



RESOLUTION 2013-059

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH WASHINGTON COUNTY TO SECURE APPROVAL OF THE MID-BLOCK CROSSINGS FOR THE CEDAR CREEK TRAIL

WHEREAS, the City of Sherwood was awarded a federal Metropolitan Transportation Improvement Program (MTIP) Regional Flexible Fund grant for the planning, design, and construction of the Cedar Creek Trail; and

WHEREAS, the MTIP schedules spending of federal transportation funds in coordination with significant State and local funds in the Portland metro region; and

WHEREAS, ODOT provides the oversight and administration of federal regulations regarding project eligibility, air quality impacts, environment justice and public involvement through this grant; and

WHEREAS, by the authority granted in Oregon Revised Statute (ORS) 190.110, ODOT may enter into agreements with local governments for the performance of any or all functions and activities that are a party to the agreement, its officers, or agents have the authority to perform; and

WHEREAS, it is understood that the alignment of the Cedar Creek Trail will require at grade crossings on Washington County roadways; and


WHEREAS, ODOT as part of their administration of the project requires the City to enter into a separate IGA with Washington County in order to secure the County's approval to temporarily occupy the County right-of-way, design, and construct any portion of the project as it relates to the mid-block crossing to Washington County's specifications.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1: City Council authorizes the City Manager to enter into an Intergovernmental Agreement (IGA), between the City of Sherwood and Washington County, relating to the use of County right-of-way for the design and construction of the Cedar Creek Trail. A draft copy of the IGA is attached to this resolution as Exhibit A. Upon final review and approval of the IGA by the City Attorney, a final IGA will be forwarded to the City Manager for signature.

Section 2: This Resolution shall be effective as of the date of its adoption by the City Council.

Duly passed by the City Council this 5th day of November 2013.



Bill Middleton, Mayor

Attest:



Sylvia Murphy, MMC, City Recorder

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
Washington County and the City of Sherwood**

**FOR CONSTRUCTING THE ICE AGE TONQUIN TRAIL/
CEDAR CREEK TRAIL**

THIS INTERGOVERNMENTAL AGREEMENT is entered into between Washington County, a political subdivision of the State of Oregon, hereinafter referred to as "COUNTY"; and the City of Sherwood, a municipal corporation, hereinafter referred to as "CITY."

RECITALS

1. CITY desires to construct a segment of the Ice Age Tonquin Trail within the City's corporate limits, hereinafter referred to as the "PROJECT".
2. CITY has identified a preliminary alignment for the PROJECT that intersects and crosses SW Roy Rogers Road, SW Edy Road, and SW Oregon Street.
3. SW Roy Rogers Road, SW Edy Road and SW Oregon Street are COUNTY roads subject to COUNTY's jurisdiction.
4. The preliminary alignment projects the trail crossing the COUNTY roads mid-block, rather than at established intersections, hereinafter referred to as the "Mid-Block Crossings."
5. COUNTY has an established policy regarding the location and construction of Mid-Block Crossings on COUNTY roadways.
6. CITY is required to secure COUNTY approval to occupy the COUNTY right of way and to construct PROJECT-related improvements within the right of way.
7. ORS 190.010 authorizes CITY and COUNTY to enter into an agreement for the performance of any or all functions and activities either party has the authority to perform.

AGREEMENT

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

1. COUNTY OBLIGATIONS

- 1.1 COUNTY shall assign a project manager responsible to coordinate with the CITY during the design and construction administration phases of the PROJECT.
- 1.2 COUNTY shall review and provide comments on the Mid-Block Crossing application(s) submitted by the CITY under Paragraph 2.4 below within fifteen (15) working days of receiving the application(s).
- 1.3 COUNTY shall review and provide comments on the 50%, 75% and 100% plans for the PROJECT within fifteen (15) working days of receipt of plans from CITY.
- 1.4 COUNTY shall provide an estimate of the deposit for the Mid-Block Crossing application(s) including construction plan review and construction administration costs.

2. CITY OBLIGATIONS

- 2.1 CITY shall assign a project manager to coordinate with COUNTY during the design and construction administration phases of the PROJECT, and to oversee all design, bidding, and construction administration activities for PROJECT.
- 2.2 CITY is responsible for the following PROJECT tasks:
 - Project Management
 - Planning and Public Involvement
 - Mid-Block Crossing application(s)
 - Preliminary Design
 - Land Use Approval and Permitting
 - Environmental Permits
 - Right-of-Way Acquisition
- 2.3 CITY is responsible for all costs for the PROJECT, including COUNTY costs related to review of the Mid-Block Crossing application(s), construction plan review, and construction administration costs.
- 2.4 CITY shall deposit funds with the COUNTY to cover COUNTY expenses associated with review of the Mid-Block Crossing application(s) and construction plans prior to submitting the Mid-Block Crossing application(s).
- 2.4 CITY shall provide COUNTY with at least fifteen (15) working days to review the 50%, 75% and 100% plans.

- 2.5 CITY shall require all contractors to include "Washington County, its elected and appointed officials, officers, agents, employees and volunteers" as additional insureds on insurance coverage required for construction work performed in completing the PROJECT.
- 2.6 CITY shall require all contractors to provide worker's compensation coverage pursuant to ORS for all subject workers performing work in connection with this Agreement.

3. FINANCIAL OBLIGATIONS

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

4. GENERAL PROVISIONS

4.1 LAWS OF OREGON

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

4.2 DEFAULT

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

4.3 INDEMNIFICATION

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

responsible for any contract claims, delay damages or similar items arising from or caused by the action or inaction of the party under this agreement.

4.4 MODIFICATION OF AGREEMENT

No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by both parties.

4.5 DISPUTE RESOLUTION

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

4.6 REMEDIES

Subject to the provisions in paragraph 4.5, any party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The parties, by signature of their authorized representatives below, consent to the personal jurisdiction of that court. If legal action is instituted under the terms of this Agreement, each party shall be responsible for its own attorney fees, costs and expenses.

4.7 EXCUSED PERFORMANCE

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

4.8 SEVERABILITY

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

4.9 INTEGRATION

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

5. TERM OF AGREEMENT

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

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

DATED this _____ day of _____, 2013.

CITY OF SHERWOOD, OREGON

WASHINGTON COUNTY, OREGON

Joseph Gall,
CITY MANAGER

CHAIR,
BOARD OF COUNTY COMMISSIONERS

ATTEST:

Sylvia Murphy, CITY RECORDER

RECORDING SECRETARY

APPROVED AS TO FORM:

APPROVED AS TO FORM:

CITY ATTORNEY

COUNTY COUNSEL