



## RESOLUTION 2015-089

### **AUTHORIZING THE CITY MANAGER TO EXECUTE AN IGA WITH WASHINGTON COUNTY FOR THE TUALATIN SHERWOOD ROAD WIDENING PROJECT**

**WHEREAS**, the Tualatin-Sherwood Road widening project is identified in the City's Transportation System Plan (TSP), the County TSP, and the Regional Transportation Plan; and

**WHEREAS**, the County Board of Commissioners placed this project on the MSTIP-3d project list and allocated the necessary funding for design and construction; and

**WHEREAS**, while Tualatin-Sherwood Road is under the jurisdictional control of the County, portions of the road are located within City limits, and the project will also involve Baler Way, which is under the jurisdictional control of the City; and

**WHEREAS**, the County is in the process of designing the project, however in order to ensure a clear understanding of each jurisdiction's role and responsibilities prior to proceeding further, an Intergovernmental Agreement (IGA) has been determined to be necessary; and


**WHEREAS**, an IGA has been developed with input from County and City staff and legal counsel.


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

**Section 1.** That the City Manager is authorized to execute the Intergovernmental Agreement (IGA) with the County for the design and construction of the Tualatin Sherwood Road widening project (see attached Exhibit 1).

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

**Duly passed by the City Council this 1st day of December, 2015.**

  
Krisanna Clark, Mayor

Attest:  
  
Sylvia Murphy, MMC, City Recorder

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
WASHINGTON COUNTY AND THE CITY OF SHERWOOD  
FOR TRANSPORTATION IMPROVEMENTS RELATED  
TO THE TUALATIN-SHERWOOD ROAD PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into between Washington County, a political subdivision of the State of Oregon, acting by and through its elected officials, hereinafter referred to as “COUNTY”; and the City of Sherwood, a municipal corporation, acting by and through its City Council, hereinafter referred to as “CITY,” collectively referred to as the “Parties.”

**RECITALS**

1. WHEREAS, ORS 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has the authority to perform; and
2. WHEREAS, Washington County has an approved and funded Major Streets Transportation Improvement Program (MSTIP) project to construct road improvements to SW Tualatin-Sherwood Road (a County Arterial Road); and
3. WHEREAS, SW Tualatin-Sherwood Road is within the CITY’s boundary and the project includes roads under CITY or COUNTY jurisdiction; and
4. WHEREAS, the decision to make certain improvements at the SW Tualatin-Sherwood Road/Regal Cinemas and Sherwood Market Place intersection resulted in an appeal of the decision to the Land Use Board of Appeals (LUBA) on September 23, 2013; and
5. WHEREAS, LUBA remanded the decision to the COUNTY on March 5, 2014 for additional consideration regarding jurisdiction and consistency with applicable comprehensive plans and land use regulations; and
6. WHEREAS, CITY recognizes COUNTY jurisdiction over COUNTY owned and operated roads and defers all decision making to COUNTY as road authority over COUNTY roads within CITY limits, consistent with the past practice between the parties and with the Urban Planning Area Agreement between the parties; and
7. WHEREAS, the SW Tualatin-Sherwood Road project includes plans to design and construct Baler Way, a local street under CITY’s jurisdiction; and
8. WHEREAS, CITY has no land use process established for road improvement projects that are listed in the Transportation System Plan (TSP) or permitted with development, and the SW Tualatin-Sherwood Road project is included in the TSP (project #D13), so it is therefore appropriate for the CITY to defer to the COUNTY

process; and

9. WHEREAS, the CITY desires COUNTY to design and construct all aspects of the Road Project under the provisions of COUNTY's land use process, including construction of the Baler Way extension and improvements to Baler Way, and improvements to 99W as part of the Road Project, with the exception of modifications to the site plans for those businesses along SW Baler Way that would be outside of the improved right-of-way; and
10. WHEREAS, under such authority, it is the mutual desire of the COUNTY and CITY to enter into an Agreement to cooperate in the planning, design, and construction of the improvements, with the allocation of responsibilities as detailed below.

## **AGREEMENT**

NOW, THEREFORE, the premise being in general as stated in the foregoing recitals, and in consideration of the terms, conditions and covenants as set forth below, the Parties hereto agree as follows:

### **1. PROJECT DESCRIPTION AND PROJECT PLANNING**

- 1.1 The COUNTY road project improvements are currently proposed to include: widening of Tualatin-Sherwood Road to include two westbound thru lanes between SW Langer Farms Parkway and Borchers; widening east of SW Langer Farms Parkway to carry a second eastbound thru lane beyond the SW Langer Farms Parkway intersection; improvements to Highway 99W intersection to allow signal function efficiency; conversion of signalized intersection of Tualatin-Sherwood Road/Regal Cinemas and Sherwood Market Place to right-in, right-out access; extension of Baler Way; and addition of bicycle facilities on both sides of Tualatin-Sherwood Road within the project boundaries, hereinafter "ROAD PROJECT" as shown generally on the attached Exhibit A.
- 1.2 The CITY has no transportation land use process for County roads within City limits that are identified in the TSP. As this project is identified in the TSP, the CITY expressly defers to COUNTY authority over COUNTY's own road and the land use process utilized by the COUNTY. To the extent the ROAD PROJECT is upon CITY roads, CITY agrees that COUNTY shall be the planning authority for said roads, provided however that such roads shall be constructed in accordance with CITY design and construction standards, and CITY shall have review and approval authority as specified herein to ensure compliance with said standards. The process of implementing the COUNTY land use provisions for the road improvements for both CITY and COUNTY is hereinafter referred to as the "PROJECT LAND USE PROCESS."

- 1.3 The ROAD PROJECT and PROJECT LAND USE PROCESS are referred to herein as the "PROJECT".

## **2. COUNTY OBLIGATIONS**

- 2.1 COUNTY shall, upon execution of this Agreement, assign a Project Manager to be responsible for coordination of PROJECT with CITY.
- 2.2 COUNTY shall exercise its transportation planning authority over planning, design, and construction of the PROJECT.
- 2.3 COUNTY shall perform, or cause to be performed, all actions necessary for the design and construction of the PROJECT including project management, design and construction engineering, right-of-way acquisition, regulatory and land use permits and approvals, public information, contract administration, inspection, and construction management. COUNTY shall coordinate the design of, advertise for, award, and administer the construction contract for the PROJECT.
- 2.4 COUNTY shall design and construct Baler Way, a CITY facility, to CITY standards and will provide CITY with the opportunity for design review and approval of 50% design development and final plans prior to bidding.
- 2.5 COUNTY shall provide CITY with the opportunity for design review of final plans for all other project elements prior to bidding. COUNTY agrees to consider CITY comments that do not unreasonably impact PROJECT costs and/or schedule.

## **3. CITY OBLIGATIONS**

- 3.1 CITY shall, upon execution of this Agreement, assign a city project manager to be responsible for coordination of PROJECT with COUNTY and to participate in the design process including public open houses.
- 3.2 CITY shall participate in the PROJECT LAND USE PROCESS in a manner including but not limited to, submission of written or oral testimony during the COUNTY's public hearing(s), particularly on matters related to COUNTY road authority, consistency between CITY and COUNTY land use planning and regulations, and CITY's deferral to COUNTY's transportation planning process.

## **4. COMPENSATION**

- 4.1 There will be no exchange of compensation between CITY and COUNTY for PROJECT services rendered by either party. COUNTY and CITY shall each

be responsible for their own costs in carrying out their respective obligations under this Agreement.

## **5. GENERAL PROVISIONS**

### **5.1 LAWS OF OREGON**

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

### **5.2 DEFAULT**

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

### **5.3 INDEMNIFICATION**

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

### **5.4 MODIFICATION OF AGREEMENT**

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

### **5.5 DISPUTE RESOLUTION**

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

## 5.6 REMEDIES

Subject to the provisions in paragraph 5.5, any party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The parties, by signature of their authorized representatives below, consent to the personal jurisdiction of that court.

In the event of any controversy or claim arising out of or relating to this agreement, or the breach thereof, the Parties may use all available remedies. In the event of mediation or arbitration, the costs shall be shared equally by the Parties to the dispute. Each party shall be responsible for its own costs and attorney fees for any claim, action suit or proceeding, including any appeal.

## 5.7 EXCUSED PERFORMANCE

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

## 5.8 SEVERABILITY

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

## 5.9 INTEGRATION

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

## 6. TERMS OF AGREEMENT

6.1 The term of the Agreement shall be from the date of execution until the completion of the PROJECT, but not to exceed five (5) years.

6.2 This Agreement may be amended or extended for periods of up to one (1) year by mutual consent of the parties. It may be canceled or terminated for any reason by either party. Termination or cancellation shall be effective thirty

(30) days after written notice to the other party, or at such time as the parties may otherwise agree. The parties shall, in good faith, agree to such reasonable provisions for winding up the PROJECT. The CITY's adoption and agreement to the COUNTY's PROJECT LAND USE PROCESS shall survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties hereto acknowledge that they understand the terms and conditions of this Agreement and agree to be bound to those terms and conditions.

CITY OF SHERWOOD, OREGON

WASHINGTON COUNTY, OREGON

\_\_\_\_\_  
CITY MANAGER

\_\_\_\_\_  
CHAIR, BOARD OF COUNTY  
COMMISSIONERS

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY RECORDER

\_\_\_\_\_  
RECORDING SECRETARY

APPROVED AS TO FORM:

APPROVED AS TO FORM:

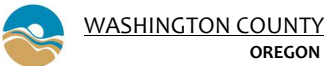
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CITY ATTORNEY

\_\_\_\_\_  
COUNTY COUNSEL

Exhibit A to consist of Tualatin-Sherwood Road project map

# Exhibit A















# TUALATIN - SHERWOOD ROAD BORCHERS DR TO ADAMS AVE

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For more information contact  
Capital Project Management Division  
Phone: 503-846-7800  
Fax: 503-846-7810

Drawn by: RRR  
Map Date: November 26, 2015

- LEGEND**
-  PROJECT LOCATION
  -  HIGHWAYS
  -  MAJOR ROADS
  -  MINOR ROADS
  -  RAILROADS
  -  MAX LIGHT RAIL
  -  COUNTY BOUNDARY
  -  CITIES
  -  LAKES
  -  RIVERS & STREAMS

**SCALE**

