

Hearing Date: January 22, 2013 Time: 7:30 PM

**STAFF REPORT TO THE
CITY COUNCIL
FOR THE CITY OF TIGARD, OREGON**



120 DAYS = N/A

SECTION I. APPLICATION SUMMARY

FILE NAME: RIVER TERRACE – PHASE II ANNEXATION
CASE NO: Zone Change Annexation (ZCA) ZCA2012-00003

APPLICANT: Multiple applicants
Attachment 1 lists applicants
OWNER: Multiple property owners
Attachment 2 lists owners

PROPOSAL: A request to annex to the City of Tigard approximately 268 acres of property (Metro Urban Growth Boundary expansion areas 63 and Roy Rogers West (including adjacent rights-of-way)).

LOCATION: Multiple parcels generally located east of SW Roy Rogers Road, west of SW 150th Avenue and north of SW Beef Bend Road and portions of SW Roy Rogers and SW 150th Avenue rights-of-way. Washington County Tax Assessors Map (WCTM) 2S10700, Tax Lots 1200 and 1400. WCTM 2S10800, Tax Lots 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1500, 1501, 1503, 1504, 1505, 1506, 1507, 2900, 2901, 3000, 3100, and 3200. WCTM 2S108CA, Tax Lots 100, 200, 300, and 400. WCTM 2S108CD, Tax Lots 100, 200, 300, and 400.

COUNTY ZONE: FD20 Future Development, 20-acre minimum lot size. The FD20 District applies to the unincorporated urban lands added to the urban growth boundary by Metro through a Major or Legislative Amendment process after 1998. The FD20 District recognizes the desirability of encouraging and retaining limited interim uses until the urban comprehensive planning for future urban development of these areas is complete. The provisions of this district are also intended to implement the requirements of Metro's Urban Growth Management Functional Plan.

EFU Exclusive Farm Use. The intent of the Exclusive Farm Use District is to preserve and maintain commercial agricultural land within the County. The purpose of the Exclusive Farm Use District is to preserve and maintain agricultural lands for farm use consistent with existing and future needs for agricultural products, forests and open spaces; to conserve and protect scenic resources; to maintain and improve the quality of the air, water and land resources of the County and to establish criteria and standards for farm use and related supportive uses which are deemed appropriate. This EFU District is provided to meet the Oregon statutory and administrative rule requirements.

**EQUIVALENT
CITY ZONE:**

Annexation areas will retain current Washington County zoning until Tigard zoning is applied with the future adoption of a community plan for the area.

**APPLICABLE
REVIEW
CRITERIA:**

The approval standards for annexations are described in Community Development Code Chapters 18.320 and 18.390, Comprehensive Plan Goal 1, Goal 11, Goal 12, and Goal 14; ORS Chapter 222; Metro Code Chapter 3.09.

SECTION II. STAFF RECOMMENDATION

Staff recommends that City Council find that the proposed annexation (ZCA2012-00003) meets all the approval criteria as identified in ORS Chapter 222, Metro Code Chapter 3.09, Community Development Code Chapters 18.320 and 18.390, and the following Comprehensive Plan Goals and Policies: Goal 1.1; Goals 11.1, 11.2 and 11.3; Goal 12.1, and Goals 14.1 and 14.2. Therefore, staff recommends APPROVAL of ZCA2012-00003 by adoption of the attached ordinance.

SECTION III. BACKGROUND INFORMATION

History

Urban Growth Boundary (UGB) Expansion Areas 63/64 and Roy Rogers West were brought into the UGB by Metro in 2002 and 2012 respectively. Area 64 was annexed into the City of Tigard in 2011 (ZCA2011-00001). These three expansion areas are now known as River Terrace.

In November 2010, the Washington County Board of Commissioners unanimously approved Resolution & Order 10-105, approving a concept plan (West Bull Mountain Concept Plan) as the basis to develop a more detailed community plan for areas west of Bull Mountain. Tigard is currently developing a community plan for River Terrace that will provide land use designations, development code regulations, and public facility plans. All of these elements are necessary for River Terrace to be urbanized.

Tigard City Council passed an ordinance in December 2012 (ORD 12-38) to amend the Tigard Comprehensive Plan map to include land use designations for the River Terrace Community Plan area that are based on recommended land uses found in Washington County's West Bull Mountain Concept Plan. The ordinance also amended Tigard Comprehensive Plan Goal 14: Urbanization Policies. These new policies guide the development of the River Terrace Community Plan.

Proposal Information

The proposed annexation area is made up of 29 parcels totaling approximately 268 acres. The area is adjacent to Area 64 annexed in 2011 and located generally west of Roy Rogers Road, east of 150th Avenue and north of Beef Bend Road. A majority of the property owners (60%) in the area, which represent 73% of the land area and 64% of the total assessed value, have submitted petitions to annex into the City of Tigard. These percentages meet what is known as the "triple majority" method of annexation, which does not require a public election. However, a public hearing before the Tigard City Council is required. The purpose of the request is to obtain services from the City needed to urbanize the area and provide housing and employment opportunities as envisioned by Metro when the subject areas were added to the UGB in 2002 and 2012.

SECTION IV. APPLICABLE REVIEW CRITERIA, FINDINGS AND CONCLUSIONS

City: Community Development Code Chapter 18.320 and Chapter 18.390
Comprehensive Plan Goal 1; Goal 11, Goal 12 and Goal 14.
State: ORS Chapter 222
Regional: Metro Code Chapter 3.09

A. CITY OF TIGARD COMMUNITY DEVELOPMENT CODE (TITLE 18)

Staff has determined that the proposal is consistent with the relevant portions of the Community Development Code based on the following findings:

“Chapter 18.320.020.B: Approval Process and Standards.

Approval Criteria. The decision to approve, approve with modification, or deny an application to annex property to the City shall be based on the following criteria:

1. All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area;”

FINDINGS: The City of Tigard Comprehensive Plan’s Public Facilities and Services Chapter states that for the purposes of the Comprehensive Plan, public facilities and services refer to storm water management, water supply and distribution, wastewater management, community facilities, and private utilities. In addition the comprehensive Plan Glossary includes public safety, parks, and transportation.

A conceptual plan was prepared for each service as part of the West Bull Mountain Concept Plan (WBMCP). Background documentation including technical memorandums regarding alternative water supplies, transportation, stormwater, and sewer infrastructure needs, was adopted as part of the Concept Plan findings and illustrate that these services can be provided to River Terrace.

The city is currently developing the River Terrace Community Plan which involves the planning for specific land uses and provision of services within the annexation territory. Urban development of the annexation territory will occur pursuant to the community plan. Services are available to the annexation territory and will be extended pursuant to the community plan as development occurs, with the exception of police and fire, which will be provided immediately upon annexation.

The proposed annexation area is currently designated by Washington County as rural with FD20 or EFU zoning and urban services are not currently available. The annexation in conjunction with the adoption of the community plan will result in the availability of urban services and provide urban land to meet the Portland Metropolitan Region’s employment and housing needs.

Water – City of Tigard. In September 2010 the city adopted the Tigard Water System Master Plan, which looks at current and projected supply and demands for areas currently served and to be served by the City of Tigard, including River Terrace. This plan included the proposed annexation area. Recommended upgrades to ensure future capacity requirements are being or have been completed by the city. Tigard water is available by extending existing mainlines from the north and east.

The West Bull Mountain Concept Plan reviewed potential suppliers of water for the River Terrace vicinity and acknowledged that “water provision is most efficient from the east,” and that the City of Tigard and the Tigard Water District are potential providers.

Sewer – City of Tigard/Clean Water Services. The city through agreements with Clean Water Services (CWS) is and will be the service provider of sewer to the proposed annexation area. The majority of the proposed annexation area is not currently served, but can be as shown in a 2009 CWS Sanitary Sewer Service Master Plan, which included the annexation area within study areas of anticipated growth. The plan calls out pump stations and trunk lines necessary to reach the Durham treatment plant, which has the capacity to serve the future growth in River Terrace and surrounding areas. Sewer services can be readily extended into the annexation territory, as development occurs.

Drainage – Clean Water Services. Clean Water Services will be the ultimate provider of stormwater services in River Terrace. CWS has storm lines within the unincorporated urban areas to the north. The city will work with CWS to develop a comprehensive stormwater plan to ensure water quality within the Tualatin River Basin, protect Goal 5 resources within the area, and guarantee sufficient capacity as part of the River Terrace Community Plan.

Streets – City of Tigard Engineering Division. The proposed annexation area is accessed primarily by SW Roy Rogers Road and SW 150th Avenue, with secondary access from substandard roads (161st Avenue, Finis Lane, and April Lane). Existing access will not be affected by the proposed annexation. Rights of way adjacent to parcels within the area are proposed for annexation to the city. Maintenance of these roads will be provided by a combination of the City of Tigard and Washington County through

intergovernmental agreements. Necessary improvements to the transportation system within River Terrace and surrounding area will be identified as part of the community plan.

Police – City of Tigard Police Department. The City of Tigard Police Department was notified of the proposed annexation and has no objections to the proposal. Tigard Police have capacity to provide adequate services to the most intense allowed use and providing services will not significantly reduce the level of services available to other land within the City of Tigard. The area is currently served by the Washington County Sheriff. Upon annexation, the area will be served by City of Tigard Police.

Fire – Tualatin Valley Fire and Rescue (TVF&R). The subject property is in Tualatin Valley Fire and Rescue’s (TVF&R’s) service area. The TVF&R District currently provides services to the entire area, both inside and outside of the City of Tigard. TVF&R has personnel and equipment in the area that can respond to an emergency incident and implement such actions as may be necessary for fire and/or rescue operations to developed and undeveloped land within the City of Tigard.

Parks–City of Tigard. The West Bull Mountain Concept Plan notes that the River Terrace vicinity is not located within the boundaries of a parks and recreation provider; therefore the subsequent community plan will need to identify a provider and adopt standards for development and maintenance of a parks system. The City of Tigard, named as one of the possible providers within the concept plan, will utilize its adopted standards to provide parks in conjunction with development following annexation of River Terrace.

CONCLUSION: Based upon the findings above it is concluded that all public services and facilities (as defined by the Comprehensive Plan) are available to the proposed annexation territory and will have sufficient capacity to serve annexation territory if developed generally to the most intense uses allowed as proposed by the concept plan. The comprehensive community plan and its associated implementation methods will ensure that annexation and development of the area will not significantly reduce the level of services available to developed and undeveloped land in the City of Tigard. Therefore the annexation meets this standard.

“2. The applicable Comprehensive Plan policies and implementing ordinance provisions have been satisfied.”

FINDINGS: The following Comprehensive Plan goals and policies apply to the proposed annexation: Goal 1, Goal 11, Goal 12, and Goal 14. Staff has determined that the proposal has satisfied the applicable Comprehensive Plan policies based on the following findings:

“GOAL 1 – CITIZEN INVOLVEMENT

Goal 1.1: The City shall provide citizens, affected agencies and other jurisdictions the opportunity to participate in all phases of the planning process.”

The City maintains an ongoing citizen involvement program. To assure citizens will be provided an opportunity to be involved in all phases of the planning process, the City provides notice for Type IV land-use applications. The City posted, mailed, and published notice of the public hearing as follows:

- The City posted the hearing notice at two public places on December 20, 2012 (Tigard City Hall and Tigard Permit Center) and two additional locations within the right-of-way along SW 150th Avenue and SW Roy Rogers Road on December 26, 2012.
- The City published notice of the hearing in *The Tigard Times* for two successive weeks (January 10, 2013 & January 17, 2013) prior to the January 22, 2013, public hearing.
- In addition, the City maintains a list of interested parties organized by geography. Notice was mailed to interested parties on December 27, 2012.

The city also provided notice and sought comment regarding the proposed annexation from the following affected units of government: Washington County, CWS, City of Beaverton, Metro, Tualatin Valley Fire & Rescue, City of King City, Portland General Electric, Tigard - Tualatin School District, Northwest Natural Gas, Metro Area Communications, Comcast Cable Corporation, Verizon, Centurylink, and Washington County CPO 4B. None of these agencies have expressed objections to the proposed annexation, and all have had the opportunity to participate in the process.

“GOAL 11 – PUBLIC FACILITIES AND SERVICES

Goal 11.1: Develop and maintain a stormwater system that protects development, water resources, and wildlife habitat.

Policy 2. The City shall continue to collaborate with Clean Water Services in the planning, operation, and maintenance of a comprehensive stormwater management system.

Policy 3. The City shall require the stormwater management system to comply with all applicable federal, state, and regional regulations and programs.

Policy 4. The City shall require the property to be located within the city limits prior to receiving City stormwater services.”

Clean Water Services in partnership with the City of Tigard will be the ultimate provider of stormwater management within the River Terrace area and will be closely involved in the development of the community plan to ensure stormwater needs and applicable regulations will be met with future development. CWS has budgeted to complete a basin-wide stormwater study that will include the River Terrace vicinity and has begun modeling that will determine the pipe sizing for the area.

Clean Water Services is a member of the community plan Technical Advisory Committee, therefore, the city is aware of CWS concerns and regulatory needs pertaining to stormwater within the River Terrace vicinity. If the proposed annexation is approved, the city will request the area be included in the CWS service boundary as part of the River Terrace Community Plan. The City will require all future development within the area to comply with CWS standards pertaining to stormwater management. No services will be provided prior to properties being located within the Tigard City limits.

“11.2 Secure a reliable, high quality, water supply to meet the existing and future needs of the community.

Policy 1. The City shall prioritize securing an interest in a high quality, long-term water supply, which is financially feasible and reliable, to serve the Tigard Water Service Area.

Policy 2. The City shall develop and maintain a water system master plan to coordinate the improvement and expansion of Tigard Water Service Area infrastructure to serve current and projected demand.”

The Tigard Water System Master Plan was approved in September 2010, which included the River Terrace vicinity. This plan studied current and future supply and demand considering population growth within areas currently served and those to be served, analyzed the existing system, and recommended capital improvements. The city is completing these improvements and upgrades.

“Goal 11.3: Develop and maintain a wastewater collection system that meets the existing and future needs of the community.

Policy 2. The City shall continue to collaborate with Clean Water Services in the planning, operation, and maintenance of a comprehensive wastewater management system for current and projected Tigard residents.

Policy 6. The City shall require the property to be located within the city limits prior to receiving City wastewater services.”

None of the parcels within the annexation area currently receive city wastewater services. The city in agreement with CWS will be the ultimate provider of this service. The CWS Sanitary Sewer Master Plan was updated in 2009. The plan included options for serving the River Terrace vicinity and included necessary improvements to ensure adequate capacity for development of the proposed annexation areas. These included upgrades to the Durham Treatment Facility, new pump stations, and replacement of pipes throughout the system.

“GOAL 12 - TRANSPORTATION

Goal 12.1 Develop mutually supportive land use and transportation plans to enhance the livability of the community.

Policy 1. The City shall plan for a transportation system that meets current community needs and anticipated growth and development.”

An updated Transportation System Plan (TSP) for the City of Tigard was adopted in 2010 as part of the city’s periodic review. The plan considered both problem and growth areas within the city and the urban services area, and was consistent with state and regional rules and policies. A multi-modal and balanced approach was a key in the plan’s development.

As part of the West Bull Mountain Concept Plan, the area was extensively modeled by Washington County. The focus was on impacts to the transportation system surrounding the area upon full urban build out. The area is currently accessible by SW 150th Avenue, SW Roy Rogers Road, and SW Beef Bend Road. Through the community planning process the city will address impacts to these major streets and ensure adequate and safe access to these streets from future local streets. The city will coordinate planning efforts with other affected agencies and jurisdictions. Any necessary traffic improvements and related findings will be adopted into the Tigard TSP.

“GOAL 14 - URBANIZATION

14.1. Provide and/or coordinate the full range of urban level services to lands and citizens within the Tigard City limits.

1. The City shall only approve the extension of City services:

A. where applications for annexation for those properties have been approved; or

B. in circumstances where applicable state and county health agencies have declared a potential or imminent health hazard pursuant to ORS 431.705 to 431.760 (Health Hazard Annexation or Service District Formation); or

C. as outlined in the intergovernmental agreement regarding water provision within the Tigard Water Service Area.”

The city will not approve extension of services prior to the proposed annexation of the area. Upon annexation, only police and long range planning services will be provided by the city prior to adoption of the River Terrace Community Plan. Extension of utilities and other services will not occur until after the adoption of the River Terrace Community Plan and the associated updates of the applicable utility/infrastructure and financing plans.

“2. The City shall maintain, and amend when necessary, agreements with Washington County that recognizes the City as the ultimate provider of governance and identified services to the Tigard Urban Services Area.”

The proposed annexation area is not currently within the Tigard Urban Service Area (TUSA). However, the city will be the ultimate provider of urban services and governance to the entirety of River Terrace. This fact is recognized and reflected in an Intergovernmental Agreement (IGA) with Washington County signed in April 2012. This agreement (Attachment 3) includes a provision for Washington County to temporarily provide planning services to the annexation area until the community plan is completed and adopted.

“3. The City shall, as needed, coordinate and/or participate in planning activities or development decisions within the Tigard Urban Services Area.”

While this is not a policy directly related to annexation, the city is a participant in planning activities and development decisions within the Tigard Urban Services Area. The city has coordinated with all jurisdictions and agencies within the annexation territory, including Washington County. The signed IGA with Washington County requests that the County convene government representatives to amend the TUSA to include the entire River Terrace planning area.

“4. The City shall protect the existing and future delivery of City services and only support the formation of a new service district, or expansion of existing districts, that will not create a conflict within the Tigard Urban Services Area.”

This is not an applicable policy to the proposed annexation. No new district or expansion of an existing district is proposed with this application.

“5. The City shall enter into and maintain intergovernmental agreement with service districts operating within the Tigard Urban Service Area to:

A. define short and long term service provision roles;

B. specify the terms and conditions of withdrawal of territory from service districts and the transition of capital facility ownership and administration to the City;

C. provide for the coordination of plans and programs to eliminate duplicity and minimize conflict; and

D. ensure that services are provided consistent with the City’s adopted Public Facility Plan.”

The proposed annexation area is not within the TUSA boundaries; however the city has coordinated with all jurisdictions and agencies within/near the annexation territory, and extension of services to the proposed annexation area will be accomplished pursuant to the community plan being prepared by the city. This plan will be consistent with the city’s Public Facility Plan and the Regional Transportation Plan (RTP).

“Goal: 14.2. Implement the Tigard Urban Services Agreement through all reasonable and necessary steps, including the appropriate annexation of unincorporated properties.

Policy 1. The City shall assign a Tigard zoning district designation to annexed property that most closely conforms to the existing Washington County zoning designation for that property.”

The current Washington County zoning designations will be retained for the entire annexation area until adoption of the community plan. Appropriate Tigard zoning district designations are addressed below in the findings for Section 18.320.020.C.

“Policy 2. The City shall ensure that capacity exists, or can be developed, to provide needed urban level services to an area when approving annexation.”

Capacity has been addressed above, consistent with this policy. The city is preparing a community plan for River Terrace and vicinity in accordance with statewide goals and Metro policies. All systems and capacity issues will be fully addressed prior to urban level development within the area. Technical memoranda associated with the West Bull Mountain Concept Plan and current facility plans show that the area can be provided the appropriate level of services.

“Policy 3. The City shall approve proposed annexations based on findings that the request:

A. can be accommodated by the City’s public facilities and services; and”

The future availability of public facilities and services has been addressed above, consistent with this policy.

“B. is consistent with applicable state statute.”

As reviewed in later sections of this report, staff finds that the provisions of ORS 222 have been met, consistent with this policy.

“Policy 4. The City shall evaluate and may require that parcels adjacent to proposed annexations be included to: A) avoid creating unincorporated islands within the City; B) enable public services to be efficiently and effectively extended to the entire area; or C) implement a concept plan or sub-area master plan that has been approved by the Planning Commission or City Council.”

No unincorporated islands will be created by the proposed annexation. A majority of the property owners within the proposed annexation area have submitted annexation petitions. In order to avoid creating islands within the area, the application proposal is to annex all parcels within UGB Area 63 and Roy

Rogers West. To annex the entire area allows greater efficiency in planning and provision of future public services. Inviting additional parcels outside the area to join the proposal was determined to be unnecessary at this time.

“Policy 6. The City shall periodically update and/or amend its Public Facility Plan to ensure the predictable and logical provision of urban services for areas anticipated to be within the Tigard city limits.”

While this is not a policy directly related to annexation, it is noted that the city is currently updating its Public Facility Plan as part of periodic review. These updates are considering future growth of the city and all will, like the Tigard Waster System Master Plan, include River Terrace within the study areas.

CONCLUSION: There have been invitations for public participation in the application review process. The city has coordinated with all jurisdictions and agencies within/near the annexation territory. The City of Tigard has the capacity and is the most efficient provider of urban services for the annexation area. Conceptual plans adopted as part of the county’s West Bull Mountain Concept Plan will be refined through the city’s community planning process for this area. These plans include utilities and infrastructure, parks, and transportation. Based upon the above findings, the proposed annexation is consistent with the city’s applicable Comprehensive Plan goals and policies.

“Chapter 18.320.020.C

Assignment of comprehensive plan and zoning designations.

The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.”

FINDINGS: Parcels within the proposed annexation area currently have one of two Washington County zoning designations. The parcels with Area 63 are zoned FD20 (Future Development 20 units per acre), and those within Roy Rogers West are zoned EFU (Exclusive Farm Use). The county’s FD20 zoning is applied to areas that are currently rural but are designated for future urban development. The EFU zoning is intended to preserve and maintain commercial agricultural land in the county. However, during the 2011 Urban Growth Boundary expansion process, Metro determined that the 49 acres in Roy Rogers West were very important to the efficient and cost-effective provision of public facilities and services to adjacent areas and included the area in the expansion.

In December the City passed an ordinance adopting Tigard Comprehensive Plan designations in River Terrace that conform to the West Bull Mountain Concept Plan designations. However, consistent with state law, the appropriate urban level zoning will not be applied in the area until the adoption of the community plan. Prior to adoption of the Community Plan the County will continue to administer the existing County zoning designations.

CONCLUSION: Consistent with state law, the appropriate urban level zoning will not be applied in the area until the adoption of the Community Plan. Prior to adoption of the Community Plan the County will continue to administer the existing County zoning designations. Urban level zoning designations will be applied to the area at the adoption of the River Terrace Community Plan. The code allows zone changes after the annexation has been approved. Maintaining Washington County zoning designations until after annexation is consistent with this code regulation.

“Chapter 18.390.060: Type IV Procedure”

Annexations are processed by means of a Type IV procedure, as governed by Chapter 18.390 of the Community Development Code (Title 18) using standards of approval contained in 18.390.020.B, which were addressed in the previous section. Chapter 18.390 requires City Council to hold a hearing on an annexation. It also requires the city to provide notice at least 10 days prior to the hearing by mail and to

publish notice at least 10 business days prior to the hearing; the city mailed notice on December 27, 2012, and published public notice in *The Tigard Times* for two successive weeks (January 10, 2013 & January 17, 2013) prior to the January 22, 2013 public hearing.

“Chapter 18.390.060 sets forth five decision-making considerations for a Type IV decision:

1. The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197;”

FINDINGS: The city’s Comprehensive Plan has been acknowledged by the Land Conservation and Development Commission to be in compliance with state planning goals and as reviewed above, the annexation proposal is consistent with Tigard Comprehensive Plan goals and policies.

CONCLUSION: The proposal is consistent with the city’s acknowledged Comprehensive Plan. Therefore, the proposal complies with statewide planning goals, including citizen involvement, public facilities, transportation, and urbanization.

“2. Any federal or state statutes or regulations found applicable;”

Oregon Revised Statutes Chapter 222 – City Boundary Changes; Consolidations; Withdrawals is applicable to annexations. The applicable subsections are addressed below:

FINDINGS:

“ORS 222.111. *Authority and procedure for annexation.* (1) When a proposal containing the terms of annexation is approved in the manner provided by the charter of the annexing city or by ORS 222.111 to 222.180 or 222.840 to 222.915, the boundaries of any city may be extended by the annexation of territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water. Such territory may lie either wholly or partially within or without the same county in which the city lies.”

The proposed annexation area is contiguous to the city. The proposal satisfies this procedural requirement.

“(2) A proposal for annexation of territory to a city may be initiated by the legislative body of the city, on its own motion, or by a petition to the legislative body of the city by owners of real property in the territory to be annexed.”

This annexation is being initiated by property owners in the annexation area. Signed petitions are found within the application materials. The legislative body of the city has initiated annexation of some lots in the annexation territory in order to create a reasonably shaped annexation territory that is conducive to the orderly and efficient provision of urban services and does not create unincorporated islands. The proposal satisfies this procedural requirement.

“(3) The proposal for annexation may provide that, during each of not more than 10 full fiscal years beginning with the first fiscal year after the annexation takes effect, the rate of taxation for city purposes on property in the annexed territory shall be at a specified ratio of the highest rate of taxation applicable that year for city purposes to other property in the city. The proposal may provide for the ratio to increase from fiscal year to fiscal year according to a schedule of increase specified in the proposal; but in no case shall the proposal provide for a rate of taxation for city purposes in the annexed territory which will exceed the highest rate of taxation applicable that year for city purposes to other property in the city. If the annexation takes place on the basis of a proposal providing for taxation at a ratio, the city may not tax property in the annexed territory at a rate other than the ratio which the proposal authorizes for that fiscal year.”

This section does not include any applicable substantive approval criteria. The application does not include a proposal regarding the rate of taxation for the annexation area. The applicant recognizes that the city cannot assess taxes in an amount that exceeds the highest city tax rate for the year. The proposal is consistent with this section.

“(4) When the territory to be annexed includes a part less than the entire area of a district named in ORS 222.510, the proposal for annexation may provide that if annexation of the territory occurs the part of the district annexed into the city is withdrawn from the district as of the effective date of the annexation. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.”

The proposed annexation area is rural and not within any special districts named in ORS 222.465 or 222.510. This section is not applicable to the application.

“(5) The legislative body of the city shall submit, except when not required under ORS 222.120, 222.170 and 222.840 to 222.915 to do so, the proposal for annexation to the electors of the territory proposed for annexation and, except when permitted under ORS 222.120 or 222.840 to 222.915 to dispense with submitting the proposal for annexation to the electors of the city, the legislative body of the city shall submit such proposal to the electors of the city. The proposal for annexation may be voted upon at a general election or at a special election to be held for that purpose.”

This section is not applicable because the application satisfies the requirements of ORS 222.170, as described below.

“(6) The proposal for annexation may be voted upon by the electors of the city and of the territory simultaneously or at different times not more than 12 months apart.”

Because the annexation will not be submitted to a vote of the electors, this section is not applicable to the application.

“(7) Two or more proposals for annexation of territory may be voted upon simultaneously; however, in the city each proposal shall be stated separately on the ballot and voted on separately, and in the territory proposed for annexation no proposal for annexing other territory shall appear on the ballot.”

Because the annexation will not be submitted to a vote of the electors, this section is not applicable to the Application.

“222.120 Procedure without election by city electors; hearing; ordinance subject to referendum. (1) Except when expressly required to do so by the city charter, the legislative body of a city is not required to submit a proposal for annexation of territory to the electors of the city for their approval or rejection.

The city charter does not require that the city submit the question of the proposed annexation to the electors of the city for their approval or rejection.

(2) When the legislative body of the city elects to dispense with submitting the question of the proposed annexation to the electors of the city, the legislative body of the city shall fix a day for a public hearing before the legislative body at which time the electors of the city may appear and be heard on the question of annexation.

(3) The city legislative body shall cause notice of the hearing to be published once each week for two successive weeks prior to the day of hearing, in a newspaper of general circulation in the

city, and shall cause notices of the hearing to be posted in four public places in the city for a like period.

A public hearing in accordance with this section is being held on January 22, 2013 to hear an owner initiated request to annex UGB Expansion Areas 63 and Roy Rogers West. Notice was published in the *Tigard Times* for two consecutive weeks prior to the hearing and notices were posted in four public places (Tigard City Hall, Tigard Permit Center, on SW Roy Rogers Road and SW 150th Avenue) on December 20, 2012 and December 26, 2012.

(4) After the hearing, the city legislative body may, by an ordinance containing a legal description of the territory in question:

(a) Declare that the territory is annexed to the city upon the condition that the majority of the votes cast in the territory is in favor of annexation;

(b) Declare that the territory is annexed to the city where electors or landowners in the contiguous territory consented in writing to such annexation, as provided in ORS 222.125 or 222.170, prior to the public hearing held under subsection (2) of this section; or

(c) Declare that the territory is annexed to the city where the Oregon Health Authority, prior to the public hearing held under subsection (1) of this section, has issued a finding that a danger to public health exists because of conditions within the territory as provided by ORS 222.840 to 222.915.

(5) If the territory described in the ordinance issued under subsection (4) of this section is a part less than the entire area of a district named in ORS 222.510, the ordinance may also declare that the territory is withdrawn from the district on the effective date of the annexation or on any subsequent date specified in the ordinance. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

(6) The ordinance referred to in subsection (4) of this section is subject to referendum.

(7) For the purpose of this section, ORS 222.125 and 222.170, “owner” or “landowner” means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If there is a multiple ownership in a parcel of land each consenting owner shall be counted as a fraction to the same extent as the interest of the owner in the land bears in relation to the interest of the other owners and the same fraction shall be applied to the parcel’s land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.”

Tigard City Council will declare by ordinance that the territory is annexed where landowners consented in writing as provided in ORS222.170 prior to the public hearing. The area is not within any special districts so no withdrawals are proposed within the ordinance. This application is being processed in accordance with applicable law.

“222.170 Effect of consent to annexation by territory; proclamation with and without city election. (1) The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if more than half of the owners of land in the territory, who also own more than half of the land in the contiguous territory and of real property therein representing more than half of the assessed value of all real property in the contiguous territory consent in writing to the annexation of their land in the territory and file a statement of their consent with the legislative body on or before the day:

(a) The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or

(b) The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city.

The proposed annexation includes twenty nine (29) parcels. More than half (60%) of the property owners, who also own more than half the land (73%) therein representing more than half of the assessed

value of all real property (63%) have filed petitions to annex into the City of Tigard. These petitions represent a percentage of owners that exceeds the applicable thresholds for annexation without public election. The annexation request is being processed in accordance ORS 222.170(1) without an election.

“222.173 *Time limit for filing statements of consent; public records.* (1) For the purpose of authorizing an annexation under ORS 222.170 or under a proceeding initiated as provided by ORS 199.490 (2), only statements of consent to annexation which are filed within any one-year period shall be effective, unless a separate written agreement waiving the one-year period or prescribing some other period of time has been entered into between an owner of land or an elector and the city.

(2) Statements of consent to annexation filed with the legislative body of the city by electors and owners of land under ORS 222.170 are public records under ORS 192.410 to 192.505.”

The application includes 15 petitions, all of which were filed within a year of each other. These petitions meet the thresholds required by ORS 222.170(1). These petitions are found within the land use file (ZCA2012-00003), which is public record. Therefore, the application satisfies this criterion.

“222.175 *City to provide information when soliciting statements of consent.* If a city solicits statements of consent under ORS 222.170 from electors and owners of land in order to facilitate annexation of unincorporated territory to the city, the city shall, upon request, provide to those electors and owners information on that city’s ad valorem tax levied for its current fiscal year expressed as the rate per thousand dollars of assessed valuation, a description of services the city generally provides its residents and owners of property within the city and such other information as the city considers relevant to the impact of annexation on land within the unincorporated territory within which statements of consent are being solicited.”

The statements of consent are being offered voluntarily and at the initiation of the owners of the annexation area. Therefore, this section is not applicable.

“222.177 *Filing of annexation records with Secretary of State.* When a city legislative body proclaims an annexation under ORS 222.125, 222.150, 222.160 or 222.170, the recorder of the city or any other city officer or agency designated by the city legislative body to perform the duties of the recorder under this section shall transmit to the Secretary of State:

- (1) A copy of the resolution or ordinance proclaiming the annexation.**
- (2) An abstract of the vote within the city, if votes were cast in the city, and an abstract of the vote within the annexed territory, if votes were cast in the territory. The abstract of the vote for each election shall show the whole number of electors voting on the annexation, the number of votes cast for annexation and the number of votes cast against annexation.**
- (3) If electors or landowners in the territory annexed consented to the annexation under ORS 222.125 or 222.170, a copy of the statement of consent.**
- (4) A copy of the ordinance issued under ORS 222.120 (4).**
- (5) An abstract of the vote upon the referendum if a referendum petition was filed with respect to the ordinance adopted under ORS 222.120 (4).”**

This section does not include any applicable substantive approval criteria, but it does include procedural provisions that govern the city's actions. If the annexation is approved, the city will send necessary information to Metro for final action. Metro will map the annexation and make the appropriate notifications to the Secretary of State's Archives Division, the county elections supervisor, and the county assessor.

“222.180 *Effective date of annexation.* (1) The annexation shall be complete from the date of filing with the Secretary of State of the annexation records as provided in ORS 222.177 and 222.900. Thereafter the annexed territory shall be and remain a part of the city to which it is annexed. The date of such filing shall be the effective date of annexation.

(2) For annexation proceedings initiated by a city, the city may specify an effective date that is later than the date specified in subsection (1) of this section. If a later date is specified under this subsection, that effective date shall not be later than 10 years after the date of a proclamation of annexation described in ORS 222.177.”

If approved by Tigard City Council, the annexation will be effective on the date of filing with the Secretary of State. The city is not proposing a later effective date.

OAR 660 - 014 - 0060 Annexations of Lands Subject to an Acknowledged Comprehensive Plan. A city annexation made in compliance with a comprehensive plan acknowledged pursuant to ORS 1197.251(1) or 19 76. 25 shall be considered by the commission to have been made in accordance with the goals unless the acknowledged comprehensive plan and implementing ordinances do not control the annexation.

OAR 660 - 014 - 0060 provides that a city is not required to directly apply the Goals to an annexation decision unless the city's acknowledged comprehensive plan and implementing ordinances do not "control the annexation." Whether the plan and ordinances control the annexation depends upon whether the plan and ordinances include substantive standards guiding the city's determination of whether or not to annex land. Such standards need not be mandatory approval criteria, provided that they provide relevant guidance to the annexation decision. When the plan and ordinances "control the annexation," the city is required to apply such provisions to the decision.

The City's Comprehensive Plan is acknowledged and includes relevant standards providing guidance for annexation decisions. The city has also adopted substantive approval criteria relating to annexations in Tigard Community Development Code (TDC) 18.320.020. Together, these provisions include substantive standards guiding the City's determination of whether to annex the property. The standards are addressed previously in this document, and the findings conclude the annexation complies with the applicable city standards.

CONCLUSION: The proposed annexation has been requested by a sufficient number of property owners within River Terrace to comply with ORS 222.170, and a public election is not required. The annexation area is contiguous to the city. The city plan and development code contain substantive criteria that control the annexation, and the city is not required to directly apply the Statewide Planning Goals to the annexation request. Per the above findings, the proposed annexation is consistent with all state law, including ORS 222 and all applicable provisions of the Oregon Administrative Rules.

“3. Any applicable METRO regulations;”

Chapter 3.09 of the Metro Code (Local Government Boundary Changes) includes standards to be addressed in annexation decisions, in addition to local and state review standards. Staff has reviewed the Metro regulations for Local Government Boundary Changes and addressed the applicable regulations (Metro Code 3.09.045(d) &(e) and 3.09.050) below:

FINDINGS:

“Metro 3.09.045 (d) and (e)”

The proposed annexation is not being reviewed through an expedited process, but subsections (d) of Metro Code 3.09.050 requires that the standards of 3.09.045 (d) & (e) be addressed.

“(d) To approve a boundary change through an expedited process, the city shall:

(1) Find that the change is consistent with expressly applicable provisions in:

(A) Any applicable urban service agreement adopted pursuant to ORS 195.065;”

The proposed annexation area is not part of any urban service agreements. However, as part of the River Terrace Community Plan, both the Urban Planning Area Agreement (UPAA – 2006) and the Tigard Urban Service Agreement (TUSA) will be updated to include the entire River Terrace area.

“(B) Any applicable annexation plan adopted pursuant to ORS 195.205;”

These statutes outline the process for annexations initiated by a city or district, including public hearings and voting procedures. This statute is not applicable since this annexation was initiated by the property owners. The applicants have submitted petitions to annex, signed by the property owners.

“(C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020(2) between the affected entity and a necessary party;”

ORS195.020(2) speaks to cooperative agreements between counties or Metro with each special district that provides an urban service within the boundaries of the county or the metropolitan district. Special districts would include fire, water, school, and sewer districts. Many of these districts will be the same following annexation, including fire and school districts. The area is not currently served with water or sewer, which will be provided by the city and CWS. If annexation is approved, the city will work to annex the area into CWS service boundaries to include it in service agreements already set up with the city. Properties within Roy Rogers West are currently within the Metro boundary; however properties within area 63 still remain outside of the Metro boundary. The city will initiate a Metro boundary change, if the proposed annexation is approved. The city will work with Metro during the boundary change to identify and amend any applicable planning agreements adopted pursuant to ORS195.020(2).

“(D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and”

The City of Tigard Public Facility Plan was adopted in 1991 in compliance with statewide planning goals and Oregon Administrative Rule 660-11. A revised plan is currently being developed as part of periodic review. The development of the community plan and its public facility elements will be coordinated consistent with the new facility plan being prepared through periodic review and with CWS and TVF& R facility plans as required by Statewide Planning Goal 14, Urbanization. New Comprehensive Plan goals and policies for public facilities were adopted in 2008 (Goal 11), and the applicable goals and policies were addressed previously in this report. The proposed annexation is consistent with the Tigard Public Facility Plan.

“(E) Any applicable comprehensive plan; and”

The Tigard Comprehensive Plan applies in this case. Applicable policies are satisfied as addressed previously in this report.

“(2) Consider whether the boundary change would: (A) Promote the timely, orderly and economic provision of public facilities and services; (B) Affect the quality and quantity of urban services; and (C) Eliminate or avoid unnecessary duplication of facilities or services.”

The proposed annexation areas were brought into the Portland Metro UGB in 2002 and 2011 to ensure future regional housing and employment needs would be met. The area has not significantly changed from its rural level development. One reason for this is the inadequate level of services currently available to the area within Washington County. The city is the most efficient provider of urban level services and has the capacity to serve the area effectively. The proposed annexation will not affect the provision of public facilities and services. Conceptual and master plans exist for the River Terrace Area, but provision of services, including financing, will be greater defined through the community planning process. Urban services are not available without annexation into the city limits. This annexation will promote the efficient, timely, quality and appropriate quantity of services.

“(e) A city may not annex territory that lies outside the UGB, except it may annex a lot or parcel that lies partially within and outside the UGB. Neither a city nor a district may extend water or sewer services from inside a UGB to territory that lies outside the UGB.”

The property to be annexed is not outside the UGB. This criterion is not applicable.

“Metro 3.09.050 (b)

(b) Not later than 15 days prior to the date set for a change decision, the approving entity shall make available to the public a report that addresses the criteria in subsection (d) below, and that includes at a minimum the following:”

Note that this report is available 15 days before the hearing (January 7, 2013 for a January 22, 2013 hearing).

“(1) The extent to which urban services presently are available to serve the affected territory including any extra territorial extensions of service;”

As addressed previously in this report, urban services can be available to the affected territory prior to urban level development. The city will prepare and adopt a community plan to provide for all urban level services.

“(2) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and”

The affected territory will not result in the withdrawal from any legal boundary because the area is not located within any special districts.

“(3) The proposed effective date of the boundary change.”

The public hearing will take place January 22, 2012. If the Council adopts findings to approve ZCA2012-00003, the effective date of the annexation will be the date of filing with the Oregon Secretary of State.

“(c) The person or entity proposing the boundary change has the burden to demonstrate that the proposed boundary change meets the applicable criteria.”

The applicant has provided findings within a narrative that addresses the applicable criteria.

“(d) To approve a boundary change, the reviewing entity shall apply the criteria and consider the factors set forth in subsections (d) and (e) of Section 3.09.045.”

The criteria and factors outlined in subsections (d) and (e) of Section 3.09.045 have been previously addressed in this report.

CONCLUSION: As shown in the above findings the proposed annexation of River Terrace satisfies the Metro Code regulations related to Local Government Boundary Changes.

“(Tigard CDC 18.390.060)

4. Any applicable comprehensive plan policies; and”

FINDINGS: Findings addressing the applicable Comprehensive Plan policies were provided previously in this report.

CONCLUSION: As previously demonstrated, the proposed annexation is consistent with all applicable comprehensive plan policies.

“5. Any applicable provisions of the City’s implementing ordinances.”

FINDINGS: Resolution 12-09 extended previously approved incentives to phase in city taxes over a three year period and waive application fees for property owners that voluntary annex into the city limits. This resolution also formalized a process for annual review of the city annexation policy. Resolution 21-38 established an additional incentive that builds upon the property tax phase-in for properties annexed through the “triple majority” method, such as the proposed annexation.

Taxes will be phased in over a longer period. These incentives, outlined below, will be extended to the applicants.

- 0.00 percent of the increased property taxes for collection in fiscal years prior to July 1, 2014;
- 33 percent of the increased property taxes for collection in fiscal year starting July 1, 2014;
- 66 percent of the increased property taxes for collection in fiscal year starting July 1, 2015; and
- 100 percent of the increased property taxes for collection in fiscal year starting July 1, 2016

Ordinance 12-12 amended the Tigard Comprehensive Plan map to include land use designations for the River Terrace Community Plan based on recommended land uses found in Washington County's West Bull Mountain Concept Plan and amended the current Comprehensive Plan Goal 14: Urbanization policies. These amendments are directed to the development of the community plan development and do not regulate the proposed annexation.

As demonstrated in previous sections of this report, the proposed annexation is consistent with all other applicable provisions of the Tigard Development Code.

CONCLUSION: Based upon the findings above, all applicable provisions of the city's implementing ordinances are satisfied.

SECTION VII. OTHER STAFF COMMENTS

The City of Tigard Police Department Public Information Officer, Jim Wolf, commented that there were no issues with the project.

The city's **Public Works Department, Community Development Building Division and Development Services Division** were sent a request for comments. No comments were received.

SECTION VIII. AGENCY COMMENTS

Tualatin Valley Fire and Rescue and City of King City have reviewed the proposal and have no objections to it.

Washington County – Long Range Planning submitted a letter stating that Washington County supports adoption of the West Bull Mountain Concept Plan into the city's comprehensive plan and encourages the inclusion of parks, trails and street classification within the adoption.

The following agencies and jurisdictions were sent a request for comments but provided no formal written comments: **City of Beaverton, Metro – Land Use & Planning, Washington County Assessment & Taxation and Cartography, Portland General Electric, Tigard-Tualatin School District, Beaverton School District, Northwest Natural Gas, Metro Area Communications, Comcast Cable Corporation, Verizon, and Century Link Communications.**


PREPARED BY: Cheryl Caines
Associate Planner

January 3, 2013
DATE


REVIEWED BY: Tom McGuire
Interim Asst. Community Development Director

January 3, 2013
DATE

Applicant List

Attachment 1

2S1070001400

BAGGENSTOS, JAMES K & DARLA A
15252 SW ROY ROGERS RD
SHERWOOD, OR 97140

2S1080001500/1501/1504

DICKSON FAMILY PROPERTIES, LLC
KENNETH D DICKSON
29397 SW BAKER RD
SHERWOOD OR 97140

2S1080001505/1506

DICKSON, KEN & KARRI
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SHERWOOD, OR 97140

2S1080003100

DRESSEL, KEVIN W & GILLIAN A
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PORTLAND, OR 97224

2S108CA00400

GIESBRECHT, F BRUCE & SERENA L
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2S1080003000

HUPFER, ROBERT W & HEATHER A
HERNSTEDT, CARL E & KRIS T
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2S1080002901

MARTIN, DANIEL & ELIZABETH
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2S108CD00200

MCCLESKEY, MICHAEL T & ALITA A
15590 SW APRIL LN
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2S108CA00200

NOFFZ, JOHN O JR & CHERYL A
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2S108CD00400

PISCITELLI FAMILY TRUST
BY PISCITELLI, VINCENZO & ROSALBA
15540 SW APRIL LN
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2S108CA00300

RASMUSSEN, ROGER & NANCY
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2S1080002900

STANLEY, JEAN A TRUST
BY STANLEY, JEAN A GAVIN D CO-TRS
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2S108CA00100

SUNDERMEIER, WILLIAM A JR & RONDA
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2S1080003200

TIGARD-TUALATIN SCHOOL DISTRICT
ROB SAXTON
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2S108CD00300

TRI-COUNTY INVESTMENTS LLC
17933 NW EVERGREEN PKWY STE 300
BEAVERTON, OR 97006

Property Owner List

Attachment 2

2S1080001507

ALBERTSON, BARRY D &
LESLIE, ROBIN R
15445 SW 150TH AVE
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2S1070001400

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SHERWOOD, OR 97140

2S1080001500/1501/1504

DICKSON FAMILY PROPERTIES, LLC
KENNETH D DICKSON
29397 SW BAKER RD
SHERWOOD OR 97140

2S1080001505/1506

DICKSON, KENNETH D & KARRI K
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2S1080003100

DRESSEL, KEVIN W & GILLIAN A
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2S108CA00400

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2S1080001400

HASUIKE, ALAN & SUSAN REV LG TR
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2S1080001406

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2S1080003000

HUPFER, ROBERT W & HEATHER A
HERNSTEDT, CARL E & KRIS T
15149 SW 161ST AVE
TIGARD, OR 97224

2S1080001403/1404

JACOBSON, STEVEN K & BARBARA
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TIGARD, OR 97224

2S1080001402

JAW PROPERTIES LLC
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2S1080001503

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KADEL, JANET S TRUST
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2S1080001405

KNOX, DANIEL F & PATRICIA
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TIGARD, OR 97224

2S1080002901

MARTIN, DANIEL & ELIZABETH
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2S108CD00200

MCCLESKEY, MICHAEL T & ALITA A
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2S1080001401

NEIDERS, REGINE I & GUNARS K
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2S108CA00200

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2S108CD00100

PETERSON, CINDI R
PETERSON, DONALD A REN TR
15601 SW APRIL LN
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2S108CD00400

PISCITELLI FAMILY TRUST
BY PISCITELLI, VINCENZO & ROSALBA
15540 SW APRIL LN
TIGARD, OR 97224

2S108CA00300

RASMUSSEN, ROGER & NANCY
15165 SW FINIS LN
TIGARD, OR 97224

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STANLEY, JEAN A TRUST
BY STANLEY, JEAN A GAVIN D CO-TRS
15025 SW 161ST AVE
TIGARD, OR 97224

2S108CA00100
SUNDERMEIER, WILLIAM A JR & RONDA
15300 SW FINIS LN
TIGARD, OR 97224

2S1080003200
TIGARD-TUALATIN SCHOOL DISTRICT
6960 SW SANDBURG ST
TIGARD, OR 97223

2S108CD00300
TRI-COUNTY INVESTMENTS LLC
17933 NW EVERGREEN PKWY STE 300
BEAVERTON, OR 97006

2S1070001200
UPCHURCH, GERALD S
14992 SW ROY ROGERS RD
SHERWOOD, OR 97140

BCC 12-0304

INTERGOVERNMENTAL AGREEMENT
Coordination in Urbanizing Areas
and
Transfer of County Road Ownership

BETWEEN: City of Tigard, an Oregon Municipal Corporation (“City”)
AND: Washington County, a Political Subdivision of the State of Oregon (“County”)
DATED: APRIL 24, 2012

RECITALS

A. In 2002, Metro brought the West Bull Mountain Area, consisting of approximately 500 acres of land, within the Urban Growth Boundary (“UGB”).

B. In 2003, City, County, Clean Water Services, and other providers of urban services, entered into an agreement called the Tigard Urban Service Agreement (“TUSA”) that designated City as appropriate provider of services in the Tigard urban service area, except for those services that are to be provided by other agencies as further set forth in the TUSA.

C. On November 23, 2010, County adopted the West Bull Mountain Concept Plan Resolution and Order that established general land use strategies for how the West Bull Mountain Area should become a future urban community. Two areas of the West Bull Mountain Concept Plan are known as Area 63 and Area 64/River Terrace. Metro brought these areas inside the UGB in 2002. A third component of the West Bull Mountain Concept Plan is known as the “Rural Element,” which was not brought inside the UGB in 2002. These premises are illustrated on the map attached to this IGA as **Exhibit A**.

D. On September 30, 2011, the City annexed Area 64/River Terrace. The area annexed to the City of Tigard is illustrated on the map attached to this IGA as **Exhibit B**.

E. On October 20, 2011, Metro brought approximately 49 acres within the UGB, which will be referred to for the purposes of this Agreement as the Roy Rogers West Area. The Roy Rogers West Area is a portion of the Rural Element.

F. The City has also been formally approached by property owners in Area 63 and Roy Rogers West who are interested in annexing to Tigard.

G. Area 63, Area 64/River Terrace, and Roy Rogers West are currently within the UGB. These premises are illustrated on the map attached to this IGA as **Exhibit C**, and shall be referred to collectively as the Community Planning Area.

H. The City will refine the County’s West Bull Mountain Concept Plan and provide a detailed land use, public infrastructure, governance, and financial planning framework for urban development of the concept planned area. The refinement shall be referred to as the Community Plan.

I. City is the expected urban service provider to territory of the West Bull Mountain Area already within the UGB, Roy Rogers West, and the balance of the Rural Element that remains outside of the UGB. It is important to City and County that:

- 1) planning be completed to implement Metro's decision that River Terrace, Area 63, and Roy Rogers West, become functioning urban areas within the UGB; and
- 2) City and Council cooperate to support future annexation to the City of Area 63 and Roy Rogers West;
- 3) City and County further cooperate with Metro to bring the balance of the Rural Element inside the UGB; and
- 4) Roy Rogers West, Area 63, and River Terrace are included in the Community Plan for land use in the area.

J. City and County find it mutually beneficial to continue finding agreement on rights and obligations in the Tigard Urban Service Area.

K. City and County believe this IGA furthers effective governance, economy of scale, and furthers the policies of Metro Functional Plan Title 11, in that:

- 1) A single jurisdiction—the City of Tigard—will bear responsibility for creating a Community Plan for Area 63, River Terrace, and Roy Rogers West; and
- 2) One effort to produce a Community Plan governing the Community Planning Area may create more clear policy direction for the public; may prevent unnecessarily repetitive land use planning; and may promote quantity discounts for concurrently planning for streets and utility facilities in all three areas involved.

L. City and County find that there needs to be a funding mechanism for construction of roadways and transportation in the Community Planning Area, and both parties find it to be mutually beneficial to work together to develop a financing strategy for the development of a multi-modal transportation system in the Community Planning Area.

M. City and County agree that City ownership of roads within the City furthers effective maintenance, repair, and management of the City and County transportation systems, and provides increased efficiencies for provision of urban services within the City and County.

N. City and County agree that City ownership of roads within the City provides long term clarity and certainty as to the respective obligations of the two governments for street maintenance and repair.

AGREEMENT

NOW, THEREFORE, the parties mutually agree as follows:

Article 1: Land use planning and development

1. Delegation of planning and development authority.

- 1.1 The County agrees to assign and City agrees to accept responsibility to prepare a Community Plan to encompass the Community Planning Area. Such assignment shall occur by execution of separate assignment agreement attached hereto as **Exhibit D**. Upon such assignment, Tigard will be obligated to prepare the Community Plan for River Terrace as a component of the Tigard Comprehensive Plan.
- 1.2 City intends to concurrently plan for the Community Planning Area irrespective of whether Area 63 and Roy Rogers West are annexed by the City and despite the balance of the Rural Element not being included within the UGB in 2011.
- 1.3. Administration of County land use plan and zoning code. County will administer the County land use plan and regulations, with the exception of applications for zone or comprehensive plan changes, in River Terrace and any other territory within the Community Planning Area that may be annexed to City, until the effective date of the ordinance passed by City Council adopting the Community Plan and supporting zoning code for the Community Planning Area.
- 1.4. Development authority. County agrees that, prior to the effective date of all ordinances passed by City Council to adopt the Community Plan and supporting zoning code for the Community Planning Area, it will refer to City any development applications, and will not approve any urban-level development in this territory. The City shall have sole authority to decide applications for zone or comprehensive plan changes as described in section 1.3 above.

2. Binding effect of Community Plan. The parties intend for the Community Plan to be submitted to Metro for that agency's review under Title 11. The County agrees to accept the Plan and not pursue inconsistent regulations once it is submitted to Metro for this purpose.

3. Financial support for creating the Community Plan. County agrees it will fund a share of the land use planning cost required to produce the Community Plan, in cash equivalent or staff resources and in-kind services such as special analysis and transportation modeling as required by the City in support of the project and mutually agreed upon by City and County. All County resources made available to the City under this Section will continue until the date City Council approves the Community Plan.

4. Continued support for MSTIP work. Through the MSTIP process, County will work with City to identify projects that the City can submit to the Washington County Coordinating Committee to implement the Community Plan and mitigate its impacts on the roadway system.

Article 2: Annexation

5. Area 63 and Roy Rogers West annexation. County supports and consents to City annexation of Area 63 and Roy Rogers West as shown on **Exhibit C** including lands and rights-of-way under County control or ownership.

6. UGB amendments. County and City support future action by Metro to bring the entirety of the Rural Element within the UGB.

7. Timeframe for City consideration of annexations. City agrees to begin annexation of unincorporated islands within its boundaries.

Article 3: Services

8. **TUSA updates.** County agrees to convene government representatives for the purpose of amending the TUSA to recognize City as the logical provider of urban services to Area 63, River Terrace, and the Rural Element.

9. **Providers of urban services.** The parties continue to acknowledge their agreement that agencies providing services to the Tigard urban services area consist of those agencies listed in Sections A through G of the TUSA. The parties further agree that County will not create any new special service areas or enhanced service districts within the boundaries of Tigard's urban service area.

10. Prior to urban development of the Community Planning Area, and as part of the plan development, the City will work with the County to develop a financing strategy that assures an adequate level of arterial and collector roads over a 30 year time frame. Development and implementation of this strategy may require the establishment of new or supplemental funding components.

Article 4: Roadways

11. The City agrees to assume the entirety of the County's ownership interest in the portions of the following roads that are within Tigard's jurisdictional boundaries as soon as the parties adopt this Agreement, described as follows and attached hereto as **Exhibit E**.

11.1 The southeastern half of Barrows Road from Scholls Ferry to Springbrook (*item D on map*).

11.2 113th Avenue from Durham Road to the current city limits (*item E on map*).

11.3 Bull Mountain Road from Highway 99W to east of 14025 SW Bull Mountain Road (*item C on map*).

11.4 Friendly Lane from Roy Rogers Road east to its terminus (*item A on map*).

11.5 Roshak Road from Roy Rogers Road east to its terminus (*item B on map*).

12. The City's obligation to take ownership of the above listed roads is contingent on receipt of payment in cash from the County in an amount equal to or greater than the estimated total cost to the City to improve all portions of each of the above mentioned roads that are below Pavement Condition Index ("PCI") 67, to PCI 67.

Article 5: Administration of this Agreement

13. **Term.** This agreement shall become effective upon full execution of the parties and remain in effect until it is retired or superseded.

14. **Amendment.** This Agreement may be changed by written agreement of the parties.

15. **Dispute resolution.** Disputes over the administration or interpretation of this agreement shall be handled under the dispute resolution model provided in Article IX of the Tigard Urban Service Agreement.

CITY OF TIGARD, an Oregon Municipal Corporation

WASHINGTON COUNTY, a Political Subdivision of the State of Oregon

By: *Martha L. Wine*

By: *Andy Duyck*

Name: Martha L. Wine

Name: Andy Duyck

Its: City Manager

Its: Chairman Board of Commissioners

Signature

Signature

APPROVED WASHINGTON COUNTY
BOARD OF COMMISSIONERS

MINUTE ORDER # 12-99

DATE 4-24-12

BY *Barbara Hejmanek*
BOARD

Exhibit A

Beaverton

River Terrace Vicinity

-  River Terrace
-  Urban Growth Boundary
-  City of Tigard

River Terrace
(UGB Area 64)

Tigard

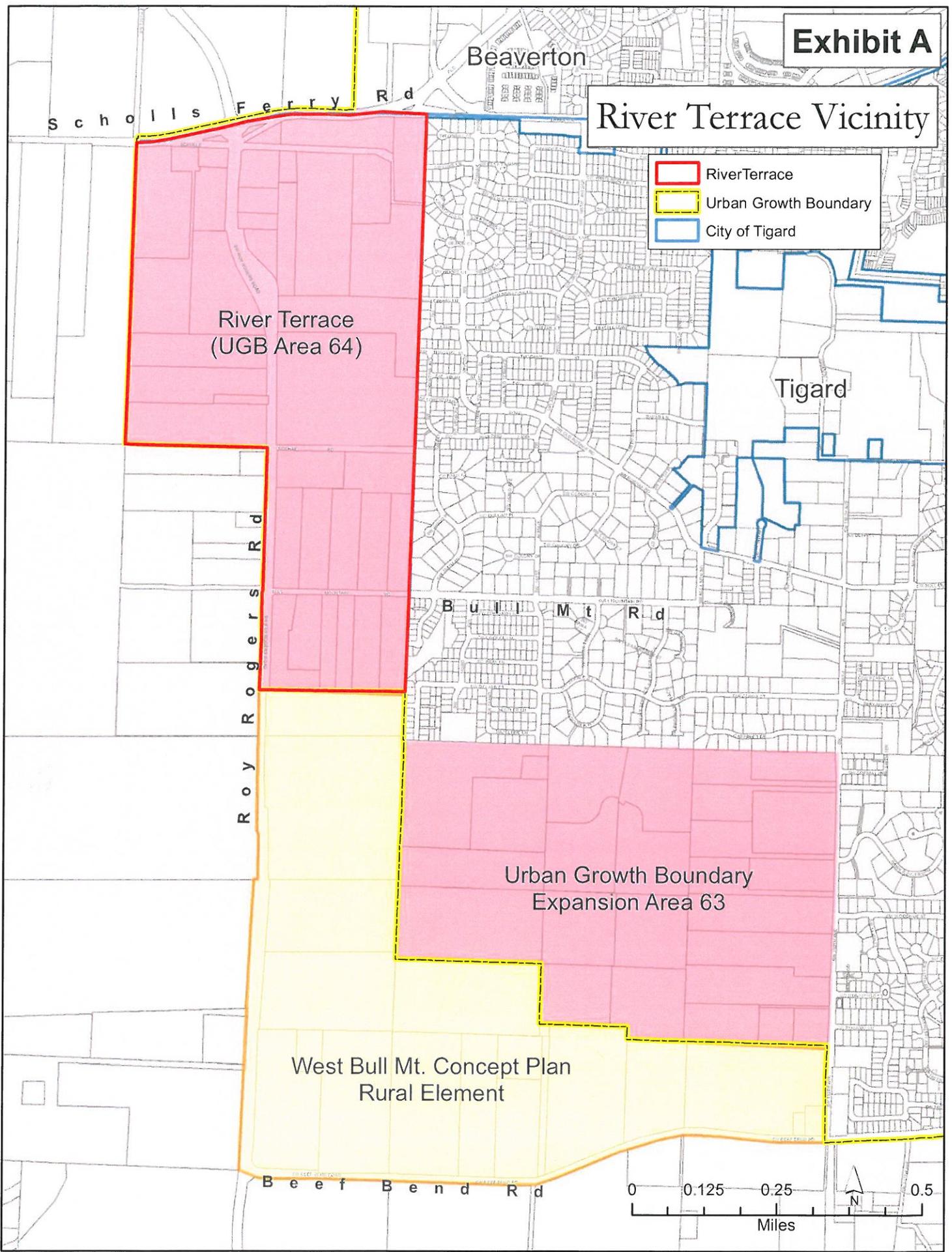
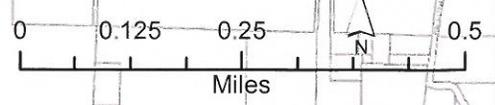
R o y
R o g g e r s
R d

B u l l M t R d

Urban Growth Boundary
Expansion Area 63

West Bull Mt. Concept Plan
Rural Element

B e e f B e n d R d



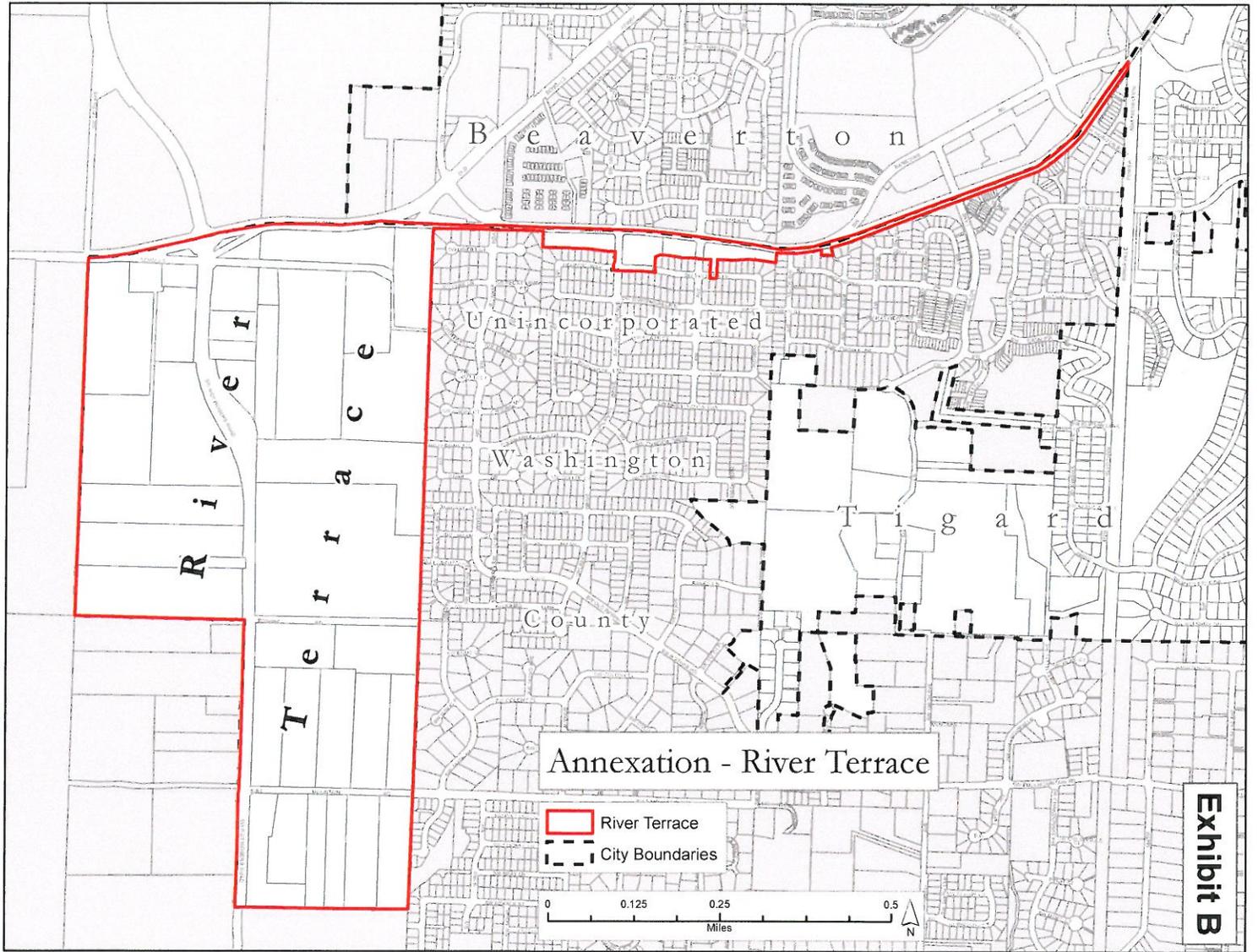
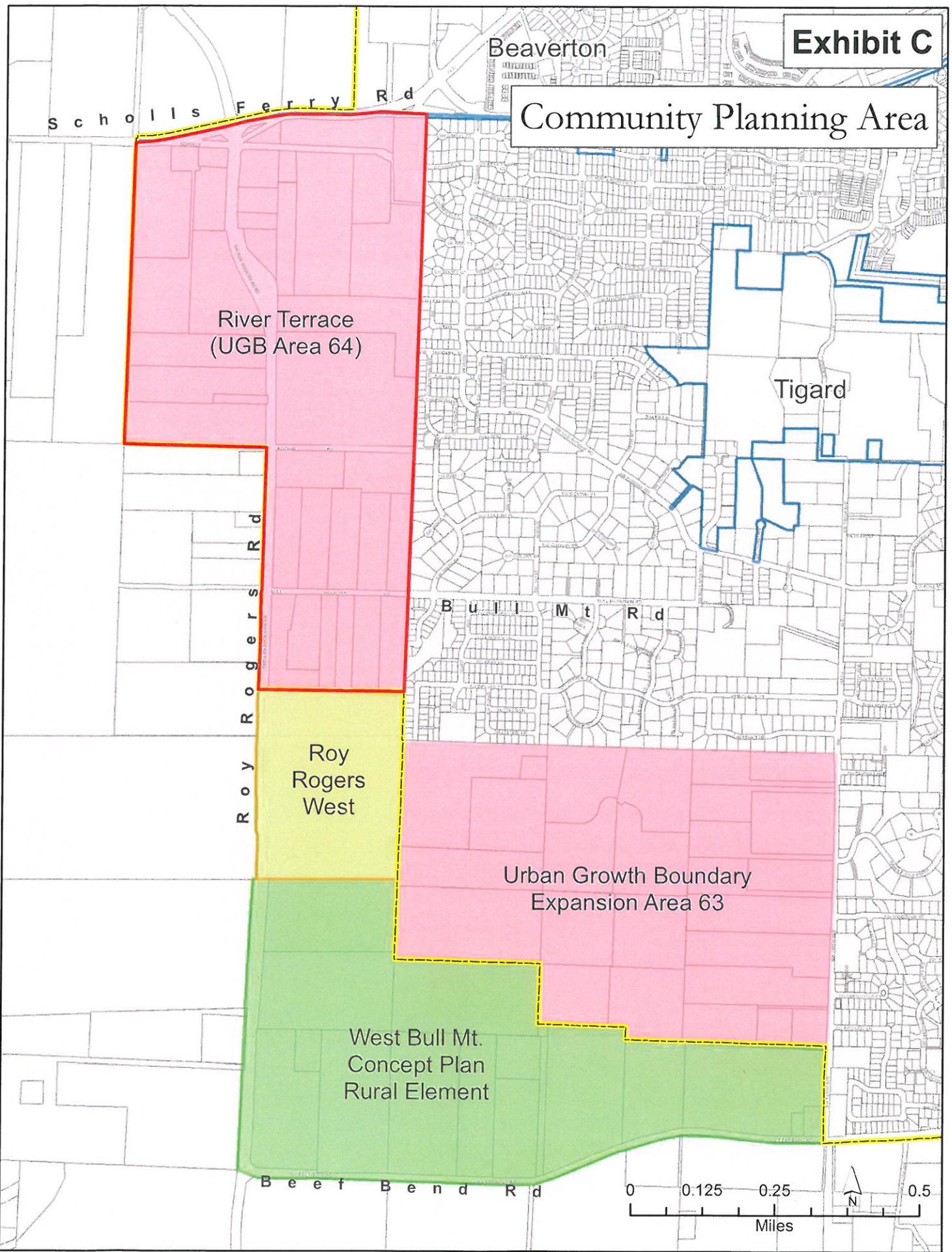


Exhibit B

Exhibit C

Community Planning Area



ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES
UNDER CONSTRUCTION EXCISE TAX GRANT
INTERGOVERNMENTAL AGREEMENT

From: Washington County, Oregon

To: City of Tigard, Oregon

WHEREAS, Metro and Washington County (County) have entered into an IGA entitled, *Construction Excise Tax Grant Intergovernmental Agreement (Agreement)*, and County and the City of Tigard wish to enter into this Assignment of Rights and Delegations (Assignment) under the Agreement; and

WHEREAS, under the Agreement, Metro grants excise tax funds to Washington County to reimburse the County for the cost of local comprehensive land use planning efforts required for territory that is brought into the Urban Growth Boundary (UGB); and

WHEREAS, Exhibit A to the Agreement grants excise tax funds to Washington County to reimburse the County for land use planning costs incurred in the West Bull Mountain area, which is a territory of approximately 500 acres that Metro brought into the UGB in 2002 with the support of Metro, City of Tigard (City), and Washington County; and

WHEREAS, In 2003, City, County, Clean Water Services, and other providers of urban services, entered into an agreement called the Tigard Urban Service Agreement (“TUSA”) that designated City as appropriate provider of services in the Tigard urban service area, except for those services that are to be provided by other agencies as further set forth in the TUSA; and

WHEREAS, On November 23, 2010, County adopted the West Bull Mountain Concept Plan Resolution and Order (Concept Plan) that established general land use strategies for how the West Bull Mountain Area should become a future urban community. Two areas of the West Bull Mountain Concept Plan are known as Area 63 and Area 64/River Terrace, which were already inside the UGB. A third component of the West Bull Mountain Concept Plan is known as the “Rural Element,” which is not at present inside the UGB except for a subarea of about 50 acres referred to herein as Roy Rogers West, which Metro brought into the UGB on October 11, 2011. These premises are illustrated on the map attached to this Assignment as Exhibit A; and

WHEREAS, There is a need to refine the Concept Plan to provide detailed land use, public infrastructure, governance, and financial planning policies to guide urban development of the concept planned area; and

WHEREAS, For purposes of the Agreement and this Assignment, the refinement of the Concept Plan will be known as the Community Plan. City and County (collectively “Parties”) intend to ask Metro to approve the Community Plan and coordinate approval with the Department of Land Conservation and Development as consistent with the Statewide Planning Goals in the affected territory; and

WHEREAS, under the Agreement, Washington County currently must create the Community Plan for the West Bull Mountain area; and

WHEREAS, a formal assignment is necessary for City to satisfy County’s planning tasks under the Agreement;

NOW, THEREFORE, the Parties agree to the following:

1. Assignment from County to City: County assigns to City, and City accepts, the task to study and adapt the Concept Plan to become a Community Plan for River Terrace, Area 63, Roy Rogers West, and the balance of the Rural Element that satisfies County’s obligation to supply a deliverable Plan under Exhibit A of the Agreement. This assignment is subject to the following conditions subsequent:

- a. County will provide staff resources and services in support of the project as follows:
 - i. Collaborate with City staff to refine the West Bull Mountain Concept Plan into the river Terrace Community Plan. This will involve providing review and comment of refined land use designations, natural resource areas and implementing code standards. It is anticipated the County’s involvement in the land use/natural resource refinement phase shall not involve more than 150 staff hours.
 - ii. Collaborate with City staff to refine the West Bull Mountain Transportation Plan. The transportation element will be limited to 200 hours of County staff time to 1) test the performance of the proposed local street system; 2) propose solutions to any deficiencies in the local street system; 3) identify proportional impacts of River Terrace development on the arterial and collector road system particularly in Tigard and on Highway 99W; 4) work with the City to propose funding mechanisms to address these impacts.
 - iii. Participate on a City Technical Advisory Committee to assist in development of the Community Plan.
 - iv. Provide information to the City pertaining to its citizen engagement effort for the west Bull Mountain Community Plan to assist citizen information and involvement for the Community Plan.

- b. Metro agrees to pay City under this Assignment document; and

- c. County will grant City access to studies, correspondence, professional reports, exhibits, and all other documents that comprise the file of materials developed in connection with County’s creation of the Concept Plan.

2. Assignment of right to grant money: County assigns to City, and City accepts, the right to claim the remaining grant money under the Agreement, which sum is estimated at approximately \$134,000. Metro has acknowledged that the County will assign its rights to this grant money to the City pursuant to this agreement as demonstrated in Attachment “A”.

3. Effect of County nonperformance: County’s failure to supply the document access and in-kind services described in Section 1 does not:

- a. Invalidate City's right to submit Deliverables to Metro and claim the remaining grant money; or
 - b. Create in City a right to claim money damages against County on any legal or equitable theory.
4. Administration of this Assignment document:
- a. This Assignment becomes effective upon execution by both parties and remains in effect until it is cancelled by mutual agreement of the Parties, or the grant money has been fully claimed and received by City.
 - b. This Agreement may be amended by the Parties' written agreement.
5. This Agreement may be terminated, with cause at any time if the City fails to perform any of the other provisions of this Agreement as determined by Metro, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from the County, fails to correct such failures within sixty (60) days or other such period as the County may authorize.
6. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including its officers, agents, and employees, against all claims, demands, actions and suits (including all attorney fees and costs) arising from the indemnitor's performance of this agreement where the loss or claim is attributable to the negligent acts or omissions of that party.
7. Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this Agreement.
8. Each party agrees to comply with all local, state and federal ordinances, statutes, laws and regulations that are applicable to the services provided under this Agreement.
9. This Agreement is expressly subject to the debt limitation of Oregon Counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore.
10. Each party is an independent contractor with regard to each other party(s) and agrees that the performing party has no control over the work and the manner in which it is performed. No party is an agent or employee of any other.

Exhibit D

- 11. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- 12. This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement.

CITY OF TIGARD, an Oregon Municipal Corporation

WASHINGTON COUNTY, a Political Subdivision of the State of Oregon

By: _____

By: _____

Name: _____

Name: _____

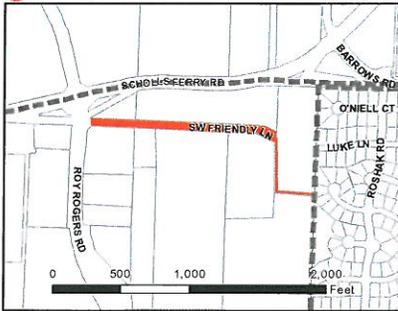
Its: _____

Its: _____

Signature

Signature

A Friendly Lane



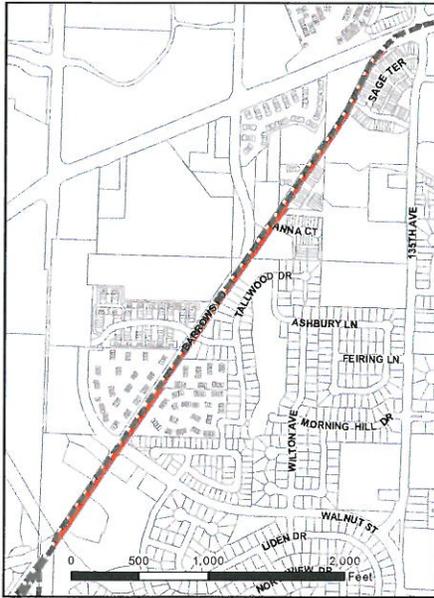
B Roshak Road



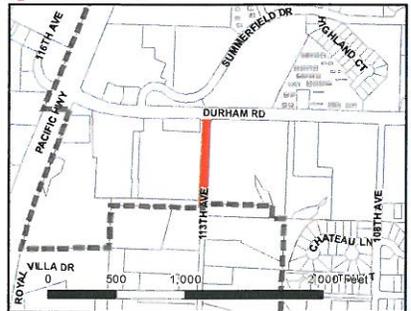
C Bull Mountain Road



D Barrows Road (Eastern Half)



E 113th Avenue



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Attachment A
referred to in
Exhibit D

CONSTRUCTION EXCISE TAX GRANT INTERGOVERNMENTAL AGREEMENT Metro – Washington County West Bull Mountain Project

This Construction Excise Tax Grant Intergovernmental Agreement (“CET Grant IGA”) is effective on the last date of signature below, and is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, located at 600 Northeast Grand Avenue, Portland, OR, 97232-2736 (“Metro”), and Washington County (“County”), located at 155 N. First Ave., Hillsboro, OR 97124, collectively referred to as “Parties.”

WHEREAS, Metro has established a Construction Excise Tax (“CET”) which imposes an excise tax throughout the Metro regional jurisdiction to fund local comprehensive planning needs associated with new inclusions into the urban growth boundary (“UGB”) between 2002 and 2005;

WHEREAS, the CET is collected by local jurisdictions when issuing building permits, and the CET collected is remitted to Metro by the local collecting jurisdictions via Construction Excise Tax Intergovernmental Agreements to Collect and Remit Tax (“CET Collection IGAs”) entered into separately between Metro and the local collecting jurisdictions;

WHEREAS, in creating the purpose and amount of the CET, Metro worked with local jurisdictions, and received their estimates as to the total dollar amounts needed by the local jurisdictions to fund their local comprehensive planning needs associated with new inclusions into the UGB between 2002 and 2005;

WHEREAS, the CET will expire when the total amount of CET collected by all jurisdictions and remitted to Metro is \$6.3 million dollars, which is estimated to take approximately three years; and

WHEREAS, Metro will distribute 100% of the CET expected to be remitted to Metro as grants to local jurisdictions, based on CET Grant Requests submitted by local jurisdictions that set forth their expected completion of certain milestones associated with Title 11 of Metro Code Chapter 3.07, the Urban Growth Management Functional Plan; and

WHEREAS, as part of the CET process Metro has met with all of the applicable local jurisdictions regarding their local comprehensive planning funding needs associated with new inclusions into the urban growth boundary between 2002 and 2005, and the total estimates recently provided by the local jurisdictions greatly exceed the total estimates upon which the CET was based; and

WHEREAS, the CET Administrative Rules set forth certain eligible expenses for CET Grant consideration, and the rules also provide that if the total Grant Requests from participating local governments exceed the total CET expected revenues, Metro shall first consider awarding funds for eligible direct costs, which will have priority for funding over indirect costs; and

WHEREAS, County has submitted a CET Grant Request to Metro, and the parties wish to set forth the funding amounts, timing, and procedures for receiving reimbursement from the CET fund for County’s planning expenditures.

NOW THEREFORE, the Parties hereto agree as follows:

1. Reimbursement by Metro. Metro shall reimburse County for approved eligible expenses, associated with County’s completion of those planning milestones, in the amounts and at the times, as set forth in Exhibit A attached hereto and incorporated herein. Payments shall be in accordance with the “payment

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procedures” set forth below.

2. County Responsibilities. County agrees that it shall take all actions in a timely and diligent manner that are required or necessary to complete and fulfill the milestones set forth in Exhibit A. County also covenants and agrees that it shall use the CET funds it receives under this Agreement only for the work approved to reach the milestones set forth in Exhibit A.

3. Eligible Expenses. As set forth in Metro Code Chapter 7.04 Administrative Rules, the following expenses shall be considered Eligible Expenses for CET Grant consideration, up to a ceiling of the reimbursable amounts set forth in Exhibit A attached hereto: (a) materials directly related to project; (b) consultants’ work on project; (c) County staff support directly related to project; and (d) overhead directly attributable to project.

4. Payment Procedures. Within 30 days after the completion of each milestone as set forth in Exhibit A, County shall submit to Metro a statement describing in reasonable detail the eligible and reimbursable work services performed pursuant to this Agreement. County will furnish Metro with any other statements or reports of expenditures as may be needed to satisfy fiscal requirements. Metro shall reimburse County for the eligible and approved reimbursable work after each milestone is reached, no later than 60 days after the date Metro receives County’s statement. County shall send the statement, and Metro shall send CET payments, to:

Metro
Attention: Ray Valone
600 NE Grand Ave.
Portland OR 997205
(503) 797-1808

Washington County DLUT
Attention: Judy Lynn
Public Services Building, Suite 350, MS 16
155 N. First Ave.
Hillsboro, OR 97124
(503) 846-3718

5. Project Records. County shall maintain all records and documentation relating to the work and tasks involved in the project as set forth in Exhibit A. County shall provide Metro with such reasonable information and documentation as Metro requires for implementation of the CET grant process. County shall establish and maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Agreement.

6. Audits, Inspections and Retention of Records. Metro and its representatives shall have full access to and the right to examine, during normal business hours and as often as they reasonably deem necessary, all County records with respect to all matters covered by this Agreement and Exhibit A, excepting privileged and other such documents that County may claim to be exempt from disclosure under ORS chapter 192. Nothing herein limits Metro’s right to challenge the withholding of any documents as permitted by law. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls and other matters covered by this Agreement. All documents, papers, time sheets, accounting records, and other materials pertaining to costs incurred in connection with the project shall be retained by County and all of its contractors for three years from the later of the date of completion of the project, or expiration of the Agreement, to facilitate any audits or inspection.

7. Funding From CET Funds. Metro’s funding commitment set forth in this Agreement shall be fulfilled solely through the programming of CET funds. The parties recognize and agree that if the CET is ever held to be unenforceable or is terminated through no act or omission of Metro, that Metro shall not be liable in any way for funding the amounts described in Exhibit A.

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Exhibit A

CET Grant IGA Between Metro and Washington County West Bull Mountain Project Milestones, Due Dates, and Reimbursement Rates

Total Requested by County for New Urban Growth Area West Bull Mountain Project:	\$670,500
Total Reimbursable Amount:*	\$670,500**

<u>Milestone #:</u>	<u>Deliverable</u>	<u>Date Due***</u>	<u>Grant Payment</u>
1.	Execution of CET Grant IGA	x date	\$134,100
2.	Mid-point in Concept Plan development, demonstrating progress toward completion	x date + 210 days	\$134,100
3.	County's Preferred Concept Plan Alternative or Urban Growth Diagram, showing at least those elements set forth in Title 11	x date + 390 days	\$134,100
4.	County's recommended Comprehensive Plan or Comp. Plan amendment, addressing Title 11; the applicable conditions of addition in Metro ordinance for the new urban area; and applicable state laws and regulations	x date + 540 days	\$134,100
5.	County's adoption of Comprehensive Plan or Comp. Plan amendment, addressing Title 11; the applicable conditions of addition in Metro ordinance for the new urban area; and applicable state laws and regulations	x date + 660 days	\$134,100
TOTAL REIMBURSABLE AMOUNT*			\$670,500**

*The Total Reimbursable Amount is a maximum amount that will be reimbursed for Eligible Expenses as set forth in the CET Grant IGA and Metro Code Chapter 7.04 Administrative Rules.

** The CET will fund the project for the full \$670,500 for all eligible expenses. Grant funding is subject to reduction attributed to a reduction in milestone expectations, alternate grants awarded to this project or completion or reduction requests by County.

*** Due dates are intended by the parties to be hard estimates of expected milestone completion dates. If County anticipates that a due date will not be met, it shall inform Metro in writing no later than ten (10) days prior to the due date, and shall provide a revised estimated due date, and Metro and County will mutually revise the milestone due dates set forth in this Agreement.

Beaverton

Exhibit A referenced in Exhibit D

Community Planning Area

S c h o l l s F e r r y R d

River Terrace
(UGB Area 64)

Tigard

R o y R o g g e r s R d

B u l l M t R d

Roy
Rogers
West

Urban Growth Boundary
Expansion Area 63

West Bull Mt.
Concept Plan
Rural Element

B e e f B e n d R d

