

RESOLUTION NO. 5209-14

RESOLUTION AUTHORIZING EXECUTION OF A DONATION AGREEMENT WITH NYBERG CENTERCAL II, LLC 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 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 (See Attachment A, Project Map); 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 cash contribution from Nyberg CenterCal II, LLC of \$600,000; 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

WHEREAS A Donation Agreement between the City of Tualatin and Nyberg CenterCal II, LLC is necessary to formalize the donation of funds to the City of Tualatin.

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 Donation Agreement with Nyberg CenterCal II, LLC in the amount of \$600,000.

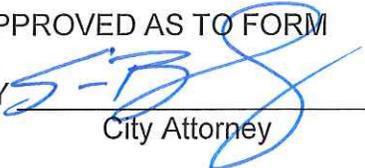
Section 2. This resolution is effective upon adoption.

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

DONATION AGREEMENT

This Donation Agreement ("Donation Agreement") is made by and between the City of Tualatin, Oregon, a municipal corporation (City), and Nyberg CenterCal II, LLC, a Delaware limited liability company authorized to do business in the State of Oregon (Donor), (collectively referred to herein as the "Parties").

RECITALS

Whereas, Donor has offered to donate a cash contribution in the amount of \$600,000 ("Donation") to be used solely for the *ConnectOregon V Tualatin Greenway Trail Gap Completion Project* as depicted on Exhibit "A" attached hereto and made a part hereof ("Project").

Whereas, Donor has offered to make this Donation out of Donor's generosity to the City; and

Whereas, the parties find this Donation will provide a substantial public benefit; and

Whereas, the purpose of this Donation Agreement is to set forth the terms under which the Donor will donate and City will accept the Donation.

AGREEMENT

Section 1. Payment of Donation. Donor will make payment in the amount of six hundred thousand dollars (\$600,000) to City on or before October 31, 2014. City and Donor acknowledge and agree that no goods or services were provided to Donor in connection with the Donation.

Section 2. City Acceptance. City will accept the Donation and agrees it is expressly conditioned upon it being used for the construction of the Project. City will commence construction of the Project as soon as reasonably practicable following receipt of the Donation from Donor. City will complete construction of the Project in accordance with the terms and timelines established in the *ConnectOregon V* grant agreement, including any future modifications and amendments to that agreement, provided, however that the Project will be completed no later than December 31, 2016. If the Project is not completed by December 31, 2016, City will immediately return the entire Donation to Donor.

Section 3. Ownership; Maintenance; Liability. Donor does not have claim of ownership, or title to the Project or in any way related to the use of the Donation except as expressly set forth in this Donation Agreement with respect to the use of the Donation for the construction of the Project. This Donation Agreement does not create any liability or maintenance responsibilities for Donor arising out of or related to the Project for which the Donation is made.

Section 4. Charitable Contribution. City will cooperate in the execution of any documentation as reasonably necessary to allow Donor to deduct the Donation for tax purposes.

Section 5. Governing Law. This Donation Agreement is governed and will be interpreted according to the laws of the State of Oregon, without regard to conflict of laws principles.

Section 6. Notices. Any notices under this Donation Agreement will be given to the following:

To City:

Sherilyn Lombos
City Manager
18880 SW Martinazzi Avenue
Tualatin, Oregon 97062
Phone: 503.691.3010
Email: slombos@ci.tualatin.or.us

To Donor:

Fred W. Bruning and Jean Paul Wardy
c/o CenterCal Properties, LLC
1600 East Franklin Avenue
El Segundo, California 90245
Phone: 310 563-6900
Email: fbruning@centercal.com; jwardy@centercal.com

Section 7. Indemnity. City will indemnify, defend, save and hold harmless Donor and its officers, employees, agents, and volunteers from and against any and all claims or actions of any nature whatsoever resulting from or arising out of the activities or negligence of the City, its officers, employees, agents, and volunteers related to the use of the Donation for the Project.

Section 8. Force Majeure. Neither party will hold the other responsible for damages or delay in performance caused by acts of Gods, strikes, lockouts, accidents, or other events beyond the reasonable control of the other party or the other party's officers, employees, or agents.

Section 9. Complete Agreement. This Donation Agreement embodies the full and complete understanding of the parties respecting the subject matter hereof. It supersedes all prior agreements, negotiations, and representations between the parties, whether written or oral.

Section 10. Execution of Agreement; Electronic Signature. This Donation Agreement may be executed in one or more counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Donation Agreement so executed constitutes an original. A signature of a party provided by email, "pdf," or other electronic data file constitutes an original signature of that party.

IN WITNESS WHEREOF the Parties have caused this Donation Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below:

DONOR

CITY OF TUALATIN

NYBERG CENTERCAL II, LLC
a Delaware limited liability company

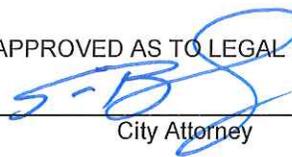
By 

SHERILYN LOMBOS
CITY MANAGER

By: CenterCal, LLC,
a Delaware limited liability company

By: CenterCal Associates, LLC,
a Delaware limited liability company

By _____
NAME
TITLE

APPROVED AS TO LEGAL FORM


City Attorney

EXHIBIT "A"

DEPICTION OF THE PROJECT

