

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
WASHINGTON COUNTY AND THE CITY OF TUALATIN**

**FOR PUBLIC UTILITY IMPROVEMENTS ON SW TUALATIN  
SHERWOOD ROAD**

THIS INTERGOVERNMENTAL 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 Tualatin, a municipal corporation, acting by and through its City Council, hereinafter referred to as “CITY.”

**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, on October 4, 2016 the Washington County Board of Commissioners approved Resolution and Order No. 16-129 establishing the MSTIP 3e Funding Program, which identified twenty-three (23) multi-modal transportation improvement projects on County facilities; and
3. WHEREAS, the MSTIP 3e Funding Program includes capacity enhancements on SW Tualatin Sherwood Road, specifically SW Tualatin Sherwood Road between SW Teton Avenue and SW Langer Farms Parkway (Project 318); and
4. WHEREAS, CITY, consistent with the powers and purposes of city government, finds it necessary and desirable for the continued growth, safety and welfare of the community that the aforementioned transportation project will be constructed as soon as practicable; and
5. WHEREAS, the CITY agrees to relocate waterline and sanitary sewer utilities to accommodate the COUNTY’s transportation improvements, and agrees to pay for such requested work; and
6. WHEREAS, the CITY and COUNTY have agreed to cooperate in the relocation and construction of the CITY’s waterline and sanitary sewer improvements and combine the CITY’S waterline and sanitary sewer improvements into a single construction project with the COUNTY’s transportation improvements to reduce construction costs and the impacts of construction on the public by reducing the number of road closures and detours needed to accomplish the work identified and by reducing the duration of construction activities; and
7. WHEREAS, under such authority, it is the mutual desire of the COUNTY and CITY to enter into this Intergovernmental Agreement to cooperate in relocation and construction of the CITY’S waterline and sanitary sewer improvements, and to allocate 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 COUNTY SW Tualatin Sherwood Road project (Project 318) will include: design and construction of improvements including road widening, curbs, sidewalks, bike lanes, street lighting, drainage, landscaping, traffic control, water quality improvements, and all necessary permitting on SW Tualatin Sherwood Road between SW Teton Avenue and SW Langer Farms Parkway, hereinafter referred to as “COUNTY PROJECT”.
- 1.2 The CITY SW Tualatin Sherwood Road waterline project will include adjustment and relocation of existing water meters, and fire hydrants, and adjustment of blow-offs, valve lids, and other water infrastructure work to accommodate the road project. All these proposed improvements are located along SW Tualatin Sherwood Road, hereinafter referred to as “WATERLINE PROJECT”.
- 1.3 The CITY SW Tualatin-Sherwood Road sanitary sewer project will include adjustment and relocation of manholes, cleanouts, and other sanitary sewer infrastructure work to accommodate the road project. This work is hereinafter referred to as “SANITARY SEWER PROJECT”.
- 1.4 The CITY WATERLINE PROJECT and SANITARY SEWER PROJECT will collectively be referred to as CITY PROJECTS.

### **2. COUNTY OBLIGATIONS**

- 2.1 COUNTY hereby designates Matt Meier as COUNTY Project Manager for the COUNTY PROJECT and the COUNTY representative responsible for coordination of the CITY PROJECTS with CITY pursuant to this Agreement.
- 2.2 COUNTY shall perform, or cause to be performed, all actions necessary for the design and construction of the COUNTY PROJECT, including project management, design and construction engineering, property acquisition, including right-of-way as necessary, utility relocation as necessary, regulatory and land use permits and approvals, public information related to the roadway design and construction, contract administration, inspection and construction management. COUNTY shall coordinate the design of, advertise for, award and administer the construction contract for the COUNTY PROJECT.
- 2.3 Subject to CITY obligations set forth in Article 3, Terms 3.1 – 3.11, COUNTY shall:

- 2.3.1 perform, or cause to be performed, all actions necessary for the construction of the CITY PROJECTS as part of the COUNTY PROJECT as described in Term 2.2 and
- 2.3.2 bid, construct and manage the CITY PROJECTS as part of the COUNTY PROJECT construction contract, with CITY project costs tracked separately.
- 2.4 COUNTY shall provide CITY three (3) work days following bid opening to review and approve bid results for the CITY PROJECTS. COUNTY may award the construction contract, including work for the CITY PROJECTS, unless CITY informs COUNTY in writing prior to award that it wishes to cancel construction of the CITY PROJECTS as part of the COUNTY PROJECT.
- 2.5 COUNTY shall perform all actions regarding compensation as set forth in Article 4 – Compensation.
- 2.6 COUNTY shall not acquire any right-of-way or easements for CITY PROJECTS.
- 2.7 COUNTY shall notify CITY of any request for a change order or other deviation from the costs of the construction contract associated with the CITY PROJECTS (“CITY PROJECTS change order”). COUNTY shall provide CITY five (5) work days following such notification to review and approve any CITY PROJECTS change order request. COUNTY may approve any CITY PROJECTS change order request, unless CITY informs COUNTY in writing prior to the end of the five (5) working day period that it wishes not to agree to the request. In the event the CITY provides notice that it does not approve a CITY PROJECTS change order within the applicable time, the CITY shall be responsible for all costs, including future change orders, redesign or delay claims that are a result of the CITY’s non-approval.

### **3. CITY OBLIGATIONS**

- 3.1 CITY hereby designates Heidi Springer as CITY Project Manager for the CITY PROJECTS and the CITY representative responsible for coordination of the CITY PROJECTS with COUNTY pursuant to this Agreement.
- 3.2 CITY shall provide timely comments to COUNTY construction documents including construction plan sheets, specifications, and bid schedule for the CITY PROJECTS. Unless the CITY notifies the COUNTY as provided in Term 2.4, the CITY PROJECTS bid items shall be incorporated into the overall COUNTY PROJECT Bid Schedule.
- 3.3 CITY shall provide timely responses to bidder’s questions about CITY PROJECTS during advertisement of the COUNTY PROJECT. If necessary, CITY shall provide COUNTY with addendum no later than four (4) calendar days

prior to the bid opening if the question comes to the CITY no later than five calendar days prior to the bid opening.

- 3.4 CITY shall provide inspection of the CITY PROJECTS bid items including review and approval of shop drawings, submittals, and onsite inspections to determine compliance with the contract documents. CITY's onsite inspector shall be onsite as appropriate and responsible for enforcing all applicable CITY PROJECTS specifications during all CITY PROJECTS work. CITY's onsite inspections of the CITY PROJECTS bid items, including required night work inspections, shall be coordinated through COUNTY's lead inspector. If the COUNTY notifies CITY that CITY inspection is required but CITY inspection does not timely occur, COUNTY may proceed with PROJECT work in accordance with the PROJECT schedule and shall have no liability to CITY related to the lack of CITY inspection. CITY must approve the final acceptance of the CITY PROJECTS prior to top lift paving.
- 3.5 CITY shall assist the COUNTY lead inspector with the following construction documentation for the CITY PROJECTS bid items:
  - General daily progress reports and erosion control reports,
  - Quantity documentation used for monthly estimates, and
  - Quality documentation and test results as specified in the construction contract.
  - Change orders and extra work directives
- 3.6 CITY shall cooperate, coordinate and financially participate with COUNTY on any disagreements, disputes, delays or claims related to or as a result of the CITY PROJECTS.
- 3.7 CITY shall perform all actions regarding compensation as set forth in Article 4-Compensation.
- 3.8 CITY shall perform all necessary public involvement and notifications for water service shutdowns resulting from the CITY PROJECTS work. CITY shall assign a 24-hr emergency contact for the duration of the CITY PROJECTS construction.
- 3.9 CITY shall perform all necessary plan review and construction inspection tasks required for COUNTY PROJECT work permitted under CITY Public Works Permit, CITY Water Quality Permit, and CITY Erosion Control Permit.
- 3.10 CITY shall be responsible to obtain all necessary permits and pay all permit fees for CITY PROJECTS.
- 3.11 CITY shall grant the necessary easements as described in the separate Dedication Deeds in Exhibit B (File 32 and File 50).

3.12 CITY shall issue CITY Public Works Permit, CITY Water Quality Permit, and CITY Erosion Control Permit within 14 calendar days of payment from COUNTY as provided in Term 4.1.2.

**4. COMPENSATION**

**4.1 COUNTY PROJECT**

4.1.1 COUNTY shall be responsible for all costs to design and construct the COUNTY PROJECT as described in Term 2.2.

4.1.2 COUNTY shall pay CITY for the following COUNTY PROJECT permit fees:

i.	Public Works Permit	\$7,500
ii.	Water Quality Permit	\$7,500
iii.	Erosion Control Permit	\$11,545

The Public Works Permit fee covers all CITY costs for plan review, inspection, and materials testing of COUNTY PROJECT work within CITY right-of-way.

The Water Quality Permit fee covers all CITY costs for plan review inspection, and materials testing of COUNTY PROJECT work within CITY stormwater facility jurisdictional limits.

The Erosion Control Permit fee covers all CITY costs for plan review and inspection of COUNTY PROJECT erosion control work within CITY jurisdictional limits.

4.1.3 COUNTY shall pay CITY for necessary easements described in Exhibit B to construct COUNTY PROJECT as follows:

i.	Permanent Utility and Slope Easement	\$3,838.52
ii.	Permanent Slope Easement	\$3,817.90
<b>TOTAL</b>		<b>\$7,656.42</b>

**4.2 CITY PROJECTS**

4.2.1 The CITY shall pay an estimated total of \$883,029.00 for the cost of construction of the WATERLINE PROJECT and SANITARY SEWER PROJECT, as described in Section 1.2 and Section 1.3. Specific WATERLINE PROJECT and SANITARY SEWER PROJECT costs are shown in Exhibit A and are estimated as follows:

i. Waterline and Sanitary Sewer Construction Costs	\$723,795
ii. Construction Administration and Management (10% of i)	\$72,379
iii. Mobilization & Traffic Control (12% of i)	\$86,855
<b>TOTAL</b>	<b>\$883,029</b>

Items ii and iii shall be calculated as a lump sum calculation on the actual costs to the COUNTY after COUNTY makes final payment to the construction contractor for the CITY PROJECTS.

- 4.2.2 CITY and COUNTY understand that the costs outlined above are estimates and are used to determine project budgets and estimated payments amount used within this Agreement. Final costs will be based on the actual contract amount realized. Final payments made by the CITY to the COUNTY for the CITY PROJECTS shall be based on actual bid prices, construction quantities and non-construction costs.
- 4.2.3 In the event the CITY and COUNTY agree to design and construction changes that will eliminate or reduce the scope and extent of the CITY PROJECTS, the CITY will pay for COUNTY's cost for re-design and/or construction change orders.
- 4.2.4 Within sixty (60) days of execution of the COUNTY construction contract, CITY shall deposit with the COUNTY the sum of \$180,000.00. COUNTY shall send CITY quarterly statements during project construction indicating the itemized amount incurred for the CITY PROJECTS and the amount due. Quarterly statements will not be sent to the CITY if no CITY PROJECTS work is performed. Upon depletion of the \$180,000 deposited under this section, the quarterly statement shall include the itemized amount due from CITY for the CITY PROJECTS work. CITY shall pay COUNTY the amount due within thirty (30) days of its receipt of this billing. Any CITY deposited funds remaining upon completion of the CITY PROJECTS, shall be refunded to the CITY within sixty (60) days.

## 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.

## 5.2 DEFAULT

Time is of essence in the performance of the 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 defect.

## 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 shall be 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.

## 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 this Agreement shall be from the date of execution until the completion of the COUNTY 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 COUNTY PROJECT and CITY PROJECTS and paying for any additional costs as necessary.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year hereinafter written.

**WASHINGTON COUNTY, OREGON**

\_\_\_\_\_  
Deputy County Administrator

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

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

APPROVED AS TO FORM:

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

**CITY OF TUALATIN, OREGON**

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

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

ATTEST:

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