

RESOLUTION NO. 5511-20

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH WASHINGTON COUNTY FOR ASSURANCE FOR CITY CONSTRUCTION PROJECTS ALONG COUNTY RIGHT-OF-WAY

WHEREAS, ORS 190.110 et seq., authorizes the City to enter into Intergovernmental Agreements with other government entities;

WHEREAS, City desires to construct various public improvements in the public right of way of Washington County; and

WHEREAS, Washington County is requiring the City to make certain assurances related to public improvements constructed within the County's rights-of-way ;

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

Section 1. The City Manager is authorized to execute an Intergovernmental Agreement (IGA) with Washington County for Assurance for City Construction Projects along County Right-of-Way, which is attached as Exhibit A.

Section 2. This resolution is effective upon adoption.

ADOPTED by the City Council this 13th day of July, 2020.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO FORM

ATTEST:

BY _____
City Attorney

BY _____
City Recorder

EXHIBIT A - RESOLUTION NO. 5511-20

INTERGOVERNMENTAL AGREEMENT

This Agreement is entered into, by and between Washington County, Oregon (hereinafter "County"), a political subdivision of the State of Oregon, 155 N First Ave Hillsboro, Oregon 97124 and City of Tualatin (hereinafter "City", Tualatin, Oregon).

RECITALS

WHEREAS, City desires to construct various public improvements in the public right of way of Washington County; and

WHEREAS, City has obtained or will obtain a land use decision or expressed authorization from the County Engineer approving the development for which the public improvements are to be constructed; and

WHEREAS, per the attached Public Project Worksheet the City desires to assure, construct, and complete each public improvement described in accordance with County specifications and County approved plans, and to reimburse the County for the cost of review, inspection and administration of each improvement; and

WHEREAS, County Director of Land Use and Transportation or designee (the "Director") agrees to the attached Public Project Worksheet; and

NOW, THEREFORE, pursuant to the authority provided in ORS 190.010 and the consideration of the mutual promises contained herein, the parties agree as follows:

Overview of Process as detailed by the Public Project Worksheet

City shall submit Plans, Design Option Form, Inspection Option Form and Administration Deposit for each public improvement project described in each Public Project Worksheet. County will issue an Engineering Estimate which is the basis for determining the cost of each public improvement project. Upon County plan approval and satisfaction of County requirements, the County will issue a Facility Permit to construct the public improvement project described. Upon acceptance by the County of the completed public improvement project, the City shall warrant and maintain the installed public improvement project for a period of one (1) year.

1. ASSURANCE

The **City**, may act as its own assurance provider, under the terms of this Intergovernmental Agreement, for each public improvement project per each Public Project Worksheet. The **City** shall establish an account or fund solely for the purpose of holding funds for the performance assurance of each public improvement project as detailed in each Public Project Worksheet (the Assurance Account).

City shall deposit funds in the Assurance Account in the amount determined by the County Engineering Estimate for each approved public improvement project and for the term determined by the Director. The County Engineering Estimate shall be made part of each Public Project Worksheet.

The **City** shall maintain the amount of assurance outlined in the County Engineering Estimate for the subject development with first claim and priority to the County, until the Director releases the funds in writing.

The **City** will make no disbursements from the Assurance Account without prior written authorization by County indicating the amount to be disbursed, corresponding with the Public Project Worksheet and County Engineering Estimate. If the County requests, in writing, the assurance or part thereof the **City** shall make available to County the amount requested within 30 days, in order for the County to complete the required public improvement or satisfy any other provision of the Public Project Worksheet.

Upon such a request, the **City** is to make the amount available to the County without regard as to the merits of the County's claim. County's claim is paramount to all parties including the **City**. Any dispute as to the merits of County's claim shall be determined separately between the **City** and the County. The County may at any time, upon reasonable notice, request a statement from the **City** as to the funds on deposit in the Assurance Account.

2. FAILURE TO COMPLETE IMPROVEMENTS

The **City** shall be liable for any and all loss or damage resulting from the failure to complete the public improvements in accordance with each Public Project Worksheet entered into by the **City**, including the expense to bring the improvements into compliance with the County's requirements outlined in therein. **City** further agrees that in the event that any suit or action is pursued by County to enforce any provision of this IGA or the Public Project Worksheet, including any suit or action to obtain release of the security deposit, the prevailing party shall be entitled reasonable attorney fees at trial and on appeal. Venue for any such action shall be the Washington County Circuit Court. This agreement is in addition to, and not in lieu, of any other enforcement action available to County including permit revocation and citation.

3. INDEMNIFICATION

This Agreement is for the benefit of the parties only. **City of Tualatin** and Washington County agree to hold harmless and indemnify the other, and its elected officials, employees, and agents from and against all claims, demands and causes of actions and suits of any kind or nature resulting from the negligent or

wrongful acts, actions or omissions of the indemnifying party and its respective elected officials, employees, agents and contractors in the performance of their respective responsibilities and duties under this Agreement, to the extent applicable, the above indemnification is subject to and shall not exceed the limits of the Oregon Tort Claims Act (ORS 30.260 through 30.300) and the Oregon Constitution.

4. MUTUAL AGREEMENT

IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND BETWEEN THE **CITY** AND COUNTY:

- a. County may enter into an extension of a Public Project Worksheet (as determined by Director).
- b. That each and every Public Project Worksheet is being entered into pursuant to the Community Development Code (CDC) in effect on the date of the Public Project Worksheet and that all matters that may be disputed shall be resolved so as to comply with the provisions and intent of said CDC.
- c. That waiver by any part of the strict performance of any provisions of this Agreement or the Public Project Worksheet shall not be a waiver of or prejudice to the other party's right to require strict performance of the contract in the future.
- d. That if any provision of this Agreement or the Public Project Worksheet shall for any reason be held invalid or unconstitutional, the remainder of the contract shall remain in full force and effect.

5. AUTHORITY

The **City** hereby authorizes the **City Manager or designee** to execute the required Public Improvement Contracts and provide the requested assurance.

6. EFFECTIVE DATE AND RIGHT TO TERMINATE

This Agreement shall become effective on the last date signed by one of the parties and shall continue thereafter for a term of ten (10) years, unless extended by the parties. This Agreement may be renewed or extended for a period of up to ten (10) years by mutual consent of the parties. The party desiring to renew or extend the term of this Agreement shall provide written notice of the intent to renew and extend 60 (sixty) days prior to the natural termination of the current term. Such renewal or extension shall be automatic if no objection is received from the other party within 30 (thirty) days of receipt of notice.

Either party may terminate this Agreement on July 1st of any year, by providing written notice of intent to terminate the Agreement on or before April 1st of that year in which the party wants to terminate. In addition, County may notify **City** upon 60 days written notice that this Agreement is terminated as to any future Public Project Worksheets.

Termination of this Agreement shall not terminate **City's** obligations to continue to provide assurance amounts for County Public Improvement Contracts approved prior to the effective date of termination.

WHEREAS, all the aforementioned is hereby agreed upon by the parties and executed by the duly authorized signatures below:

CITY OF TUALATIN

_____	_____
Signature	Date
_____	_____
Printed Name	Title
Address: _____	

WASHINGTON COUNTY, OREGON:

_____	_____
Signature	Date
_____	_____
Printed Name	Title

Approved as to form:

County Counsel