant to a determination.
  - (b) The PAB shall consider all information and reach a determination based upon the record submitted and prepare a written finding.
  - (c) The PAB, in its discretion may hold a formal hearing. The City shall have the opportunity to provide oral testimony if a hearing is conducted by the PAB. If a formal hearing is not held, the City shall have the opportunity to submit written objections, arguments and other material relevant to its position to the PAB.
  - (d) The findings of the PAB are final and no further appeal is allowed.

17. TERMINATION

- A. This Agreement shall terminate upon any of the following events:
  - (1) Termination following default as defined previously;
  - (2) The failure by the County to provide funding for services rendered as required by this Agreement;
  - (3) The unavailability of Block Grant funds from either the federal government or through the County.
  - (4) Termination for convenience by either party pursuant to 24 CFR 85.44.
- B. This Agreement will terminate upon thirty (30) days written notice by the County in the event funding is no longer available.
- C. Upon termination of this Agreement, any unexpended balance of Agreement funds shall remain with the County. The regulations relating to reimbursement of Block Grant funds shall be applicable to the City for expended funds in accordance with HUD Regulation 24 CFR, 570.503(b)(7) and Part I, Section 7 herein.

- D. The City shall reimburse the County for any and all funds expended in violation of the terms of this Agreement, state or federal law.

18. PROHIBITION ON THE USE OF DEBARRED CONTRACTORS

CDBG funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor or subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 5. The City shall not make any award at any tier to any party which is debarred, suspended or excluded from participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension."

19. APPLICABLE LAW, VENUE, ATTORNEY FEES AND COSTS

This Agreement shall be governed by the laws of the State of Oregon and federal law. Any action or suit commenced in connection with this Agreement shall be in the Circuit Court of Washington County. The prevailing party, either in Circuit Court or on appeal, shall be entitled to reasonable attorney fees and costs and disbursements as awarded by the Court.

20. EXTENSIONS

If, in the determination of the Office of Community Development (OCD), a time extension is necessary or appropriate, an extension of the term of this Agreement for an additional period may be granted to the City by the County's Office of Community Development provided the City requests such an extension, in writing, at least four (4) weeks prior to the last expiration date contained in this Agreement. Additional extension(s) may be granted by the OCD Program Manager in case of extenuating circumstances.

21. SURVIVAL

The terms, conditions, representations, obligations and warranties set forth in this Agreement shall survive the termination or expiration of this Agreement.



PART II. FEDERAL, STATE AND LOCAL PROGRAM REQUIREMENTS

1. UNIFORM ADMINISTRATIVE REQUIREMENTS

- A. The City shall comply with all applicable uniform administrative requirements, as described in 24 CFR 570.502

2. PROCUREMENT STANDARDS

- A. In awarding contracts pursuant to this Agreement, the City shall comply with all applicable requirements of local and state law for awarding contracts, including but not limited to procedures for competitive bidding, contractor's bonds, and retained percentages. In addition, the City shall comply with the requirements of the 24 CFR Part 85.36 relating to bonding, insurance and procurement standards; and with Executive Order 11246 and the regulations issued pursuant thereto (41 CFR Chapter 60) regarding nondiscrimination bid conditions for projects over \$25,000.
- B. The City agrees to submit copies of all contracts, agreements, plans, specifications and change orders related to the project to the County's Office of Community Development in a timely manner. No plan specification or change order shall be used or implemented if it increases the total project cost without approval from the Office of Community Development.
- C. The City shall make available to each contractor bidding on any activity under this Agreement a listing of minority business enterprises (MBEs).

3. ENVIRONMENTAL REVIEW

- A. The County retains environmental review responsibility for purposes of fulfilling requirements of the National Environmental Policy Act as implemented by HUD Environmental Review Procedures (24 CFR Part 58). The County shall require the City to furnish data, information and assistance for the County's review and assessment in fulfillment of the County's responsibilities under 24 CFR, Part 58.
- B. The City shall not proceed with the acquisition of real property, any construction activities, or commit any choice limiting action under this Agreement until there is satisfaction of all applicable requirements of the National Environmental Policy Act.
- C. Other Environmental Compliance Requirements:

- (1) Historic Preservation. The City shall meet the historic preservation requirements of the National Historic Preservation Act of 1966 (Public Law 89-665) and the Archeological and Historic Preservation Act of 1974 (Public Law 93-291) and Executive Order 11593, including the procedures prescribed by the Advisory Council on Historic Preservation in the regulations at 36 CFR Part 800. Activities affecting property listed in or found to be eligible for inclusion in the National Register of Historic Places will be subject to requirements set forth in HUD Environmental Review Procedures at 24 CFR Part 58.
- (2) National Flood Insurance. The City shall not receive Community Development Block Grant funding for acquisition or construction for use in any area that has been identified as having special flood hazards and is not participating in the National Flood Insurance Program, as provided by Section 3(a) and 202 (a) of the Flood Disaster Protection Act of 1973 (42 USC 400(a) and 4106) and the regulations thereunder (44 CFR Chapter 1, Subchapter B, and 24 CFR, Section 570.605).
- (3) Air and Water Pollution. The City shall comply with the provisions of the Clean Air Act, as amended (42 USC Section [1857] 7401 et seq.) and the regulations issued thereunder (40 CFR Part 15) and the Water Pollution Act, 33 U.S.C. 1251 et. seq.
- (4) Lead-Based Paint Poisoning. Pursuant to 24 CFR, 570.608 the City shall comply with the HUD Lead-Based Paint Regulations (24 CFR Part 35, subparts A,B,J,K, and R) issued pursuant to the Lead-Based Paint Poisoning Prevention Act, as amended, (42 USC Section 4821-4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856) requiring prohibition of the use of lead-based paint whenever funds under this Agreement are used directly or indirectly for acquisition, construction, rehabilitation, or modernization; elimination of immediate lead-based paint hazards in residential structures; and notification of the hazards in residential structures; and notification of the hazards of lead-based paint poisoning to purchasers and tenants of residential structures constructed prior to 1978.
- (5) Endangered Species Act. The City shall comply with the provisions of the Endangered Species Act of 1973, as amended (16 USC Section 1531 et seq.), particularly Section 7 of the regulations thereunder (50 CFR Part 402).

4. NONDISCRIMINATION

- A. General. The City shall comply with all federal, state and local laws prohibiting discrimination on the basis of race, color, national origin, religion, gender, familial status, age or disability. These requirements are specified in Section 109 of the Housing and Community Development Act of 1974 "as amended"; Civil Rights Act of 1964, Title VI (42 USC 2000d et seq.) and implementing regulations at 24 CFR 1; Civil Rights Act of 1968, Title VIII (42 USC 3601 et seq.); Executive Order 11063, as amended by Executive Order 12259; Executive Order 11246 and the regulations issued pursuant thereto (41 CFR Chapter 60); Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u); and Section 504 of the Rehabilitation Act of 1973, (29 USC 794); Americans With Disabilities Act (ADA) (42 USC 12101); and the Age Discrimination Act of 1975 (42 USC 6101 et seq.). Specifically, the City is prohibited from taking any discriminatory actions defined in the HUD regulations at 24 CFR 570.602 and 24 CFR Part 6 and shall take such affirmative and corrective actions as required by the regulations at 24 CFR Part 6. These requirements are summarized in the following paragraphs:
- (1) Program Benefit. The City shall not discriminate against any resident of the project service area by denying benefit from or participation in any Block Grant funded activity on the basis of race, color, national origin, religion, gender, familial status, age or disability. (Civil Rights Act of 1964, Title VI; Civil Rights Act of 1968, Title VIII; Section 109, Housing and Community Development Act of 1974; Age Discrimination Act 1975; Americans With Disabilities Act (ADA) (42 USC 12101); Section 504, Rehabilitation Act of 1973.)
  - (2) Fair Housing. The City shall take necessary and appropriate actions to prevent discrimination in federally assisted housing and lending practices related to loans insured or guaranteed by the Federal Government. The City shall comply with the Civil Rights Act of 1964 (42 USC 2000(d) et. seq. and implementing regulations in 24 CFR part 1, and the Fair Housing Act 42 USC 3601 – 3620) Executive Order 11063, as amended by Executive Order 12259 and implementing regulations in 24 CFR part 107.
  - (3) Employment.
    - (a) In all solicitations under this Agreement the City shall state that all qualified applicants will be considered for employment. The words, "Equal Opportunity Employer" in all advertisements shall constitute compliance with this Section.
    - (b) The City shall not discriminate against any employee or applicant for employment in connection with the Agreement because of race, color,

national origin, religion, gender, familial status, age or disability, except when there is a bona fide occupational limitation. The City shall not refuse to hire, employ or promote, or bar, discharge, dismiss, reduce in compensation, suspend, demote, or discriminate in work activities, terms or conditions because an individual has a physical or mental disability in any employment in connection with this Agreement unless it can be shown that the particular disability prevents the performance of the work involved. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training. The City shall comply with Executive Order 11246 as amended by Executive Orders 11375, 11478, 12086, and 12107 (Equal Employment Opportunity); Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations) and the implementing regulations at 41 CFR chapter 60; and Section 504 of the Rehabilitation Act of 1973; Americans With Disabilities Act (ADA) (42 USC 12101); and the Age Discrimination Act of 1975.)

- (c) This Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, the HUD regulations issued pursuant thereto at 24 CFR Part 135, and any applicable rules and orders of HUD issued thereunder prior to the HUD authorization of the funding approval.
- (4) Persons With Disabilities. As required by 24 CFR, Part 8.51 the City shall conduct a self-evaluation and take corrective action to ensure reasonable accommodation in programs and services to persons with disabilities. The City shall provide County with a completed self- evaluation checklist, in the form set forth in County's CDBG Procedures Manual.
- (5) Contractors and Suppliers
  - (a) No contractor, subcontractor, union or vendor engaged in any activity under this Agreement shall discriminate in the sale of materials, equipment or labor on the basis of race, color, national origin, religion, gender, familial status, age or disability. No contractor, subcontractor, union or vendor engaged in any activity under this Agreement shall refuse to hire, employ or promote, or bar, discharge, dismiss, reduce in compensation, suspend, demote or discriminate in work activities, terms or conditions because an individual has a physical or mental disability in any employment in connection with this Agreement unless it can be shown that the particular disability prevents the performance of the work involved. Such practices include upgrading, demotion, recruiting, transfer, layoff, termination, pay rate, and advertisement for

employment. (Executive Order 11246 as amended; and Section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975.)

- (b) To the greatest extent feasible, the City shall purchase supplies and services for activities under this Agreement from vendors and contractors whose businesses are located in the area served by the Block Grant funded activities or owned in substantial part by project area residents. (Section 3, Housing and Community Development Act of 1968, as amended.)

- B. In the event of noncompliance by the City with any nondiscrimination provisions of this Agreement, the County shall have the right in whole or in part to terminate this Agreement in accordance with Part I, Section 15.

## 5. PROPERTY MANAGEMENT

The City, as a subgrantee, agrees that any property, equipment, or supplies purchased wholly or in part with program funds shall be managed under the same guidelines applicable to the County, pursuant to 24 CFR Part 85.

## 6. LABOR STANDARDS

- A. The City shall require that project construction and subcontractors pay their laborers and mechanics at wage rates in accordance with the Davis-Bacon Act, as amended (40 USC sections 276(a)-276(a)(5), and that they comply with the Copeland "Anti-Kickback" Act, as amended (40 U.S.C. 276(c) and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) as further prescribed at 29 CFR Parts 1, 3, 5, 6 and 7; provided that this section shall not apply to rehabilitation of residential property designed for residential use by less than eight units.
- B. A copy of the current Davis-Bacon wages must be included in all construction bid specifications and/or contracts over \$2,000.
- C. If the Project constitutes a public work as defined in ORS 279C.840, unless the Project is otherwise exempt, City shall require and ensure that all of its agreements with and between contractors and subcontractors contain provisions:
  - (a) requiring compliance with ORS 279C.840;
  - (b) stating the existing state prevailing wage rate and, if applicable, the federal prevailing rate of wage required under the Davis bacon Act (40 U.S.C. 276a) that may be paid to workers in each trade or occupation required for public

works employed in the performance of the contract either by the contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract;

(c) requiring that workers not be paid less than the specified minimum hourly rate of wage in accordance with ORS 279C.838;

(d) stating that a fee is required to be paid to the Commissioner of the Bureau of Labor and Industries as provided under ORS 279C.825 pursuant to the administrative rule of the commissioner; and

(e) requiring the contractor and every subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project unless exempt under ORS 279C.836(7) or (8).

## 7. ACQUISITION AND RELOCATION

A. Any acquisition of real property by a unit of government for any activity assisted under this Agreement shall comply with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 amended as Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (hereinafter referred to as the Uniform Relocation Act) (42 USC 4601 et seq.) and the Regulations at 24 CFR Part 42 as amended effective April 2, 1987.

B. Any displacement of persons, business, nonprofit organizations or farms as a result of acquisition of real property assisted under this Agreement shall comply with Title II of the Uniform Act and the regulations at 24 CFR Part 42. The City shall comply with the regulations pertaining to relocation at 24 CFR Section 570.606 and the Washington County CDBG Program Policies.

## 8. ARCHITECTURAL BARRIERS

Any building or facility designed constructed or altered with CDBG funds, and that meets the definition of a "residential structure" as defined in 24 CFR 40.2 or the definition of a "building" as defined in 41 CFR 101-19.602(a), shall comply with the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101-19, subpart 101.19.6, for general type buildings, and the provisions of the Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA).

9. NONPARTICIPATION IN POLITICAL ACTIVITIES

The City shall comply with the provisions of the Hatch Act (5 USC Chapter 15).

10. NONSUBSTITUTION FOR LOCAL FUNDING

The Block Grant funding made available under this Agreement shall not be utilized by the City to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of funds under this Agreement.

11. PUBLIC INFORMATION

All written materials (reports, brochures, promotional or informational items), news releases, and other public notices produced by or for the City shall acknowledge the source of funding as being derived from the Department of Housing and Urban Development and provided through the Washington County Community Development Block Grant Program.

12. UNIFORM ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES

To the extent applicable to the City's acceptance and use of funds under this Agreement, the City shall comply with the policies, guidelines and Uniform Administrative Requirements of OMB Circulars A-87, a-110 (Implemented at 24 CFR part 84), A-122, A-133 (Implemented at 24 CFR part 45), and A-128 (Implemented at 24 CFR part 44). The applicable sections of 24 CFR Parts 84 and 85 are set forth at 24 CFR 570.502.

13. CERTIFICATION REGARDING LOBBYING

The City certifies, by affixing its authorized signature(s) to this agreement that, to the best of the City's knowledge and belief:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the City, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the entering into this cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this cooperative agreement.

- B. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. (Available through the Office of Community Development.)
- C. The City shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

14. CERTIFICATION REGARDING USE OF EXCESSIVE FORCE

The City in accordance with Section 519 of Public Law 101-144, 1990 HUD Appropriations Act, certifies by affixing its authorized signature(s) to this agreement that the City will not use excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations.

15. ELIGIBILITY RESTRICTIONS FOR CERTAIN RESIDENT ALIENS

The City shall comply with the provisions in 24 CFR 570.613 pertaining to he eligibility restrictions for certain newly legalized aliens described in 24 CFR part 49.



### PART III. EVALUATION AND RECORD KEEPING

#### 1. EVALUATION

The City agrees to participate with the County in any evaluation project or performance report, as designed by the County or the appropriate federal agency, and to make available all information required by any such evaluation process.

#### 2. AUDITS AND INSPECTIONS

A. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit by the County, federal or state officials so authorized by law during the performance of this Agreement and during the period of records retention specified in this Part III at paragraph 4.

B. The City shall be responsible for meeting the audit requirements established in the U.S. Office of Management and Budget Circular A-133. Upon request of the County's Office of Community Development, the City shall be required to provide audit information relative to any project or activity funded under the terms of this Agreement.

#### 3. RECORDS

In the event the City sponsors multiple projects, each project shall be maintained under a separate file system and kept in a manner recommended by the County. As required by HUD regulations, the City shall compile and maintain records as indicated:

A. Financial Management - Such records shall identify adequately the source and application of funds for activities within this Agreement in accordance with the provisions of 24 CFR Part 85.20. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

B. Citizen Participation - Narrative and other documentation describing the process used to inform citizens concerning the amount of funds available, the ranges of project activities undertaken, and opportunities to participate in funded Block Grant projects.

C. Relocation - City recordkeeping must comply with the Uniform Act implementing regulations at 24 CFR Part 42. Indication of the overall status of the relocation workload and separate relocation record for each person, business, organization, and farm operation displaced or in the relocation workload must be kept.

D. Real Property Acquisition

1. If the City acquires real property by exercising its power of eminent domain, City acquisition files must contain the following records:

- (a) Identification of property and property owners.
- (b) Official Determination to Acquire - A citation of the action that constitutes the official determination to acquire, the date of the action, and the applicable CDBG project number.
- (c) Notice of Intent to Acquire the Property - A copy of the notice (including owner's rights), citation of the date of transmittal to owner, and evidence of receipt by the owner. If tenants are involved, then a general notice must also be issued to all affected tenants.
- (d) Preliminary Acquisition Notice - A citation of the date of transmittal to the owner and evidence of receipt by owner.
- (e) Invitation to Accompany Appraiser - Evidence that owner was invited to accompany each appraiser on his inspection of the property.
- (f) Appraisal Reports - A copy of each appraisal report, including reviewer's report, on which determination of just compensation was based.
- (g) Determination of Just Compensation - A copy of the resolution, certification, motion or other document constituting the determination of just compensation.
- (h) Purchase Offer - A copy of written purchase offer of just compensation, including all basic terms and conditions of such offer, and a citation of the date of delivery to the owner. This date is the initiation of negotiations and triggers the relocation requirement of making a "Notice of Displacement".
- (i) Statement of the Basis for the Determination of Just Compensation - A copy of the statement and an indication that it was delivered to the owner with written purchase offer.

- (j) Purchase Agreement, copy of recorded Deed, Declaration of Taking, Title Report, Title exceptions - A copy of each such document and any similar or related document utilized in conveyance.
- (k) Settlement Cost Reporting Statement - A signed copy of the statement.
- (l) Purchase Price Receipt - Evidence of owner receipt of purchase price payment.
- (m) Copy of any appeal or complaint and City response.

2. If the City opts not to exercise its power of eminent domain and acquires real property through voluntary acquisition, City acquisition files must contain the following records:

- (a) Identification of property and property owners.
- (b) Letter sent to Seller (prior to City making an offer on the property) which states:
  - Federal CDBG funds may be used on this project.
  - The Buyer has the power of eminent domain but will not use its power of eminent domain to purchase the property.
  - Seller is not eligible for benefits under the URA under this type of voluntary acquisition.
  - The current appraised value of the property, or other indication of fair market value approved in advance by the County.

The seller must sign, date, and return the letter, thus documenting receipt.
- (c) Appraisal Reports - A copy of each appraisal report, including reviewer's report, on which determination of just compensation was based.
- (d) Purchase Agreement, copy of recorded Deed, Declaration of Taking, Title Report, Title exceptions - A copy of each such document and any similar or related document utilized in conveyance.
- (e) Purchase of Price Receipt - Evidence of owner receipt of purchase price payment.
- (f) Either:
  - 1. Documentation that no tenants were affected by the sale; or
  - 2. Copy of General Information Notices sent to tenants and evidence of delivery of said notices.

(g) Evidence that the property is not part of a designated project area where substantially all the properties in the area will be purchased within a specified timeframe. The documentation must also show that the City does not require a specific site for the program or activity; instead, the documentation must show that the City is willing to consider alternative sites.

- E. Equal Opportunity - The City will maintain racial, ethnic, and gender data showing the extent to which these categories of persons have participated in, or benefitted from, the activities carried out under this Agreement. The City shall also maintain data which records its affirmative action in equal opportunity employment, and its good faith efforts to identify, train, and/or hire lower-income residents of the project area and to utilize business concerns which are located in or owned in substantial part by persons residing in the area of the project.
- F. Labor Standards - Records shall be maintained regarding compliance of all contractors performing construction work under this Agreement with the labor standards made applicable by 24 CFR Part 570.605.
- G. Miscellaneous Records - The City shall maintain such other records as may be required by the County and/or HUD.

#### 4. RETENTION OF RECORDS

As required in 24 CFR 85.42, required records shall be retained for a period of four (4) years following the date of the submission of the final grantee performance report in which the activity is covered, except as follows:

- A. Records that are the subject of audit findings shall be retained for four (4) years or until such audit findings have been resolved, whichever is later.
- B. Records for Real Property and Equipment shall be retained for four (4) years after its final disposition. The retention period starts from the date of disposition, replacement, or transfer at the direction of the County. Equipment is defined in 24 CFR Part 85.32 and real property is defined in 24 CFR Part 570.505.
- C. Records for any displaced person shall be retained for four (4) years after such person has received final payment.

#### 5. ACCESS TO RECORDS

As required in 24 CFR 85.42(e), for so long as records are retained by the Agency, the County, The Comptroller General of the United States, or any of their

authorized representatives shall have the right of access to any pertinent books, documents, papers, or other records of Agency which are pertinent to this Agreement in order to make audits, examinations, excerpts and transcripts.

PART IV. SPECIAL CONDITIONS

1. The City shall execute this agreement no later than 30 days following the date of the County's letter of transmittal.
2. The City shall make available to the County's Office of Community Development, a draft copy of the Bid Specifications (including drawings, if applicable). At a minimum, the draft specifications shall include: the date of bid solicitation; date of bid opening or final date of phone solicitations, as applicable; proposed work activities; and anticipated award date. In addition, the City will provide a written construction cost estimate and a projected start of construction.
3. The City shall make available to the Office of Community Development a copy of the following documents: Final Bid Specifications (including drawings, if applicable); all signed contract documents between the City and the Contractor; the City's Notice to Proceed; all required bonds obtained by the contractor; and a projected schedule for each of the activities.
4. In accordance with Part I, Paragraph 1.B., the following covenants are deemed not applicable and are expressly deleted:

**PART V. EXHIBITS**

- A. Project Description, Scope of Activities and Anticipated Accomplishments**
- B. Authorized Signature Card**
- C. Budget Summary**

PROJECT DESCRIPTION, SCOPE OF ACTIVITIES  
AND ANTICIPATED ACCOMPLISHMENTS  
2012-2013 CDBG Program Year

- I. Federal Award Information  
A. Federal Award Number: B-12-UC-41-0002  
B. CFDA #:14.218  
C. Amount of Federal Funds: See III.E. below

The Federal Award Information shown above must be passed on to any subaward made under this contract.

- II. Washington County Project Number and Title:

CDBG Project #4228 City of Sherwood, Marjorie Stewart Senior Center Restroom and Lobby Improvements

- III. Description of: Project, Activities, Anticipated Accomplishments, Low and Moderate or Other Target Group Beneficiaries.

- A. Nature and Purpose of the Project:

There are a series of accessibility (ADA) upgrades that need to be done to the building to better serve both people with disabilities, but also the older population that simply needs a little more assistance. The existing restrooms do not meet current ADA requirements and the finishes are dated. The current code requires increased maneuvering clearances in the fully accessible stalls as well as at the restroom entrance doors. In addition, under the 2010 Oregon building code, a new building of this size would require a unisex restroom.

The floors in the lobby area are exposed aggregate and are cold, unwelcoming, and not an appropriate floor finish for this type of facility and the clients who access services here. The proposed project would upgrade the restrooms and lobby area floor finish to make the senior center more accessible and functional.

- B. Proposed Location or Impact Area(s):

21907 SW Sherwood Blvd., Sherwood, OR 97140

- C. Duration/Timing of the Project:

July 1, 2012 – June 30, 2013

- D. Number of Low and Moderate Income or Target Group Beneficiaries:

360 low-income persons

- E. Component Activities (CDBG vs. Others):

CDBG = \$179,600      Agency = \$41,663

F.

Quantitative Projections for CDBG Component Activities (in units, linear feet, square feet, etc.) for all acquisitions, construction, reconstruction, rehabilitation, etc.:

CDBG Funds will be used to pay for legal and public notices, architectural and engineering, and construction costs for the project.



APR 23 2012

Project No. 4228  
Project Year Funded 12-13

**AUTHORIZATION SIGNATURE CARD**

Project Name Marjorie Stewart Senior Center - Restrooms & Lobby  
Applicant's Name City of Sherwood Renovations  
Address 22560 SW Pine St.  
City, State, Zip Sherwood OR 97140  
Telephone Number 503-625-4210

**SIGNATURE OF INDIVIDUALS AUTHORIZED TO SIGN FINANCIAL DOCUMENTS:**

Any TWO signatures required to sign any financial document

NAME	SIGNATURE
<u>Kristen Switzer</u>	<u>[Signature]</u>
<u>CRAIG GIBSONS</u>	<u>[Signature]</u>
<u>Julie Blums</u>	<u>Julie Blums</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

I certify that the signatures above are of the individuals authorized to execute financial documents.

4-17-2012  
Date

[Signature]  
Signature of Authorized Official  
Tom Rossemier  
City Manager Pro Tem  
Title of Authorized Official

APR 23 2012

Project Number: 4228  
 Project Year (funded): 12-13

**Budget Summary (2 page form - see Excel tabs )**

Project Title: Marjorie Stewart Senior Center- Restroom & Lobby Improvements
Legal Name of Entity: City of Sherwood
Address: 22560 SW Pine Street City: Sherwood State: OR Zip: 97140


**I. BUDGET LINE ITEMS:  
 A. Personnel Services**

1. No. of Employees	2. Job Title	3. Total Salary	4. Portion Chargeable to CDBG
2	Project Management	\$20,831.00	\$0.00
5. Subtotal		\$20,831.00	
6. Extra Help/Overtime			
7. Fringe Benefits		\$20,832.00	
8. TOTAL PERSONNEL COSTS		\$41,663.00	\$0.00
<b>B. Materials and Supplies</b>		<b>Materials and Services</b>	<b>Portion Chargeable to CDBG</b>
9. Office Supplies			
10. Operating Supplies			
11. Communications			
12. Travel and Training			
13. Legal & Public Notices		\$500.00	\$500.00
14. Professional Services		\$22,629.00	\$22,629.00
15. Construction Contracts		\$152,512.00	\$152,512.00
16. Other: Specify- Permits		\$3,959.00	\$3,959.00
17. TOTAL MATERIALS AND SERVICES		\$179,600.00	\$179,600.00

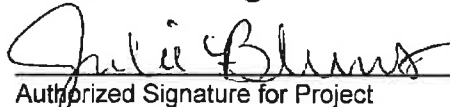
C. CAPITAL OUTLAY	Total Capital Outlay	Portion Chargeable to CDBG
18. Capital Outlay:		
Quantity    Item		
19. Real Property Acquisition		
20. TOTAL CAPITAL OUTLAY	\$0.00	\$0.00
	<b>21. Total Project Cost</b>	<b>22. Total CDBG Award</b>
	<b>\$221,263.00</b>	<b>\$179,600.00</b>
<b>II. SOURCES OF PROJECT FUNDING</b>		
1. Federal		
2. State		
3. Local Cash	\$5,000.00	
4. County		
5. In-Kind Service and Supply	\$36,663.00	
6. Other (detail)		
7. Subtotal	\$41,663.00	
8. Community Development Block Grant	\$179,600.00	
<b>9. TOTAL PROJECT COST</b>	<b>\$221,263.00</b>	

III. AUTHORIZATION

4/16/12  
Date

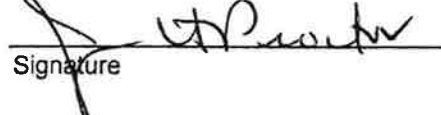
  
Authorized Signature for Project

4-14-12  
Date

  
Authorized Signature for Project

COUNTY USE ONLY

Reviewed and approved by Washington County Office of Community Development on

May 9, 2012 by Jennie H. Proctor  
Signature 

CDBG Project #4228 City of Sherwood Marjorie Stewart Senior Center

**PROMISSORY NOTE**  
for Facilities (>\$25,000 AWARD)

\$179,600.00 \_\_\_\_\_, 2012  
Amount

This Promissory Note ("Note") is by and between City of Sherwood, a municipality of the State of Oregon (the "Maker") and Washington County, a political subdivision of the State of Oregon, acting by and through the Office of Community Development (the "Holder").

**RECITALS**

**Whereas**, Holder and Maker executed a project agreement dated \_\_\_\_\_ ("Project Agreement"), wherein Holder awarded Maker a Community Development Block Grant ("CDBG") grant in the amount of One Hundred Seventy-nine Thousand Six Hundred dollars (\$179,600.00) ("CDBG Award") for the purposes set forth in the Project Agreement; and

**Whereas**, as a condition of the Project Agreement, Maker must execute a Promissory Note and Trust Deed to secure the CDBG funds; and

**Whereas**, under 24 CFR Ch. V §570.503 (the "Regulation"), any real property acquired with CDBG funds must be used for one of the national objectives set forth in 24 CFR ch. V §570.208 or be disposed of in a manner that results in Holder being reimbursed for the fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to the Property, which requirements are set forth below.

**Now therefore, Maker agrees as follows:**

1. Agreement

Maker promises to pay to Holder an amount equal to the current market value of the Property less any portion of the value attributable to expenditures of non-CDBG funds (hereinafter referred to as "Proportionate Share") or (\$179,600.00), which ever is greater, upon the happening of any Event of Default herein described, in consideration of its receipt of the CDBG Award.

2. When Due

This Note is without interest and shall be canceled, and the Trust Deed securing it shall be satisfied on June 30, 2033, if no Event of Default, as defined in paragraph 3, has occurred; provided, however, that this Note is immediately due and payable upon any Event of Default. No waiver of this paragraph shall occur unless evidenced in writing.

CDBG Project #4228 City of Sherwood Marjorie Stewart Senior Center

### 3. Events of Default

- A. Any and all of the following will be considered to be events of default ("Events of Default"):
- (1) Any default or breach of any term or condition of this Note, the Project Agreement (referenced in the above Recitals), or the Trust Deed securing this Note (after expiration of all applicable cure periods) prior to cancellation of this Note. All terms and conditions of the Project Agreement and the Trust Deed securing this Note are incorporated herein by this reference.
  - (2) Any sale or transfer of, or attempt to sell or transfer, the Property without Holder's consent, which consent shall not be unreasonably withheld so long as the transferee is an eligible nonprofit corporation providing services similar to those provided by Maker; or
  - (3) Discovery that Maker failed to disclose any fact material to the making of the CDBG Award or that Maker made a material misrepresentation in connection with the CDBG Award.

### 4. Proportionate Share

- A. As set forth in Exhibit A, which is incorporated herein by this reference, Holder's Proportionate Share is 17.2%. Maker agrees that if, for any reason, Holder's entitlement to the Proportionate Share upon the happening of and Event of Default is invalidated, Holder shall be entitled to receive, or may elect to receive, the full amount of the CDBG Award (\$179,600.00) plus interest at the legal rate in effect at the time of invalidation, running from the date of any Event of Default until paid.
- B. Fair Market Value. For purposes of this Note, Fair Market Value shall be calculated, at Holder's option, as follows: In the case of a sale of the Property, the greater of the sale's price of the Property or the appraised value thereof at the time of sale as determined at Maker's expense by an appraiser reasonably satisfactory to Holder; or, in the case of a breach of any other term or condition, the appraised value of the Property as determined at Maker's expense by an appraiser reasonably satisfactory to Holder:
- (1) Less, the outstanding principal and interest of any loans secured by liens against the Property having priority over the Trust Deed securing this Note; and
  - (2) Less, the actual reasonable costs of sale (if sold), such as real estate commission, real property transfer taxes, escrow fees, recording fees and title insurance premiums.

CDBG Project #4228 City of Sherwood Marjorie Stewart Senior Center

- C. Future Capital Improvements. Subject to Sections 4.C.(1), if the Maker makes future capital improvements to the Property, Holder's Proportionate Share will be reduced in accordance with Section 4.D.
- (1) Before making any capital improvements to the Property for which the Maker intends to claim credit under this Section 4.C., the Maker must first obtain Holder's written consent to the proposed improvements, which consent Holder agrees not to unreasonably withhold. If Maker fails to first obtain Holder's consent, Holder shall have the right to waive this requirement, in its sole discretion.
- D. Proportionate Share Recalculation. The reduction in Holder's Proportionate Share will be determined by discounting the cost of the future improvement to its value in 2012 dollars and then adjusting the fraction that determines Holder's Proportionate Share, as more specifically set forth as follows:
- (1) The cost of the future capital improvement will first be determined (the "Future Cost"). The Future Cost may only include sums attributable to capital expenditures and may not include sums spent on ongoing maintenance or other noncapital expenditures such as real property taxes, legal and professional fees and the like. If the Maker pays below market cost for materials or labor used in completing a capital improvement, the fair market value, rather than the actual costs incurred, for the materials or labor, or both, as applicable, will be included in the Future Cost.
  - (2) The Future Cost will then be reduced to its value in 2012 dollars, by discounting the Future Cost by the average annual rate of increase in the Consumer Price Index between the year in which the Future Cost is incurred and 2012 (the "2012 Value Cost"). For the purposes of this Note, "Consumer Price Index" means the index published by the United States Bureau of Labor Statistics of the United States Department of Labor and entitled U.S. City Average--All Items and Major Group Figures for All Urban Consumers (CPI-U) (1982-84 = 100), or the nearest comparable data on changes in the cost of living if such index is no longer published.
  - (3) The 2012 Value Cost will then be added to the denominator of the fraction set forth in Exhibit "A," and rounded to the nearest one thousand dollars. Unless further adjusted in accordance with this Note because of additional future capital improvements, the new value of that fraction will then serve as Holder's Proportionate Share for the purposes of this Note.

CDBG Project #4228 City of Sherwood Marjorie Stewart Senior Center  
Example (based on initial projected Proportionate Share): In 2020, the Maker makes a capital improvement to the Property whose Future Cost equals \$50,000.00. Between 2010 and 2020, the average annual increase in the Consumer Price Index was 10%. The 2010 Value Cost of the Future Cost would therefore equal \$19,000. The 2020 Value Cost would be added to the denominator of the fraction set forth in Exhibit "A."

#### 5. POLICY AGAINST TRANSFER

The CDBG Award is subsidized by public funds and is intended solely for the benefit of the Maker and for the purposes set forth in the Project Agreement. The Maker understands that the CDBG Award as evidenced by the Project Agreement is not intended to be of a direct benefit to any transferee as the result of any subsequent transfer. It is, therefore, intended that no sale or transfer of any of the real or personal property securing this Note will be made without the prior written consent of Holder.

#### 6. DUE ON SALE OR TRANSFER

**UNLESS HOLDER HAS GIVEN ITS PRIOR WRITTEN CONSENT, THIS NOTE IS DUE AND PAYABLE IMMEDIATELY UPON SALE OR TRANSFER (OR ANY ATTEMPTED SALE OR TRANSFER) OF ALL OR ANY INTEREST OR INTERESTS OF WHATEVER NATURE IN, THE PROPERTY OR OTHER COLLATERAL SECURING THIS NOTE OR ANY PART THEREOF.**

#### 7. DEFINITION

As used herein, sale or transfer shall include within its meaning, any transfer by deed or assignment, any contract for the sale of the property over time, any assumption of the CDBG Award by a transferee of the Maker, any assignment for the benefit of creditors, any option to purchase, the appointment of a receiver, a foreclosure of any nature, any gift, any transfer of a general partnership interest where the Maker is a partnership, any sale or transfer of a controlling interest in stock by a corporate signatory, any corporate dissolution, or any dissolution or winding-up of partnership affairs if Maker is a partnership. Included within the above meaning is any attempt to sell or transfer. The terms sale or transfer shall not include any transfer by way of subordinate encumbrance or by way of a lease which does not contain an option to purchase.

Acceleration of the Note and all other indebtedness secured by the Trust Deed and the Project Agreement securing this Note upon any sale or transfer without the Holder's written consent is automatic, except as provided in these documents and is subject to no exceptions except as follows: Holder may, in its sole discretion, permit sale or transfer prior to actual sale or transfer, or may waive acceleration after sale or transfer only in accordance with Holder's requirements pertaining to the particular program pursuant to which the CDBG Award was made available. Such waiver must be effected and evidenced by way of written agreement between Holder and

CDBG Project #4228 City of Sherwood Marjorie Stewart Senior Center  
the proposed transferee of the Maker which provides that the transferee's credit is satisfactory to Holder.

#### 8. OPTION TO PAY CHARGES

If the Maker breaches any covenant in the Trust Deed or this Note which breach is for failure to timely and properly pay any tax, lien, assessment, charge, or insurance premium related to the Property when due, Holder shall have the option to pay the same and any payment made shall be added to the principal balance of this Note and shall be secured by the Trust Deed, and such payment shall thereby become a lien upon the Property. No payment pursuant to the preceding sentence shall be a waiver of any default.

#### 9. INTEREST AFTER JUDGMENT

If this Note is reduced to judgment, any judgment or decree will bear interest at the rate which Oregon law permits for interest on judgments.

#### 10. TIME OF THE ESSENCE

Time is of the essence for this Note.

#### 11. NON-WAIVER

Failure to exercise any right Holder may have or be entitled to in the event of any Event of Default hereunder shall not constitute a waiver of such right or any other right in the event of any subsequent Event of Default.

#### 12. GOVERNING LAW

This Note shall be governed by and construed in accordance with the laws of the State of Oregon.

#### 13. ATTORNEY FEES

In case suit or action is instituted to collect this Note or any portion hereof, the prevailing party shall receive from the losing party in such suit or action such additional sum as the court may adjudge as reasonable attorney's fees, expenses, and costs in said suit or action, or on any appeal therefrom, including, but not limited to, those fees and expenses permitted or defined by statutory law, and including without limitation all fees and expenses incurred at trial, on appeal, on petition for review, arbitration, mediation and in bankruptcy proceedings.



CDBG Project #4228 City of Sherwood Marjorie Stewart Senior Center

14. SECURITY; NON-RECOURSE

- A. This Note is secured by the Trust Deed between the undersigned corporation as Grantor, Washington County Counsel as Trustee and Washington County as Beneficiary.
- B. This Note is without recourse and shall be canceled, and the Trust Deed securing it shall be satisfied, if none of the events accelerating immediate payment as above described occur within the applicable time periods set forth in this Note, the Trust Deed and the Project Agreement.

15. MISCELLANEOUS

In construing this Note it is understood that the references to the undersigned include singular and plural, as the case may be, and include any transferee (to the extent permitted). This Note applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The Recitals are a material part of this Agreement. The Maker hereby waives demand, protest, presentment, notice of nonpayment, notice of protest, and notice of dishonor.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Maker: City of Sherwood  
an Oregon Nonprofit Corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

CDBG Project #4228 City of Sherwood Marjorie Stewart Senior Center

## EXHIBIT "A"

### RATIO OF EXPENDITURES - PROPORTIONATE SHARE

City of Sherwood vs CDBG Funds:

<u>Assessed Value:</u>	<u>Agency</u>	<u>Total</u>	<u>CDBG</u>	<u>Proportionate Share</u> <u>(CDBG / Total =)</u>
\$1,004,802	\$41,663	\$1,046,465	\$179,600	17.2%

Ratio of Expenditures:

Agency: 82.8%

County: 17.2%

After Recording Return To:  
Office of Community Development  
Mail Stop #7

## **TRUST DEED with Assignments of Rents**

“THIS TRUST DEED is made this \_\_\_\_\_ day of \_\_\_\_\_, by and among City of Sherwood ("Grantor"), Washington County Counsel, ("Trustee") and Washington County, a municipal corporation of the State of Oregon currently acting by and through the Office of Community Development ("Beneficiary").”

The Grantor, in consideration of a One Hundred Seventy-nine Thousand Six Hundred dollars (\$179,600.00) Community Development Block Grant (“CDBG”) award ("Award") does convey to the Trustee in trust, and any successor of the Trustee, the following real property ("Property") situated in the County of Washington, State of Oregon, and described as follows:

See attached Exhibit "A."

Together with all rents, issues, profits, and all fixtures now or hereafter attached to or used in connection with the above-described property ("Property") at the time of the execution of this Trust Deed or at any time during the term of this Trust Deed; to have and to hold the Property as so described until such time as all obligations set forth in the Promissory Note from Grantor to Beneficiary, of even date (“Promissory Note”), are extinguished and all conditions of the project agreement, dated \_\_\_\_\_, between the Grantor and Beneficiary, (“Project Agreement”) as well as the conditions of this Trust Deed, are satisfied.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

This conveyance is intended to secure: (a) the obligations set forth in the Promissory Note given by Grantor to Beneficiary on \_\_\_\_\_, 2012 as well as any and all extensions, renewals, and

modifications of the Promissory Note; and (b) performance by Grantor, its successors, and assigns of the restrictions and obligations set forth in the Project Agreement.

All of Grantor's obligations under the Promissory Note and the Project Agreement will terminate on June 30, 2033 unless on that date an Event of Default has occurred and not been cured.

The Grantor covenants:

(1) Title: That Grantor is the legal owner of the property and now has a valid fee simple title thereto, and that the Grantor will warrant and defend said title against the claims and demands of all other persons.

(2) Performance: That for all times that there remains any obligations under this Trust Deed, the Promissory Note, or the Project Agreement, Grantor shall abide by, and shall timely perform, any and all covenants and conditions.

(3) Pay Liens, Taxes, and Assessments: That Grantor will, so long as this Trust Deed remains in force, keep the Property free from construction liens and will timely pay all taxes, assessments, charges, or liens that may be levied or assessed upon the Property, before any tax, assessment, or lien becomes due or delinquent and before commencement of any foreclosure or collection proceedings which may threaten the security of this Trust Deed.

(4) Maintain Property: That Grantor will keep all the improvements erected on said premises in good order and repair and will not permit or cause any waste of the property.

(5) Insurance: That Grantor will, for all times during the period there remains any indebtedness under the Note, or any other indebtedness secured by this Trust Deed, keep improvements now existing or hereafter erected on the property insured against loss or damage by fire, on an all risk form, including earthquakes, floods or flooding, in a form acceptable to Beneficiary, and with loss payable to the Beneficiary, in an amount acceptable to Beneficiary in a company or companies acceptable to the Beneficiary and for the benefit of the Beneficiary with a standard lender's loss payable clause naming County as loss payee, and will deliver all the policies and renewals to the Beneficiary. Grantor agrees that any insurance proceeds payable under a policy or policies shall be paid directly to Beneficiary. If Beneficiary, by reason of such insurance receives any money for loss or damage, such insurance proceeds shall be used for the purpose of repairing and restoring the improvements damaged by the casualty to their former condition and usability or replacement of the same with equivalent or more suitable improvements. Using such insurance proceeds, the parties shall proceed with reasonable diligence as soon as sufficient funds are available to prepare plans and specifications for, and thereafter carry out, all work necessary (a) to repair and restore the building and/or improvements on the premises damaged by the casualty to their former condition, or (b) to replace said building and/or improvements with a new building and/or improvements on the premises of a quality and usefulness for the Project described in the application submitted by Grantor for the CDBG funds and plans associated therewith, at least equivalent to, or more suitable than, the building and/or improvements which were damaged. Grantor agrees that it will comply with the requirements of the Beneficiary as to the purchase and maintenance of flood insurance, as those requirements are established by the policies and requirements of the Beneficiary. It is the Grantor's responsibility to maintain the above insurance coverage until the Note secured by this Trust Deed is satisfied. Nothing in this paragraph shall be construed to mean that Grantor's obligations under this Trust Deed shall be altered or discharged due to the existence of insurance coverage. Beneficiary does not need to await payment of, or resolution of litigation as to, insurance proceeds before seeking any other remedy.

(6) Further Encumbrance: Grantor agrees to obtain Beneficiary's written consent prior to placing or allowing any further liens or encumbrances on the Property, which consent shall not be unreasonably withheld provided that such liens or encumbrances are subordinate to this Trust Deed.

(7) Sale or Transfer: Grantor further agrees to obtain Beneficiary's written consent to sell or transfer the Property as further described below.

#### FAILURE TO ABIDE BY COVENANTS

A failure by the Grantor to perform the covenants and conditions in this Trust Deed, or Grantor's failure to comply with the terms and conditions of any Project Agreement, Promissory Note, or Declaration of Restrictive Covenants shall constitute a default of this Trust Deed.

#### RIGHTS AND REMEDIES ON DEFAULT

Upon the occurrence of any default, Trustee or Beneficiary may exercise any one or more of the following rights and remedies:

(1) Beneficiary may declare any and all obligations under the Promissory Note immediately due and payable, and this Trust Deed may be foreclosed at any time thereafter.

(2) The Trustee shall have the right to foreclose by notice and sale, and Beneficiary shall have the right to foreclose by judicial foreclosure, in either case in accordance with applicable law.

(3) Beneficiary shall have the right to take possession of the Property described above and collect the rents, issues, profits, and revenues and apply the net proceeds, over and above Beneficiary's costs, against the indebtedness secured hereby or due hereunder.

(4) Beneficiary shall have the right to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, to collect the rents, issues, profits and revenues from the Property and apply the proceeds, over and above the costs of the receivership, against the obligations secured hereby or due hereunder. The receiver may serve without bond, if permitted by law. Beneficiary's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the obligation secured hereby or due hereunder by a substantial amount. Employment by Beneficiary or an assignee of Beneficiary shall not disqualify a person from serving as a receiver.

(5) In the event Grantor remains in possession of the Property after it is sold as provided above or Beneficiary otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant-at-will of Beneficiary for the purchaser of the Property and shall pay a reasonable rental for use of the Property while in Grantor's possession.

(6) Trustee and Beneficiary shall have any other right or remedy provided in this Trust Deed, the Promissory Note, the Project Agreement or any other instrument delivered by Grantor in connection with the Award or available at law, in equity or otherwise. Beneficiary's remedies in this Trust Deed are in addition to, and not in lieu of, any other remedies provided by law.

FAILURE TO DISCLOSE

The Beneficiary is authorized by the Grantor to declare, at its option, the obligations under the Promissory Note immediately due and payable upon the Beneficiary's discovery of the Grantor's failure to disclose any fact material to the making of the Award.

POLICY AGAINST TRANSFER

The Award secured by this Trust Deed is subsidized by public funds and is intended solely for the benefit of the Grantor for the specific purpose identified in the Project Agreement. It is therefore intended that no sale or transfer of any of the real or personal property securing this Trust Deed shall occur without the express written consent of the Beneficiary, which consent will not be unreasonably withheld.

DUE ON SALE OR TRANSFER

**THE AWARD SECURED BY THIS TRUST DEED, OR ANY OTHER INDEBTEDNESS OR OBLIGATION SECURED BY THIS TRUST DEED, IS DUE AND PAYABLE IMMEDIATELY UPON SALE OR TRANSFER (OR ANY ATTEMPTED SALE OR TRANSFER) OF GRANTOR'S INTEREST IN THE PROPERTY WITHOUT THE EXPRESS WRITTEN CONSENT OF BENEFICIARY.**

Beneficiary may permit a sale or transfer prior to actual sale or transfer, or may waive acceleration after sale or transfer only in accordance with Beneficiary's requirements pertaining to the particular program pursuant to which the Award was made available. Such waiver must be effected and evidenced by way of written agreement between Beneficiary and the proposed transferee of the Grantor.

DEFINITION OF "SALE OR TRANSFER"

As used herein, "sale or transfer" means any transfer of the Property or an interest in the Property. This includes within its meaning, any transfer by deed or assignment, any contract for the sale of the property over time, any assumption of the Award by a transferee of the Grantor, any assignment for the benefit of creditors, any option to purchase, the appointment of a receiver, a foreclosure of any nature, any gift, any corporate dissolution or any attempt to sell or transfer. The terms sale or transfer shall not include any transfer by way of an authorized subordinate encumbrance.

REVERSION OF ASSETS

As the Award secured by this Trust Deed is subsidized by public funds and in accordance with 24 CFR Ch. V §570.503, Beneficiary shall be entitled to its Proportionate Share of the Fair Market Value of the Property, as those terms are defined in the Promissory Note, upon any default under the terms of this Trust Deed, the Promissory Note, or the Project Agreement (incorporated herein by reference).

TIME OF ESSENCE

Time is of the essence of this Trust Deed.

INVALID PROVISIONS DO NOT AFFECT OTHERS

If any of the provisions contained in the Promissory Note or this Trust Deed are held invalid, illegal or unenforceable in any respect, the validity of the remaining provisions in the Promissory Note and this Trust Deed shall not be affected.

#### INTEREST AFTER JUDGMENT

If this Trust Deed is foreclosed, any judgment or decree will bear interest on the unpaid balance at the rate which the law permits for interest on judgments.

#### COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS

Grantor shall promptly comply with all laws, ordinances and regulations of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Beneficiary's and Trustee's interests in the Property are not jeopardized.

#### NOTICE

Any notice under this Trust Deed shall be given when actually delivered or two (2) days after being deposited in the United States mail as certified mail, addressed as follows:

To Beneficiary:            Washington County  
                                 Office of Community Development  
                                 328 West Main St., Suite 100, MS #7  
                                 Hillsboro OR 97123-3967

To Grantor:                City of Sherwood  
                                 22560 SW Pine St.  
                                 Sherwood, OR97140

or to such other address as may be specified from time-to-time by either of the parties in writing.

#### ATTORNEY FEES

In the event of any suit or action to foreclose this Trust Deed, the losing party agrees to pay all costs plus whatever sum the trial court may find to be reasonable as attorney fees to be allowed to the prevailing party, and in the event of any appeal, the losing party agrees to pay all costs plus whatever sum the appellate court may find to be reasonable as the prevailing party's attorney fees on the appeal.

This Trust Deed may be foreclosed by advertisement and sale in accordance with statute. In the event of such foreclosure, the Beneficiary shall be entitled to recover its reasonable expenses, Trustee's fees and attorney fees.

#### CONDEMNATION

Grantor further agrees that in the event any portion or all of the property is taken under right of eminent domain or condemnation, Beneficiary shall have the right to require that the compensation be paid to Beneficiary and applied to the obligation secured by this Trust Deed.

MISCELLANEOUS

In construing this Trust Deed, it is understood that the Grantor or Beneficiary may be more than one person; that if the context so requires, the singular shall be taken to mean and include the plural, the masculine shall mean and include the feminine and the neuter; and that references to Grantor or Beneficiary include any transferee (to whatever extent permitted). This Trust Deed applies to, insures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the Grantor has executed this Trust Deed on \_\_\_\_\_, 2012.

By: \_\_\_\_\_

SUBSCRIBED AND SWORN TO BEFORE ME this \_\_\_\_\_ day of \_\_\_\_\_,  
2012, by \_\_\_\_\_ of \_\_\_\_\_, on behalf  
of the Board of Directors.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_



## EXHIBIT A

A tract of land located in the Southwest One-Quarter of Section 29, Township 2 South, Range 1 West, Willamette Meridian, City of Sherwood, Washington County, Oregon being more particularly described as follows:

Beginning at the Southwest corner of Section 29 being a 3-1/4 inch aluminum cap; thence along the South line of said Section 29 South 89°25'43" East 340.49 feet to a bent 5/8 inch iron rod at the Southeast corner of Lot 14 of the plat "Gleneagle" and the True Point of Beginning; thence along the Northeasterly line of said Lot 14 and Lot 5 North 43°10'06" West 399.90 feet to a 5/8 inch iron rod; thence along the East line of Lot 5 North 01°24'28" West 89.23 feet to a point; thence along the Southwesterly lines of the tract of land described in Document Number 93073545 South 42°52'52" East 56.23 feet to a point; thence North 47°07'08" East 13.88 feet to a point; thence South 42°52'52" East 6.11 feet to a point; thence North 47°07'08" East 24.19 feet to a point from which a 5/8 inch iron rod bears North 44°13'00" West 10.92 feet; thence leaving said Southwesterly lines and along the Southwesterly line of the tract of land described in Document Number 2000044496 South 44°13'00" East 136.05 feet to a 3/4 inch iron pipe; thence South 45°47'00" West 69.69 feet to a point; thence South 43°10'06" East 125.11 feet to a point; thence North 45°47'00" East 184.62 feet to a point; thence South 44°14'23" East 111.88 feet to a point; thence North 45°45'37" East 50.00 feet to a point on the Northeasterly line of Document Number 80004057; thence along the Northeasterly line of Document Number 80004057 South 44°14'23" East 46.60 feet to a 1/2 inch iron pipe; thence continuing along Document Number 80004057 South 44°23'29" East 150.84 feet to a 1/2 inch iron pipe on the Westerly line of Document Number 2003-071273; thence along the Westerly line of Document Number 2003-071273 South 00°02'14" West 69.13 feet to a 1/2 inch iron pipe on the South line of said Section 29; thence along the South line of said Section 29 North 89°25'43" West 309.26 feet the True Point of Beginning.

## REQUEST FOR FULL RECONVEYANCE

(To be used only when obligations have been paid.)

TO: \_\_\_\_\_, Trustee

The undersigned is the beneficiary of all obligations secured by the foregoing Trust Deed. All obligations secured by said Trust Deed have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of said Trust Deed or pursuant to statutes, to cancel all documents evidencing obligations secured by said Trust Deed (which are delivered to you herewith together with said Trust Deed) and to reconvey without warranty, to the parties designated by the terms of said Trust Deed, the estate now held by you under the same. Mail reconveyance and documents to:

\_\_\_\_\_  
\_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Beneficiary

(This Trust Deed and the Promissory Note that it secures must be delivered to the Trustee for cancellation before reconveyance will be made.)

CDBG Project #1214 City of Sherwood Marjorie Stewart Senior Center

**PROMISSORY NOTE**  
for Facilities (>\$25,000 AWARD)

\$120,704.49 \_\_\_\_\_, 2012  
Amount

This Promissory Note ("Note") is by and between City of Sherwood, a municipality of the State of Oregon (the "Maker") and Washington County, a political subdivision of the State of Oregon, acting by and through the Office of Community Development (the "Holder").

**RECITALS**

**Whereas**, Holder and Maker executed a project agreement dated \_\_\_\_\_ ("Project Agreement"), wherein Holder awarded Maker a Community Development Block Grant ("CDBG") grant in the amount of One Hundred Twenty Thousand Seven Hundred Four Dollars and Forty-nine cents (120,704.49) ("CDBG Award") for the purposes set forth in the Project Agreement; and

**Whereas**, as a condition of the Project Agreement, Maker must execute a Promissory Note and Trust Deed to secure the CDBG funds; and

**Whereas**, under 24 CFR Ch. V §570.503 (the "Regulation"), any real property acquired with CDBG funds must be used for one of the national objectives set forth in 24 CFR ch. V §570.208 or be disposed of in a manner that results in Holder being reimbursed for the fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to the Property, which requirements are set forth below.

**Now therefore, Maker agrees as follows:**

1. Agreement

Maker promises to pay to Holder an amount equal to the current market value of the Property less any portion of the value attributable to expenditures of non-CDBG funds (hereinafter referred to as "Proportionate Share") or (\$120,704.49), which ever is greater, upon the happening of any Event of Default herein described, in consideration of its receipt of the CDBG Award.

2. When Due

This Note is without interest and shall be canceled, and the Trust Deed securing it shall be satisfied on June 30, 2031, if no Event of Default, as defined in paragraph 3, has occurred; provided, however, that this Note is immediately due and payable upon any Event of Default. No waiver of this paragraph shall occur unless evidenced in writing.

CDBG Project #1214 City of Sherwood Marjorie Stewart Senior Center

3. Events of Default

- A. Any and all of the following will be considered to be events of default ("Events of Default"):
- (1) Any default or breach of any term or condition of this Note, the Project Agreement (referenced in the above Recitals), or the Trust Deed securing this Note (after expiration of all applicable cure periods) prior to cancellation of this Note. All terms and conditions of the Project Agreement and the Trust Deed securing this Note are incorporated herein by this reference.
  - (2) Any sale or transfer of, or attempt to sell or transfer, the Property without Holder's consent, which consent shall not be unreasonably withheld so long as the transferee is an eligible nonprofit corporation providing services similar to those provided by Maker; or
  - (3) Discovery that Maker failed to disclose any fact material to the making of the CDBG Award or that Maker made a material misrepresentation in connection with the CDBG Award.

4. Proportionate Share

- A. As set forth in Exhibit A, which is incorporated herein by this reference, Holder's Proportionate Share is 11.8%. Maker agrees that if, for any reason, Holder's entitlement to the Proportionate Share upon the happening of and Event of Default is invalidated, Holder shall be entitled to receive, or may elect to receive, the full amount of the CDBG Award (\$120,704.49) plus interest at the legal rate in effect at the time of invalidation, running from the date of any Event of Default until paid.
- B. Fair Market Value. For purposes of this Note, Fair Market Value shall be calculated, at Holder's option, as follows: In the case of a sale of the Property, the greater of the sale's price of the Property or the appraised value thereof at the time of sale as determined at Maker's expense by an appraiser reasonably satisfactory to Holder; or, in the case of a breach of any other term or condition, the appraised value of the Property as determined at Maker's expense by an appraiser reasonably satisfactory to Holder:
- (1) Less, the outstanding principal and interest of any loans secured by liens against the Property having priority over the Trust Deed securing this Note; and
  - (2) Less, the actual reasonable costs of sale (if sold), such as real estate commission, real property transfer taxes, escrow fees, recording fees and title insurance premiums.

CDBG Project #1214 City of Sherwood Marjorie Stewart Senior Center

- C. Future Capital Improvements. Subject to Sections 4.C.(1), if the Maker makes future capital improvements to the Property, Holder's Proportionate Share will be reduced in accordance with Section 4.D.
- (1) Before making any capital improvements to the Property for which the Maker intends to claim credit under this Section 4.C., the Maker must first obtain Holder's written consent to the proposed improvements, which consent Holder agrees not to unreasonably withhold. If Maker fails to first obtain Holder's consent, Holder shall have the right to waive this requirement, in its sole discretion.
- D. Proportionate Share Recalculation. The reduction in Holder's Proportionate Share will be determined by discounting the cost of the future improvement to its value in 2012 dollars and then adjusting the fraction that determines Holder's Proportionate Share, as more specifically set forth as follows:
- (1) The cost of the future capital improvement will first be determined (the "Future Cost"). The Future Cost may only include sums attributable to capital expenditures and may not include sums spent on ongoing maintenance or other noncapital expenditures such as real property taxes, legal and professional fees and the like. If the Maker pays below market cost for materials or labor used in completing a capital improvement, the fair market value, rather than the actual costs incurred, for the materials or labor, or both, as applicable, will be included in the Future Cost.
  - (2) The Future Cost will then be reduced to its value in 2012 dollars, by discounting the Future Cost by the average annual rate of increase in the Consumer Price Index between the year in which the Future Cost is incurred and 2012 (the "2012 Value Cost"). For the purposes of this Note, "Consumer Price Index" means the index published by the United States Bureau of Labor Statistics of the United States Department of Labor and entitled U.S. City Average--All Items and Major Group Figures for All Urban Consumers (CPI-U) (1982-84 = 100), or the nearest comparable data on changes in the cost of living if such index is no longer published.
  - (3) The 2012 Value Cost will then be added to the denominator of the fraction set forth in Exhibit "A," and rounded to the nearest one thousand dollars. Unless further adjusted in accordance with this Note because of additional future capital improvements, the new value of that fraction will then serve as Holder's Proportionate Share for the purposes of this Note.

CDBG Project #1214 City of Sherwood Marjorie Stewart Senior Center

Example (based on initial projected Proportionate Share): In 2020, the Maker makes a capital improvement to the Property whose Future Cost equals \$50,000.00. Between 2010 and 2020, the average annual increase in the Consumer Price Index was 10%. The 2010 Value Cost of the Future Cost would therefore equal \$19,000. The 2020 Value Cost would be added to the denominator of the fraction set forth in Exhibit "A."

5. POLICY AGAINST TRANSFER

The CDBG Award is subsidized by public funds and is intended solely for the benefit of the Maker and for the purposes set forth in the Project Agreement. The Maker understands that the CDBG Award as evidenced by the Project Agreement is not intended to be of a direct benefit to any transferee as the result of any subsequent transfer. It is, therefore, intended that no sale or transfer of any of the real or personal property securing this Note will be made without the prior written consent of Holder.

6. DUE ON SALE OR TRANSFER

**UNLESS HOLDER HAS GIVEN ITS PRIOR WRITTEN CONSENT, THIS NOTE IS DUE AND PAYABLE IMMEDIATELY UPON SALE OR TRANSFER (OR ANY ATTEMPTED SALE OR TRANSFER) OF ALL OR ANY INTEREST OR INTERESTS OF WHATEVER NATURE IN, THE PROPERTY OR OTHER COLLATERAL SECURING THIS NOTE OR ANY PART THEREOF.**

7. DEFINITION

As used herein, sale or transfer shall include within its meaning, any transfer by deed or assignment, any contract for the sale of the property over time, any assumption of the CDBG Award by a transferee of the Maker, any assignment for the benefit of creditors, any option to purchase, the appointment of a receiver, a foreclosure of any nature, any gift, any transfer of a general partnership interest where the Maker is a partnership, any sale or transfer of a controlling interest in stock by a corporate signatory, any corporate dissolution, or any dissolution or winding-up of partnership affairs if Maker is a partnership. Included within the above meaning is any attempt to sell or transfer. The terms sale or transfer shall not include any transfer by way of subordinate encumbrance or by way of a lease which does not contain an option to purchase.

Acceleration of the Note and all other indebtedness secured by the Trust Deed and the Project Agreement securing this Note upon any sale or transfer without the Holder's written consent is automatic, except as provided in these documents and is subject to no exceptions except as follows: Holder may, in its sole discretion, permit sale or transfer prior to actual sale or transfer, or may waive acceleration after sale or transfer only in accordance with Holder's requirements pertaining to the particular program pursuant to which the CDBG Award was made available. Such waiver must be effected and evidenced by way of written agreement between Holder and

CDBG Project #1214 City of Sherwood Marjorie Stewart Senior Center

the proposed transferee of the Maker which provides that the transferee's credit is satisfactory to Holder.

#### 8. OPTION TO PAY CHARGES

If the Maker breaches any covenant in the Trust Deed or this Note which breach is for failure to timely and properly pay any tax, lien, assessment, charge, or insurance premium related to the Property when due, Holder shall have the option to pay the same and any payment made shall be added to the principal balance of this Note and shall be secured by the Trust Deed, and such payment shall thereby become a lien upon the Property. No payment pursuant to the preceding sentence shall be a waiver of any default.

#### 9. INTEREST AFTER JUDGMENT

If this Note is reduced to judgment, any judgment or decree will bear interest at the rate which Oregon law permits for interest on judgments.

#### 10. TIME OF THE ESSENCE

Time is of the essence for this Note.

#### 11. NON-WAIVER

Failure to exercise any right Holder may have or be entitled to in the event of any Event of Default hereunder shall not constitute a waiver of such right or any other right in the event of any subsequent Event of Default.

#### 12. GOVERNING LAW

This Note shall be governed by and construed in accordance with the laws of the State of Oregon.

#### 13. ATTORNEY FEES

In case suit or action is instituted to collect this Note or any portion hereof, the prevailing party shall receive from the losing party in such suit or action such additional sum as the court may adjudge as reasonable attorney's fees, expenses, and costs in said suit or action, or on any appeal therefrom, including, but not limited to, those fees and expenses permitted or defined by statutory law, and including without limitation all fees and expenses incurred at trial, on appeal, on petition for review, arbitration, mediation and in bankruptcy proceedings.

CDBG Project #1214 City of Sherwood Marjorie Stewart Senior Center

14. SECURITY; NON-RECOURSE

- A. This Note is secured by the Trust Deed between the undersigned corporation as Grantor, Washington County Counsel as Trustee and Washington County as Beneficiary.
- B. This Note is without recourse and shall be canceled, and the Trust Deed securing it shall be satisfied, if none of the events accelerating immediate payment as above described occur within the applicable time periods set forth in this Note, the Trust Deed and the Project Agreement.

15. MISCELLANEOUS

In construing this Note it is understood that the references to the undersigned include singular and plural, as the case may be, and include any transferee (to the extent permitted). This Note applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The Recitals are a material part of this Agreement. The Maker hereby waives demand, protest, presentment, notice of nonpayment, notice of protest, and notice of dishonor.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Maker: City of Sherwood  
an Oregon Nonprofit Corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_



CDBG Project #1214 City of Sherwood Marjorie Stewart Senior Center

## EXHIBIT "A"

### RATIO OF EXPENDITURES - PROPORTIONATE SHARE

City of Sherwood vs CDBG Funds:

<u>Assessed Value:</u>	<u>Agency</u>	<u>Total</u>	<u>CDBG</u>	<u>Proportionate Share</u> <u>(CDBG / Total =)</u>
\$1,003,500	\$16,500	\$1,020,000	\$120,704.49	11.8%

Ratio of Expenditures:

Agency: 88.2%

County: 11.8%

After Recording Return To:  
Office of Community Development  
Mail Stop #7

## **TRUST DEED with Assignments of Rents**

“THIS TRUST DEED is made this \_\_\_\_\_ day of \_\_\_\_\_, by and among City of Sherwood ("Grantor"), Washington County Counsel, ("Trustee") and Washington County, a municipal corporation of the State of Oregon currently acting by and through the Office of Community Development ("Beneficiary").”

The Grantor, in consideration of a One Hundred Twenty Thousand Seven Hundred Four Dollars and Forty-nine cents (120,704.49) Community Development Block Grant (“CDBG”) award ("Award") does convey to the Trustee in trust, and any successor of the Trustee, the following real property ("Property") situated in the County of Washington, State of Oregon, and described as follows:

See attached Exhibit "A."

Together with all rents, issues, profits, and all fixtures now or hereafter attached to or used in connection with the above-described property ("Property") at the time of the execution of this Trust Deed or at any time during the term of this Trust Deed; to have and to hold the Property as so described until such time as all obligations set forth in the Promissory Note from Grantor to Beneficiary, of even date (“Promissory Note”), are extinguished and all conditions of the project agreement, dated \_\_\_\_\_, between the Grantor and Beneficiary, (“Project Agreement”) as well as the conditions of this Trust Deed, are satisfied.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

This conveyance is intended to secure: (a) the obligations set forth in the Promissory Note given by Grantor to Beneficiary on \_\_\_\_\_, 2012 as well as any and all extensions, renewals, and

modifications of the Promissory Note; and (b) performance by Grantor, its successors, and assigns of the restrictions and obligations set forth in the Project Agreement.

All of Grantor's obligations under the Promissory Note and the Project Agreement will terminate on June 30, 2031 unless on that date an Event of Default has occurred and not been cured.

The Grantor covenants:

(1) Title: That Grantor is the legal owner of the property and now has a valid fee simple title thereto, and that the Grantor will warrant and defend said title against the claims and demands of all other persons.

(2) Performance: That for all times that there remains any obligations under this Trust Deed, the Promissory Note, or the Project Agreement, Grantor shall abide by, and shall timely perform, any and all covenants and conditions.

(3) Pay Liens, Taxes, and Assessments: That Grantor will, so long as this Trust Deed remains in force, keep the Property free from construction liens and will timely pay all taxes, assessments, charges, or liens that may be levied or assessed upon the Property, before any tax, assessment, or lien becomes due or delinquent and before commencement of any foreclosure or collection proceedings which may threaten the security of this Trust Deed.

(4) Maintain Property: That Grantor will keep all the improvements erected on said premises in good order and repair and will not permit or cause any waste of the property.

(5) Insurance: That Grantor will, for all times during the period there remains any indebtedness under the Note, or any other indebtedness secured by this Trust Deed, keep improvements now existing or hereafter erected on the property insured against loss or damage by fire, on an all risk form, including earthquakes, floods or flooding, in a form acceptable to Beneficiary, and with loss payable to the Beneficiary, in an amount acceptable to Beneficiary in a company or companies acceptable to the Beneficiary and for the benefit of the Beneficiary with a standard lender's loss payable clause naming County as loss payee, and will deliver all the policies and renewals to the Beneficiary. Grantor agrees that any insurance proceeds payable under a policy or policies shall be paid directly to Beneficiary. If Beneficiary, by reason of such insurance receives any money for loss or damage, such insurance proceeds shall be used for the purpose of repairing and restoring the improvements damaged by the casualty to their former condition and usability or replacement of the same with equivalent or more suitable improvements. Using such insurance proceeds, the parties shall proceed with reasonable diligence as soon as sufficient funds are available to prepare plans and specifications for, and thereafter carry out, all work necessary (a) to repair and restore the building and/or improvements on the premises damaged by the casualty to their former condition, or (b) to replace said building and/or improvements with a new building and/or improvements on the premises of a quality and usefulness for the Project described in the application submitted by Grantor for the CDBG funds and plans associated therewith, at least equivalent to, or more suitable than, the building and/or improvements which were damaged. Grantor agrees that it will comply with the requirements of the Beneficiary as to the purchase and maintenance of flood insurance, as those requirements are established by the policies and requirements of the Beneficiary. It is the Grantor's responsibility to maintain the above insurance coverage until the Note secured by this Trust Deed is satisfied. Nothing in this paragraph shall be construed to mean that Grantor's obligations under this Trust Deed shall be altered or discharged due to the existence of insurance coverage. Beneficiary does not need to await payment of, or resolution of litigation as to, insurance proceeds before seeking any other remedy.

(6) Further Encumbrance: Grantor agrees to obtain Beneficiary's written consent prior to placing or allowing any further liens or encumbrances on the Property, which consent shall not be unreasonably withheld provided that such liens or encumbrances are subordinate to this Trust Deed.

(7) Sale or Transfer: Grantor further agrees to obtain Beneficiary's written consent to sell or transfer the Property as further described below.

#### FAILURE TO ABIDE BY COVENANTS

A failure by the Grantor to perform the covenants and conditions in this Trust Deed, or Grantor's failure to comply with the terms and conditions of any Project Agreement, Promissory Note, or Declaration of Restrictive Covenants shall constitute a default of this Trust Deed.

#### RIGHTS AND REMEDIES ON DEFAULT

Upon the occurrence of any default, Trustee or Beneficiary may exercise any one or more of the following rights and remedies:

(1) Beneficiary may declare any and all obligations under the Promissory Note immediately due and payable, and this Trust Deed may be foreclosed at any time thereafter.

(2) The Trustee shall have the right to foreclose by notice and sale, and Beneficiary shall have the right to foreclose by judicial foreclosure, in either case in accordance with applicable law.

(3) Beneficiary shall have the right to take possession of the Property described above and collect the rents, issues, profits, and revenues and apply the net proceeds, over and above Beneficiary's costs, against the indebtedness secured hereby or due hereunder.

(4) Beneficiary shall have the right to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, to collect the rents, issues, profits and revenues from the Property and apply the proceeds, over and above the costs of the receivership, against the obligations secured hereby or due hereunder. The receiver may serve without bond, if permitted by law. Beneficiary's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the obligation secured hereby or due hereunder by a substantial amount. Employment by Beneficiary or an assignee of Beneficiary shall not disqualify a person from serving as a receiver.

(5) In the event Grantor remains in possession of the Property after it is sold as provided above or Beneficiary otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant-at-will of Beneficiary for the purchaser of the Property and shall pay a reasonable rental for use of the Property while in Grantor's possession.

(6) Trustee and Beneficiary shall have any other right or remedy provided in this Trust Deed, the Promissory Note, the Project Agreement or any other instrument delivered by Grantor in connection with the Award or available at law, in equity or otherwise. Beneficiary's remedies in this Trust Deed are in addition to, and not in lieu of, any other remedies provided by law.

FAILURE TO DISCLOSE

The Beneficiary is authorized by the Grantor to declare, at its option, the obligations under the Promissory Note immediately due and payable upon the Beneficiary's discovery of the Grantor's failure to disclose any fact material to the making of the Award.

POLICY AGAINST TRANSFER

The Award secured by this Trust Deed is subsidized by public funds and is intended solely for the benefit of the Grantor for the specific purpose identified in the Project Agreement. It is therefore intended that no sale or transfer of any of the real or personal property securing this Trust Deed shall occur without the express written consent of the Beneficiary, which consent will not be unreasonably withheld.

DUE ON SALE OR TRANSFER

**THE AWARD SECURED BY THIS TRUST DEED, OR ANY OTHER INDEBTEDNESS OR OBLIGATION SECURED BY THIS TRUST DEED, IS DUE AND PAYABLE IMMEDIATELY UPON SALE OR TRANSFER (OR ANY ATTEMPTED SALE OR TRANSFER) OF GRANTOR'S INTEREST IN THE PROPERTY WITHOUT THE EXPRESS WRITTEN CONSENT OF BENEFICIARY.**

Beneficiary may permit a sale or transfer prior to actual sale or transfer, or may waive acceleration after sale or transfer only in accordance with Beneficiary's requirements pertaining to the particular program pursuant to which the Award was made available. Such waiver must be effected and evidenced by way of written agreement between Beneficiary and the proposed transferee of the Grantor.

DEFINITION OF "SALE OR TRANSFER"

As used herein, "sale or transfer" means any transfer of the Property or an interest in the Property. This includes within its meaning, any transfer by deed or assignment, any contract for the sale of the property over time, any assumption of the Award by a transferee of the Grantor, any assignment for the benefit of creditors, any option to purchase, the appointment of a receiver, a foreclosure of any nature, any gift, any corporate dissolution or any attempt to sell or transfer. The terms sale or transfer shall not include any transfer by way of an authorized subordinate encumbrance.

REVERSION OF ASSETS

As the Award secured by this Trust Deed is subsidized by public funds and in accordance with 24 CFR Ch. V §570.503, Beneficiary shall be entitled to its Proportionate Share of the Fair Market Value of the Property, as those terms are defined in the Promissory Note, upon any default under the terms of this Trust Deed, the Promissory Note, or the Project Agreement (incorporated herein by reference).

TIME OF ESSENCE

Time is of the essence of this Trust Deed.

INVALID PROVISIONS DO NOT AFFECT OTHERS

If any of the provisions contained in the Promissory Note or this Trust Deed are held invalid, illegal or unenforceable in any respect, the validity of the remaining provisions in the Promissory Note and this Trust Deed shall not be affected.

#### INTEREST AFTER JUDGMENT

If this Trust Deed is foreclosed, any judgment or decree will bear interest on the unpaid balance at the rate which the law permits for interest on judgments.

#### COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS

Grantor shall promptly comply with all laws, ordinances and regulations of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Beneficiary's and Trustee's interests in the Property are not jeopardized.

#### NOTICE

Any notice under this Trust Deed shall be given when actually delivered or two (2) days after being deposited in the United States mail as certified mail, addressed as follows:

To Beneficiary:            Washington County  
                                 Office of Community Development  
                                 328 West Main St., Suite 100, MS #7  
                                 Hillsboro OR 97123-3967

To Grantor:                City of Sherwood  
                                 22560 SW Pine St.  
                                 Sherwood, OR97140

or to such other address as may be specified from time-to-time by either of the parties in writing.

#### ATTORNEY FEES

In the event of any suit or action to foreclose this Trust Deed, the losing party agrees to pay all costs plus whatever sum the trial court may find to be reasonable as attorney fees to be allowed to the prevailing party, and in the event of any appeal, the losing party agrees to pay all costs plus whatever sum the appellate court may find to be reasonable as the prevailing party's attorney fees on the appeal.

This Trust Deed may be foreclosed by advertisement and sale in accordance with statute. In the event of such foreclosure, the Beneficiary shall be entitled to recover its reasonable expenses, Trustee's fees and attorney fees.

#### CONDEMNATION

Grantor further agrees that in the event any portion or all of the property is taken under right of eminent domain or condemnation, Beneficiary shall have the right to require that the compensation be paid to Beneficiary and applied to the obligation secured by this Trust Deed.

MISCELLANEOUS

In construing this Trust Deed, it is understood that the Grantor or Beneficiary may be more than one person; that if the context so requires, the singular shall be taken to mean and include the plural, the masculine shall mean and include the feminine and the neuter; and that references to Grantor or Beneficiary include any transferee (to whatever extent permitted). This Trust Deed applies to, insures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the Grantor has executed this Trust Deed on \_\_\_\_\_, 2012.

By: \_\_\_\_\_

SUBSCRIBED AND SWORN TO BEFORE ME this \_\_\_\_\_ day of \_\_\_\_\_,  
2012, by \_\_\_\_\_ of \_\_\_\_\_, on behalf  
of the Board of Directors.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

## EXHIBIT A

A tract of land located in the Southwest One-Quarter of Section 29, Township 2 South, Range 1 West, Willamette Meridian, City of Sherwood, Washington County, Oregon being more particularly described as follows:

Beginning at the Southwest corner of Section 29 being a 3-1/4 inch aluminum cap; thence along the South line of said Section 29 South 89°25'43" East 340.49 feet to a bent 5/8 inch iron rod at the Southeast corner of Lot 14 of the plat "Gleneagle" and the True Point of Beginning; thence along the Northeasterly line of said Lot 14 and Lot 5 North 43°10'06" West 399.90 feet to a 5/8 inch iron rod; thence along the East line of Lot 5 North 01°24'28" West 89.23 feet to a point; thence along the Southwesterly lines of the tract of land described in Document Number 93073545 South 42°52'52" East 56.23 feet to a point; thence North 47°07'08" East 13.88 feet to a point; thence South 42°52'52" East 6.11 feet to a point; thence North 47°07'08" East 24.19 feet to a point from which a 5/8 inch iron rod bears North 44°13'00" West 10.92 feet; thence leaving said Southwesterly lines and along the Southwesterly line of the tract of land described in Document Number 2000044496 South 44°13'00" East 136.05 feet to a 3/4 inch iron pipe; thence South 45°47'00" West 69.69 feet to a point; thence South 43°10'06" East 125.11 feet to a point; thence North 45°47'00" East 184.62 feet to a point; thence South 44°14'23" East 111.88 feet to a point; thence North 45°45'37" East 50.00 feet to a point on the Northeasterly line of Document Number 80004057; thence along the Northeasterly line of Document Number 80004057 South 44°14'23" East 46.60 feet to a 1/2 inch iron pipe; thence continuing along Document Number 80004057 South 44°23'29" East 150.84 feet to a 1/2 inch iron pipe on the Westerly line of Document Number 2003-071273; thence along the Westerly line of Document Number 2003-071273 South 00°02'14" West 69.13 feet to a 1/2 inch iron pipe on the South line of said Section 29; thence along the South line of said Section 29 North 89°25'43" West 309.26 feet the True Point of Beginning.



## REQUEST FOR FULL RECONVEYANCE

(To be used only when obligations have been paid.)

TO: \_\_\_\_\_, Trustee

The undersigned is the beneficiary of all obligations secured by the foregoing Trust Deed. All obligations secured by said Trust Deed have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of said Trust Deed or pursuant to statutes, to cancel all documents evidencing obligations secured by said Trust Deed (which are delivered to you herewith together with said Trust Deed) and to reconvey without warranty, to the parties designated by the terms of said Trust Deed, the estate now held by you under the same. Mail reconveyance and documents to:

\_\_\_\_\_  
\_\_\_\_\_  
DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Beneficiary

(This Trust Deed and the Promissory Note that it secures must be delivered to the Trustee for cancellation before reconveyance will be made.)