City *of* Tigard

Tigard Business Meeting - Agenda

Agenda was revised on December 15, 2011. A proclamation was added (see Non-Agenda) and a City Center Development Agency Executive Session was added at the end of the business meeting agenda.

TIGARD CITY COUNCIL, LOCAL CONTRACT REVIEW BOARD AND CITY CENTER DEVELOPMENT AGENCY

MEETING DATE AND TIME:	December 20, 2011 - 6:30 p.m. Study Session; 7:30 p.m. Business Meeting
MEETING LOCATION:	City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

PUBLIC NOTICE:
Anyone wishing to speak on an agenda item should sign on the appropriate sign-up sheet(s). If no sheet is available, ask to be recognized by the Mayor at the beginning of that agenda item. Citizen Communication items are asked to be two minutes or less. Longer matters can be set for a future Agenda by contacting either the Mayor or the City Manager.

Times noted are *estimated;* it is recommended that persons interested in testifying be present by 7:15 p.m. to sign in on the testimony sign-in sheet. *Business agenda items can be heard in any order after 7:30 p.m.*

Assistive Listening Devices are available for persons with impaired hearing and should be scheduled for Council meetings by noon on the Monday prior to the Council meeting. Please call 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

Upon request, the City will also endeavor to arrange for the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters.

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. on the Thursday preceding the meeting by calling: 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

SEE ATTACHED AGENDA

VIEW LIVE VIDEO STREAMING ONLINE:

http://www.tvctv.org/government-programming/government-meetings/tigard

CABLE VIEWERS: The regular City Council meeting is shown live on Channel 28 at 7:30 p.m. The meeting will be rebroadcast at the following times on Channel 28:

Thursday	6:00 p.m.	Sunday	11:00 a.m.
Friday	10:00 p.m.	Monday	6:00 a.m.

City *of* Tigard

Tigard Business Meeting - Agenda

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TIGARD CITY COUNCIL, LOCAL CONTRACT REVIEW BOARD AND CITY CENTER DEVELOPMENT AGENCY

MEETING DATE AND TIME: December 20, 2011 - 6:30 p.m. Study Session; 7:30 p.m. Business Meeting

MEETING LOCATION: City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

6:30 PM

- STUDY SESSION

A. Briefing on Consent Agenda Item to Award a Computerized Maintenance Management System (CMMS) Contract to MaintStar

B. Briefing on Southwest Corridor Plan Public Involvement and Messaging

- EXECUTIVE SESSION: The Tigard City Council will go into Executive Session to discuss real property transaction negotiations and pending litigation under ORS 192.660(2)(e) and (h)All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

7:30 PM

1. BUSINESS MEETING - DECEMBER 20, 2011

A. Call to Order

B. Roll Call

C. Pledge of Allegiance

D. Council Communications & Liaison Reports

E. Call to Council and Staff for Non-Agenda Items

Proclamation - Tigard - A Rotary Peace Community

2. CITIZEN COMMUNICATION (Two Minutes or Less, Please)
7:35 p.m. - time is estimated

A. Follow-up to Previous Citizen Communication

B. Citizen Communication – Sign Up Sheet

3. CONSENT AGENDA: (Tigard City Council and Local Contract Review Board) These items are considered routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action. Motion to:
7:45 p.m. - time is estimated

A. Approve City Council Meeting Minutes for:

1. October 25, 2011
2. November 15, 2011

B. Appoint Clifford Rone to the Budget Committee and Appoint Zoe Monahan as an Alternate Member to the Budget Committee- Resolution

C. Reappoint Thomas Murphy and Appoint Deanie Bush and Sherrie Devaney to the City Center Advisory Commission, and Appoint Jeff Mauro as an Alternate Member to the City Center Advisory Commission - Resolution

D. Appoint Donald Schmidt and Calista Fitzgerald as Voting Members to the Planning Commission and Andrew Miller and Dianne Armstrong as Alternates to the Planning Commission - Resolution

E. Appoint Steven Bass, Christopher Warren and Evelyn Murphy as Voting Members and Mark Bogert and Shane Brown as Alternate Members of the Transportation Advisory Committee - Resolution

F. Approve an Agreement to Convey Tract H of Colony Creek Estates No. 2 to the City of Tigard - Resolution

G. Waive Temporary Sign Permit Fees for Tigard Little League - Resolution

H. Approve Amendment #01 to the Intergovernmental Agreement (IGA) with the Oregon Department of Transportation (ODOT) - Motor Vehicle Fuel Dealer Tax Collection

I. Local Contract Review Board:

1. Award the contract for Banking Services to US Bank and Direct the City Manager to Carry the Contract through Execution

2. Award the Contract for Replacement of the Public Works Department's Computerized Maintenance Management System (CMMS) software to MaintStar, Inc. and Directs the City Manager to Execute the Contract.

- *Consent Agenda - Items Removed for Separate Discussion:* *Any items requested to be removed from the Consent Agenda for separate discussion will be considered immediately after the Council/City Center Development Agency has voted on those items which do not need discussion.*

4. JOINT MEETING OF THE CITY COUNCIL AND THE TREE BOARD
7:50 p.m. - time is estimated

5. PUBLIC HEARING - CONSIDER A RESOLUTION OF NECESSITY TO ACQUIRE PROPERTY FOR THE LAKE OSWEGO-TIGARD WATER PARTNERSHIP
8:30 p.m. - time is estimated

6. COUNCIL LIAISON REPORTS
8:50 p.m. - time is estimated

7. NON AGENDA ITEMS

8. EXECUTIVE SESSION: The **Tigard City Council** will go into Executive Session to discuss real property transaction negotiations under ORS 192.660(2) (e). The **Tigard City Center Development Agency** will also go into Executive Session to discussreal property transaction negotiations under ORS 192.660(2)(e). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision.
9:00 p.m. - time is estimated

9. ADJOURNMENT
9:10 p.m. - time is estimated

Study Session

AIS-716 **Item #: A.**

Business Meeting

Date:	12/20/2011		
Length (in minutes):	10 Minutes		
Agenda Title:	Briefing on Consent Agenda Item to Award a Computerized Maintenance Management System (CMMS) Contract to MaintStar		
Prepared For:	Brian Rager	**Submitted By:**	Twila Willson Public Works
Item Type:	Update, Discussion, Direct Staff	**Meeting Type:**	Council Business Mtg - Study Sess.

ISSUE

Staff will brief the council on a Local Contract Review Board (LCRB) consent agenda item to award a CMMS contract to MaintStar.

STAFF RECOMMENDATION / ACTION REQUEST

No action is required in study session. However, awarding the CMMS contract appears on the LCRB's consent agenda later in the meeting. Staff recommends the LCRB awards the CMMS contract to MaintStar.

KEY FACTS AND INFORMATION SUMMARY

Background

The city manages over 249 miles of water lines, 164 miles of sewer lines, 125 miles of storm drainage lines, over 200 acres of developed parks and over 20 city-owned buildings. The rough replacement value of these assets is $1.5 billion. In order to systematically and effectively manage these assets, the Public Works Department utilizes a CMMS. A CMMS allows an organization to track the inventory of its assets, plan for routine maintenance work, record important inspection findings, track repair histories, and plan for rehabilitation or replacement.

The Public Works Department has used the Hansen CMMS since the early 1990s. This software is due for replacement; it is outdated and the vendor will eventually discontinue support.

CMMS Selection

The department conducted a competitive selection process which included a Request for Proposal (RFP) issued in January 2011 and visits to other cities and agencies to see various CMMS software programs in action. The team ranked vendors responding to the RFP based on firm qualifications, project understanding and approach, overall schedule and cost. The MaintStar CMMS software received the team's highest ranking; MaintStar has been a CMMS vendor for over 20 years and is used extensively by multiple organizations in California and also by Clark County Public Works in Washington.

Update

Since staff last briefed the council on CMMS software replacement in July 2011, the city has been working with MaintStar to determine data conversion costs. MaintStar has concluded the city's existing CMMS data is in very good condition and now has an accurate picture of what the data conversion will entail. The city and MaintStar are ready to enter into a contract for the CMMS replacement software; this is the contract that appears on the LCRB's consent agenda later in the meeting.

OTHER ALTERNATIVES

The council could direct staff to follow some other course of action regarding the replacement of the existing CMMS software. However, a CMMS is a necessity for the city. Current regulations mandate the use of a CMMS to effectively track maintenance and repair history on assets. Sanitary sewer asset management, in particular, is subject to federal regulations that require reporting from a CMMS to verify compliance.

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

2011 Tigard City Council Five-Year Council Goal - "Develop Sustainability Plan."

2011 Tigard City Council Long Range Objective - "External and internal city assets are well managed and utilized."

Asset management, accomplished through effective and modern CMMS software, is a critical part of the city's sustainability effort.

DATES OF PREVIOUS COUNCIL CONSIDERATION

The council was briefed on the CMMS replacement software on July 12, 2011.

Fiscal Impact

Cost:	$409,450
Budgeted (yes or no):	Partial
Where Budgeted (department/program):	Multiple Funds

Additional Fiscal Notes:

Implementation will take approximately 18 months, so this project will span two fiscal years. The total project cost is $409,450, with $260,000 budgeted across five funds in fiscal year 2011-2012. The remaining project costs will be included in the fiscal year 2012-2013 proposed budget. Annual software maintenance costs will be $31,000.

Study Session

AIS-664 **Item #: B.**

Business Meeting

Date: 12/20/2011

Length (in minutes): 25 Minutes

Agenda Title: Briefing on Southwest Corridor Plan Public Involvement and Messaging

Submitted By: Marissa Daniels
Community Development

Item Type: Update, Discussion, Direct Staff **Meeting Type:** Council Business Mtg - Study Sess.

ISSUE

Council briefing on plans to involve Tigard citizens in the region's Southwest Corridor integrated land use and transportation planning project.

STAFF RECOMMENDATION / ACTION REQUEST

Receive staff's presentation and ask questions if desired.

KEY FACTS AND INFORMATION SUMMARY

The City's High Capacity (HCT) Land Use Plan is nearing completion and in 2012 staff will focus on implementation of the Plan and participation in the regional Southwest Corridor Plan. A major part of this effort is a coordinated citizen involvement effort among all of the project partners. Tigard will refocus its HCT land use citizen involvement effort toward the Southwest Corridor Plan beginning with a kick-off event on January 30, 2012. Tigard's citizen engagement program will be called "Tigard Connects" and its purpose is to ensure that the community receives factual information and that its citizens' views, values and preferences are represented throughout the multi-year corridor planning process. Also, a robust citizen involvement effort is required of any major transportation project that will use federal funds.

The Southwest Corridor Plan integrates multiple efforts: 1) local land use plans that guide actions and investments to support livable communities; 2) corridor refinement planning to examine the function, mode and general location of future transportation improvements and 3) a transit alternatives analysis to define the best mode and alignment of high capacity transit (HCT) to serve the corridor.

The plan is a partnership between Metro, Multnomah County, Washington County, the Oregon Department of Transportation (ODOT), TriMet and the cities of Portland, Sherwood, Tigard, Tualatin, Beaverton, Durham, King City and Lake Oswego. As such, project communication must be a coordinated effort. To assist in this work Metro has convened a Southwest Corridor public involvement group containing representation from public involvement staff of each participating jurisdiction. Marissa Daniels, Associate Planner currently serves as the city's primary representative to this group.

Her presentation will focus on three aspects of public involvement for the Southwest Corridor Plan including 1) what citizens have told us thus far about living and traveling within the Corridor; 2) future opportunities for citizen engagement in the project and; 3) Tigard's specific citizen involvement plan.

The Southwest Corridor Plan will be successful to the degree that it reflects the values and interests of the communities it is intended to serve. This means there's an important role for Tigard residents and stakeholders in the Southwest Corridor planning process. As staff transitions from the Tigard High Capacity Transit Land Use Plan to participation and implementation in the broader Southwest Corridor process, it will be important to ensure Tigard residents and stakeholders are able to participate effectively. The Tigard Connects project and Connections Team will be described in more detail in the PowerPoint presentation (Attachment 1) as the vehicle to accomplish this goal for Tigard.

OTHER ALTERNATIVES

N/A

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

Council Goal 1:
Implement the Comprehensive Plan
c. Participate in the Southwest Corridor Study

DATES OF PREVIOUS COUNCIL CONSIDERATION

None.

Proclamation

City *of* Tigard

TIGARD - A ROTARY PEACE COMMUNITY

Whereas, the Rotary Community Peace Credo promotes *Respect* for cultural diversity and the life and dignity of every person, without discrimination or prejudice; *Resolution* of conflict within local and global communities and *Reconciliation* of differences in the pursuit of harmony; and

Whereas, the City of Tigard supports the mission of the Rotary Peace Community of Tigard and together we wish to promote peace, understanding and goodwill between our residents and in communities around the world by resolving to:

- share our time and material resources in a spirit of generosity to put an end to exclusion, injustice and political and economic oppression,
- defend freedom of expression and cultural diversity, giving preference always to dialogue and reason rather than to violence, conflict, or the rejection of others, and
- contribute to the development of our community with the full participation of all people and respect for democratic principles; and

Whereas, the Tigard Rotary Club desires to become a Rotary District 5100 Sustaining Peacebuilder Club and join the registry of Rotary Peace Communities around the World.

NOW THEREFORE BE IT RESOLVED THAT I, Craig E. Dirksen, Mayor of the City of Tigard, Oregon, do hereby proclaim the City of Tigard as a

ROTARY PEACE COMMUNITY

And encourage residents to support the Tigard Rotary Club in their endeavor to develop peaceful and diverse communities worldwide.

Dated this _____ day of _____ , 2011.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Tigard to be affixed.

_____
Craig E. Dirksen, Mayor
City of Tigard

Attest:

_____
City Recorder

AIS-749 **Item #: 3. A.**

Business Meeting

Date: 12/20/2011

Length (in minutes): Consent Item

Agenda Title: Approve City Council Meeting Minutes

Submitted By: Cathy Wheatley
Administrative Services

Item Type: Motion Requested **Meeting Type:** Consent Agenda

ISSUE

Approve City Council meeting minutes for October 25, 2011

STAFF RECOMMENDATION / ACTION REQUEST

Approve minutes as submitted.

KEY FACTS AND INFORMATION SUMMARY

Council minutes are being drafted and will be attached to this agenda item summary by December 19, 2011, or rescheduled to a later council meeting date for approval.

OTHER ALTERNATIVES

N/A

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

N/A

DATES OF PREVIOUS COUNCIL CONSIDERATION

N/A

Attachments

October 25, 2011 Minutes

City *of* Tigard
Tigard Business Meeting - Minutes

TIGARD CITY COUNCIL AND LOCAL CONTRACT REVIEW BOARD

MEETING DATE AND TIME:	October 25, 2011 – 6:30 p.m. Study Session; 7:30 p.m. Business Meeting
MEETING LOCATION:	City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

Mayor Dirksen called the meeting to order at 6:32 p.m.

Name	Present	Absent
Mayor Dirksen	✓	
Council President Buehner	✓	
Councilor Henderson	✓	
Councilor Wilson	✓	
Councilor Woodard	✓	

Staff present: Interim City Manager Newton, City Recorder Wheatley, Public Works Director Koellermeier, Senior Project Engineer Murchison, Streets and Transportation Senior Project Engineer McCarthy, City Attorney Ramis, Community Development Director Bunch

- STUDY SESSION

A. Briefing on a Consent Item to Re-Allocate $1.6 Million in Grant Funding to the Main Street/Green Street Retrofit Phase II Project

Streets and Transportation Senior Project Engineer McCarthy presented the staff report. Many years ago, the city was awarded $1.6 million in federal funds to revamp the Tiedeman/Greenburg Road intersection to expand Greenburg Road from Tiedeman to Highway 217. After the grant application was submitted, the bridge widening was added increasing the project by about $4 million. To use the $1.6 million in federal funds, the city

would need to expend about $3 million, which it does not have. The original project was placed on hold.

About 1-1/2 years ago, work was done to find out about re-allocating the grant to Walnut Street. This project fit the purposes of the Metro funding because they are looking for a project that would improve the conditions in a center or access to a center, particularly non-single occupancy vehicle access. As this project was being researched, it was discovered that when the right of way was purchased for the Walnut Street project, federal process was not followed. Differences were significant enough that the Oregon Department of Transportation (ODOT) staff, who administer federal funds in the state, said this project was not eligible for federal funds because of the way it was acquired.

Staff talked with Metro who suggested the Main Street/Green Street Retrofit Phase II project for this funding. Streets and Transportation Senior Project Engineer McCarthy said City Council consensus is requested to use the funding for the Main Street project.

After brief discussion, City Council consensus was to use the federal funding for the Main Street project.

Council President Buehner asked how soon the city would need to use the fund. Streets and Transportation Senior Project Engineer McCarthy said there has been no definitive timeline established. One of the other factors involved is "the red tape" necessary to make a change in projects. When the money got moved from Greenburg to Walnut, it had to go through the various committees at the Metro level. If the money is shifted away from the Walnut Street project, it would have to go back through all the committees again. If we commit to finding local funds for Walnut Street, then the change can be made at the administrative level (just by staff). Council discussion on funding followed. Council President Buehner noted her concerns with continued disruption of businesses in the downtown during construction. Public Works Director Koellermeier advised that the work planned must be done in two separate projects, so there will be a minimum of a one-year lag between construction of Main Street phases one and two. Streets and Transportation Senior Project Engineer McCarthy said he thought a two- to three-year lag would be likely.

City Council discussed looking for opportunities to make construction less disruptive during the construction on Main Street.

Councilor Wilson said he would like to see the 90 percent drawings of the south end of Main Street when they are completed. Public Works Director Koellermeier said he would schedule this for a study session.

Interim City Manager Newton reviewed the following with the City Council:

B. Administrative Items

- Ask council members to select a couple of meeting dates as options for a joint City Council/Tigard-Tualatin School Board meeting. (Tigard will host.) Choices are:

  Wednesday, January 25
  Thursday, January 26
  Monday, January 30

  Agenda items will be set by the City per Mayor Dirksen.

  After brief discussion, City Recorder Wheatley will follow up on the above meeting dates and advise City Council members when a date is selected.

- Non-Agenda Item (beginning of business meeting): Mayor Dirksen was to present a "Certificate of Recognition" to Rick Parker for his service on the Budget Committee, June 2005 through December 2011. (Note: Mr. Parker was called away and was unable to attend to receive the certificate.)

- Council Calendar:

  Tuesday, November 1, 2011 - Special meeting, 6:30 p.m., to consider ratification of the Tigard Police Officer's Association Agreement.

  Tuesday, November 8, 2011 - Regular business meeting is canceled.

  Friday, November 11 - Veterans Day Holiday, City Hall closed.

  Monday, November 14, 2011 - Special meeting with Lake Oswego City Council, 6:30 p.m. dinner, 7 p.m. special meeting at Tigard Town Hall.

  Tuesday, November 15 - Workshop meeting, 6:30 p.m.

  Tuesday November 22 - Regular business meeting; 6:30 p.m. study session and 7:30 p.m. business meeting.

  Thursday and Friday, November 24 and 25 - Thanksgiving Holiday, City Hall closed.

  Tuesday, December 6, 2011, Council goal-setting meeting, noon-5 p.m. at Fanno Creek House.

Tuesday, December 13, 2011, Regular business meeting; 6:30 p.m. study session and 7:30 p.m. business meeting.

Tuesday, December 20, 2011, Business meeting; 6:30 p.m. study session and 7:30 p.m. business meeting. (This business meeting will take the place of the regularly scheduled Workshop meeting.)

Tuesday, December 27, 2011, Regular business meeting canceled.

- EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 6:50 p.m. to discuss real property transaction negotiations under ORS 192.660(2) (e).

  Executive Session concluded: 7:28 p.m.

1. BUSINESS MEETING - OCTOBER 25, 2011

   A. Mayor Dirksen called the meeting to order at 7:37 p.m.
   B. Roll Call

Name	Present	Absent
Mayor Dirksen	✓	
Council President Buehner	✓	
Councilor Henderson	✓	
Councilor Wilson	✓	
Councilor Woodard	✓	

   C. Pledge of Allegiance

   D. Council Communications & Liaison Reports: None.

   E. Call to Council and Staff for Non-Agenda Items: None.

2. CITIZEN COMMUNICATION

   A. Follow-up to Previous Citizen Communication

   At the October 11, 2011, City Council meeting, Ms. Mira Vowles gave testimony regarding the Lake Oswego/Tigard partnership. She urged the council to commission

an independent update of the cost assumptions and potential risks associated with this partnership. Ms. Vowles invited Tigard residents to learn more about the partnership by attending a meeting on Monday, October 17, in the Tigard Library Community Room.

Interim City Manager Newton gave a follow-up report to the City Council. On October 13, the Tigard Times published a soapbox article on this matter. There was a meeting at the Library on October 17 that Ms. Vowles and two other citizens attended. Utility Division Manager Goodrich attended the October 17 meeting where they discussed the water partnership and project. Questions were answered. The residents that attended this meeting were relatively new to the area and were unaware of the history of the Tigard community's efforts to develop a water source. It appears as though the residents were satisfied with the information provided as there has been no additional contact from these individuals.

B. Citizen Communication – Sign Up Sheet

Patricia Romans, 13166 SW Broadmoor Place, Tigard, announced that the Mask and Mirror Community Theatre is holding its inaugural show, "The Green Room," on November 4 at Calvin Presbyterian Church. She thanked the city for its support.

3. PROCLAMATION - CENTENNIAL GREETINGS METZGER

Mayor Dirksen issued the Centennial Greetings Metzger proclamation.

4. CONSENT AGENDA: (Tigard City Council and Local Contract Review Board) Mayor Dirksen reviewed the Consent Agenda items:

A Approve Council Meeting Minutes

- September 20, 2011
- October 4, 2011

B. Approve the Re-Allocation of $1.6 Million in Grant Funding to the Main Street/Green Street Retrofit Phase II Project

C. Local Contract Review Board:

1. Award a Contract for the Purchase of a Truck-Mounted Heated Asphalt Patching Box to Sahlberg Equipment.
2. Approve Purchase of a Freightliner m2 106 Chassis from McCoy Freightliner

Motion by Councilor Wilson, seconded by Council President Buehner, to approve the Consent Agenda.

The motion was approved by a unanimous vote of City Council present.

Mayor Dirksen	Yes
Council President Buehner	Yes
Councilor Henderson	Yes
Councilor Wilson	Yes
Councilor Woodard	Yes

5. CONSIDER WASHINGTON COUNTY PROJECT HOMELESS CONNECT SOCIAL SERVICE FUNDING REQUEST

Confidential Executive Assistant Lutz introduced Kim Marshall with Washington County Project Homeless Connect.

Ms. Lutz and Ms. Marshall presented information regarding the request for use of the Social Service set-aside allocation to fund work with the homeless in Washington County. An October 21, 2011, memorandum is on file in the City Council's meeting packet, which clarifies the timing of the request.

After discussion of the request and a description of the services proposed, the City Council considered a motion to approve the request.

Mayor Dirksen noted the extenuating circumstances where no external audit of this agency was done in the prior year. Councilor Wilson and Mayor Dirksen urged that an external audit be done this year.

Motion by Council President Buehner, seconded by Councilor Wilson, to approve the request for $2500 to the Washington County Homeless Connect Project.

The motion was approved by a unanimous vote of City Council present.

Mayor Dirksen	Yes
Council President Buehner	Yes
Councilor Henderson	Yes
Councilor Wilson	Yes
Councilor Woodard	Yes

In response to a comment from Mayor Dirksen, Ms. Marshall assured the City Council that this agency would submit a funding request during the appropriate time period for next year.

6. RECEIVE UPDATE ON TRANSPORTATION PLANNING RULE (TPR)

Senior Transportation Planner Gray presented the update on this matter:

- The draft changes to the policies contained in the Transportation Planning Rule and the Oregon Highway Plan are now within the public comment period.
- If the City Council gives direction tonight, Senior Transportation Planner Gray said she could prepare a letter should the City Council decide it would like to participate in the public comment to the Oregon Transportation Commission and the Land Conservation and Development Commission.
- This process is also being discussed at JPACT. JPACT will be taking a vote regarding a statement of support at its November 10 meeting.
- The TPR has been discussed by cities in the state for many years.
- The TPR was adopted in the 1990's with the intent of tying land use and transportation planning more directly. This has given consistency in the way cities throughout Oregon do their plans and it has provided a framework for coordination with neighboring and regional jurisdictions.
- Amendments to the TPR receives a lot of attention. Cities' Transportation and Comprehensive Plans are supposed to connect and amendments are guided by the TPR.
- Application of the TPR has been rigid and has, at times, represented a barrier or large expense and contributed uncertainty to the process for public agencies and private property owners seeking a zone change.
- The League of Oregon Cities and Metro placed a priority on a review of the Transportation Planning Rule for the year.
- In early 2011, there was a joint subcommittee of the Oregon Transportation Commission and the Land Conservation and Development Commission to address TPR issues. In that process, it was revealed that many of the issues were not only with the TPR, but also with the Oregon Highway Plan that documents the policies, standards and guidelines for implementing the TPR.
- In April 2011, after a series of hearings, the subcommittee issued five recommendations.
- The Senate passed a bill in support of the recommendations and required adoption by January 1, 2012.
- Senior Transportation Planner Gray advised that just today, she received an updated version of the TPR.

- The joint subcommittee appointed a rulemaking advisory committee for the TPR and Ms. Gray advised she serves on this committee. She and a Metro appointee Tom Kloster were the only two representatives from the metropolitan region representing public agencies.
- The proposed changes to the TPR were developed as statewide policies.
- The Oregon Highway Plan rulemaking duties were dealt with by an internal Oregon Department of Transportation (ODOT) committee.
- Final hearings before both commissions will occur in November and December with anticipated adoption of amendments in place by January 1, 2012.
- JPACT is scheduled to make its decision on November 10. The technical advisory committee to JPACT is reviewing the details of the proposed language. It is expected that the changes will be minor.

Ms. Gray presented information regarding changes in the Oregon Highway Plan:

- The OHP implements the TPR.
- The OHP establishes the mobility target and performance measurements based on traffic congestion. The measurements have always been precise, i.e., ".95." If the performance of a street was in a failure area of measurement or projected to fail, then this was the end of any proposal for change or development. A significant policy change in the OHP is proposed to change the OHP language from "standard" to "target." In the case where the target is not met, this is to be the beginning of the conversation, not the end of the conversation as it has been in the past. Alternative performance measures will be allowed. This change gives an opportunity to use a performance measure that goes beyond traffic congestion.
- The Southwest Corridor Plan will be the first to be developed under these amended plans.
- Region 1 has already begun a research project to develop a menu of performance measures. During the Southwest Corridor Plan process the menu can be used to designate the performance measurements.
- Currently, if a zone change results in the addition of one trip, the same requirements exist for analysis and mitigation as you would have for the addition of 100 trips; that is zero tolerance. In the technical analysis, some minimum thresholds are being set before the requirements are triggered. This will be good for small projects so they do not get "hung up" in uncertainty that comes with this analysis.
- Another proposed amendment deals with the situation where applicants are required to assume worst-case development; that is, maximum build out. If you assume maximum development everywhere, this results in a large over-estimation. An assumption for "average" development will now be allowed.
- There will be a hearing on November 16 in Silverton with someone attending from Metro. It would be helpful to have positions stated from local communities also, which could either be in writing or in person.

- Council President Buehner said she thought the proposed amendments are good overall and she thanked Ms. Gray for serving on the Rulemaking Advisory Committee. She urged someone in the group attempt to educate the First Congressional candidates on transportation issues.
- Mayor Dirksen said for the most part the proposed amendments are technical and not at the policy level; however, these amendments will impact policy decisions.
- Councilor Wilson commented on the alternate performance measures. In response to his questions, Ms. Gray advised the effects of transit improvements, sidewalks or bike facilities are reviewable now in the technical analysis. To respond to Councilor Wilson, she cited a specific example:

  > When there is a capacity constraint at an intersection, one way to address it is to increase the size of the intersection by adding a turn lane, which will help mitigate the impact. But, it also makes it more difficult for pedestrians and bicycles – now there is no measure, standard or consideration of this difficulty.

- Ms. Gray said she would like to see, for Tigard, an alternative performance measure for travel time (reliability) on Pacific Highway – this is a big cost component for freight traffic.

- Councilor Wilson asked if the proposal was to allow some flexibility for areas to use a variety of performance measures or will it be a statewide mandate. Ms. Gray said every state facility will have a standard performance measure but ultimately, at a committee level, a determination will be made regarding what the most important performance measures will be for the Southwest Corridor. These will be reviewed by the Oregon Transportation Commission to consider whether to adopt these measures for the corridor. This will be the first project to go through this process.
- Councilor Wilson asked if other states have similar standards comparing to the Transportation Planning Rule. Ms. Gray said states almost always have a measure of performance that reflects congestion. Councilor Wilson commented that other states do not restrict land use based on the "TPR" as does Oregon. Before the 1990's there was no TPR in Oregon and the market decided where development was going to occur, congestion followed until it was intolerable and then money would be allocated to fix the situation. Since the TPR, in theory, the process is opposite – we know where development is supposed to occur and the dollars should flow to those areas to be developed. It does not happen that way – we are still doing things the way we always have. He asked, why we are not proposing to do away with the TPR altogether. He said our gas tax dollars are still going to rural areas where there is no traffic. He said the proposed amendments are good, but the TPR has instituted a fictional way that things are supposed to happen. Ms. Gray commented on the need for funding regardless of whether a state has standards similar to the TPR. Councilor Wilson acknowledged the

limits to pushing beyond what the politics will allow. He would like to see the way funding is allocated changed entirely so funding decisions take into account where the funding comes from and where there is need

- Ms. Gray gave another example of an alternative performance measure:

  One other measure might be vehicle miles traveled (VMT). This information is readily available. Certain types of development might reduce overall travel if it is convenient for people. The real purpose of the alternative mobility standards is to recognize that while congestion is one objective, there are other objectives that could be used.

- Council President Buehner asked Ms. Gray about future planning for Tigard's Downtown and the Triangle area -- these amendments will give us more opportunities to do things we cannot do under the current rules? Ms. Gray said, "absolutely." Mayor Dirksen said this is the bottom line – it really will help us with what we need to do in the near term.
- Councilor Wilson commented that they learned from their trip to Vancouver B.C. that the density has to reach a high level before you start to realize a reduction in trips. The high density is required to support neighborhood grocery stores, etc.
- Council President Buehner noted Tigard is hoping to have a grocery store and other services in the downtown area, which will require a certain population base to survive. Under the current rules, this development could not occur.
- Ms. Gray commented on the Transportation Planning Rule amendments considered by the committee. In some cases, the committee did not reach consensus and there are other instances where the consensus was not strong.
- The biggest proposed amendment in the TPR would exempt certain urban areas from the TPR and she described the two-step exemption process to designate an area as a "mixed-use, multi-modal area (MMA)" that would no longer fall under the TPR. Ms. Gray further elaborated on components of an MMA.
- This endeavor must be about balancing traffic congestion with development goals.
- Ms. Gray addressed the issue of developing new statewide policy, which would mean when the Tigard Triangle, the Rose Quarter or the Lents area – areas in the Portland Metropolitan region – would be evaluated the same as a development in Pendleton. Because this was a statewide committee, development standards for the metropolitan areas were not a priority for representatives from the other areas of the state. However, this might be an opportunity to suggest that evaluation of the areas within close proximity to interchanges to be relative to the metro region – we should not be comparing this region to smaller communities; that is, safety analyses should be based on Region 1 conditions.

- Council President Buehner asked if the representatives from less densely populated parts of the state came to appreciate some of the issues in the metro area. Ms. Gray said there were people from other cities who were very supportive even though the metro issues were not what they were facing – they had their own priorities.
- The current proposals are good; however, Ms. Gray said it was a fair question to ask whether there was recognition/acknowledgement for the investment of staff resources, money, and volunteer resources that go into efforts for our regional planning.
- Ms. Gray said the subcommittee included a recommendation to allow cities to accept practical mitigation for impacts caused by development that is primarily focused on industrial or the trade sector. Over the course of the discussions, this recommendation became "partial mitigation," which would mean that for certain kinds of development if a city and ODOT determine that, on balance, the impacts were worth a "subsidy," then a lower performance could be accepted without requiring full mitigation. This recommendation received a "bare majority" consensus. The most consistent and outspoken opposition came from Clackamas County Commissioner Lehan who pointed out that this was a subsidy and was concerned that the improvement would never happen and everyone would bear worse congestion or someone else would be expected to pay for the mitigation. Because there was such an interest in supporting economic development, the recommendation did receive a majority consensus. In some of the smaller communities (under 10,000 population), there was a push to allow retail development to also benefit from this partial mitigation.
- Ms. Gray said there is a new provision in the draft that might provide the flexibility desired for economic development. The proposed amendment would allow cities to accept some other kind of mitigation to an alternative mode.
- Councilor Wilson commented on the urban/rural split. The conversation on the Transportation Planning Rule was started in an attempt to address the downtown employment vs. bedroom community commute; that is, concentrating employment in one area and placing housing further and further out. A large retailer setting up in a small community that benefits from partial mitigation provisions was not the reason for this conversation. Mayor Dirksen agreed there still is the urban/rural divide, but as Oregon grows, there are more areas facing urban issues; i.e., Bend and Medford have many of the same concerns that we do.
- Council President Buehner commented that in reviewing census data, it appears urban areas are growing, while rural areas are rapidly losing population. There should be recognition that urban issues take priority because there are so few people in the rural counties. Councilor Wilson said that's why they should not focus on retail but work to attract manufacturing – and then consider some mitigation exemptions. Council President Buehner said she thought these communities are expanding in the area of tourism to survive. Ms. Gray said if the mitigation exemptions were limited to industrial and traded-sector development, retail development would not be prohibited – it would mean that retail would have to pay the full mitigation.

- There was not overall consensus of the working group to support partial mitigation according to Ms. Gray. The problem was seen as who ends up paying for the traffic impacts. Discussion followed regarding instances where other property owners pick up the costs if a developer is not required to pay the full cost of the impact created.
- Another major exemption to the TPR, advised Ms. Gray, would exempt zone changes consistent with the Comprehensive Plan. At this time this exemption would not affect Tigard very much since we have consistent maps for zoning and Comprehensive Plan designations, but it might be useful for us later – especially in the Southwest Corridor as we start looking at changes in the area. This exemption did not have consensus, so there are two options in the draft. One of the options says that if you have an acknowledged Comprehensive Plan and Transportation System Plan, you are "in." The other option is conservative as it would require the jurisdiction to check the assumptions in its Transportation System Plan. Either of these options would not be onerous for Tigard. These proposals would impact small communities.
- City Attorney Ramis commented and inquired about process. Under the Highway Plan draft amendments, if the city is asking for flexibility in performance impacts, would it be the Commission who would consider the request? Ms. Gray said the alternative performance measure will have to be adopted by the Transportation Commission, but changes the manner in which the analyses are done (minimum thresholds, using average density assumptions) at the staff level. City Attorney Ramis asked if Commission staff would say "yes" or "no" or would the city adopt findings of our own? Ms. Gray said we would adopt findings of our own.
- City Attorney Ramis followed up and asked, if there is a dispute, would we adopt findings, which are then subject to appeal to Land Use Board of Appeals in the usual course? Council President Buehner said this would be important to get this question answered. City Attorney Ramis said one of the criticisms from the local government legal side is that when there have been disputes over these issues, we expect in our system to have an impartial tribunal making the decision. Many, at the local government level, do not accept that the Commission or the Department are impartial decision makers. It would be more acceptable to a local government that we adopt findings and if someone disputes the findings, they would appeal to LUBA. If they carry their burden of proof, they win, but if they do not, the city prevails. Ms. Gray reviewed the standards under which TPR analysis is required and some are unambiguous and some are more discretionary. City Attorney Ramis said when the application of the TPR is more discretionary, the key for the city is to be able to defend it to LUBA on the basis that we have substantial evidence for our point of view and, if found to be the case, then the city would prevail. We do not want to be in front of a state agency exercising their own expertise about whether or not they think we have met the criteria.
- Councilor Wilson commented on the above exchange between Senior Transportation Planner Gray and City Attorney Ramis. He said ODOT's natural inclination is to disapprove of any change that might negatively impact their highway. If

ODOT is the final authority, then the Rule will be applied the same as it is now. Senior Transportation Planner Gray said while she agrees there could be a challenge by others who oppose the development, she does not think the end result would be more subject to challenge that it already was. Council President Buehner said the point by City Attorney Ramis is well taken in that if there are not strong guidelines, there would be less defined areas leading to a great deal of litigation.

- Community Development Director Bunch said that when this is brought through a land use process and there is disagreement from ODOT, it has been his experience that the dispute is appealed to LUBA. If the state disagrees with LUBA's decision, then they can go to the Court of Appeals or a higher body. Community Development Director Bunch suggested that staff could clarify the dispute question and return with some scenarios as to how a land use case might proceed.
- After additional discussion, Mayor Dirksen said that once the new provisions are adopted, the conversations and work will continue. Council President Buehner said at least the conversation has started so most of the "big picture" issues can be aired.
- Senior Transportation Planner Gray said the changes give more opportunities to review zone change requests that have been unavailable. She pointed out the new proposals also unties ODOT's hands and provides opportunities to use more approaches. She said if the City Council decides to endorse the proposals, it will be a good opportunity to show support to the commissions.
- Councilor Woodard commented that the proposed amendments offer a variety of ways to address with additional flexibility – it probably represents a good move forward. Senior Transportation Planner Gray confirmed that she thought this was an improvement and is favorable towards economic development.
- Mayor Dirksen said he thinks the appeals process would be the same as it has been in the past, but it would be good to have this confirmed.
- In response to a request regarding the extent to which this will benefit the City of Tigard, Senior Transportation Planner Gray said she would prepare a report for the City Council on how she thinks the amendments will bear out. She said she expects that the combination of these amendments should make it possible to develop the Triangle and the Downtown the way the city wants.
- Senior Transportation Planner Gray said the Highway Plan amendments will have a hearing on November 16. The Planning Rule will be considered on December 8.
- Senior Transportation Planner Gray, in response to Council President Buehner's inquiry about whether Tigard will have a representative at the hearing, advised she plans to attend the Metro TPAC meeting on Friday to find out what the staff-level representatives plan to recommend to JPACT.
- Community Development Director Bunch commented that this item is also a City Council goal. He said Senior Transportation Planner Gray has done a great job in monitoring and representing the city. We are getting close to a decision. Since we have

invested staff resources and the council's time on this matter, the city should participate and comment at every opportunity leading up to the LCDC and Oregon Transportation Commission hearings and adoption of administrative rules. The amendments represent a big step forward and are worthy of support.

- Council President Buehner said she thought it was absolutely critical that the city stay on top of the process, especially since the first test will be with the Southwest Corridor Study.
- Mayor Dirksen said if testimony were offered at the Oregon Transportation Commission public hearing, that such testimony be for general support of the proposed changes and the flexibility of the rule.
- Senior Transportation Planner Gray said the priority recommendation is to generally support both of the drafts. Fine tuning would be nice, but it is most important to show support to both commissions.
- Councilor Wilson said this is a huge step and he thinks the City Council is in general agreement with staff. With all of the changes being proposed, it is more than we could have hoped for and we are finally getting traction on this issue – and just in time. He thanked Senior Transportation Planner Gray for her involvement.
- Mayor Dirksen summarized the City Council consensus as being in general support of the rules and the changes as recommended/proposed.
- In response to a question from Interim City Manager Newton regarding City Attorney Ramis' question about the body that would be hearing appeals, Mayor Dirksen, said this would be a good thing to find out during committee meeting discussions, not at the public hearings.
- Councilor Wilson said the City Council discussion indicated the position of the city was "on the fence" with regard to partial mitigation provisions. Mayor Dirksen noted the committee had a similar position. Senior Transportation Planner Gray said she thinks JPACT will not comment on this matter – it was not supported at the staff level; however, she was unsure whether Metro would testify in opposition. Senior Transportation Planner Gray said she thinks the city should take a position on this point by saying the proposed language does not represent the best way to achieve the intent. The initial recommendation from the subcommittee said we should be looking at phasing of mitigations or funding mechanisms. This was not fleshed out as she thinks the subcommittee ran out of time. It might be reasonable to say that those are appropriate strategies to be investigated with the next round of changes. Council President Buehner agreed it would be appropriate to comment that further work is needed on this issue. Interim City Manager Newton suggested it be raised as a question rather than saying we oppose it.
- In response to Council President Buehner, Senior Transportation Planner Gray said written testimony would be satisfactory. Mayor Dirksen said he did not think it is necessary to have someone from the city attend the upcoming hearings.

- Councilor Henderson said he would be glad to sign a letter of support. Senior Transportation Planner Gray will prepare such a letter for the City Council's signature.

7. COUNCIL LIAISON REPORTS: None

8. NON AGENDA ITEMS: None

9. EXECUTIVE SESSION: Not held.

10. ADJOURNMENT: 9:27 p.m.

Motion by Council President Buehner, seconded by Councilor Woodard to adjourn the meeting.

_____
Catherine Wheatley, City Recorder

Attest:

_____
Mayor, City of Tigard

Date:_____

AIS-655			**Item #: 3. B.**
Business Meeting			
Date:	12/20/2011		
Length (in minutes):	Consent Item		
Agenda Title:	Approve Budget Committee Appointments		
Prepared For:	Toby LaFrance	**Submitted By:**	Liz Lutz Financial and Information Services
Item Type:	Motion Requested Resolution	**Meeting Type:**	Consent Agenda

ISSUE

There is one vacancy on the Budget Committee beginning January 1, 2012 and one vacancy for an alternate member of the Budget Committee.

STAFF RECOMMENDATION / ACTION REQUEST

Approve the recommended appointments to the Budget Committee.

KEY FACTS AND INFORMATION SUMMARY

Rick Parker's Budget Committee term expires on December 31, 2011. As a result, the Appointments Advisory committee recently conducted interviews with several citizens who applied to become members of the Budget Committee.

The Appointments Advisory Committee interviewed 11 citizen candidates and is recommending that the City Council appoint Clifford Rone to a three-year term beginning on January 1, 2012. The committee also recommends that the City Council appoint Zoe Monahan as an alternate for a one-year term beginning on January 1, 2012.

OTHER ALTERNATIVES

None

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

City will maximize the effectiveness of the volunteer spirit to accomplish the greatest good for our community.

DATES OF PREVIOUS COUNCIL CONSIDERATION

N/A

Attachments

Resolution

Biographical Information

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 11-

A RESOLUTION APPOINTING CLIFFORD RONE TO THE BUDGET COMMITTEE AND APPOINTING ZOE MONAHAN AS AN ALTERNATE MEMBER.

WHEREAS, one position is open on the city's Budget Committee due to Rick Parker's completing his established term; and

WHEREAS, the Mayor's Appointments Advisory Committee conducted interviews of several individuals on November 28 and December 5, 2011; and

WHEREAS, the Mayor's Appointments Advisory Committee recommended that Clifford Rone be appointed to the city's Budget Committee.

WHEREAS, the Mayor's Appointments Advisory Committee recommended that Zoe Monahan be appointed as an alternate member.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: Clifford Rone is appointed to a three-year term on the City of Tigard's Budget Committee beginning January 1, 2012.

SECTION 2: Zoe Monahan is appointed to a one-year term as an alternate member on the City of Tigard's Budget Committee beginning January 1, 2012.

SECTION 3: This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2011.

_____
Mayor - City of Tigard

ATTEST:

_____
City Recorder - City of Tigard

BUDGET COMMITTEE RECOMMENDATIONS

CLIFFORD RONE:

Mr. Rone has a Masters of Business and JD degrees. He is currently a real estate consultant and has 30 plus years in the banking industry. He has lived in Tigard for 27 years. Additionally, he volunteers for various organizations.

ZOE MONAHAN:

Ms. Monahan will finish her MPA in March, 2012. She is currently employed by the City of Sherwood Planning department. She has lived in Tigard for 1 ½ years, and has also volunteered for various organizations.

AIS-730 **Item #: 3. C.**

Business Meeting

Date: 12/20/2011

Length (in minutes): Consent Item

Agenda Title: Appoint Members to City Center Advisory Commission (CCAC)

Submitted By: Sean Farrelly
Community Development

Item Type: Resolution **Meeting Type:** Consent Agenda

ISSUE

Should Council reappoint Thomas Murphy and appoint Deanie Bush and Sherrie Devaney to the City Center Advisory Commission (CCAC) and also appoint Jeff Mauro as an alternate member.

STAFF RECOMMENDATION / ACTION REQUEST

Adopt the attached resolution reappointing Thomas Murphy appointing Deanie Bush and Sherrie Devaney to the CCAC and appointing Jeff Mauro as an alternate member.

KEY FACTS AND INFORMATION SUMMARY

The CCAC is the advisory body to the City Center Development Agency (CCDA) on urban renewal issues. As of January 1, 2012 there will be three vacancies for voting members and two vacancies for alternate members.

The Mayor's Appointment Advisory Committee interviewed CCAC candidates and recommended reappointing Thomas Murphy and appointing Deanie Bush and Sherrie Devaney. In addition it was recommended to appoint Jeff Mauro as an alternate member.

The terms of Thomas Murphy, Deanie Bush, and Sherrie Devaney will expire December 31, 2014. The term of Jeff Mauro will expire December 31, 2012.

OTHER ALTERNATIVES

Council may choose not to accept the Appointment Advisory Committee's Recommendation

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

Goal 2. Implement Downtown and Town Center Redevelopment Opportunities

DATES OF PREVIOUS COUNCIL CONSIDERATION

N/A

Attachments

Resolution

Biographical Information

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 11-

A RESOLUTION REAPPOINTING THOMAS MURPHY, AND APPOINTING DEANIE BUSH AND SHERRIE DEVANEY AS VOTING MEMBERS OF THE CITY CENTER ADVISORY COMMISSION AND APPOINTING JEFF MAURO AS AN ALTERNATE TO THE CITY CENTER ADVISORY COMMISSION

WHEREAS, the City Center Advisory Commission (CCAC) consists of nine members and two alternate members appointed by City Council to act as an advisory body to the City Center Development Agency, the Urban Renewal Agency for the City of Tigard; and

WHEREAS, as of January 1, 2012 there will be three voting member vacancies and two alternate member vacancies on the City Center Advisory Commission; and

WHEREAS the Mayor's Appointment Advisory Committee interviewed candidates and recommended reappointing Thomas Murphy and appointing Deanie Bush and Sherrie Devaney as a voting members of the CCAC, and appointing Jeff Mauro as an alternate.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: Thomas Murphy shall be reappointed to the City Center Advisory Commission as a voting member to fill a term which expires December 31, 2014.

SECTION 2: Deanie Bush shall be appointed to the City Center Advisory Commission as a voting member to fill a term which expires December 31, 2014.

SECTION 3: Sherrie Devaney shall be appointed to the City Center Advisory Commission as a voting member to fill a term which expires December 31, 2014.

SECTION 4: Jeff Mauro shall be appointed to the City Center Advisory Commission as an alternate to fill a term which expires December 31, 2012.

SECTION 5: This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2011.

_____
Mayor - City of Tigard

ATTEST:

_____
City Recorder - City of Tigard

Attachment 2

CITY CENTER ADVISORY COMMISSION
RECOMMENDED APPOINTEES
BIOGRAPHICAL INFORMATION

On December 20, 2011, Thomas Murphy, Deanie Bush, and Sherrie Devaney will be recommended for appointment as voting members of the City Center Advisory Commission(CCAC). Jeff Mauro will be recommended for appointment as an alternate.

Deanie Bush has been a Tigard resident for six years. She has a background in sales and marketing. Among her volunteer activities are serving as the VP of fundraising for the Deer Creek Elementary PSO and working with the Tigard Area Chamber of Commerce.

Sherrie Devaney owns Sherrie's Jewelry Box on Main Street**.** She is a resident of Gresham and has been a Tigard business owner for the past 15 years. She has served on the CCAC public art subcommittee.

Thomas Murphy has been a Tigard resident for 17 years. He has been an attorney in private practice and currently has an office on Burnham Street. He also serves on the board of Community Partners for Affordable Housing. He has been a member of the CCAC since December 2007 and currently serves as chair.

Jeff Mauro has been a Tigard resident for two years. He works as a medical coding analyst. He has volunteer experience with the Veterans Administration.

AIS-740 **Item #: 3. D.**

Business Meeting

Date:	12/20/2011		
Length (in minutes):	Consent Item		
Agenda Title:	Appoint Donald Schmidt & Calista Fitzgerald as Voting Members, Andrew Miller & Dianne Armstrong as Alternates to the Planning Commission		
Submitted By:	Susan Hartnett Community Development		
Item Type:	Resolution	**Meeting Type:**	Consent Agenda

ISSUE

Should Council reappoint Donald Schmidt and appoint Calista Fitzgerald as voting members of the Tigard Planning Commission and appoint Andrew Miller and Dianne Armstrong as alternate members to the commission?

STAFF RECOMMENDATION / ACTION REQUEST

Approve a resolution reappointing Donald Schmidt and appointing Calista Fitzgerald as voting members of the planning commission for terms that expire on December 31, 2015 and appoint Andrew Miller and Dianne Armstrong as alternate members of the planning commission for terms that expire on December 31, 2012.

KEY FACTS AND INFORMATION SUMMARY

There are currently two voting positions on the planning commission that will expire on December 31, 2011 as well as two vacant alternate positions. Incumbent Donald Schmidt fills one of the voting positions and was appointed to the planning commission in December, 2009 to fill an unexpired term of a former commissioner.

Donald Schmidt, Calista Fitzgerald, Andrew Miller and Dianne Fitzgerald applied for planning commission seats. The Mayor's Appointment Advisory Committee interviewed applicants and recommended Donald Schmidt be reappointed and Calista Fitzgerald be appointed to fill the current voting member vacancies on the Tigard Planning Commission. They also recommended appointing Andrew Miller and Dianne Armstrong to the alternate positions.

Attachment 1 is a Resolution implementing these recommended appointments.

See Attachment 2 for biographical information on all four recommended appointees.

OTHER ALTERNATIVES

None

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

Tigard City Council Long Range Objectives:
Tigard citizens are involved in the community and participate effectively.

DATES OF PREVIOUS COUNCIL CONSIDERATION

N/A

Fiscal Impact

Cost: NA

Budgeted (yes or no): NA

Where Budgeted (department/program): NA

Additional Fiscal Notes:

NA

Attachments

Resolution

Biographical Information

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 11-

A RESOLUTION REAPPOINTING DONALD SCHMIDT AND APPOINTING CALISTA FITZGERALD AS VOTING MEMBERS TO THE PLANNING COMMISSION, AND APPOINTING ANDREW MILLER AND DIANNE ARMSTRONG AS ALTERNATES TO THE PLANNING COMMISSION

WHEREAS, there currently exist two vacancies for voting members on the Tigard Planning Commission; and

WHEREAS, Donald Schmidt was appointed as an alternate planning commissioner in December, 2009 to fill an unexpired term of a former commissioner that expires December 31, 2011, and he is eligible for reappointment to the planning commission; and

WHEREAS, there currently exists two vacant alternate positions on the planning commission; and

WHEREAS, Donald Schmidt, Calista Fitzgerald, Andrew Miller and Dianne Armstrong applied for appointments to the planning commission; and

WHEREAS, the Mayor's Appointment Advisory Committee recommends that council reappoint Donald Schmidt and appoint Calista Fitzgerald as voting members of the planning commission for terms that expire December 31, 2015, and appoint Andrew Miller and Dianne Armstrong as alternates to the planning commission for terms that expire on December 31, 2012.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: Donald Schmidt is reappointed and Calista Fitzgerald is appointed to the Tigard Planning Commission for terms that expires December 31, 2015.

SECTION 2: Andrew Miller and Dianne Armstrong are appointed as alternates to the Tigard Planning Commission for terms that expire December 31, 2012.

SECTION 3: This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2011.

_____
Mayor - City of Tigard

ATTEST:

_____
City Recorder - City of Tigard

Attachment 2

PLANNING COMMISSION
RECOMMENDED APPOINTEES
BIOGRAPHICAL INFORMATION

On December 20, 2011, Tigard City Council will consider a Resolution to appoint Calista Fitzgerald and to reappoint Donald Schmidt, both as voting members of the Tigard Planning Commission. The Resolution will also appoint Andrew Miller and Dianne Armstrong as alternates.

Donald Schmidt has been a Tigard resident for more than 5 years. He was initially appointed to the Planning Commission as an alternate beginning in January 2009. He was appointed to a voting position in December 2009 to fill an unexpired term of a departing Commissioner. Don has a professional background in architecture and participates with the American Institute of Architects and the Cascadia Green Building Council.

Calista Fitzgerald is not a resident of Tigard but has lived for the last 7 ½ years very close by; her property abuts the city boundary**.** The Planning Commission bylaws allow up to 2 non-resident members. Calista brings 18 years of experience in architecture and design to the commission. Her volunteer activities range from Habitat for Humanity to Castle and Bears, Inc., a tuition assistance program. She has also participated as a Metzger ES volunteer.

Andrew Miller has been a Tigard resident for 4 ½ years. He has a degree in Forest Engineering and is working to achieve his land surveyor certification. Joining the Planning Commission as an alternate will be his first community participation activity in Tigard.

Dianne Armstrong has been a Tigard resident for 18 years. She retired from the banking industry and has begun what she terms her "encore career" in an allied medical field. She has volunteered with the SMART Reading program and OASIS Learning Institute in the past.

AIS-747 **Item #: 3. E.**

Business Meeting

Date: 12/20/2011

Length (in minutes): Consent Item

Agenda Title: Resolution Appointing Transportation Advisory Committee Members

Submitted By: Judith Gray
Community Development

Item Type: Resolution **Meeting Type:** Consent Agenda

ISSUE

Council is requested to consider and act on recommended appointments to the Transportation Advisory Committee .

STAFF RECOMMENDATION / ACTION REQUEST

It is recommended that Council appoint:

- Steven Bass and Christopher Warren as voting citizen representatives of the Transportation Advisory Committee with terms expiring December 31, 2014;
- Evelyn Murphy as a voting citizen representative to fulfill a partial term expiring December 31, 2012;
- Mark Bogert and Shane Brown as alternate members of the Transportation Advisory Committee with terms expiring December 31, 2012.

KEY FACTS AND INFORMATION SUMMARY

The Tigard Transportation Advisory Committee has five vacancies to be filled starting in 2012.

- Incumbents Steven Bass and Christopher Warren will complete partial terms, expiring December 31, 2011. They are both eligible to serve again and both have applied for reappointment.
- Don Fox and Maureen Wolf served partial terms expiring December 31, 2011, creating two vacancies for business representatives. Neither has chosen to apply for reappointment.
- Kim Moreland resigned her position before it expired, creating a vacancy for a partial term for a citizen representative (expiring December 31, 2012).

Incumbents Steven Bass and Christopher Warren applied for reappointment, and Evelyn Murphy, Mark Bogert, and Shane Brown applied for appointment. No business representatives applied.

The Mayor's Appointment Advisory Committee recommends that Council reappoint Steven Bass and Christopher Warren to full terms; Evelyn Murphy as a voting member to complete the partial term vacated by Kim Moreland; and Mark Bogert and Shane Brown as alternates.

There will remain two vacancies for business representatives on TTAC.

Attachment 1 is a resolution regarding the new committee members; Attachment 2 contains short biographies of the new members.

OTHER ALTERNATIVES

None

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

City Council Long Range Objectives:

Tigard citizens are involved in the community and participate effectively.

DATES OF PREVIOUS COUNCIL CONSIDERATION

n/a

Attachments

Resolution

Biographical Information

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 11-_____

A RESOLUTION REAPPOINTING CHRISTOPHER WARREN AND STEPHEN BASS AS VOTING MEMBERS OF THE TRANSPORTATION ADVISORY COMMITTEE, APPOINTING EVELYN MURPHY AS A NEW VOTING MEMBER; AND APPOINTING MARK BOGERT AND SHANE BROWN AS ALTERNATE MEMBERS.

WHEREAS, the Transportation Advisory Committee was formed by City Council Resolution 09-14; and

WHEREAS, Steven Bass and Christopher Warren served partial terms expiring December 31, 2011, creating two vacancies for citizen representatives, for which they are eligible and have applied for reappointment; and

WHEREAS, Don Fox and Maureen Wolf served partial terms expiring December 31, 2011, creating two vacancies for business representatives; and

WHEREAS, Kim Moreland resigned her position as a citizen representative, with the term scheduled to expire on December 31, 2012, leaving vacant a partial term for a citizen representative; and

WHEREAS, Evelyn Murphy, Mark Bogert, and Shane Brown applied for appointment to the Transportation Advisory Committee; and

WHEREAS, the Mayor's Appointment Advisory Committee recommends that Council reappoint Steven Bass and Christopher Warren to full terms; Evelyn Murphy as a voting member to complete the partial term vacated by Kim Moreland; and Mark Bogert and Shane Brown as alternates.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: Steven Bass and Christopher Warren are reappointed as voting citizen representatives of the Transportation Advisory Committee with terms expiring December 31, 2014.

SECTION 2: Evelyn Murphy is appointed as a voting citizen representative to fulfill the partial term expiring December 31, 2012.

SECTION 3: Mark Bogert and Shane Brown are appointed as alternate members of the Transportation Advisory Committee with terms expiring December 31, 2012.

PASSED: This _____ day of _____ 2011.

_____
Mayor - City of Tigard

ATTEST:

_____
City Recorder - City of Tigard

Tigard Transportation Advisory Committee
Brief Applicant Biographies

On December 20, 2011 the Tigard City Council will consider a resolution appointing voting members and alternates to the Tigard Transportation Advisory Committee (TTAC).

Following are brief biographies for the individuals recommended for appointment:

Christopher Warren is an incumbent on TTAC and served as the committee chair in 2011. He was also on the Citizens Advisory Committee for the recent 2035 Transportation System Plan. Chris has lived in Tigard for five years. Prior to moving to Tigard, he was a community volunteer in his previous community of Wilsonville. Chris is a commercial construction plumber by trade.

Steven Bass is a TTAC incumbent. He has lived in Tigard for 4 years. Prior to moving to Tigard, Steve was a volunteer for the Downtown Redding Business Association. Steve is a pharmacist with Fred Meyer Pharmacy.

Evelyn Murphy has been a Tigard resident for 17 years and previously lived in the Metzger area. Her past community volunteer activities include the Community Partners for Affordable Housing. Evelyn is a medical professional in the field of ICU and Maternal/Child nursing and has worked for her current employer for 23 years.

Mark Bogert has lived in Tigard for 50 years. He lists the Tigard Chapter of St Vincent de Paul as past community activity. Mark is a retired UPS driver.

Shane Brown has lived in Tigard for 3 years, having previously lived in Beaverton. Shane is a licensed civil engineer and works as a bridge engineer with Parametrix.

AIS-732			**Item #: 3. F.**
Business Meeting			
Date:	12/20/2011		
Length (in minutes):	Consent Item		
Agenda Title:	Adopt a Resolution Approving an Agreement which Conveys Tract H of Colony Creek Estates No. 2 to the City		
Prepared For:	Steve Martin	**Submitted By:**	Greer Gaston Public Works
Item Type:	Motion Requested Resolution	**Meeting Type:**	Consent Agenda

ISSUE

Shall the council adopt a resolution approving an agreement which conveys Tract H of Colony Creek Estates No. 2 to the city and authorizing the city manager to execute all documents associated with the conveyance.

STAFF RECOMMENDATION / ACTION REQUEST

Staff recommends the council adopts the resolution.

KEY FACTS AND INFORMATION SUMMARY

- The Colony Creek Homeowners' Association (HOA) has expressed a willingness to donate property, known as Tract H, to the city. The HOA was concerned about maintenance and liability issues associated with the ownership of the parcel.
- A section of the Fanno Creek Trail crosses Tract H. The city is interested in acquiring the property because this trail segment connects Fanno Creek Drive to the library and gives pedestrians access to the Fanno Creek Trail.
- The city conducted a level 1 environmental assessment on the property; no environmental issues were identified.
- The HOA held several meetings and collected enough votes from homeowners to convey the property to the city. The HOA has adopted a resolution turning the property over to the city.
- A declaration between the HOA and the city specifies the property may be conveyed to the city, provided it is used as open space or for recreation. These uses are consistent with the city's plans to maintain the trail and small park area currently on the property.
- It should be noted that the city is unable to obtain title insurance on the property. A memo from Park and Facilities Manager Steve Martin is attached and provides more detail on the title insurance. Staff and the city's real estate attorney do not see the lack of title insurance as a significant issue.
- The city's real estate attorney has guided the acquisition process and has reviewed the agreement.

OTHER ALTERNATIVES

Council could choose not to approve the resolution, and the HOA would retain ownership of the property.

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

This property is part of the Fanno Creek Trail as outlined the Tigard Greenways Trail System Master Plan accepted by council in July 2011.

DATES OF PREVIOUS COUNCIL CONSIDERATION

The council was briefed on this property in an executive session on real property transactions on January 25, 2011.

Fiscal Impact

Cost:	Nominal
Budgeted (yes or no):	No
Where Budgeted (department/program):	Park Fund

Additional Fiscal Notes:

The HOA is willing to convey the property to the city at no cost. The city will have some nominal costs for the environmental assessment, legal fees, and escrow costs.

Attachments

Resolution

Exhibit A - Agreement

Title Insurance Memo

Property Map

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 11-

A RESOLUTION APPROVING AN AGREEMENT WHICH CONVEYS TRACT H OF COLONY CREEK ESTATES NO. 2 TO THE CITY AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS ASSOCIATED WITH THE CONVEYANCE

WHEREAS, the Colony Creek Homeowners' Association ("HOA") has expressed a willingness to donate property, known as Tract H, to the City of Tigard ("City"); and

WHEREAS, the HOA has adopted a resolution turning the property over to the City; and

WHEREAS, a section of the Fanno Creek Trail crosses Tract H; and

WHEREAS, the City is interested in acquiring the property because this section of trail connects Fanno Creek Drive to the library and gives pedestrians access to the Fanno Creek Trail; and

WHEREAS, a Declaration between the HOA and the City specifies the property may be conveyed to the City, provided the property is used as open space or for recreation; and

WHEREAS, this provision is consistent with the City's plans to maintain the trail and small park area currently on the property.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The City Council approves the agreement (Exhibit A) with Colony Creek Estates Homeowners' Association to convey Tract H of Colony Creek Estates No. 2 to the City.

SECTION 2: The City intends to use the property as open space or for recreation.

SECTION 3: The City Council authorizes the city manager to execute all documents associated with the conveyance.

SECTION 4: This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2011.

_____
Mayor - City of Tigard

ATTEST:

_____
City Recorder - City of Tigard

Exhibit A

AGREEMENT

BETWEEN: Colony Creek Estates Homeowners' Association, Inc.,
an Oregon nonprofit corporation ("Grantor")
PO Box 230553
Tigard, Oregon 97281
Attn: _____
Office: (_____) _____

AND: City of Tigard ("Grantee")
13325 SW Hall Blvd.
Tigard, Oregon 97223
Attn: City Manager
Office: (503) 718-2486

EFFECTIVE DATE: _____ _____, 2011 ("Effective Date")

RECITALS

A. Colony Creek Estates (the "Planned Community") is a planned community located in the City of Tigard, Washington County, Oregon. The Planned Community was established and is governed by the following documents (collectively "Governing Documents") recorded, as indicated, in the Records of Washington County, Oregon:

(a) Declaration of Protective Covenants Colony Creek Estates (the "Declaration" recorded August 6, 1979 as Document No. 79031314, as amended or supplemented by:

(i) First Supplemental Amendment Declaration of Protective Covenants for Colony Creek Estates recorded May 4, 1981 as Document No. 81015019.

(ii) Amendment to the Declaration of Protective Covenants for Colony Creek Estates recorded May 19, 1982 as Document No. 82012592.

(iii) Annexation of Property to the Declaration of Protective Covenants for Colony Creek Estates recorded August 24, 1984 as Document No. 84033750.

(b) Bylaws of Colony Creek Estates Homeowners Association, Inc. (the "Bylaws").

(c) The following plats recorded in the Washington County Plat Records:

(i) Colony Creek Estates Recorded August 6, 1979 in Book 47, Page 19.

(ii) Colony Creek Estates No. 2 recorded August 14, 1984 in Book 57, Page 12.

(iii) Colony Creek Estates No. 3 recorded May 21, 1985 in Book 58, Page 34.

(iv) Colony Creek Estates No. 4 recorded May 21, 1985 in Book 58, Page 36.

B. Grantor is Colony Creek Estates Homeowners' Association, Inc., an Oregon nonprofit corporation (the "Association") formed to serve as the means through which the owners may take action with regard to the administration, management and operation of the Association and the Planned Community as provided under the Governing Documents.

C. As of January 1, 2002, Colony Creek Estates is a Class I Planned Community and subject to the provisions of the Oregon Planned Community Act, ORS 94.550 to 94.783 (the "Act") as provided in ORS 94.572.

D. Tract H, Colony Creek Estates No. 2, Washington County, Oregon (the "Subject Property") is common property and is designated as "Open Space" on the Colony Creek Estates No. 2 Plat.

E. The Subject Property includes any improvements, fixtures, structures, timber, water and minerals located thereon, and any and all rights appurtenant thereto owned by Grantor, including but not limited to development rights, timber rights, water rights, grazing rights, access rights and mineral rights.

F. Grantor wishes to convey the Subject Property to Grantee and Grantee wishes to receive the Subject Property on the terms and conditions set forth in this Agreement (the "Agreement").

G. Section 6.1 of the Declaration specifies, with the approval of the City of Tigard, and approval in writing of the owners of a majority of the lots subject to the Governing Documents, the Association may dedicate or convey any portion of the common areas to a park district or other public body for open space or recreational use.

H. In January, 2011, pursuant to Section 6.1 of the Declaration, the Grantor's Board of Directors requested and received the written approval from the owners of at least a majority of the lots subjected to the Governing Documents to convey Tract H to the City pursuant to Section 6.1 of the Declaration. Specifically, the owners of sixty-four (64) of the one hundred ten (110) lots approved the conveyance.

I. ORS 94.665 governs conveyance of common property and specifies:

> *Except as otherwise provided in the declaration*, a homeowners association may sell, transfer, convey or subject to a security interest any portion of the common property if 80 percent or more of the votes in the homeowners association, including 80 percent of the votes of lots not owned by a declarant at the time of the vote, are cast in favor of the action. *(Emphasis added*)

J. ORS 94.665 further provides, an instrument that sells, transfers, conveys or encumbers common property must:

(a) State that the action of the homeowners association was approved in accordance with this section; and

(b) Be executed by the president and secretary of the association and acknowledged in the manner provided for acknowledgment of the instruments by the officers.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals set forth above, which are contractual, and for other good and valuable consideration described in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as set forth below.

SECTION 1
General Provisions

1.1 Conveyance and Acceptance. Grantor agrees to convey to Grantee and Grantee agrees to accept from Grantor the Subject Property on the terms and conditions set forth herein.

1.2 Consideration. There shall be no cash consideration for the Subject Property; provided, however, as consideration for the Subject Property, Grantee shall assume the obligations of maintaining the Subject Property as required by the Declaration and will incorporate the Subject Property into its park system.

1.3 Possession. Except as specifically set forth in this Agreement, there are no leases, licenses or other agreements permitting, nor has Grantor entered any course of conduct that would permit any person or entity to occupy or use any portion of the Subject Property. Grantor shall deliver immediate and exclusive possession of the entire Subject Property to Grantee at closing.

1.4 Condition. **The Subject Property is being sold "AS-IS ". Grantee has inspected the Subject Property and is satisfied with its physical condition.**

SECTION 2
Conditions Precedent to Closing

2.1 Title Policy. Grantee may procure, at Grantee's sole cost and expense, an ALTA standard or extended coverage owner's policy of title insurance for the Subject Property.

2.2 Environmental. Grantee has reviewed an environmental assessment of the Subject Property by a qualified environmental processional following ASTM E 1527-05, which assessment was dated June 15, 2010, with reference number 7806. Said assessment indicated no "recognized environmental conditions" as defined by the standard. Grantee's approval of any change to the environmental condition of the Subject Property subsequent to the date of assessment, based on its due diligence and inspections, is a condition to closing.

2.3 Contingency Failure. In the event any of the contingencies set forth in Section 2 are not timely satisfied or waived, for a reason other than the default of the Grantee or the Grantor under this Agreement, this Agreement and the rights and obligations of the Grantee and the Grantor shall terminate, except as otherwise provided.

SECTION 3
Grantor's Representations

Grantor makes the following representations:

3.1 Authority. Subject to Section 3.3 below, Grantor, pursuant to the Declaration and ORS 94.665, has full power and authority to enter into this Agreement.

3.2 No Other Obligations. Grantor has not entered into any other contracts for the conveyance of the Subject Property or any portion thereof, nor do there exist any rights of first refusal or options to purchase the Subject Property.

3.3 No Other Proceedings. Grantor acknowledges that some confusion exists over whether Grantor has sole and legal beneficial fee title to the Subject Property. Other than this recognized issue, to the best of Grantor's knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Subject Property or pending or threatened against Grantor which could subject an owner of the Subject Property to liability. The representations of Grantor contained in this Agreement shall be effective through the close of escrow.

3.4 Pending Transactions, Suits or Proceedings. To Grantor's knowledge, there are no transactions, suits, proceedings, litigation (including zoning or other land use regulation proceedings), condemnation, or investigations pending or threatened against or affecting the Property or Grantor as the owner of the Property in any court at law or in equity, or before or by any governmental department, commission, board, agency or instrumentality.

3.5 Effective Period. The representations of Grantor contained in this Agreement shall be effective through the close of escrow.

SECTION 4
Grantee's Representations

Grantee makes the following representations:

4.1. Authority. Grantee has all requisite authority and power to enter into this Agreement.

4.2. No Violations. Neither Grantee's execution of this Agreement nor its taking any of the actions contemplated hereunder will violate any City, County, State or Federal Codes or Ordinances, or other governmental regulations.

4.3. Title; Acceptance by Deed. Grantee acknowledges that some confusion exists over whether Grantor has sole and legal beneficial fee title to the Subject Property, and agrees to accept Grantor's conveyance of the Subject Property via the form of Deed specified in Section 5.2.1 hereof.

4.4. Effective Period. The representations of Grantee contained in this Agreement shall be effective through the close of escrow.

SECTION 5
Closing and Escrow

5.1. Closing. Closing on the purchase and sale of the Subject Property shall occur on or about December 30, 2011.

5.2. Grantor to Deliver at Closing.

5.2.1. Title. Title shall be conveyed to Grantee, via quitclaim deed (the "Deed") at the close of escrow, Grantor shall cause the Deed to be recorded in the official property records of Washington County and shall subsequently deliver conformed copies of the Deed to the parties.

5.2.2. Proof of Authority. Such proof of the Grantor's authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, and such proof of the power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of the Grantor to act for or bind the Grantor, as may be reasonably required by the Title Company and/or the Grantee.

5.2.3. Nonforeign Certification. The Grantor represents that it is not a "foreign person" as defined in IRC §1445. If required by the Grantee, Grantor will give an affidavit to the Grantee to this effect in the form required by that statute and related regulations.

5.2.4. Closing Expenses and Fees. The escrow fee shall be paid by Grantee. Real estate taxes, if any, on the Subject Property shall be prorated between the Grantor and Grantee as of the close of escrow based upon the latest available tax bill. Other fees and charges shall be allocated in accordance with the customary practices of Washington County, Oregon.

5.2.5. Title Insurance. Grantee acknowledges that Grantor has no obligation to provide title insurance to Grantee for the Subject Property.

SECTION 6
Defaults and Remedies

6.1. Grantee's Default and Grantor's Remedies. If Grantee breaches this Agreement, which breach Grantee fails to cure within twenty (20) days after receipt of written notice thereof from Grantor, Grantee shall be in default under this Agreement and Grantor shall be entitled to any and all remedies at law or equity.

6.2. Grantor's Default and Grantee's Remedies. If Grantor breaches this Agreement, which breach Grantor fails to cure within twenty (20) days after receipt of written notice thereof from Grantee, Grantor shall be in default under this Agreement and Grantee shall be entitled to any and all remedies at law or equity.

SECTION 7
Miscellaneous

7.1. Notices. All notices pertaining to this Agreement shall be in writing delivered to the parties hereto personally by hand, courier service or express mail, or by first class mail, postage prepaid, at the addresses set forth on the first page of this Agreement. All notices shall be deemed given when deposited in the mail, first class postage prepaid, addressed to the party to be notified, or if delivered by hand, courier service or Express Mail, shall be deemed given when delivered. The parties may, by notice as provided above, designate a different address to which notice shall be given.

7.2. No Broker's Commission. Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party against whom the claim is asserted will hold the other party harmless from said claim.

7.3. Time of the Essence. Time is of the essence under this Agreement.

7.4. Binding on Successors. This Agreement shall be binding not only upon the parties but also upon their assigns, and other successors in interest. Neither party shall assign its rights and/or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

7.5. Additional Documents. Grantor and Grantee agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

7.6. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between Grantor and Grantee pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

7.7. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

7.8. **Severability**. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

7.9. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

7.10. **Statutory Notice under ORS 93.040**. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

7.11. **Damage or Destruction; Condemnation.** Until the transfer of legal title, the risk of loss shall be retained by the Grantor. The Grantor shall keep the Subject Property fully insured until the transfer of legal title. In the event of any material portion of the Subject Property is damaged, destroyed, or condemned or threatened with condemnation before the transfer of legal title, the Grantee may terminate this Agreement. In such event, this Agreement shall have no further force or effect whatsoever. If a nonmaterial portion of the Subject Property is destroyed then Grantee is obligated to close this transaction as provided for under this Agreement. In such event, the Grantee shall be assigned all insurance proceeds or condemnation proceeds payable to or for the account of the Grantor.

7.12. Attorneys' Fees. If any action is instituted between Grantor and Grantee in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs of action, including, without limitation, attorneys' fees and costs, as fixed by the court therein, at trial or on appeal. In addition, if either party incurs attorneys' fees or costs in successfully enforcing any right under this Agreement, such attorneys' fees and costs shall be recoverable from the other party hereto.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

GRANTEE	GRANTOR
City of Tigard	Colony Creek Estates Homeowners' Association, Inc.
By:_____	By:_____
Name:_____	Name:_____
Its:_____	Its: President
Approved as to Form:	By:_____
	Name:_____
By: _____	Its: Secretary
Title: City Attorney	
Date: _____	

City *of* Tigard
Memorandum

To: The Honorable Mayor and City Councilors

From: Park and Facilities Manager Steve Martin

Re: Title Insurance Regarding the Colony Creek Homeowners' Association (HOA) Property Donation

Date: December 5, 2011

While the HOA wishes to convey the property to the city, and the city wishes to accept the property, the city will not be able to obtain title insurance on this parcel. This is due to a discrepancy between the record of ownership in the chain of title and the authority granted to the HOA in the declaration to convey open space.

Jeff Bennett, the city's real estate attorney, has supplied the following explanation as to why the city cannot obtain this insurance:

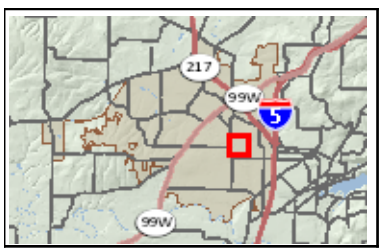
> *Section 6.1 of the Declaration states in part that "the Declarant (or, after delegation, the Association) upon approval in writing of the owners of a majority of the lots and approved by order of the resolution of the City of Tigard, may dedicate or convey any portion of the common areas to a park district or other public body for open space or recreational use."*
>
> *However, the title report states that title to the tract is vested in "the owner of each and every platted lot in this plat (and all previous or subsequent plats in the Colony Creek Estates series)". This means that, in order for the title company to issue title insurance, each and every owner of a platted lot in Colony Creek Estates would need to approve transfer of the plat to the City.*
>
> *We discussed this with Steve Martin last May and because of the logistical issues associated with getting written approval from every platted lot owner, the minimal risk to the City that an owner of a platted lot in Colony Creek Estates would actually assert a claim, and the limited liability should such a claim occur, Steve decided that, if the Association obtained the approval as provided for in Section 6.1 of the Declaration (which it did), Steve would present to the City Council for approval a resolution approving the conveyance of the tract to the City by quitclaim deed from the HOA and would not require title insurance.*

Based on advice from the city's real estate attorney and the minimal risk involved in foregoing the insurance, staff recommends the city proceeds with the conveyance.

VICINITY MAP

Colony Creek HOA

Subject Site



Approx. Scale 1:4,000 - 1 in = 333 ft

Map printed at 01:07 PM on 30-Nov-11

DATA IS DERIVED FROM MULTIPLE SOURCES. THE CITY OF TIGARD MAKES NO WARRANTY, REPRESENTATION OR GUARANTEE AS TO THE CONTENT, ACCURACY, TIMELINESS OR COMPLETENESS OF ANY OF THE DATA PROVIDED HEREIN. THE CITY OF TIGARD SHALL ASSUME NO LIABILITY FOR ANY ERRORS, OMISSIONS, OR INACCURACIES IN THE INFORMATION PROVIDED REGARDLESS OF HOW CAUSED.

TIGARD MAPS

City of Tigard
13125 SW Hall Blvd
Tigard, OR 97223
503 639-4171
www.tigard-or.gov

TIGARD

AIS-733			**Item #: 3. G.**
Business Meeting			
Date:	12/20/2011		
Length (in minutes):	Consent Item		
Agenda Title:	Resolution Waiving Temporary Sign Permit Fees for Tigard Little League		
Prepared For:	Toby LaFrance	**Submitted By:**	Toby LaFrance Financial and Information Services
Item Type:	Resolution	**Meeting Type:**	Consent Agenda

ISSUE

Does the Tigard City Council find that benefit to the community of waiving the temporary sign permit fees for Tigard Little League to hang two banners outweigh the $104 financial hardship to the City?

STAFF RECOMMENDATION / ACTION REQUEST

Consider Resolution waiving $104 of permit fees for Tigard Little League.

KEY FACTS AND INFORMATION SUMMARY

On November 9, 2012, Kim Kelleher from Tigard Little League e-mailed the city to request a waiver of permit fees charged to hang two banners (text of email is attached). According to the Master Fees and Charges Schedule, Temporary Sign Permits are $52 per sign. Kim is requesting the city waive fees for two signs totaling a $104 fee waiver. TMC 3.32.070 authorizes Council to waive fees for non-profits. The text of the TMC is as follows:

"3.32.070 Exemptions. The City Council is authorized to waive or exempt the fee or charge imposed upon an application or for the use of City facilities and services, if a nonprofit organization requests such a waiver in writing and the Council determines that community benefit from the proposed activity outweighs the financial burden on the City. The waiver or exemption shall not excuse the nonprofit organization from compliance with other requirements of this code."

Tigard Little League is a qualifying non-profit. They have made their request to waive fees in writing. If Council determines that the benefit to the community outweighs the loss of $104 in permit fees, then Council is authorized to waive the fees.

OTHER ALTERNATIVES

City Council could deny the request.

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

Tigard citizens are involved in the community and participate effectively.

Programs and activities are available in the community to meet the needs of a diverse population.

DATES OF PREVIOUS COUNCIL CONSIDERATION

None.

Fiscal Impact

Cost:	NA
Budgeted (yes or no):	NA

Where Budgeted (department/program): NA

Additional Fiscal Notes:

Waiving the fees will reduce City of Tigard General Fund revenues by $104.

Attachments

Resolution

Written Request from Tigard Little League

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 11-

A RESOLUTION WAIVING $104 IN TEMPORARY SIGN PERMIT FEES FOR TIGARD LITTLE LEAGUE

WHEREAS, Tigard Municipal Code 3.32.070 authorizes City Council to waive fees for non-profits when the request is made in writing and Council determines that the community benefit outweighs the financial burden to the City; and

WHEREAS, Tigard Little League has requested in writing the waiver of fees for two temporary sign permits; and

WHEREAS, The Master Fees and Charges states that the fee for temporary sign permits is $52 per sign; and

WHEREAS, Council determines that the community benefit outweighs the $104 financial burden to the City.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: Tigard Little League receives a waiver of $104 in temporary sign permit fees.

SECTION 2: This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2011.

_____
Mayor - City of Tigard

ATTEST:

_____
City Recorder - City of Tigard

From: Kim Kelleher [mailto:kimkell6@gmail.com]
Sent: Wednesday, November 09, 2011 9:58 AM
To: Councilmail Councilmail
Cc: kim.kelleher@tigardll.org
Subject: Permit Fees for Non-Profits

Hello City Council,

I am contacting you with a request to consider waiving the permit fees charged to hang banners for non-profit sports leagues in Tigard.

As Player Agent/Registrar for Tigard Little League, I am responsible for the flyers, banners and yard signs that we use to advertise that our registration is open for baseball and softball for Tigard kids age 5-14. I have learned that the City of Tigard permit fee to hang a banner is $54 per banner – we have 2 banners that we put up each year at Fowler Middle School and Tigard High School, so that is a cost of $108. While this cost is certainly not exorbitant, those are dollars that are then required to be spent on something other than things that will actually add value to the program for the kids.

In 2011, Tigard Little League provided $6,500 in scholarships and I know that the other non-profit youth sports groups (e.g., Tigard Youth Lacrosse, Tigard Youth Football, Tigard Basketball Association and Tigard Competitive Hoops) all provided scholarships as well. I would be happy to contact those groups and provide you with the amounts if that would be helpful to you.

This is my first request to a City Council so please let me know if you would like something more formal or if you would like representatives from these groups to present the request at a meeting. And please let me know if you would like any additional information. I would love to spend the $108 on either scholarships or player development opportunities for our players!

Thanks very much for your consideration,
Kim Kelleher
Tigard Little League Player Agent/Registrar

AIS-744 **Item #: 3. H.**

Business Meeting

Date:	12/20/2011		
Length (in minutes):	Consent Item		
Agenda Title:	Approve Amendment #01 to Intergovernmental Agreement (IGA) with Oregon Department of Transportation (ODOT) - Motor Vehicle Fuel Dealer Tax Collection		
Prepared For:	Toby LaFrance	**Submitted By:**	Toby LaFrance Financial and Information Services
Item Type:	Motion Requested	**Meeting Type:**	Consent Agenda

ISSUE

Should Council approve Amendment #01 to Intergovernmental Agreement (IGA) with Oregon Department of Transportation (ODOT) for Motor Vehicle Fuel Dealer Tax Collection?

STAFF RECOMMENDATION / ACTION REQUEST

Approve Amendment #01 to IGA with ODOT for Motor Vehicle Fuel Dealer Tax Collection

KEY FACTS AND INFORMATION SUMMARY

The State of Oregon collects Gas Tax revenues from fuel stations in Tigard. The collection includes the $0.03/gallon City Gas Tax that is used to fund specific transportation projects in Tigard, such as the Greenburg Road / Main Street / Pacific Highway intersection. On March 9, 2007, the City of Tigard entered into an IGA with ODOT to collect the City Gas Tax. That agreement ends on December 31, 2011.

Amendment Number 01 to the IGA serves three main purposes:

1. Renews the IGA for another four years,
2. Makes changes to the IGA to account for City of Tigard Ordinance 09-12, which amended the City Gas Tax, and
3. Makes changes to account for changes in ORS references.

OTHER ALTERNATIVES

Council could deny the request and instruct staff to seek other methods of collecting the City Gas Tax.

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

Financial stability

DATES OF PREVIOUS COUNCIL CONSIDERATION

Fiscal Impact

Cost:	NA
Budgeted (yes or no):	NA
Where Budgeted (department/program):	City Gas Tax

Additional Fiscal Notes:

In Fiscal Year 2012, the City Gas Tax is anticipated to produce $692,265. By agreement ODOT collects the gas tax and reduces the amount distributed to Tigard in the first month of the fiscal year. By agreement the amount deducted cannot exceed $7,500.

Attachments

Amendment #1 to IGA w/ ODOT

Original 2007 IGA w/ ODOT

AMENDMENT NUMBER 01
INTERGOVERNMENTAL AGREEMENT
Motor Vehicle Fuel Dealer Tax Collection
City of Tigard

The **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," and the **City of Tigard**, acting by and through its elected officials, hereinafter referred to as "CITY," entered into an Agreement on March 9, 2007. Said Agreement covers the authorization of ODOT to act as the tax administrator for the CITY motor vehicle fuel license tax on motor vehicle fuel dealers that sell, use or distribute fuel in the CITY.

It has now been determined by ODOT and CITY that the Agreement referenced above shall be amended to extend the termination date, update language and Exhibit A. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

Exhibit A shall be deleted in its entirety and replaced with the attached Revised Exhibit A. All references to "Exhibit A" shall hereinafter be referred to as "Revised Exhibit A."

TERMS OF AGREEMENT, **Paragraph 1**, **Page 1, which reads:**

1. The City of Tigard Code, Ordinance No. 06-21 attached as Exhibit A, and by this reference made a part hereof, (hereinafter referred to as "Ordinance 06-21"), authorizes the collection and use of a $.03 per gallon motor vehicle fuel license tax (hereinafter referred to as "tax") on motor vehicle fuel dealers that sell, use or distribute fuel in the City. City desires that ODOT act as the tax administrator for the tax, with the exception of declaring the effective date of the tax.

Shall be deleted in its entirety and replaced with the following:

1. The City of Tigard Code, Ordinance No. 09-12 attached as Revised Exhibit A, and by this reference made a part hereof, (hereinafter referred to as "Ordinance 09-12"), authorizes the collection and use of a $.03 per gallon motor vehicle fuel license tax (hereinafter referred to as "tax") on motor vehicle fuel dealers that sell, use or distribute fuel in the City. City desires that ODOT act as the tax administrator for the tax, with the exception of declaring the effective date of the tax.

TERMS OF AGREEMENT, **Paragraph 2**, **Page 1, which reads:**

2. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on December 31, 2011, unless extended by an amendment to this Agreement.

Shall be deleted in its entirety and replaced with the following:

2. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate four (4) years from the date of execution, unless extended by an amendment to this Agreement.

ODOT OBLIGATIONS, Paragraph 1, page 2, which reads:

1. Upon the effective date of Ordinance 06-21, the ongoing fee charged to the City for activities performed by ODOT required or necessary for the implementation of City Ordinance 06-21 shall be at a rate of $55.00 per hour not to exceed 50 hours (hereinafter referred to as "start up costs). The $55.00 per hour, 50 hour cap applies only to start up costs incurred by ODOT staff. Start up costs include but are not limited to programming charges, service and supplies, travel, Attorney General costs, and ODOT staff time and are in addition to the ongoing fee for administering the ordinance. In no event will total start up costs be less than $2,200 nor shall they exceed $7,500.

Shall be deleted in its entirety and replaced with the following:

1. Upon the effective date of Ordinance 09-12, the initial fee charged to the City for activities performed by ODOT required or necessary for the implementation of City Ordinance 09-12 shall be at a rate of $55.00 per hour not to exceed 50 hours. The $55.00 per hour, 50 hour cap applies only to start up costs incurred by ODOT staff, costs which shall not exceed $2,750. Costs incurred by the Attorney General, supplies, and travel are in addition to the ODOT staff costs, and when combined with ODOT staff costs, shall not exceed a total of $7,500 and are in addition to the ongoing costs of administering Ordinance 09-12. Said costs will be deducted from the first months revenue transfer in one lump sum payment.

ODOT OBLIGATIONS, Paragraphs 4 and 5, page 2, which reads:

4. ODOT shall be responsible for all aspects of tax administration as it pertains to Ordinance 06-21 and as further defined in this Agreement. ODOT will not act as tax administrator for purposes of declaring the effective date of the tax, or commencing and prosecuting lawsuits to final determination in any court. ODOT will provide administrative support in the event of a lawsuit.

5. ODOT may, at its sole discretion, determine what action shall be taken to enforce Ordinance 06-21 for purposes of tax administration. In exercising its discretion, ODOT shall provide a level of service comparable to the level of service it provides in the administration of the Oregon motor vehicle fuel tax statutes. Audits will be limited to motor vehicle fuel dealers that are also licensed under ORS Chapter 319.

Shall be deleted in its entirety and replaced with the following:

4. ODOT shall be responsible for all aspects of tax administration as it pertains to Ordinance 09-12 and as further defined in this Agreement. ODOT will not act as tax administrator for purposes of declaring the effective date of the tax, or commencing and prosecuting lawsuits to final determination in any court. ODOT will provide administrative support in the event of a lawsuit.

5. ODOT may, at its sole discretion, determine what action shall be taken to enforce Ordinance 09-12 for purposes of tax administration. In exercising its discretion, ODOT shall provide a level of service comparable to the level of service it provides in the administration of the Oregon motor vehicle fuel tax statutes.

ODOT OBLIGATIONS, Paragraph 10, page , which reads:

10. ODOT will maintain all databases and records created or received by ODOT under this Contract for not less than the period of time which ODOT maintains records for its administration of ORS Chapter 319. ODOT will make all such information available to City in the same format as the format used by ODOT. Such information shall include, but not be limited to, information concerning the identity, business operations and tax payment history of all fuel dealers who are subject to Ordinance 06-21. Upon termination of this Agreement for any reason, ODOT will provide City with copies of all of the data described above, in electronic format, if possible, or in the form otherwise existing within ODOT's databases.

Shall be deleted in its entirety and replaced with the following:

10. ODOT will maintain all databases and records created or received by ODOT under this Contract for not less than the period of time which ODOT maintains records for its administration of ORS Chapter 319. ODOT will make all such information available to Agency in the same format as the format used by ODOT. Such information shall include, but not be limited to, information concerning the identity, business operations and tax payment history of all fuel dealers who are subject to Ordinance 09-12. Upon termination of this Agreement for any reason, ODOT will provide Agency with copies of all of the data described above, in electronic format, if possible, or in the form otherwise existing within ODOT's databases.

Insert new ODOT OBLIGATIONS, **Paragraphs 11 and 12**, **to read as follows:**

11. In the event Ordinance 09-12 is referred to a public vote, by way of referendum or initiative, prior to implementation or collection of the tax, ODOT reserves the right to extend or suspend collection activity until the petition is resolved.

12. ODOT's Project Manager for this Project is David Nemchik, Fuels Tax Operations Manager, ODOT – PUC Building, 550 Capital Street NE, Mailstop 1, Salem, OR 97301; 503-378-3077; David.nemchik@odot.state.or.us, or assigned designee upon individual's absence. ODOT shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS, Paragraph 1, Page 3, which reads:

1. In order to ensure consistency in the administration of the tax, each Party shall notify the other in writing of any change in Ordinance 06-21, and in state or local regulations or rulings related to the tax at least thirty (30) days prior to the effective date of such change.

Shall be deleted in its entirety and replaced with the following:

1. In order to ensure consistency in the administration of the tax, each Party shall notify the other in writing of any change in Ordinance 09-12, and in state or local regulations or rulings related to the tax at least thirty (30) days prior to the effective date of such change.

GENERAL PROVISIONS, Paragraph 7, Page 4, which reads:

7. All employers, including the Parties, 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. The Parties shall ensure that each of its subcontractors complies with these requirements.

Shall be deleted in its entirety and replaced with the following:

7. All employers, including the Parties, 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 $500,000 must be included. The Parties shall ensure that each of its subcontractors complies with these requirements.

GENERAL PROVISIONS, Paragraphs 8 and 9, Page 4, which read:

8. Both parties shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless each other, their officers, employees, and agents from any and all claims, suits, and liabilities which may occur in their respective performance of this Project.

9. Notwithstanding the foregoing defense obligations under the paragraph above, neither party nor any attorney engaged by either party shall defend any claim in the name of the other party or any agency/department/division of such other party, nor purport to act as legal representative of the other party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other party. Each party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other party is

prohibited from defending it, or that other party is not adequately defending it's interests, or that an important governmental principle is at issue or that it is in the best interests of the party to do so.

Shall be deleted in their entirety and replaced with the following:

8. Both Parties shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless each other, their officers, employees, and agents from any and all claims, suits, and liabilities which may occur in their respective performance of this Project. . Agency's total liability shall not exceed the tort claims limits provided in Oregon Tort Claims Act, ORS 30.260 to 30.300, for 'local public bodies'.

9. Notwithstanding the foregoing defense obligations under the paragraph above, neither Party nor any attorney engaged by either Party shall defend any claim in the name of the other Party or any agency/department/division of such other Party, nor purport to act as legal representative of the other Party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other Party. Each Party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other Party is prohibited from defending it, or that other Party is not adequately defending it's interests, or that an important governmental principle is at issue or that it is in the best interests of the Party to do so.

GENERAL PROVISIONS, Paragraph 10, Page 5, which reads:

10. City acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of City which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

Shall be deleted in its entirety and replaced with the following:

10. City 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 City which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

This Amendment 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 Amendment so executed shall constitute an original.

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

City of Tigard, by and through its elected officials

By _____
Council President

Date _____

By _____
City Manager

Date _____

STATE OF OREGON, by and through its Department of Transportation

By _____
Maureen Bock, Fuels Tax Group Manager

Date _____

CITY Contact:
Toby LaFrance, Director of Finance & IS
City of Tigard
13125 SW Hall Boulevard
Tigard, OR 97223
503-718-2406
toby@tigard-or.gov

ODOT Contact:
David Nemchik, Fuels Tax Operations Manager
ODOT – Financial Services
PUC Building
550 Capital Street NE, Mailstop 1
Salem, OR 97301
503-378-3077
David.nemchik@odot.state.or.us

REVISED EXHIBIT A

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
ORDINANCE NO. 09-12

AN ORDINANCE AMENDING THE TIGARD MUNICIPAL CODE SECTION 3.65.040.B, REMOVING A CRITERION WHICH REQUIRES THE CITY TO AMEND THE LOCAL MOTOR VEHICLE FUEL TAX TO OFFSET LEGISLATIVE CHANGES TO THE STATE OR COUNTY MOTOR VEHICLE FUEL TAX, AND AMENDING SECTIONS 3.65.030 AND 3.65.270.2, REMOVING A CRITERION WHICH REQUIRES THE AUTOMATIC SUNSET OF THE LOCAL MOTOR VEHICLE FUEL TAX AND, ADDING SECTION 3.65.270.3, REQUIRING THAT FUTURE ALLOCATION OF CITY MOTOR VEHICLE FUEL TAX REVENUE BE DETERMINED BY THE TRANSPORTATION ADVISORY COMMITTEE, AND DECLARING AN EMERGENCY.

WHEREAS, on July 29, 2009, the Governor signed HB 2001, as adopted during the 2009 Regular Session of the Oregon State Legislature; and

WHEREAS, HB 2001 becomes effective on September 28, 2009; and

WHEREAS, upon its effective date, HB 2001 prohibits, until January 1, 2014, the amendment of any local ordinance which taxes motor vehicle fuel; and

WHEREAS, Section 3.65.040.b of the Tigard Municipal Code requires the City to amend its motor vehicle fuel tax ordinance in response to legislative enactments of the State or County, and is thereby found to be in conflict with HB 2001; and

WHEREAS, Ordinance No. 06-21 and Ordinance No. 08-20, enacting and amending the City of Tigard Motor Vehicle Fuel Tax Ordinance, were passed with the purpose of ensuring that the City be able to raise funds necessary for improvements of the Greenburg Road/ Highway 99/ Main Street intersection and allow the City Council to reinstate the motor vehicle fuel tax to finance critical transportation and intersection improvements in Tigard; and

WHEREAS, HB 2001 jeopardizes that ability and authority of City to readily meet the intended purpose of the Tigard motor vehicle fuel tax; and

WHEREAS, the Tigard City Council, at its public meeting of August 18, 2009, has determined the need to amend the Tigard Municipal Code in order to be consistent with State of Oregon current law and the purpose of the City of Tigard Motor Vehicle Fuel Tax Ordinance.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Section 3.65.040.b of the Tigard Municipal Code is amended to read as follows:

b. Pay a motor vehicle fuel tax computed on the basis of 3 cents per gallon of such motor vehicle fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this ordinance.

SECTION 2: Section 3.65.030 of the Tigard Municipal Code is amended to read as follows:

REVISED EXHIBIT A

A motor vehicle fuel tax is hereby imposed on every dealer. The tax imposed shall be paid to the tax administrator. The tax administrator is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection and administration of the motor vehicle fuel tax, including all powers specified in ORS 319.010 to 319.430.

SECTION 3: Section 3.65.270.2 of the Tigard Municipal Code is amended to read as follows:

2. The net revenue shall be used only for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads and streets within the city. The net revenue shall be used exclusively for improvements to the Greenburg Road/Highway 99/Main Street intersection until such improvements are fully funded.

SECTION 4: Section 3.65.270.3 is added to the Tigard Municipal Code to read as follows:

3. The Tigard Transportation Advisory Committee shall create and maintain a project list, which designates in order of priority, the projects for which net revenue shall be used subsequent to sufficient funds being collected to fully finance and pay for the Greenburg Road/Highway 99/Main Street intersection improvements. If, at anytime, the Transportation Advisory Committee has not designated a project for funding, all funds collected pursuant to this Chapter shall be maintained in the Tigard City Gas Tax Fund until such time as the Transportation Advisory Committee designates a priority project for the use of such funds.

SECTION 5: Because this ordinance amends the current Tigard motor vehicle fuel tax ordinance as is prohibited by HB 2001 after its effective date of September 28, 2009, an emergency is declared to exist and this ordinance shall be in full force and effect immediately upon passage by the Council.

PASSED: By Unanimous vote of all Council Members present after being read by number and title only, this 8th day of September, 2009.

Carol A. Krager
Carol A. Krager, Deputy City Recorder

APPROVED: By Tigard City Council this 8th day of September, 2009.

Craig Dirksen, Mayor

Approved as to form:

City Attorney

September 8, 2009
Date

ORDINANCE No. 09-12
Page 2

INTERGOVERNMENTAL AGREEMENT
Motor Vehicle Fuel Dealer Tax Collection

THIS 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 City of Tigard, hereinafter referred to as "City", collectively referred to as "Parties".

RECITALS

1. By the authority granted in ORS 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies 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. By the authority granted in ORS 802.010, ODOT shall perform all of the duties, functions, and powers with respect to the administration of the laws relating to the motor vehicle fuel license tax, aircraft fuel license tax and use fuel license tax including ORS Chapter 319.

3. By the authority granted in ORS 802.110, the monies received under this Agreement shall be deposited in the Department of Transportation Driver and Motor Vehicle Suspense Account with the State Treasurer.

4. For purposes of this Agreement, duties of the tax administrator shall be defined as administration, including licensing of dealers, collection and enforcement of motor vehicle fuel tax.

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

TERMS OF AGREEMENT

1. The City of Tigard Code, Ordinance No. 06-21 attached as Exhibit A, and by this reference made a part hereof, (hereinafter referred to as "Ordinance 06-21"), authorizes the collection and use of a $.03 per gallon motor vehicle fuel license tax (hereinafter referred to as "tax") on motor vehicle fuel dealers that sell, use or distribute fuel in the City. City desires that ODOT act as the tax administrator for the tax, with the exception of declaring the effective date of the tax.

2. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on December 31, 2011, unless extended by an amendment to this Agreement.

CITY OBLIGATIONS

1. The costs incurred by ODOT as tax administrator, plus any refunds authorized by this Agreement shall be paid from the Department of Transportation Driver and Motor Vehicle Suspense Account with the State Treasurer.

2. City's Project Manager responsible for coordinating the administrative requirements of this Agreement is the City Manager or designee.

ODOT OBLIGATIONS

1. Upon the effective date of Ordinance 06-21, the ongoing fee charged to the City for activities performed by ODOT required or necessary for the implementation of City Ordinance 06-21 shall be at a rate of $55.00 per hour not to exceed 50 hours (hereinafter referred to as "start up costs). The $55.00 per hour, 50 hour cap applies only to start up costs incurred by ODOT staff. Start up costs include but are not limited to programming charges, service and supplies, travel, Attorney General costs, and ODOT staff time and are in addition to the ongoing fee for administering the ordinance. In no event will total start up costs be less than $2,200 nor shall they exceed $7,500.

2. Costs incurred by ODOT for administration of this Agreement shall be paid from the Department of Transportation Driver and Motor Vehicle Suspense Account with the State Treasurer. Administration includes, but is not limited to, processing reports and payments; entering data into system; resolving errors and discrepancies; managing records; responding to licensee inquiries, and auditing.

3. ODOT will deduct refunds, costs of administration and collection for the month, and the balance will be transferred to the City's Local Government Investment Pool Account with the state treasurer no later than the 15th day of the month following the month of collection.

4. ODOT shall be responsible for all aspects of tax administration as it pertains to Ordinance 06-21 and as further defined in this Agreement. ODOT **will not** act as tax administrator for purposes of declaring the effective date of the tax, or commencing and prosecuting lawsuits to final determination in any court. ODOT will provide administrative support in the event of a lawsuit.

5. ODOT may, at its sole discretion, determine what action shall be taken to enforce Ordinance 06-21 for purposes of tax administration. In exercising its discretion, ODOT shall provide a level of service comparable to the level of service it provides in the administration of the Oregon motor vehicle fuel tax statutes. Audits will be limited to motor vehicle fuel dealers that are also licensed under ORS Chapter 319.

6. If the City requests and ODOT agrees, or if ODOT deems it necessary to vary substantially from the standard level of service, a supplemental Agreement shall be entered into between the parties before services are performed.

7. ODOT's Project Manager responsible for this Agreement is ODOT Fuel Tax Audit Manager or designee, PUC Building 550 Capitol St NE, Basement, Salem, OR 97301-2530.

8. Beginning in 2008 and no later than March 15 each year thereafter, ODOT shall provide a written report for the preceding calendar year to City showing the total revenue collected, refunds paid, the expenses incurred for administration and collection of the tax, and any other information ODOT deems pertinent to this Agreement. In the annual report, ODOT may also make recommendations concerning amendments to the code, ordinance, procedures, and policies in administration of the tax, or other related matters.

9. ODOT and the City shall coordinate all necessary announcements to the public so as to facilitate effective administration of the tax and maintain consistency in public announcements and information.

10. ODOT will maintain all databases and records created or received by ODOT under this Contract for not less than the period of time which ODOT maintains records for its administration of ORS Chapter 319. ODOT will make all such information available to City in the same format as the format used by ODOT. Such information shall include, but not be limited to, information concerning the identity, business operations and tax payment history of all fuel dealers who are subject to Ordinance 06-21. Upon termination of this Agreement for any reason, ODOT will provide City with copies of all of the data described above, in electronic format, if possible, or in the form otherwise existing within ODOT's databases.

GENERAL PROVISIONS

1. In order to ensure consistency in the administration of the tax, each Party shall notify the other in writing of any change in Ordinance 06-21, and in state or local regulations or rulings related to the tax at least thirty (30) days prior to the effective date of such change.

2. This Agreement may be terminated by either party upon 90 days' notice, in writing and delivered by certified mail or in person.

3. ODOT may terminate this Agreement on 30 days notice to the extent permitted by law, effective upon delivery of written notice to City or at such later date as may be established by ODOT, under any of the following conditions:

   a. If Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is

prohibited or if ODOT is prohibited from paying for such work from the planned funding source.

b. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

5. The Parties agree to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) 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.

6. The Parties shall perform the service under this Agreement 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.

7. All employers, including the Parties, 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. The Parties shall ensure that each of its subcontractors complies with these requirements.

8. Both parties shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless each other, their officers, employees, and agents from any and all claims, suits, and liabilities which may occur in their respective performance of this Project.

9. Notwithstanding the foregoing defense obligations under the paragraph above, neither party nor any attorney engaged by either party shall defend any claim in the name of the other party or any agency/department/division of such other party, nor purport to act as legal representative of the other party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other party. Each party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other party is prohibited from defending it, or that other party is not adequately defending it's interests, or that an important governmental principle is at issue or that it is in the best interests of the party to do so.

10. City acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of City which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

11. 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.

12. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change 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 State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year hereinafter written.

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Central Services to approve and sign agreements over $75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission such as the Oregon Traffic Safety Performance Plan, or in a line item in the biennial budget approved by the Director.

City of Tigard/ODOT
Agreement No. 23927

On August 2, 2005, the Deputy Director, Central Services approved Subdelegation Order No. 9, in which the Deputy Director, Central Services delegates the authority to the Support Services Branch Manager to approve and execute agreements over $75,000 when the work is related to a project included in the Statewide Transportation Investment Program or in other system plans approved by the Oregon Transportation Commission or in a line item in the legislatively adopted biennial budget.

City of Tigard, by and through its City Manager

By Craig Prosser

Title City Manager

Date 2/27/07

By _____

Title _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By Timothy V Kerr
Counsel

Date 2.27.07

Agency Contact:

STATE OF OREGON, by and through its Department of Transportation

By Kathryn Ryan

Date 3-6-07

APPROVAL RECOMMENDED

By [illegible]

Date 5 March 2007

By _____

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By N/A
Assistant Attorney General

Date: _____

EXHIBIT A

CITY OF TIGARD, OREGON

ORDINANCE NO. 06-21

AN ORDINANCE CREATING AND IMPOSING A TAX ON MOTOR VEHICLE FUEL DEALERS; PROVIDING FOR ENFORCEMENT, ADMINISTRATION AND COLLECTION OF THE TAX; AND AMENDING THE TIGARD MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.65.

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

WHEREAS, said authority and power includes the authority to impose a tax on the sale of motor vehicle fuel sold within the City;

WHEREAS, the City Council wishes to exercise that power and to limit the use of any revenues generated by said tax to purposes associated with the administration, construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads and streets within the city;

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Tigard Municipal Code is amended by adding a new Chapter 3.65 Motor Vehicle Fuel Tax, to read as follows:

Chapter 3.65 MOTOR VEHICLE FUEL TAX

3.65.010 Short Title
3.65.015 Purpose
3.65.020 Definitions
3.65.030 Tax Imposed
3.65.040 Amount and Payment
3.65.050 Permit Requirements
3.65.060 Permit Applications and Issuance
3.65.070 Failure to Secure Permit
3.65.080 Revocation of Permit
3.65.090 Cancellation of Permit
3.65.100 Remedies Cumulative
3.65.110 Payment of tax and Delinquency
3.65.120 Monthly Statement of Dealer

3.65.130 Failure to File Monthly Statements
3.65.140 Billing Purchasers
3.65.150 Failure to Provide Invoice or Delivery Tag
3.65.160 Transporting Motor Vehicle Fuel in Bulk
3.65.170 Exemption of Export Fuel
3.65.190 Fuel in Vehicle Coming into City Not Taxed
3.65.200 Fuel sold or Delivered to Dealers
3.65.210 Refunds
3.65.220 Examination and Investigations
3.65.230 Limitation on Credit for Refund or Overpayment and on Assessment of Additional Tax
3.65.240 Examining Books and accounts of Carrier of Motor Vehicle Fuel
3.65.250 Records to be Kept by Dealers
3.65.260 Records to be Kept Three Years
3.65.270 Use of Tax Revenues

3.65.010 Short Title

The provisions of this Chapter shall be known and may be cited as the "City of Tigard Motor Vehicle Fuel Tax Ordinance".

3.65.015 Purpose

The purpose of the motor vehicle fuel tax is to raise revenues necessary for the construction, reconstruction, improvement, repair, maintenance, operation and use of the public street system in the city.

3.65.020 Definitions.

As used in this ordinance, unless the context requires otherwise:

1. "City" means City of Tigard, a municipal corporation of the State of Oregon.

2. "Dealer" means any person who:

a. Imports or causes to be imported motor vehicle fuel for sale, use or distribution in, and after the same reaches the city, but "Dealer" does not include any person who imports into the city motor vehicle fuel in quantities of 500 gallons or less purchased from a supplier who is licensed as a dealer hereunder and who assumes liability for the payment of the applicable motor vehicle fuel tax to the city; or

b. Produces, refines, manufactures or compounds motor vehicle fuels in the city for use, distribution or sale in the city; or

c. Acquires in the city for sale, use or distribution in the city motor vehicle fuel with respect to which there has been no motor vehicle fuel tax previously incurred.

3. "Distribution" means, in addition to its ordinary meaning, the delivery of motor vehicle fuel by a dealer to any service station or into any tank, storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or for delivery into the fuel tanks of motor vehicles whether or not the service station, tank or storage facility is owned, operated or controlled by the dealer.

4. "Highway" means every way, thoroughfare and place of whatever nature, open for use of the public for the purpose of vehicular travel.

5. "Motor Vehicle" means all vehicles, engines or machines, movable or immovable, operated or propelled by the use of motor vehicle fuel.

6. "Motor Vehicle Fuel" means and includes diesel and gasoline and any other flammable or combustible gas or liquid, by whatever name such as diesel and gasoline, gas or liquid is known or sold, usable as fuel for the operation of motor vehicles, except gas or liquid, the chief use of which, as determined by the tax administrator, is for purposes other than the propulsion of motor vehicles upon the highways.

7. "Person" includes every natural person, association, firm, partnership, corporation, joint venture or other business entity.

8. "Service Station" means and includes any place operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

9. "Tax Administrator" means the city manager, the city manager's designee, or any person or entity with whom the city manager contracts to perform those duties.

3.65.030 Tax Imposed.

A motor vehicle fuel tax is hereby imposed on every dealer. The tax imposed shall be paid monthly to the tax administrator. The tax administrator is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection and administration of the motor vehicle fuel tax, including all powers specified in ORS 319.010 to 319.430. The motor vehicle fuel tax shall remain in effect through December 31, 2011, but shall not remain in effect after that date unless renewed by ordinance of the City Council. Renewal of the tax shall be set for council consideration in the first half of calendar year 2011.

3.65.040 Amount and Payment.

In addition to any fees or taxes otherwise provided for by law, every dealer engaging in his own name, or in the name of others, or in the name of his representatives or agents in the city, in the sale, use or distribution of motor vehicle fuel, shall:

a. Not later than the 25th day of each calendar month, render a statement to the tax administrator or duly authorized agent of all motor vehicle fuel sold, used or distributed by him/her in the city as well as all such fuel sold, used or distributed in the city by a purchaser thereof upon which sale, use or distribution the dealer has assumed liability for the applicable motor vehicle fuel tax during the preceding calendar month.

b. Pay a motor vehicle fuel tax computed on the basis of 3 cents per gallon of such motor vehicle fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this ordinance. In the event that the State of Oregon or Washington County increase their taxes on motor vehicle fuel, the City, which receives a share of those taxes, shall reduce the rate established by this section so that the City's total revenue from fuel taxes remains what it would have been without the State or County increases.

2. In lieu of claiming refund of the tax as provided in Section 3.65.210, or of any prior erroneous payment of motor vehicle fuel tax made to the city by the dealer, the dealer may show such motor vehicle fuel as a credit or deduction on the monthly statement and payment of tax.

3. The motor vehicle fuel tax shall not be imposed wherever it is prohibited by the Constitution of laws of the United States or of the State of Oregon.

3.65.050 Permit Requirements.

No dealer shall sell, use or distribute any motor vehicle fuel until he/she has secured a dealer's permit as required herein.

3.65.060 Permit Applications and Issuance.

1. Every person, before becoming a dealer in motor vehicle fuel in this city, shall make an application to the tax administrator for a permit authorizing such person to engage in business as a dealer.

2. Applications for the permit must be made on forms prescribed, prepared and furnished by the tax administrator.

3. The applications shall be accompanied by a duly acknowledged certificate containing:

a. The business name under which the dealer is transacting business.

b. The address of the applicant's principal place of business and location of distributing stations in the city.

c. The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership and, if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its principal officers and registered agent.

4. If an application for a motor vehicle fuel dealer's permit is complete and has been accepted for filing, the tax administrator shall issue to the dealer a permit in such form as the tax administrator may prescribe to transact business in the city. The permit so issued is not assignable, and is valid only for the dealer in whose name it is issued.

5. The tax administrator shall keep and file all applications with an alphabetical index thereof, together with a record of all permitted dealers.

3.65.070 Failure to Secure Permit.

1. If any dealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 3.65.060, the motor vehicle fuel tax shall immediately be due and payable on account of all motor vehicle fuel so sold, distributed or used.

2. The tax administrator shall proceed forthwith to determine, from as many available sources as the tax administrator determines reasonable, the amount of tax due, and shall assess the tax in the amount found due, together with a penalty of 100% of the tax, and shall make a certificate of such assessment and penalty. In any suit or proceeding to collect such tax or penalty or both, the certificate shall be prima facie evidence that the dealer therein named is indebted to the city in the amount of the tax and penalty stated.

3. Any tax or penalty so assessed may be collected in the manner prescribed in section 3.65.110 with reference to delinquency in payment of the tax or by action at law.

4. In the event any suit or action is instituted to enforce this section, if the city is the prevailing party, the city shall be entitled to recover from the person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to other sums provided by law.

3.65.080 Revocation of Permit.

The tax administrator may revoke the permit of any dealer who fails to comply with any provision of sections 3.65.020 to 3.65.279. The tax administrator shall mail by certified mail addressed to such dealer at his last known address appearing on the files of the tax administrator,

a notice of intention to cancel. The notice shall give the reason for the cancellation. The cancellation shall become effective without further notice if within 10 days from the mailing of the notice the dealer has not made good its default or delinquency.

3.65.090 Cancellation of Permit.

1. The tax administrator may, upon written request of a dealer, cancel a permit issued to the dealer. The tax administrator shall, upon approving the dealer's request for cancellation, set a date not later than 30 days after receipt of the written request, after which the permit shall no longer be effective.

2. The tax administrator may, after 30 days' notice has been mailed to the last known address of the dealer, cancel the permit of the dealer upon finding that the dealer is no longer engaged in the business of a dealer.

3.65.100 Remedies Cumulative.

Except as otherwise provided in Sections 3.65.110 and 3.65.130, the remedies provided in Sections 3.65.070, 3.65.080 and 3.65.090 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this code.

3.65.110 Payment of Tax and Delinquency.

1. The motor vehicle fuel tax imposed by sections 3.65.030 and 3.65.040 shall be paid to the tax administrator on or before the 25th day of each month.

2. Except as provided in subsections (3) and (4) of this section, if payment of the motor vehicle fuel tax is not paid as required by subsection (1) of this section, a penalty of one percent of such motor vehicle fuel tax shall be assessed and be immediately due and payable.

3. Except as provided in subsection (4) of this section, if payment of the tax and penalty, if any, is not made on or before the 1st day of the next month following that month in which payment is due, a further penalty of 10 percent of the tax shall be assessed. Said penalty shall be in addition to the penalty provided for in subsection (2) of this section, and shall be immediately due and payable.

4. Penalties imposed by this section shall not apply if a penalty has been assessed and paid pursuant to section 3.65.070. The tax administrator may for good cause shown waive any penalties assessed under this section.

5. If any person fails to pay the motor vehicle fuel tax or any penalty provided for by this section, the tax and/or penalty shall be collected from that person for the use of the city. The

tax administrator shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

6. In the event any suit or action is instituted to collect the motor vehicle fuel tax or any penalty provided for by this section, if the city is the prevailing party, the city shall be entitled to recover from the person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to other sums provided by law.

7. No dealer who collects from any person the tax provided for herein shall knowingly and willfully fail to report and pay the same to the City as required herein.

3.65.120 Monthly Statement of Dealer.

Every dealer in motor vehicle fuel shall provide to the tax administrator on or before the 25th day of each month, on forms prescribed, prepared and furnished by the tax administrator, a statement of the number of gallons of motor vehicle fuel sold, distributed or used by him during the preceding calendar month. The statement shall be signed by the dealer or the dealer's agent.

All statements filed with the City, as required in this section, are public records.

3.65.130 Failure to File Monthly Statements.

If a dealer fails to file any statement required by Section 3.65.120, the tax administrator shall proceed forthwith to determine from as many available sources as the tax administrator determines to be reasonable the amount of motor vehicle fuel sold, distributed or used by such dealer for the period unreported, and such determination shall in any proceeding be prima facie evidence of the amount of such fuel sold, distributed or used. The tax administrator shall immediately assess the dealer for the motor vehicle fuel tax upon the amount determined, adding thereto a penalty of ten percent of the tax. The penalty shall be cumulative to other penalties provided in this code.

3.65.140 Billing Purchasers.

Dealers in motor vehicle fuels shall render bills to all purchasers of motor vehicle fuel. The bills shall separately state and describe the different products sold or shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the tax administrator are maintained.

3.65.150 Failure to Provide Invoice or Delivery Tag.

No person shall receive and accept motor vehicle fuel from any dealer, or pay for the same, or sell or offer the motor vehicle fuel for sale, unless the motor vehicle fuel is accompanied by an invoice or delivery tag showing the date upon which motor vehicle fuel was delivered, purchased or sold, and the name of the dealer in motor vehicle fuel.

3.65.160 Transporting Motor Vehicle Fuel in Bulk.

Every person operating any conveyance for the purpose of hauling, transporting or delivering motor vehicle fuel in bulk shall, before entering upon the public highways of the city with such conveyance, have and possess during the entire time of the hauling or transporting of such motor vehicle fuel, an invoice, bill of sale or other written statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee, if any, of the same. The person hauling such motor vehicle fuel shall at the request of any officer authorized by law to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

3.65.170 Exemption of Export Fuel.

1. The motor vehicle fuel tax imposed by sections 3.65.030 and 3.65.040 shall not be imposed on motor vehicle fuel:

a. Exported from the city by a dealer; or

b. Sold by a dealer in individual quantities of 500 gallons or less for export by the purchaser to an area or areas outside the city in containers other than the fuel tank of a motor vehicle, but every dealer shall be required to report such exports and sales to the city in such detail as may be required.

2. In support of any exemption from motor vehicle fuel taxes claimed under this section other than in the case of stock transfers or deliveries in his own equipment, every dealer must execute and file with the tax administrator an export certificate in such form as shall be prescribed, prepared and furnished by the tax administrator, containing a statement, made by some person having actual knowledge of the fact of such exportation, that the motor vehicle fuel has been exported from the city, and giving such details with reference to such shipment as the tax administrator may require. The tax administrator may demand of any dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The tax administrator may, in a case where tax administrator believes no useful purpose would be served by filing of an export certificate, waive the filing of the certificate.

3. Any motor vehicle fuel carried from the city in the fuel tank of a motor vehicle shall not be considered as exported from the city.

4. No person shall, through false statement, trick or device, or otherwise, obtain motor vehicle fuel for export as to which the city tax has not been paid and fail to export the same, or any portion thereof, or cause the motor vehicle fuel or any portion thereof not to be exported, or divert or cause to be diverted the motor vehicle fuel or any portion thereof to be used, distributed or sold in the city and fail to notify the tax administrator and the dealer from whom the motor vehicle fuel was originally purchased of his/her act.

5. No dealer or other person shall conspire with any person to withhold from export, or divert from export or to return motor vehicle fuel to the city for sale or use so as to avoid any of the fees imposed herein.

6. In support of any exemption from taxes on account of sales of motor vehicle fuel in individual quantities of 500 gallons or less for export by the purchaser, the dealer shall retain in his/her files for at least three years an export certificate executed by the purchaser in such form and containing such information as is prescribed by the tax administrator. This certificate shall be prima facie evidence of the exportation of the motor vehicle fuel to which it applies only if accepted by the dealer in good faith.

3.65.175 Sales to Armed Forces Exempted.

The license tax imposed by sections 3.65.030 and 3.65.040 shall not be imposed on any motor vehicle fuel sold to the Armed Forces of the United States for use in ships, aircraft or for export from the city; but every dealer shall be required to report such sales to the tax administrator in such detail as may be required. A certificate by an authorized officer of such Armed Forces shall be accepted by the dealer as sufficient proof that the sale is for the purpose specified in the certificate.

3.65.190 Fuel in Vehicle Coming into City Not Taxed.

Any person coming into the city in a motor vehicle may transport in the fuel tank of such vehicle, motor vehicle fuel for his/her own use only and for the purpose of operating such motor vehicle without securing a permit or paying the tax provided in Sections 3.65.030 and 3.65.040, or complying with any of the provisions imposed upon dealers herein, but if the motor vehicle fuel so brought into the city is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing fuel into the city shall be subject to all the provisions herein applying to dealers.

3.65.200 Fuel Sold or Delivered to Dealers.

1. A dealer selling or delivering motor vehicle fuel to dealers is not required to pay a motor vehicle fuel tax thereon.

2. The dealer in rendering monthly statements to the city as required by Sections 3.65.040 and 3.65.120 shall show separately the number of gallons of motor vehicle fuel sold or delivered to dealers.

3.65.210 Refunds.

Refunds will be made pursuant to ORS 319.280 to 319.320. Claim forms for refunds may be obtained from the tax administrator's office.

3.65.220 Examination and Investigations.

The tax administrator, or duly authorized agents, may make any examination of accounts, records, stocks, facilities and equipment of dealers, service stations and other persons engaged in storing, selling or distributing motor vehicle fuel or other petroleum product or products within this city, and such other investigations as it considers necessary in carrying out the provisions of sections 3.65.020 through 3.65.279. If the examinations or investigations disclose that any reports of dealers or other persons theretofore filed with the tax administrator pursuant to the requirements herein, have shown incorrectly the amount of gallonage or motor vehicle fuel distributed or the tax accruing thereon, the tax administrator may make such changes in subsequent reports and payments of such dealers or other persons, or may make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations. The dealer shall reimburse the city for reasonable costs of the examination or investigation if the action disclosed that the dealer paid 95 percent 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 shall be subject to interest at the rate of 18 percent per year from the date the original tax payment was due.

3.65.230 Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax.

1. Except as otherwise provided in this ordinance, any credit for erroneous overpayment of tax made by a dealer taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer must be so taken or filed within three years after the date on which the overpayment was made to the city.

2. Except in the case of a fraudulent report or neglect to make a report, every notice of additional tax proposed to be assessed under this code shall be served on dealers within three years from the date upon which such additional taxes become due, and shall be subject to penalty as provided in section 3.65.110.

3.65.240 Examining Books and Accounts of Carrier of Motor Vehicle Fuel.

The tax administrator or duly authorized agents may at any time during normal business hours examine the books and accounts of any carrier of motor vehicle fuel operating within the City for the purpose of enforcing the provisions of this ordinance.

3.65.250 Records to be Kept by Dealers.

Every dealer in motor vehicle fuel shall keep a record in such form as may be prescribed by the tax administrator of all purchases, receipts, sales and distribution of motor vehicle fuel. The records shall include copies of all invoices or bills of all such sales and shall at all times during the business hours of the day be subject to inspection by the tax administrator or authorized officers or agents of the tax administrator.

3.65.260 Records to be Kept Three Years.

Every dealer shall maintain and keep, for a period of three years, all records of motor vehicle fuel used, sold and distributed within the city by such dealer, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the tax administrator. In the event such records are not kept within the state of Oregon, the dealer shall reimburse the tax administrator for all travel, lodging, and related expenses incurred by the tax administrator in examining such records. The amount of such expenses shall be an additional tax imposed by section 3.65.030.

3.65.270 Use of Tax Revenues.

1. For the purposes of this section, net revenue shall mean the revenue from the tax imposed by sections 3.65.020 through 3.65.279 remaining after providing for the cost of administration and any refunds and credits authorized herein.

2. The net revenue shall be used only for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads and streets within the city. The net revenue shall be used exclusively for improvements to the Greenburg Road/Highway 99 intersection. The City shall cease collecting the tax once the improvements are fully funded.

SECTION 2: The tax imposed pursuant to section 3.65.030 shall take effect only after the tax administrator has developed the necessary forms and documents to administer the tax. The tax administrator shall declare when the tax shall take effect, and give not less than 15 days notice of the date before the tax may take effect. The tax administrator's decision as to the effective date of the tax and the type of notice to provided shall be final and not subject to review.

EXHIBIT A

SECTION 3: If any portion of this Chapter is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 3: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By Unanimous vote of all Council members present after being read by number and title only, this 19th day of December, 2006.

Catherine Wheatley

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this 19th day of December, 2006.

Craig E. Dirksen, Mayor

Approved as to form:

City Attorney

12-19-06

Date

Ordinance No. 06-21
Page 12

Oregon
Theodore R. Kulongoski, Governor

Oregon Department of Transportation
Support Services
Procurement Office
455 Airport Rd. SE, Bldg. K
Salem, OR 97301-5348

March 13, 2007

Augustin Duenas, P.E.
City of Tigard
13125 SW Hall Boulevard
Tigard, OR 97223

Dear Mr. Duenas,

We have enclosed one original for your files of the fully executed Agreement #23927 for our upcoming project which covers Motor Vehicle Fuel Dealer Tax Collection. This Agreement has been signed by all parties.

We have retained one signed original of the fully executed Agreement #23927 on file at the Oregon Department of Transportation.

If you have any questions regarding this Agreement, please contact me at my e-mail address susan.c.herring@odot.state.or.us or at (503) 986-2731.

Sincerely,

Susan Herring

Susan Herring, Technical/Administrative Assistant
ODOT Procurement Office

Enclosure

CITY OF TIGARD

ImageFlow Lite Report - Legislative History (Detailed)

Doc. Ref. Code	Doc. Date	Item Ref.	Action Code	Brief Description	Ret.Code
Cont. Date	Exp. Date	Name Referred to		File Reference #	Security Class
Abstract				Keywords	
AG	03/15/2007	INTER	A	GAS TAX COLLECTION	166-200-013
	12/31/2011	DIANE JELDERKS			

OREGON
DEPARTMENT OF TRANSPORTATION
ODOT
STATE OF OREGON
CITY OF TIGARD
INTERGOVERNMENTAL AGREEMENT
MOTOR VEHICLE FUEL DEALER TAX COLLECTION
GAS TAX
AGREEMENT NO. 23927
ORD 06-21
ORDINANCE NO 06-21

Total Items Printed: 1

AIS-686 **Item #: 3. I. 1.**

Business Meeting

Date: 12/20/2011

Length (in minutes): Consent Item

Agenda Title: Banking Services Contract

Submitted By: Debbie Smith-Wagar
Financial and Information Services

Item Type: Motion Requested **Meeting Type:** Consent Agenda - LCRB

ISSUE

Shall the Local Contract Review Board award a contract for banking services?

STAFF RECOMMENDATION / ACTION REQUEST

Staff recommends the Local Contract Review Board award the contract for banking services to US Bank. and direct the City Manager to carry the contract through execution.

KEY FACTS AND INFORMATION SUMMARY

The City of Tigard currently has its primary banking services contract with US Bank. This contract provides a variety of services:

• General checking
• Merchant services (credit card processing)
• Lock box (automatic processing of check payments, primarily for utility billing)

Every five years the city is required to reevaluate the contract. Our five years are up, and the city needs to sign a new contract.

The city has been pleased with the service from US Bank. The bank's staff responds quickly to questions from city staff. US Bank consistently receives high ratings from web services that rate banks for safety, such as Bankrate.com. In addition, US Bank is the only bank with a lock box in Oregon. This is important as it allows our customers to mail payments to an Oregon address. We would like to continue with US Bank.

Staff is asking the LCRB to allow us to use the results of Lane County's formal Request for Proposal (RFP) and approve new banking services agreement with US Bank. Staff is also recommending the use of a permissive cooperative procurement, as authorized under ORS 279A.215 through the use of an existing Lane County contract and solicitation. The permissive cooperative procurement method allows the city to save on both staff time and materials when compared to a traditional RFP. This method is most fitting in this case as US Bank is the only potential proposer which has the local lockbox service in Oregon and conducting an RFP would most assuredly end with US Bank as the most responsible proposer.

OTHER ALTERNATIVES

Staff could issue a request for proposals.

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

The requirement for banking services is a state requirement placed on the city. The request to use a permissive cooperative procurement process supports council goal 6a, "Hold the line on the General Fund Budget".

DATES OF PREVIOUS COUNCIL CONSIDERATION

This item was discussed at a council study session on November 22, 2011.

Fiscal Impact

Cost:	450000
Budgeted (yes or no):	yes
Where Budgeted (department/program):	various

Additional Fiscal Notes:

Staff estimates banking services will cost approximately $450,000 over the next five year. Banking services are charged to the departments that use them.

AIS-717 **Item #: 3. I. 2.**

Business Meeting

Date: 12/20/2011

Length (in minutes): Consent Item

Agenda Title: Award a Computerized Maintenance Management System (CMMS) Contract to MaintStar

Prepared For: Brian Rager **Submitted By:** Twila Willson Public Works

Item Type: Motion Requested **Meeting Type:** Consent Agenda - LCRB

ISSUE

Shall the Local Contract Review Board award a contract for the replacement of the Computerized Maintenance Management System (CMMS) software in the Public Works Department to MaintStar, Inc.?

STAFF RECOMMENDATION / ACTION REQUEST

Staff recommends the Local Contract Review Board awards the contract for replacement of the Public Works Department's CMMS software to MaintStar, Inc. and directs the city manager to execute the contract.

KEY FACTS AND INFORMATION SUMMARY

The council will be briefed on this contract in study session.

Background

The city manages over 249 miles of water lines, 164 miles of sewer lines, 125 miles of storm drainage lines, over 200 acres of developed parks and over 20 city-owned buildings. The rough replacement value of these assets is $1.5 billion. In order to systematically and effectively manage these assets, the Public Works Department utilizes a CMMS. A CMMS allows an organization to track the inventory of its assets, plan for routine maintenance work, record important inspection findings, track repair histories, and plan for rehabilitation or replacement.

The Public Works Department has used the Hansen CMMS since the early 1990s. This software is due for replacement; it is outdated and the vendor will eventually discontinue support.

CMMS Selection

The department conducted a competitive selection process which included a Request for Proposal (RFP) issued in January 2011 and visits to other cities and agencies to see various CMMS software programs in action. The team ranked vendors responding to the RFP based on firm qualifications, project understanding and approach, overall schedule and cost. The MaintStar CMMS software received the team's highest ranking; MaintStar has been a CMMS vendor for over 20 years and is used extensively by multiple organizations in California and also by Clark County Public Works in Washington.

Update

Since staff last briefed the council on CMMS software replacement in July 2011, the city has been working with MaintStar to determine data conversion costs. MaintStar has concluded the city's existing CMMS data is in very good condition and now has an accurate picture of what the data conversion will entail.

The next step is to enter into a formal contract with MaintStar; this is the contract now before the LCRB. The MaintStar CMMS replacement will cost is $409,450. Implementation will take approximately 18 months, so the replacement will span two fiscal years.

OTHER ALTERNATIVES

The council could direct staff to follow some other course of action regarding the replacement of the existing CMMS software. However, a CMMS is a necessity for the city. Current regulations mandate the use of a CMMS to effectively track maintenance and repair history on assets. Sanitary sewer asset management, in particular, is subject to federal regulations that require reporting from a CMMS to verify compliance.

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

2011 Tigard City Council Five-Year Council Goal - "Develop Sustainability Plan."

2011 Tigard City Council Long Range Objective - "External and internal city assets are well managed and utilized."

Asset management, accomplished through effective and modern CMMS software, is a critical part of the city's sustainability effort.

DATES OF PREVIOUS COUNCIL CONSIDERATION

The council was briefed on the CMMS replacement software earlier in this meeting and on July 12, 2011.

Fiscal Impact

Cost:	$409,450
Budgeted (yes or no):	Partial
Where Budgeted (department/program):	Multiple Funds

Additional Fiscal Notes:

Implementation will take approximately 18 months, so this project will span two fiscal years. The total project cost is $409,450, with $260,000 budgeted across five funds in fiscal year 2011-2012. The remaining project costs will be included in the fiscal year 2012-2013 proposed budget. Annual software maintenance costs will be $31,000.

AIS-661 **Item #: 4.**

Business Meeting

Date: 12/20/2011

Length (in minutes): 40 Minutes

Agenda Title: Joint Meeting of the City Council and the Tree Board

Submitted By: Cheryl Caines
Community Development

Item Type: Update, Discussion, Direct Staff Joint Meeting-Board or Other Juris.

Meeting Type: Council Business Meeting - Main

ISSUE

This is a joint meeting with the Tree Board. The Tree Board will update City Council on the progress of accomplishing their goals for 2011 and look at setting goals for 2012. The meeting will also allow both bodies to ask questions of and provide information to one another.

STAFF RECOMMENDATION / ACTION REQUEST

Receive information about progress on 2011 Tree Board goals, provide direction on the Urban Forestry funding discussion to be completed in January 2012 and give feedback on proposed 2012 goals.

KEY FACTS AND INFORMATION SUMMARY

The Tree Board would like to review progress on their 2011 goals and propose 2012 goals for Council's consideration during their joint meeting on December 20, 2011. The Tree Board's two main purposes are to develop and administer a comprehensive tree management program for trees on public property (Resolution 01-02); and, in the interim, to develop a comprehensive citywide tree stewardship and urban forest enhancement program (Resolution 07-30).

2011 Tree Board Goals Update

1. Update Council on the Implementation of the Urban Forestry Master Plan;
As in previous years, implementations of the Urban Forestry Master Plan goals are specific to the Urban Forestry Code Revision project. Staff has given the Tree Board project updates and discussed the Urban Forestry Code Revisions at their regular meetings. In addition, the Tree Board continued to provide members as representatives for the Urban Forestry Code Revisions Citizen Advisory Committee to advise staff. Progress on the Urban Forestry Master Plan goals appears to be on track.

2. Develop a Funding Proposal for a Sustainable Tree and Urban Forest Enhancement Program;
The Tree Board has had several discussions on funding a sustainable Urban Forestry Program and will present findings and recommendations at the March 20, 2012 City Council workshop meeting. Funding of Urban Forestry activities is a complicated issue because activities involve staff from different city departments and are funded by several sources. To ensure the recommendations presented to City Council in March will be helpful in upcoming funding discussions, the Board would like to know what sort of information City Council is seeking. For example, is City Council asking the Tree Board for general information that includes activities lacking funding, priorities for funding and suggestions on funding sources or a more formal plan that outlines how to fund Urban Forestry activities in the short and long term?

3. Develop a New Tree Board Charge Statement for Council Adoption following Adoption of the Urban Forestry Code Revisions. The Recommended Charge Shall Retain the Tree Board's Primary Function of Advising Council on Urban Forestry Issues, While Possibly Expanding Their Advisory Role to Other Natural Resource Issues; and
The Tree Board has begun discussions on a new Charge Statement. The Board understands that after adoption of a new Urban Forestry Code in 2012 the number of issues needing advisement will likely decrease. There has been some discussion on expanding the Board’s role to also include other natural resource issues; however, the members

are concerned that tree specific issues will get lost in the process. Discussions will continue into 2012.

4. Develop an Education and Outreach Function.
The Tree Board was granted a budget of $750 and would like to utilize this for education and outreach. The city's Community Development Department will be implementing Urban Forestry Master Plan outreach goals in 2012 to coincide with the adoption of the revised code. Coordination of efforts may be possible. The Tree Board has not developed an education and outreach plan at this time, but will focus more on the topic after the Urban Forestry funding discussions are complete.

2012 Tree Board Goals
The Tree Board is proposing to maintain the same goals for 2012 for several reasons. Due to the board member and staff involvement in the Urban Forestry Code Revision project, the Board currently only meets every other month. The 2011 goals were not adopted until March 23rd, so the Board has not had a full year to complete the work program. Many of the goals from 2011 were long term goals that would not be complete until 2012; therefore no new goals have been proposed at this time. The table below shows estimated completion dates for major Tree Board tasks.

Task	Estimated Completion
Urban Forestry Funding Discussion	1st Quarter 2012
Adoption of Urban Forestry Code	2nd Quarter 2012
Finalize New Tree Board Charge Statement	3rd Quarter 2012
Update Council on the Urban Forestry Master Plan	On-going
Education and Outreach	On-going

OTHER ALTERNATIVES
N/A

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS
Council Goal 1b is to update the Tree Code and this is scheduled for completion in the 2nd quarter of 2012.

DATES OF PREVIOUS COUNCIL CONSIDERATION
The last joint meeting with the Tree Board was December 21, 2010 where the Board updated City Council on the progress of 2010 goals and requested feedback on goalsf for 2011.

AIS-710			**Item #: 5.**
Business Meeting			
Date:	12/20/2011		
Length (in minutes):	20 Minutes		
Agenda Title:	Hold a Public Hearing to Consider a Resolution of Necessity to Acquire Property for the Lake Oswego-Tigard Water Partnership		
Prepared For:	Rob Murchison	**Submitted By:**	Greer Gaston Public Works
Item Type:	Resolution Public Hearing - Informational	**Meeting Type:**	Council Business Meeting - Main

ISSUE

Shall the council hold a public hearing to consider a resolution of necessity to acquire property for the Lake Oswego-Tigard Water Partnership?

STAFF RECOMMENDATION / ACTION REQUEST

Staff recommends the council holds the public hearing and adopts the resolution.

KEY FACTS AND INFORMATION SUMMARY

The City of Tigard provides water to 58,000 customers who reside in the Tigard Water Service Area.

Since 2008 the cities of Tigard and Lake Oswego have been working together to develop a new water system that will meet both communities' future water needs. The new water system necessitates the construction of several capital improvement projects, including a pump station. The pump station will move water, via Tigard's distribution system, to customers and to several storage facilities.

City staff and consultants for the partnership evaluated several locations for the new pump station. Ultimately, a vacant, 1.8-acre parcel located on Milton Court was determined to be the best site. A map of the property is attached. This property was selected because it:

- Is located in close proximity to emergency interties and existing water transmission pipelines within Bonita Road.
- Enables the city to distribute water to customers in the 410- and 470-foot zones and transmit water directly to several reservoirs.
- Allows the city to maintain water quality standards throughout the system and when transitioning from Portland to Lake Oswego water.
- Involves the least private injury. The lot is vacant; there are no improvements that would need to be removed or that present an obstacle to construction.

This resolution of necessity declares the need to acquire property for the purpose of constructing the pump station and authorizes condemnation should negotiations to purchase the property fail.

Assuming the council adopts the resolution of necessity, the city will enter into negotiations with the property owner to buy the property at the appraised value. (An appraisal is currently underway.)

Depending upon these negotiations, staff will return to the council to obtain approval to either purchase the property at the appraised value or to proceed with the condemnation suit.

OTHER ALTERNATIVES

The council could choose not to adopt the resolution and could give staff direction on how to proceed with the location of the new pump station. However, such a decision may impact the pump station design and the water partnership project schedule. Alternative sites are likely to cost more and involve greater private injury.

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

Council Goal No. 5 – "Continue Coordination with Lake Oswego on Water Partnership."

DATES OF PREVIOUS COUNCIL CONSIDERATION

The council was briefed on this topic in an executive session on real property transactions on October 25, 2011.

Fiscal Impact

Cost:	Unknown *
Budgeted (yes or no):	Yes
Where Budgeted (department/program):	Water Fund in the Capital Improvement Plan

Additional Fiscal Notes:

The Capital Improvement Plan includes $8,238,000 in fiscal year 2011-2012 for the Lake Oswego-Tigard Water Partnership. This dollar amount will be sufficient to purchase the property and fund Tigard's share of other water partnership projects in fiscal year 2011-2012.

* An appraisal of the property is underway.

Attachments

Resolution

Aerial Site Selection Vicinity Map

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 11-

A RESOLUTION DECLARING THE NEED TO ACQUIRE PROPERTY FOR THE PURPOSE OF CONSTRUCTING, OPERATING AND MAINTAINING A POTABLE WATER PUMP STATION AS PART OF THE LAKE OSWEGO-TIGARD WATER PARTNERSHIP AND AUTHORIZING IMMEDIATE POSSESSION OF THE PROPERTY

WHEREAS, the City Charter grants the City of Tigard ("City") the authority to acquire land for public purposes; and

WHEREAS, the City is authorized by ORS 223.005 ct seq. and ORS 35.015 et seq. to purchase, acquire, take, use, enter upon and appropriate land and property within or without its corporate limits for the purpose provided in those statutes; and

WHEREAS, the cities of Tigard and Lake Oswego are working together to develop a new water system that will meet both communities' future water needs; and

WHEREAS, the new water system necessitates the construction of several capital improvement projects, including the potable water pump station; and

WHEREAS, the potable water pump station will move water, via Tigard's distribution system, to customers and to several storage facilities; and

WHEREAS, the City needs to acquire real property on which it can construct, operate and maintain the potable water pump station; and

WHEREAS, the best location for the potable water pump station is a vacant, 1.8-acre parcel located on Milton Court ("Property") because it:

- Is located in close proximity to emergency interties and existing water transmission pipelines within Bonita Road.
- Enables the city to distribute water to customers in the 410- and 470-foot zones and transmit water directly to several reservoirs.
- Allows the city to maintain water quality standards throughout the system and when transitioning from Portland to Lake Oswego water.
- Involves the least private injury; and

WHEREAS, immediate possession of the Property is necessary due to the time and resource constraints of getting the new water system online by 2016; and

WHEREAS, the acquisition of this Property is necessary is for the health, safety, benefit, and general welfare of the public and to operate the water system that serves 58,000 customers who reside in the Tigard Water Service Area.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The City does hereby find and declare that Property located in the City of Tigard, Washington County, Oregon is immediately needed and required for the construction, operation, and maintenance of a potable water pump station to provide water to the 58,000 customers within the Tigard Water Service Area. This Property is described and depicted in Exhibit A; this exhibit is incorporated herein by this reference.

SECTION 2: The City does hereby find the acquisition of the Property is necessary and is in the public interest, and the improvements to the Property will be planned, designed, located and constructed in a manner that will be most compatible with the greatest public benefit and the least private injury or damage.

SECTION 3: The city manager, city's agent, and the city's real estate attorney are authorized to negotiate with the owners and other persons who have an interest in the compensation for the Property.

SECTION 4: In the event that no satisfactory agreement can be reached on the Property purchase, the city's real estate attorney is directed and authorized to commence and prosecute to final determination such proceedings as may be necessary to acquire the Property, including exercise of eminent domain, and upon the filing of such proceedings, possession of the Property therein may be taken immediately to the extent provided by law.

SECTION 5: This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2011.

_____

Mayor - City of Tigard

ATTEST:

_____

City Recorder - City of Tigard

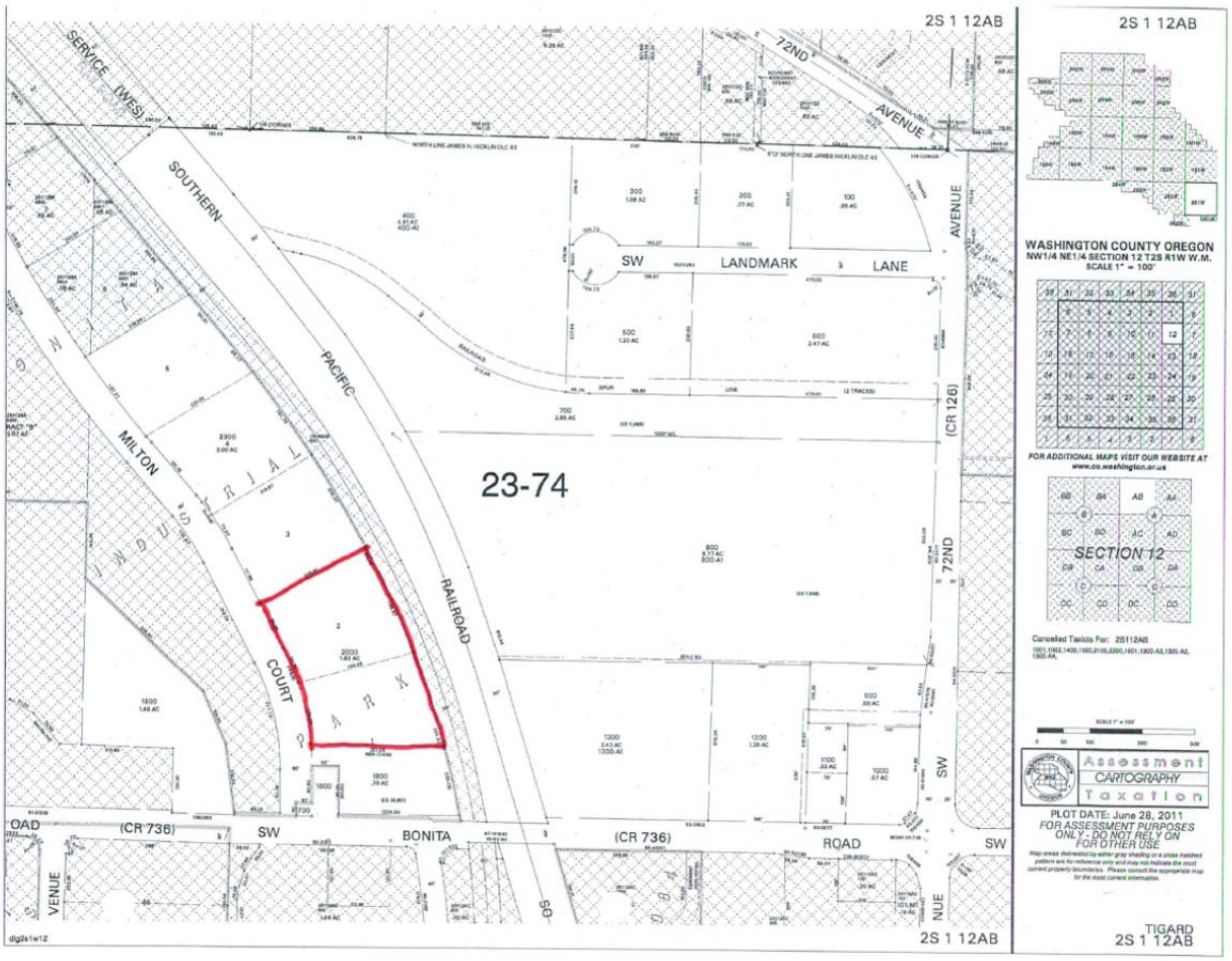
EXHIBIT "A"

ALL OF LOT 2 AND A PORTION OF LOT 1, "BONITA INDUSTRIAL PARK" A PLAT OF RECORD IN THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CITY OF TIGARD, WASHINGTON COUNTY, OREGON SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE MOST WESTERLY LINE OF SAID LOT 1, WHICH POINT BEARS NORTH 04°20'02" WEST 41.46 FEET FROM THE MOST WESTERLY SOUTHWEST CORNER OF LOT 1 SAID POINT OF BEGINNING ALSO BEING ON THE EAST RIGHT OF WAY LINE OF SW MILTON DRIVE, AND RUNNING THENCE NORTH 89°17'03" EAST 251.59 FEET TO A POINT ON THE EAST LINE OF SAID LOT 1; THENCE ALONG THE BOUNDARY OF SAID LOT 188.30 FEET ALONG THE ARC OF A 1736.73 FOOT RADIUS NON TANGENT CURVE TO THE LEFT (THE LONG CHORD OF WHICH BEARS NORTH 19°19'09" WEST 188.21 FEET) TO THE SOUTHEAST CORNER OF SAID LOT 2; THENCE SOUTH 73°02'59" WEST, ALONG THE SOUTH LINE THEREOF, 226.46 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE 118.20 FEET ALONG THE ARC OF A 505.00 FOOT RADIUS NON TANGENT CURVE TO THE RIGHT (THE LONG CHORD OF WHICH BEARS SOUTH 13°23'34" EAST 117.94 FEET) TO THE POINT OF BEGINNING.

CONTAINING 79361 SQUARE FEET TOTALLY, MORE OR LESS.

THE PURPOSE OF THIS DESCRIPTION IS TO ACCOMPLISH A LOT LINE ADJUSTMENT.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SERVICE (WES)
72ND
AVENUE
SOUTHERN
PACIFIC
RAILROAD
SW
LANDMARK
LANE
AVENUE
(CR 126)
72ND
23-74
MILTON
COURT
SW
BONITA
(CR 736)
ROAD
SW
(CR 736)
VENUE
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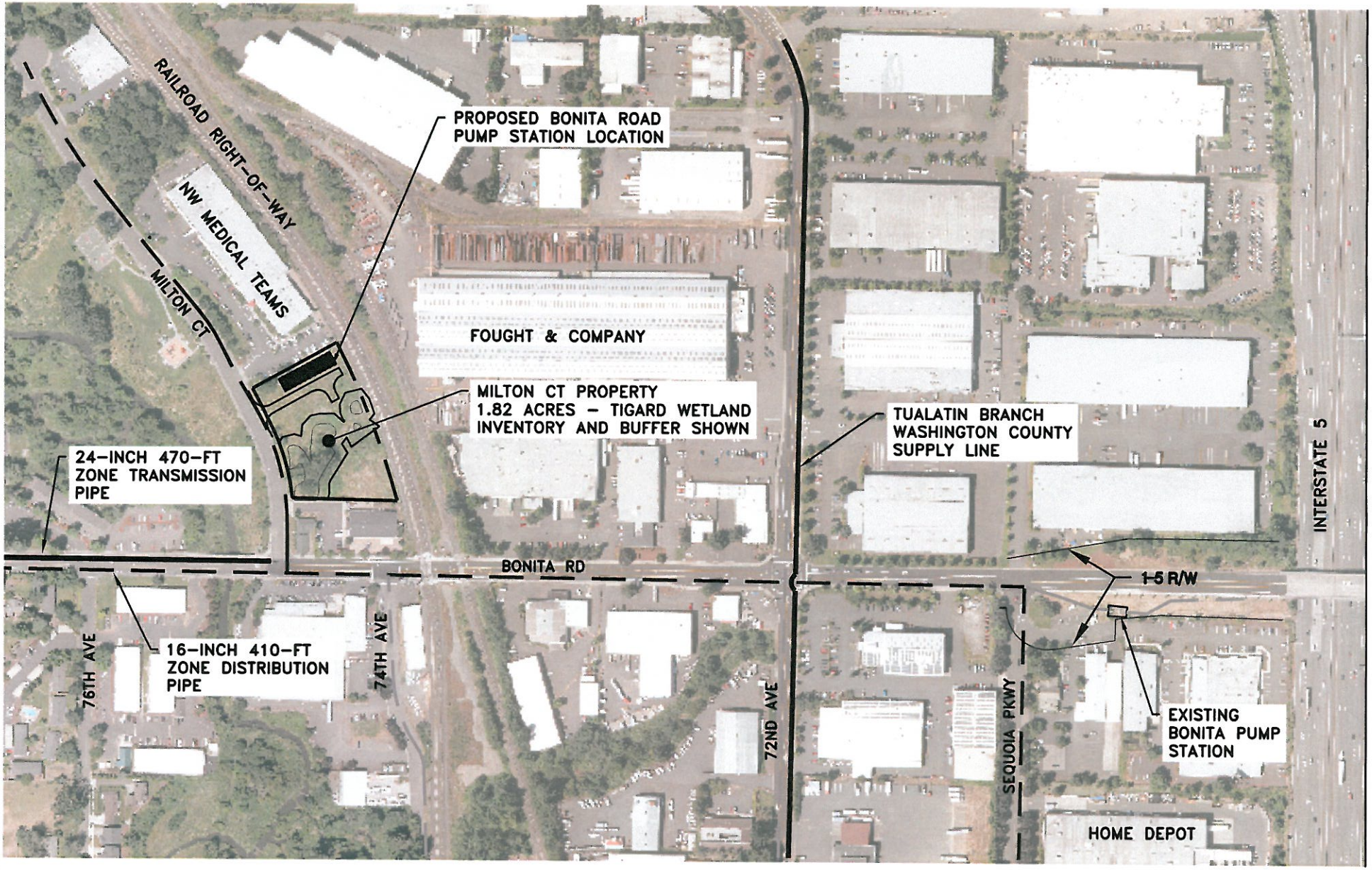
2S 1 12AB
WASHINGTON COUNTY OREGON
NW1/4 NE1/4 SECTION 12 T2S R1W W.M.
SCALE 1" = 100'
FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
www.co.washington.or.us
SECTION 12
Assessment
CARTOGRAPHY
Taxation
PLOT DATE: June 28, 2011
FOR ASSESSMENT PURPOSES
ONLY - DO NOT RELY ON
FOR OTHER USE
TIGARD
2S 1 12AB



Plotted by:RAY WOOLF on Friday, October 21, 2011 at 9:35:23 AM from the 8.5X11 FIGURE BORDER layout tab
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Lake Oswego · Tigard Water Partnership

TIGARD

ENGINEERING DIVISION
PUBLIC WORKS DEPARTMENT
13125 S.W. HALL BLVD.
TIGARD, OREGON 97223
VOICE: 503-639-4171
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BONITA PUMP STATION SITE SELECTION

FIGURE 1

FILE NO