



City of Tualatin

TUALATIN CITY COUNCIL

Monday, January 27, 2014

CITY COUNCIL CHAMBERS
18880 SW Martinazzi Avenue
Tualatin, OR 97062

EXECUTIVE SESSION begins at 5:30 p.m.
WORK SESSION begins at 6:30 p.m.
BUSINESS MEETING begins at 7:00 p.m.

Mayor Lou Ogden

Council President Monique Beikman

Councilor Wade Brooksby Councilor Frank Bubenik

Councilor Joelle Davis Councilor Nancy Grimes

Councilor Ed Truax

Welcome! By your presence in the City Council Chambers, you are participating in the process of representative government. To encourage that participation, the City Council has specified a time for citizen comments on its agenda - *Item C*, following Announcements, at which time citizens may address the Council concerning any item not on the agenda with each speaker limited to three minutes, unless the time limit is extended by the Mayor with the consent of the Council.

Copies of staff reports or other written documentation relating to each item of business referred to on this agenda are available for review on the City website at www.tualatinoregon.gov/meetings, the Library located at 18878 SW Martinazzi Avenue, and on file in the Office of the City Manager for public inspection. Any person with a question concerning any agenda item may call Administration at 503.691.3011 to make an inquiry concerning the nature of the item described on the agenda.

In compliance with the Americans With Disabilities Act, if you need special assistance to participate in this meeting, you should contact Administration at 503.691.3011. Notification thirty-six (36) hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

Council meetings are televised *live* the day of the meeting through Washington County Cable Access Channel 28. The replay schedule for Council meetings can be found at www.tvctv.org. Council meetings can also be viewed by live *streaming video* on the day of the meeting at www.tualatinoregon.gov/meetings.

Your City government welcomes your interest and hopes you will attend the City of Tualatin Council meetings often.

PROCESS FOR LEGISLATIVE PUBLIC HEARINGS

A **legislative** public hearing is typically held on matters which affect the general welfare of the entire City rather than a specific piece of property.

1. Mayor opens the public hearing and identifies the subject.
2. A staff member presents the staff report.
3. Public testimony is taken.
4. Council then asks questions of staff, the applicant, or any member of the public who testified.
5. When the Council has finished questions, the Mayor closes the public hearing.
6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either *approve*, *deny*, or *continue* the public hearing.

PROCESS FOR QUASI-JUDICIAL PUBLIC HEARINGS

A **quasi-judicial** public hearing is typically held for annexations, planning district changes, conditional use permits, comprehensive plan changes, and appeals from subdivisions, partitions and architectural review.

1. Mayor opens the public hearing and identifies the case to be considered.
2. A staff member presents the staff report.
3. Public testimony is taken:
 - a) In support of the application
 - b) In opposition or neutral
4. Council then asks questions of staff, the applicant, or any member of the public who testified.
5. When Council has finished its questions, the Mayor closes the public hearing.
6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either *approve*, *approve with conditions*, or *deny the application*, or *continue* the public hearing.

TIME LIMITS FOR PUBLIC HEARINGS

The purpose of time limits on public hearing testimony is to provide all interested persons with an adequate opportunity to present and respond to testimony. All persons providing testimony **shall be limited to 3 minutes**, subject to the right of the Mayor to amend or waive the time limits.

EXECUTIVE SESSION INFORMATION

An Executive Session is a meeting of the City Council that is closed to the public to allow the City Council to discuss certain confidential matters. An Executive Session may be conducted as a separate meeting or as a portion of the regular Council meeting. No final decisions or actions may be made in Executive Session. In many, but not all, circumstances, members of the news media may attend an Executive Session.

The City Council may go into Executive Session for certain reasons specified by Oregon law. These reasons include, but are not limited to: ORS 192.660(2)(a) employment of personnel; ORS 192.660(2)(b) dismissal or discipline of personnel; ORS 192.660(2)(d) labor relations; ORS 192.660(2)(e) real property transactions; ORS 192.660(2)(f) information or records exempt by law from public inspection; ORS 192.660(2)(h) current litigation or litigation likely to be filed; and ORS 192.660(2)(i) employee performance of chief executive officer.



A. CALL TO ORDER

Pledge of Allegiance

B. ANNOUNCEMENTS

1. Introduction of City of Tualatin Police K-9 Zoey
2. TriMet's Southwest Service Enhancement Plan Open House
3. State of the City and Tualatin Tomorrow Vision Plan Update

C. CITIZEN COMMENTS

This section of the agenda allows citizens to address the Council regarding any issue not on the agenda. The duration for each individual speaking is limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

D. CONSENT AGENDA

The Consent Agenda will be enacted with one vote. The Mayor will first ask staff, the public and Councilors if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. The matters removed from the Consent Agenda will be considered individually at the end of this Agenda under, 1) Items Removed from the Consent Agenda. The entire Consent Agenda, with the exception of items removed from the Consent Agenda to be discussed, is then voted upon by roll call under one motion.

1. Consideration of Approval of the Minutes for the City Council Work Session and Regular Meeting of January 13, 2014
2. Consideration of Recommendations from the Council Committee on Advisory Appointments
3. Consideration of **Resolution No. 5178-14** Authorizing a Personal Services Agreement for Concept Planning for the Basalt Creek / West Railroad Areas
4. Consideration of an Intergovernmental Agreement between the City of Portland and the City of Tualatin for Access to the Regional Justice Information Network [RegJIN]
5. Consideration of **Resolution No. 5181-14** Authorizing the Extension of the Term of the Cable Television Services Agreement with Comcast of Oregon II, Inc.

E. SPECIAL REPORTS

F. PUBLIC HEARINGS – Legislative or Other

G. PUBLIC HEARINGS – *Quasi-Judicial*

1. Request for Review of the Architectural Review Board Decision Approving the Nyberg Rivers Shopping Center Project Located at 7455-7925 SW Nyberg Street (AR-13-07)
2. Request for Review of the Public Facilities Decision Approving the Nyberg Rivers Shopping Center Project Located at 7455-7925 SW Nyberg Street (AR-13-07)

H. GENERAL BUSINESS

1. **Resolution No. 5182-14** Declaring the City Council's Intent to Construct an Extension of Seneca Street and a Traffic Signal at the Intersection of Seneca Street and Martinazzi Avenue

I. ITEMS REMOVED FROM CONSENT AGENDA

Items removed from the Consent Agenda will be discussed individually at this time. The Mayor may impose a time limit on speakers addressing these issues.

J. COMMUNICATIONS FROM COUNCILORS

K. ADJOURNMENT

City Council Meeting

B. 1.

Meeting Date: 01/27/2014

ANNOUNCEMENTS: Welcome the City of Tualatin Police Departments Canine Zoey

ANNOUNCEMENTS

Introduction of City of Tualatin Police K-9 Zoey

SUMMARY

We are proud to introduce the newest member to the Tualatin Police Department, Zoey. Zoey is a two year old female Chocolate Labrador. She is trained as a narcotic detection canine with Officer Nick Barkley as her partner. Officer Barkley met and began training with Zoey in November 2013. They became certified as a Canine Unit for narcotic detection on January 21, 2014. We look forward to decreasing drug activity in the City of Tualatin.

City Council Meeting

B. 2.

Meeting Date: 01/27/2014

SPECIAL REPORTS: TriMet's Southwest Service Enhancement Plan Open House

SPECIAL REPORTS

TriMet's Southwest Service Enhancement Plan Open House

SUMMARY

Attachment A: Open House Announcement



TriMet's Southwest Service Enhancement Plan

Upcoming Open House
Thursday, February 13, 6:30-8:30 p.m.
Tualatin Public Library
18878 SW Martinazzi Ave., Tualatin

Past Public Meetings
Thursday, January 9, 6:30-8:30 p.m.
West End Building, Santiam Room
4101 SW Kruse Way, Lake Oswego

Wednesday, January 15, 6:30-8:30 p.m.
Bolton Fire Station #58
6050 SW Failing St., West Linn

Thursday, January 16, 6:30-8:30 p.m.
City Council Chambers
22560 SW Pine St., Sherwood

Thursday, January 23, 6:30-8:30 p.m.
Multnomah Arts Center Auditorium
7688 SW Capitol Highway, Portland

City Council Meeting

B. 3.

Meeting Date: 01/27/2014

ANNOUNCEMENTS: State of the City and Tualatin Tomorrow Vision Plan Update

ANNOUNCEMENTS

State of the City and Tualatin Tomorrow Vision Plan Update

SUMMARY

Mayor Ogden will present the State of the City on Wednesday, January 29, 2014 at 5:00 p.m. at the Grand Hotel at Bridgeport. This is a community event presented by the City of Tualatin and hosted by the Tualatin Chamber of Commerce. Mayor Ogden's address will include the highlights from 2013 and what the community can look forward to in 2014.

The event will also feature the results of the community outreach for the Tualatin Tomorrow Vision Plan Update.

[State of the City Flyer](#)

The City
of Tualatin
Presents

2014

State of the City

WEDS

29

JAN

All are Welcome to Join

Mayor Lou Ogden & Friends

The Grand Hotel at Bridgeport
7265 SW Hazel Fern Rd.

Refreshments will be provided



Networking
5:00 p.m.
Program Begins
5:30 p.m.

Please RSVP at

www.tualatinoregon.gov/citycouncil/state-city

Program Schedule

- 5:00 p.m. Networking
- 5:30 p.m. Welcome & Posting of the Colors
- 6:00 p.m. Address by Mayor Lou Ogden
- 6:45 p.m. Adjourn

Hosted by



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STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Nicole Morris, Deputy City Recorder

DATE: 01/27/2014

SUBJECT: Consideration of Approval of the Minutes for the City Council Work Session and Regular Meeting of January 13, 2014

ISSUE BEFORE THE COUNCIL:

The issue before the Council is to approve the minutes for the City Council Work Session and Regular Meeting of January 13, 2014.

RECOMMENDATION:

Staff respectfully recommends that the Council adopt the attached minutes.

Attachments: [City Council Work Session Minutes of January 13, 2014](#)
[City Council Meeting Minutes of January 13, 2014](#)



OFFICIAL MINUTES OF TUALATIN CITY COUNCIL WORK SESSION FOR JANUARY 13, 2014

Present: Mayor Lou Ogden; Council President Monique Beikman; Councilor Frank Bubenik; Councilor Joelle Davis; Councilor Nancy Grimes; Councilor Ed Truax

Absent: Councilor Wade Brooksby

Staff City Manager Sherilyn Lombos; City Attorney Sean Brady; Assistant City Manager

Present: Alice Cannon; Community Services Director Paul Hennon; Finance Director Don Hudson; Deputy City Manager Sara Singer; Planning Manager Aquilla Hurd-Ravich; Deputy City Recorder Nicole Morris; Information Services Manager Lance Harris; Engineering Manager Kaaren Hofmann; Police Captain Mark Gardner; Human Resources Manager Janet Newport; Public Works Director Jerry Postema

CALL TO ORDER

Mayor Ogden called the work session to order at 5:13 p.m.

1. ***Medical Marijuana Dispensaries.***

Deputy City Manager Sara Singer stated at the December 9th work session Council discussed House Bill 3460 regarding the regulations of medical marijuana dispensaries. Council directed staff to review a variety of options for not allowing medical marijuana dispensaries and to provide information on the timeline for adoption. Deputy City Manager Singer presented three options for not allowing dispensaries in Tualatin. A zoning ordinance that would define medical marijuana dispensaries and not allow medical marijuana dispensary uses in any zone. The timeline for enactment would be approximately three months. A business license ordinance could state that a business must comply with local, state, and federal law or could include language which would require compliance with the Controlled Substance Act. This option would take approximately two meetings plus a 30 day effective date. A change to the municipal code which would define medical marijuana dispensaries and not allow it as a business, recognize that the City's zoning code does not define medical marijuana dispensaries as a permitted use, and prohibits City employees from interpreting the zoning code to allow medical marijuana dispensaries. A change to the municipal code would take approximately two Council meetings, plus a 30 day waiting period for the ordinance to be effective, unless the Council included an emergency clause..

Councilor Davis noted there are three initiatives circulating to gather signatures to add recreational marijuana use to the state ballot in November. She would like to pursue prohibiting the retail sale of recreational marijuana in the City while continuing to work toward a temporary moratorium on medical marijuana dispensaries through the municipal code.

Council discussed sunset dates for a moratorium on medical marijuana

dispensaries. Consensus was reached to have a sunset date of December 31, 2014.

Council directed staff to prepare a municipal code ordinance placing a temporary moratorium on medical marijuana dispensaries with a sunset date on December 31, 2014, and begin work on preparing a ordinance to prohibit recreational marijuana use within the city limits.

2. Seneca Street / Council Building.

Deputy City Manager Sara Singer, Engineering Manager Kaaren Hofmann, and Assistant City Manager Alice Cannon presented traffic information regarding the Seneca Street extension as requested by Council at the November 12 work session. Manager Hofmann stated DKS analyzed eight different alignment options. She explained Level of Service (LOS) and Volume/Capacity Ratios, noting the city's standards in these areas. Manager Hofmann presented the analysis, including cost and mobility standards, for the following options: the existing condition, Seneca full build out, narrower and angled Seneca Street, closed driveway at Martinazzi Ave., close driveway to Nyberg Rivers, right in/right out and left in, right in/right out, and dual signals.

Councilor Bubenik asked for more detail regarding the impacts of a right in/right out option. Manager Hofmann stated there is decreased mobility at the intersection of Tualatin Sherwood Road and Martinazzi Avenue.

Mayor Ogden spoke to the level of service matrix provided in the DKS report and his concerns with the gains in efficiency vs. cost investment of a full build out.

Council President Beikman stated the analysis reassured her the Seneca Street extension needs to go through as it will increase the safety for pedestrians and bicycles in the area.

Councilor Davis would like to see the driveway at Martinazzi Ave. closed as it would allow the Council Building to be demolished and provide additional parking for the library.

Councilor Bubenik would like to proceed with the right in/right out and left in option and use the cost savings to fix pedestrian crossings in the area. He would like to complete a facilities study so that an adequate building can be built that will meet the city's growth needs in the future.

Councilor Grimes would like to see the Seneca Street extension completed as it will improve pedestrian safety in the area and allow for better connectivity throughout the downtown. She wants to see a facilities study completed and a proper plan established for a new building.

Council President Beikman wants to mitigate the impact to the library. The full build out would allow for more parking, improve circulation, and increase safety for pedestrians in the area. She stated having CenterCal complete the build out now will be cheaper for the City.

Councilor Truax would like to see this area enhanced by connecting Seneca Street

to improve the feel and safety in the area. He would like to see a comprehensive facilities study completed before he will make any decisions on the relocation of the Council Building.

Mayor Ogden would like to wait and see the extent of the traffic congestion in the area due to the development. He would like a facilities study completed and then he will make a decision on the building.

Council directed staff to prepare a resolution proposing a full build out of Seneca Street and bring it back at the next Council meeting.

City Manager Lombos noted that at the next Council meeting the Council will hear the Public Facilities Decision Review and Architectural Review Board Appeals.

3. Basalt Creek Concept Plan Update.

Discussion moved to Council Communications during Council meeting.

4. Council Meeting Agenda Review, Communications & Roundtable.

None.

ADJOURNMENT

The work session adjourned at 6:59 p.m.

Sherilyn Lombos, City Manager

_____ / Nicole Morris, Recording Secretary

_____ / Lou Ogden, Mayor



OFFICIAL MINUTES OF THE TUALATIN CITY COUNCIL MEETING FOR JANUARY 13, 2013

Present: Mayor Lou Ogden; Council President Monique Beikman; Councilor Frank Bubenik; Councilor Joelle Davis; Councilor Nancy Grimes; Councilor Ed Truax

Absent: Councilor Wade Brooksby

Staff Present: City Manager Sherilyn Lombos; City Attorney Sean Brady; Assistant City Manager Alice Cannon; Community Services Director Paul Hennon; Finance Director Don Hudson; Deputy City Manager Sara Singer; Planning Manager Aquilla Hurd-Ravich; Deputy City Recorder Nicole Morris; Information Services Manager Lance Harris; Program Coordinator Becky Savino; Teen Program Specialist Julie Ludemann; Police Captain Mark Gardner; Human Resources Manager Janet Newport; Public Works Director Jerry Postema

A. CALL TO ORDER

Pledge of Allegiance

Mayor Ogden called the meeting to order at 7:05 p.m.

B. ANNOUNCEMENTS

1. Honor Eagle Scout Justin Metschan-Baertlein

Human Resource Manager Janet Newport introduced Justin Metschan-Baertlein. Justin was awarded the honor of Eagle Scout in November for completing a bench restoration project at Ibach Park. He contributed 163 hours to the bench project and involved 20 volunteers from Troop 846 and the community.

Mayor Ogden congratulated Justin on receiving the honor of Eagle Scout and presented him with a plaque.

2. Tualatin Youth Advisory Council Update for January 2014

Member of the Youth Advisory Council (YAC) presented a PowerPoint on their latest activities and upcoming events. YAC held their annual holiday party in December which included a potluck and gingerbread house building competition. They have begun work on the annual Project FRIENDS workshop. The curriculum is currently being revised with plans to hold the workshop in April or May.

3. Centennial Public Art at Tualatin Public Library

Councilor Bubenik announced the installation of a new piece of centennial art. A reception was held earlier in the day accepting the art piece into the collection. The piece "Dynamic Continuum" is located in the entry way of the Library.

Tualatin Arts Advisory Committee Chair Buck Braden introduced artist Lynn Adamo who created this piece. Ms. Adamo explained the concept of the piece.

Chair Braden noted the committee has commissioned a 20ft steel sculpture that will be installed at the Tualatin Commons Park in March.

Mayor Ogden and Councilor Bubenik thanked that Centennial Art Committee for their work on selecting these pieces.

C. CITIZEN COMMENTS

This section of the agenda allows citizens to address the Council regarding any issue not on the agenda. The duration for each individual speaking is limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

Julie Rogers shared her concerns over the change in the speed limit along Martinazzi Avenue. She noted the speed was reduced from 35mph to 25mph. She requested more information on why the speed was reduced.

Grace Lucini requested she be notified directly of meetings and discussions around the Basalt Creek Concept Plan as this directly affects her residence.

Brett Hamilton urged Council to move forward with the construction of the Seneca Street extension. He stated it will improve pedestrian safety, traffic flow, increase commerce, and provide better access to the library.

D. CONSENT AGENDA

The Consent Agenda will be enacted with one vote. The Mayor will first ask staff, the public and Councilors if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. The matters removed from the Consent Agenda will be considered individually at the end of this Agenda under, I) Items Removed from the Consent Agenda. The entire Consent Agenda, with the exception of items removed from the Consent Agenda to be discussed, is then voted upon by roll call under one motion.

MOTION by Council President Monique Beikman, SECONDED by Councilor Nancy Grimes to approve the consent agenda.

Vote: 6 - 0 MOTION CARRIED

1. Consideration of Approval of the Minutes for the City Council Work Session and Regular Meeting of December 9, 2013.
2. Consideration of the Parks System Development Charge (SDC) Annual Report for Fiscal Year 2012/2013
3. Recommendations from the Council Committee on Advisory Appointments

E. SPECIAL REPORTS

1. Vision Action Network Update

City Manager Lombos introduced Vision Action Network Executive Director Karin Kelley-Torregroza. Ms. Kelley-Torregroza recapped the mission of Vision Action Network (VAN) and its work on issues that impact the citizens of Washington County. She noted VAN grew out of the Vision West process. The mission of VAN is to identify critical issues and support the development of collaborative community based solutions. Their role is to act as a neutral convener to bring leaders together to help address challenging issues. Their goals include strengthening economic security, support diversity and inclusion, build sustainability, and promote a compassionate community. Some of their current projects include the Aging Initiative, Washington County Thrives, and a homeless cost study.

Councilor Davis asked to hear more about what VAN is doing in relation to primary care. Ms. Kelley-Torregroza stated that VAN is focusing on capacity and access in primary care for uninsured citizens. VAN is in the early stage of planning on this project.

F. ITEMS REMOVED FROM CONSENT AGENDA

Items removed from the Consent Agenda will be discussed individually at this time. The Mayor may impose a time limit on speakers addressing these issues.

G. COMMUNICATIONS FROM COUNCILORS

BASALT CREEK CONCEPT PLAN UPDATE

Planning Manager Aquilla Hurd-Ravich and Assistant City Manager Alice Cannon gave an update on the Basalt Creek Concept Plan. Manager Hurd-Ravich stated the joint City of Tualatin and City of Wilsonville sub-committee met in December to discuss a decision making structure and the public engagement process for this concept plan.

Council President Beikman discussed the decision making structure. She noted meetings and workshops will be held and information will be reported back to each Council and Planning Commission individually. Joint meetings will be held throughout the process for both Councils to come together and make decisions.

Manager Hurd-Ravich shared the process diagram showing key milestones and deliverables. The first task will include making a detailed schedule and public involvement plan with the consultant team.

Assistant City Manager Cannon noted that the consultant team will be working on updating and making the website more interactive. They will be responsible for keeping the information on the site up to date.

Councilor Davis asked that a email update feature be added to the site.

COMMUNICATIONS FROM COUNCILORS

Councilor Davis thanked the Peace County/Washington County Democrats for inviting her and the Mayor to the Public Transit Forum they hosted.

Councilor Bubenik announced Tualatin Tomorrow will be hosting the State of the City Event . Tualatin Tomorrow will present the draft Vision Action Plan followed by the Mayor's State of the City speech. The event will be held on January 29, 5pm, at the Bridgeport Grand Hotel. Mayor Ogden invited all citizens to attend.

Councilor Bubenik noted Washington County is updating their Cooperative Plan for 2015-2020 and will kick this off by screening the movie American Winter. The screening will take place on February 26, 6pm, at the Venetian Theater and will be followed by a panel discussion on poverty in Oregon.

H. ADJOURNMENT

Mayor Ogden adjourned the meeting at 8:02 p.m.

Sherilyn Lombos, City Manager

_____ / Nicole Morris, Recording Secretary

_____ / Lou Ogden, Mayor



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Nicole Morris, Deputy City Recorder

DATE: 01/27/2014

SUBJECT: Consideration of Recommendations from the Council Committee on Advisory Appointments

ISSUE BEFORE THE COUNCIL:

Consideration of re-appointments and new appointments to the Tualatin Tomorrow Advisory Committee and the Budget Committee.

RECOMMENDATION:

Staff recommends the City Council approve the recommendations from the Council Committee on Advisory Appointments (CCAA) and reappoint and appoint the below listed individuals.

EXECUTIVE SUMMARY:

The Council Committee on Advisory Appointments met and interviewed citizens interested in participating on City advisory committees and boards. The Committee recommends reappointing and appointing the following individuals:

<i>Individuals</i>	<i>Board</i>	<i>Term</i>
Adam Butts	Tualatin Tomorrow Advisory Committee	Reappointment Term Expiring 1/31/17
Ed Casey	Tualatin Tomorrow Advisory Committee	Reappointment Term Expiring 1/31/17
John Bartholomew	Tualatin Tomorrow Advisory Committee	New Appointment Term Expiring 1/31/17
Diana Emami	Tualatin Tomorrow Advisory Committee	New Appointment Term Expiring 1/31/17
Robert Kellogg	Budget Committee	New Appointment Term Expiring 12/31/16

Attachments:



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Cindy Hahn, Associate Planner
Aquilla Hurd-Ravich, Planning Manager

DATE: 01/27/2014

SUBJECT: Consideration of **Resolution No. 5178-14** Authorizing a Personal Services Agreement for Concept Planning for the Basalt Creek / West Railroad Areas

ISSUE BEFORE THE COUNCIL:

Council consideration of Resolution No. 5178-14 authorizing the City Manager to enter into a Personal Services Agreement with Fregonese Associates for professional services for the Concept Planning of the Basalt Creek / West Railroad areas.

RECOMMENDATION:

Staff recommends that the City Council accept the scope and budget and authorize the City Manager to enter into a contract with Fregonese Associates for professional services for Concept Planning for the Basalt Creek / West Railroad areas.

EXECUTIVE SUMMARY:

A Request for Proposals (RFP) for Professional Services for the Concept Planning for the Basalt Creek / West Railroad project was published in the Daily Journal of Commerce on August 2, 2013. Staff received four proposals in response to the RFP. The proposals were reviewed for responsiveness to the selection criteria contained in the RFP by a committee composed of the following individuals:

- City of Tualatin:
 - Aquilla Hurd-Ravich, Planning Manager
 - Kaaren Hofmann, Engineering Manager
 - Cindy Hahn, Associate Planner and Project Manager
 - Ben Bryant, Management Analyst
- City of Wilsonville:
 - Chris Neamtzu, Planning Director
 - Katie Mangle, Long Range Planning Manager and Project Manager
 - Steve Adams, Development Engineering Manager
 - Mike Ward, Civil Engineer

As per the selection process outlined in the RFP, the review committee selected consultant

teams for interviews on September 16, 2013. After careful consideration and discussion, the committee recommends Fregonese Associates, with sub-consultants CH2M Hill, Leland Consulting Group, and DKS Associates, as the most qualified consultant team for the Concept Planning for the Basalt Creek / West Railroad project. Staff has negotiated a scope of work and budget with Fregonese Associates; these are attached to this staff report for Council's review.

This project is funded through a Construction Excise Tax (CET) grant from Metro in the amount of \$365,277. Part of the Intergovernmental Agreement (IGA) with Metro for the grant outlines specific milestones that must be completed in order for the City to collect grant dollars. The first milestone was execution of the IGA, which was approved by Resolution No. 5010-10 on November 8, 2010. Subsequent milestones in this project include:

- Milestone 2: Existing conditions report, evaluative criteria, city collaboration
- Milestone 3: Proposed concept plan or urban growth diagram showing at least those elements set forth in Title 11
- Milestone 4: Recommended Comprehensive Plan Amendment addressing Title 11; applicable conditions of addition in Metro ordinance for new urban area; applicable state laws and regulations
- Milestone 5: Adoption of Comprehensive Plan Amendment addressing Title 11; applicable conditions of addition in Metro ordinance for new urban area; applicable state laws and regulations

The Concept Planning for this project is expected to take approximately 18 months to complete following execution of the personal services agreement with the consultant.

NEXT STEPS

After receiving notice to proceed, the Fregonese Associates Team will prepare a Public Involvement Plan (PIP) to guide community engagement and a detailed calendar of milestones for the project. Guiding principles and evaluation measures will be developed and there will be an inventory of existing conditions in the planning area. A Joint Council meeting to review progress to date is anticipated for summer 2014 and Planning Commissions and City Councils of both Tualatin and Wilsonville will receive regular updates throughout the concept planning process.

OUTCOMES OF DECISION:

If the Mayor and City Manager are not authorized to sign the Personal Services Agreement with Fregonese Associates, the City will not have an approved contract for professional services for the Basalt Creek / West Railroad Concept Planning project and Milestones 2-5 of the City's IGA with Metro for CET Grant funding for the project will not be met.

FINANCIAL IMPLICATIONS:

This project is funded by the award of a Construction Excise Tax (CET) grant in the amount of \$365,277 from Metro. City staff will manage the contract and project.

Attachments: A. Resolution
 B. Personal Services Agreement
 C. Scope of Work
 D. Budget

RESOLUTION NO. 5178-14

RESOLUTION AUTHORIZING A PERSONAL SERVICES AGREEMENT FOR
CONCEPT PLANNING FOR NEW URBAN AREAS: BASALT CREEK / WEST
RAILROAD

WHEREAS, the City of Tualatin issued a solicitation for request for proposals for
Concept Planning for New Urban Areas: Basalt Creek / West Railroad; and

WHEREAS, the solicitation was advertised in the Daily Journal of Commerce on August
2, 2013, and proposals were received prior to the close of the proposal period on August 30,
2013; and

WHEREAS, City staff and City of Wilsonville staff reviewed the responsive proposals
and recommend the City Council award the contract to Fregonese Associates, with sub-
consultants; CH2M Hill, Leland Consulting Group, and DKS Associates to provide professional
services for the Concept Planning for New Urban Areas: Basalt Creek / West Railroad project;
and

WHEREAS, funds are available for the Concept Planning for New Urban Areas: Basalt
Creek / West Railroad project through a Construction Excise Tax (CET) grant from Metro; and

WHEREAS, the procurement complied with the City's public contracting requirements;
and

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

Section 1. The City of Tualatin hereby awards the Professional Services contract for
the Concept Planning for New Urban Areas: Basalt Creek / West Railroad project to Fregonese
Associates.

Section 2. The City Manager is authorized to execute a contract with Fregonese
Associates in the amount of \$302,915.

Section 3. The City Manager is authorized to execute Contract Amendments totaling up
to 10% of the original contract amount.

Section 4. This Resolution is effective upon adoption.

ADOPTED by the City Council this 27th day of January, 2014.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO FORM

ATTEST:

BY _____
City Attorney

BY _____
City Recorder

**CITY OF TUALATIN
PERSONAL SERVICES AGREEMENT**

THIS AGREEMENT is entered by and between the City of Tualatin, a municipal corporation of the State of Oregon ("City"), and Fregonese Associates ("Provider").

Section 1 - Agreement Documents. The Contract Documents, which together form the complete Contract between the parties, consist of the following documents in descending order of precedence. To the extent there is any conflict between the documents, the conflict is resolved by the order of precedence of the document. There are no Agreement Documents other than those listed: (i) this Agreement; (ii) any documents specifically referenced in this Agreement; and (iii) the attached Scope of Work/Proposal (Attachment A).

Section 2. Work. Provider shall complete all Work that is generally described as set forth in Attachment A, which is incorporated into this Agreement as if fully set forth. All Work shall be performed by qualified personnel and other professionals that are properly licensed under the laws of the State of Oregon. Provider shall be solely responsible for all Work under this Agreement, including all services, labor, materials and supplies, documents, permits and other requirements to complete the Work, whether produced by Provider or any of Provider's subcontractors or contractors, except for those items identified as the responsibility of the City.

Section 3. Effective Date. The effective date of this Agreement is the date both Parties sign this Agreement ("Effective Date"). If the parties sign on separate dates, the latter date shall be the Effective Date.

Section 4. Standard of Care. Provider shall use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession. Provider will reimburse City for all costs if performance fails to meet this standard.

Section 5. Duty to Inform. If during the performance of this Agreement or in the future, Provider becomes aware of actual or potential problems, faults, or defects in the project, any nonconformance with the federal, state or local law, rule, or regulation, or has any objection to a decision or order made by City with respect to such laws, rules, or regulations, Provider shall give prompt written notice to City's Project Manager. Delay or failure by City to provide a written response to Provider shall not constitute agreement with, nor acquiescence to, Provider's statement or claim, nor constitute a waiver of City's rights.

Section 6. Independent Contractor; Responsibility for Taxes and Withholding

- A. Provider shall perform all Work as an independent Contractor. The City reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product, however, the City may not and will not control the means or manner of Provider's performance. Provider is responsible for determining the appropriate means and manner of performing the Work.
- B. Provider understands and agrees that Provider is not an "officer", "employee", or "agent" of the City, as those terms are used in ORS 30.265.
- C. Provider shall be responsible for all federal or state taxes applicable to compensation or payments paid to Provider under this Agreement and, unless Provider is subject to backup withholding, City will not withhold from such compensation or payments any amount(s) to cover Provider's federal or state tax obligations. Provider is not eligible for any social security, unemployment insurance or workers' compensation benefits from City under this Agreement. Provider is not entitled to, and expressly waives all claims to City benefits, including but not limited to health and disability insurance, paid leave, and retirement.

Section 7. Subcontracting.

- A. Provider's services are unique and as such, shall not enter into any subcontracts for any of the Work required by this Agreement without City's prior written consent.
- B. If City permits a subcontract as set forth in subsection A, Provider shall not be relieved of any of its duties or obligations under this Agreement.
- C. All subcontracts for services shall be issued under written agreements that include all provisions required under Oregon Public Contracting law and substantially similar to the City's Standard Agreement provisions. Provider shall provide City a copy of all Agreements with subcontractors who are performing work under this Agreement, upon request by City.

Section 8. Ownership of Intellectual Property.

- A. Definitions.** As used in this Section 8, and elsewhere in this Agreement, the following terms have the meanings set forth below:
- (i) "Provider Intellectual Property" means any intellectual property owned by Provider and developed independently from the Work.
 - (ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than City or Provider.
 - (iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Provider is required to deliver to City pursuant to the Work.
- B. Original Works.** All Work Product created by Provider pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of City. City and Provider agree that such original works of authorship are "work made for hire" of which City is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not "work made for hire," Provider hereby irrevocably assigns to City any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon City's reasonable request, Provider shall execute such further documents and instruments necessary to fully vest such rights in City. Provider forever waives any and all rights relating to original Work Product created pursuant to the Work, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. In the event that Work Product created by Provider under this Agreement is a derivative work based on Provider Intellectual Property, or is a compilation that includes Provider Intellectual Property, Provider hereby grants to City an irrevocable, non exclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre existing elements of the Provider Intellectual Property employed in the Work Product, and to authorize others to do the same on City's behalf. In the event that Work Product created by Provider under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Provider shall secure on the City's behalf and in the name of the City an irrevocable, non exclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on City's behalf.
- C. Provider Intellectual Property.** In the event that Work Product is Provider Intellectual Property Provider hereby grants to City an irrevocable, nonexclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Provider Intellectual Property, and to authorize others to do the same on City's behalf.
- D. Third Party Works.** In the event that Work Product is Third Party Intellectual Property, Provider shall secure on the City's behalf and in the name of the City, an irrevocable, non exclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on City's behalf.

Section 9. Price; Payment Process.

- A. Agreement Price.** City agrees to pay Provider the not to exceed price of \$302,915 which is inclusive of all hours necessary to complete the Work. City certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement.
- B. Payment Process.** Provider shall furnish City an invoice for services on a monthly basis. The invoice shall contain an itemized statement showing the work completed by Provider. City will pay Provider for services invoiced within 30 days of receiving an itemized invoice ("net thirty"), unless City's disputes the invoice, in which case City will only pay for those services not in dispute. Any invoice received more than ninety (90) days after final payment is made or contract terminated may be considered null and void by the City and Provider shall have no right to payment for the invoiced amount.

Section 10. Notice to Parties. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, mail, facsimile, or email.

- A. Notice By Personal Delivery.** Any communication or notice given by personal delivery shall be effective when actually delivered.

- B. Notice by Mail.** Notice given by mail shall be by postage prepaid, to Provider or City at the address, set forth herein, or to such other addresses or numbers as either party may indicate. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing.
- C. Notice by Facsimile.** Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against City, any notice transmitted by facsimile must be confirmed by telephone notice to City's Agreement Administrator.
- D. Notice by Email.** Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.
- E. Notice to Project Manager.** Unless otherwise notified in writing as set forth above, notices shall be given to the Project Managers. If a Party's Project Manager is changed, notification of the change shall be promptly made in writing to the other party. If a party receives a communication from the other party not executed by the Project Manager, the party may request clarification by the other party's Project Manager, which shall be promptly furnished.

- 1. **City's Project Manager**
Cindy L. Hahn, AICP, Associate Planner
City of Tualatin, 18880 SW Martinazzi Avenue, Tualatin OR 97062
Phone: 503-691-3029
Fax: 503-692-0147
Email: chahn@ci.tualatin.or.us
- 2. **Provider's Project Manager**
Leila Aman, Principal
Fregonese Associates, 1525 SW Park Ave, Portland OR 97201
Phone: (O) 503.228.3054, (C) 971-244-4163
Fax: 503-525-0478
Email: leila@frego.com

Section 11. Assignment of Agreement. No assignment of any rights, duties, responsibilities, or interests in the Agreement will be binding on the other party without the written consent of the party sought to be bound. No assignment will release or discharge the assignor from any duty or responsibility under the Agreement Documents.

Section 12. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

Section 13. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

Section 14. Merger Clause; Waiver. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind the parties unless in writing and signed by both parties and all necessary City approvals have been obtained. Any waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

Section 15. Records Maintenance; Access. Provider shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Provider shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Provider's performance. Provider acknowledges and agrees that City, the State of Oregon, and the federal government and their duly authorized representatives shall have access to such records and other books, documents, papers, plans, records of shipments and payments and writings of Provider that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Provider shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

Section 16. No Third-Party Beneficiaries. There are no intended third-party beneficiaries to this Agreement. Provider and the City are the only parties to this Agreement and are intended to be the only entities entitled to exercise and enforce the rights and obligations created by this Agreement.

Section 17. Nondiscrimination; Compliance with Applicable Law. Provider agrees that no person shall, on the grounds of race, color, religion, sex, marital status, familial status, domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or veteran status suffer discrimination in the performance of this Agreement. Provider shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Agreement.

Section 18. Registered in Oregon and City of Tualatin. If Provider is not domiciled in or registered to do business in the State of Oregon, Provider shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Agreement. Provider shall demonstrate its legal capacity to perform the Work under this Agreement in the State of Oregon prior to entering into this Agreement. Provider shall have or acquire a City business license prior to executing this Agreement.

Section 19. Use of Recycled Products. Provider shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

Section 20. Force Majeure. Neither City nor Provider shall be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of City or Provider, respectively. Provider shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

Section 21. Survival. All rights and obligations of the parties shall cease upon termination or expiration of this Agreement, except for the rights and obligations of a party for payment of completed Work, indemnity, dispute resolution, maintenance of insurance, and those provisions, including, but not limited to, provisions concerning property rights and governing laws which, by their nature, must survive termination to accomplish the intent of the parties as expressed in this Agreement.

Section 22. Joint and Several Liability. In the event Provider includes more than one person or entity, all such persons or entities shall be jointly and severally liable for all conditions herein.

Section 23. Indemnification.

- A. General indemnity.** Provider shall defend, save, hold harmless, and indemnify the City, its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys fees, resulting from, arising out of, or relating to the acts or omissions of Provider or its officers, employees, subcontractors, or agents.
- B. Indemnity for infringement claims.** Without limiting the general indemnity, Provider expressly agrees to defend, indemnify, and hold City, its officers, employees, and agents harmless from any and all claims, suits, actions, losses, liabilities, costs, expenses, including attorneys fees, and damages arising out of or related to any claims that the work, the work product or any other tangible or intangible items delivered to the City by Provider that may be the subject of protection under any state or federal intellectual property law or doctrine, or the City's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, that city shall provide Provider with prompt written notice of any infringement claim.
- C. Control of defense and settlement.** Provider shall have control of the defense and settlement of any claim that is subject to indemnity; however, neither Provider nor any attorney engaged by Provider shall defend the claim in the name of the City, nor purport to act as legal representative of the City or any of its officers, employees, or agents, without first receiving from the City, in a form and manner determined appropriate by the City, authority to act as legal counsel for the City, nor shall Provider settle any claim on behalf of the City without the approval of the City. The City may, at its election and expense, assume its own defense and settlement in the event that the City determines that Provider is prohibited from defending the City, or is not adequately defending the City's interests, or that an important governmental principle is at issue and the City desires to assume its own defense.

Section 24. Insurance. Provider shall provide City a copy of each insurance policy, issued by a company currently licensed in the State of Oregon and certified as a true copy by an authorized representative of the issuing company or a certificate in a form satisfactory to City certifying to the issuance of such insurance. All policies shall provide for not less than 30 days' prior written notice to City before they may be revised, non-renewed, canceled, or coverage reduced. All policies shall provide an endorsement naming the City, its officers, employees, and agents as additional insureds.

- A. Automobile.** Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of

the public and/or damages to property of others arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles, with \$2,000,000 combined single limits.

- B. **General.** Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any act or omission of Provider or of any of its employers, agents, or subcontractors, with \$2,000,000 per occurrence and in the aggregate.
- C. **Primary.** Coverage provided by the policy(ies) shall be primary and any other insurance carried by City is excess. Provider shall be responsible for any deductible amounts payable under all policies of insurance.
- D. **Workers Compensation.** Provider, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017.

Section 25. Execution of Agreement. This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

Section 26. Governing Law; Venue; Consent to Jurisdiction.

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. This Agreement shall not be construed against either party regardless of which party drafted it. Other than as modified by this Agreement, the applicable rules of Agreement construction and evidence shall apply. In any litigation, the entire text of any order or permit issued by a governmental or regulatory authority, as well as any documents referenced or incorporated therein by reference, shall be admissible for the purpose of Agreement interpretation.
- B. Any claim, action, suit or proceeding (collectively, "Claim") between City and Provider that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Washington County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver of any form of defense or immunity from any Claim or from the jurisdiction of any court.

Section 27. Public Contracting Requirements. Provider shall comply with the provisions of ORS 279A.110; ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 which are incorporated by reference herein. City's performance under the Agreement is conditioned upon Provider's compliance.

Section 28. Default; Remedies; Termination.

- A. **Default by Provider.** Provider shall be in default under this Agreement if:

- (i) Provider institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

- (ii) Provider no longer holds a license or certificate that is required for Provider to perform its obligations under the Agreement and Provider has not obtained such license or certificate within fourteen (14) calendar days after City's notice or such longer period as City may specify in such notice; or

- (iii) Provider commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Provider's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after City's notice, or such longer period as City may specify in such notice.

- B. **City's Remedies for Provider's Default.** In the event Provider is in default, City may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:

- (i) termination of this Agreement;

- (ii) withholding all monies due for Work and Work Products that Provider has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;

- (iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; and

- (iv) exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and City may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Provider was not in default, then Provider shall be entitled to the same remedies as if this Agreement was terminated.

C. Default by City. City shall be in default under this Agreement if:

(i) City fails to pay Provider any amount pursuant to the terms of this Agreement, and City fails to cure such failure within thirty (30) calendar days after Provider's notice or such longer period as Provider may specify in such notice; or

(ii) City commits any material breach or default of any covenant, warranty, or obligation under this Agreement, and such breach or default is not cured within thirty (30) calendar days after Provider's notice or such longer period as Provider may specify in such notice.

D. Provider's Remedies for City's Default. In the event City terminates the Agreement, or in the event City is in default and whether or not Provider elects to exercise its right to terminate the Agreement, Provider's sole monetary remedy shall be:

(i) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Agreement but not yet billed, authorized expenses incurred and interest of two-thirds of one percent per month, but not more than eight percent per annum; and

(ii) with respect to deliverable based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by City, less previous amounts paid and any claim(s) that City has against Provider. In no event shall City be liable to Provider for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Provider exceed the amount due to Provider under this subsection, Provider shall pay immediately any excess to City upon written demand provided.

E. Mutual Termination. City and Provider may terminate this Contract by mutual written consent at any time.

F. Termination By City. At its sole discretion, City may terminate this Agreement:

(i) For any reason upon thirty (30) days' prior written notice by City to Provider;

(ii) Immediately upon written notice if City fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products; or

(iii) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the City's purchase of the Work or Work Products under this Agreement is prohibited or City is prohibited from paying for such Work or Work Products from the planned funding source.

(iv) Immediately upon written notice by City to Provider, or at such later date as City may establish in such notice, upon the occurrence of Default by Provider.

G. Termination By Provider. Provider may terminate this Agreement with such written notice to City upon the occurrence of the following events:

(i) City is in default because City fails to pay Provider any amount pursuant to the terms of this Agreement, and City fails to cure such failure within thirty (30) calendar days after Provider's notice of the failure to pay or such longer period as Provider may specify in such notice; or

(ii) City is in default because City commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and City fails to cure such failure within thirty (30) calendar days after Provider's notice or such longer period as Provider may specify in such notice.

H. Return of Property Upon Termination. Upon termination of this Agreement for any reason whatsoever, Provider shall immediately deliver to City all of City's property (including without limitation any Work or Work Products for which City has made payment in whole or in part) that is in the possession or under the control of Provider in whatever stage of development and form of recordation such City property is expressed or embodied at that time. Upon receiving a notice of termination of this Agreement, Provider shall immediately cease all activities under this Agreement, unless City expressly directs otherwise in such notice of termination. Upon City's request, Provider shall surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

Section 29. Dispute Resolution. The Parties shall exercise good faith and due diligence to resolve any disputes that may arise between them. The Parties will work amicably to resolve disputes. If a dispute cannot be resolved, the Parties shall submit the matter to mediation. The mediator shall be chosen by mutual agreement. If a mediator cannot be agreed upon, the Parties agree to present the dispute to a mediator selected by the Presiding Judge of Washington County Circuit Court. The mediation fee shall be borne equally by the Parties. If the dispute cannot be resolved through discussion, negotiation or mediation, either Party may pursue resolution by litigation, as provided the jurisdictional provision of this Agreement.

Section 30. Attorney Fees. If any suit, action, arbitration or other proceeding is instituted upon this Agreement or to enforce any rights herein or otherwise pursue, defend or litigate issues related to this Agreement, each party shall be liable for their own attorneys' fee and costs, including those on appeal. The parties each agree and hereby waive any right to attorney fees granted by statute or rule that conflicts with this provision.

Section 31. Public Records Law. Provider acknowledges that any disclosures Provider makes to City under this Contract are subject to application of the Oregon Public Records Law, including but not limited to ORS 192.410- 192.505, the provisions for the Custody and Maintenance of Public Records. The non-disclosure of documents or of any portion of a document submitted by Provider to City may depend upon official or judicial determinations made pursuant to the foregoing laws. Provider will be notified prior to City's release of documents. Provider shall be exclusively responsible for defending Provider's position concerning the confidentiality of the requested documents, at its own expense.

Section 32. Confidentiality and Protection of Personal Information. Provider acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Agreement or its performance may consist of information that is exempt from disclosure to the public under Oregon's Public Records Laws, the Oregon Consumer Identity Theft Protection Act, ORS 646A.600- 646A.628, or other state or Federal statutes. Provider agrees to hold such information in strictest confidence and not to make use of such information for any purpose other than the performance of this Agreement, to release it only to authorized employees or subcontractors requiring such information for the purposes of carrying out this Agreement, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without City's express written consent or as provided by law.

PROVIDER, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT PROVIDER HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

APPROVED AND ENTERED this 27th day of January 2014:

Fregonese Associates
PROVIDER

By [Signature]
Title President

20-9319355
Provider's Federal ID Number or
Social Security Number

CITY OF TUALATIN

By _____
Sherilyn Lombos,
City Manager

APPROVED AS TO LEGAL FORM

City Attorney

Consultant Scope of Work

Concept Planning for New Urban Areas: Basalt Creek / West Railroad December 22, 2013

TASK 1. PROJECT LAUNCH

Task 1.1. Final Scope and Budget

Prior to the official launch of the Project the consultant shall develop and refine a detailed scope of work for the Basalt Creek / West Railroad Concept Plan.

Consultant Deliverables

1. Detailed Scope of Work (FA)
2. Budget (FA)

Task 1.2 Execute Contract

The City of Tualatin will engage with Tualatin City Council on January 27th to get approval to execute the contract for the Basalt Creek / West Railroad Concept Plan.

Consultant Deliverables

1. Signed Contract (FA)

Task 1.3 Develop Public Involvement Plan (PIP)

The Fregonese Associates (FA) Team will produce a Public Involvement Plan that clearly articulates the specific strategies, methods, and timing of our public involvement efforts. The expected elements include:

- production schedule for web materials;
- email blast notifications;
- interview and focus group participants;
- schedule for Agency Review Team (ART) meetings (assume meets quarterly or at major milestones)
- Individual Council information sessions (assumes 6 meetings)
- Joint Council Decisions and information sessions (assumes 6 meetings)

The Public Involvement Plan will be developed collaboratively between the consultant and the Cities Project Management Team (PMT) and will be based on the Project Partnering Agreement which provides a framework for the process to engage the public and other stakeholders and the decision making structure to adopt the concept plan.

Up to two drafts of the Public Involvement Plan will be provided to the Cities PMT to review and make comments. A meeting that includes the FA Project Manager and the Cities PMT will be scheduled to discuss the draft and make final revisions after the second draft.

1.2 Detailed Calendar of Milestones

The Detailed Scope of Work will clearly delineate the responsibilities of each team member on the project, as well as the responsibilities of City staff. From this effort FA staff will work with the Cities Project Management Team to clarify the sequencing of the scope activities and create two documents that can be used to communicate the project schedule:

- A detailed calendar to be used internally that includes details on deliverables, review time, meetings and other schedule related activities.
- A more general milestone calendar will be developed to communicate the project process and timeline with outside stakeholders.

The schedule will be developed in tandem with the Public Involvement Plan, and after the Partnering Agreement is completed. The Partnering Agreement sets the decision making framework and process necessary to complete the Public Involvement Plan and detailed schedule.

Deliverables:

1. Public Involvement Plan (FA)
2. Detailed Project Schedule for internal use (FA)
3. Calendar of Process and Milestones for external use (FA)

TASK 2. DEVELOP GUIDING PRINCIPLES, EVALUATION MEASURES

Using the Public Involvement Plan developed as part of Task 1 this task is centered on engaging with the public and key stakeholders to get their input to establish guiding principles and evaluation measures that will be used to develop and evaluate alternative land use and transportation scenarios for the Basalt Creek / West Railroad planning area. Information gathered as part of Task 3 (Existing Conditions) will also be used throughout this task to inform discussions with the Agency Review Team and the Joint Council.

Task 2.1 Guiding Principles and Identification of Evaluation Measures

The guiding principles and identification of evaluation measures will be undertaken with the City Councils and Agency Review Team. The consultant team will develop initial guiding principles based upon information gleaned from existing plans and policies and goals for the area and input from previous Joint Council Work Sessions on Basalt Creek. We will also utilize information gathered as part of the existing conditions analysis and focus group meetings. Throughout the planning process it is essential to have agreed upon evaluation measures to assess alternative concept scenarios, proposed transportation and infrastructure systems and boundary possibilities. The consultant will work with the Cities Project Management Team to identify key spatial indicators including, but not limited to, those related to land use, transportation, population growth and demographics, housing mix and affordability, economic development, infrastructure costs and fiscal impacts. The criteria will be established to ensure the concept plan meets the outcomes

outlined in Metro's Title 11 and used to evaluate different land use alternatives to ensure they meet the guiding principles of the plan.

Deliverables:

1. One meeting with the ART (FA)
2. Guiding Principles and Evaluation Measures Memo (FA)
3. Presentation to Joint Councils (FA)

TASK 3 - INVENTORY EXISTING CONDITIONS AND DRAFT REPORT

In this task the Consultant team will assemble baseline information and set the stage for discussions with stakeholders and developing the guiding principles, evaluation measures and informing the alternative scenarios. This task provides critical information on development capacity (buildable lands) key infrastructure constraints that can help guide land use and transportation decisions as well as highlight important considerations for jurisdictional boundaries. This task will start immediately upon project approval and will constitute the foundation for the planning effort, including calibrating the Envision Tomorrow modeling tool to create a base map of existing conditions.

Task 3.1 Inventory Existing Conditions and Market Demand

The FA Team will work closely with City staff to identify relevant land use planning and other documents to examine on the ground conditions of both current and planned land uses within the concept planning area. In this task we will examine the landscape for constraints, buildability and an understanding of existing issues that should be considered for this project. This includes such plans as the recent TSP update, water and sewer planning documents for both cities and other relevant adjacent and nearby planning efforts such as the Coffee Creek concept plan.

The FA Team will also assemble existing Geographic Information System (GIS) data and we will evaluate existing household and employment within the planning area using the Metro regional forecasts for growth for the concept planning area. In this task FA will also use this data to develop base year model conditions within Envision Tomorrow that will inform the development of alternative scenarios in Task 4. This base year model will include estimates of buildable land capacity and other measures to provide a framework to evaluate future land use scenarios. Drawing largely from existing plans and studies, but updating with new data where necessary, the team will prepare a real estate and demographics summary to identify prevailing trends in housing, commercial, and employment land uses and how the study area is positioned to capture these markets relative to adjacent and/or competitive market areas.

CH2M HILL will lead the team in an infrastructure needs assessment. To perform the assessment, CH2M HILL will review Tualatin, Wilsonville, Washington County, and water and sewer district published or ready to use mapping to identify existing infrastructure in the planning area. CH2M HILL staff will interview Wilsonville, Tualatin, and Clean Water Services utility managers to assess current capacity and existing service agreements. Published or ready to use natural resource inventories and mapping from the same agencies and Metro will be reviewed to identify important areas of special consideration, especially in and near existing receiving waters. A general description of the adequacy of existing

infrastructure to support new development will be prepared. Preliminary drainage maps, sewer basins and pressure zones will be developed.

DKS will lead the existing conditions evaluation for the existing transportation system. This evaluation will include documentation of the existing multi-use trails, pedestrian facilities, bicycle facilities, and transit facilities that provide connectivity to the planning area, including the identification of planned facilities. In terms of motor vehicle access DKS will summarize existing conditions based on data available from the Wilsonville TSP, the Tualatin TSP, the Basalt Creek Transportation Refinement Plan, and the SW 124th Extension Project. Intersection operations, motor vehicle volumes, and freight volumes from these plans will be summarized for weekday PM peak hour and AM peak hour (where available) conditions. Future year 2035 PM peak hour baseline conditions will also be documented from the prior planning efforts (primarily the Basalt Creek Transportation Refinement Plan), including identifying planned improvements (both financially constrained and aspirational). To provide a guide for the development of land use scenarios in subsequent tasks, the total amount of PM peak period vehicle trips generated in the study area Transportation Analysis Zones (TAZs) used for forecasting traffic demand for the Basalt Creek Transportation Refinement Plan will be identified. This total trip generation amount will be used as “side-boards” for guiding the overall amount and density of land uses designated throughout the planning area, allowing scenarios that vary by the mix and location of land use types to maintain consistency with the overall traffic forecasting from the Basalt Creek Transportation Refinement Plan. It is assumed that this approach would avoid the need for traffic impact analysis outside of the planning area for demonstrating compliance with Transportation Planning Rule (TPR) requirements. This approach is also assumed to reduce the required study area for traffic operations analysis to the locations described in Task 5.

3.2 Existing Conditions Report

For the existing conditions report we will summarize relevant information gathered as part of Task 3.1 including landscape conditions that impact market demand, and the ability for the area to achieve the guiding principles set for the plan and the potential to capture market demand. A general description of the adequacy of existing infrastructure to support new development will also be prepared.

Deliverables:

1. Draft Existing Conditions Report (assumes 2 revisions) (FA with report sections provided to FA by DKS,CH2 and LCG)
2. Final Existing Conditions Report (FA)
3. Base map of existing conditions in Envision Tomorrow (FA)
4. Presentation to the ART of findings from existing conditions report (FA) PowerPoint presentation
5. Presentation to the City Councils upon request

TASK 4 - DEVELOP ALTERNATIVE SCENARIOS

Fregonese Associates will lead the team’s scenario planning work in which up to three alternative land use and transportation scenarios will be developed. The existing conditions analysis conducted as part of Task 3 will provide the analytical foundation for the public outreach element of the plan. This will enable the public to make informed land use choices given the physical and market conditions of the area. The Public Involvement Plan will outline in detail the engagement strategies and timeline. This task outlines the key outreach strategies and how they will be used in

combination with the guiding principles to form the basis upon which the team will develop a series of three land use and transportation scenarios.

4.1 Online Public Engagement

A key component of the Public Involvement Plan is using the Internet to engage the public. The consultant will provide materials for the Cities' project webpage and Facebook and Twitter channels. As key deliverables are completed over the course of the project, the FA Team will create content for the website, including a schedule of upcoming meetings, meeting agendas, and notes from previous meetings.

Strategies for online public engagement will include:

Email updates: On-going communications via email (using an email distribution list) will generate goodwill and enthusiasm for expanded stakeholder participation. On-going communications will highlight positive momentum toward achieving community goals.

Web and social media content: The FA Team will provide materials to use as on-going updates on the Cities' project webpage and Facebook and Twitter channels. These updates will include:

- Workshop/Public outreach announcements
- Workshop and public outreach results
- General project updates

The Consultant will also administer up to three online surveys for the project to garner public feedback on the alternatives and the preferred scenario. The surveys will reflect the content and nature of related public meetings allowing those who could not attend to view similar information and provide feedback. This information will be summarized and included as part of the development of the land use alternatives for the Basalt Creek area.

Task 4.2 Interviews and Focus Groups

As part of the Public Involvement Plan the FA Team will work with City staff to identify key stakeholders for conducting in depth interviews and focus groups. These interviews and focus groups will occur throughout the project to highlight property owner interests, key issues of concern within the planning area, and other issues that relate to development and implementation of a project vision for the concept plan. The consultant team will conduct two focus groups (up to 6 participants each) organized around a specific topic, and 4 individual interviews with key stakeholders, or a combination thereof with a focus group replacing 2 interviews, or 2 interviews in lieu of a focus group.

Task 4.3 Public Workshop

The consultant will design and run a public workshop that will provide the team with a host of important information for creating a range of scenarios in later tasks. Participants in the workshop will work together in small groups using maps and icons that represent future development and transportation investments. The consultant team will utilize a custom map-based exercise to gather information on community aspirations for future land uses, multimodal transportation network, employment lands, parks and open spaces. We will use the Envision Tomorrow (ET) suite of planning tools to

digitize and analyze maps and comments from the public workshop to uncover themes and unique solutions to guide the scenario development and the development of a final concept plan and vision for the planning area. We will also ask participants to respond to a series of instant polling questions designed to address community priorities, concerns and values. Questions will be made available in web survey form to reach a broader audience.

Task 4.5 Summary Presentation

The FA Team will present findings on the initial themes from the various outreach activities to the ART and each individual City Council (or joint council) to gather input and direction on developing the alternative scenarios. The FA Team will develop a PowerPoint presentation to summarize themes and input from the various outreach activities. The FA Team will work with the Cities PMT to identify key questions for the ART and Councils that will provide direction for the development of the alternative scenarios.

Task 4.6 Develop Alternative Scenarios

The consultant team will develop up to three alternative scenarios that will depict locations of infrastructure and transportation systems and proposed land uses based on outreach performed in previous tasks. The scenarios will be built using our Envision Tomorrow Suite of Planning Tools, a flexible and powerful analytical system. As part of that analysis, the team will test the financial feasibility of a range of desired building and land use types that is feasible for developers, affordable to local households and meets employment goals. Envision Tomorrow will be used to quantify the scenarios based on the evaluation measures selected in Task 2 and outputs will provide the data necessary for evaluative infrastructure and transportation modeling.

The alternatives will include a conceptual design of the multimodal transportation network. Concepts will include the arterial and local roadway network (with the support of DKS' motor vehicle analysis), active transportation corridors and the location of crossings. Concepts will identify opportunities and constraints for integrating transportation infrastructure into the landscape features and general aesthetics of the proposed land uses.

CH2M HILL will support development of up to three (3) alternatives by advising on opportunities and constraints for integrating water utility services, especially stormwater, into the landscape features and general aesthetics of proposed development. Concepts will include water distribution and storage, and sewer collection and pumping needs. After investigating engineering constraints, CH2M HILL will provide a recommended service boundary for each utility separately, based on technical analysis (as part of Task 8). A general description will be prepared for alternate concepts that might be necessary if service boundaries are selected based on other factors. Support will include advice based on past experience and best practices used regionally and nationally. Detailed plans and cost estimates for infrastructure services will not be prepared as part of this task. CH2M HILL will provide FA with approximate unit cost data for typical utility service, based on past experience and published data sources to support development of conceptual comparative cost estimates.

Task 4.7 Working Session to Refine Scenarios for Evaluation

The draft alternative scenarios will be reviewed with the PMT and the consultant team in a half day working session. Through this working session the consultant team will garner ideas for refinement of the scenarios and ensure that the

direction provided by the ART and Councils have been incorporated prior to the evaluation of the scenarios and infrastructure modeling.

Deliverables:

1. Presentation in initial themes and feedback from public to ART and Joint (or individual) Councils to get direction on the alternative scenarios.
2. Up to three alternative draft scenarios will be developed in Envision Tomorrow using feedback from ART and Councils (FA)
3. Working session with project team to refine draft scenarios (FA, DKS, CH2, LCG)
4. Final scenarios based on working session and ART and Council feedback (FA)

TASK 5. ANALYZE TRANSPORTATION AND WATER INFRASTRUCTURE REVIEW OF MODEL OUTPUT AND DEVELOP PERFORMANCE MEASURES

DKS will lead the motor vehicle transportation system evaluation of up to three alternatives, including the development of future year 2035 PM peak hour volumes using a focus-area travel demand model (built from the Tualatin TSP and Wilsonville TSP travel demand models). Travel forecasts for each scenario will be based on factoring the trip-table from the baseline year 2035 model according to the TAZ-level land use data for each scenario (it is not anticipated that full 4-step travel demand model runs from Metro will be required). As noted in Task 3.1, detailed intersection operation evaluations at off-site locations will not be assumed for this scope. Traffic volume information within the planning area will be used to guide the sizing of facilities (e.g., 2-lane vs. 3-lane roadways) and to identify locations for signalized or roundabout traffic control. Intersection operation analysis (level of service and v/c ratios) based on the forecasted 2035 PM volumes will be conducted using Synchro at up to 15 major intersections in the planning area, including:

- I-5 Northbound/Elligsen Road
- I-5 Southbound/Elligsen Road
- Boones Ferry Road/95th Avenue
- Boones Ferry Road/Day Road
- Boones Ferry Road/Norwood Road
- Boones Ferry Road/Ibach Street
- Grahams Ferry Road/Clutter Road
- Grahams Ferry Road/Day Road
- Grahams Ferry Road/124th Avenue
- Grahams Ferry Road/Tonquin Road
- 124th Avenue/Tonquin Road
- Other future intersections identified by the Project Management Team based on the arterial/collector network

CH2M HILL will develop aggregate water and sewer requirements for each of the three alternatives. Stormwater analysis will compare pre- and post-development discharge for design precipitation events within each major basin. A comparison will be provided indicating required capacity and potential infrastructure elements based on each land use alternative and the existing systems inventory.

Deliverables:

1. Technical Transportation Memorandum (DKS)
2. Technical Water, Sewer, and Infrastructure Memorandum (CH2M Hill)

TASK 6. REVIEW OF ALTERNATIVE CONCEPTS

6.1 Public Review of Scenarios Analysis

The team will provide for the public a comprehensive look at how each scenario performs, as measured against the project's evaluative criteria and guiding principles established in Task 2. Transportation, housing choice, employment and infrastructure indicators will be presented for each scenario, thus allowing the public to weigh the costs and benefits of different choices and investments. The approach to this outreach will ultimately be shaped by the Public Involvement Plan. It is likely to contain some public event that could include a mix of activities such as one on one discussion around maps or boards and a group presentation where keypad polling will be utilized to allow for quantifiable feedback. Materials that would be used in a public event will also be available for web use and accompanied by an online survey to replicate instant feedback polling from the public meeting. Input gathered will be used in shaping a preferred scenario that can move forward as the final concept plan.

The FA Team will also develop visualizations to bring discussions of strategic planning to life. Not only will stakeholders be able to read about the future of their area, they will be able to see the changes in highly realistic but conceptual perspectives and photorealistic before-and-after images. These images and graphics will be used to present the alternative scenarios, and gather additional feedback to develop a preferred option.

6.2 Summarize public feedback

Conversations and written feedback will be summarized and keypad polling results will be included. The summary will be used in leading a conversation with the Agency Review Team and the Joint Council about which elements of the alternative scenarios should move forward as a preferred scenario. We may use instant polling and other techniques to get direction from the Agency Review Team, both Councils and the general public to move forward on a preferred option.

Deliverables:

1. Scenario communication materials such as:
 - a. Evaluation matrix
 - b. Visualizations
 - c. Display boards
2. PowerPoint Presentation to Joint Council (FA)

TASK 7 – PREFERRED SCENARIO

7.1 Preferred Scenario Working Session

A project team working session will be held following the review of alternative concepts completed in Task 6 and the input received from the public, the ART and the Joint Council. The group will consider the feedback gathered and determine the elements that will move forward as a preferred scenario. It is possible that one of the three scenarios will

be selected. However, it is more likely that the preferred scenario will come from either strategic modification of the best performing scenario, or by combining components from two or even all three alternatives.

7.2 Evaluate Preferred Scenario

The consultant team will develop the preferred scenario in GIS using Envision Tomorrow. Subsequently the team will perform the land use, transportation and infrastructure analysis to document the expected performance of the preferred scenario. Results will be included in the Concept Plan document.

Deliverables:

1. Working session with PMT and Consultant Team (FA)
2. Preferred scenario in GIS and evaluation of land use, infrastructure and transportation measures. (FA, DKS and CH2)

TASK 8. RECOMMEND POSSIBLE JURISDICTIONAL BOUNDARIES

CH2M HILL will prepare a summary of options for utility service area delineation. Based on indications of downstream capacity, topography, and the preferred land use plan, recommended utility service area boundaries will be prepared for water, wastewater, and surface water management. The service area boundaries may differ from jurisdictional boundaries. CH2M HILL will provide the FA Team with guidance on implementation for up to three boundary cases. The FA Team in partnership with the PMT will form the final recommendation for both jurisdictional and service area boundaries. CH2M HILL will prepare a final guidance in the form of recommended implementation measures that support the proposed boundaries. For purposes of this task, the evaluation will focus on the physical delivery of services to the planning area. City staff will conduct analysis of impacts to rates, revenue, system development charges, bonding or finance capacity.

Deliverables:

1. Possible Jurisdictional Boundaries Map (Draft and Final) (FA and CH2M Hill)
2. Supporting memorandum on Possible Jurisdictional Boundaries (FA and CH2M Hill)
3. Joint Council Work Session (FA, DKS, CH2)

TASK 9. FINAL CONCEPT PLAN

Develop a Draft and Final Concept Plan based on previously completed research and analysis, input from community workshop and open house, a feasible and widely accepted concept map, and transportation and infrastructure plans. The plan will include a skeletal transportation system based on previously performed research and analysis. CH2M HILL will provide design support in the development of the plan for water services infrastructure and the transportation network based on previously performed research and analysis. The effort will include concept level cost estimates for transportation and infrastructure facilities.

The Draft Concept Plan will comply with the Urban Growth Management Functional Plan and Tualatin and Wilsonville codes. Based on input from the the Tualatin and Wilsonville Planning Commissions, and both City Councils, the draft concept plan will be finalized and presented for a formal acceptance by the Councils. The plan will be implementation-focused, and designed for not only professional planners, but compelling for developers and the community at-large.

The plan will be richly illustrated and include maps and images and allow policymakers and the public to chart implementation progress. The plan will be written and formatted so each City may extract and adopt sections that are pertinent to that City's interests and responsibilities.

Deliverables:

1. Draft Concept Plan with 2 revisions (FA)
2. Final Concept Plan (FA)
3. Transportation System Concept Cost Estimates (FA)
4. Presentation of the Final Plan to the ART and Joint City Council

TASK 10: PREPARE A PHASING SCHEDULE FOR PUBLIC FACILITIES, DEVELOPMENT AND TRANSPORTATION

This task will build off of the analysis conducted in Task 5 and the final concept plan developed in Task 9. CH2M HILL will develop recommendations for a public facilities phasing plan that will include conceptual overviews of the recommended facilities and Class 5 concept-level costs. A general overview of possible funding strategies will also be prepared.

The transportation phasing plan will include recommended priority projects (based on compatibility with the phasing from the Basalt Creek Transportation Refinement Plan and access to priority development areas) and funding sources for early implementation. The development phasing report will include recommended near and long term strategies for land use development.

Deliverables:

5. Public facilities phasing report and schedule (CH2M Hill)
6. Transportation phasing report and schedule (DKS)
7. Development phasing report and schedule (LCG)

TASK 11: RECOMMEND IMPLEMENTATION STRATEGIES AND TOOLS

Implementation of the Concept Plan will take the form of comprehensive plan amendments that will allow for zoning changes in the Basalt Creek planning area. In some instances new districts along with subsequent requirements may be recommended. Accompanying the recommendations will be maps detailing, at the tax lot level, new land use districts, environmental protections, future transportation, and requisite public infrastructure. Language will also be drafted for individual amendment elements, including: transportation system plan, natural resources protection program, and public facilities master plans. The primary goal of this task is to develop a land use plan, map, and implementation strategy. The comprehensive plan amendments will contain both text and maps that define land use and development policies, as well as specific land use districts and suggested development outcomes.

Deliverables:

1. Land use comprehensive plan findings, goals, policies, implementation strategies and action measures (FA)
2. Land use district plan map and text (FA)
3. Evaluate and recommend transportation and land use design options for industrial and employment areas to reduce travel demand and provide convenient services to these areas while reducing transportation impacts and preserving freight mobility capacity. (FA and DKS)

4. Metro Title 11 compliance memo (FA)

Basalt Creek Concept Plan Proposed Budget Summary	Task Total
Task 1: Project Launch	\$ 5,577
Task 2: Develop Guiding Principles & Evaluation Measures	\$ 6,530
Task 3: Inventory Existing Conditions and Draft Report	\$ 42,314
Task 4: Develop Alternative Scenarios	\$ 81,505
Task 5: Analyze Transportation and Infrastructure, Review of model output and develop performance measures	\$ 21,214
Task 6: Public Review of Alternative Concepts	\$ 18,317
Task 7: Preferred Scenario	\$ 16,182
Task 8: Recommend Possible Jurisdictional Boundaries	\$ 15,722
Task 9: Final Concept Plan	\$ 48,968
Task 10: Prepare Development Phasing Schedule	\$ 18,654
Task 11: Recommend Implementation Strategies	\$ 25,732
Subtotal	\$ 300,715
Expenses	\$ 2,200
Plan Total	\$ 302,915



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Lance Harris, Information Services Manager

DATE: 01/27/2014

SUBJECT: Consideration of an Intergovernmental Agreement between the City of Portland and the City of Tualatin for Access to the Regional Justice Information Network [RegJIN]

ISSUE BEFORE THE COUNCIL:

Consideration of authorizing the City Manager to execute an Intergovernmental Agreement with the City of Portland that will allow the City of Tualatin to continue access to the regional justice information network.

RECOMMENDATION:

It is recommended that this agreement be approved to allow the police officers of the City of Tualatin to access RegJIN.

EXECUTIVE SUMMARY:

The goal of RegJIN is to develop a single, regional records management system (RMS) that will be used by over 35 law enforcement agencies and that provides all of the capabilities of the current Portland Police Data System (PPDS), with expanded, more fully integrated capabilities.

The Tualatin Police Department will use the RegJIN system to:

- Create offense reports
- Access criminal information and history

Through the identification and procurement of a new regionwide, enterprise solution, the RegJIN Partner Agencies (RPA) anticipate enhanced automated capabilities that will allow for improved data management, more effective decision support, and enhanced crime data analysis. Specifically, they hope to accomplish the following goals:

- Procure an enterprise solution that will provide modern law enforcement data collection and records keeping functionality, including secure data sharing among participating agencies.
- Provide law enforcement with modern, state-of-the-art tools.

**RegJIN PARTICIPANT INTERGOVERNMENTAL AGREEMENT (*Draft*)
REGIONAL PARTNER AGENCY – FULL ENTRY**

This Intergovernmental Agreement (“Agreement”) is made effective on _____ (“Effective Date”) by and between the City of Portland, a municipal corporation of the State of Oregon, and its successors or assigns (hereinafter referred to as “City”) and _____ (hereinafter referred to as “RPA”), a(n) _____ corporation, by and through their duly authorized representatives. Authority to enter into the Agreement is pursuant to Oregon Revised Statutes (“ORS”) 190.003 *<and Revised Code of Washington (“RCW”) 39.34.030 if a Washington State agency>*,

This Agreement may refer to the City and RPA individually as a “Party” or jointly as the “Parties.”

This Agreement shall be perpetual and remain in effect unless otherwise terminated per the terms of this Agreement.

RPA Contact:

City of Portland Contact:

TEL: () -

TEL: (503) -

E-MAIL:

E MAIL:

RECITALS

WHEREAS, the City has acquired a law enforcement Records Management System (“System”) to maintain a multi-agency, multi-jurisdictional set of law enforcement applications and associated databases; and

WHEREAS, the City and the RPA are both signatories to the Intergovernmental Agreement for the User Board of the Regional Justice Information Network (RegJIN); and

WHEREAS, the RPA is an Entry RPA as defined in the Intergovernmental Agreement for the User Board of the RegJIN and herein; and

WHEREAS, the RPA desires to fully use the System; and

WHEREAS, the City and the RPA desire to enter into this Agreement and being fully advised; and

NOW THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, it is agreed as follows:

1. DEFINITIONS:

The following is a definition of terms used herein:

- A. “Access” means the authority granted by the City to the RPA’s Authorized Users to review or receive information from the System.
- B. “Agreement” means this Participating Intergovernmental Agreement and all the Terms and Conditions, including all the documents referenced in the Order of

Precedence.

- C. "Amendment" means a written document required to be signed by both Parties when in any way altering the Terms and Conditions or provisions of the Agreement or changing, adding to, or substantially altering a Statement of Work.
- D. "Authorized Use" means functions and capabilities that a User is assigned and able to perform based on User ID and Password, as established by a System Administrator.
- E. "Authorized System User" means any User that has passed the authentication process of the System and is thereby authorized to Use the System's functions and components based on the permissions established by that User's credentials (User ID and password, fingerprints, etc.).
- F. "City Confidential Information" means any information, in any form or media, including verbal discussions, whether or not marked or identified by the City, which is reasonably described by one or more of the following categories of information: (1) financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Identity Theft Protection Act of 2007; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.501(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) Exempt per ORS 192.501 and/or ORS 192.502 (6) attorney/client privileged communications, (7) exempt per federal laws (including but not limited to Copyright, HIPAA) and (8) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems developed for the benefit of the City including without limitation, data and information systems, any software code and related materials licensed or provided to the City by third parties; processes; applications; codes, modifications and enhancements thereto; and any work products produced for the City.
- G. "Confidential Information" means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential or proprietary at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving party; is already known to the receiving party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Contract or any other agreement between the Parties or of any applicable protective or similar order, in the receiving party's possession without any obligation restricting disclosure; is independently developed by the receiving party without breach of this Contract; or is explicitly approved for release by written authorization of the disclosing party.
- H. "Criminal History Record Information" means information collected by criminal justice agencies and stored or available through the System on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges and any dispositions arising therefrom, including, but not limited to sentencing, correctional supervision, and release.
- I. "Criminal Justice Information" means information collected by criminal justice agencies that is needed for their legally authorized and required functions. This includes Criminal History Record Information and investigative and intelligence

information. It does not include agency personnel or administrative records used for agency operations or management.

- J. "Days" shall mean calendar days, including weekdays, weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later, unless otherwise specified by the Agreement.
- K. "Dissemination (Disseminate)" means the transmission of information, whether in writing, or electronically, to anyone outside the RPA that maintains the information, except reports to an authorized repository.
- L. "Documentation" means User manuals, and other written and electronic materials in any form that describe the features or functions of the System, including but not limited to published specifications, technical manuals, training manuals, and operating instructions.
- M. "Entry RPA" means a law enforcement agency that has signed the User Board IGA and this Participant IGA with the City. Entry RPA, the City and their Authorized Users enter data into the System.
- N. "Equipment" means any hardware, machinery, device, tool, computer, computer components, computer system or other high-technology equipment, including add-ons, or peripherals of tangible form together with the necessary supplies for upkeep and maintenance, and other apparatus necessary for the proper execution, installation and acceptable completion of the System.
- O. "Error" means any defect, problem, condition, bug, or other partial or complete inability of the System to operate in accordance with the applicable Specifications and Documentation.
- P. "Interface" means a point of interaction between System components or the device or code which enables such interaction; applicable to both Equipment and Software.
- Q. "Cost Allocation Formula" means the Plan, adopted by the City based on recommendations by the User Board that apportions capital, operation, maintenance, repair and equipment replacement costs and use of grant funding among the Entry RPAs and Inquiry Only RPAs. The Cost Allocation Formula may be amended as provided for in the User Board IGA.
- R. "Inquiry Only RPA" means a law enforcement agency that has signed a Participant IGA with the City, providing Access to view System data but does not input any agency data into the System.
- S. "Intelligence and Investigative Information" means information compiled in an effort to anticipate, prevent, or monitor possible criminal activity, or compiled in a course of investigation of known or suspected crimes.
- T. "Level 1 Error" means a "Level 1 Error" as defined in the System maintenance and support agreement between the City and the System Contractor and at least 75 Users are impacted in the same manner as defined in the System maintenance and support agreement for a level 1 error.
- U. "Level 2 Error" means a "Level 2 Error" as defined in the System maintenance and support agreement between the City and the System Contractor and at least 75 Users are impacted in the same manner as defined in the System maintenance and

support agreement for a level 2 error.

- V. "Level 3 Error" means a "Level 3 Error" as defined in the System maintenance and support agreement between the City and the System Contractor.
- W. "Level 4 Error" means a "Level 4 Error" as defined in the System maintenance and support agreement between the City and the System Contractor
- X. "Material Breach" means any breach of this Contract that (a) causes or may cause substantial harm to the non-breaching party; or (b) substantially deprives the non-breaching party of the benefit it reasonably expected under this Contract.
- Y. "Mobile Data Computer (MDC)" means commercial grade mobile computers operating in a law enforcement vehicle or otherwise not connected via a local or wide area network that are capable of Accessing System servers via a CJIS compliant connection.
- Z. "Operation and Maintenance Cost" shall mean the budgeted amount required for the operation, maintenance, and support of the System which may include, but not be limited to, the direct cost for: license fees, vendor support costs, software and hardware upgrade and/or replacement costs, administrative support of the User Board, maintenance, personnel, direct costs, facilities use and rental costs, and training for the upcoming year.
- AA. "Personal Computer (PC)" means commercial grade desk top computers that are capable of accessing System servers via a CJIS compliant connection.
- BB. "Person" means an individual of any age, concerning whom Criminal History Record Information is contained in, or accessible through the System.
- CC. "RPA Asset" shall mean hardware, software, equipment, real property and fixtures, owned or leased by the RPA.
- DD. "Specifications" shall mean the specifications contained in the contract between the City and the Contractor for the System governing its implementation and use by the City, Entry RPA, and Inquiry Only RPA.
- EE. "System" is the law enforcement records management system acquired and implemented by the City of Portland for use by the Portland Police Bureau and the RPA.
- FF. "System Administrator" shall mean a specially trained Authorized User that is authorized to perform System administrative functions.
- GG. "System Manager" is the individual with designated named backups appointed by the City of Portland to manage and operate the System on a daily basis.
- HH. "Use" means the City authorized Access given to RPA to assign Users, permission levels, enter data, and receive information from the System.
- II. "User" shall mean any person employed by or working on behalf of the City or an RPA, the City's and RPA's Bureaus and Divisions, Officers, Directors, and any person or entity authorized by the City and/or RPA to provide it with Services requiring use of the System, and to use the City's or an RPA's resources in whole or in part, in the course of assisting the City or an RPA.

- JJ. "User Board" shall mean the advisory body for the System that operates under the Intergovernmental Agreement for the User Board of the Regional Justice Information System Network (RegJIN).
- KK. "User Fees" are fees set by the City for RPA Access and use of the System and as agreed to between the City and a RPA in a Participating IGA. User Fees shall be updated annually based on the Cost Allocation Formula and do not require an Amendment.
- LL. "Withdrawal Plan" is a plan outlined in the User Board IGA, providing the manner of complete withdrawal of the RPA from this Agreement or for the RPA to change to an Inquiry Only RPA.

2. ORDER OF PRECEDENCE:

In the event there is a conflict between the terms and conditions of one portion of this Agreement with another portion of this Agreement, the conflict will be resolved by designating which portion of the Agreement documents takes precedence over the other for purposes of interpretation, except where a clear statement of precedence other than that set forth in this section is included in the document. In this Agreement the order of precedence shall be:

Exhibit A – User Fees (2014)

Exhibit B – Use Policy for LInX Northwest

Exhibit C – System Procedures and Use Policy

Exhibit D – Equipment and Security Requirements

Exhibit E – Placeholder – as needed for additional work

Exhibits C and D are available on the System's website at:

<http://www.portlandonline.com/regjinrc/index.cfm?&c=51409>. Exhibits C and D will be revised as necessary to conform to updated requirements and procedures.

3. STATEMENT OF PURPOSE:

The purpose of this Agreement is to define the terms and conditions under which the System will be Accessed and Used by the RPA.

4. SYSTEM ACCESS:

The City will contract with the System Contractor and will own all licenses to Access the System. The City will provide the RPA's Users Access to the System.

5. PROVIDED SERVICES:

- A. Enable Access via Equipment, including PCs, MDC, and other hand held devices for Authorized Use of the System by RPA Users.
- B. Provide the capability through the System to generate Oregon National Incident Reporting System (O-NIBRS) data for the RPA and to upload the O-NIBRS data to the State of Oregon in the proper format. *<replace with Washington NIBRS, or Oregon NIBRS depending on RPA's requirements>*

- C. Provide procedures, instructions and other documents to the RPA regarding the methods available and minimum requirements for RPA PCs and MDCs to gain access to the System.
- D. Provide instructions, documents, and arrange for the necessary training to certify one or more RPA System Administrators to perform limited administrative functions such as adding and removing Users from the System, establishing User IDs and passwords, setting up each User's Authorized Uses, and resetting passwords. RPA System Administrators will be trained as required, but not more than five (5) RPA employees will be trained at any one time.
- E. Support the RPA's System Administrators in the performance of their System related administrative functions.
- F. Provide training materials, training mentors and access to the System's training environment to enable RPA trainers to provide System training and instruction to RPA Users.
- G. Maintain and administer the System according to City of Portland Information Technology policies and procedures including backup and restore, operating system patches, and System version upgrades as required and certified by the System Contractor.
- H. Monitor, audit, and trouble-shoot the upload of appropriate information from the System to the Oregon Law Enforcement Data System (LEDS) *<W-ACCESS for Washington State agencies>*, NCIC, and other interfaced crime and public safety databases and systems including but not limited to LInX Northwest.
- I. Ensure that audit logs are maintained in the System in accordance with CJIS requirements.
- J. Provide trouble reporting, trouble diagnostics and phone support on a 24-hour, 365 days per year basis.
- K. Acknowledge trouble report calls within 30 minutes of receipt.
- L. Initiate Level 1 error and Level 2 resolution supports within 2 hours or as specified within City labor agreements, whichever is greater. Verified System Level 1 and Level 2 errors will be resolved as specified in the City's System's maintenance and support agreement with the System Contractor.
- M. Initiate Level 3 and Level 4 Error resolution Monday thru Fridays from 0800-1700, excluding recognized City of Portland Holidays.

6. RPA RESPONSIBILITY

- A. Compliance with Applicable Law. RPA warrants it has complied and shall comply with all applicable law, ordinances, orders, decrees, labor standards and regulations of its domicile and wherever performance occurs in connection with the execution, delivery, and performance of this Agreement.
- B. The RPA acknowledges and agrees that RPA employees will only use the System for Authorized Uses. Permission to use the information available in or through the System other than for Authorized Use shall be obtained in writing from the City prior to any such use.

- C. The RPA acknowledges and agrees that RPA employees and subcontractors will only Access the System and information available in or through the System as authorized in this Agreement. Permission to Access the System or information available in or through the System other than as authorized in this Agreement shall be obtained in writing from the City prior to any such Access.
- D. The RPA acknowledges and agrees that the RPA, RPA employees, and RPA subcontractors will not modify through computer programming or other techniques the functions, capabilities, and operations of the System unless written authorization is provided by the System Manager prior to performing such modifications.
- E. The RPA acknowledges and agrees that; pursuant to the directions of the Oregon State Police <Washington State Patrol for Washington State Agencies> and Part IV of the National Crime Information Center (NCIC) Computerized Criminal History, Program Concepts and Policy; the City shall establish policy and exercise management control over all operations of the System. The System Procedures and Use Policy is attached as Exhibit C.
- F. RPA Administrators shall be responsible for creating User IDs, passwords, and establishing the Authorized Uses of the System for RPA Users within the constraints of the policies and procedures established by the City for such Users.
- G. RPA is responsible for providing its own Equipment, including PCs, MDCs, printers, and other RPA located devices required by RPA Users of the System.
- H. The RPA acknowledges and agrees that all RPA Equipment such as PCs and MDCs with Access to the System will be configured to meet the System's minimum requirements as specified in Exhibit D: Equipment and Security Requirements.
- I. The RPA acknowledges and agrees that all RPA Users shall meet the Personnel Security requirements specified in Exhibit D: Equipment and Security Requirements.
- J. RPA is responsible for maintaining RPA PCs and MDCs according to City established requirements as specified in Exhibit D: Equipment and Security Requirements for the System.
- K. RPA is responsible for installing, configuring and providing network access to devices located in RPA facilities and vehicles including, but not limited to, printers, scanners, and image capture devices.
- L. RPA is responsible for providing secure network Access that 1) meets CJIS security requirements and 2) enables RPA PCs to reach the System's network demarcation points.
- M. RPA is responsible for providing network connectivity that meets CJIS security policies and for providing all network communication devices and Equipment between RPA MDCs and the System.
- N. RPA is responsible for ensuring that all RPA network infrastructure and workstations with Access to the System comply with the most current CJIS security policy including, but not limited to, the physical security of workstations and MDCs that are able to Access the System, access control, identification and authentication, information flow enforcement, and system and information integrity. RPA may contact the City to determine how to obtain the most current version of the CJIS security policy document. The RPA is responsible for curing any problems uncovered

as a result of an FBI audit. The City reserves the right to verify RPA's compliance with CJIS policies.

- O. RPA is responsible for correcting any O-NIBRS data identified by the System or by the State. *<replace with Washington equivalent language for Washington Agencies>*
- P. RPA is responsible for providing the City with the most current contact information for the RPA's security personnel and any changes thereof within 7 days of the change.
- Q. RPA is responsible for ensuring that all RPA Users that are granted Authorized Use of the System comply with the appropriate CJIS security requirements.
- R. RPA is responsible for checking the accuracy of, and generating standard O-NIBRS data for RPA and for the upload of the O-NIBRS information to the State of Oregon through the System. *<replace with Washington NIBRS, or Oregon NIBRS depending on RPA's requirements>*
- S. RPA acknowledges and agrees that data entered into the System by RPA Users shall conform to the standards and procedures established for the System as described in Exhibit C, System Procedures and Use Policy. The City shall notify the RPA in writing if data entered by RPA Users is found to be nonconforming to the established standards and procedures. The RPA shall, at its option, 1) Correct such data using RPA resources as soon as practicable, but not to exceed 30 days, or 2) request assistance by the City and reimburse the City for any costs associated with the City's removing or performing remedial actions on RPA data required to bring the data into conformance with established standards and procedures.

7. LInX NORTHWEST:

- A. The RPA acknowledges and agrees to abide by all use policies set forth for participation in the NCIS Law Enforcement Information Exchange (LInX Northwest) system as stipulated in Exhibit B: Use Policy for LInX Northwest.
- B. The RPA authorizes the City to provide the RPA's public records category data that is contained in the RegJIN RMS to LInX Northwest for Access and authorized use by LInX Northwest users.

8. CONFIDENTIALITY:

- A. Maintenance of Confidentiality. The City and RPA shall treat as confidential any Confidential information that has been made known or available to them or that an Entry RPA has received, learned, heard or observed; or to which an RPA has had access. The City and RPA shall use Confidential information exclusively for the City or RPA's benefit and in furtherance of this Agreement. Except as may be expressly authorized in writing by the City or RPA, in no event shall the City or RPA publish, use, discuss or cause or permit to be disclosed to any other person such Confidential information. The City and RPA shall (1) limit disclosure of the Confidential information to those directors, officers, employees and agents of the City or RPA who need to know the Confidential information, (2) exercise reasonable care with respect to the Confidential Information, at least to the same degree of care as the City or RPA employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City or RPA who provided the information, upon its request, all materials containing Confidential Information in whatever form, that are in the City or RPA's possession or custody or under its control. The City and RPA are expressly restricted from and shall not use

Confidential intellectual property of the City or providing RPA without the City or that RPA's prior written consent.

- B. The RPA acknowledge that each RPA is subject to the Oregon or Washington Public Records Acts, as applicable, and Federal law. Third persons may claim that the Confidential Information may be, by virtue of its possession by the City or a RPA, a public record and subject to disclosure. RPA receiving a public records request agrees, consistent with its state public records law, not to disclose any information that includes a written request for confidentiality and as described above and specifically identifies the information to be treated as Confidential. A RPA's commitments to maintain information confidential under this Agreement are all subject to the constraints of Oregon or Washington and federal laws. Within the limits and discretion allowed by those laws, the City and RPA will maintain the confidentiality of information.
- C. The RPA acknowledge and agree that the City and each RPA owns its own data in the System. RMS data can only be disclosed by the agency that entered it. In the event of a public record request for System data which belongs to the City or another RPA, the City or receiving RPA shall inform both the requestor and the appropriate RPA within two business days that it is not the custodian of record for the requested data and identify the RPA that may be able to comply with the public record request.
- D. The RPA acknowledge that unauthorized disclosure of Confidential Information will result in irreparable harm to the City or providing RPA. In the event of a breach or threatened breach of this Agreement, the City or affected RPA may obtain equitable relief prohibiting the breach, in addition to any other appropriate legal or equitable relief.

9. LIMITS ON DISSEMINATION:

The RPA's Dissemination of Criminal Justice Information available in or through the RegJIN RMS shall follow current Criminal Justice Information policies and procedures and/or other applicable State and/or Federal Laws.

10. INFORMATION CONTROL AND RESPONSIBILITY

Additions, modifications, and deletions of information stored in the RegJIN RMS shall be restricted to specifically authorized RPA Users and devices. The City will provide the RPA with a list of RPA sworn personnel, Users and devices that are permitted Access to the System on an annual basis. The RPA shall verify the list and report any discrepancies within 60 days. The responsible Party shall update the list of authorized Users and devices in a timely manner.

11. EQUITABLE REMEDIES

The RPA acknowledges that unauthorized disclosure of City Confidential Information or misuse of a City computer system or network will result in irreparable harm to the City. In the event of a breach or threatened breach of this Contract, the City may obtain equitable relief prohibiting the breach, in addition to any other appropriate legal or equitable relief.

12. SECURITY

- A. Physical Security – the RPA shall be responsible for maintaining the physical

security of all devices that are authorized to Access the System, as well as any printed output or System Documentation which might permit unauthorized Access to, or use of the System from within the RPA.

- B. On-Line Security – The System contains procedures and tools to ensure that only authorized RPA Users and RPA devices can Access the information available in or through the System. RPA Users will be required to enter System User IDs and passwords before gaining Access to the System. System functions and System data. The RPA is responsible for issuing individual System User IDs and passwords to RPA Users. The RPA acknowledges and agrees that RPA employees will not share System User IDs and passwords.
- C. Personnel Security – Any individuals that are provided Access to the System by the RPA through the issuing of System IDs and passwords shall undergo the following security checks:
 - 1) A personal background investigation equivalent to a background investigation that would enable them to access the RPA's own confidential information.
 - 2) Be fingerprinted and their identification and personal history verified through a check of the System's master name index, Oregon LEDS *<or W-ACCESS whichever is appropriate for the User's agency>*, the National Crime Information Center, and the FBI's Criminal Identification files.
 - 3) Obtain appropriate certifications from the Oregon State Police *<or Washington State Patrol depending on the state in which the User is employed>* for any LEDS, *<W-ACCESS for Washington State Agencies>*, and NCIC transactions for which the User is authorized to perform within the System.
- D. The RPA acknowledges and agrees to deny Access and to deny issuing a System User ID and password if, upon investigation, any RPA employee requesting a System User ID and password is found to have provided intentionally false information in their personal statements, or who is shown to have been arrested and convicted for committing an offense which, under Oregon or Washington State law, can result in a sentence to a state penal institution for adults, or who is shown to have been arrested and convicted of committing a Class A or B felony as a juvenile in the States of Oregon or Washington within the past five (5) years.
- E. The RPA acknowledges and agrees to immediately deactivate the System USER ID and password of any employee or contractor who is no longer an RPA employee, an RPA contractor, or who no longer requires Access to the System.
- F. RPA shall provide immediate notification to the System Manager of any security breach that affects the System or any other City systems. RPA shall provide notification to the System Manager of any incident relating to System integrity such as a computer virus.
- G. Failure to comply with the Security and Access specifications contained in the Agreement and Exhibit D: Equipment and Security Requirements may, at the sole discretion of the City, result in the suspension of the RPA and the RPA Users' Access to the System until such failures are corrected to the City's satisfaction.

13. **PROPRIETARY RIGHTS:** All trademarks, service marks, patents, copyrights, trade secrets,

and other proprietary rights in or related to each Party are and will remain the exclusive property of that Party.

14. PAYMENT

- A. RPA acknowledges and agrees to pay the City the amount set out in Exhibit A: User Fees, which shall conform to the Entry RPA cost allocations contained in the Cost Allocation Formula in the User Board IGA in effect at the time of billing.
- B. Additional services and/or System functions that are not routinely provided to other Entry RPAs under this Agreement shall be added via Amendment and billed as a separate line item identified in Exhibit A.
- C. Exhibit A, User Fees, shall be adjusted periodically to conform to changes in the Cost Allocation Formula or in the services and/or System functions provided by the City to the RPA.
- D. The City will invoice the RPA quarterly in conformance with Exhibit A: User Fees.
- E. The RPA shall submit payment within 30 days of receipt of the invoice from the City.
- F. Failure to pay the City as due will suspend the RPA's access to the System until fully paid up.
- G. In order to conform to the Cost Allocation Formula in the User Board IGA and to enable the invoice preparation per Exhibit A, RPA shall provide the City with the RPA's number of authorized sworn personnel plus any correctional deputies that will Access the System by November 1 of the calendar year before the year during which the invoices apply.

- 15. CITY AUDITS:** The City, either directly or through a designated representative, may conduct financial and performance audits. City audits shall be conducted in accordance with generally accepted auditing standards. RPA shall provide the City's internal auditor or external auditor, and their designees with a copy of all reports, including any management letters issued as a result of the specified audits.

Access to Records – The City internal auditor or City external auditor, and their designees, shall be given the right, and the necessary access, to review the work papers of RPA audits if the City deems it necessary. Copies of applicable records shall be made available upon request at no cost to the City.

16. DURATION, WITHDRAWAL AND TERMINATION

- A. This Agreement is perpetual and shall continue from year to year unless otherwise terminated.
- B. This Agreement may be terminated by either Party by the provision of a 90-day written notice of termination to the other Party. Termination notices must be provided in writing and sent by either certified US mail, return receipt requested, or by personal delivery.
- C. The effective date of termination shall be on January 1 of the year following the year during which the 90-day written notice expired.
- D. Upon the effective date of termination, the RPA may remove its RPA assets from the

System including any System data belonging to the RPA. All costs associated with the reasonable removal of the RPA's assets including System data owned by the RPA will be the responsibility of the RPA, unless termination notice is provided by the City in which case the City will either keep the data or the RPA will be responsible for all costs associated with the reasonable removal of the RPA's assets including System data owned by the RPA.

- E. A minimum of 180 days shall be allocated for the System Manager to withdraw an RPA's assets including System data owned by the RPA from the System after the date upon which the termination becomes effective. The RPA may, at its option, continue to Access the System during this period.
- F. In the event of termination, RPA shall pay the City for work performed in accordance with the Agreement prior to the effective date of termination.

17. FORCE MAJEURE

- A. In the event that either Party is unable to perform any of its obligations under this Agreement (or in the event of loss of Use) due to natural disaster, actions or decrees of governmental bodies or communications line failure not the fault of the affected Party (hereinafter referred to as a "Force Majeure Event"), the Party who has been so affected immediately shall give notice to the other Party and shall do everything possible to resume performance.
- B. If the period of nonperformance exceeds fifteen (15) Calendar Days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement

18. VIOLATIONS OF THE AGREEMENT

In the event of violation of the provisions of this Agreement, or violation of the security policy by the RPA, RPA employees, and/or RPA contractors, the City shall have the authority to immediately restrict or prohibit access to the System by RPA Users, RPA PCs, RPA MDCs, and other RPA devices until resolution of the problem to the satisfaction of the City. The RPA shall be notified in writing of such action, given 30 days in which to cure the violation before access is restricted or prohibited, and there shall be no charge for Access during any time that Access is prohibited.

- 19. **ROLLING ESTOPPEL:** Unless otherwise notified by the RPA, it shall be understood that the City shall have met all its obligations under the Agreement. The City will be conclusively deemed to have fulfilled its obligations, unless it receives a deficiency report from the RPA by the fifteenth (15th) day of the month following the month of the alleged deficiency and the RPA identifies the specific deficiency in the City's fulfillment of its obligations in that report. Deficiencies must be described in terms of how they have affected a specific performance requirement of City.

- 20. **DISPUTE RESOLUTION:** The RPA shall cooperate with the City to assure that all claims and controversies which arise under this Agreement and which might affect the quality of such Services will be resolved as expeditiously as possible in accordance with the following resolution procedure:

- A. Any dispute between the City and RPA under this Agreement shall be resolved, if possible by the System Manager or their designee on behalf of the City and _____ on behalf of the RPA.

- B. If the System Manager or the System Manager's designee and RPA are unable to resolve any dispute within three (3) business days after notice of such dispute is given by either Party to the other, the matter shall be submitted to Bureau of Technology Services Chief Technology Officer on behalf of the City and _____ on behalf of the RPA for resolution, if possible.
- C. Should any dispute arise between the Parties concerning this Agreement that is not resolved by mutual agreement above, it is agreed that such dispute will be submitted to mandatory mediated negotiation prior to any Party's commencing arbitration or litigation. In such an event, the Parties to this Agreement agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the Parties.
- D. Should an equitable solution not result from the foregoing, the City and Contractor shall be free to pursue other remedies allowed under this Agreement.
- E. Unless ordered by the City to suspend Access, the RPA shall proceed with Use without any interruption or delay during the pendency of any of the foregoing dispute resolution. During the pendency of any of the foregoing dispute resolution procedures, the RPA shall continue to make all payments that are not in dispute, in accordance with the provisions of the Agreement.

21. NOTICE

Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following address or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving Party hereafter shall specify in writing:

If to the Provider:	RegJIN System Manager Portland Police Bureau 1111 SW Second Avenue, Room 1156 Portland, Oregon 97204-3232
---------------------	--

If to the RPA:	Agency Contact Info xxxxxx xxxxxx xxxxxx
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22. AMENDMENTS

Except as a section or subsection may otherwise specifically provide, limit, or prohibit, the City and RPA may amend this Agreement at any time only by written amendment executed by the City and the RPA.

Any changes to the provisions of this Agreement shall be in the form of an Amendment. No provision of this Agreement may be amended unless such Amendment is approved as to form by the City Attorney and executed in writing by authorized representatives of the Parties. If the requirements for Amendment of this Agreement as described in this section are not satisfied in full, then such Amendments automatically will be deemed null, void, invalid, non-binding, and of no legal force or effect.

23. INTERPRETATION:

The terms and conditions of this Agreement shall be liberally construed in accordance with the general purposes of this Agreement and according to Oregon law. **This Agreement shall be construed according to the laws of the State of Oregon without reference to its conflict of law provisions. Any litigation between the City and RPA arising under this Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.**

24. INDEMNIFICATION:

To the extent permitted by the Constitutions and laws of Oregon *<and Washington>*, the RPA and the City shall hold each other harmless and indemnify each other for the negligent acts, actions or omissions to act of their respective entity's, commissioners, officers, employees, and agents in the performance of their respective responsibilities and duties under this Agreement. Notwithstanding the foregoing, neither Party shall in any way be liable to hold harmless or indemnify the other Party for any costs or claims arising directly, or indirectly, out of any System related activities in which they are not participating.

25. ASSIGNMENT:

The rights and obligations of each party under this Agreement may not be assigned in whole or in part. Any attempted transfer shall be null and void, of no force or effect. Attempted transfer of this Agreement shall be considered Material Breach of contract.

26. WAIVER:

No waiver or any breach of Agreement shall be held to be a waiver of any other or subsequent breach of this Agreement.

27. REMEDIES:

The remedies provided in this Agreement are cumulative, and may be exercised concurrently or separately. The exercise of any one remedy shall not constitute an election of one remedy to the exclusion of any other.

28. SURVIVAL:

All obligations relating to confidentiality; indemnification; publicity; representations and warranties; proprietary rights as stated in this Agreement shall survive the termination or expiration of this Agreement.

29. NO THIRD PARTY BENEFICIARIES:

The Parties expressly agreed that nothing contained in the Agreement shall create any legal right or inure to the benefit of any third party.

This Agreement is entered into for the benefit of the City and RPA. Except as set forth herein, nothing in this Agreement shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof, or to authorize anyone not a party to this Agreement to maintain a suit for breach of contract, personal injuries, property damage, or

any other relief in law or equity in connection with this Agreement.

30. SEVERABILITY:

The terms of this Agreement are severable and a determination by an appropriate body having jurisdiction over the subject matter of this Agreement that results in the invalidity of any part, shall not affect the remainder of this Agreement.

31. INTEGRATION:

This Agreement and the User Board IGA contains the entire Agreement between RPA and the City and supersedes all prior written or oral discussions or agreements.

The City: City of Portland	RPA:
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

Exhibit A: User Fees
November 1, 2014

RPA agrees to pay the City of Portland the following annual User Fees for System Access and Use. RPA shall be billed quarterly. Partial year amounts shall be pro-rated. The User Fees conform to the Entry RPA cost allocations contained in the Cost Allocation Formula in the User Board IGA in effect at the time of billing.

RegJIN Access and Use \$XX,XXX.XX

In addition to the annual User Fees, the following additional services will be provided by the City to the RPA at the following itemized annual rates, which shall be billed quarterly:

Additional Services Rates:

- 1. Service A \$XX,XXX.XX**
- 2. Service B \$XX,XXX.XX**
- 3. Service C \$XX,XXX.XX**

Exhibit B: Use Policy for LInX Northwest

November 1, 2014

The Law Enforcement Information Exchange (LInX Northwest) is a law enforcement information sharing partnership involving local, state, and federal law enforcement agencies in the Northwest. LInX has been developed to improve public safety, solve crime, and prevent terrorism. LInX is a partnership built on trust and to maintain that trust the following rules are upheld by all LInX agencies. Violations of this policy may result in sanctions against an individual User or his/her Regional Partner Agency.

1. Each Regional Partner Agency shall contribute information to LInX Northwest, once a connection is made, and agrees to permit the Access, dissemination, and/or Use of such information by every other partner agency in LInX Northwest. The contributing party has the sole responsibility and accountability for ensuring that it is not constrained from permitting this by any laws, regulations, policies, and procedures applicable to the submitting party.
2. A user may only access LInX when he/she has a legitimate, official law enforcement purpose, after receiving LInX training.
3. Information in the system shall not be disseminated outside of an accessing party without first obtaining express permission of each party that contributed the information in question. LInX users who wish to use information in LInX for the preparation of judicial process such as affidavits, warrants, subpoenas, etc... agree to not print and use information from LInX, but to contact the originating agency who will FAX or email a copy of the original report to the requestor for court or other official uses.
4. Printing copies from LInX is highly restricted. Users may only retain printed copies temporarily and shall not place printed copies in an official file or submit them to a court. Printed copies must be destroyed, shredded, or burned promptly. Printed copies may not be made for members of non-participating agencies.
5. Any requests for reports or data in LInX records from anyone other than a party to this Exhibit will be directed to the contributing party. Participating agencies in LInX agree to not disclose another agency's reports or information to a third party. Even when an agency receives an official request for disclosure, LInX agencies agree to refer such requests to the originating agency of the report for action.
6. Each Agency retains sole ownership of, sole responsibility for, and exclusive control over the content of the information that it contributes to LInX, and it may, at will, at any time update, correct, or delete the information that it contributes to LInX.
7. Regional Partner Agencies will have access to LInX via a secure Internet connection. RPA are responsible for providing and maintaining their own Internet connectivity to LInX.
8. LInX will maintain an audit capability that will log the date, time, subject, and originating account of all user queries. The LInX Governance Board will maintain these audit logs for at least five years.



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Sara Singer, Deputy City Manager

DATE: 01/27/2014

SUBJECT: Consideration of **Resolution No. 5181-14** Authorizing the Extension of the Term of the Cable Television Services Agreement with Comcast of Oregon II, Inc.

ISSUE BEFORE THE COUNCIL:

The Metropolitan Communications Commission (MACC) Board of Commissioners unanimously passed a resolution recommending its fifteen member jurisdictions extend the current Comcast Franchise terms until December 31, 2014, in order to provide time to complete the ongoing process to renew the Comcast Franchise.

RECOMMENDATION:

Staff respectfully recommends approving Resolution 5181-14 to extend the term of the cable television services agreement with Comcast of Oregon II, Inc. to enable the Metropolitan Area Communications Commission to complete the formal renewal process.

EXECUTIVE SUMMARY:

Tualatin is a member of MACC, an intergovernmental agency which administers and regulates cable television franchises for fourteen cities and Washington County. MACC currently administers Comcast's cable television franchises on behalf of its members. MACC staff will make a presentation to Council at the January 27 Council Work Session regarding the details of the negotiations with Comcast for renewal of the franchise.

Attachments: [Resolution No. 5181-14](#)

RESOLUTION NO. 5181-14

A RESOLUTION EXTENDING THE TERM OF THE CABLE TELEVISION SERVICES AGREEMENT WITH COMCAST OF OREGON II, INC. TO ENABLE THE METROPOLITAN AREA COMMUNICATIONS COMMISSION TO COMPLETE THE FORMAL RENEWAL PROCESS

WHEREAS, the Metropolitan Area Communications Commission, hereinafter "MACC," is an intergovernmental cooperation commission formed by Intergovernmental Agreement ("IGA") under ORS Chapter 190, with Washington County and the cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard, Tualatin and West Linn as members ("Member Jurisdictions"); and

WHEREAS, the IGA contemplates that MACC and its Member Jurisdictions may grant one or more nonexclusive cable franchise agreements to construct, operate, and maintain a cable service system within the combined boundaries of the Member Jurisdictions; and

WHEREAS, on February 1, 1999, MACC and its Member Jurisdictions at that time, granted nonexclusive cable franchise agreements ("Comcast Franchises") which are now held by Comcast of Oregon II, Inc. ("Comcast"); and

WHEREAS, the Comcast Franchises will expire on January 31, 2014; and

WHEREAS, on March 9, 2011, Comcast requested that the Comcast Franchises be renewed; and

WHEREAS, the IGA authorizes MACC to process Comcast's renewal request on behalf of the Member Jurisdictions, including informal negotiations as set forth in 47 U.S.C. 546 (h) and the formal renewal process set forth in 47 U.S.C. 546 (a)-(g); and

WHEREAS, in its letter of April 5, 2011, MACC properly responded to Comcast's request for renewal of the Comcast Franchises and thereafter commenced the franchise renewal process set forth in federal law at 47 U.S.C. 546; and

WHEREAS, on January 24, 2013, MACC directed staff to begin informal franchise renewal negotiations with Comcast, as set forth in 47 U.S.C. 546 (h), which informal negotiations began in February 2013; and

WHEREAS, on June 5, 2013, the Commission authorized the MACC Executive Committee to invoke the formal renewal process set forth in 47 U.S.C. 546 (a)-(g), if informal renewal negotiations were not successful; and

WHEREAS, on November 22, 2013, the Executive Committee found that further informal renewal negotiations have no reasonable prospect of success and adopted

Resolution 2013-06 directing MACC staff to begin the formal renewal process set forth in 47 U.S.C. 546 (a)-(g); and

WHEREAS, on December 11, 2013, the MACC Commission adopted Resolution 2013-08, ratifying Resolution 2013-06 and recommending that Member Jurisdictions extend the Comcast Franchises to allow MACC to complete the formal renewal process; and

WHEREAS, Comcast has agreed to execute extension agreements with each Member Jurisdiction; and

WHEREAS, the City of Tualatin finds that it is in the best interest of the City and its residents to process Comcast's request for renewal of the Comcast Franchise via the formal renewal process set forth in 47 U.S.C. 546 (a)-(g), and to extend the term of the Comcast Franchise to allow MACC to complete the formal renewal process.

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

Section 1. Comcast's request for renewal of the Comcast Franchise will be processed through the formal renewal process set forth in 47 U.S.C. 546 (a)-(g).

Section 2. The Mayor is hereby authorized to execute the extension agreement with Comcast substantially in the form attached hereto as Exhibit A to allow MACC to complete the formal renewal process set forth in 47 U.S.C. 546 (a)-(g).

Section 3. This resolution shall be effective from and after its adoption.

Adopted by the City Council this 27th Day of January, 2014.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO FORM

ATTEST:

BY _____
City Attorney

BY _____
City Recorder



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Aquilla Hurd-Ravich, Planning Manager
Alice Cannon, Assistant City Manager and Clare Fuchs, Senior Planner

DATE: 01/27/2014

SUBJECT: Request for Review of the Architectural Review Board Decision Approving the Nyberg Rivers Shopping Center Project Located at 7455-7925 SW Nyberg Street (AR-13-07)

ISSUE BEFORE THE COUNCIL:

A hearing before the City Council for consideration of approval of the Architectural Review Application for Nyberg Rivers Shopping Center. This hearing comes before Council as a result of a Request for Review of the ARB Decision AR-13-07.

RECOMMENDATION:

Staff requests that City Council consider the staff report and Attachments 101-111.

EXECUTIVE SUMMARY:

This is a Quasi-judicial action that follows the Evidentiary Hearing procedures set forth in TDC 31.078. The Council can consider the reasons (issues) listed in the Request for Review as *de novo* and can accept new testimony and information.

AR-13-07 is an application by CenterCal to develop a shopping center known as Nyberg Rivers on a 31.91 acre property at 7455-7925 SW Nyberg Street. Attachment 101 includes the application materials.

CenterCal was granted Master Plan (MP-13-01) and Conditional Use Permit Approval (CUP-13-04) (Resolution No. 5163-13 and 5164-13). The Master Plan approved the general location of the streets and buildings. The master plan approval process also assured adherence to the Central Urban Renewal District Goals. The Conditional Use Permit before the City Council was consideration for the Nyberg Rivers Shopping Center to allow Retail Uses in a Commercial Office (CO) Planning District at 7055-7433 SW Nyberg Street (2S124A 2700) and outside storage and sales in the Central Commercial (CC) Planning District at 7437-7463 SW Nyberg (2S124A2100 and 2S124B2507). The Master Plan and Conditional Use Permit Record are herein incorporated by reference. To view a copy of the Master Plan or Conditional Use Permit record please come to the planning counter. A copy will be made available for use at the hearing.

The ARB conducted a noticed public hearing on December 3, 2013 and December 16, 2013, in conformance with the laws of the State of Oregon and the City of Tualatin. Copies of the application materials, staff reports, letters, documents, other materials submitted into the record at the hearing and Unofficial Minutes of the ARB meetings are included as Attachments 104-109. The ARB evaluated the architectural features of the application in accordance with the Community Design Standards of TDC Chapter 73 and the Council's decision on MP-13-01 and CUP-13-04 and decided approval with conditions AR-1 thru AR-14. The ARB Findings and Decision to Approve with Conditions the architectural features of the Nyberg Rivers project was issued on December 20, 2013 (Attachment 104, see pp. 3-6 for the ARB Conditions 1-8).

A Request for Review (Attachment 102) was filed on January 3, 2014 by Zian Limited Partnership, a neighboring shopping center.

Reason #1: Concerning the ability of the applicant to obtain ownership of the ODOT owned portion of the project.

Reason #2: Concerning the negative traffic impacts to appellant, Zian Properties.

The applicant has prepared responses to the Request for Review in Attachment 103.

To assist in Council review staff prepared Council Analysis and Findings that includes all findings from the December 3rd and 16th decisions and addresses the issues raised in the Request for Review. The Council Analysis, Findings, and Conditions of Approval are included as Attachment 109. Staff has prepared responses to the request for review included in the **Discussion** section below.

Staff determined that when considering the issues raised in the Request for Review of AR-13-07 and evaluating the information in the applicant's responses (Attachment 103), the ARB Decision to approve the architectural features of the Nyberg Rivers development is supported by findings and evidence and is correct.

Before approving the proposal, the City Council must find that the requirements of the Tualatin Development Code (TDC) Chapter 73, Community Design Standards and the conditions of approval of MP-13-01 and CUP-13-04 are met in respect to the issues.

The City Engineer's Public Facilities Decision on AR-13-07 was also appealed. That hearing will be held directly after this hearing.

As per ORS 227.178, the governing body shall take a final action within 120 days of the application being deemed complete. The 120th day is February 28, 2014.

DISCUSSION:

Below we set forth the findings to each reason for appeal and staff's response.

Reason #1 APPELLANT'S COMMENTS

Appellant Zian Properties states,

"The Decision is not in conformance with applicable law because it does not establish, based upon substantial evidence, that compliance with TDC 73.050(1)(a) is possible,

likely, and reasonably certain to succeed when Applicant does not own or control the property in the southeast portion of the site plan. Alternatively, Applicant has not demonstrated that it is feasible to develop the Property in compliance with applicable development standards as required by TDC 73.050(1.a) if this portion of the Property is removed. " (Attachment 102-Steven L. Pfeiffer Request for Review January 3, 2014, pg. 2)

Reason #1 STAFF RESPONSE

ODOT has consented to the construction of improvements to the current ODOT right-of-way. Because there will be no direct access to the surplus property from a public street, ODOT has stated this property may only be sold to one of the two abutting property owners both of which are including their properties in the Nyberg Rivers development. The City is permitted to impose reasonable conditions of approval for off-site improvements. The improvements are required to be constructed prior to issuance of a certificate of occupancy.

In addition ODOT provided an "ODOT Service Provider Response to Completeness Review," on May 17, 2013. This letter stated,

"ODOT supports the proposed westbound right turn lane on Nyberg Rd. as it will mitigate the traffic impacts from the development at the I-5/Nyberg Rd ramp intersection and recommends the City require this mitigation as a condition of approval. Much of the right of way needed for the right turn lane is under ODOT jurisdiction and we are currently working with the City, Washington County and the Applicant on the design of the right turn lane..."

Staff finds that this documentation along with the Letter of Authorization from ODOT constitutes enough control over the ODOT property to move forward with the process.

Reason #2 APPELLANT'S COMMENTS

Appellant Steven L. Pfeiffer for Zian Properties states,

"Zian is adversely affected by the Decision because Zian's property is located one-half mile west of the Project site and directly accesses two roads (SW Tualatin Sherwood Road and SW Boones Ferry Road) that will be heavily affected by traffic congestion associated with the Project." (Attachment 102, Steven L. Pfeiffer, Request for Review pg. 3).

Reason #2 STAFF RESPONSE

Traffic impacts are not within the purview of Architectural Review. Traffic impacts are within the purview of the Public Facilities Decision which is a separate hearing before the City Council.

STAFF CONCLUSION

Staff recommends that the City Council approve the Nyberg Rivers Shopping Center with conditions (see Attachment 104, pp. 3-6 for the ARB Conditions 1-8). City Council approval with conditions is supported by the findings of this report and on the supporting materials and information cited in the findings.

OUTCOMES OF DECISION:

Approval with conditions of the AR-13-07 Decision will result in the following:

- Approves the attached Council Analysis, Findings, and Conditions of Approval on the architectural features of AR-13-07.

ALTERNATIVES TO RECOMMENDATION:

The alternatives for the City Council are:

- Council approves the application with recommended conditions.
- Council can modify the recommended conditions.
- Council can deny the application.

FINANCIAL IMPLICATIONS:

The appellant submitted the required \$135.00 fee with the Request for Review of AR-13-07.

Attachments: 101 - Application
Exhibit A Number 1 Application - Completeness Correspondence
Exhibit A Number 2 Narrative Completeness Responses
Exhibit A Number 3 Conditions of Approval Responses
Exhibit A Number 4 Road Cross Sections
Exhibit A Number 5 Transportation Plan
Exhibit A Number 6 Transportation Outdoor Sales Exhibits
Exhibit A Number 7 Tree Preservation Plan
Exhibit B Number 1 McBale Signed Land Use Application
Exhibit B Number 2 Tuala NW Signed Land Use Application
Exhibit C Sign Posting Affidavit
Exhibit D Natural Resource Assessment
Exhibit E Clean Water Services Service Provider Letter
Exhibit F Neighborhood Meeting Materials
Exhibit G Property Legal Description
Exhibit H Vicinity Map
Exhibit I Solid Waste Plan
Exhibit J Tax Maps
Exhibit K 1,000 Foot Notice Addresses
Exhibit L Traffic Impact Assessment

Exhibit M Arborist Report
Exhibit N Water Quality Design
Exhibit O Number 1 Plan Set Cover Sheet
Exhibit A Number 2 Narrative Completeness Responses
Exhibit O Number 3 Civil Plan Set
Exhibit O Number 4 Landscaping Plans
Exhibit O Number 5 Photometric Plans
Exhibit O Number 6 Architectural Elevations
102 - Request for Review of ARB Decision
103 - Applicant Response to Request for Review
104 - ARB Final Order
105 - ARB Unofficial Minutes December 16
106 - ARB Agenda Packet December 16
107 - ARB Unofficial Minutes December 3
108 - ARB Agenda Packet December 3
109 Presentation Slides December 3
110 Council Conditions of Approval, Analysis, and Findings
111 Presentation January 27, 2014

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STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Tony Doran, Engineering Associate
Kaaren Hofmann, Engineering Manager

DATE: 01/27/2014

SUBJECT: Request for Review of the Public Facilities Decision Approving the Nyberg Rivers Shopping Center Project Located at 7455-7925 SW Nyberg Street (AR-13-07)

ISSUE BEFORE THE COUNCIL:

A hearing before the City Council for consideration of approval of the City Engineer's Public Facilities Findings & Recommended Decision for the Nyberg Rivers Shopping Center. This hearing comes before Council as a result of a Request for Review of the City Engineer's Public Facilities Findings & Recommended Decision for Architectural Review AR-13-07, Nyberg Rivers.

RECOMMENDATION:

Staff requests that City Council consider the staff report and Attachments 101-117.

EXECUTIVE SUMMARY:

This is a Quasi-judicial action that follows the Evidentiary Hearing procedures set forth in TDC 31.078. The Council can consider the reasons (issues) listed in the Request for Review as *de novo* and can accept new testimony and information.

AR-13-07 is an application by CenterCal to develop a shopping center known as Nyberg Rivers on a 31.91 acre property at 7455-7925 SW Nyberg Street. Attachment 101 includes the application materials.

CenterCal was granted Master Plan (MP-13-01) and Conditional Use Permit Approval (CUP-13-04) (Resolution No. 5163-13 and 5164-13). The Master Plan approved the general location of the streets and buildings. The master plan approval process also assured adherence to the Central Urban Renewal District Goals. The Conditional Use Permit before the City Council was consideration for the Nyberg Rivers Shopping Center to allow Retail Uses in a Commercial Office (CO) Planning District at 7055-7433 SW Nyberg Street (2S124A 2700) and outside storage and sales in the Central Commercial (CC) Planning District at 7437-7463 SW Nyberg (2S124A2100 and 2S124B2507). The Master Plan and Conditional Use Permit Record are herein incorporated by reference. To view a copy of the Master Plan or Conditional Use Permit record please come to the planning counter. A copy will be made available for use at the

hearing.

The City Engineer's Public Facilities Findings & Recommended Decision for the Nyberg Rivers project was issued on December 20, 2013 (Attachments 104 to 117).

A Request for Review (Attachment 102) was filed on January 3, 2014 by Zian Limited Partnership, a neighboring shopping center.

Reason #1: Concerning the decision's conformance with applicable law, including the Project Master Plan and the TDC.

Reason #2: Concerning the construction timing of SW Seneca Street.

Reason #3: Concerning the ability of the applicant to develop the ODOT owned portion of the project.

Reason #4: Concerning the negative traffic impacts to appellant, Zian Properties.

The applicant has prepared responses to the Request for Review in Attachment 103.

Staff has prepared responses to the request for review included in the **Discussion** section below.

Staff determined that when considering the issues raised in the Request for Review of AR-13-07 and evaluating the information in the applicant's responses (Attachment 103), the City Engineer's Public Facilities Findings & Recommended Decision to approve the Nyberg Rivers development is supported by findings and evidence and is correct.

Before approving the proposal, the City Council must find that the requirements of the Tualatin Development Code (TDC) and the conditions of approval of MP-13-01 are met in respect to the issues.

The ARB Findings and Decision on AR-13-07 was also appealed. That hearing will be held directly before this hearing.

As per ORS 227.178, the governing body shall take a final action within 120 days of the application being deemed complete. The 120th day is February 28, 2014.

DISCUSSION:

Staff has incorporated the applicant's response to the issues raised in the Request for Review as the staff response.

Reason #1 APPELLANT'S COMMENTS

Appellant Zian Properties argues:

"The decision is not in conformance with applicable law, including the Project Master Plan and the TDC. The City Engineer erred in relying upon the Master Plan as a factual base to support the Application, when the Master Plan itself is deficient and on appeal to the Land Use Board of Appeals ("LUBA")."

Reason #1 STAFF RESPONSE

The applicant sought and obtained approval of the Master Plan before proceeding with the AR. While Zian has appealed that decision to Land Use Board of Appeal, the Master Plan decision was not stayed and is a valid and effective decision. Additionally, there are no grounds within the TDC that would support Zian's request for a local stay on the decision.

Reason #2 APPELLANT'S COMMENTS

Appellant Zian Properties argues:

"The Decision does not conform with TDC 74.140 or TDC 74.420(8) because there is no requirement or assurance that the Seneca Street extension will be constructed at all, let alone prior to issuance of a certificate of occupancy for the Project. The Decision does not conform with the Project Master Plan because it does not determine the time of constructing the "necessary" Seneca Street extension during the Public Facilities Review."

Reason #2 STAFF RESPONSE

Resolution 5163-13 approved Master Plan 13-01, Nyberg Rivers. The Master Plan Area consists not only of the Nyberg Rivers properties, but the City's property and the apartment complex north of the Nyberg Properties. This area as a whole consists of the Master Plan Area. The Master Plan found that the Seneca extension was needed to serve the Master Plan Area, not just the Nyberg Rivers site. The Master Plan decision did not find that the Nyberg Rivers site could not function without the Seneca Street extension, but found that the Master Plan Area would function better with the Seneca extensions.

The Master Plan decision is not a permit decision and did not condition development on any requirements or the timing of any requirements. Rather, the Master Plan approves a plan for development. The Master Plan properly provided that the timing and requirements of the Seneca extension would be determined at the permit decision, which is the public facilities decision. The permit decision is what is now before this Council to determine.

The Public Facilities Findings & Recommended Decision implements a condition requiring SW Seneca Street to be constructed and the timing of construction.

Per PFR-70: If the applicant obtains the right-of-way for the Seneca Street extension and traffic signal by April 1, 2014, the applicant will design and construct the Seneca Street extension along with a new signal at the SW Martinazzi Avenue/SW Seneca Street intersection per the Public Works Construction Code under a public works permit or if the applicant is unable to obtain the right-of-way by April 1, 2014, the applicant will provide a fee in lieu of the Seneca Street construction to the City in the amount of \$360,000, which accounts for the applicant's share of the improvements.

TDC 74.430 authorizes the City Engineer to modify the conditions of development in certain instances. Construction of SW Seneca Street would require demolition of the existing Council Building. City Council has not made a determination as to the timing of Council Building demolition. The City Engineer has the authority to modify a condition to eliminate impractical or detrimental results. Requiring the Seneca Street

extension against the wishes of the City Council if the City Council decides not to demolish the Council building is both impractical and detrimental. Modifying the condition to allow for a fee-in-lieu if City Council decides not to demolish the Council building is a proper modification to eliminate an impractical and detrimental result. Permitting a fee-in-lieu of the construction equally implements the condition while protecting the City's timing interests.

Additionally, TDC 74.410(5) allows the City Engineer to require an applicant to participate in the funding of future off-site street extensions. This provision also authorizes the fee-in-lieu provision.

Reason #3 APPELLANT'S COMMENTS

Appellant Zian Properties argues:

"The Decision is not in conformance with applicable law because it does not establish, based upon substantial evidence, that compliance with TDC 74.140 and TDC 74.420(8) is possible, likely, and reasonably certain to succeed when Applicant does not own or control the property where the SW Nyberg Street improvements required by Condition PFR-72 are proposed."

Reason #3 STAFF RESPONSE

ODOT signed the application. ODOT has consented to the construction of improvements to the current ODOT right-of-way. Because there will be no direct access to the surplus property from a public street, ODOT has stated this property may only be sold to one of the two abutting property owners both of which are including their properties in the Nyberg Rivers development. The City is permitted to impose reasonable conditions of approval for off-site improvements. The improvements are required to be constructed prior to issuance of a certificate of occupancy.

Reason #4 APPELLANT'S COMMENTS

Appellant Zian Properties argues:

"B. Zian is adversely affected by the Decision because there is a locational and causal link between the Project and Zian's property."

Reason #4 STAFF RESPONSE

Traffic traveling between I-5 and Zian's property must travel through the same interchange and some of the same intersections that the project's traffic must travel through. The applicant is mitigating the impacts of the traffic generated by their development with improvements to Tualatin-Sherwood Road between I-5 and the site entrance along with the other required transportation improvements. With these improvements, the intersections will operate at an acceptable Level of Service. In fact, the Level of Service will not worsen over background conditions.

STAFF CONCLUSION

Staff recommends that the City Council approve with conditions the Nyberg Rivers Shopping Center (see Attachment 104, pp. 34-41 for the City Engineer Conditions PFR-1 to PFR-87). City

Council approval with conditions is supported by the findings of this report and on the supporting materials and information cited in the findings.

OUTCOMES OF DECISION:

Approval with conditions of the AR-13-07 Decision will result in the following:

- Approves the attached City Engineer's Public Facilities Findings & Recommended Decision of AR-13-07.

ALTERNATIVES TO RECOMMENDATION:

The alternatives for the City Council are:

- Council approves the application with recommended conditions.
- Council can modify the recommended conditions.
- Council can deny the application.

FINANCIAL IMPLICATIONS:

The appellant submitted the required \$135.00 fee with the Request for Review of AR-13-07.

Attachments: [101 - Application](#)
 [Exhibit A Number 1 Application - Completeness Correspondence](#)
 [Exhibit A Number 2 Narrative Completeness Responses](#)
 [Exhibit A Number 3 Conditions of Approval Responses](#)
 [Exhibit A Number 4 Road Cross Sections](#)
 [Exhibit A Number 5 Transportation Plan](#)
 [Exhibit A Number 6 Transportation Outdoor Sales Exhibits](#)
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- [104 AR-13-07, Nyberg Rivers, City Engineer's Public Facilities Decision](#)
- [105 Clean Water Services Memorandum](#)
- [106 Oregon Department Of Transportation Response to Local Land Use Notification](#)
- [107 Washington County Required Conditions of Approval](#)
- [108 Washington County Traffic Staff Report](#)
- [109 Tualatin Valley Fire and Rescue](#)
- [110 City Council Resolution 5163-13](#)
- [111 Kittelson & Associates Letter Dated November 25, 2013](#)
- [112 Seth J. King, Perkins Coie comment letter dated December 3, 2013](#)
- [113 Christie White, Rebuttal letter dated December 9, 2013](#)
- [114 Jan Giunta, Comments Regarding Public Facilities Decision, December 17, 2013](#)
- [115 Seth J. King, Perkins Coie comment letter dated December 17, 2013](#)
- [116 DKS Traffic Submittals dated December 18, 2013 and July 11, 2013](#)
- [117 Presentation January 27, 2014](#)

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STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Sara Singer, Deputy City Manager

DATE: 01/27/2014

SUBJECT: **Resolution No. 5182-14** Declaring the City Council's Intent to Construct an Extension of Seneca Street and a Traffic Signal at the Intersection of Seneca Street and Martinazzi Avenue

ISSUE BEFORE THE COUNCIL:

At the January 13th City Council Work Session, the Council directed staff to prepare a Resolution to authorize the construction of Seneca Street with the development of Nyberg Rivers per the requirements in the City's Transportation System Plan (TSP), the Central Urban Renewal District Plan (CURD) and the Nyberg Rivers Master Plan.

RECOMMENDATION:

Staff respectfully recommends that Council consider the information presented and take action on the Resolution.

EXECUTIVE SUMMARY:

The City Council approved the Nyberg Rivers Master Plan on August 26, 2013. The approved Nyberg Rivers Plan shows the extension of Seneca Street per the City's Transportation System Plan (TSP) to improve circulation, pedestrian safety and enhance the access to the adjacent development site. The extension of the street would require the demolition of the existing Council Building. The Council directed staff to prepare a Resolution authorizing the construction of the Seneca Street Extension with the Nyberg Rivers development to be discussed and voted on in a City Council meeting.

DISCUSSION:

The Council began discussion of this issue in March 2013 when CenterCal Properties indicated they would submit an application for the Nyberg Rivers development located along Nyberg Road and Martinazzi Avenue (the former Kmart site). CenterCal's conceptual design for Nyberg Rivers showed the construction of Seneca Street as required by the Central Urban Renewal District Plan and the City's TSP. The TSP included this project to improve overall mobility, traffic circulation, pedestrian safety, improved connectivity (for bikes and pedestrians), and to provide better access to the adjacent property. The City began discussions on the Seneca Street Extension and the Council Building to prepare for a future decision of whether the City should

require the extension of Seneca Street with the development. This discussion has occurred at different times over the years. Specifically, the Council Building relocation is discussed in the Central Urban Renewal District (CURD) Plan which was originally approved in 1975. [\[1\]](#)

The Council directed staff to conduct a feasibility study to examine options for the building in May 2013. The feasibility study examined the following options:

1. Use the existing site to build a replacement building
2. Examine the available rental space in Tualatin and analyze the costs to rent space
3. Analyze existing space owned by the City to accommodate the City functions in the Council Building
4. Make no changes to the site, and conduct additional traffic analysis to determine the impact of not building the Seneca Street extension

SRG Partnership assisted the City in preparing a feasibility study and the results were presented to the Council in July 2013. Following the presentation, the Council directed staff to prepare a public involvement plan to gather community input on the various options. Throughout the months of September through November, the City worked with the Citizen Involvement Organizations (CIOs) and the City Advisory Committees and Boards to gather community input.

On November 11, 2013, the Citizen Involvement Organizations and City staff presented the results of the community outreach. After considering the comments and questions presented by the community, the Council requested additional information including parking impacts at the Library, cost of constructing the street with the development vs. constructing the street later, the deadline for the final decision on whether the street will be constructed as part of the Nyberg Rivers development, the scope, cost, and timing for additional traffic analysis regarding Seneca Street and alternatives for other traffic and pedestrian safety improvements, and the scope, cost and timeline for a comprehensive City facilities study. Staff returned on November 25th to provide information about the deadline for a final decision, the cost of constructing the street, and information regarding parking at the Library. On January 13, 2014, staff presented the results of the additional traffic analysis related to Seneca Street.

The traffic analysis was prepared by DKS Associates, and it analyzed eight alternatives including the existing configuration and the full Seneca Street build out (per the TSP). Each alternative showed different impacts to traffic congestion at the various intersections in the downtown area. The quantitative traffic data in the reports did not account for pedestrian safety; however, the qualitative material in the DKS report included information regarding the impacts to pedestrian safety for each alternative. The only alternative which improved traffic, pedestrian safety and overall mobility in the downtown area was the full build out of the Seneca Street extension per the City's TSP. The other alternatives varied in their impacts to different intersections. Some of the alternatives failed at certain intersections, did not meet the City's minimum level of service standards, or simply maintained existing conditions.

Following the Council discussion of the traffic analysis, Council directed staff to prepare a Resolution authorizing the construction of Seneca Street with the development of Nyberg Rivers. Staff has prepared the Resolution accordingly for discussion by Council.

If the Council approves the Resolution as prepared, staff will return with information regarding a scope, schedule and budget for a comprehensive facilities study and alternatives for the relocation of the services provided in the Council Building.

[1] Central Urban Renewal Plan

<http://www.tualatinoregon.gov/economicdevelopment/central-urban-renewal-district-plan>

Attachments: Resolution Seneca

RESOLUTION NO. 5182-14

RESOLUTION DECLARING THE CITY COUNCIL'S INTENT TO CONSTRUCT AN EXTENSION OF SENECA STREET AND A TRAFFIC SIGNAL AT THE INTERSECTION OF SENECA STREET AND MARTINAZZI AVENUE

WHEREAS, the intersection of Martinazzi Avenue and the City Campus driveway is unsignalized and has caused, and continues to cause, traffic congestion and pedestrian safety issues; and

WHEREAS, the Central Urban Renewal District Plan provides for the Seneca Street extension to improve transportation service to the City of Tualatin's downtown area; and

WHEREAS, the City's Transportation System Plan provides for the Seneca Street extension to be constructed as a needed transportation project; and

WHEREAS, the City Council decided in MP 13-01 that the Seneca Street extension and the installation of a traffic signal at Seneca Street and Martinazzi Avenue would provide a transportation benefit to the Nyberg Rivers Master Plan area; and

WHEREAS, the transportation analysis by two different transportation firms, DKS Associates and Kittleson and Associates, Inc., shows the Seneca Street extension and a traffic signal at Seneca Street and Martinazzi Avenue improves traffic flow and pedestrian safety in the downtown area; and

WHEREAS, constructing the Seneca Street extension and a traffic signal at the intersection of Seneca Street and Martinazzi Avenue will increase pedestrian safety and decrease traffic conflicts.

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

Section 1. The City Council declares its intent to construct an extension of Seneca Street and a traffic signal at the intersection of Seneca Street and Martinazzi Avenue.

Section 2. The City Council finds the construction of Seneca Street and a traffic signal at the intersection of Seneca Street and Martinazzi Avenue will enhance the public's safety and welfare and is in best interest of the City of Tualatin.

Section 3. The City Council finds it is in the best interest of the City of Tualatin to construct the extension of Seneca Street and a traffic signal at the intersection of Seneca Street and Martinazzi Avenue to coincide with the timing of the Nyberg Rivers development. The timing of the construction will be determined as part of the public

facilities decision.

Section 4. This Resolution is effective upon adoption.

INTRODUCED AND ADOPTED this 27th day of January, 2014.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO LEGAL FORM

ATTEST:

BY _____
City Attorney

BY _____
City Recorder