



City of Tualatin

# TUALATIN CITY COUNCIL

Monday, September 8, 2014

**JUANITA POHL CENTER**

**8513 SW Tualatin Road**

**Tualatin, OR 97062**

**WORK SESSION** begins at 5:00 p.m.

**BUSINESS MEETING** begins at 7:00 p.m.

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**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 your comments on its agenda, following Announcements, at which time citizens may address the Council concerning any item not on the agenda or to request to have an item removed from the consent agenda. If you wish to speak on a item already on the agenda, comment will be taken during that item. Please fill out a Speaker Request Form and submit it to the Recording Secretary. You will be called forward during the appropriate time; each speaker will be 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](http://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](http://www.tvctv.org). Council meetings can also be viewed by live *streaming video* on the day of the meeting at [www.tualatinoregon.gov/meetings](http://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. Tualatin Youth Advisory Council Update, September 2014
2. Nyberg Rivers Opening Traffic Management Plan Update
3. “Lazy River” Public Art Dedication Announcement

**C. CITIZEN COMMENTS**

*This section of the agenda allows anyone to address the Council regarding any issue not on the agenda, or to request to have an item removed from the consent 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 ask Councilors if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. If you wish to request an item to be removed from the consent agenda you should do so during the Citizen Comment section of the agenda. The matters removed from the Consent Agenda will be considered individually at the end of this Agenda under, 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 August 25, 2014
2. Consideration of an Intergovernmental Agreement Between the Tigard-Tualatin School District (TTSD) and the City of Tualatin for the School Resource Officer Program
3. Consideration of **Resolution Number 5208-14** Authorizing Execution of an Intergovernmental Agreement Between The City Of Tualatin and Washington County for the Tualatin River Greenway Gap Completion Project
4. Consideration of an Intergovernmental Agreement Between City and Metro to Fund Planning and Public Involvement Efforts Related to the Southwest Corridor

**E. GENERAL BUSINESS**

*If you wish to speak on a general business item please fill out a Speaker Request Form and you will be called forward during the appropriate item. 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.*

1. Consideration of **Resolution Number 5209-14** Authorizing Execution of a Donation Agreement with Nyberg CenterCal II, LLC for the Tualatin River Greenway Gap Completion 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**

**H. ADJOURNMENT**

**City Council Meeting**

**Meeting Date:** 09/08/2014

**ANNOUNCEMENTS:** Tualatin Youth Advisory Council Update

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**ANNOUNCEMENTS**

Tualatin Youth Advisory Council Update, September 2014

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A. YAC Update

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September 8, 2014



# TUALATIN YOUTH ADVISORY COUNCIL

# New Member Recruitment

- Deadline for applications was August 27<sup>th</sup>
- YAC are reviewing applications and conducting interviews
- Excited to get new members on board!





# Movies on the Commons



- Saturday nights at sunset
- Thank you sponsors:
  - Us World Class TaeKwonDo
  - New Seasons Market
  - In Focus
  - Community Newspapers



# Movies on the Commons

- 9 movies
- About 2,000 people attended
- Concessions sales help send YAC members to National League of Cities Congress of Cities



# Coming Soon!

- West Coast Giant Pumpkin Regatta
  - Saturday, October 18, 2013
- Haunted House
  - Wednesday – Saturday, October 22 - 25
- National League of Cities, Austin TX
  - November 19-22, 2014
- Youth and Elected Leader Social
  - January, 2015



# STAFF REPORT

## CITY OF TUALATIN

**TO:** Honorable Mayor and Members of the City Council

**THROUGH:** Sherilyn Lombos

**FROM:** Nicole Morris, Deputy City Recorder

**DATE:** 09/08/2014

**SUBJECT:** Consideration of Approval of the Minutes for the City Council Work Session and Regular Meeting of August 25, 2014

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### **ISSUE BEFORE THE COUNCIL:**

The issue before the Council is to approve the minutes for the City Council Work Session and Regular Meeting of August 25, 2014.

### **RECOMMENDATION:**

Staff respectfully recommends that the Council adopt the attached minutes.

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**Attachments:** [City Council Work Session Minutes of August 25, 2014](#)  
[City Council Regular Meeting Minutes of August 25, 2014](#)



## OFFICIAL MINUTES OF TUALATIN CITY COUNCIL WORK SESSION FOR AUGUST 25, 2014

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

Staff Present: City Manager Sherilyn Lombos; City Attorney Sean Brady; Police Chief Kent Barker; Deputy City Manager Sara Singer; Planning Manager Aquilla Hurd-Ravich; Deputy City Recorder Nicole Morris; Information Services Manager Lance Harris; Associate Planner Cindy Hahn; Police Captain Larry Braaksma; Assistant City Manager Alice Cannon

### CALL TO ORDER

Mayor Ogden called the meeting to order at 5:04 p.m.

#### 1. ***Update on the Regulation of Marijuana Dispensaries.***

Deputy City Manager Sara Singer presented the public involvement plan for gathering input on medical marijuana dispensaries in Tualatin. Information on other cities regulations were presented. Goals for the public involvement plan were listed. Potential survey questions were presented for feedback. Deputy City Manager Singer noted a summary of the proposed recreational marijuana regulations has been included in the packet. The proposed public involvement schedule was presented and was based off the sunset date in the current ordinance.

Councilor Bubenik asked if public outreach would be driven by the Citizen Involvement Organizations (CIO) or by staff. Deputy City Manager Singer stated it would be a collaboration between both including CIO hosted meetings and general public meetings.

Councilor Brooksby asked about the distribution of the citizen survey. Deputy City Manager Singer explained the survey would be available on the City's website and communications would be through the CIO networks and social media. She noted that a statistically valid survey would cost the City an estimated \$10,000.

Councilor Davis asked if survey questions were targeted at medical or recreational marijuana. Deputy City Manager Singer stated questions were left open so a sense of both topics could be gauged.

Council President Beikman would like to see the two topics separated in the survey.

Councilor Truax thought the intention of tonight's discussion was on medical marijuana dispensaries. City Manager Lombos stated the draft questions were presented as a starting point for feedback. She noted Measure 91 on Recreational

Marijuana came out after the City's moratorium was adopted making it difficult to keep the two topics separate.

Mayor Ogden is interested in pursuing a survey that includes both topics. He would prefer a statistically valid survey to get an accurate view of where Tualatin citizens stand on the issues.

Councilor Truax stated when Measure 91 is voted on in November he will then have the information he needs to make a decision.

Councilor Brooksby asked about the costs to the police department to monitor dispensaries. City Manager Lombos stated that a cost analysis on the effect has not been done at this time.

Councilor Davis asked if the City could ban recreational use. City Attorney Brady stated that a ban would have to be done by a citizen initiative.

City Manager Lombos asked if the Council would like medical marijuana dispensaries regulated with time, place and manner restrictions. Council consensus was to proceed in that direction.

Councilor Grimes asked for clarification on the time frame. City Manager Lombos walked the Council through the timeframe working backwards from the ordinance expiration date of May 1, 2015.

Council directed staff to look into conducting a statistically valid survey.

## **2. *Basalt Creek Project Update.***

Planning Manager Aquilla Hurd-Ravich and Associate Planner Cindy Hahn presented the Basalt Creek Project update. Manager Hurd-Ravich stated tonight's presentation has captured responses to questions from prior meetings. Associate Planner Hahn recapped the history and regional context of the area. She stated in 2004 Metro identified industrial land needs as part of the 2004 UGB Expansion. Criteria for selection of land were the area had to be within two miles of Interstate 5, 1/2 mile from existing industrial areas, relatively flat, and exception land. Overall industrial employment was a priority for Metro during the expansion.

Associate Planner Hahn presented a draft report of existing conditions for infrastructure comparing conditions for Tualatin and Wilsonville. Stormwater, wastewater, water, and transportation were covered. Associate Planner Hahn also covered the land capacity analysis which combines constraints with the land supply. Preliminary numbers were presented for buildable, stable, and constrained areas.

Assistant City Manager Cannon noted consultants for the project will be at the next meeting to answer further questions from the Council.

Councilor Grimes asked for more information regarding the water supply to the area and the ability for Tualatin to provide water without citizens having to bear the cost. Assistant City Manager Cannon stated this will need to be a policy discussion in the future when more information is available.

Councilor Davis asked about buffering options for the proposed arterial to the area, as she wants to make sure that the residential area is protected from this noise. She would like to see staff persue having the arterial pushed to the southern portion of the area, as it would better serve industrial and residential needs.

Councilor Bubenik asked about Wilsonville's ability to accept more treatment into their facility. Planner Hurd-Ravich stated the facility could handle more capacity but the piping has not been put into place.

Councilor Truax expressed he has no interest in the City acquiring any of the area and would like to see the entire boundary turned over to Wilsonville.

Mayor Ogden asked questions for specifics on the non-constrained buildable land. Planning Manager Hurd-Ravich explained the topography had to have a slope of less than 25% to be considered constrained. Mayor Ogden asked for more information on the type of business that could be built on that type of land. Manager Hurd-Ravich stated the consultants will have more details and refined numbers to help answer this question at the next meeting.

### **3. *Outside Agencies Allocation of Funds for 2014/15.***

City Manager Sherilyn Lombos presented the Outside Agency Grant applications. She noted proposals were solicited through the City's grant process that opened July 1 and \$30,000 has been allocated in the budget this year for grant awards. After review and discussion, Council determined the award amounts for all nine proposals.

### **4. *Invitation to Participate in Mayors' Institute on City Design.***

Assistant City Manager Cannon stated Mayor Ogden received an invitation to participate in the Mayors' Institute on City Design (MICD) conference. She presented background information on MICD and potential study problems for Tualatin. The downtown area has been presented as a potential area as this would be the most beneficial area for the City to receive feedback on.

Mayor Ogden further explained MICD provides free professional advice that can assist the City with future development of the downtown area.

### **5. *Council Meeting Agenda Review, Communications & Roundtable.***

Councilor Grimes asked questions in regards to the OLCC licensing type on The Growler Guys liquor license application. City Manager Lombos clarified licensing type.

## ADJOURNMENT

The work session adjourned at 6:54 p.m.

Sherilyn Lombos, City Manager

\_\_\_\_\_ / Nicole Morris, Recording Secretary

\_\_\_\_\_ / Lou Ogden, Mayor





## OFFICIAL MINUTES OF THE TUALATIN CITY COUNCIL MEETING FOR AUGUST 25, 2014

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

Staff Present: City Manager Sherilyn Lombos; City Attorney Sean Brady; Community Services Director Paul Hennon; Deputy City Manager Sara Singer; Deputy City Recorder Nicole Morris; Information Services Manager Lance Harris; Police Captain Larry Braaksma; Assistant City Manager Alice Cannon

### A. CALL TO ORDER

Pledge of Allegiance

Mayor Ogden called the meeting to order at 7:02 p.m.

### B. ANNOUNCEMENTS

#### 1. New Employee Introduction: Zoe Monahan, Management Analyst

Assistant City Manager Alice Cannon introduced Management Analyst Zoe Monahan. The Council welcomed her.

#### 2. New Employee Introduction: Rich Mueller, Park & Recreation Manager

Community Services Director Paul Hennon introduced Park and Recreation Manager Rich Mueller. The Council welcomed him.

#### 3. Tualatin Riverpark Greenway Gap Project Update

Community Services Director Paul Hennon announced the grant award of \$1.585 million from the Connect Oregon V grant for the completion of the Tualatin River Greenway project. More information on the grant acceptance and the project will be presented at a future Council work session.

### C. CITIZEN COMMENTS

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Tualatin Chamber of Commerce Director Linda Moholt spoke on behalf of C&E Rentals regarding overgrown vegetation at the corner of Tualatin-Sherwood Road and Teton Avenue. She stated the vegetation in the area is unsightly to have located in front of their business. Assistant City Manager Alice Cannon stated staff has been in contact with the company and they are working towards a resolution.

Tualatin Historical Society Member Larry McClure announced the 4th Annual Wine Tasting Auction to be held at the Tualatin Heritage Center on September 12. He invited all citizens to attend.

Gordon Rute presented issues regarding the Basalt Creek area. He spoke to the lack of buildable residential development in Tualatin and concerns with water, sewer and stormwater service to the area.

**D. CONSENT AGENDA**

*The Consent Agenda will be enacted with one vote. The Mayor will ask Councilors if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. If you wish to request an item to be removed from the consent agenda you should do so during the Citizen Comment section of the agenda. The matters removed from the Consent Agenda will be considered individually at the end of this Agenda under, 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:** 7 - 0 MOTION CARRIED

1. Consideration of Approval of the Minutes for the City Council Work Session and Regular Meeting of July 28, 2014
2. Consideration of an Updated Washington County Master Interagency Teams Intergovernmental Agreement
3. Consideration of Approval of a New Liquor License Application for The Growler Guys
4. Consideration of Approval of a New Liquor License Application for New Seasons Market - Nyberg Rivers

**E. 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.*

**F. COMMUNICATIONS FROM COUNCILORS**

Councilor Bubenik participated in the Tualatin Riverkeepers Paddle Event this past weekend. He encouraged everyone to participate next year.

**G. ADJOURNMENT**

Mayor Ogden adjourned the meeting at 7:30 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:** Don Hudson, Finance Director

**DATE:** 09/08/2014

**SUBJECT:** Consideration of an Intergovernmental Agreement Between the Tigard-Tualatin School District (TTSD) and the City of Tualatin for the School Resource Officer Program

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### **ISSUE BEFORE THE COUNCIL:**

Consideration of approving an Intergovernmental Agreement with the School District that will allow the City of Tualatin to continue their cooperative efforts by contract as authorized under ORS 190.010.

### **RECOMMENDATION:**

It is recommended that this agreement be approved, to allow the Police Department, in cooperation with the School District, to continue their effort to keep the students safe and healthy.

### **EXECUTIVE SUMMARY:**

The Tualatin Police Department's School Resource Officer Program strives to enhance public safety through community policing within the schools, including crime prevention, enforcement of laws on school grounds, education and role modeling.

The goals of this cooperative effort are:

- Creating an atmosphere of safety and security on school grounds;
- Enforcing the law and making arrests when necessary;
- Educating students on health, safety, drugs and violence issues;
- Providing resources for School District, staff, and students;
- Providing a positive image of law enforcement and law enforcement officers for school age children; and

The City and the District desire to memorialize and continue their cooperative efforts by contract as authorized under ORS. 190.010.

There are two changes to the previous contract, which expired on June 30, 2014. The first is to change the language in Section 8, to provide a formula, based upon the most senior Officer

assigned as an SRO, and is consistent with other SRO contracts with TTSD. The second change is in Section 16, allowing for automatic annual renewals, unless either party provides a 30 day written notice seeking to terminate the agreement.

**FINANCIAL IMPLICATIONS:**

The School District shall provide funding to offset the costs of the School Resource Officer program. With the new formula added in Section 8 of the agreement, the District's funding for Fiscal Year 2014/2015, increases to \$54,280, from \$50,000 for the previous fiscal year.

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**Attachments:**    IGA with Tigard Tualatin School District for SRO Program

*CITY OF TUALATIN AND TIGARD-TUALATIN SCHOOL DISTRICT  
SCHOOL RESOURCE OFFICER AGREEMENT*

This agreement is made and entered into by and between the City of Tualatin (City), a municipal corporation of the State of Oregon, and the Tigard-Tualatin School District (District).

WHEREAS the City and District desire a cooperative effort in:

- Creating an atmosphere of safety and security on school grounds;
- Enforcing the law and making arrests when necessary;
- Educating students on health, safety, drugs and violence issues;
- Providing resources for School District, staff, and students;
- Providing a positive image of law enforcement and law enforcement officers for school age children; and

WHEREAS the City and District desire to memorialize and continue their cooperative efforts by contract as authorized under ORS.190.010.

The parties agree as follows:

1. The Tualatin Police Department's School Resource Officer Program will strive to enhance public safety through community policing within the schools, including crime prevention, enforcement of laws on schoolgrounds, education and role modeling.
2. The City shall provide a minimum of two (2) School Resource Officers (SRO) to be assigned to service District schools within the city limits of Tualatin. All SROs shall be sworn employees of the Police Department.
3. The Tualatin SRO's primary assignments will be Tualatin High School, Hazelbrook Middle School, Byrom Elementary School, Bridgeport Elementary School, Tualatin Elementary School, and any future District school site that falls within the Tualatin Police Department jurisdiction.
4. The SRO's schedule will be developed by a Police Department supervisor to address the needs of the SRO unit and the schools they serve.
5. The SRO will work in cooperation with all school personnel, students, parents, and community members to accomplish the Police Department's mission.
6. The school principals and the Police supervisor of the SRO unit shall coordinate activities and meetings related to the SROs in the schools. The following priorities will guide the activities of the SRO:
  - a. Police presence, crime prevention and enforcement of laws. To create and maintain a feeling of safety and security for the benefit of all students and staff and to deter crime and violence on all school grounds through police

presence and enforcement of laws.

- b. Education and positive contact. To create and maintain educational opportunities for all students and staff which in turn creates a positive image of law enforcement.
  - c. Student and staff assistance. To become and remain a resource for all students and staff. To that end the SRO will be available for special event security as necessary.
7. The School District shall make every effort to provide the SROs with a private work area containing a desk, computer, and telephone within the High School and Middle School.
8. The City shall pay the costs of selection, salary, benefits, vehicle, and equipment for a minimum of two (2) SROs. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this agreement during the 2014/15 fiscal year. Funding during future fiscal years shall be subject to budget approval by the Tualatin City Council. The District shall provide funding to offset one half of the costs of the most senior SRO, including benefits and overtime, for nine months of the year. The District's funding for Fiscal Year 2014/15 shall be \$54,280.
9. As part of the ongoing partnership between the City and District, each agrees to allow the other the use of any facilities as available for meetings, trainings, community events or other use as agreed upon by the parties, subject to each entity's facilities use policies and procedures.
10. The cost of specialized training shall be shared by mutual agreement between the City of Tualatin and the School District on a case-by-case basis.
11. All equipment supplied by the School District shall remain the property of the District; all equipment supplied by the City of Tualatin shall remain the property of the City.
12. The City agrees to hold and save the School District, its officers, employees, or agents harmless from all claims whatsoever that might arise against the School District, its officers, employees, or agents by any act of the City of Tualatin, its officers, employees, or agents in the performance of the duties required by this contract.
13. The District agrees to hold and save the City of Tualatin, its officers, employees, or agents harmless from all claims whatsoever that might arise against the City of Tualatin, its officers, employees, or agents by any act of School District, its officers, employees, or agents in the performance of the duties required by this contract.
14. The City and the District mutually agree that neither party will insure the actions of the other, but rather each party will assume its own responsibility in connection with any claims made by a third party against the City and/or the District and that both the City and the District will maintain liability insurance coverage.



15. The City and the District mutually agree that nothing contained in this contract is intended to limit the remedy, if any, of either party against the other party, including claims under subrogation agreements with the party's insurance carrier, to recover damages to property or injury to persons caused by a party's negligence.

16. This contract shall be effective beginning July 1, 2014, through June 30, 2015. It shall continue and shall be automatically renewed for each successive year unless either party gives written notice of termination, no later than the first day of the immediately preceding month of June. This contract may be modified, subject to negotiation, provided that the party seeking to renew the agreement provides the other party with thirty-days (30) written notice.

In witness whereof, the parties have caused this contract to be executed by the duly authorized officers on the dates hereinafter written.

Dated this 8th day of September, 2014.

City of Tualatin

Tigard-Tualatin School District

By \_\_\_\_\_  
Lou Ogden, Mayor

By \_\_\_\_\_  
Ernie Brown, Superintendent

ATTEST:

By \_\_\_\_\_  
City Recorder



# STAFF REPORT

## CITY OF TUALATIN

**TO:** Honorable Mayor and Members of the City Council

**THROUGH:** Sherilyn Lombos

**FROM:** Paul Hennon, Community Services Director

**DATE:** 09/08/2014

**SUBJECT:** Consideration of **Resolution Number 5208-14** Authorizing Execution of an Intergovernmental Agreement Between The City Of Tualatin and Washington County for the Tualatin River Greenway Gap Completion Project

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### **ISSUE BEFORE THE COUNCIL:**

The Council will consider approving an intergovernmental agreement with Washington County to accept a Major Streets Transportation Improvement Program (MSTIP) Opportunity Fund Grant of \$750,000 that will be used as portion of a required cash match to a State of Oregon *ConnectOregon V* Grant to construct the Tualatin River Greenway Gap Completion Project.

### **RECOMMENDATION:**

Staff recommends that the Council adopt the attached Resolution.

### **EXECUTIVE SUMMARY:**

The Tualatin River Greenway Gap Completion Project will extend the Tualatin River Greenway trail from the new Barngrover Street, located east of the Tualatin Public Library/City Offices Building, along the Tualatin River, under Interstate 5, north of the Nyberg Woods Shopping Center and Forest Rim Apartments to the old RV Park of Portland property on Nyberg Lane, a distance of about three-fourths of a mile (See Attachment A, Project Map).

This project supports the City Council goals of providing expanded opportunities for vibrant parks and recreation facilities, and enhanced and expanded transportation options. It fills a gap in Tualatin's interconnected system of on and off street bicycle and pedestrian facilities. The trail will link nearby residents to jobs, retail, and public facilities, provide safe and convenient multimodal access across I-5, and enable people to connect with nature and enjoy Tualatin's natural beauty and wildlife.

This project is a public-private partnership, and is possible only through the participation and cooperation of the various partners.

Once the owner of the old RV Park of Portland site develops that property, the trail will connect with the existing greenway trail that runs along the Tualatin River north of the Stones Throw Apartments and then continues through Brown's Ferry Park to Tualatin's eastern boundary.

Until the old RV Park of Portland property develops, there will be a temporary detour through the Nyberg Woods Shopping Center to the sidewalk and bike lanes on Nyberg Street, to Nyberg Lane and past the old RV of Portland site where it will connect to the existing Tualatin River Greenway Trail west of the Stones Throw Apartments.

There will be connections to the Heron's Landing and Forest Rim apartments, the Nyberg Rivers and Nyberg Woods shopping centers, and the old RV Park of Portland property when it develops.

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.

The *ConnectOregon* V Grant requires a cash match that will be met by a Washington County Major Streets Transportation Improvement Program (MSTIP) Opportunity Fund Grant of \$750,000 and a \$600,000 cash donation from Nyberg CenterCal II, LLC. Nyberg CenterCal II is the developer of the new Nyberg Rivers Shopping Center. Additionally, the City of Tualatin will contribute \$352,000 of Park System Development Charge funds to pay the costs of professional services for permitting, design, construction administration, citizen involvement, and associated costs. The total project cost is estimated to be \$3,287,800.

The Washington County Coordinating Committee endorsed funding the Tualatin River Greenway Gap Completion Project in November, 2013, and the Washington County Board of County Commissioners is scheduled to consider the grant at its meeting on September 16, 2014. 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.

The intergovernmental agreement is effective for three (3) years. The intergovernmental agreement may be amended or extended for a period of up to one (1) year by mutual consent of the parties. The Tualatin River Greenway Gap Completion Project is planned to be completed during the Winter of 2015/2016, about a year and a half from now.

Oregon Revised Statutes 190.10 authorizes agencies to enter into intergovernmental agreements for the performance of any or all activities and functions that a party to the agreement has the authority to perform.

The Tualatin Park Advisory Committee (TPARK) submitted a letter of support with the *ConnectOregon* V Grant application.

#### **FINANCIAL IMPLICATIONS:**

Approval of the attached Resolution authorizes the Mayor to execute the attached intergovernmental agreement between the City of Tualatin and Washington County allowing the City to receive a Washington County Major Streets Transportation Improvement Program (MSTIP) Opportunity Fund Grant of \$750,000, which along with a cash donation of \$600,000 from Nyberg CenterCal II, LLC, will enable the City to receive a State of Oregon

*ConnectOregon* V Grant in the amount of \$1,585,800 for the Tualatin River Greenway Gap Completion Project.

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**Attachments:**    A - Tualatin River Greenway Gap Completion Project Map

B- Resolution No 5208-14

C- IGA



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

ATTEST:

BY \_\_\_\_\_  
City Attorney

BY \_\_\_\_\_  
City Recorder



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

**FOR A DISTRIBUTION FROM THE MAJOR STREETS  
TRANSPORATION 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**

**WASHINGTON COUNTY, OREGON**

\_\_\_\_\_  
Lou Ogden, Mayor

\_\_\_\_\_  
CHAIR, Board of County  
Commissioners

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
RECORDING SECRETARY

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_

\_\_\_\_\_  
COUNTY COUNSEL



# STAFF REPORT

## CITY OF TUALATIN

**TO:** Honorable Mayor and Members of the City Council

**THROUGH:** Sherilyn Lombos

**FROM:** Ben Bryant, Economic Development Manager

**DATE:** 09/08/2014

**SUBJECT:** Consideration of an Intergovernmental Agreement Between City and Metro to Fund Planning and Public Involvement Efforts Related to the Southwest Corridor

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### **ISSUE BEFORE THE COUNCIL:**

Should the City Council authorize the City Manager to enter into an Intergovernmental Agreement between the City and Metro to fund planning and public involvement efforts related to the Southwest Corridor?

### **RECOMMENDATION:**

Staff respectfully asks the City Council to consider the Intergovernmental Agreement between the City and Metro to fund planning and public involvement efforts related to the Southwest Corridor

### **EXECUTIVE SUMMARY:**

In May, the Tualatin City Council provided direction to the Metro Southwest Corridor Steering Committee to continue studying high capacity transit (HCT) between Portland and Tualatin, via Tigard. The next step in the process is to complete a Draft Environmental Impact Statement (DEIS). The purpose of the DEIS is to discover the potential impacts and benefits of a future alignment and gather additional public feedback.

Metro has identified an overall cost to complete the DEIS of \$10-\$12 million. Each partnering jurisdiction has been asked to contribute funds to assist in the work, with the majority of the funding coming from Metro and TriMet. Based on the scope of work, Tualatin's share of this phase will be \$160,000 split evenly between the next two fiscal years. The Intergovernmental Agreement (IGA) between the City and Metro outlines the specific scope of the work and payment of these funds.

The IGA specifies that Metro will use funds from Tualatin for planning and public involvement efforts. As the Council is aware, an initiative is scheduled to be voted upon that would amend the Charter to prohibit the Council from authorizing the use of "city resources" to finance, design, construct, or operate any public rail transit system without first obtaining prior approval from the voters through an "authorization ordinance." While the initiative cannot restrict the Council's current authority under the Charter, the expenditure of funds under the IGA is consistent with

the proposed limitations in the initiative if the initiative passes. Under the IGA, no Tualatin funds will be used for the financing, design, construction, or operation of a public rail project, as those terms are used in the initiative language.

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**Attachments:**    Intergovernmental Agreement with Metro

**INTERGOVERNMENTAL AGREEMENT  
TRANSPORTATION PROJECT FUNDING AGREEMENT**

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This Intergovernmental Agreement (“Agreement”) is made and entered into by and between the City of Tualatin (“Tualatin”) and Metro, effective as of the date of last signature below.

**RECITALS**

- A. Tualatin is a jurisdiction organized under the laws of the State of Oregon.
- B. Metro is an Oregon metropolitan service district organized under the laws of the State of Oregon and the Metro Charter.
- C. The “Southwest Corridor” is a transportation corridor located between downtown Portland and Sherwood. Metro and its regional partners, including TriMet, have initiated a comprehensive land use and transportation planning study to create a plan that will identify and prioritize public investments in the Southwest Corridor (the “Southwest Corridor Plan” or “Plan”).
- D. The Southwest Corridor Plan is advancing in two phases. The first phase of the Plan is complete and resulted in the creation of the Southwest Corridor Shared Investment Strategy (the “Shared Investment Strategy”) endorsed by the Southwest Corridor Plan Steering Committee (“Steering Committee”).
- E. The Shared Investment Strategy identifies a need for enhanced local transit service, further study of high capacity transit (“HCT”) from Portland to Tualatin via Tigard, over 60 roadway and active transportation projects that support the transit and the land use vision endorsed by the Steering Committee (the “Land Use Vision”), over 400 parks and natural resource projects that support the Land Use Vision, and a toolkit of policies and incentives to support development characteristic of the Land Use Vision.
- F. During the second phase of the Southwest Corridor planning process (“Phase 2”), Metro will refine the projects and strategies identified in Phase 1, including the HCT element of the Shared Investment Strategy, which require refinement prior to commencing analysis of the environmental impacts of the Southwest Corridor Plan.
- G. Tualatin and Metro collaborated on Phase 1 of the Plan, as agreed in the Southwest Corridor Plan Charter adopted by the Steering Committee in December 2011 and endorsed by project partner jurisdictions. Now, Tualatin and Metro desire to work together during Phase 2 of the Plan to, among other things, complete a Draft Environmental Impact Statement for the Southwest Corridor HCT project that will allow the partners to develop and agree on a Locally Preferred Alternative for the HCT project to enable TriMet to be ready to

construct an HCT project in the final phase of the Plan, if the project is otherwise approved by government entities with jurisdiction.

- H. The parties are entering into this Agreement to document each Party's understanding as to the services to be performed and obligations of each Party during this Phase 2.

**NOW THEREFORE**, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

## **TERMS OF AGREEMENT**

- 1. SCOPE OF WORK.** Metro will complete a Focused Refinement Period, produce a Draft Environmental Impact Statement and develop a Locally Preferred Alternative (the "Work"), consistent with the attached scope of work (Attachment A).
- 2. FUNDS TO METRO.** Recognizing the importance of implementing the Southwest Corridor Shared Investment Strategy by further study of the HCT project consistent with the Scope of Work, Tualatin will pay Metro \$160,000 (hereafter "Funds") for the completion of the Work. Within thirty (30) days of execution of this IGA, Tualatin will wire transfer \$80,000 to Metro. On July 1, 2015, Tualatin will wire transfer the remaining \$80,000 to Metro.
- 3. METRO APPLY FUNDS TO WORK.** Metro will apply the Funds, and all interest earnings on the Funds while held by Metro, if any, to pay for planning and public involvement efforts related to the Work. Any Funds and earnings on the Funds that are not so applied must be promptly returned to Tualatin. The parties anticipate that the Steering Committee will take action to commence preparation of the DEIS in the fall of 2014. If this action is postponed, Metro shall obtain Tualatin's written approval prior to committing or expending any of Funds provided to Metro pursuant to this Agreement.
- 4. METRO RESPONSIBLE FOR CONTRACTS.** Metro is solely responsible for any and all contracts and subcontracts associated with the Work, including but not limited to procurement under applicable public contracting laws, contract management, and payments to contractors and subcontractors. Metro acknowledges that other than Tualatin's payment of Funds to Metro, Tualatin has no other obligation or responsibility for the Work.
- 5. INDEMNITY.** To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Metro agrees to defend, indemnify, and hold harmless Tualatin, its officers, employees, and agents, from and against any and all claims relating to or arising out of the Work or any and all contracts related to the Work.
- 6. TERMINATION.**
  - a) This Agreement may be terminated by mutual written consent of both parties. If this Agreement is terminated while Metro holds any unexpended and unobligated SW Corridor Proceeds or earnings, Metro



will pay those proceeds and earnings to Tualatin promptly after termination and those proceeds and earnings shall be reallocated. Any termination of this Agreement does not prejudice any rights or obligations accrued to the parties prior to termination. If not earlier terminated, this Agreement will terminate when Metro completes the Work.

- b) If the Southwest Corridor Project is terminated while Metro holds any unexpended and unobligated SW Corridor funds or earnings, Metro will pay those proceeds and earnings to Tualatin promptly after termination.

**7. MERGER; WAIVER.** This Agreement and the IGA constitutes 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 or terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent modification or change, if made shall be effective only in the specific instance and for the specific purpose given.

IN WITNESS WHEREOF, the parties have agreed to the terms and conditions of this Agreement.

**TUALATIN**

**METRO**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as form:  
  
\_\_\_\_\_

Approved as to form:  
  
\_\_\_\_\_

### Southwest Corridor Focused Refinement Work Plan Summary

Project partners will address a select set of questions during a focused refinement period from July to November 2014. Once completed, the Steering Committee will be asked to finalize the HCT options that receive full environmental review. Project partners desire a streamlined NEPA process that will begin in late 2014 and result in consideration of a Locally Preferred Alternative in 2016.

When	Phase	Steering Committee role
July – November 2014	Focused refinement period	11/10: Steering Committee action to refine/answer questions and move into NEPA for DEIS
Late November 2014 – late January 2015	Scoping period for DEIS	Late January/early February: Steering Committee action on which HCT design options receive full environmental analysis
Spring/Summer 2016	Complete DEIS, define LPA	Steering Committee recommendation on LPA, local and regional actions

#### Recommended questions to address during a focused refinement period

The Steering Committee has directed staff to address the following questions prior to initiating the project scoping phase under NEPA, in order to further narrow the HCT design options that receive full environmental analysis to those most reasonable and feasible options:

1. **Funding strategy:** Complete a preliminary assessment of potential funding sources and a strategy for a future HCT investment to help inform Steering Committee and public conversations on HCT alignment choices.
2. **Traffic analysis to assess tie-in options:** Additional traffic analysis and partner discussion to determine the best approach to tie in to downtown Portland and the existing transit system.
3. **HCT branch service to Tigard and Tualatin:** Explore opportunities to implement branched service to downtown Tigard and south to Tualatin to achieve operational efficiencies.
4. **Adjacent to I-5:** Further explore and discuss the tradeoffs of providing HCT adjacent to I-5 rather than on Barbur Boulevard.
5. **OHSU Marquam Hill access:** Explore options for pedestrian/bicycle access to Marquam Hill from a surface alignment on Barbur or Naito, including outreach to neighborhoods, stakeholder groups, OHSU, Portland Parks and Recreation and the Veterans Hospital.
6. **Medium tunnel that serves Marquam Hill and Hillsdale:** Explore replacing the short tunnel that serves Marquam Hill with the medium tunnel that serves Hillsdale. Outreach to communities and stakeholders regarding refined tunnel costs, construction impacts, travel time, ridership and equity issues.
7. **Hillsdale:** Explore the benefits as compared to the costs and travel time of directly serving the town center that currently has eight bus lines, and look at enhanced pedestrian/bicycle connections from Barbur Boulevard.
8. **Direct service to Portland Community College – Sylvania:** Assess the potential of a more robust pedestrian connection from Barbur Boulevard to PCC along SW 53<sup>rd</sup> Ave while working with PCC and the neighborhood to understand the tradeoffs of direct service for the future of the campus.

## **Southwest Corridor Draft Environmental Impact Statement Work Plan Summary**

The Southwest Corridor Plan is a comprehensive approach to achieving community visions through integrated land use and transportation planning. The plan incorporates existing local land use visions, including the Barbur Concept Plan, the Tigard High Capacity Transit Land Use Plan, Linking Tualatin and the Sherwood Town Center Plan.

In July 2013, the Southwest Corridor Plan Steering Committee recommended a shared investment strategy, identifying key investments in roadways, active transportation, parks, trails and nature as well as options for a high capacity transit to be studied further in a Draft Environmental Impact Statement (DEIS) under the National Environmental Policy Act (NEPA).

The Southwest Corridor Steering Committee identified high capacity transit in the Portland, Tigard, Tualatin corridor as a near term priority. Prior to the start of the DEIS, a refinement study was initiated to refine the purpose and need and the potential high capacity transit alternatives/options to the most promising transit alternatives in this corridor. The refinement study includes opportunities to support the community's vision, stimulate economic development and make it easier and safer for residents to travel along this corridor. These opportunities include, but are not limited to new crosswalks, sidewalks, trails and vehicle mobility.

The study is exploring Bus Rapid Transit (BRT) and a light rail alternatives with several design options for each. During the refinement study, project partners further narrowed the high capacity transit design options. In June 2014, the Steering Committee accepted the recommendation and to directed staff to address eight specific issues in a more focused refinement in order to further narrow the options to identify the most promising for further study in a Draft Environmental Impact Statement (DEIS) under the National Environmental Policy Act (NEPA).

The focused refinement period will conclude in November 2014 and lead directly into the NEPA phase. A locally preferred alternative (LPA) is anticipated in the summer of 2016. After this, the project will move into project development for more refined design and engineering while finalizing the environmental analysis (Final Environmental Impact Statement (FEIS)) and then construction. The project is anticipated to begin construction in 2019 and open for service in 2023.

The Southwest Corridor Plan will undergo environmental review in accordance with NEPA, following FTA regulations and policies. The project will address related Federal, state and local environmental laws, regulations and guidelines, affected environment of the potential alternatives/options and potential mitigation. Metro and FTA agreed that an Environmental Impact Statement (EIS) and Record of Decision (ROD) was the appropriate environmental process to follow.

Following are the key phases of the project's environmental review and documentation process.

1. **Scoping.** Scoping includes the Notification of Intent (NOI) to publish an EIS, identification of the project's Lead, Cooperating (if appropriate) and Participating agencies; Purpose and Need Statement; range of alternatives; and scope of and methods for the environmental review and analysis.
2. **DEIS Preparation and Publication.** Based on the results of Scoping, Metro and FTA will prepare a DEIS documenting the environmental analysis.
3. **Public Involvement.** Metro and project partners will provide a clear and transparent manner to engage the public and to support the Southwest Corridor DEIS and decision-making process.

## Attachment A

4. **DEIS Public and Agency Comment Period.** In compliance with NEPA, Metro and FTA will provide a 45 to 60-day public and agency comment period for the DEIS. The comment period will include one or more public hearings, which will be held no sooner than 15 days following publication of the DEIS.
5. **Locally Preferred Alternative (LPA) Selection.** Following the close of the DEIS comment period, Metro and project partners will select a LPA, considering the DEIS, public and agency comments and recommendations from the project's local and regional partners agencies and jurisdictions. The LPA and the rationale for its selection will be documented in a final LPA report.
6. **FEIS Preparation and Publication.** After the LPA is selected by Metro and, if the LPA is a build alternative, Metro and FTA will prepare and publish the project's FEIS. The project's FEIS will be based on the project's LPA and the No-Build Alternative. When complete, the FEIS will document and respond to all public and agency comments received during the DEIS comment period.
7. **Record of Decision (ROD).** Following completion of the FEIS, FTA will issue a Record ROD documenting FTA's determination that the project has successfully addressed the NEPA environmental review process.
8. **Permitting.** As determined necessary through the project's environmental review process, the project will obtain the Federal, state, regional and/or local permits needed to construct and operate the project as defined by the LPA. Additional environmental analysis, documentation and/or review may be needed to successfully complete the project's permitting process.



# STAFF REPORT

## CITY OF TUALATIN

**TO:** Honorable Mayor and Members of the City Council

**THROUGH:** Sherilyn Lombos

**FROM:** Paul Hennon, Community Services Director

**DATE:** 09/08/2014

**SUBJECT:** Consideration of **Resolution Number 5209-14** Authorizing Execution of a Donation Agreement with Nyberg CenterCal II, LLC for the Tualatin River Greenway Gap Completion Project

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### **ISSUE BEFORE THE COUNCIL:**

The Council will consider approving a Donation Agreement with Nyberg CenterCal II, LLC for a cash donation of \$600,000 that will be used as a portion of a required cash match to a State of Oregon *ConnectOregon V* Grant to construct the Tualatin River Greenway Gap Completion Project.

### **RECOMMENDATION:**

Staff recommends that the Council adopt the attached Resolution.

### **EXECUTIVE SUMMARY:**

The Tualatin River Greenway Gap Completion Project will extend the Tualatin River Greenway trail from the new Barngrover Street, located east of the Tualatin Public Library/City Offices Building, along the Tualatin River, under Interstate 5, north of the Nyberg Woods Shopping Center and Forest Rim Apartments to the old RV Park of Portland property on Nyberg Lane, a distance of about three-fourths of a mile (See Exhibit A to the attached Resolution for the Project Map).

This project supports the City Council goals of providing expanded opportunities for vibrant parks and recreation facilities, and enhanced and expanded transportation options. It fills a gap in Tualatin's interconnected system of on and off street bicycle and pedestrian facilities. The trail will link nearby residents to jobs, retail, and public facilities, provide safe and convenient multimodal access across I-5, and enable people to connect with nature and enjoy Tualatin's natural beauty and wildlife.

This project is a public-private partnership, and is possible only through the participation and cooperation of the various partners, including the current and past contributions of CenterCal.

Once the owner of the old RV Park of Portland site develops that property, the trail will connect with the existing greenway trail that runs along the Tualatin River north of the Stones Throw

Apartments and then continues through Brown's Ferry Park to Tualatin's eastern boundary.

Until the old RV Park of Portland property develops, there will be a temporary detour through the Nyberg Woods Shopping Center to the sidewalk and bike lanes on Nyberg Street, to Nyberg Lane and past the old RV of Portland site where it will connect to the existing Tualatin River Greenway Trail west of the Stones Throw Apartments.

There will be connections to the Heron's Landing and Forest Rim apartments, the Nyberg Rivers and Nyberg Woods shopping centers, and the old RV Park of Portland property when it develops.

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 Exhibit A to agreement, Project Map).

The *ConnectOregon V* Grant requires a cash match that will be met by a Washington County Major Streets Transportation Improvement Program (MSTIP) Opportunity Fund Grant of \$750,000 and a \$600,000 cash donation from Nyberg CenterCal II, LLC. Nyberg CenterCal II is the developer of the new Nyberg Rivers Shopping Center. Additionally, the City of Tualatin will contribute \$352,000 of Park System Development Charge funds to pay the costs of professional services for permitting, design, construction administration, citizen involvement, and associated costs. The total project cost is estimated to be \$3,287,800.

The Washington County Coordinating Committee endorsed funding the Tualatin River Greenway Gap Completion Project in November, 2013. The Washington County Board of County Commissioners is scheduled to consider the grant at its meeting on September 16, 2014.

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

The Tualatin River Greenway Gap Completion Project is planned to be completed during the Winter of 2015/2016, about a year and a half from now.

CenterCal's donation of \$600,000 to assist in funding the Tualatin River Greenway Gap Completion Project is generous, and it should be noted that it builds on previous contributions by CenterCal that, when combined with the current sources of funding, make this vital trail connection possible.

Prior contributions to the Tualatin River Greenway Trail by CenterCal include:

1. Providing easements for the greenway trail on the Nyberg Rivers Shopping Center site;
2. Providing Tualatin with the rights for the trail on the Nyberg Woods Shopping Center site;
3. Funding and installing most of the environmental enhancement and mitigation for the segment of the trail on the Nyberg Woods Shopping Center property;
4. Constructing a concrete ramp that will connect the Nyberg Woods Shopping Center to the greenway trail (located just east of the Best Buy store); and

5. Grading, installing irrigation and landscaping, and constructing a raised crosswalk over Barngrover Street in advance preparation for a segment of the trail located on the Nyberg Rivers Shopping Center site.

The Tualatin Park Advisory Committee (TPARK) submitted a letter of support with the *ConnectOregon V* Grant application.

**FINANCIAL IMPLICATIONS:**

Approval of the attached Resolution authorizes the Mayor to execute the attached donation agreement between the City of Tualatin and Nyberg CenterCal II, LLC, allowing the City to receive a cash donation of \$600,000, which along with a Washington County Major Streets Transportation Improvement Program (MSTIP) Opportunity Fund Grant of \$750,000, will enable the City to receive a State of Oregon *ConnectOregon V* Grant in the amount of \$1,585,800 for the Tualatin River Greenway Gap Completion Project.

---

**Attachments:**    A- Resolution No. 5209-14  
                          B- Donation Agreement

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

ATTEST:

BY \_\_\_\_\_  
City Attorney

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](mailto: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](mailto:fbruning@centercal.com); [jwardy@centercal.com](mailto: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: CenterCal, LLC,  
a Delaware limited liability company

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

By \_\_\_\_\_  
NAME  
TITLE

By \_\_\_\_\_  
SHERILYN LOMBOS  
CITY MANAGER

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
City Attorney

