

RESOLUTION NO. 5577-21

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH WASHINGTON COUNTY FOR A DISTRIBUTION FROM THE MAJOR STREETS TRANSPORTATION IMPROVEMENT PROGRAM OPPORTUNITY FUND; AND APPROPRIATING SPECIFIC PURPOSE REVENUES IN THE CITY'S GENERAL FUND DURING THE FY 2021-2022 BUDGET.

WHEREAS, Washington County approved the request by the City for a \$452,528 distribution for the Major Streets Transportation Improvement Program Opportunity Fund;

WHEREAS, under ORS 294.338(2), during the year the Council may authorize the acceptance of specific purpose revenues and the associated appropriations through a specific purpose revenue budget adjustment resolution;

WHEREAS, the City will receive \$452,528 in specific purpose revenues from Washington County to be used for remote offering of the Major Streets Transportation Improvement Program Opportunity Fund; and

WHEREAS, the City of Tualatin desires to enter into this agreement to fund the Tualatin River Greenway Trail.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The City Manager is authorized to enter into an agreement with the Washington County, which is attached as Exhibit 1, for the Major Streets Transportation Improvement Program Opportunity Fund.

Section 2. The City Manager is authorized and instructed to adjust the General Fund's budget to reflect receipt of the specific purpose revenue and the associated appropriation:

General Fund Revenues: \$452,530

General Fund Expenditures, Parks and Recreation: \$452,530

Section 3. This resolution is effective upon adoption.

Adopted by the City Council this ____ day of _____, 2021.

CITY OF TUALATIN, OREGON

BY _____
Mayor

ATTEST:

BY _____
City Recorder

APPROVED AS TO FORM

BY _____
City Attorney

AGREEMENT BETWEEN Washington County and the City of Tualatin

FOR A DISTRIBUTION FROM THE MAJOR STREETS TRANSPORTATION IMPROVEMENT PROGRAM (MSTIP) 3E OPPORTUNITY FUND

THIS 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. COUNTY approved the MSTIP 3e program in October 2016 that contained a \$7,500,000 Opportunity Fund component hereinafter referred to as "FUND".
2. CITY requested a \$452,528 distribution from the FUND as a match for an Oregon Communities Path Program grant, hereinafter referred to as "GRANT", to fund the Tualatin River Greenway Trail project (PROJECT).
3. The FUND distribution requested by CITY was approved by the Washington County Coordinating Committee in December 2020. The approval was contingent on the CITY receiving approval for the GRANT.
4. CITY was awarded the GRANT by the Oregon Transportation Commission on May 13, 2021.
5. CITY will enter into a separate agreement with the Oregon Department of Transportation (ODOT) for the administration of the PROJECT.
6. 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.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth below, the parties hereto agree as follows:

1. COUNTY OBLIGATIONS

- 1.1 COUNTY shall distribute \$152,528 from the FUND within sixty (60) calendar days of receipt of an invoice from CITY to be used as match for planning, design and Right Of Way acquisition.

- 1.2 COUNTY shall distribute \$300,000 from the FUND to be used as match for construction of the PROJECT within sixty (60) calendar days of receipt of an invoice from CITY and upon completion of 100% Plans, Specifications and Estimate (PS&E).

2. CITY OBLIGATIONS

- 2.1 CITY shall invoice COUNTY for the \$152,528 distribution from the FUND within thirty (30) calendar days of the execution of this AGREEMENT.
- 2.2 CITY shall invoice COUNTY for the \$300,000 distribution from the FUND to be used as match for construction of the PROJECT upon completion of 100% Plans, Specifications and Estimate (PSE).
- 2.3 CITY shall be responsible for any costs over the \$452,528 provided from the MSTIP Opportunity Fund. City shall return any funds not spent as part of the Tualatin River Greenway Trail project.

3. FINANCIAL OBLIGATIONS

- 3.1 COUNTY and CITY will each bear the cost of performance of their respective obligations under this AGREEMENT.

4. GENERAL PROVISIONS

4.1 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.

4.2 DEFAULT

Time is of the 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.

4.3 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.

4.4 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.

4.5 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.

4.6 REMEDIES

Subject to the provisions in paragraph 4.5, 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.

4.7 EXCUSED PERFORMANCE

In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delay or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires,

casualties, acts of God, governmental restrictions imposed on 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.

4.8 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.

4.9 INTEGRATION

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

5. TERM OF AGREEMENT

5.1 This Agreement becomes effective on the last date signed below and shall terminate five (5) years from the effective date except as provided in Paragraph 5.2 below.

5.2 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 Agreement as necessary.

DATED this _____ day of _____ 2021.

CITY OF TUALATIN, OREGON

WASHINGTON COUNTY, OREGON

Sherilyn Lombos
CITY MANAGER

Ruth Osuna
DEPUTY COUNTY ADMINISTRATOR

ATTEST:

CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY

