

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

FOR DESIGN OF PUBLIC UTILITY IMPROVEMENTS ON BASALT CREEK PARKWAY

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," (collectively referred to hereinafter 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, County is completing an extension of Basalt Creek Parkway, a County arterial Road between SW Grahams Ferry Road and SW Boones Ferry Road (County Project), currently in unincorporated Washington County; and
3. WHEREAS, City desires to complete design of a new waterline along Basalt Creek Parkway (City Waterline Project) within the scope of the County Project and pay the cost of that design; and
4. WHEREAS, City desires that County incorporate the design of a City trail connection along Basalt Creek Parkway to a future City trail (City Trail Project) into the design of the County Project and for the City to pay the cost of that design ; and
5. WHEREAS, the Parties desire to mutually cooperate in the design of City's Waterline Project and Trail Project; and
6. WHEREAS, it is the mutual desire of the Parties to enter into this Intergovernmental Agreement to mutually cooperate in design of City's Waterline Project and Trail Project, and to allocate responsibilities as detailed below.

AGREEMENT

NOW THEREFORE, the premises 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 Project will include the design of the road extension between SW Grahams Ferry Road and SW Boones Ferry Road with curbs, sidewalks, bike lanes, street lighting, drainage, landscaping, traffic control, water quality needs, and all necessary permitting.
- 1.2 The City Waterline Project will include the design of a new waterline between SW Grahams Ferry Road and SW Boones Ferry Road and will also include the installation of fire hydrants, blow-offs, valve lids, and other water infrastructure work required for a new waterline.
- 1.3 The City Trail Project will include the design of a new trail connection from the north side of Basalt Creek Parkway, under the bridge, terminating at the south right-of-way line. Location and concept are shown in Exhibit A.
- 1.4 The City Waterline Project and Trail Project will collectively be referred to hereinafter as "City Projects."

2. COUNTY OBLIGATIONS

- 2.1 County hereby designates Renus Kelfkens 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 of the County Project, including project management, design, 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.
- 2.3 Subject to City obligations set forth in Sections 3.1 – 3.3, County shall perform, or cause to be performed, all actions necessary for the design of the City Projects as part of the County Project as described in Section 1.1;
- 2.4 County shall meet with City to review design comments as set forth in Section 3.2, and update City on funds expensed related to design of the City Projects.
- 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 Waterline Project.

- 2.7 County shall identify the required easements necessary for the City Trail Project outside the County's right-of-way limits. No acquisition of easements or right-of-way for the City Projects will take place as part of this agreement.
- 2.8 County shall provide City with a complete set of design plans and documents for the City Projects once the design is complete.

3. CITY OBLIGATIONS

- 3.1 CITY hereby designates Mike McCarthy 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 comments to County within three (3) weeks of submittal of design plan sheets to City by County for the City Projects.
- 3.3 City shall perform all actions regarding compensation as set forth in Article 4-Compensation.

4. COMPENSATION

4.1 COUNTY PROJECT

- 4.1.1 County shall be responsible for all costs to design the County Project as described in Section 2.2.

4.2 CITY PROJECT

- 4.2.1 The City shall pay an estimated total of \$177,000 for the cost of the design of the City Projects, as described in Section 1.2 and 1.3. Specific City Projects costs are shown in Exhibit B and are estimated as follows:

i. Waterline Design Costs	\$57,000
ii. <u>Trail Design Costs</u>	<u>\$120,000</u>
TOTAL	\$177,000

- 4.2.2 The Parties understand that the costs outlined in Section 4.2.1 is an estimate. Final cost will be based on the actual amount of the cost of designing the City Projects.
- 4.2.3 If during design, the Parties mutually agree to changes that will eliminate or reduce the scope and extent of the City Projects, City will pay for County's reasonable and necessary costs for re-design.

- 4.2.4 If during design, the Parties mutually agree to changes that will increase the scope and extent of the City Projects, City will pay for County's reasonable and necessary costs for re-design and scope increase.
- 4.2.5 City shall pay to the County the sum of \$177,000 for the estimated cost of the design in the installments listed below:
 - 4.2.5.1 Within sixty (60) days of execution of this Agreement, City shall pay to the County the sum of \$88,500.
 - 4.2.5.2 Within thirty (30) days of County submitting the final plans to City, and County submitting an invoice for the remaining City Project design cost to City, City shall pay County the balance of the reasonable and necessary remaining City Project costs up to \$88,500.
- 4.2.6 County will provide City with quarterly updates on expenses and remaining funds. The intent of these updates is to help anticipate cost overruns or underruns. City will have the option of addressing the scope of the City Projects to reduce anticipated overruns. If costs of City Projects are anticipated to exceed the sum of \$177,000, County shall provide City with a detailed estimate of the cost overrun and shall obtain written City approval of any cost overrun prior to exceeding \$177,000 in total costs for the City 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.

5.2 COMPLIANCE WITH APPLICABLE LAW

The Parties shall comply with all federal, state and local laws and ordinances applicable to the work performed under the contract including, but not limited to the following, as applicable: Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659A.142 and all regulations and administrative rules established pursuant to those law, and all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

5.3 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.

5.4 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.

5.5 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.

5.6 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 on resolution.

5.7 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.

5.8 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 Project and paying for any additional reasonable and necessary 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

CITY OF TUALATIN, OREGON

CITY MANAGER

DATE: _____

ATTEST:

CITY RECORDER