

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
WASHINGTON COUNTY AND THE CITY OF TIGARD  
FOR FUNDING AND CONSTRUCTION OF TRANSPORTATION IMPROVEMENTS ON ROY  
ROGERS ROAD

This Intergovernmental Agreement is between Washington County, a political subdivision of the State of Oregon, acting by and through its elected officials, hereinafter referred to as “COUNTY”; and the City of TIGARD, a municipal corporation, acting by and through its City Council, hereinafter referred to as “CITY”. COUNTY and CITY may be jointly referred to as the “Parties” or individually as “Party.”

**RECITALS**

- A. WHEREAS, ORS 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has the authority to perform; and
- B. WHEREAS, recent additions to the region’s Urban Growth Boundary in Washington County, hereinafter referred to as Residential High-Growth Areas, will need transportation infrastructure to comply with planning requirements and to function successfully; and
- C. WHEREAS, COUNTY and cities with Residential High-Growth Areas identified and selected multiple transportation improvement projects for design and construction which consists of COUNTY and State facilities located in and near these High Growth Areas (“ Residential High-Growth Area Transportation Funding Program Project List” hereinafter “Project List”) and attached as Exhibit ‘A’; and
- D. WHEREAS, in order to help fund construction of improvements on the Project List, COUNTY intends to create bonded indebtedness titled the Residential High-Growth Area Bonds based on the growth of MSTIP funds; and
- E. WHEREAS, on June 23, 2015 the Washington County Board of Commissioners approved Resolution and Order 15-43 establishing the Residential High-Growth Area Transportation Funding Program; and
- F. WHEREAS, Resolution and Order 15-43 calls for the COUNTY to pay for sixty-six point seven percent (66.7%) of costs and the CITY to pay for thirty-three point three percent (33.3%) of costs to construct the projects on the Project List that serve both COUNTY and CITY transportation needs; and

- G. WHEREAS, the Project List includes a project to complete construction of improvements to Roy Rogers Road from Scholls Ferry Road to a point south of Bull Mountain Road; and
- H. WHEREAS, the CITY, consistent with the powers and purposes of city government, finds it necessary and desirable for the continued growth, safety and welfare of the community that the Roy Rogers Road improvement project be funded and constructed; and
- I. WHEREAS, the COUNTY and CITY find it is beneficial to the public to partner to complete the Roy Rogers Road improvement project as provided in this Agreement and that such partnership will minimize disruption of public travel and commerce, establish economies of scale that will reduce the cost to the public, and provide other good and valuable benefits to the general public; and
- J. WHEREAS, the Parties desire to define the components and estimated cost of the Roy Rogers Road improvement project, establish COUNTY and CITY funding obligations, provide a schedule for CITY payments for the improvement project, and otherwise allocate the roles and responsibilities of each Party as detailed below.

## **AGREEMENT**

NOW, THEREFORE, the premise being in general as stated in the foregoing recitals, and in consideration of the terms, conditions and covenants as set forth below, the Parties hereto agree as follows:

1. Project Description. The Roy Rogers Road improvement project, hereinafter referred to as “PROJECT” and shown generally on the attached Exhibit ‘B’, will include four vehicle travel lanes, turn lanes as appropriate, pedestrian and bicycle facilities, intersection improvements at the Bull Mountain Road and Scholls Ferry Road intersections, and improvements to address connectivity at two additional intersections on Roy Rogers Road between Scholls Ferry Road and Bull Mountain Road, including the Lorenzo Lane / Jean Louise Road intersection. The PROJECT description may be amended and extended upon mutual written consent of the Parties. The PROJECT, as originally planned or extended, shall be designed and constructed in compliance with County Community Development Code and County Road Design and Construction Standards in effect at the time of design and construction.
2. Project Design. The COUNTY shall include the CITY on the design team to refine the PROJECT description, develop the PROJECT design, and review final design plans prior to bidding. COUNTY agrees to consider CITY comments.

3. Construction of Project. The COUNTY shall perform, or cause to be performed, all actions necessary for the design and construction of the PROJECT including project management, design and construction engineering, property acquisition, including right-of-way as necessary, regulatory and land use permits and approvals, public information, contract administration, inspection and construction management. COUNTY shall coordinate the design of, advertise for, award and administer the construction contract for the PROJECT.
4. Project Cost. The Parties agree that the general categories and estimated cost amounts associated with all aspects of the design, engineering, right-of-way acquisition, permitting, construction, installation, contingency and related administration of the PROJECT are as follows:

<u>ITEM</u>	<u>AMOUNT</u>
Design	\$3,400,000
Right-of-Way	\$1,500,000
Construction	\$20,000,000
<b>TOTAL PROJECT COST ESTIMATE</b>	<b>\$24,900,000</b>

- 4.1 COUNTY and CITY understand and agree that the design, right-of-way and construction components outlined above are estimates only and are used to determine project budgets and estimated payment amounts used within this Agreement. Final costs will be based on the actual contract amount of the schedule of prices and quantities used and installed. Notwithstanding the estimates shown above, the COUNTY and CITY agree that the funding contribution of each Party, as set forth in Section 5, shall be based on actual design invoices, bid prices, construction costs and quantities and non-construction costs such as account and managing the project.
- 4.2 Notwithstanding Section 4.1 above, the Parties agree and expressly acknowledge that the PROJECT cost estimate described above will be reviewed as provided below:
- 4.2.1 Within thirty (30) days of receipt of COUNTY's 30% design plans, specifications and engineer's estimate (PSE), the Parties shall review the estimated PROJECT cost and the COUNTY may consider PROJECT cost adjustments that do not significantly impact PROJECT description or schedule.
- 4.2.2 Within thirty (30) days of receipt of COUNTY's 50% PSE, the Parties shall review the estimated PROJECT cost and the COUNTY may consider PROJECT cost adjustments that do not significantly impact PROJECT description or schedule.

- 4.2.3 Within thirty (30) days of receipt of COUNTY's 90% PSE, the Parties shall review the estimated PROJECT cost and the COUNTY may consider PROJECT cost adjustments that do not significantly impact PROJECT description or schedule.
- 4.2.4 Upon public opening of the bid solicitation and before award of any bid, COUNTY shall provide CITY with bid tabs and other pertinent bid information of the apparent low bidder. Within fifteen (15) days after receipt of such information, the Parties shall review and reach agreement in writing on any adjustments to the estimated PROJECT cost. Failure of the CITY to provide the COUNTY with comments regarding the estimated PROJECT cost within fifteen (15) days after public opening of the bid shall be deemed approval of the estimated PROJECT cost without further action by the COUNTY.
- 4.3 COUNTY shall provide CITY with a final statement of PROJECT design expenses within forty five (45) days after completion of the design phase described in Section 4.2. Within forty five (45) days after the completion of the construction contract, the COUNTY shall provide the CITY with a final statement of construction costs. The total final PROJECT cost shall be reconciled with the final design and construction cost statements provided to the CITY.
- 4.4 The Parties shall meet throughout the PROJECT design process to determine which portions of the PROJECT will be built by COUNTY's contractor and which will be built by private development.
- 5. Project Funding. The Parties agree as follows:
  - 5.1 COUNTY shall fully fund, pursuant to the Residential High-Growth Area Bond, the PROJECT cost in the estimated amount of \$24,900,000 or the PROJECT cost as adjusted. After repayment by CITY, COUNTY costs shall be in an amount equal to sixty-six point seven percent (66.7%) of the total final PROJECT cost, less the CITY's costs as described in Section 5.2.
  - 5.2 CITY shall pay to COUNTY an amount equal to thirty-three point three percent (33.3%) of the total final PROJECT cost, up to a maximum of \$9,000,000, as determined through the provisions of this Agreement, less the value of any eligible portions of the PROJECT that are constructed by private development, as described in Sections 5.2.1, 5.2.2, 5.2.3, and 5.2.4 below.

- 5.2.1 Portions of the PROJECT constructed by private development that are eligible to count toward the CITY's cost contribution shall include: dedication of right-of-way, construction of sidewalks that are between five and six feet wide, landscaping and trees as described in the Washington County Road Design & Construction Standards, bike lanes, street lights, roadway widening to accommodate general purpose through-lanes and a center left turn lane or median, traffic signals at the intersection of Roy Rogers Road and Bull Mountain Road, traffic signals at the intersection of Roy Rogers Road and Lorenzo Lane / Jean Louise Road, traffic signal modifications at the intersection of Roy Rogers Road and Scholls Ferry Road, stormwater facilities designed to treat and manage runoff from Roy Rogers Road, and a proportional share of regional stormwater facilities designed to treat and manage runoff from Roy Rogers Road.
- 5.2.2 Portions of the PROJECT constructed by private development that are not eligible to count toward the CITY's cost contribution include: traffic signals, turn lanes and accesses at intersections not provided for in Section 5.2.1, utility undergrounding, stormwater facilities that are not designed to treat or manage run off from Roy Rogers Road, landscaping in excess of that described in the Washington County Road Design & Construction Standards, landscape maintenance of planted medians, sidewalk width beyond six feet, and sidewalk length in excess of the length of the adjacent roadway caused by a meandering design.
- 5.2.3 CITY shall fully fund portions of the PROJECT outside of the PROJECT description when requested as a betterment by CITY, including but not limited to a pedestrian undercrossing at the location of the northernmost Roy Rogers Road bridge.
- 5.2.4 Final determination of eligibility and cost contribution under this section shall be at the sole discretion of the COUNTY.
- 5.3 CITY has adopted a mutually acceptable funding strategy for repayment of PROJECT costs, including existing revenue sources (such as the Transportation Development Tax), supplemental system development charges, and conditions imposed upon private development to construct portions of the PROJECT, attached as Exhibit 'C'.
- 5.4 CITY shall make annual installment payments to COUNTY for its share of PROJECT costs no later than March 15th of each year. CITY's obligation to make payments shall commence in the fiscal year following the fiscal year in which the notice to proceed has

been issued for the awarded construction bid. The amount will be determined as follows:

5.5.1 Initial installment payments shall be based on the PROJECT costs determined at the time of awarding the bid.

5.5.2 Installment payments shall be adjusted when the PROJECT costs are reconciled as provided in Sections 5.2 and 4.3.

5.5.3 CITY shall make equal annual payments, as described in Sections 5.5.1 and 5.5.2, for ten years or until the amount is paid in full. There is no penalty for early payment by the CITY, but in no event shall payment extend beyond ten years except by mutual written consent of the Parties.

5.5 CITY agrees to contribute up to a maximum of \$9,000,000 to the PROJECT per its adopted River Terrace Funding Strategy, including the value of any eligible portions of the PROJECT that are constructed by development. In no event shall CITY be obligated to pay the COUNTY more than the total amount described in Section 5.2 in satisfaction of its funding obligation under this Agreement.

5.6 Nothing in this Agreement obligates the CITY to contribute to any other projects on the Project List.

## 6.0 General Provisions

### 6.1 LAWS OF OREGON

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

## 6.2 DEFAULT

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

## 6.3 INDEMNIFICATION

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

## 6.4 MODIFICATION OF AGREEMENT

No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by both Parties. In the event of unforeseen circumstances which limit the ability of the CITY to repay its share of PROJECT Costs, the Parties will meet to negotiate terms which may include changes to future MSTIP projects in the CITY.

## 6.5 DISPUTE RESOLUTION

The Parties shall attempt to informally resolve any dispute concerning any Party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. The Parties agree that in the event of an impasse in the resolution of any dispute, the issue shall be submitted to the COUNTY Director of Land Use & Transportation and the CITY Manager for recommendation or resolution. If resolution cannot be reached, a neutral third party may be used if the Parties agree to facilitate these negotiations.

## 6.6 REMEDIES

Subject to the provisions in paragraph 6.5, any Party may institute legal action to cure,

correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The Parties, by signature of their authorized representatives below, consent to the personal jurisdiction of that court.

6.7 EXCUSED PERFORMANCE

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

6.8 SEVERABILITY

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

6.9 INTEGRATION

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

7. Term of Agreement

7.1 The term of the Agreement shall be from the date of execution until the completion of the PROJECT and the CITY's payment obligations, as described in Sections 4 and 5. Sections 6.3, 6.5, and 6.6 shall survive termination or expiration of this Agreement.

7.2 This Agreement may be amended or extended for periods of up to one (1) year by mutual written consent of the Parties.

[Signature Page to Follow]

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

**CITY OF TIGARD, OREGON**

**WASHINGTON COUNTY, OREGON**

\_\_\_\_\_

\_\_\_\_\_

CITY MANAGER/MAYOR

CHAIR, BOARD OF COUNTY  
COMMISSIONERS

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

RECORDING SECRETARY

CITY RECORDER

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_

\_\_\_\_\_

COUNTY COUNSEL

CITY ATTORNEY

**Exhibit 'A'**

## Residential High-Growth Areas Transportation Funding Program Project List – Tigard

<b>Road</b>	<b>Extent</b>	<b>PROJECT Description<sup>1</sup></b>	<b>Total Cost<sup>2</sup></b>	<b>County Cost<sup>2</sup></b>	<b>Local Cost<sup>2</sup></b>	<b>TDT Project Number<sup>3</sup></b>
<b>Years 1-3<sup>4</sup></b>						
Roy Rogers Rd	Scholls Ferry – south of Bull Mountain	Widen to 5 lanes	\$24,900,000	\$16,600,000	\$8,300,000	TBD
<b>Total, Years 1-10</b>			<b>\$24,900,000</b>	<b>\$16,600,000</b>	<b>\$8,300,000</b>	

## Notes:

1. “Widening” projects include pedestrian/bicycle facilities, lighting, stormwater, etc.
2. Project costs are estimates and are subject to change.
3. Transportation Development Tax (TDT) project numbers shown as “TBD” are to be determined when those projects are added to the TDT Project List.
4. Project timeframes shown are tentative and subject to change.



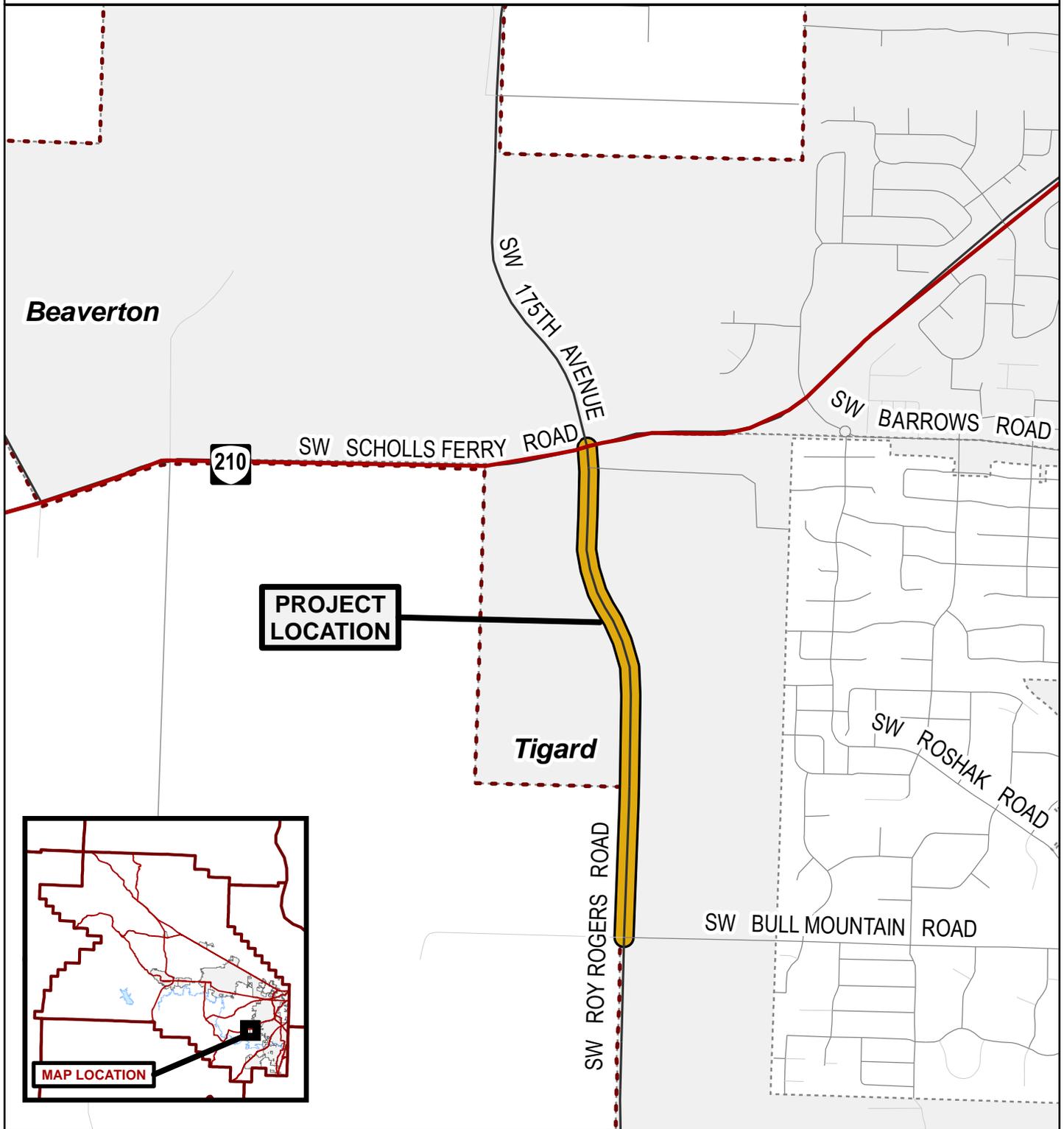
# VICINITY MAP

## SW ROY ROGERS ROAD SCHOLLS FERRY ROAD TO BULL MOUNTAIN ROAD



Map Date: August 10, 2015  
Prepared by: EDF

### PROJECT 100255



## City of Tigard Transportation Funding Strategy for River Terrace<sup>1</sup>

<b>ADOPTED STRATEGY<sup>2</sup></b>	
75% Allocation <sup>3</sup>	
<b>River Terrace (RT) Transportation Costs</b>	<b>\$149,600,000</b>
<b>Outside Funding Strategy:</b>	
Non-RT Costs & Outside Planning Area/Horizon	\$76,920,000
<b>Developer Contributions:</b>	
Non-creditable Public Costs (Collector Streets)	\$17,527,000
Private Costs (Neighborhood Routes)	\$30,000,000
<b>Public Capital Costs</b>	<b>\$25,153,000</b>
<b>Public Funding Sources:</b>	
General Fund Transfers	\$3,000,000
RT Transportation Utility Fee (TUF)	\$1,396,800
RT Transportation System Development Charge (TSDC)	\$1,047,600
Citywide Transportation System Development Charge (TSDC)	\$8,730,000
Citywide Transportation Development Tax (TDT)	\$11,039,958
Grants	\$900,000
<b>Total RT Revenue</b>	<b>\$26,114,358</b>
<b>Net Revenue</b>	<b>\$961,358</b>
<b>Summary of Fees and Charges:</b>	
<b>River Terrace TUF</b>	<b>\$5</b>
<b>River Terrace TSDC</b>	<b>\$450</b>
<b>Citywide TSDC</b>	<b>\$5,000</b>
<b>Citywide TDT</b>	<b>\$6,323</b>

1) Subsequent SDC methodology report resulted in the adoption of different TSDC fees than shown here.

2) Assumed \$28M for River Terrace Blvd and \$8M for Roy Rogers Road, not including intersection improvements.

3) Assumed 75% of Citywide TSDC and TDT collected in River Terrace to stay in River Terrace.