



City of Tualatin

# TUALATIN CITY COUNCIL

Monday, September 22, 2014

**JUANITA POHL CENTER**

**8513 SW Tualatin Road**

**Tualatin, OR 97062**

**EXECUTIVE SESSION** begins at 5:30 p.m.

**WORK SESSION** begins at 6:30 p.m.

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

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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. New Employee Introduction: Corey Bingham, Building Inspector II
2. Proclamation Declaring October 3, 2014, National Manufacturing Day in the City of Tualatin

**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 September 8, 2014
2. Consideration of **Resolution No. 5211-14** Awarding the Bid for the Interior & Exterior Maintenance Painting of Norwood B-1 Reservoir
3. Consideration of **Resolution No. 5210-14** Amending the City of Tualatin Fee Schedule and Rescinding Resolution No. 5204-14
4. Consideration of Recommendations from the Council Committee on Advisory Appointments
5. Consideration of Approval of a New Liquor License Application for Pieology Pizzeria
6. Consideration of **Resolution No. 5213-14** Authorizing Execution of an Intergovernmental Agreement Between the City of Tualatin and the State of Oregon for the Tualatin River Greenway Gap Completion Project

**E. SPECIAL REPORTS**

1. Summer Programs Review & Fall Programs Preview
2. Tualatin Chamber of Commerce Annual Report

**F. PUBLIC HEARINGS – Legislative or Other**

1. Consideration of **Resolution No. 5212-14** Adopting Findings in Support of an Exemption from Bidding and Authorizing the City Manager to Enter into a Direct Negotiation Contract with Cardno for Design and Construction Administration Services for the Tualatin River Greenway Trail Gap Completion Project

**G. 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 **Ordinance 1376-14** an Ordinance Establishing a Tax on the Sale Of Marijuana and Marijuana-Infused Products in the City Of Tualatin; and Establishing New Tualatin Municipal Code Chapter 13-01

**H. 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.*

**I. COMMUNICATIONS FROM COUNCILORS**

**J. ADJOURNMENT**



**City Council Meeting**

**Meeting Date:** 09/22/2014

**ANNOUNCEMENTS:** Proclamation Declaring October 3, 2014, National Manufacturing Day in the City of Tualatin

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**ANNOUNCEMENTS**

Proclamation Declaring October 3, 2014, National Manufacturing Day in the City of Tualatin

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Proclamation - National Manufacturing Day

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# Proclamation

## *Proclamation Declaring Friday, October 3, 2014 as National Manufacturing Day in the City of Tualatin*

WHEREAS the City of Tualatin recognizes that fundamental element to the overall quality of life is the health of the local economy.

WHEREAS the advanced manufacturing sector employs 22 percent of Tualatin's workforce and contributes to the thriving local economy; and

WHEREAS six of the top ten employers in Tualatin are manufacturing companies; and

WHEREAS advanced manufacturing is one of Tualatin's key industry clusters as identified in the Economic Development Strategic Plan; and

WHEREAS there are nearly 400 acres of vacant or redevelopable lands in the limits of the City of Tualatin zoned for future manufacturing use; and

WHEREAS Tualatin is at the center of trade and commerce located along Interstate-5, Interstate-205, and Highway 99W providing a favorable environment for manufacturing companies to effectively move goods throughout the region; and

WHEREAS Tualatin recognizes the importance of a thriving manufacturing sector in fueling Tualatin's economic stability and growth in a promising future; and

NOW THEREFORE, BE IT PROCLAIMED BY THE City Council of the City of Tualatin, that:

Friday, October 3, 2014, is proclaimed as National Manufacturing Day in the City of Tualatin.

INTRODUCED AND ADOPTED this 22nd day of September, 2014.

CITY OF TUALATIN, OREGON

BY \_\_\_\_\_  
Mayor

ATTEST:

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



# STAFF REPORT

## CITY OF TUALATIN

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

**THROUGH:** Sherilyn Lombos

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

**DATE:** 09/22/2014

**SUBJECT:** Consideration of Approval of the Minutes for the City Council Work Session and Regular Meeting of September 8, 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 September 8, 2014.

### **RECOMMENDATION:**

Staff respectfully recommends that the Council adopt the attached minutes.

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**Attachments:** [City Council Work Session Minutes of September 8, 2014](#)  
[City Council Regular Meeting Minutes of September 8, 2014](#)



## OFFICIAL MINUTES OF TUALATIN CITY COUNCIL WORK SESSION FOR SEPTEMBER 8, 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; Planning Manager Aquilla Hurd-Ravich; Deputy City Recorder Nicole Morris; Information Services Manager Lance Harris; Associate Planner Cindy Hahn; Engineering Manager Kaaren Hofmann; Police Captain Larry Braaksma; Economic Development Manager Ben Bryant; Assistant City Manager Alice Cannon

### CALL TO ORDER

**Mayor Ogden called the meeting to order at 5:03 pm**

#### 1. ***Basalt Creek Project Update.***

Planning Manager Aquilla Hurd-Ravich introduced Principle Consultant John Fregonese as part of the Basalt Creek consultant team. Mr. Fregonese presented a summary of stakeholder feedback. Community workshops, online survey, focus groups, and joint Council themes were discussed. Themes included employment, retail, housing, natural areas, transportation, and infrastructure.

Mr. Fregonese presented the land suitability analysis. The analysis included hard and soft constraints for the area. The land supply is broken into three classifications: vacant, redevelopable, and stable land. The land suitability is categorized into four classifications: A-least constrained and larger parcels, B- Modestly constrained and medium-sized parcels, C- Modestly constrained and small to medium sized lots, D- stable or constrained. Mr. Fregonese discussed Metro's forecast for the Basalt Creek area. The forecast included the creation of 2,600 jobs and 1,386 households for the area.

Mr. Fregonese discussed scenario planning for the areas including the development process. Development themes will be created and will include a conventional development, industrial focus, creative mixed uses, and a strong natural features scenario.

Councilor Bubenik asked what input will go into the model scenarios. Mr. Fregonese explained the base model will use constraint maps and modeling of work already done on the area. From there creative input from different sources will be used to establish alternate scenarios.

Councilor Brooksby wants to ensure that the scenarios include adequate housing to support new industrial jobs in the area.

Councilor Davis explained Basalt Creek is going to have access to the SW Concept Plan area and would like to see Basalt Creek used for residential so the two areas work together. She also expressed concerns with the location of the main arterial into the area and would like to see it moved to the south. Mr. Fregonese explained buffering the two areas is one of the issues they are working on solving.

Mayor Ogden asked how Metro's forecast impacts the area. Mr. Fregonese explained it is what Metro is expecting the City will generate from the area. He noted Metro typically defers to the local jurisdictions as to what is best for the area and noted the numbers are just a starting point.

Mayor Ogden asked if parcels are large enough to support industrial uses. Mr. Fregonese stated the sites are good for research and development facilities which are suitable to the overall area.

Mayor Ogden asked about sanitary sewer in the area. Mark Anderson, CH2M Hill, stated the area gravity flows towards Wilsonville. Mayor Ogden asked about cost feasibility of pumping the sanitary sewer into Tualatin. Mr. Anderson stated he does not have exact numbers for the area but the general principle is to not pump unless you have to. Mr. Fregonese explained City limits do not have to coordinate with service in the areas.

Mayor Ogden asked about the next joint meeting. Mr. Fregonese stated the next joint meeting will be December. Assistant City Manager Alice Cannon noted staff will be back monthly to present updates to the Council.

## **2. *Fox Hills Parking Permit Survey.***

Police Capitan Larry Braaksma presented the Fox Hills parking permit survey results. Surveys were sent on August 4 to 62 potentially impacted residents. 45 surveys were returned and tallied. Six questions were asked and results for each were presented.

Council President Beikman and Councilor Truax both agreed it was clear the residents do not want parking permits issued in the area.

Councilor Grimes presented a proposal of painting a no parking curb on the first block near the congested intersection. She perceives this to be the problem area for residents.

Mayor Ogden asked about communications with Stafford Hills Racquet Club regarding the parking issues. Councilor Truax stated they have contracted for offsite parking with another facility. City Manager Lombos stated staff has been working with Stafford Hills Racquet Club and they have been timely and responsive.

Mayor Ogden asked if they had additional space to build more parking. Councilor Truax responded he believes they have space to expand for future parking needs.

### **3. *Connect Oregon V Grant Update.***

Community Services Director Paul Hennon presented a brief overview of the project schedule and budget for the Tualatin River Greenway Gap Completion project. Grant funds to complete this project were received through ConnectOregon V in the amount of \$1,585,800. Director Hennon stated grant agreements for the project are on tonight's Council agenda for approval. The project schedule was covered with an expected opening date to the public in the winter of 2015-16. The total project cost is estimated to be \$3,287,800.

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

Councilor Brooksby stated he would be requesting to have the intergovernmental agreement between the City and Metro to fund planning and public involvement efforts related to the Southwest Corridor removed from the consent agenda.

Council President Beikman stated she attended the Washington County Coordination Committee (WCCC) today where they discussed having an Area Commission on Transportation (ACT) put in place for the metro area. She presented the options that were discussed at WCCC to the Council. She noted any written responses regarding the formation of the ACT needed to be back to WCCC by September 22.

Mayor Ogden expressed concerns with having two ACT's put in place and how it would affect the distribution of funding. Council President Beikman explained funding would remain in one pool and the ACT's would decide how the money is spent.

Economic Development Manager Ben Bryant stated it is important the City have a say in how the ACT would be structured and not so much where the boundaries for the ACT are drawn.

Council consensus was made to support two ACT's but the main focus of the Council was on how these groups would be structured.

Councilor Bubenik asked about the vacant lot along Lower Boones Ferry Road and the removal of the trailer and fencing. City Manager Lombos stated staff had received a complaint about the property and the city's Code Enforcement Officer is now working with the property owners to get the lot cleaned-up.

## **ADJOURNMENT**

The work session adjourned at 6:47 p.m.

Sherilyn Lombos, City Manager

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

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



## OFFICIAL MINUTES OF THE TUALATIN CITY COUNCIL MEETING FOR SEPTEMBER 8, 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; Finance Director Don Hudson; Deputy City Manager Sara Singer; Deputy City Recorder Nicole Morris; Information Services Manager Lance Harris; Police Captain Larry Braaksma; Economic Development Manager Ben Bryant; Assistant City Manager Alice Cannon

### **A. CALL TO ORDER**

Pledge of Allegiance

Mayor Ogden called the meeting to order at 7:01 p.m.

### **B. ANNOUNCEMENTS**

#### **1. Tualatin Youth Advisory Council Update, September 2014**

Members of Tualatin Youth Advisory Committee (YAC) presented a PowerPoint on their latest activities and upcoming events. New member recruitment is underway. The committee will begin reviewing applications and conducting interviews soon. Movies on the Commons this year was success with 2,000 people attending nine movies. YAC raised money selling concessions to send members to the National League of Cities (NLC) Conference. Upcoming events include participation in the Pumpkin Regatta, the annual YAC Haunted House, NLC Conference, and the Youth and Elected Leader Social.

#### **2. Nyberg Rivers Opening Traffic Management Plan Update**

Deputy City Manager Sara Singer shared updates on the traffic management plan for the grand opening of Cabela's on September 18. Heavy traffic congestion hours were shared and citizens were advised to plan ahead. Information regarding the plan has been communicated through the city's website, email, press releases, and social media.

#### **3. "Lazy River" Public Art Dedication Announcement**



Councilor Frank Bubenik announced the art installation of the “Lazy River” by Joseph Rastovich at Tualatin Commons Park. He noted the installation is part of the Centennial Public Art project. The art was installed on August 6 and the reception was held on August 22.

**C. CITIZEN COMMENTS**

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Tualatin Chamber of Commerce Director Linda Moholt spoke to parking concerns in the Core Area Parking lots during the grand opening of Cabela’s. She requested time limits be enforced in the core area lots during the opening to allow for ample parking for other businesses.

**D. CONSENT AGENDA**

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

**Vote:** 7 - 0 MOTION CARRIED

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

**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

Community Development Director Paul Hennon and CenterCal Property Manager Chad Hastings spoke to the donation agreement with Nyberg CenterCal II, LLC. Director Hennon spoke to donations already made to the City by CenterCal and thanked them for their significant investment in the community over the years. Mr. Hastings stated CenterCal is happy to support the completion of the trail as they know it brings great value to the community.

Mayor Ogden thanked CenterCal for their generous donations to the City.

MOTION by Council President Monique Beikman, SECONDED by Councilor Ed Truax to adopt Resolution Number 5209-14 authorizing execution of a donation agreement with Nyberg CenterCal II, LLC for the Tualatin River Greenway Gap Completion Project.

**Vote:** 7 - 0 MOTION CARRIED

**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.*

1. Consideration of an Intergovernmental Agreement Between City and Metro to Fund Planning and Public Involvement Efforts Related to the Southwest Corridor

City Manager Lombos stated the City has been working with Metro and TriMet along with other partnering jurisdictions on the next phase of the SW Corridor Project. The project is currently in the draft environmental phase. A project budget was developed with each partner set to contribute. She noted the intergovernmental agreement (IGA) tonight recognizes there is currently a measure on the ballot and that these funds will only be used for planning and public involvement. These activities would remain in line with the measure specifications.

Councilor Brooksby asked for clarification from the City Attorney about potential conflicts with the measure. City Attorney Brady stated that measure does not bind the Council tonight and if the measure is to pass the language in the resolution is consistent with the measure.

**PUBLIC COMMENT**

Arva Bartos requested Council not fund this request until after the vote has occurred.

Paul Bartos encouraged the Council to not spend city funds on light rail projects.

Gary Bray wants to ensure citizens have a voice in the matter and requested that Council wait to vote on this IGA until after the election.

Steve Schopp asked Council not preempt the election and wait to vote on this IGA.

Tualatin Chamber of Commerce Director Linda Moholt stated the Chamber has yet to take a stance on this issue but she feels it is imperative the process continue to persue what future options may look like and make a informed decision then.

**COUNCIL COMMENT/DISCUSSION**

Councilor Brooksby stated he does not feel there is a pressing need to vote on this IGA tonight. He also requested that citizens utilize their Citizen Involvement Organizations (CIO) to voice their concerns on this issue.

Mayor Ogden stated he has expressed his concerns to Metro about the citizen involvement process with the SW Corridor project. He is ok with not voting on funding until after the election.

Councilor Grimes asked about potential consequences to the City for not participating in the process. She expressed her concern about losing a say in the preferred options if the City does not participate as planned.

Councilor Bubenik stated he would be willing to wait to vote until after the election is held.

Councilor Davis brought up concerns over the lack of identification of residents during public comment. She requested that in the future citizens identify their City of residence or the group in which they are affiliated.

MOTION by Councilor Nancy Grimes, SECONDED by Councilor Frank Bubenik to table discussion on the intergovernmental agreement between the City and Metro to fund planning and public involvement efforts related to the Southwest Corridor to a date uncertain.

**Vote: 7 - 0 MOTION CARRIED**

## **G. COMMUNICATIONS FROM COUNCILORS**

Councilor Bubenik reminded everyone about the 4th Annual Wine Tasting Auction to raise money for the Tualatin Historical Society. The event will be held on September 12, 6pm, at the Tualatin Heritage Center.

## **H. ADJOURNMENT**

Mayor Ogden adjourned the meeting at 7:58 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:** Alice Cannon

**FROM:** Dayna Webb, Project Engineer

**DATE:** 09/22/2014

**SUBJECT:** Consideration of **Resolution No. 5211-14** Awarding the Bid for the Interior & Exterior Maintenance Painting of Norwood B-1 Reservoir

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### ISSUE BEFORE THE COUNCIL:

Awarding the Interior & Exterior Maintenance Painting of Norwood B-1 Reservoir.

### RECOMMENDATION:

Staff recommends that this project be awarded to S & K Painting, Inc. for \$548,000.

### EXECUTIVE SUMMARY:

This project consists of interior and exterior coating of the City's Norwood B-1 Reservoir, a ground level 2.2 million gallon welded steel drinking water storage tank. The tank is 90 feet in diameter and 50 feet tall and was constructed in 1971. The exterior coating of the B-1 Reservoir has approached the recommended limit for adding more coatings, and has a lead based primer coating. The interior coating appears to be the original coating applied when the reservoir was installed.

Surface preparation will include full removal of existing interior and exterior coatings with abrasive blast methods. The existing exterior coating system has lead based paints and as such will require full containment and lead abatement procedures. In addition to interior and exterior coatings, improvements to the reservoir's existing control electrical cabinet and installing water sample lines are included.

As part of the process, bidders were required to be prequalified as Reservoir Painting Contractors and attend a mandatory pre-bid conference at the project site in order to bid on the project. All bids submitted met those requirements.

The bids for this project were opened on Tuesday, September 9, 2014 at 2:00 pm. The following firms submitted bids:

S & K Painting, Inc.	\$548,000
Hancock Sandblasting & Paint	\$651,580

Coatings Unlimited, Inc.	\$707,800
Long Painting Company	\$720,000

S & K Painting, Inc. submitted the lowest bid of \$548,000. This award will be made in accordance with the public contracting rules.

**OUTCOMES OF DECISION:**

Awarding of the contract will result in the following:

1. The proposed project will be constructed.

Not awarding the contract will result in the following:

1. The project will not move forward until a contractor selection is made.

**FINANCIAL IMPLICATIONS:**

Funding for this project is budgeted in the 2014/2015 fiscal year in the Water Operating Fund.

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**Attachments:**    Attachment A- Resolution 5211-14

RESOLUTION NO. 5211-14

RESOLUTION AWARDING THE BID FOR THE INTERIOR & EXTERIOR MAINTENANCE PAINTING OF NORWOOD B-1 RESERVOIR AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT

WHEREAS, the Interior & Exterior Maintenance Painting of Norwood B-1 Reservoir was advertised in the Daily Journal of Commerce on August 22, 2014; and

WHEREAS, four proposals were received and publically opened and read on September 9, 2014; and

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

WHEREAS, funding for the project is budgeted in the 2014-2015 fiscal year Water Operating Fund.

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

**Section 1.** S & K Painting, Inc. was the successful responsible low bidder and is hereby awarded a contract to provide maintenance painting of the Norwood B-1 Reservoir.

**Section 2.** The City Manager is authorized to execute a contract with S & K Painting, Inc. in the amount of \$548,000.

**Section 3.** The City Manager or designee is authorized to execute change orders that do not exceed 10 percent of the total contract.

Adopted by the City Council this 22 Day of September, 2014.

CITY OF TUALATIN, OREGON

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM

ATTEST:

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

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



# STAFF REPORT

## CITY OF TUALATIN

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

**THROUGH:** Sherilyn Lombos

**FROM:** Lisa Thorpe, Program Coordinator  
Don Hudson, Finance Director

**DATE:** 09/22/2014

**SUBJECT:** Consideration of **Resolution No. 5210-14** Amending the City of Tualatin Fee Schedule and Rescinding Resolution No. 5204-14

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

Whether to update and amend the City of Tualatin Fee Schedule

### **RECOMMENDATION:**

Staff recommends adoption of the attached resolution amending the City of Tualatin Fee Schedule and rescinding Resolution No. 5204-14.

### **EXECUTIVE SUMMARY:**

The Police Department has recently purchased an electronic fingerprinting station and therefore will be offering fingerprinting services to the public by appointment only. Based on research of fees charged by surrounding cities for this service, a fee has been established. The attached resolution adds this license fee in the amount of \$25 for the first two cards, with a \$2 fee for each additional card.

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**Attachments:** Resolution No. 5210-14

RESOLUTION NO. 5210-14

RESOLUTION AMENDING THE CITY OF TUALATIN FEE SCHEDULE AND  
RESCINDING RESOLUTION NO. 5204-14

WHEREAS; the City Council has the authority to set fees for materials and services provided by the City; and

WHEREAS Resolution No. 5204-14, adopted June 23, 2014, which last amended the City of Tualatin Fee Schedule, must now be rescinded.

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

Section 1. The Police Department will be offering fingerprinting services to the public. The fee has been established and included in "Exhibit A", which is attached and incorporated by reference.

Section 2. All other fees provided in the City of Tualatin Fee Schedule remain unchanged, as set forth in "Exhibit A", which is attached and incorporated by reference.

Section 3. The fees shall be effective October 1, 2014.

Section 4. Resolution No. 5204-14 is rescinded effective October 1, 2014.

INTRODUCED AND ADOPTED this 22nd day of September, 2014.

CITY OF TUALATIN, OREGON

BY \_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM

ATTEST:

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

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



## CITY OF TUALATIN FEE SCHEDULE

### Administration Department:

Agenda Packet ..... same as photocopy rate  
 Ordinances or Portions Thereof ..... same as photocopy rate

### Photocopies:

Per page/side (up to 8.5"x14") .....0.25  
 Per page/side (11"x17").....0.50  
 Color - per page/side (up to 8.5"x14").....1.00  
 Color - per page/side (11"x17").....1.50  
 Certified Copies – per document..... 5.00  
 Thumb Drive (2 GB) ..... 10.00  
 CD/DVD .....20.00  
 Storage Retrieval Fee .....25.00  
 Staff Time:  
 -Up to 30 minutes .....no charge  
 -Over 30 minutes ..... employee cost

### Community Development Department - Planning:

Amendment to Comprehensive Plan Map.....2,090.00  
 Amendment to Comprehensive Plan Text/Landmark  
 Designation/Removal of Landmark Designation.....2,090.00  
 Annexation .....1,425.00  
 Appeal Proceeding to Council .....135.00  
 Appeal Expedited Process to Referee, Deposit per ORS 197.375.....300.00  
 Architectural Review Application, Nonexpedited Process:  
 Estimated Project Value:  
 Under \$5,000.....115.00  
 \$5,000 - \$24,999.99 .....550.00  
 \$25,000 - \$99,999.99 .....990.00  
 \$100,000 - 499,999.99 .....1,645.00  
 \$500,000 and greater .....2,410.00  
 Architectural Review Application, Expedited Process:  
 Estimated Project Value:  
 Under \$5,000.....115.00  
 \$5,000 - \$24,999.99 .....1,100.00  
 \$25,000 - \$99,999.99 .....2,185.00  
 \$100,000 - 499,999.99 .....3,290.00  
 \$500,000 and greater .....5,040.00  
 Architectural Review, Minor.....75.00  
 Architectural Review, Single-family Level I (Clear & Objective) .....55.00  
 Architectural Review, Single-family Level II (Discretionary) .....730.00  
 Conditional Use Permit.....1,425.00  
 Conditional Use Permit Renewal.....1,425.00  
 Core Area Parking District Tax Appeal.....135.00  
 Extension Request Reviewed by Staff.....200.00  
 Extension Request Reviewed by Architectural Review Board.....1,150.00  
 Interpretation of Development Code.....No Fee  
 Industrial Master Plans .....1,820.00

**CITY OF TUALATIN FEE SCHEDULE**

Landmark Alteration/New Construction Review .....	60.00
Landmark Demolition Review.....	60.00
Landmark Relocation Review.....	60.00
License to Keep Chickens.....	50.00
Pre-Application Meeting .....	205.00
Reinstatement of Nonconforming Use.....	1,425.00
Request for Council Rehearing .....	165.00
Sign Code Interpretation .....	410.00
Sign Ordinance .....	8.00
Sign Code Variance .....	675.00
Sign Permit:	
New Sign or Structural Change to Existing Sign.....	135.00
Temporary Sign or Each Face Change to Existing Sign.....	70.00
Temporary Uses, 1 - 3 days.....	50.00
4 - 180 days.....	\$50.00 + 1.50/day
Over 3 days .....	not to exceed a total of \$200.00
Transitional Use Permit.....	1,530.00
Tree Removal Permit, 1 tree .....	290.00
each additional tree, \$10.00 not to exceed a total of .....	315.00
Variance:	
When primary use is a single family dwelling in RL or RML .....	285.00
When primary use is not a single family dwelling in RL or RML.....	1,425.00
Variance, Minor:	
When primary use is a single family dwelling in RL or RML .....	285.00
When primary use is not a single family dwelling in RL or RML .....	1,050.00
All Other Actions .....	325.00

**Community Development Department - Engineering & Building:**

Engineering Copies:	
1987 and earlier, aerial/contour maps .....	8.00
36" x 48" .....	5.00
24" x 36" .....	4.00
18" x 24" and 11" x 17" .....	3.00
Geographic Information System:	
Citywide aerial photo, 36" x 42" .....	30.00
Subdivision street map, 34" x 36" .....	15.00
Street map, 22" x 22" .....	8.00
Planning Districts, 34" x 44" .....	15.00
Planning Districts, 18" x 24" .....	8.00
Custom Mapping .....	55.00/hr, plus materials
Partition,* Nonexpedited & Expedited Processes.....	410.00
Partition,* Nonexpedited & Expedited Exten. /Modif. ....	135.00
Partition,* Nonexpedited, Appeal Proceeding to Council.....	135.00
Partition,* Expedited, Appeal to Referee, Deposit per ORS 197.375 .....	300.00
Partition,* Minor Variance included & primary use is a single family dwelling in RL or RML .....	Add 135.00

**CITY OF TUALATIN FEE SCHEDULE**

Partition,* Minor Variance included & primary use is not a single family dwelling & not in RL or RML.....	Add 205.00
Property Line Adjustm't.,* primary use is a single family dwelling in RL or RML .....	70.00
Property Line Adjustm't.,* Minor Variance included & primary use is a single family dwelling in RL or RML.....	Add 135.00
Property Line Adjustm't.,* primary use is not a single family dwelling in RL or RML .....	300.00
Property Line Adjustm't.,* Minor Variance included & primary use is not a single family dwelling in RL or RML.....	Add 135.00
Property Line Adjustm't.* Appeal Proceeding to Council.....	135.00
Public Works Construction Code.....	50.00
Subdivision,* Nonexpedited and Expedited Processes.....	2,700.00
Subdivision,* Variance included & primary use is a single family dwelling in RL or RML .....	Add 270.00
Subdivision,* Variance included & primary use is not a single family dwelling in RL or RML .....	Add 340.00
Subdivision,* Minor Variance included & primary use is a single family dwelling in RL or RML .....	Add 135.00
Subdivision,* Minor Variance included & primary use is not a single family dwelling in RL or RML .....	Add 205.00
Subdivision,* Nonexpedited, Extension/Modif. by Council .....	620.00
Subdivision,* Expedited, Extension/Modif. by City Engineer .....	155.00
Subdivision,* Nonexpedited, Appeal Proceeding to Council .....	135.00
Subdivision,* Expedited Appeal to Referee, Deposit per ORS 197.375 .....	300.00
Street Name Change .....	135.00
Street Vacation Application Deposit .....	340.00
Zone of Benefit Application Fee .....	675.00

\* Subdivision, Partition and Property Line Adjustment applicants shall contact the Finance Department for a determination of L.I.D. assessment apportionment for the property proposed to be divided or adjusted.

**Finance Department:**

*L.I.D. Assessment Apportionment Fee .....	108.75
Lien Search Fee (per tax lot).....	29.85
Passport Photo.....	16.00
Recovery Charge Installment Payment Plan Application Fee .....	228.20
Returned Checks (per check for processing NSF check).....	36.25
Zone of Benefit Recovery Charge Administration Fee .....	120.50

## CITY OF TUALATIN FEE SCHEDULE

### Legal Services Department:

Development Code (hard copy) .....	70.00 each + postage
Updates (hard copy)	
8.5" x 11" .....	0.25 per page/side + postage
11" x 17" .....	0.50 per page/side + postage
Color - 8.5" x 11" .....	1.00 per page/side + postage
Color - 11" x 17" .....	1.50 per page/side + postage
Tualatin Municipal Code (hard copy) .....	55.00 each + postage
Thumb Drive (2GB) containing electronic copies of Tualatin Municipal Code and/or Development Code.....	10.00 + postage

### Municipal Court

#### Traffic School and Compliance Program Fees:

Class A .....	275.00
Class B .....	155.00
Class C .....	125.00
Class D .....	100.00
Seat Belt Class.....	65.00
Vehicle Compliance Program.....	35.00
Collection Fee .....	25% of ordered amount
License Restatement Fee .....	70.00
Overdue Payment Letter Fee .....	10.00
Failure to Appear – Arraignments .....	40.00
Failure to Appear – Trials .....	100.00

### Operations Department:

Street Tree and Installation (Single Family Only) .....	175.00
Street Tree Removal (excluding Stump Grinding) .....	300.00
Street Tree Stump Grinding .....	125.00
Tree-for-a-Fee Program .....	45.00
New Tree Grates – Full set of 2 halves .....	400.00
New Tree Grates – Half set.....	200.00
Tree Grates – Leveling Stone and fastening hardware .....	25.00
Tree Grates Improvements .....	175.00

### Police Department:

Copies of Audio Tapes .....	14.00 including CD
Copies of Video Tapes .....	14.00 including CD
Copies of Photographs on CD.....	15.00 including CD
Copies of Police Reports (no charge to victims):	
1 - 10 pages.....	10.00
plus each page over 10 .....	0.25
Alarm Permit, Initial Application.....	23.00
Alarm Permit, Annual Renewal .....	23.00
Alarm Permit, 1st False Alarm.....	No charge
Alarm Permit, 2nd False Alarm .....	No charge
Alarm Permit, 3rd False Alarm .....	85.00
Alarm Permit, 4th False Alarm .....	113.00

**CITY OF TUALATIN FEE SCHEDULE**

Alarm Permit, 5th False Alarm .....	169.00
Alarm Permit, 6 <sup>th</sup> and More False Alarms.....	225.00 per alarm
Alarm Permit, 10 or more False Alarms .....	500.00 Civil Infraction
Release of Towed (impounded) Vehicles.....	100.00
Fingerprinting cards.....	(first two) 25.00
Each additional card .....	each 2.00



# STAFF REPORT

## CITY OF TUALATIN

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

**THROUGH:** Sherilyn Lombos

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

**DATE:** 09/22/2014

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

---

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

Consideration of new appointments and re-appointments to the Tualatin Arts Advisory Committee and the Architectural Review Board.

### **RECOMMENDATION:**

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

### **EXECUTIVE SUMMARY:**

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

<i><b>Individuals</b></i>	<i><b>Board</b></i>	<i><b>Term</b></i>
Mason Hall	Tualatin Arts Advisory Committee	Appointment Term Expiring 3/31/15
Michael Ward	Architectural Review Board	Reappointment Term Expiring 6/30/16

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### **Attachments:**



# STAFF REPORT

## CITY OF TUALATIN

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

**THROUGH:** Sherilyn Lombos

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

**DATE:** 09/22/2014

**SUBJECT:** Consideration of Approval of a New Liquor License Application for Pieology Pizzeria

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

The issue before the Council is to approve a new liquor license application for Pieology Pizzeria.

### **RECOMMENDATION:**

Staff respectfully recommends that the Council approve endorsement of the liquor license application for Pieology Pizzeria.

### **EXECUTIVE SUMMARY:**

Pieology Pizzeria has submitted a new liquor license application under the category of limited on-premises sales. This would permit them to sell factory-sealed containers of malt beverages, wine, and cider for on-site consumption; the definition of "limited on-premises sales" is: "Sell and serve malt beverages, wine, and cider for onsite consumption. Allows the sale of malt beverages in containers (kegs) for off-site consumption. Sell malt beverages for off-site consumption in securely covered containers provided by the customer." The business is located at 7695 Nyberg Road in the Nyberg Rivers Center. The application is in accordance with provisions of Ordinance No.680-85 which established a procedure for review of liquor licenses by the Council. Applicants are required to fill out a City application form, from which a review by the Police Department is conducted, according to standards and criteria established in Section 6 of the ordinance. The Police Department has reviewed the new liquor license application and recommended approval. According to the provisions of Section 5 of Ordinance No. 680-85 a member of the Council or the public may request a public hearing on any of the liquor license requests. If such a public hearing request is made, a hearing will be scheduled and held on the license. It is important that any request for such a hearing include reasons for said hearing.

### **FINANCIAL IMPLICATIONS:**

A fee has been paid by the applicant.

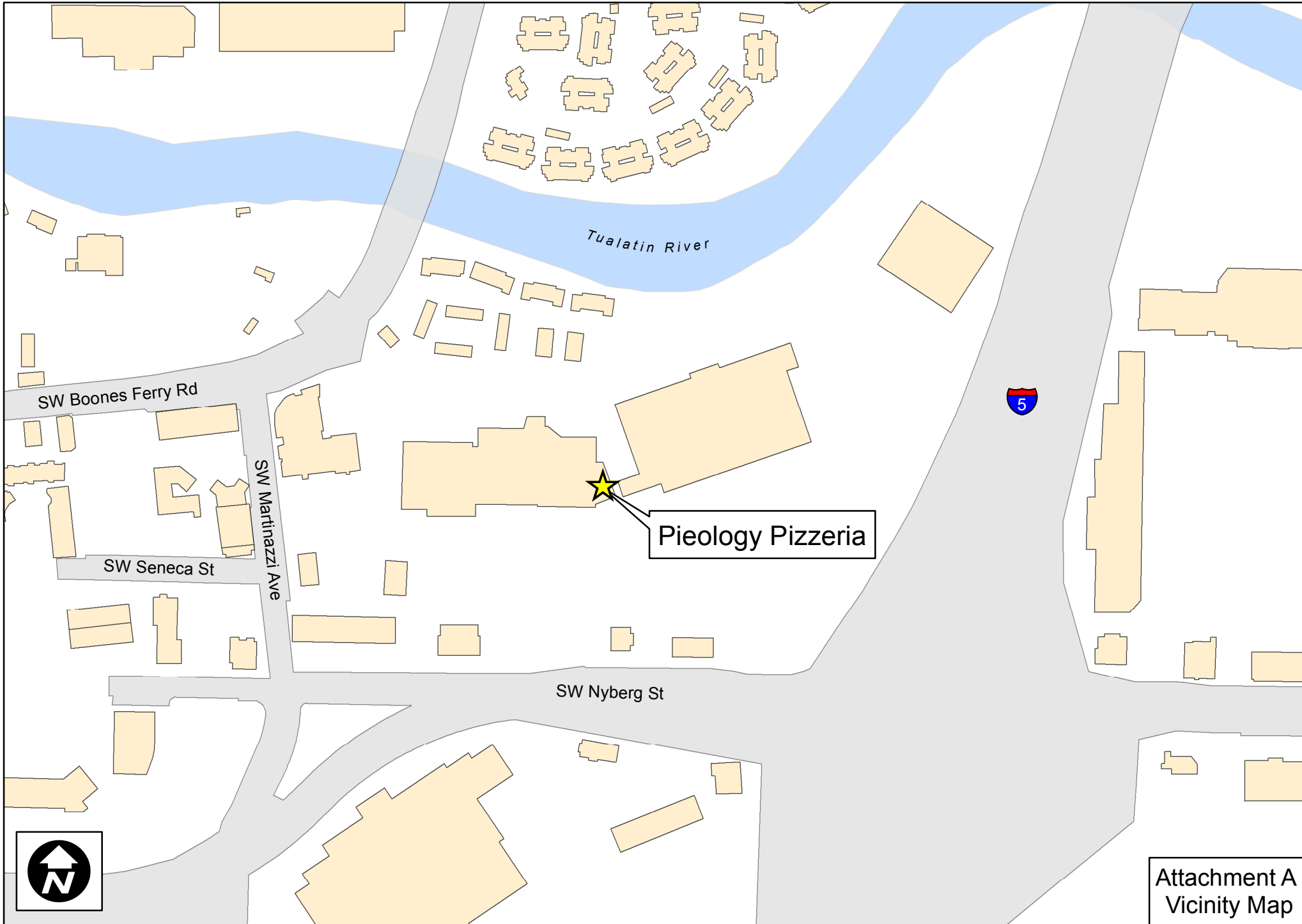
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**Attachments:** [Attachment A - Vicinity Map](#)

Attachment B- License Types

Attachment C- Liquor License





Pieology Pizzeria

## OREGON LIQUOR CONTROL COMMISSION

### LICENSE TYPES

#### FULL ON-PREMISES SALES

- **Commercial Establishment**  
Sell and serve distilled spirits, malt beverages, wine, and cider for consumption at that location (*this is the license that most “full-service” restaurants obtain*). Sell malt beverages for off-site consumption in securely covered containers provided by the customer. Food service required. Must purchase distilled liquor **only** from an Oregon liquor store, or from another Full On- Premises Sales licensee who has purchased the distilled liquor from an Oregon liquor store.
- **Caterer**  
Allows the sale of distilled spirits, malt beverages, wine, and cider by the drink to individuals at off-site catered events. Food service required.
- **Passenger Carrier**  
An airline, railroad, or tour boat may sell and serve distilled spirits, malt beverages, wine, and cider for consumption on the licensed premises. Food service required.
- **Other Public Location**  
Sell and serve distilled spirits, malt beverages, wine, and cider for consumption at that location, where the predominant activity is not eating or drinking (for example an auditorium; music, dance, or performing arts facility; banquet or special event facility; lodging fairground; sports stadium; art gallery; or a convention, exhibition, or community center). Food service required.
- **Private Club**  
Sell and serve distilled spirits, malt beverages, wine, and cider for consumption at that location, but only for members and guests. Food service required.

#### LIMITED ON-PREMISES SALES

Sell and serve malt beverages, wine, and cider for onsite consumption. Allows the sale of malt beverages in containers (kegs) for off-site consumption. Sell malt beverages for off-site consumption in securely covered containers provided by the customer.

#### OFF-PREMISES SALES

Sell factory-sealed containers of malt beverages, wine, and cider at retail to individuals in Oregon for consumption off the licensed premises. Eligible to provide sample tastings of malt beverages, wine, and cider for consumption on the premises. Eligible to ship manufacturer-sealed containers of malt beverages, wine, or cider directly to an Oregon resident.

#### BREWERY PUBLIC HOUSE

Make and sell malt beverages. Import malt beverages into and export from Oregon. Distribute malt beverages directly to retail and wholesale licensees in Oregon. Sell malt beverages made at the business to individuals for consumption on or off-site.

#### WINERY

Must principally produce wine or cider in Oregon. Manufacture, store, and export wine and cider. Import wine or cider *If bottled, the brand of wine or cider must be owned by the licensee*. Sell wine and cider to wholesale and retail licensees in Oregon. Sell malt beverages, wine, and cider to individuals in Oregon for consumption on or off-site.



CITY OF TUALATIN
LIQUOR LICENSE APPLICATION

9/3/14
(missing OLCC paperwork)

Date Sept 2, 2014

IMPORTANT: This is a three-page form. You are required to complete all sections of the form. If a question does not apply, please indicate N/A. Please include full names (last, first middle) and full dates of birth (month/day/year). Incomplete forms shall receive an unfavorable recommendation. Thank you for your assistance and cooperation.

SECTION 1: TYPE OF APPLICATION

- Original (New) Application - \$100.00 Application Fee.
Change in Previous Application - \$75.00 Application Fee.
Renewal of Previous License - \$35.00 Application Fee. Applicant must possess current business license. License #
Temporary License - \$35.00 Application Fee.

SECTION 2: DESCRIPTION OF BUSINESS

Name of business (dba): Pieology Pizzeria
Business address 7695 Nyberg Rd City Tualatin State OR Zip Code
Mailing address 70 SW Century Dr. City Bend State OR Zip Code 97702
Telephone # 925-577-3474 Fax #
Name(s) of business manager(s) First Rena Middle C Last Bouma
Date of birth Social Security # M F X
Home address City Rena State OR Zip Code 97702
Type of business Pizzeria
Type of food served Pizza
Type of entertainment (dancing, live music, exotic dancers, etc.)
Days and hours of operation M - F 11-9:30 Fri/Sat 11-10:30
Food service hours: Breakfast 11AM Lunch all day - Dinner all day
Restaurant seating capacity 68 Outside or patio seating capacity 24
How late will you have outside seating? 9:30pm How late will you sell alcohol? 9:30 weekday 10:30 Fri, Sat

How many full-time employees do you have? 2 Part-time employees? 220-25

**SECTION 3: DESCRIPTION OF LIQUOR LICENSE**

Name of Individual, Partnership, Corporation, LLC, or Other applicants il Booshe Pizza LLC

Type of liquor license (refer to OLCC form) Limited on premise

Form of entity holding license (check one and answer all related applicable questions):

**INDIVIDUAL:** If this box is checked, provide full name, date of birth, and residence address.  
Full name \_\_\_\_\_ Date of birth \_\_\_\_\_  
Residence address \_\_\_\_\_

**PARTNERSHIP:** If this box is checked, provide full name, date of birth and residence address for each partner. If more than two partners exist, use additional pages. If partners are not individuals, also provide for each partner a description of the partner's legal form and the information required by the section corresponding to the partner's form.  
Full name \_\_\_\_\_ Date of birth \_\_\_\_\_  
Residence address \_\_\_\_\_  
Full name \_\_\_\_\_ Date of birth \_\_\_\_\_  
Residence address \_\_\_\_\_

**CORPORATION:** If this box is checked, complete (a) through (c).  
(a) Name and business address of registered agent.  
Full name \_\_\_\_\_  
Business address \_\_\_\_\_

(b) Does any shareholder own more than 50% of the outstanding shares of the corporation? If yes, provide the shareholder's full name, date of birth, and residence address.  
Full name \_\_\_\_\_ Date of birth \_\_\_\_\_  
Residence address \_\_\_\_\_

(c) Are there more than 35 shareholders of this corporation? Yes \_\_\_ No \_\_\_ If 35 or fewer shareholders, identify the corporation's president, treasurer, and secretary by full name, date of birth, and residence address.  
Full name of president: \_\_\_\_\_ Date of birth: \_\_\_\_\_  
Residence address: \_\_\_\_\_  
Full name of treasurer: \_\_\_\_\_ Date of birth: \_\_\_\_\_  
Residence address: \_\_\_\_\_  
Full name of secretary: \_\_\_\_\_ Date of birth: \_\_\_\_\_  
Residence address: \_\_\_\_\_

**LIMITED LIABILITY COMPANY:** If this box is checked, provide full name, date of birth, and residence address of each member. If there are more than two members, use additional pages to complete this question. If members are not individuals, also provide for each member a description of the member's legal form and the information required by the section corresponding to the member's form.  
Full name: Brian Bourka  
Residence address: [Redacted] Bend, OR

47702

*Kenel Boume*

Full name: Mike Sheehan  
Residence address: \_\_\_\_\_

Date of birth: \_\_\_\_\_  
Michigan - Ca.

**OTHER:** If this box is checked, use a separate page to describe the entity, and identify with reasonable particularity every entity with an interest in the liquor license.

**SECTION 4: APPLICANT SIGNATURE**

A false answer or omission of any requested information on any page of this form shall result in an unfavorable recommendation.

\_\_\_\_\_  
Signature of Applicant

Sept 3, 2014  
Date

For City Use Only

Sources Checked:

DMV by [Signature]     LEADS by [Signature]     TuPD Records by [Signature]  
 Public Records by [Signature]

Number of alcohol-related incidents during past year for location.

Number of Tualatin arrest/suspect contacts for \_\_\_\_\_

It is recommended that this application be:

**Granted**

**Denied**

Cause of unfavorable recommendation: \_\_\_\_\_

\_\_\_\_\_  
Signature

9/15/14  
Date

Kent W. Barker  
Chief of Police  
Tualatin Police Department



# STAFF REPORT

## CITY OF TUALATIN

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

**THROUGH:** Sherilyn Lombos

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

**DATE:** 09/22/2014

**SUBJECT:** Consideration of **Resolution No. 5213-14** Authorizing Execution of an Intergovernmental Agreement Between the City of Tualatin and the State of Oregon 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 the State of Oregon to accept a *ConnectOregon V* grant of \$1,585,800 to be used as a portion of the funding to construct the Tualatin River Greenway Gap Completion Project.

### **RECOMMENDATION:**

Staff recommends that the Council adopt the attached Resolution.

### **EXECUTIVE SUMMARY:**

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 attached Notice of Award, Attachment A.

An intergovernmental agreement between the City of Tualatin and the State of Oregon is necessary to formalize the *ConnectOregon V* grant. The intergovernmental agreement is effective for five (5) years. 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.

The *ConnectOregon V* Grant requires a cash match. The cash match 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, the developer of the new Nyberg Rivers Shopping Center. Additionally, the City of Tualatin will contribute \$352,000 of Park System Development Charge funds towards 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 required cash match for the grant is in the process of being secured. The Washington County Coordinating Committee endorsed funding the Tualatin River Greenway Gap Completion Project in November, 2013, the Tualatin City Council approved an intergovernmental agreement

with Washington County for this grant on September 8, 2014, and the Washington County Board of County Commissioners is scheduled to consider and award the grant at its meeting on September 16, 2014. Also on September 8, 2014, the Tualatin City Council approved a donation agreement with CenterCal II, LLC for the cash contribution of \$600,000. Additionally, adequate budget capacity exists in the Park Development fund to cover the City's share of funding for the project.

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 B, 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 continue 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 the detour 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.

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 an intergovernmental agreement between the City of Tualatin and the State of Oregon allowing the City to receive a *ConnectOregon V* Grant of \$1,585,800 to be used as a portion of the funding to construct the Tualatin River Greenway Gap Completion Project.

---

**Attachments:**    A - Notice of Award

B - Project Map

C - Resolution No. 5213-14

D - Intergovernmental Agreement





# Oregon

John A. Kitzhaber, M.D., Governor

ATTACHMENT A

Department of Transportation  
Active Transportation Section  
555 13<sup>th</sup> Street NE, Suite 2  
Salem OR 97301

August 25, 2014

Paul Hennon  
Community Services Director  
City of Tualatin  
18880 SW Martinazzi Avenue  
Tualatin, OR 97062

**Subject: *ConnectOregon V* – Notice of Award**  
**Agreement Number: 30125**  
**Project Name: Tualatin River Greenway Trail Gap Completion**

Transportation Commission has approved your project for *ConnectOregon V* funding. The *ConnectOregon V* award for your project is \$1,585,800. In the next couple of weeks you will receive an agreement in the mail for signature. Once you receive the agreement, please sign it and return as soon as possible.

**Please note** that only work performed on the project after the agreement is fully signed and as described in the agreement will be eligible for reimbursement.

Additionally, recipients are not eligible to receive reimbursement until they have met applicable “Special Conditions” listed in the agreement and/or provided a conformed copy of the recorded Memorandum of Agreement and Acknowledgement of ODOT Assistance shown in the agreement.

We will be hosting a conference call on **Monday, September 15<sup>th</sup> at 10:00 a.m. – Pacific Time** to discuss the following aspects of the *ConnectOregon V* Program:

- Grant Agreement/Notice to Proceed
- ODOT Local Agency Liaison
- Monthly Invoices/Monthly Progress Reports/Project Milestones
- Request for Change Order Process/Amendment Process
- Memorandum of Agreement and Acknowledgement of ODOT Assistance
- BOLI fees
- Signage
- Project Acceptance
- Performance Reports and Retainage

**The conference call number is: 1-888-251-2909; Participant Code: 868544.** If you cannot personally attend the conference call, please ensure that a representative calls in on your behalf.

***ConnectOregon Sign Requirement.*** ORS 280.518 requires any economic development program financed with proceeds from the state lottery to display a sign in a conspicuous location on the project site. ODOT will provide one sign to you for your *ConnectOregon V* project, if requested. To request a sign, please send an email with your project agreement number, project name, and note “COV Sign Requested” in the subject line to: [LGSCoconnectOregon@odot.state.or.us](mailto:LGSCoconnectOregon@odot.state.or.us). Your email must contain a contact name, physical address and phone number.

Notice of Award  
Page 2

If your project site is in a remote location and a sign would not be visible, you will need to send proof that your organization has specified in its program information that the Project is financed with proceeds from the state lottery. This proof can be sent to the attention of the *ConnectOregon* Program Manager using the same email address above with your project agreement number, project name and a note "COV-No Sign-Program Information Proof" in the subject field. Signs should be available after the first of the year.

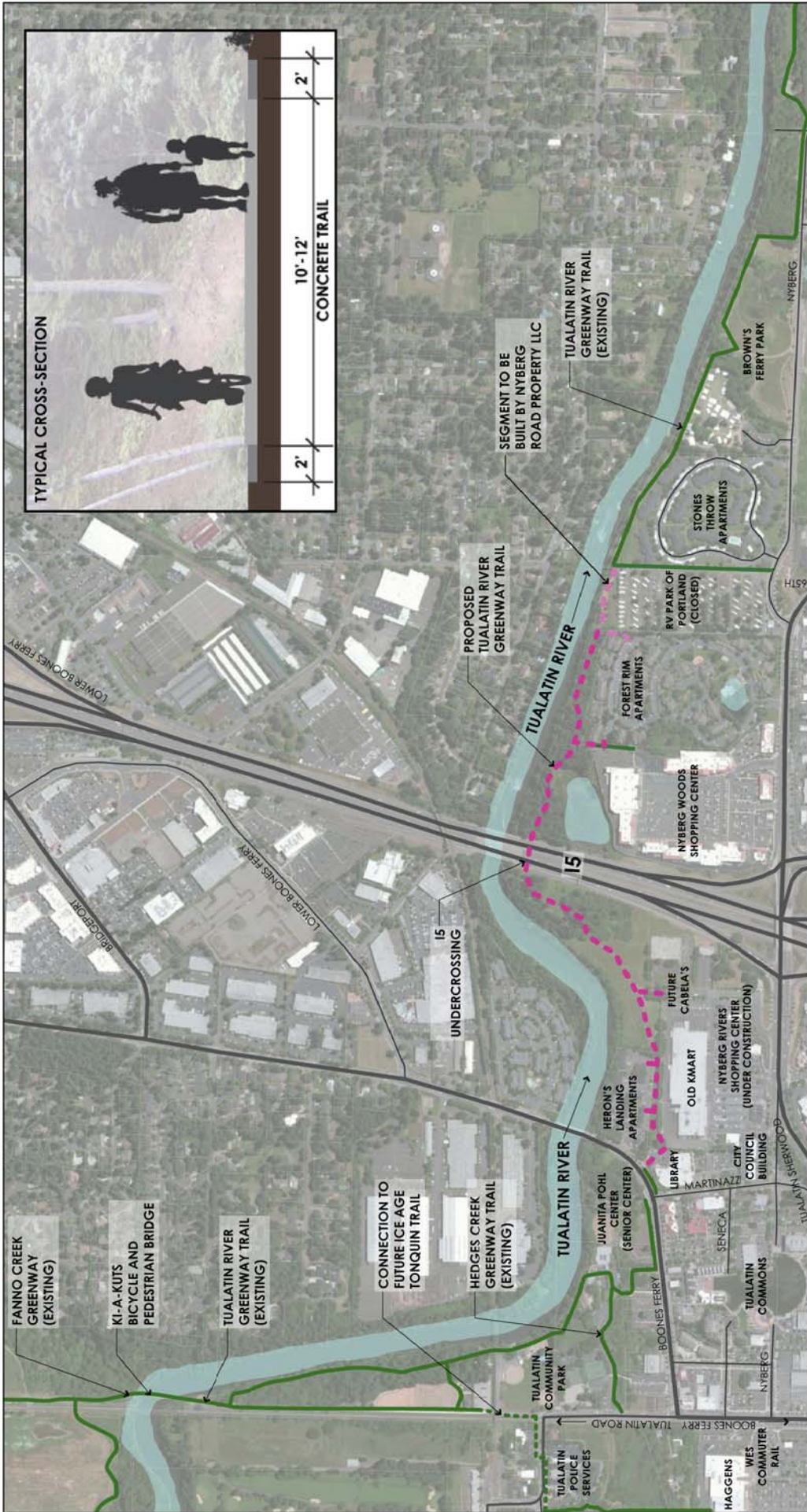
Recipients must send an email either requesting a sign or providing proof of inclusion in their program information to the email address above by November 15, 2014.

If you have any questions, contact me at 503-986-3327.

Sincerely,

*Carol Olsen*

ODOT *ConnectOregon* Program Manager



**TUALATIN RIVER GREENWAY TRAIL GAP COMPLETION**

City of Tualatin  
NOVEMBER 25, 2013



RESOLUTION NO. 5213-14

CONSIDERATION OF RESOLUTION NUMBER 5213-14 AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TUALATIN AND THE STATE OF OREGON 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 Transportation Improvement Program (MSTIP) Opportunity Fund Grant of \$750,000 and a \$600,000 cash donation from Nyberg CenterCal II, LLC; and

WHEREAS The Tualatin City Council approved both an intergovernmental agreement with Washington County for the Opportunity Fund grant and a donation agreement with CenterCal II, LLC for its cash donation on September 8, 2014, and the Washington County Board of County Commissioners is scheduled to consider and award the Opportunity Fund grant at its meeting on September 16, 2014.

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 an intergovernmental agreement between the City of Tualatin and the State of Oregon for a *ConnectOregon V* Grant in the amount of \$1,585,800, in a form substantially like the attached intergovernmental agreement.

INTRODUCED AND ADOPTED this 22th day of September, 2014.

CITY OF TUALATIN, OREGON

BY \_\_\_\_\_  
Mayor

ATTEST:

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

Misc. Contracts and Agreements  
No.

**GRANT AGREEMENT**  
**ConnectOregon IV**  
MULTIMODAL TRANSPORTATION FUND PROGRAM 2011  
**Project Name:**

THIS GRANT PROGRAM AGREEMENT, hereinafter referred to as "Agreement" is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," and the \_\_\_\_\_, acting by and through its \_\_\_\_\_, hereinafter referred to as "Recipient," hereinafter individually referred to as the "Party" and collectively referred to as the "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572, and 366.576, state agencies may enter into agreements with counties, cities, and units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. Pursuant to ORS 367.080 through 367.086, there is established the Multimodal Transportation Fund, separate and distinct from the General Fund, allowing for the issuance of lottery bonds for the purpose of financing grants and loans to fund Transportation Projects to public bodies and private entities that involve air, marine, rail or public transit.
3. The Multimodal Transportation Fund Program began through *ConnectOregon*, a one hundred million dollar (\$100,000,000) lottery-bond-based initiative approved by the Oregon Legislative Assembly in 2005 (Oregon Laws 2005, Chapter 816), to invest in air, rail, public transit, and marine transportation projects to ensure Oregon's transportation system is strong, diverse and efficient. The Oregon Legislative Assembly added an additional one hundred million dollars (\$100,000,000) in 2007 (Oregon Laws 2007, Chapter 859), one hundred million dollars (\$100,000,000) in 2009 (Oregon Laws 2009, Chapter 865 – HB 2001), and forty million dollars (\$40,000,000) in 2011 (Oregon Laws 2011, Chapter 624, HB 5036. The Multimodal Transportation Fund Program is focused on improving the connections between air, rail, marine and transit modes of transportation to reduce transportation costs to businesses, remove key bottlenecks, and increase connectivity.
4. The receipt and use of Multimodal Transportation Funds and the execution of this Agreement by Recipient are subject to conditions imposed by ORS 367.080 through 367.086 and Oregon Administrative Rule (OAR) Chapter 731, Division 35.

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5. The Oregon Transportation Commission approved the projects to be funded under the Multimodal Transportation Fund Program at its August 2012 meeting. The Oregon Transportation Commission has set specific conditions on all approved projects and the inability to meet these Oregon Transportation Commission conditions may result in a loss of Project funding. Final approval for Project is subject to meeting all the Oregon Transportation Commission conditions as stated below.
6. Safety is of paramount concern to ODOT. ODOT encourages recipients of *ConnectOregon* grant funds to have safety as a high priority for all phases of work.

## DEFINITIONS

1. The Multimodal Transportation Fund Program also known as "*ConnectOregon*" as set forth in ORS 367.060 and OAR Chapter 731, Division 35, is a legislatively authorized lottery-bond-based initiative to invest in air, rail, public transit, and marine transportation projects in Oregon.
2. Recipient, as defined in OAR 731-035-0020(19), means an Applicant that enters into Agreement with ODOT to receive funds from the Multimodal Transportation Fund.
3. The *ConnectOregon* Oversight Committee is to be composed of (A) ODOT's *ConnectOregon* Program Manager, (B) Oregon Department of Aviation Director (ODA), (C) ODOT Chief of Staff, (D) ODOT Freight Mobility representative, (E) ODOT Region representative, (F) ODOT Rail Division Administrator and (G) a non-agency representative, appointed by ODOT's *ConnectOregon* Program Manager to address the *ConnectOregon* Program and Project specific issues.

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

## TERMS OF AGREEMENT

1. The following documents are attached hereto and by this reference made a part hereof:
  - a. "Exhibit A" – Statement of Work
  - b. "Exhibit B" – Memorandum of Agreement and Acknowledgement of ODOT Assistance
2. Under such authority, ODOT and Recipient agree that Recipient shall \_\_\_\_\_, described in Exhibit A, hereinafter referred to as "Project." Project description, tasks and deliverables, schedule and budget are further described in Exhibit A.



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3. Project cost is estimated at \$ \_\_\_\_\_, which is subject to change. The *ConnectOregon* IV grant funds are limited to \$ \_\_\_\_\_ or eighty (80) percent of the total eligible Project costs, whichever is less. Eligible costs for this Project will be reimbursed at eighty (80) percent until the \$ \_\_\_\_\_ limit is reached. ODOT cannot reimburse Recipient for any work performed, or for Project costs incurred prior to the effective date of this Agreement.
  - a. Matching funds must be provided by Recipient in the form of monetary outlay for elements necessary for implementation of Project, including land, excavation, permits, engineering, payroll, special equipment purchase, rental or lease and cover at least twenty (20) percent of the eligible Project costs. Recipient shall be responsible for the twenty (20) percent match requirement and any costs in excess of the *ConnectOregon* IV grant funds.
  - b. If Project is not completed in accordance with, or consistent with, the application and documents provided by Recipient to ODOT prior to the execution of the Agreement, incorporated by reference into this Agreement, and this Agreement as they each may be amended, Recipient shall pay back all of the *ConnectOregon* IV grant funds to ODOT. Any funds disbursed but not used for the approved Project must be returned to ODOT. Recipient understands eligibility for *ConnectOregon* IV grant funds applies only to Project costs incurred on or after the effective date of this Agreement.
4. The term of this Agreement is effective on the date all required signatures are obtained and shall terminate five (5) years from the date of execution.

### **RECIPIENT OBLIGATIONS**

1. Recipient shall perform the work described in Exhibit A.
2. Recipient shall comply with all requirements of ORS 367.080 through ORS 367.086 and OAR Chapter 731, Division 35.
3. Recipient shall submit to ODOT's Project Liaison for review and approval, monthly invoices and updated monthly progress reports on Project schedule.
  - a. The invoice must adhere to generally accepted accounting principals and will identify Project, Agreement number, Project start and end date, the invoice number or the account number or both, and will itemize all expenses as well as provide a detailed breakdown of funds expended to date and dollars remaining. In the event an invoice is not necessary during a specific period, an updated monthly progress report on Project schedule must be submitted separately each month reflecting continuous progress.

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- b. The monthly progress report, which must be signed and dated, will be prepared using the *ConnectOregon* Monthly Progress Report (Form 734-2668), attached by reference and made a part of this Agreement, and will be submitted to the ODOT Project Liaison and ODOT's *ConnectOregon* Program Manager, by the first Wednesday of each month. The fillable form can be downloaded on-line at the following address:  
**<http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>**.
  - c. If Recipient anticipates Project key milestones will be delayed by more than ninety (90) days from the key milestones shown in Exhibit A, Recipient shall submit a Request for Change Order (Form 734-2648), which is hereby incorporated by reference, to ODOT's Project Liaison as soon as Recipient becomes aware of any possible delay. The Request for Change Order must be submitted prior to the milestone completion date shown in Exhibit A. The fillable form can be downloaded on-line at the following address:  
**<http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>**.
  - d. Any changes to Project scope or delivery schedule must be approved by the *ConnectOregon* Oversight Committee or assigned designee prior to execution of an amendment to this Agreement. Recipient shall not proceed with any changes to Project scope prior to the Request for Change Order being approved by ODOT and the ensuing amendment executed. A Request for Change Order may be rejected at the discretion of the *ConnectOregon* Oversight Committee. The *ConnectOregon* Oversight Committee may choose to request review by the Oregon Transportation Commission. Recipient's obligation to maintain and operate Project will survive termination of this Agreement.
  - e. Recipient shall submit a written report to ODOT's *ConnectOregon* Program Manager, that identifies the number of jobs created or retained both during construction and after Project completion, as a direct result of this Project. The report must also include the number of jobs projected in the application. This report must also include data on the methodology which measures Project's success as described in the grant application. The report must be received within eighteen months after the completion of Project. Recipient's obligation to provide this report will survive termination of this Agreement.
4. Recipient must comply with ORS 280.518, which requires any economic development program financed with proceeds from the state lottery to display a sign in a conspicuous location on Project site or specify in the program information that Project is financed with proceeds from the state lottery. ODOT will provide standard signage as appropriate. If Recipient chooses to make a custom sign, it must be approved by ODOT's *ConnectOregon* Program Manager and Recipient would be responsible for the cost of custom signage. If Project site is remote and a sign



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would not be visible to the public, then Recipient shall provide proof to ODOT's *ConnectOregon* Program Manager that they have specified in their program information that Project is financed with proceeds from the state lottery.

5. Recipient must produce or provide, upon ODOT's request, any documents or information identified or referenced in Project application or in other documents provided by Recipient to ODOT prior to the execution of the Agreement. These may include, but are not limited to, information pertaining to Project key milestones, schedule, budget and cash flow, feasibility, readiness to construct, permits, likelihood of completion within planned time frame, and other items related to completion of promised Project elements.
6. Recipient shall provide documentation of having met all pre-construction requirements, including, but not limited to, meeting all public agency conditions of Project approval and obtaining all Project-specific land entitlements and permits, prior to any construction (labor and material) costs being considered eligible for reimbursement and actually being reimbursed. Project costs will only be reimbursed through the design phase of Project until all applicable documentation is received. Recipient shall provide this documentation to ODOT's *ConnectOregon* Program Manager.
7. Recipient shall provide documentation of having secured funding for all Project costs beyond the *ConnectOregon* IV grant funds, prior to any construction (labor and material) costs being considered eligible for reimbursement and actually being reimbursed. Such funds must be available and committed for the duration of Project. Recipient shall provide this documentation to ODOT's *ConnectOregon* Program Manager.
8. Recipient shall provide a pre-construction estimate based on the final design prior to any construction (labor and material) costs being considered eligible for reimbursement and actually being reimbursed. Project costs will only be reimbursed through the design phase of Project until all applicable documentation is received. Recipient shall provide this documentation to ODOT's *ConnectOregon* Program Manager.
9. Upon execution of this Agreement, Recipient shall require its Contractor(s) performing the work under this Agreement to name ODOT as an additional obligee on Contractor(s) bond.
10. Recipient shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the applicable provisions of ORS 279A, 279B and 279C. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i)

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Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

11. Recipient shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation, its officers and employees from any and all claims, suits, or action of any nature arising out of activities of Recipient, its consultant, its contractor, its officers, subcontractors, agents, or employees under this Agreement. If Recipient is a local public agency, then Recipient's total liability shall not exceed the tort claims limits providing in the Oregon Tort Claims Act, ORS 30.260 and 30.300 for "local public bodies."
12. Notwithstanding the foregoing defense obligations in the paragraph above, neither Recipient nor any attorney engaged by Recipient shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Recipient is prohibited from defending the State of Oregon, or that Recipient is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Recipient if the State of Oregon elects to assume its own defense.
13. Recipient acknowledges and agrees that ODOT, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Recipient which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records will be made available upon request. Payment for costs of copies is reimbursable by the requesting Party.

*If the Recipient is other than a public agency which is otherwise subject to Prevailing Wage Rates, AND if the Project will have more than \$750,000 of public funds, paragraphs 14-17 will be added to the Agreement.*

14. ODOT has determined that Project is a public work of the type described in ORS 279C.800(6)(a)(B) or (C), i.e., uses seven hundred fifty thousand dollars (\$750,000)

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or more of funds of a public agency, including *ConnectOregon* funds and other public agency funds, or twenty five (25) percent or more of the square footage of the completed project will be occupied or used by a public agency. Therefore, pursuant to OAR 839-025-0020(8), Recipient shall comply with the requirements of OAR 839-025-0020(5) concerning payment of prevailing wage rates, and shall require compliance with OAR 839-025-0020(5) by any Contractor for Project.

15. Workers on Project shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.
16. Every Contractor for Project must have a public works bond filed with the Construction Contractors' Board before starting work on Project, unless exempt under ORS 279C.836(4), (7), (8), or (9).
17. OAR 839-025-0230(4) requires ODOT as the public agency providing public funds for a project, which is a public work under ORS 279C.800(6)(a)(B) to pay the fee required under ORS 279C.825 to the Bureau of Labor and Industries (BOLI) at the time the public agency commits to the provision of funds for Project. ODOT will calculate such fee for Project using OAR 839-025-0200 through OAR 839-025-0230, pay the fee, and deduct the amount of the fee from the *ConnectOregon* IV grant amount.
18. If Recipient enters into a construction contract for performance of work on Project, then Recipient will require its contractor to provide the following:
  - a. Contractor shall indemnify, defend and hold harmless ODOT from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract.
  - b. Contractor and Recipient shall name ODOT as a third party beneficiary of the resulting contract.
  - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to ODOT. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than one million dollars (\$1,000,000) for each job site or location. Each annual aggregate limit will not be less than two million dollars (\$2,000,000.)

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- d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than one million dollars (\$1,000,000.)
  - e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include ODOT and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under this Contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.
  - f. Notice of Cancellation or Change. There will be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to ODOT. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.
19. Recipient, and its Contractors, shall work as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
20. All employers, including Recipient, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than five hundred thousand dollars (\$500,000) must be included. Recipient shall ensure that each of its Contractors complies with these requirements.
21. Recipient shall, upon execution of this Agreement and as a condition to this Agreement, complete and file with the appropriate County Clerk, Exhibit B, "Memorandum of Agreement and Acknowledgment of ODOT Assistance." Recipient shall provide confirmation of this filing by forwarding to ODOT's *ConnectOregon* Program Manager a notarized copy of the recorded Exhibit B. By means of said acknowledgment of Recipient's financial obligations, the continued use of said property for public purposes, and the maintenance of the facility or service at a level consistent with normal depreciation or demand or both is recognized and attached to the property as conditions. Any interest in said property by ODOT is proportional to the state participation in Project. While in default of

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conditions of this Agreement, Recipient will be ineligible to receive state funds from any ODOT-administered program for any project on a street, road or property. The Memorandum of Agreement and Acknowledgment of ODOT Assistance shall remain in place for the useful life of Project. The useful life of Project is defined as twenty (20) years. Reimbursement to Recipient will not be made until a copy of the recorded Exhibit B has been forwarded to the ODOT Project Liaison.

22. Recipient and ODOT's Project Liaison shall, upon completion of all on-site work for Project, perform an on-site review. Once review is completed, the ODOT Project Liaison shall recommend acceptance of Project by signing the *ConnectOregon* "Recommendation of Acceptance" (Form 734-2649), which will be signed by the ODOT Project Liaison and Recipient and is hereby incorporated by reference. The full text of the above referenced exhibit may be reviewed and downloaded at the following web address:

<http://www.oregon.gov/ODOT/HWY/LGS/docs/Forms/COProjectAccept2649.doc>

23. Recipient shall, at its own expense, maintain and operate Project upon completion and throughout the useful life of Project at a minimum level that is consistent with normal depreciation or service demand or both. ODOT and Recipient agree that the useful life of Project is defined as twenty (20) years. Recipient has, by submitting its application for this *ConnectOregon* IV grant, represented and certified to sufficient funds and to its ability to operate and maintain Project. ODOT may conduct periodic inspections following the execution of this Agreement to verify that Project is being properly maintained and continues to serve the purpose for which *ConnectOregon* IV grant funds were provided.
24. Maintenance responsibilities and potential ODOT inspections of Project shall survive any termination of this Agreement.
25. Recipient certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Recipient, under the direction or approval of its governing body, commission, board, officers, members, or representatives, and to legally bind Recipient and shall provide ODOT proof of such authority upon request.
26. Recipient's Project Manager is \_\_\_\_\_, \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_; or assigned designee upon individual's absence. Recipient shall notify ODOT's Project Liaison and ODOT's *ConnectOregon* Program Manager in writing when any contact information changes during the term of this Agreement.

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### ODOT OBLIGATIONS

1. Based upon the *ConnectOregon* IV grant fund allocation allowed, ODOT agrees to pay Recipient \$ \_\_\_\_\_, or eighty (80) percent of the total eligible Project costs, whichever is less. Eligible costs for this Project will be reimbursed at eighty (80) percent until the \$ \_\_\_\_\_ limit is reached.
2. ODOT shall, upon receipt of a monthly invoice and updated monthly progress report on Project schedule, review for approval and make payment to Recipient for approved eligible costs.
3. This Agreement is contingent upon issuance and sale of lottery bonds sufficient to fund Project. The Agreement is effective and work may begin upon execution of this Agreement, but ODOT's obligation to make Project payments is contingent upon the issuance and sale of lottery bonds by the State Treasurer.
4. ODOT shall monitor Project for compliance and notify Recipient in writing if it appears Recipient is failing to comply with Multimodal Transportation Fund Program requirements as specified in ORS Chapter 367; OAR Chapter 731, Division 35; the terms of this Agreement; or Recipient's application and documents provided by Recipient to ODOT prior to the execution of the Agreement.
5. ODOT may impose sanctions against Recipient for failing to comply with the requirements governing the Multimodal Transportation Fund Program. Before imposing sanctions, ODOT will send a notice to cure to Recipient if Recipient fails to comply with Program requirements. ODOT will allow fifteen (15) days from the date the notice to cure is sent for Recipient to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:
  - a. Work on the approved Project has not been substantially initiated within six (6) months of the effective date of this Agreement or if continuous progress on Project has not been maintained for six (6) months;
  - b. State of Oregon statutory requirements have not been met;
  - c. There is a significant deviation from the terms and conditions of this Agreement or representations of Recipient's application and documents provided by Recipient to ODOT prior to the execution of the Agreement;
  - d. Significant corrective actions have been found to be necessary to protect the integrity of the funds for the approved Project, and those corrective actions are not, or will not, be made within a reasonable time;

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- e. Key Milestones shown in Project schedule are delayed by more than ninety (90) days; or
  - f. Failure to submit monthly progress reports as required in Recipient Obligations, Paragraph three (3).
6. One or more of the following sanctions may be imposed if the circumstances listed above are not remedied within the time specified in the notice to cure:
    - a. Revocation of this grant award;
    - b. Withholding of unexpended funds;
    - c. The return of unexpended funds or repayment of expended funds;
    - d. The barring of Recipient from applying for future assistance; or
    - e. Other remedies that may be incorporated into this Agreement.
  7. The remedies set forth in this Agreement are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.
  8. ODOT's Project Liaison and Recipient shall, upon completion of all on-site work for Project, perform an on-site review. Once review is completed, ODOT's Project Liaison shall recommend acceptance of Project by signing the *ConnectOregon* Recommendation of Acceptance (Form 734-2649), which will be signed by ODOT's Project Liaison and Recipient. Upon receipt of signatures by the Parties, ODOT's Project Liaison shall forward a signed copy to ODOT's *ConnectOregon* Program Manager.
  9. ODOT's *ConnectOregon* Program Manager is Carol Olsen, Active Transportation Section, 555 13<sup>th</sup> Street NE, Salem, OR 97301, 503-986-3327, carol.a.olsen@odot.state.or.us, or assigned designee upon individual's absence.

## GENERAL PROVISIONS

1. This Agreement may be terminated effective upon delivery of written notice to Recipient, or at such later date as may be established by ODOT under any of the following conditions:
  - a. If Recipient fails to perform any of the provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance

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- with its terms, and within ten (10) days or such longer period as ODOT may authorize, after receipt of written notice from ODOT, fails to correct such failures.
- b. The Legislature fails to approve, reduces, eliminates or otherwise interferes with appropriations of state expenditure limitation to the extent that legal authority is insufficient to enable ODOT, in its reasonable discretion, to continue making payments under this Agreement.
  - c. ODOT, the Department of Justice, or a court of competent jurisdiction determines that state law, rules, regulation or guidelines are modified, changed, or interpreted in such a way that the activities described in Exhibit A are no longer allowable or no longer eligible for funding proposed by this Agreement.
2. ODOT may impose one or more of the sanctions described under ODOT Obligations, Paragraph six (6), without prior notice and without opportunity to cure, in the event ODOT determines:
- a. Statements, information, or representations in the *ConnectOregon IV* application and documents provided by Recipient to ODOT prior to the execution of the Agreement, for Project were false, misleading, fraudulent or misrepresentations; or
  - b. There has been a change in circumstances so that information provided in the application and documents provided by Recipient to ODOT prior to the execution of the Agreement, and relied upon in making the grant or loan, or representations concerning considerations in the selection of Project for *ConnectOregon IV*, pursuant to OAR 731-035-0060, are no longer true or accurate.
3. Recipient may terminate this Agreement effective upon delivery of written notice to ODOT under any of the following conditions:
- a. ODOT fails to make payments due under this Agreement, or
  - b. ODOT fails to perform any of the provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and within ten (10) days or such longer period as Recipient may authorize, after receipt of written notice from Recipient, fails to correct such failure.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.



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5. ODOT and Recipient are the only Parties to this Agreement and, as such, are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third persons unless such third persons are expressly identified by name and specifically described as intended to be beneficiaries of its terms.
6. ODOT and Recipient hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 7a. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
- b. Any Party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- c. Notwithstanding subsection (b), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.
8. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
9. This Agreement, Project application and documents provided by Recipient to ODOT prior to the execution of the Agreement, and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of a conflict, the body of this Agreement and the attached Exhibit A will control over Project application and documents provided by Recipient to ODOT. There are no

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understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind 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. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that its signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The Oregon Transportation Commission at its August 2012 meeting, approved the ConnectOregon IV project application list and delegated authority to the Director of the Oregon Department of Transportation to enter into project agreements.

\_\_\_\_\_, acting by and through its Board of Commissioners

**STATE OF OREGON**, by and through its Department of Transportation

By \_\_\_\_\_

By \_\_\_\_\_  
Director

Date \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

**APPROVAL RECOMMENDED**

Date \_\_\_\_\_

By \_\_\_\_\_  
Freight Mobility Manager

**APPROVED AS TO LEGAL SUFFICIENCY**

Date \_\_\_\_\_

By \_\_\_\_\_  
Recipient Counsel

By \_\_\_\_\_  
Active Transportation Section Manager

Date \_\_\_\_\_

Date \_\_\_\_\_

**Recipient Contact:**

**APPROVED AS TO LEGAL SUFFICIENCY**

**ODOT Contact:**  
Carol Olsen  
ConnectOregon Program Manager

By \_\_\_\_\_  
Assistant Attorney General

| Recipient/ODOT  
Agreement No.

Active Transportation Section  
555 13<sup>th</sup> Street NE  
Salem, OR 97301  
503-986-3327  
carol.a.olsen@odot.state.or.us

Date \_\_\_\_\_

SAMPLE

**EXHIBIT A****Agreement No.****Application Number:****Project Name:****A. PROJECT DESCRIPTION****B. PROJECT KEY MILESTONES AND SCHEDULE**

Project has Key Milestone(s). Key Milestones are used for evaluating performance on Project and determining level of compensation for completed work as described in the Agreement. Key Milestones cannot be changed without an amendment to the Agreement. Recipient may shift the estimated grant funds shown below between milestones without an amendment to the Agreement, but shall not, under any circumstances, exceed the "Total Not To Exceed Grant Fund Allocation". Recipient shall report changes to the Estimated Amounts corresponding to each Key Milestones, shown below, in Recipient's Monthly Report to the ODOT Project Liaison.

If Recipient anticipates Project Key Milestones will be delayed by more than ninety (90) days, Recipient shall submit a Request for Change Order to the ODOT Project Liaison as soon as Recipient becomes aware of any possible delay. The Request for Change Order must be submitted prior to the Key Milestone completion date shown in this Exhibit.

The anticipated start date of Project is:

The estimated completion date of Project is:

## EXHIBIT A

Table 1: Key Milestones

Key Milestone	Description	Estimated Due Date	Estimated Amount
1			
2			
3			
4			
5			
6			
	<b>Total Project Cost</b>		<b>\$</b>

Table 2 – Funding Breakdown

<b>A</b>	<b>Total Not To Exceed Grant Fund Allocation</b>	<b>\$</b>	
<b>B</b>	<b>ConnectOregon IV twenty (20) percent required match</b>	<b>\$</b>	
<b>C</b>	<b>ConnectOregon IV Total</b>		<b>\$</b>
<b>D</b>	<b>Other Funds In Addition to twenty (20) percent Required Match</b>	<b>\$</b>	
<b>E</b>	<b>Total Project Funding</b>		<b>\$</b>

**C. BUDGET**

Total Not To Exceed payable to Recipient is \$ .

Total Project costs are estimated at \$ . The *ConnectOregon IV* grant fund allocation for Project is \$ . Recipient shall be responsible for any unanticipated costs over the identified *ConnectOregon IV* Grant Fund Allocation.

**EXHIBIT B**

After recording, return to:

**MEMORANDUM OF AGREEMENT AND ACKNOWLEDGEMENT OF ODOT ASSISTANCE**

**[State Recording Authority: ORS 93.710 and ORS 205.130(2)]**

Agreement Number:

Project Name:

Grant Agreement No. \_\_\_\_\_ (“Grant Agreement”) between the \_\_\_\_\_ (Recipient Name) and the State of Oregon, Department of Transportation was executed on \_\_\_\_\_. Pursuant to Paragraph 21, Recipient Obligations, page 8 of the Grant Agreement, upon the recording of this document, the \_\_\_\_\_ (Recipient Name) will receive grant funds for Project described in the Grant Agreement. The property and assets under the jurisdiction of the \_\_\_\_\_ (Recipient Name) will be improved with the assistance from the State of Oregon, Department of Transportation, in accordance with the terms of the Grant Agreement. Such assistance will be provided to \_\_\_\_\_ (Recipient Name), in reimbursement of costs associated with the \_\_\_\_\_ (Project Name). The use and disposition of said property is subject to the terms of the Grant Agreement, copies of which may be obtained from the Director of ODOT. A description of the improved property is attached.

**(RECIPIENT NAME)**

\_\_\_\_\_  
Name/Title:  
Address:

\_\_\_\_\_  
Date:

State of Oregon: County of \_\_\_\_\_

Signed or attested before me on \_\_\_\_\_ by \_\_\_\_\_  
(Date) (Name(s) of Person(s))

\_\_\_\_\_  
(Signature of notarial officer) My commission expires on \_\_\_\_\_.

---

**STATE OF OREGON, DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_ Date \_\_\_\_\_  
Darel F. Capps, Transportation Finance Manager  
555 13<sup>th</sup> Street NE; Salem, OR 97301

State of Oregon: County of \_\_\_\_\_

Signed or attested before me on \_\_\_\_\_ by \_\_\_\_\_  
(Date) (Name(s) of Person(s))

\_\_\_\_\_  
(Signature of notarial officer) My commission expires on \_\_\_\_\_.

**City Council Meeting**

**Meeting Date:** 09/22/2014

**SPECIAL REPORTS:** Summer Programs Review and Fall Programs Review

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**SPECIAL REPORTS**

Summer Programs Review & Fall Programs Preview

**SUMMARY**

An update on programs and activities offered this Summer by the City of Tualatin and partners, and a preview of Fall programs.

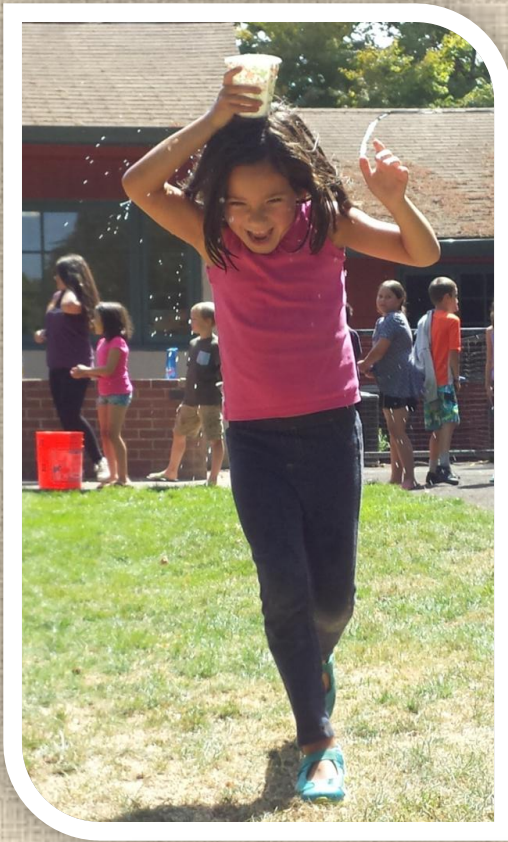
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Summer Review Fall Preview

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# City of Tualatin 2014 Summer Programs Review & Fall Programs Preview





# Summer Reading @ Library



- 2.6+ million minutes read
- 3,000+ books given away
- Increased participation in all age groups
- Highest adult participation in WCCLS – 4<sup>th</sup> year!





# Summer Reading @ The Commons



- Tuesdays, June - August
- Over 2,000 attended

*Summer Reading fosters human development through promoting literacy & education, increases cultural unity, and creates a sense of place.*





# Summer Camps



- **Summer in the Park Day Camps**
  - 100% increase over 2013
- **Teen Adventure Camps**
  - 62% increase over 2013

*Summer camp programs promote health and wellness, foster youth development, and strengthen our community image.*





# Concerts and Movies on the Commons



- **Concerts**
  - Fridays, July through August
  - Over 4,000 attended
- **Movies**
  - Saturdays, July through August
  - Over 2,000 attended



# Arts Activities



- Lazy River installation & dedication
- ArtSplash, July 18-20
  - over 2,000 attended



*Fostering an appreciation of arts in our community.*



# Teen Volunteers



- **TEAM Tualatin:**  
70 volunteers –  
2,109 service hours
- **Library:**  
40 volunteers -  
1,000 service hours



## National Night Out 20 neighborhoods hosted events



- GREAT (Gang Resistance Education and Training)
- Car Seat Clinic
- Click It or Ticket
- Prescription Drug Take Back Day



# Community Partners



## TTSD Summer Lunch Program

- Atfalati Park – served 3,190 children
- Community Park – served 1,677 children





# Recreation Partners

## Tualatin Crawfish Festival

16,000+ enjoyed music, food, contests, fun and activities



**Tualatin Heritage Center**  
Ongoing lectures, programs,  
displays, and activities



## Browns Ferry Park

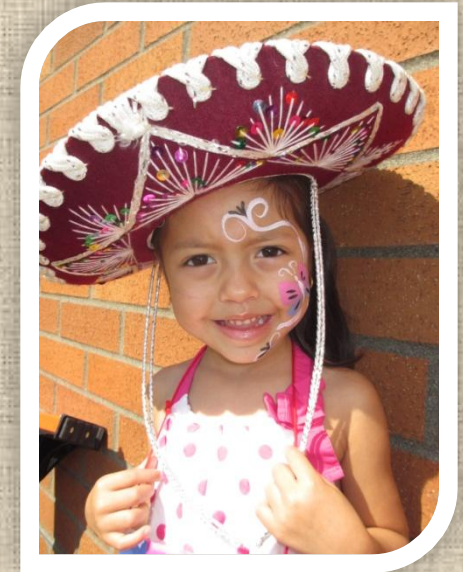
Kayak & canoe rentals-  
expanded hours and  
increased rentals over 25%





# Fall Preview – Library

- Hispanic Heritage Month
  - October 4, 1-3 pm
- Grave Matters (Conversation Project)
  - October 28, 7pm
- Dia de los Muertos
  - November 1, 2-4 pm





# Fall Preview – Juanita Pohl Center

- Oktoberfest
- Veterans' Recognition
- Computer Classes





# Fall Preview – Community Services

- West Coast Giant Pumpkin Regatta
  - October 18, 10am-4pm
- YAC Haunted House
  - October 22-24, 7-10pm



**City Council Meeting**

**Meeting Date:** 09/22/2014

**SPECIAL** Tualatin Chamber of Commerce Annual Report  
**REPORTS:**

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**SPECIAL REPORTS**

Tualatin Chamber of Commerce Annual Report

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PowerPoint

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# Tualatin

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**CHAMBER OF COMMERCE**  
BUSINESS AND COMMUNITY WORKING TOGETHER

*September, 2014*  
*Annual Update to City Council*

# *Mission of the Tualatin Chamber of Commerce*

- ▶ ***"To promote, educate and support a vital business community and enhance the livability of the greater Tualatin Area."***

# ***Core Competencies***

- ***Creating a Strong Local Economy***
- ***Promoting the Community***
  - ***Providing Networking Opportunities to Build Relationships***
- ***Representing the Interests of Business with Government***



# *Creating a Strong Local Economy*

## *Advocating for the Tualatin Shuttle*



***Negotiated with TriMet to continue Shuttle Service at or above its current capacity of 22,000 rides per year. In addition, we have spearheaded the transition the program to a new transit provider, Ride Connection, effective 10/1/14.***

# ***Creating a Strong Local Economy***

## ***Business Retention & Expansion***



***Growing Jobs by Nurturing The Businesses That  
Already Call Tualatin Home***



# **Creating A Strong Local Economy**

## **Developed Business Walks**

### **1. What is Business Walks?**

- ▶ **Community-based program bringing together the Chamber of Commerce, City, and Businesses for the purpose of retaining jobs.**
- ▶ **Helps identify barriers for local businesses and then seek solutions.**
- ▶ **Contributes to sustainability and expansion of the business community.**

### **2. Why Business Walks?**

- ▶ **75% of all new jobs will come from existing businesses.**
- ▶ **2/3 of businesses who have left a community did so because they did not have a personal relationship.**

# ***Creating a Strong Local Economy***

## ***Results of 36 Business Walks***

***In your opinion what could be done to improve local business conditions?***

***1. Improve Traffic & Transportation flow***

***2. Workforce Development-better access to skilled workers (STEM)***

***3. Improve Local Transit options.***



*City of Tualatin*

# ***Creating a Strong Local Economy***



For Rent Media Solutions

## ***Welcoming New Businesses***

- ***Introductions to community leaders and resources***
- ***Promotional & marketing support***
- ***Ribbon cuttings***





# ***Promoting the Community***

***Honoring Businesses & Volunteers  
who make our community better!***



***Held each year in April***

# *Promoting the Community*

**TUALATIN**  
*Auto Body, Inc.*



***Raised \$15,000 for  
Tualatin High School Athletics!***

# ***Promoting the Community***

## ***Tualatin Crawfish Festival***



***Transitioned the festival to a new provider. Sponsored the VIP Tent, Information Booth, Sold Merchandise and added the Tualatin Home Improvement Show.***



# ***Promoting the Community***

## ***Regatta Run in Honor of the Corporal Matthew Lembke Memorial Scholarship Fund***



***Awarded \$20,000 in Scholarships to  
Tualatin High School Graduates***

# ***Providing Networking Opportunities to Build Relationships***

## ***Membership***

***January- September 2014***

- ▶ 14 Ribbon Cuttings***
- ▶ 60 Networking Events***
- ▶ 4 Gold Level Special Invite Events***
- ▶ 71 New Members***
- ▶ 20 Upgrades to Gold Level***

# ***Providing Networking Opportunities to Build Relationships***



***Booked 12 Contractors for the show at the  
Tualatin Crawfish Festival. Connected local  
home owners to local contractors.***



# ***Providing Networking Opportunities to Build Relationships***



***AM Networking – Connecting more than 70  
businesses every Friday from 7:30-9:00am***

# ***Providing Networking Opportunities to Build Relationships***

## ***Thrive! Education Breakfasts***



***Second Thursday of every month***



# ***Providing Networking Opportunities to Build Relationships***

## ***Women in Networking***



***Third Thursday of every month***

# ***Providing Networking Opportunities to Build Business Relationships***

## ***Young Professionals of Tualatin***



***Connects 35-50 businesses each month***

# ***Representing the Interests of Business with Government***

## ***BAC (Business Advocacy Council)***

- ***Advocating for local, regional and statewide issues affecting area businesses***
- ***Workforce Development-linking education to business***
- ***Transportation & Transit Options-facilitating and advocating for local solutions***
- ***Public Affairs including Issue and Candidate Endorsements***

***Supporting a business friendly  
environment so that  
businesses can create jobs!***





# STAFF REPORT

## CITY OF TUALATIN

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

**THROUGH:** Sherilyn Lombos

**FROM:** Paul Hennon, Community Services Director  
Sean Brady, Attorney

**DATE:** 09/22/2014

**SUBJECT:** Consideration of **Resolution No. 5212-14** Adopting Findings in Support of an Exemption from Bidding and Authorizing the City Manager to Enter into a Direct Negotiation Contract with Cardno for Design and Construction Administration Services for the Tualatin River Greenway Trail Gap Completion Project

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

Council will consider authorizing the City Manager to enter into a direct negotiation contract with Cardno for design and construction administration services for the Tualatin River Greenway Trail Gap Completion Project.

### **RECOMMENDATION:**

Staff recommends Council adopt the attached Resolution.

### **EXECUTIVE SUMMARY:**

The attached resolution authorizes the City Manager to enter into a direct negotiation contract with Cardno to provide professional services required for permitting, survey, design, plans and specifications, bidding and award, construction administration, and public information and involvement materials for the Tualatin River Greenway Trail Gap Completion Project. Entering into a direct negotiation contract is allowed by both state law and the Tualatin Municipal Code (ORS 279C.335 and TMC 1-21-090) when certain circumstances are met, such as when substantial cost savings would occur and when it is not likely to encourage favoritism nor substantially diminish competition. Both these conditions exist for this project and are the basis for requesting this authorization.

The traditional process for this type of contract is a Request for Qualifications (RFQ) followed by a Request for Proposal (RFP) process. The timeframe in using this formal process is estimated to take at least two months. The City would lose at least two months of design time for the project that increases the risk of a late design and therefore late start of construction. If construction is late or missed, there would be additional design and construction costs that result due to additional scope of work, wet weather work conditions, and escalation due to increases in construction costs.

The RFQ/RFP process poses several disadvantages on this project and would subject the City to additional costs and risks, given the unique qualities of the project. The traditional procurement process does not allow the City to take into consideration the price of the contract. Using the RFQ/RFP process would subject the City to risk of increased cost and time. Exempting the project from competitive bidding and allowing the direct negotiation contract allows the City to select the best consultant based upon the skills and experience needed to complete the project efficiently and effectively. The direct negotiation process allows consideration of multiple factors, including experience, knowledge of the Project, schedule, and cost. This will provide substantial cost savings and public benefits to the City.

The City has already proceeded with a qualifications based selection process to create a qualified pool list for the type of work involved and Cardno is on it. Going through an RFQ process would likely result in a similarly qualified list of consultants and design professionals. Therefore, the time and expense in developing an RFQ is not needed and results in additional time and costs.

Proceeding through an RFP process, after the development of the RFQ, will also likely not provide a different result in the selection of the consultant. Cardno has worked with CenterCal, the developers of the Nyberg Rivers project, throughout the duration of the Nyberg Rivers project. Cardno has been performing work for CenterCal that is directly related to the Greenway Trail, including permitting, boundary and topographic survey, tree survey, drainage, trail design, landscaping, grading, phased construction, and integrating trail connections with other improvements on and off site. In addition, CenterCal has a lease interest in the area on which this Project is to be constructed. Therefore, the selected contractor needs to be familiar with and coordinate with the CenterCal development. Cardno is intimately familiar with the design and requirements of the project. Cardno will provide value engineering and be able to coordinate the Greenway design with the CenterCal project. This will result in substantial cost savings to the City.

The range of fees paid for similar services for past trail projects have ranged from 12% (Sweek Pond and east end of Brown's Ferry Park) to 18% (5 greenway trails) to 28.5% (Ki-A-Kuts Bridge and trails). Many grant programs accept 15% as a reasonable range for design and construction management services. The *ConnectOregon V* grant does not contain such a range, but the anticipated range of the direct negotiation contract with Cardno of \$455,000 is slightly less than 15% of the overall Project costs.

The biggest risks to the project are complexities regarding communications, continuity, and schedule. The exemption allows the City to coordinate in order to make the construction process as smooth as possible for the public. The exemption process will provide the City and consultant with an opportunity to work cooperatively to resolve construction and management issues in an efficient manner and early in the process. The exemption will provide both time and cost savings that are vital given the location of the project. The exemption will also allow all of the improvements in the area to be constructed with better communication and continuity. This will expedite decision making and reduce project delays.

Granting an exemption for the contract will be unlikely to encourage favoritism because this is a single contract exemption that will be procured through a selection from a consultant on the City's qualified pool list. Contractors on the qualified pool list already went through a qualifications based selection process. The direct negotiation process allows consideration of multiple factors, including experience, knowledge of the Project, schedule, and cost.

The City has already proceeded with a qualifications based selection process through use of the qualified pool. All consultants with the type of experience necessary to complete this type of works are on the City's qualified pool list.

This type of design contract, does not allow the City to take into consideration the price of the contract. Therefore, all of the consultants have had an opportunity to present the City with their qualifications. If the City were to provide the qualified pool list with the opportunity to provide proposal to be submitted in response a request for proposal process, it is very likely that Cardno would be the selected consultant. This is because Cardno is most familiar with the Project having performing work for CenterCal that is directly related to the Greenway Trail, including permitting, boundary and topographic survey, tree survey, drainage, trail design, landscaping, grading, phased construction, and integrating trail connections with other improvements on and off site. Cardno conducted the topographical survey of the western portion of the project, has been involved in easement locations for the trail, conducted a tree investigation of the western portion of the project, conducted preliminary natural resource assessment of the western portion of the project, has a history of working with ODOT and Clean Water Services, and is familiar with the City's requirements for this Project. Granting the exemption will not substantially diminish competition in the awarding of public contracts.

The terms and conditions of the contract will be the result of "arms-length" contract negotiations and the contract will be reviewed and approved by the Community Services Manager, the City Attorney, and the City Manager. The selected consultant will be required to comply with all City requirements and public contracting code requirements. These requirements are the same as if the project was competitively procured, and thus, the City will not be engaging in favoritism in the execution of the contract documents.

#### **FINANCIAL IMPLICATIONS:**

Two grants and a private donation have been obtained to fund construction of the Tualatin River Greenway Trail Gap Completion Project. The Tualatin River Greenway Gap Completion Project is not specifically included in the Park Development Fund in the adopted FY14/15 budget since it was not known if grant and donation funding would be obtained at the time the budget was prepared and adopted. The Finance Director will provide guidance in how to budget the revenues and expenditures associated with this project in compliance with state law and already approved budget capacity within the Park Development Fund.

The City will use Parks System Development Charge (Parks SDC) funds of approximately \$355,000 and \$100,000 from the Washington County Major Streets Transportation Improvement Opportunity Fund grant to pay the professional services costs for the Tualatin River Greenway Trail Gap Completion Project.

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**Attachments:**     Attachment A- Resolution 5212-14

RESOLUTION NO. 5212-14

A RESOLUTION ADOPTING FINDINGS IN SUPPORT OF AN EXEMPTION FROM COMPETITIVE BIDDING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A DIRECT NEGOTIATION CONTRACT WITH CARDNO FOR DESIGN AND CONSTRUCTION MANAGEMENT SERVICES FOR THE TUALATIN RIVER GREENWAY TRAIL PROJECT

WHEREAS, the Tualatin River Greenway Trail Project is included in the City's Parks and Recreation Master Plan and Transportation System Plan; and

WHEREAS, the Tualatin River Greenway Trail Project located north of the CenterCal Nyberg Rivers Development ("Project") was awarded a ConnectOregon V grant; and

WHEREAS, Washington County has provided money through the MSTIP Opportunity Fund grant program for the Project; and

WHEREAS, CenterCal has coordinated with the City to provide a donation toward completion of the Project; and

WHEREAS, the City needs to procure the services of a design and construction management consultant; and

WHEREAS, the City adopted its public contracting rules pursuant to Oregon Revised Statutes (ORS) 279A.065; and

WHEREAS, the City Council is designated as the Local Contract Review Board for the City of Tualatin, pursuant to ORS 279A.060 and Tualatin Municipal Code (TMC) Chapter 1-21; and

WHEREAS, ORS 279C.335 and TMC 1-21-090 authorizes the City Council to exempt contracts from the competitive process upon the adoption of certain written findings; and

WHEREAS, the City published notice of the public hearing in the *Daily Journal of Commerce* a minimum of fourteen days prior to the hearing date to consider a request for proposal process for the Project;

BE IT RESOLVED BY THE CITY COUNCIL, SITTING AS THE LOCAL CONTRACT REVIEW BOARD, OF THE CITY OF TUALATIN, OREGON, that:

**Section 1.** The contract for professional design and contract management services for the Project is exempt from competitive bidding procedures in order to use a direct negotiation process.

**Section 2.** The exemption of the Project from competitive bidding is based on the following findings:

**A. The Nature of the Contract.** This contract scope includes: civil engineering, landscape architecture, survey services, environmental services, lighting, structural engineering, and project management services. The work requires experience in the above as it relates to trail projects.

**B. Estimated Cost of the Project.** The estimated cost of the Project is approximately \$455,000.

**C. Exempting the Project from Competitive Process Will Result in Substantial Cost Savings.** Allowing a direct negotiation contract by exempting this project from the competitive process will produce substantial cost savings.

(1) The traditional process for this type of contract is a Request for Qualifications (RFQ) followed by a Request for Proposal (RFP) process. The timeframe in using this formal process is estimated to take at least two months. The City would lose at least two months of design time for the project which increases the risk of a late design and therefore, late start of construction. If construction is late or missed, there would be additional design and construction costs; resulting from additional scope of work, wet-weather work conditions, and escalation due to increases in construction costs. The RFQ/RFP process poses several disadvantages on this project and would subject the City to additional costs and risks, given the unique qualities of the project.

(2) The City already has a qualified pool list for the type of work involved. Going through an RFQ process would likely result in a similarly qualified list of consultants and design professionals. Therefore, the time and expense in developing an RFQ is not needed and would result in additional time and costs.

(3) Proceeding through an RFP process, after the development of the RFQ, will also likely not provide a different result in the selection of the consultant. Cardno has worked with CenterCal, the developers of the Nyberg Rivers project, throughout the duration of the Nyberg Rivers project. Cardno has been performing work for CenterCal that is directly related to the Greenway Trail, including permitting, boundary and topographic survey, tree survey, drainage, trail design, landscaping, grading, phased construction, and integrating trail connections with other improvements on and off site. In addition, CenterCal has a lease interest in the area on which this Project is to be constructed. Therefore, the selected contractor needs to be familiar with and coordinate with the CenterCal development. Cardno is intimately familiar with the design and requirements of the project. Cardno will provide value engineering and be able to coordinate the Greenway design with the CenterCal project. This will result in substantial cost savings to the City.

(4) Directly negotiating with Cardno will provide the following substantial cost benefits, including: (a) coordinated vehicular and pedestrian traffic flow; (b) understanding of existing conditions, design requirements, and utilities; (c) knowledge and coordination of limited staging areas; (d) phasing of improvements to maximize timing and efficiency; and (e) a recognition of the window of time to complete construction.

(5) The range of fees paid for similar services for past trail projects have ranged from 12% (Sweek Pond and east end of Brown's Ferry Park) to 18% (5 greenway trails) to 28.5% (Ki-A-Kuts Bridge and trails). Many grant programs accept 15% as a reasonable range for design and construction management services. The *ConnectOregon V* grant does not contain such a range, but the anticipated range of the direct negotiation contract with Cardno is slightly less than 15% of the overall Project costs.

(6) The traditional procurement process does not allow the City to take into consideration the price of the contract. Using the RFQ/RFP process would subject the City to risk of increased cost and time. Exempting the project from competitive bidding and allowing the direct negotiation contract allows the City to select the best consultant based upon the skills and experience needed to complete the project efficiently and effectively. The direct negotiation process allows consideration of multiple factors, including experience, knowledge of the Project, schedule, and cost. This will provide substantial cost savings and public benefits to the City.

(7) The traditional procurement process does not allow the City to select the appropriate consultant to take into consideration the unique circumstances of the Project and location of the site. The site is located in the downtown core and requires continued access to businesses and public facilities in the area. Authorizing a direct negotiation contract allows the City to select a consultant that can ensure the coordination of construction timing and requirements of continued mobility near the site. This results in cost and operational efficiencies for both the City and public at large. It also allows the City to select the best consultant to manage the integration of the project and continued mobility, while taking into account the needs of each individual part of the project. Such integration reduces costs and eliminates the need to coordinate multiple stages of the improvements at the location.

(8) The biggest risks to the project are complexities regarding communications, continuity, and schedule. The exemption allows the City to coordinate in order to make the construction process as smooth as possible for the public. The exemption process will provide the City and consultant with an opportunity to work cooperatively to resolve construction and management issues in an efficient manner and early in the process. The exemption will provide both time and cost savings that are vital given the location of the project.

The exemption will also allow all of the improvements in the area to be constructed with better communication and continuity. This will expedite decision making and reduce project delays.

(9) The project involves several complicated components, including floodplain impact and mitigation, Clean Water Services mitigation, minimizing tree disturbance and underpass design and safety. The exemption process will provide the City and consultant with an opportunity to work cooperatively to resolve these issues and coordinate with the adjacent Nyberg Rivers development as it relates to these issues.

(10) The completed Project will result in safer transportation for vehicles, bicycles, and pedestrians by providing a needed connection to the Greenway Trail system. In addition, the completed Project will provide a new recreation amenity for the public.

#### **D. The Exemption Is Not Likely To Encourage Favoritism Or Substantially Diminish Competition.**

(1) Favoritism is defined as “selection based on friendship or factors other than merit.” “Encourage” is defined as “promoting the growth and development.” Granting an exemption for the contract will be unlikely to encourage favoritism because this is a single contract exemption that will be procured through a selection from a consultant on the City’s qualified pool list. Contractors on the qualified pool list already went through a qualifications based selection process. The direct negotiation process allows consideration of multiple factors, including experience, knowledge of the Project, schedule, and cost.

(2) The City has already proceeded with a qualifications based selection process through use of the qualified pool. All consultants with the type of experience necessary to complete this type of works are on the City’s qualified pool list.

(3) This type of design contract does not allow the City to take into consideration the price of the contract. Therefore, all of the consultants have had an opportunity to present the City with their qualifications. If the City were to provide the qualified pool list with the opportunity to provide proposal to be submitted in response a request for proposal process, it is very likely that Cardno would be the selected consultant. This is because Cardno is most familiar with the Project, having performed work for CenterCal that is directly related to the Greenway Trail, including permitting, boundary and topographic survey, tree survey, drainage, trail design, landscaping, grading, phased construction, and integrating trail connections with other improvements on and off site. Cardno conducted the topographical survey of the western portion of the project, has been involved in easement locations for the trail, conducted a tree investigation of the western portion of the project, conducted preliminary natural resource



assessment of the western portion of the project, has a history of working with ODOT and Clean Water Services, and is familiar with the City's requirements for this Project. Granting the exemption will not substantially diminish competition in the awarding of public contracts.

(4) The terms and conditions of the contract will be the result of "arms-length" contract negotiations and the contract will be reviewed and approved by the Community Services Manager, the City Attorney, and the City Manager. The selected consultant will be required to comply with all City requirements and public contracting code requirements. These requirements are the same as if the project was competitively procured, and thus, the City will not be engaging in favoritism in the execution of the contract documents.

**E. The Proposed Contracting Method.** The proposed contracting method is a direct negotiation contract.

**F. The Estimated Contract Let Date.** The estimated contract let date is September 30, 2014.

**Section 3.** The City Manager is authorized to enter into a direct negotiation contract with Cardno for design and construction management services for the Tualatin River Greenway Trail project.

**Section 4.** This resolution is effective upon adoption.

INTRODUCED AND ADOPTED this 22nd day of September, 2014.

CITY OF TUALATIN, OREGON

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM

ATTEST:

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

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



# STAFF REPORT

## CITY OF TUALATIN

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

**THROUGH:** Sherilyn Lombos

**FROM:** Sherilyn Lombos, City Manager  
Sean Brady, City Attorney

**DATE:** 09/22/2014

**SUBJECT:** Consideration of **Ordinance 1376-14** an Ordinance Establishing a Tax on the Sale Of Marijuana and Marijuana-Infused Products in the City Of Tualatin; and Establishing New Tualatin Municipal Code Chapter 13-01

---

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

Should the City of Tualatin establish a tax on the sale of marijuana and marijuana-infused products?

### **RECOMMENDATION:**

Staff recommends that the City Council adopt an ordinance establishing a tax on the sale of marijuana and marijuana-infused products.

### **EXECUTIVE SUMMARY:**

Oregon voters legalized medical marijuana via initiative petition in 1999, after which medical marijuana dispensaries began operation. These dispensaries essentially served as intermediaries between marijuana growers and medical marijuana patients. While these dispensaries were legal, they were unregulated and the source of controversy in many communities. The 2013 the Oregon Legislature passed HB 3460, which created a regulatory and licensing regimen for medical marijuana dispensaries. To date, there are 198 approved and 115 provisionally approved dispensaries in Oregon. Tualatin has placed a limitation on siting medical marijuana dispensaries that will be reconsidered before May, 2015.

Oregon Ballot Measure 91 has qualified for the November, 2014 ballot regarding whether or not to enact a state law "legalizing the recreational use of marijuana, based on regulation and taxation to be determined by the Oregon Liquor Control Commission." The measure is similar to a measure approved by Washington voters in 2012.

The ordinance presented for Council consideration is a gross receipts tax on the sale of marijuana, medical marijuana and marijuana-infused products. In addition, the ordinance proposes an annual tax on any establishment that allows consumption of marijuana or marijuana infused products.

A gross receipts tax is applied to the total gross taxable revenues of a business. It is similar to a sales tax except that it is levied on the seller rather than the purchaser. The seller is responsible for maintaining accurate records of its gross revenues from taxable goods and services and then remitting a percentage to the taxing entity. Many businesses that are subject to a gross receipts tax will show the tax on the bill of sale they present to the customer, but it is nonetheless the business that is responsible for paying it. A gross receipts tax is similar to a franchise fee, and has the administrative advantages to be easy to collect, and easy to audit.

The ordinance presented does not tax growers and processors for several reasons. First, under Oregon law, growers and grow sites must register with the state, but their locations and identities are confidential. This could lead to difficulties in identifying those subject to a tax. Next, staff has no experience with administering a value added tax, which is essentially what this would be, and is reluctant to even attempt to create the administrative structure for such a tax. Third, we have no models that we could adapt in order to create a value added tax. The State of Washington's new marijuana law provides for a 25% excise tax at each transaction point (producer to processor, processor to retailer and retailer to consumer; thus a value added tax), but at this time, Washington has not adopted and published rules and procedures for administering the tax. Finally, all taxes – regardless of where they are assessed in the supply chain – are ultimately passed on to the consumer. Therefore, the gross receipts of a business would reflect all of the costs incurred along the supply chain and a gross receipts tax would capture tax revenue from each of those elements. How to disperse that tax liability within the supply chain would be left to the growers, processors and retailers, rather than to the City.

While no provisions in current Oregon law prohibit the City from taxing marijuana, Measure 91 contains the following language:

**SECTION 42. State has exclusive right to tax marijuana. No county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection fees, in connection with the purchase, sale, production, processing, transportation, and delivery of marijuana items.**

Because this language does not specifically repeal a local marijuana tax in effect at the time of the measure's passage, and because this language can be interpreted to read "No county or city of this state shall [after the effective date of this measure] impose any fee or tax..." it can be argued that this language does not pre-empt city taxation. Alternatively, the language can be read as "No county or city of this state shall [be allowed at any time to] impose any fee or tax..." As such, absent adjudication in a state court, there is no guarantee that a local tax imposed prior to passage of this initiative would survive beyond the effective date of the initiative, unless this language is modified by the Legislature.

#### **FINANCIAL IMPLICATIONS:**

At this time, the fiscal impacts of this ordinance are unknown; it would be very difficult to estimate the local fiscal impacts of taxation since the statewide measure has not been considered by voters and the siting of medical marijuana dispensaries is unlikely to be known until 2015.

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**Attachments:**     Attachment A- Ordinance No. 1376-14

ORDINANCE NO. 1376-14

AN ORDINANCE ESTABLISHING A TAX ON THE SALE OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS IN THE CITY OF TUALATIN; AND ESTABLISHING NEW TUALATIN MUNICIPAL CODE CHAPTER 13-01

WHEREAS, the City of Tualatin is an Oregon home-rule municipal corporation having the authority and under the terms of its Charter to exercise all powers and authority that the constitutions, statutes, and common law of the United States and of the State of Oregon expressly or impliedly grant or allow as fully as though each such power were specifically enumerated therein; and

WHEREAS, except as otherwise provided, all powers of the City are vested in the City Council; and

WHEREAS, the City Council wishes to exercise the power to tax the sale or transfer of marijuana, medical marijuana, and marijuana-infused products within the City.

NOW THEREFORE, THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

**Section 1.** Tualatin Municipal Code Chapter 13-01 is created to read as follows:

**13-01-010 Purpose.** Every person who sells marijuana, medical marijuana, or marijuana-infused products in the City of Tualatin is exercising a taxable privilege. The purpose of this Chapter is to impose a tax upon the sale of marijuana, medical marijuana, and marijuana-infused products.

**13-01-015 Definitions.** Unless the context clearly provides otherwise, the following words and phrases used in this Chapter have the following meanings:

(1) "City Manager" means the City Manager of the City of Tualatin or the City Manager's designee.

(2) "Gross Sales" means the total amount received in money, credits, property, or other consideration from sales of marijuana that is subject to the tax imposed by this Chapter.

(3) "Marijuana" means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time, be amended, and includes medical marijuana and marijuana-infused products. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt,

derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(4) "Oregon Medical Marijuana Program" means the office within the Oregon Health Authority that administers the provisions of ORS 475.300 through 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.

(5) "Person" means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including: the United States of America, the State of Oregon, and any political subdivision thereof, or the manager, lessee, agent, servant, officer, or employee of any of them.

(6) "Purchase or Sale" means the acquisition or furnishing for consideration of marijuana by any person within the City.

(7) "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.

(8) "Retail sale" means the transfer of goods or services in exchange for any valuable consideration.

(9) "Seller" means any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana to purchasers for money, credit, property or other consideration.

(10) "Tax" means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this Chapter.

(11) "Taxpayer" means any person obligated to account to the Finance City Manager for taxes collected or to be collected, or from whom a tax is due, under the terms of this Chapter.

**13-01-020 Tax Imposed.** A tax is hereby levied and must be paid by every seller exercising the taxable privilege of selling marijuana.

**13-01-030 Amount and Payment; Deductions.**

(1) In addition to any fees or taxes otherwise provided by law, every seller engaged in the sale of marijuana must pay a tax as follows:

(a) Five percent (5%) of the gross sales amount paid to the seller by a registry identification cardholder; and

(b) Ten percent (10%) of the gross sale amount paid to the seller of marijuana by individuals who are not registry identification cardholders purchasing marijuana under the Oregon Medical Marijuana Program; and

(2) In addition to any fees or taxes otherwise provided by law, including those provided in subsection (1) of this section, every seller engaged in and carrying on the business of operating any establishment where marijuana is consumed must pay an annual tax of \$500.

(3) The following deductions are allowed against sales received by the seller providing marijuana:

(a) Refunds of sales actually returned to any purchaser; and

(b) Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana and does not include any adjustments for other services furnished by a seller.

### **13-01-040 Seller Responsible for Payment of Tax.**

(1) Every seller must obtain a business license from the City of Tualatin pursuant to Tualatin Municipal Code Chapter 09-01. The seller must indicate on the business license application whether the seller is licensed by or registered with the State of Oregon to provide marijuana to purchasers for money, credit, property, or other consideration.

(2) Every seller must, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January), make a return to the City Manager on forms provided by the City specifying the total sales subject to this Chapter and the amount of tax collected under this Chapter. The seller may request, or the City Manager, may establish shorter reporting periods for any seller if the seller or City Manager deems it necessary in order to ensure collection of the tax and the City Manager may require further information in the return relevant to payment of the tax. A return is not considered filed until it is actually received by the City Manager.

(3) At the time the return is filed, the full amount of the tax collected must be remitted to the City.

(4) Payments will be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to



the underlying tax. If the City Manager, in the City Manager's sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the City Manager may order such a change. The City Manager may establish shorter reporting periods for any seller if the City Manager deems it necessary in order to ensure collection of the tax. The City Manager also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest will be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason.

(5) All taxes collected by sellers pursuant to this Chapter will be held in trust for the account of the City until payment is made to the City Manager. A separate trust bank account is not required in order to comply with this provision.

(6) Every seller required to remit the tax imposed in this Chapter is entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.

(7) Every seller must keep and preserve in an accounting format established by the City Manager records of all sales made by the dispensary and such other books or accounts as may be required by the City Manager. Every seller must keep and preserve for a period of three years all such books, invoices and other records. The City Manager has the right to inspect all such records at all reasonable times.

### **13-01-050 Penalties and Interest.**

(1) Any seller who fails to remit any portion of any tax imposed by this Chapter within the time required must pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.

(2) If the City Manager determines that the nonpayment of any remittance due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax will be added in addition to the penalties imposed.

(3) In addition to the penalties imposed, any seller who fails to remit any tax imposed by this Chapter must pay interest at the rate of one percent (1%), or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(4) Every penalty imposed, and such interest as accrues under the provisions of this section, is part of the tax required to be paid.

(5) The City Manager is authorized to waive any penalties or interest as determined to be reasonable in the sole discretion of the City Manager.

(6) All sums collected pursuant to the penalty provisions in this section will be distributed to the City of Tualatin General Fund to offset the costs of auditing and enforcement of this tax.

**13-01-060 Failure to Report and Remit Tax -Determination of Tax by City**

**Manager.** If any seller should fail to make, within the time provided in this Chapter, any report of the tax required by this Chapter, the City Manager will proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the City Manager procures such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this Chapter and payable by any seller, the City Manager will proceed to determine and assess against such seller the tax, interest and penalties provided for by this Chapter. In case such determination is made, the City Manager will give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the seller so assessed at the last known place of address. Such seller may make an appeal of such determination as provided in section 13-01-070. If no appeal is filed, the City Manager's determination is final and the amount thereby is immediately due and payable upon service of notice.

**13-01-070 Appeal.**

(1) Any seller aggrieved by any decision of the City Manager with respect to the amount of such tax, interest or penalties, if any, may appeal the City Manager's decision by filing a written request for review with the City Manager within 30 days of the serving or mailing of the determination of tax due. The request for review must be in writing and set forth in detail the facts supporting the request.

(2) The City Manager will hear and consider any relevant records and evidence, including that presented by the seller, bearing upon the City Manager's determination of the amount due, and make findings affirming, reversing or modifying the determination. The findings will be final and conclusive, and will be served upon the seller personally or by depositing it in the United States mail, postage prepaid, addressed to the appellant at the last known place of address.

(3) Appeal of a final decision of the City Manager shall be by writ of review to the Circuit Court of Washington County, Oregon, as provided in ORS 34.010-34.100, and not otherwise. If no appeal is filed, the City Manager's determination is final and the amount thereby is immediately due and payable upon service of notice.

**13-01-080 Refunds.**

(1) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this Chapter, it may be refunded as provided in subsection (2) of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the

claim is founded, is filed with the City Manager within one year of the date of payment. The claim must be on forms furnished by the City Manager.

(2) The City Manager has 20 calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The City Manager will notify the claimant in writing of the City Manager's determination. Such notice must be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the City Manager to be a valid claim, in a manner prescribed by the City Manager a seller may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The seller must notify City Manager of claimant's choice no later than 15 days following the date City Manager mailed the determination. In the event claimant has not notified the City Manager of claimant's choice within the 15 day period and the seller is still in business, a credit will be granted against the tax liability for the next reporting period. If the seller is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

(3) Any credit for erroneous overpayment of tax made by a seller taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a seller must be so taken or filed within three years after the date on which the overpayment was made to the City.

(4) No refund will be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the City Manager acknowledged the validity of the claim.

**13-01-090 Actions to Collect.** Any tax required to be paid by any seller under the provisions of this Chapter is deemed a debt owed by the seller to the City. Any such tax collected by a seller which has not been paid to the City be deemed a debt owed by the seller to the City. Any person owing money to the City under the provisions of this Chapter is liable for an action brought in the name of the City of Tualatin for the recovery of such amount. In lieu of filing an action for the recovery, the City of Tualatin, when taxes due are more than 30 days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Tualatin has complied with the provisions set forth in ORS 697.105, in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of fifty dollars (\$50.00) or fifty percent (50%) of the outstanding tax, penalties and interest owing.

**13-01-100 Violations.**

(1) It is a violation of this Chapter for any seller or other person to:

(a) Fail or refuse to comply as required herein;

(b) Fail or refuse to furnish any return required to be made;

- (c) Fail or refuse to permit inspection of records;
- (d) Fail or refuse to furnish a supplemental return or other data required by the City Manager;
- (e) Render a false or fraudulent return or claim; or
- (f) Fail, refuse or neglect to remit the tax to the city by the due date.

(2) A person who violates this Chapter commits a civil infraction and is subject to a fine of up to \$500. Each violation, and each day that a violation continues, constitutes a separate civil infraction.

(3) The civil infraction procedures in TMC 7-1 apply to the prosecution of any violation of this Chapter.

(4) The remedies provided by this section are not exclusive and do not prevent the City from exercising any other remedy available under the law, nor do the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

**13-01-110 Confidentiality.** Except as otherwise required by law, it is unlawful for the City or its officers, employees, or agents, to divulge, release, or make known in any manner any financial information submitted or disclosed to the City under the terms of this Chapter. Nothing in this section prohibits:

(1) The disclosure of the names and addresses of any person operating a licensed establishment from which marijuana or marijuana infused products are sold or provided; or

(2) The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or

(3) Presentation of evidence to a court, or other tribunal, having jurisdiction in the prosecution of any civil or criminal claim by the City, or an appeal from the City, for amount due the City under this Chapter; or

(4) The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or

(5) The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six months or the tax exceeds \$5,000. The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

### **13-010-120 Audit of Books, Records, or Persons.**

(1) The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of seller's state and federal income tax return, bearing upon the matter of the seller's tax return. All books, invoices, accounts and other records must be made available within the City limits and be open at any time during regular business hours for examination by the City Manager or an authorized agent of the City Manager.

(2) If the examinations or investigations disclose that any reports of sellers filed with the City Manager pursuant to the requirements herein have shown incorrectly the amount of tax accruing, the City Manager may make such changes in subsequent reports and payments, or make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations.

(3) The seller must reimburse the City for reasonable costs of the examination or investigation if the action disclosed that the seller paid ninety-five percent (95%) or less of the tax owing for the period of the examination or investigation. In the event that such examination or investigation results in an assessment by and an additional payment due to the City, such additional payment will be subject to interest at the rate of one percent (1%) per month, or the portion thereof, from the date the original tax payment was due.

(4) If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the City may immediately seek a subpoena from the Tualatin Municipal Court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination.

(5) Every seller must keep a record in such form as may be prescribed by the City of all sales of marijuana. The records must, at all times during the business hours of the day, be subject to inspection by the City or authorized officers or agents of the City Manager.

(6) Every seller must maintain and keep, for a period of three (3) years, or until all taxes associated with the sales have been paid, whichever is longer, all records of marijuana sold.

**13-01-130 Administration.** The City Manager is authorized to prescribe administrative rules, policies, and to implement the requirements of this Chapter, and without limiting the general language of this Chapter, to provide for:

(1) A form of report on sales and purchases to be supplied to all vendors; and

(2) The records which sellers providing marijuana are to keep concerning the tax imposed by this chapter.



**Section 2. Severability.** Each section of this ordinance, and any part thereof, is severable. If any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance will remain in full force and effect.

Adopted by the City Council this \_\_\_\_ Day of \_\_\_\_\_, 2014.

CITY OF TUALATIN, OREGON

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM

ATTEST:

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

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