

RESOLUTION NO. 5208-14

RESOLUTION AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TUALATIN AND WASHINGTON COUNTY FOR THE TUALATIN RIVER GREENWAY GAP COMPLETION PROJECT

WHEREAS The Tualatin River Greenway Gap Completion Project will extend the Tualatin River Greenway trail from the new Barngrover Street, along the Tualatin River, under Interstate 5, to the old RV Park of Portland property located on Nyberg Lane. A distance of about three fourths of a mile; and

WHEREAS On August 22, 2014, the Oregon Transportation Commission awarded the City of Tualatin a *ConnectOregon V* Grant in the amount of \$1,585,800 for the Tualatin River Greenway Gap Completion Project; and

WHEREAS The *ConnectOregon V* Grant requires a cash match that will be met by a Washington County Major Streets Improvement Program (MSTIP) Opportunity Fund Grant of \$750,000 and a \$600,000 cash donation from Nyberg CenterCal II, LLC; and

WHEREAS The Washington County Board of County Commissioners is scheduled to consider and award the grant at its meeting on September 16, 2014, and an intergovernmental agreement between the City of Tualatin and Washington County is necessary to formalize the transfer of Washington County MSTIP funds to the City of Tualatin; and

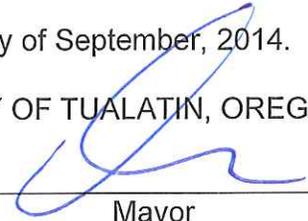
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The Mayor and City Recorder are authorized and instructed to execute the attached intergovernmental agreement between the City of Tualatin and Washington County for a Washington County Major Streets Improvement Program (MSTIP) Opportunity Fund Grant of \$750,000.

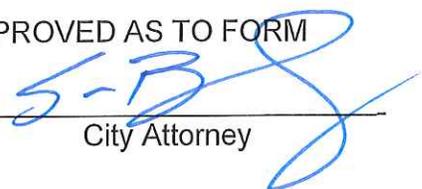
Section 2. This resolution is effective upon adoption.

INTRODUCED AND ADOPTED this 8th day of September, 2014.

CITY OF TUALATIN, OREGON

BY  _____
Mayor

APPROVED AS TO FORM

BY  _____
City Attorney

ATTEST:

BY  _____
City Recorder

**AGREEMENT
BETWEEN
Washington County and the City of Tualatin**

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

THIS AGREEMENT is entered into between Washington County, a political subdivision of the State of Oregon, acting by and through its elected officials, hereinafter referred to as "COUNTY"; and the City of Tualatin, a municipal corporation, acting by and through its City Council, hereinafter referred to as "CITY."

RECITALS

1. COUNTY approved the MSTIP 3d program in July 2012 that contained a \$5,000,000 Opportunity Fund component, hereinafter referred to as "FUND".
2. CITY requested a \$750,000 distribution from the FUND as a match for a Connect Oregon V grant for the Tualatin Trail project, hereinafter referred to as "TRAIL".
3. COUNTY approved the FUND distribution requested by CITY in March 2014. The approval was contingent on the CITY receiving approval for the TRAIL by the Oregon Transportation Commission (OTC).
4. CITY was awarded the TRAIL by OTC in August 2014.
5. CITY will enter into a separate agreement with the State of Oregon for the Connect Oregon V grant funds.

AGREEMENT

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

1. COUNTY OBLIGATIONS

- 1.1 COUNTY shall distribute \$750,000 from the FUND within sixty (60) calendar days of receipt of an invoice from CITY.

2. CITY OBLIGATIONS

- 2.1 CITY shall invoice COUNTY for the \$750,000 distribution from the FUND within thirty (30) calendar days of the execution of the agreement with the State of Oregon described in Recital 5 of this AGREEMENT.

3. FINANCIAL OBLIGATIONS

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

4. GENERAL PROVISIONS

4.1 LAWS OF OREGON

The parties shall comply with all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon. All relevant provisions required by ORS Chapter 279A and 279C to be included in public contracts are incorporated and made a part of this Agreement as if fully set forth herein.

4.2 DEFAULT

Time is of the essence in the performance of the Agreement. Either party shall be deemed to be in default if it fails to comply with any provisions of this Agreement. The non-defaulting party shall provide the other party with written notice of default and allow thirty (30) days within which to cure the defect.

4.3 INDEMNIFICATION

This Agreement is for the benefit of the parties only. Each party agrees to indemnify and hold harmless the other party, and its officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or arising out of services performed, the omissions of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees and agents. To the extent applicable, the above indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). In addition, each party shall be solely responsible for any contract claims, delay damages or similar items arising from or caused by the action or inaction of the party under this agreement.

4.4 MODIFICATION OF AGREEMENT

No waiver, consent, modification or change of terms of this Agreement

shall be binding unless in writing and signed by both parties.

4.5 DISPUTE RESOLUTION

The parties shall attempt to informally resolve any dispute concerning any party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A neutral third party may be used if the parties agree to facilitate these negotiations. In the event of an impasse in the resolution of any dispute, the issue shall be submitted to the governing bodies of both parties for a recommendation or resolution.

4.6 REMEDIES

Subject to the provisions in paragraph 4.5, any party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The parties, by signature of their authorized representatives below, consent to the personal jurisdiction of that court.

4.7 EXCUSED PERFORMANCE

In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delay or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of GOD, governmental restrictions imposed on or mandated by governmental entities other than the parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control to the party to be excused.

4.8 SEVERABILITY

If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired in any way.

4.9 INTEGRATION

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

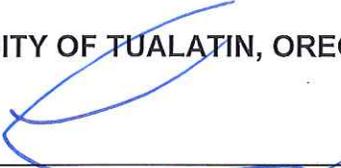
5. TERM OF AGREEMENT

5.1 This Agreement becomes effective on the last date signed below and shall terminate three (3) years from the effective date except as provided in Paragraph 5.2 below.

5.2 This Agreement may be amended or extended for periods of up to one (1) year by mutual consent of the parties. It may be canceled or terminated for any reason by either party. Termination or cancellation shall be effective thirty (30) days after written notice to the other party, or at such time as the parties may otherwise agree. The parties shall, in good faith, agree to such reasonable provisions for winding up the TRAIL as necessary.

DATED this _____ day of _____, 2014.

CITY OF TUALATIN, OREGON



Lou Ogden, Mayor

WASHINGTON COUNTY, OREGON

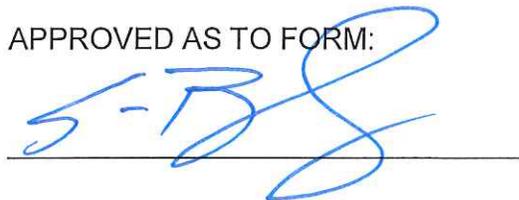
CHAIR, Board of County
Commissioners

ATTEST:



RECORDING SECRETARY

APPROVED AS TO FORM:



APPROVED AS TO FORM:

COUNTY COUNSEL