



RESOLUTION 2019-025

AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT BETWEEN WASHINGTON COUNTY AND THE CITY OF SHERWOOD FOR TRANSPORTATION IMPROVEMENTS RELATED TO THE ELWERT-KRUGER INTERSECTION PROJECT

WHEREAS, the City of Sherwood's 2014 Transportation System Plan (TSP) has identified the Kruger/Elwert/Highway 99W intersection (Project D22) as having mobility and safety issues, requiring improvements and involving three jurisdictional agencies, the City of Sherwood, Washington County (WACO), and Oregon Department of Transportation (ODOT); and

WHEREAS, the City of Sherwood and WACO have an existing IGA (Resolution 2015-087) whereby WACO will design and construct the Kruger/Elwert/Hwy 99W intersection improvements, and in July 2016 WACO commenced design of the Kruger/Elwert/Hwy 99W intersection improvement project as proposed in the MSTIP 3d funding list; and

WHEREAS, in 2017 the Sherwood School District (SSD) applied for annexation of property adjacent to the Kruger/Elwert/Hwy 99W intersection for the purpose of constructing a new High School, and because the proposed project had significant impact on the size of the proposed MSTIP project, the SSD entered into an IGA with WACO to include the transportation mitigation improvements as part of the MSTIP project design and construction process; and

WHEREAS, the City's 2014 TSP identified a capital improvement project (D31-Sunset/Hwy 99W Improvements) which would correct existing deficiencies at the intersection, and which did not anticipate or include any impacts from development occurring on lands west of Elwert Road; and

WHEREAS, due to the significant changes in the scope and interconnectedness of the Kruger/Elwert/Hwy 99W intersection improvements and Sunset/Hwy 99W intersection improvements projects, the City and WACO believe it would be better to have WACO include the design and construction of the Sunset/Hwy 99W intersection improvements with the Kruger/Elwert/Hwy 99W intersection improvements; and

WHEREAS, under the proposed IGA (attached Exhibit 1), WACO included the design and construction of the Sunset/Hwy 99W intersection improvements with the Kruger/Elwert/Hwy 99W intersection improvements project.

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

Section 1. The City Council authorizes the City Manager to enter into an Intergovernmental Agreement (IGA) with Washington County (WACO) in a form substantially similar to the attached Exhibit 1.

Section 2. The City Council further authorizes the City Manager to deposit City Transportation Development Tax (TDT) funds in the amount of \$624,000 to WACO, for the City's proportionate share cost for the Sunset/Hwy 99W intersection improvement project, and to take such other action as is necessary to implement the IGA.

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

Duly passed by the City Council this 16th of April, 2019.



Keith Mays, Mayor

Attest:



Sylvia Murphy, MMC, City Recorder

EXHIBIT 1
INTERGOVERNMENTAL AGREEMENT
BETWEEN WASHINGTON COUNTY AND THE CITY OF SHERWOOD
FOR UTILITY AND ROAD IMPROVEMENTS RELATED
TO THE ELWERT-KRUGER INTERSECTION 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 and realign SW Elwert Road (a County Rural Arterial Road) and SW Kruger Road (a County Rural Local Road); and
3. WHEREAS, COUNTY, in coordination with the Sherwood School District, is constructing a larger road project including construction of a roundabout with connecting roadways to existing roads, road realignment and widening, curbs, sidewalks, retaining walls, bike lanes, street lighting, drainage, landscaping, permanent traffic safety and guidance devices, public sanitary sewer, public storm sewer, public storm water quality improvements and all necessary permitting on SW Elwert Road from Highway 99 to SW Edy Road, SW Kruger Road, SW Haide Road, SW Edy Road, SW Handley Road, SW Orchard Hill Lane, SW Sunset Boulevard and within the Highway 99 State Right-of-Way (hereinafter “ROAD IMPROVEMENT PROJECT”) as shown generally on the attached Exhibit A.
4. WHEREAS, SW Elwert Road is within the CITY limits; and
5. WHEREAS, SW Sunset Boulevard is a CITY ROAD within the CITY limits; 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; and
7. WHEREAS, the CITY and COUNTY previously executed an Agreement (BCC 15-1203) related to design of the Elwert-Kruger Intersection Project, which is a project with committed funding in the CITY Transportation System Plan (TSP); and
8. WHEREAS, CITY desires COUNTY to design and construct sanitary lateral improvements on

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Elwert Road as part of the ROAD IMPROVEMENT PROJECT and pay for those construction costs; and

9. WHEREAS, the CITY desires to pay, and COUNTY to accept Transportation Development Tax (TDT) funds, toward the improvement of Sunset Boulevard as part of the ROAD IMPROVEMENT PROJECT; 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 bidding 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

- 1.1 The CITY project improvement work includes construction of a sanitary sewer lateral from the sanitary mainline in SW Elwert Road to the East side public Right-of-Way line (hereinafter collectively referred to as "CITY UTILITY WORK") as shown generally on the attached Exhibit A.
- 1.2 The ROAD IMPROVEMENT PROJECT and CITY UTILITY WORK are referred to herein as the "PROJECT".

2. CITY OBLIGATIONS

- 2.1 CITY shall provide timely responses to bidder's questions about the CITY UTILITY WORK during advertisement of the PROJECT.
- 2.2 CITY shall pay COUNTY \$6,200.00 for construction, construction management and construction engineering of CITY UTILITY WORK. CITY shall pay COUNTY within (30) calendar days of receipt of an invoice from the County.
- 2.3 CITY shall have three (3) business days to complete its review of the PROJECT bid opening and to provide COUNTY with written notice of CITY concurrence or suggested revisions related to the CITY UTILITY WORK bid items.
- 2.4 CITY shall have five (5) business days to complete its review of proposed construction Change Orders related to the CITY UTILITY WORK prepared by COUNTY and to provide

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COUNTY with written notice of CITY concurrence or suggested revisions. COUNTY may grant CITY additional review time on a case by case basis.

- 2.5 CITY shall coordinate and participate with County on any disagreements, disputes, delays or claims related to or as a result of the CITY UTILITY WORK.
- 2.6 CITY shall deposit with the COUNTY TDT funds in the amount of \$624,000.00 toward the PROJECT construction of Sunset Boulevard. This deposit shall be paid within sixty (60) calendar days of receipt of an invoice from COUNTY.

3. COUNTY OBLIGATIONS

- 3.1 COUNTY shall perform, or cause to be performed, all actions necessary for the construction of the PROJECT including project management, construction engineering, public information, contract administration, inspection and construction management. COUNTY shall advertise for, award, and administer the construction contract for the PROJECT.
- 3.2 COUNTY shall, following the bid opening, notify the CITY of the amount of construction cost of the CITY UTILITY WORK as contained in the bid and provide CITY the opportunity for review and approval of the contract bid proposal prior to contract award.
- 3.3 COUNTY shall provide CITY with the opportunity for advance review of construction Change Orders as they may occur. COUNTY agrees to incorporate CITY comments that do not significantly impact project costs and/or schedule beyond the cost reimbursement scope of this Agreement.
- 3.4 COUNTY shall provide a final cost accounting for the PROJECT, including all internal and external costs, to the CITY within 45 days of construction acceptance.
- 3.5 Upon the completion of the construction, the COUNTY shall deliver one electronic set of as-built plans related to the PROJECT, to the CITY, for their files.
- 3.6 COUNTY shall perform actions regarding compensation as set forth in Article 4 – Compensation.
- 3.7 COUNTY shall accept the TDT funds amount of \$624,000.00 toward PROJECT improvements at Sunset Boulevard.

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4. COMPENSATION

- 4.1 CITY shall pay County for all of its costs to: (i) administer and manage the CITY UTILITY WORK portion of the construction contract, (ii) construct the CITY UTILITY WORK, (iii) manage and provide inspection assistance for the CITY UTILITY WORK. CITY costs are estimated as follows:
- a. Bid Item Costs for: sanitary lateral construction estimated at \$5,200.00.
 - b. 15% of the CITY UTILITY WORK bid item construction costs toward mobilization, traffic control and erosion control estimated at \$780.00.
 - c. 5% of the CITY UTILITY WORK bid item construction cost for construction engineering, construction management including contract administration, construction inspection and construction survey estimated at \$260.00.
 - d. The total estimated CITY UTILITY WORK construction cost in 4.1 (a) through (c) is \$6,240.00.
- 4.2 CITY and COUNTY understand that estimated costs provided in 4.1 are used to determine project budget amounts used within this Agreement. CITY's payment to COUNTY for the CITY UTILITY WORK shall be in the amount of the actual costs incurred by the COUNTY.
- 4.3 County shall invoice CITY for the cost of the CITY UTILITY WORK within thirty (30) days of final completion of the PROJECT. CITY shall make payment for the cost of work performed under this agreement within thirty (30) days of invoicing by COUNTY. Upon request to County, CITY may inspect, at its sole cost, the accounting records and related documents upon which an invoice is based.
- 4.4 TDT funds, in the amount of \$624,000.00 shall be paid by the CITY to the COUNTY within sixty (30) days of receipt of invoice from COUNTY. The TDT payment shall represent a one-time payment towards improvement of Sunset Boulevard with no further payment by the CITY regardless of the bid or final construction costs of Sunset Boulevard or the PROJECT.

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.

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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. In the event the dispute remains unresolved, either party may then commence litigation.

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

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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 closeout of the PROJECT.

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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

MAYOR

CHAIR, BOARD OF COUNTY COMMISSIONERS

DATE: _____

DATE: _____

ATTEST:

CITY RECORDER

RECORDING SECRETARY

APPROVED AS TO FORM:

APPROVED AS TO FORM:

CITY ATTORNEY

COUNTY COUNSEL

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