

**GLADSTONE CITY COUNCIL MEETING
CITY HALL COUNCIL CHAMBERS
May 24, 2016 – 5:00 PM**

5:00 – 6:00 p.m. – WORK SESSION: Draft Right of Way (ROW) Ordinance

6:00 – 6:25 p.m. - EXECUTIVE SESSION #1: ORS 192.660 (2) (d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

6:30 p.m.

CALL TO ORDER
ROLL CALL
FLAG SALUTE

AGENDA ADDITIONS OR CORRECTIONS

BUSINESS FROM THE AUDIENCE

Visitors: Presentations not scheduled on the Agenda are limited to three (3) minutes. Longer presentations should be submitted to the Assistant City Administrator two weeks prior to the Tuesday City Council meeting. Cards are available in the back of the room for anyone who wishes to comment.

CONSENT AGENDA

1. Approval of May 10, 2016 Minutes

CORRESPONDENCE - None

REGULAR AGENDA

2. Public Hearing - 2016-17 Budget – (budget attached separately)
 3. Public Hearing – State Revenue Sharing (no attachments)
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RECESS TO URBAN RENEWAL AGENCY MEETING

4. Approval of February 23, 2016 Minutes
 5. Public Hearing – 2016-17 Urban Renewal Agency Budget – (budget attached separately)
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ADJOURN URBAN RENEWAL AGENCY MEETING

RECONVENE TO REGULAR AGENDA:

6. Discussion & Consideration of North Clackamas Chamber of Commerce Membership
7. Consideration of Oregon Department of Transportation (ODOT) Intergovernmental Agreement (IGA) for Transportation System Plan (TSP) Update

BUSINESS CARRIED FORWARD

8. Follow Up Discussion of Potential City Council Rules Violation
9. Council Liason Appointments

ADMINISTRATIVE ACTION (Informational) - None

BUSINESS FROM THE AUDIENCE – This is the second opportunity for the Audience to address Council on any item not on the Agenda.

BUSINESS FROM THE COUNCIL

EXECUTIVE SESSION #2: ORS.192.660 (2)(a) To consider the employment of of a public officer, employee, staff member or individual agent.

ADJOURN

WORK SESSION

City of Gladstone Staff Report

Report Date: May 17, 2016
Meeting Date: May 24, 2016
To: Mayor Mersereau and Gladstone City Council
From: Eric Swanson, City Administrator

AGENDA ITEM

Consider adopting a utility right of way ordinance to improve management of the city's rights of way.

History/Background

Historically, Gladstone has managed its rights of way by granting franchises to each utility using the City's rights of way to provide service—electric, natural gas, telecommunications and cable service providers. A franchise is a legally enforceable agreement between the City and the utility that sets forth the terms of use of the right of way (for example, construction, restoration and permitting) and the franchise fee, which is the compensation paid to the City for this use.

The traditional franchising model has potential limitations, however. For example, franchises often limit the City's ability to update its right of way regulations because the franchise sets the right of way use requirements for the entire term of the agreement with change only by mutually agreed-upon amendments. This leads to a patchwork of right of way regulations that vary from utility to utility depending on when the franchise was negotiated. As another example, some utilities use the franchise negotiation process to try to unreasonably limit City home rule authority, such as by refusing to enter into an agreement unless the City pays some relocation costs—costs that under the common law are to be paid by the utility.

As an alternative to negotiating franchise agreements with each utility, the League of Oregon Cities has recommended, and many cities have adopted, a utility right of way ordinance that would provide uniform requirements for all utilities using City rights of way. This type of ordinance could be especially beneficial in Gladstone, which currently has limited Municipal Code provisions relating to utility use of the rights of way.

Proposal

The draft ordinance, which is based on the League of Oregon Cities' model ordinance for right of way management, is designed to protect City right of way management authority to the extent allowed by state and federal law. At the same time, the ordinance ensures reasonable access to the rights of way under the same terms and conditions for all utilities (once franchise agreements have expired). The ordinance replaces individually-negotiated franchise agreements with a license system that requires utilities to follow the City-established requirements for use of the rights of way. The license requires compliance with the terms of the ordinance, which in turn establishes all the requirements typically found in a franchise, including permit, restoration and relocation requirements, minimum insurance, bonding and indemnification, and payment of a right of way usage fee. The City would have the option to continue to enter into negotiated franchise agreements that vary from the terms of the ordinance, but the expectation would be that all utilities would have licenses rather than franchises once their current franchises expire.

Advantages of a utility-neutral right of way ordinance include:

- Secures the legal obligation of utilities to compensate cities for the privilege of using and benefitting from the rights of way in the city, regardless of whether or not the utility has a franchise or license.
 - If a the City discovers a utility using the rights of way without permission, the ordinance will apply, which allows the City to enforce those requirements (including the right of way usage fee) retroactively on those without a franchise or license.
- Eliminates the costs of staff and attorney time spent on franchise negotiations, which can take many months to complete.
- Allows for additional revenue from utilities not currently paying for use of the right of way, which may include competitive telecommunications carriers and competitive electric service suppliers, among others, who do not own the facilities in the right of way but benefit from use of facilities in the rights of way.
 - The revenue earned by these entities is generally not included in the franchise fee payment from the facility owner; as more services are provided through these competitors rather than the facility owner, franchise fee revenue declines and the city does not receive the compensation for utility use of the rights of way expected through franchise fees.
- Standardizes right of way requirements so that City staff would not have to apply different permitting, construction, restoration and other standards or regulations from individual franchises, but instead would apply the requirements of the ordinance to all users of the right of way (once all franchises have expired).
- Provides flexibility in responding to changes in state or federal law, new technologies or construction standards that warrant revision of the existing requirements.
 - With the right of way ordinance, such changes would be done through Code amendments that would apply immediately to all utilities, whereas with franchises the changes often do not apply unless the franchise is amended or renewed to include the new requirements.
 - This creates more consistency in repairs and restoration of the right of way because all utilities are following the same up-to-date standards rather than a variety of standards set out in each individual franchise.

Disadvantages of a utility-neutral right of way ordinance include:

- The City may be slightly more vulnerable to legal challenges to their authority to implement the regulations than they would be if the regulations were included in a mutually agreed upon franchise, but such challenges are not likely.
 - Other cities in Oregon have already adopted a license approach to right of way management, including Oregon City, Happy Valley, Beaverton, Gresham, Tigard, Sherwood, Sandy, Newberg and Grants Pass. Staff is unaware of any litigation related to their authority to manage the rights of way through licenses rather than franchises.
- Because of the issues unique to cable television, such as public, educational and government (PEG) access requirements and specific customer service obligations, the City will still have to negotiate franchises with cable operators, however, the general right of way use requirements in the ordinance will apply and the franchise can be limited to cable-specific issues.
- Initial development and enactment of the ordinance requires an investment of staff and attorney time, and implementation requires some time and training.
 - The City has entered into an IGA with Oregon City for assistance with implementing the ordinance and, based on the experiences in other cities, expects that implementation costs will be covered by additional revenue resulting from the ordinance.

Options

1. Request staff to finalize the utility right of way ordinance for Council consideration at a future meeting.
2. Maintain the status quo of negotiating franchise agreements with utilities that own facilities in the rights of way. If the Council prefers to maintain this practice, staff and the City Attorney's Office recommend the Council consider Code amendments that would include an express franchise requirement and updated right of way use requirements that apply to the extent they are not inconsistent with the franchises.

Cost Impact

Staff estimates that the cost of initial implementation of the ordinance will be considerably less than a standard franchise negotiation. In addition, staff recommends that the ordinance apply to entities currently benefitting from use of the City's rights of way without compensating the City. This application of the ordinance would result in additional revenue to offset implementation costs as well as ongoing city costs related to utility use of the rights of way.

Recommended Staff Action

Staff recommends the Council consider adopting the utility right of way ordinance, and is seeking direction on several policy options related to the proposed ordinance:

1. Application to Municipal Providers: Currently, the City and other public entities own facilities in City rights of way but do not pay a franchise fee or other compensation for this use. Other public users of the rights of way include Tri-City Service District, Clackamas County Service District No. 1, Oak Lodge Sanitary District, Oak Lodge Water District, Clackamas River Water and Clackamas Broadband Express. Including municipal providers in the scope of "utilities" subject to the ordinance would ensure that all users, whether public or private entities, follow the same standards when working in the rights of way.

A related issue is imposing the right of way use fee on municipal utilities. Many Oregon cities impose franchise fees, or fees in lieu of franchise fees, on their own municipal utilities. Some cities also impose right of way use fees on other public or municipal entities. This practice reflects the fact that municipal entities' use of the rights of way creates costs for the City and that municipalities generally are not exempt from paying rent or other compensation for use of property they do not own. While current law is unsettled with respect to whether the City could impose a tax on another municipality, we do not view the right of way use fee as a tax. Cities have clear authority to impose fees on other municipalities.

2. Scope of Right of Way Use Fee: There are several options to consider regarding which entities will be subject to the right of way use fee. (Application of the fee to municipal providers is discussed above.) One option is to apply the fee only to those entities actually using the rights of way, meaning those that own facilities in the rights of way. This approach would maintain the status quo in terms of revenue from utilities (unless rates change, as discussed below) and does not address any entities that may be providing utility services in the City, but which do not own any facilities.

Another option, which staff recommends, is to extend the right of way use fee to entities that use another utility's facilities to provide services to customers in the City. These entities derive benefits from the rights of way because they use existing facilities in the rights of way to reach their customers. But for the existence of the utility whose facilities they use, these providers would be required to construct facilities in order to reach their customers, so they rely on the rights of way in a similar manner to facility owners. In addition, existing franchise fees do not

include the revenue from customers served by these third party providers, and thus franchise fees will decline as these providers increase. The result will be that the City receives less revenue from franchise fees payments, though the costs and burdens related to the right of way remain flat or increase.

Another option to consider in addition to the right of way use fee is a tax on all utilities providing services in the City by means of the rights of way (with a deduction for any franchise fees or right of way usage fees paid). This tax would not be for use of the rights of way; it is on the provision of services to customers in the City. This option has several benefits. The primary benefit relates to telecommunications providers. State law caps the fee that can be imposed on incumbent phone companies (CenturyLink in Gladstone) for use of the rights of way at 7% of gross revenue from exchange access services, which is essentially the dial tone charge and thus a limited portion of their revenue. This law does not apply to other telecommunications providers known as competitive providers. Many cities charge competitive providers 5% of all revenue, which generally is more than 7% of the limited exchanged access services revenue paid by incumbent providers.

Rather than charge the competitive providers a lower amount—effectively extending the preemption that applies to incumbents to competitive providers—the City can ensure that incumbent and competitive providers pay comparable rates by imposing a tax on the provision of utility services (i.e., not for the use of the rights of way). The state law cap described above does not apply to a service-based tax that is not for use of the rights of way, and thus if imposed this type of tax will cover the non-exchange access revenue the City cannot include in a fee for use of the rights of way.

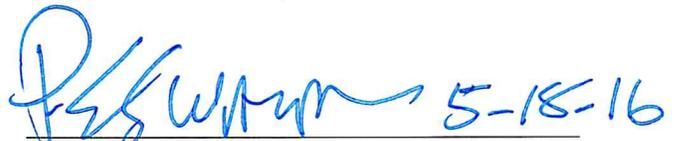
There is ongoing litigation regarding this type of tax imposed by Portland and Springfield. The cities have prevailed in both challenges to date, but CenturyLink has sought review by the Oregon Supreme Court. There is long-standing precedent holding that cities can impose this type of tax on the incumbent provider, however in that case the city included wireless carriers as well. The primary focus of the current litigation is the effort to impose the tax only on wireline, not wireless, carriers. If the Supreme Court agrees to review CenturyLink’s case, it will likely be at least two years before the issue is resolved.

3. Right of Way Use Fee Rates: The City currently has franchise fee rates that are lower than those of many other Oregon cities. For example, the City charges Northwest Natural a 3.0% franchise fee and PGE a 3.5% franchise fee. Many cities impose a 5% fee on these entities. (In addition, a very recent Oregon Supreme Court opinion makes clear that cities have home rule authority to impose fees of more than 5% on these utilities.) The right of way use fee will apply to franchisees, but they may deduct from their right of way use fee payment any franchise fees paid. This would allow the City to increase the rates paid by Northwest Natural and PGE should the City decide to do so. (Note that by operation of a state Administrative Rule, these companies will pass through to Gladstone customers any fees that exceed the existing 3% or 3.5% respectively.)

Another option is to set the right of way use fee rate at the same rate as existing franchises. This would result in no additional revenue to the City from existing franchisees. If the City pursues this option, staff recommends consideration of including a 5% right of way use fee rate that would apply to competitive telecommunications providers not subject to the state law cap discussed above.

Department Head
Signature

Date



City Administrator
Signature

Date

Note to City Council: Please note the actual Ordinance will appear at the June 1st meeting.

EXHIBIT A

Chapter 12.24 UTILITY FACILITIES IN PUBLIC RIGHTS-OF-WAY

12.245.010. Title.

The ordinance codified in this Chapter shall be known and may be referenced as the utility facilities in public rights-of-way ordinance.

12.24.020. Purpose and Intent.

The purpose and intent of this Chapter is to:

- A. Permit and manage reasonable access to the rights-of-way of the city for utility purposes and conserve the limited physical capacity of those rights-of-way held in trust by the city consistent with applicable state and federal law;
- B. Assure that the city's current and ongoing costs of granting and regulating access to and the use of the rights-of-way are fully compensated by the persons seeking such access and causing such costs;
- C. Secure fair and reasonable compensation to the city and its residents for permitting use of the rights-of-way by utilities;
- D. Assure that all utility companies, persons and other entities owning or operating facilities and/or providing services within the city comply with the ordinances, rules and regulations of the city;
- E. Assure that the city can continue to fairly and responsibly protect the public health, safety and welfare of its citizens; and
- F. Comply with applicable provisions of state and federal law.

12.24.030. Jurisdiction and Management of the Public Rights-of-way.

- A. The city has jurisdiction and exercises regulatory management over all rights-of-way within the city under authority of the city charter and state law.
- B. The city has jurisdiction and exercises regulatory management over each right-of-way whether the city has a fee, easement, or other legal interest in the right-of-way, and whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
- C. The exercise of jurisdiction and regulatory management of a right-of-way by the city is not official acceptance of the right-of-way, and does not obligate the city to maintain or repair any part of the right-of-way.
- D. The provisions of this Chapter are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and, to the extent possible, shall be interpreted to be consistent with such laws, rules and regulations.

12.24.040. Regulatory Fees and Compensation Not a Tax.

- A. The fees and costs provided for in this Chapter, and any compensation charged and paid for use of the rights-of-way provided for in this Chapter, are separate from, and in addition to, any and all other federal, state, local, and city charges as may be levied, imposed, or due from a utility operator, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.

B. The city has determined that any fee or tax provided for by this Chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or property owners.

C. The fees and costs provided for in this Chapter are subject to applicable federal and state laws.

12.24.050. Definitions.

For the purpose of this Chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive.

“Cable service” is to be defined consistent with federal laws and means the one-way transmission to subscribers of: (i) video programming, or (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

“City” means the city of Gladstone, an Oregon municipal corporation, and individuals authorized to act on the city’s behalf.

“City council” means the elected governing body of the city of Gladstone, Oregon.

“City facilities” means city or publicly-owned structures or equipment located within the right-of-way or public easement used for governmental purposes.

“Communications services” means any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. Communications service includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public rights-of-way; (4) public communications systems; (5) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (6) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

“License” means the authorization granted by the city to a utility operator pursuant to this Chapter.

“Person” means and includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint-stock company, trust, limited liability company, association, municipality, special district, government entity or other organization, including any natural person or any other legal entity.

“Private communications system” means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for sale or resale, including trade, barter or other exchange of value, directly or indirectly, to any person.

“Public communications system” means any system owned or operated by a government entity or entities for its exclusive use for internal communications or communications with other government entities, and includes services provided by the state of Oregon pursuant to ORS 283.140. “Public communications system” does not include any system used for sale or resale,

including trade, barter or other exchange of value, of communications services or capacity on the system, directly or indirectly, to any person.

“Public utility easement” means the space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utilities facilities. “Public utility easement” does not include an easement (i) that has been privately acquired by a utility operator, (ii) solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of city facilities, or (iii) where the proposed use by the utility operator is inconsistent with the terms of any easement granted to the city.

“Public Works Director” means the Public Works Director for the City of Gladstone or any designee.

“Right-of-way” means and includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other city property not generally open to the public for travel. This definition applies only to the extent of the city’s right, title, interest and authority to grant a license to occupy and use such areas for utility facilities.

“State” means the state of Oregon.

“Utility facility” or “facility” means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the rights-of-way, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

“Utility operator” or “operator” means any person who owns, places, operates or maintains a utility facility within the city.

“Utility service” means the provision, by means of utility facilities permanently located within, under or above the rights-of-way, whether or not such facilities are owned by the service provider, of electricity, natural gas, communications services, cable services, water, sewer, and/or storm sewer to or from customers within the corporate boundaries of the city, and/or the transmission or provision of any of these services through the city whether or not customers within the city are served.

“Work” means the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation.

12.24.060. Registration.

A. Registration Required. Every person that desires to provide utility services to customers within the city shall register with the city prior to providing any utility services to any customer in the city. Every person providing utility services to customers within the city as of the effective date of this Chapter shall register within sixty (60) days of the effective date of this Chapter.

B. Annual Registration. After registering with the city pursuant to subsection A of this section, the registrant shall, by December 31st of each year, file with the city a new registration form if it intends to provide utility service at any time in the following calendar year. Registrants that file an initial registration pursuant to subsection A of this section on or after September 30th shall not be required to file an annual registration until December 31st of the following year.

C. Registration Application. The registration shall be on a form provided by the city, and shall be accompanied by any additional documents required by the city to identify the registrant and its legal status, describe the type of utility services provided or to be provided by the registrant and a description of the facilities over which the utility services will be provided.

D. Registration Fee. Each application for registration shall be accompanied by a nonrefundable registration fee in an amount to be determined by resolution of the city council in an amount sufficient to fully recover all of the city's costs of administering the registration program.

E. Exception. A person with a valid franchise agreement or license from the city shall not be required to register to provide the utility services expressly permitted by the franchise agreement or license.

12.24.070. Licenses.

A. License Required.

1. Except those utility operators with a valid franchise agreement from the city, every person shall obtain a license from the city prior to conducting any work in the rights-of-way.
2. Every person that owns or controls utility facilities in the rights-of-way as of the effective date of this Chapter shall apply for a license from the city within sixty (60) days of the later of: (1) the effective date of this Chapter, or (2) the expiration of a valid franchise granted by the city, unless a new franchise is granted by the city pursuant to subsection E of this section.
3. The provisions of this section 12.24.070, do not apply to any person subject to and in compliance with the cable television franchise requirement of Chapter 5.16, except that subsection J shall apply to the extent such person provides multiple services.

B. License Application. The license application shall be on a form provided by the city, and shall be accompanied by any additional documents required by the application to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, a description of the facilities over which the utility service will be provided, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this Chapter.

C. License Application Fee. The application shall be accompanied by a nonrefundable application fee or deposit set by resolution of the city council in an amount sufficient to fully recover all of the city's costs related to processing the application for the license.

D. Determination by city. The city shall issue, within a reasonable period of time, a written determination granting or denying the license in whole or in part. If the license is denied, the written determination shall include the reasons for denial. The license shall be evaluated based upon the provisions of this Chapter, the continuing capacity of the rights-of-way to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.

E. Franchise Agreements. If the public interest warrants, as determined by the city, the city and utility operator may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this Chapter, consistent with applicable state and federal law. The franchise may conflict with the terms of this Chapter with the review and approval of city council. The franchisee shall be subject to the provisions of this Chapter to the extent such provisions are not in conflict with the express provisions of any such franchise.

F. Rights Granted.

1. The license granted hereunder shall authorize and permit the licensee, subject to the provisions of the city code and other applicable provisions of state or federal law, to construct, place, maintain, upgrade, repair and operate utility facilities in the rights-of-way for the term of the license.
2. Any license granted pursuant to this Chapter shall not convey equitable or legal title in the rights-of-way, and may not be assigned or transferred except as permitted in subsection K of this section.
3. Neither the issuance of the license nor any provisions contained therein shall constitute a waiver or bar to the exercise of any governmental right or power, police power or regulatory power of the city as may exist at the time the license is issued or thereafter obtained.

G. Term. Subject to the termination provisions in subsection M of this section, the license granted pursuant to this Chapter will remain in effect for a term of five (5) years.

H. License Nonexclusive. No license granted pursuant to this section shall confer any exclusive right, privilege, license or franchise to occupy or use the rights-of-way for delivery of utility services or any other purpose. The city expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the city's right to use the rights-of-way, for similar or different purposes. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the rights-of-way. Nothing in the license shall be deemed to grant, convey, create, or vest in licensee a real property interest in land, including any fee, leasehold interest or easement.

I. Reservation of City Rights. Nothing in the license shall be construed to prevent the city from grading, paving, repairing and/or altering any rights-of-way, constructing, laying down, repairing, relocating or removing city facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any city facilities. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any rights-of-way, public work, city utility, city improvement or city facility, except those providing utility services in competition with a licensee, licensee's facilities shall be removed or relocated as provided in subsections C, D and E of Section 12.24.090, in a manner acceptable to the city and consistent with industry standard engineering and safety codes.

J. Multiple Services.

1. A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the license and right-of-way use fee requirements of this Chapter for the portion of the facilities and extent of utility services delivered over those facilities. Nothing in this subsection J(1) requires a utility operator to pay the right-of-way use fee, if any, owed to the city by another person using the utility operator's facilities.
2. A utility operator that provides or transmits more than one utility service over its facilities is not required to obtain a separate license or franchise for each utility service, provided that it gives notice to the city of each utility service provided or transmitted and pays the applicable right-of-way use fee for each utility service.

K. Transfer or Assignment. To the extent permitted by applicable state and federal laws, the licensee shall obtain the written consent of the city prior to the transfer or assignment of the license. The license shall not be transferred or assigned unless the proposed transferee or assignee is authorized under all applicable laws to own or operate the utility system and the transfer or assignment is approved by all agencies or organizations required or authorized under

federal and state laws to approve such transfer or assignment. If a license is transferred or assigned, the transferee or assignee shall become responsible for fulfilling all of the obligations under the license with respect to all facilities of the licensee at the time of transfer or assignment. A transfer or assignment of a license does not extend the term of the license.

L. Renewal. At least ninety (90), but no more than one hundred eighty (180), days prior to the expiration of a license granted pursuant to this section, a licensee seeking renewal of its license shall submit a license application to the city, including all information required in subsection B of this section and the application fee required in subsection C of this section. The city shall review the application as required by subsection D of this section and grant or deny the license within ninety (90) days of submission of the application. If the city determines that the licensee is in violation of the terms of this Chapter at the time it submits its application, the city may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the city, before the city will consider the application and/or grant the license. If the city requires the licensee to cure or submit a plan to cure a violation, the city will grant or deny the license application within ninety (90) days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

M. Termination.

1. Revocation or Termination of a License. The city council may terminate or revoke the license granted pursuant to this Chapter for any of the following reasons:
 - a. Violation of any of the provisions of this Chapter;
 - b. Violation of any provision of the license;
 - c. Misrepresentation in a license application;
 - d. Failure to pay taxes, compensation, fees or costs due the city after final determination of the taxes, compensation, fees or costs;
 - e. Failure to restore the rights-of-way after construction as required by this Chapter or other applicable state and local laws, ordinances, rules and regulations;
 - f. Failure to comply with technical, safety and engineering standards related to work in the rights-of-way; or
 - g. Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance and/or operation of the utility facilities.
2. Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:
 - a. The egregiousness of the misconduct;
 - b. The harm that resulted;
 - c. Whether the violation was intentional;
 - d. The utility operator's history of compliance; and/or
 - e. The utility operator's cooperation in discovering, admitting and/or curing the violation.
3. Notice and Cure. The city shall give the utility operator written notice of any apparent violations before terminating a license. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than twenty (20) and no more than forty (40) days) for the utility operator to demonstrate that the utility operator has remained in compliance, that the utility operator has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination

or revocation. If the utility operator is in the process of curing a violation or noncompliance, the utility operator must demonstrate that it acted promptly and continues to actively work on compliance. If the utility operator does not respond or if the city manager or designee determines that the utility operator's response is inadequate, the city manager or designee shall refer the matter to the city council, which shall provide a duly noticed public hearing to determine whether the license shall be terminated or revoked.

12.24.080. Construction and Restoration.

A. Construction Codes. Utility facilities shall be constructed, installed, operated, repaired and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including but not limited to the National Electrical Code and the National Electrical Safety Code and the Gladstone Design and Construction Standards. When a utility operator, or any person acting on its behalf, does any work in or affecting the rights-of-way, the utility operator shall, at its own expense, promptly restore the rights-of-way as directed by the city consistent with applicable city codes, rules and regulations. A utility operator or other person acting on its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting the rights of way or property.

B. Construction Permits.

1. No person shall perform any work on utility facilities within the rights-of-way without first obtaining all required permits. The city shall not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the utility operator of the facilities has applied for and received the license required by this Chapter, or has a current franchise with the city, and all applicable fees have been paid. No permit is required for service drops to customer premises or routine maintenance or repairs where such drops, repairs or maintenance do not require cutting, digging, or breaking of, or damage to, the right of way and do not result in closing or blocking any portion of the travel lane for vehicular traffic, bicycle lanes or sidewalks.
2. In the event of an emergency, a utility operator with a license pursuant to this Chapter or its contractor may perform work on its utility facilities without first obtaining a permit from the city, provided that, to the extent reasonably feasible, it attempts to notify the city prior to commencing the emergency work and in any event applies for a permit from the city as soon as reasonably practicable, but not more than forty eight (48) hours after commencing the emergency work. As used in this subsection, "emergency" means a circumstance in which immediate work on facilities is necessary to restore lost service or prevent immediate harm to persons or property.
3. Applications for permits to construct utility facilities shall be submitted upon forms to be provided by the city and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:
 - a. That the facilities will be constructed in accordance with all applicable codes, rules and regulations, including the Gladstone Design and Construction Standards.
 - b. The location and route of all utility facilities to be installed aboveground or on existing utility poles.
 - c. The location and route of all utility facilities on or in the rights-of-way to be located under the surface of the ground, including the line and grade proposed for the burial

at all points along the route that are within the rights-of-way. Applicant's existing utility facilities shall be differentiated on the plans from new construction. The public works director may require additional information necessary to demonstrate that the proposed location can accommodate the utility facilities.

- d. The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the rights-of-way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.
 - e. The permittee has an adequate traffic control plan.
4. All permit applications shall be accompanied by the verification of a qualified and duly authorized representative of the applicant that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations. The city engineer or designee may, in his or her sole discretion, require the verification of a registered professional engineer.
 5. All permit applications shall be accompanied by a written construction schedule, which shall include an estimated start date and a deadline for completion of construction. The construction schedule is subject to approval by public works director.
 6. Prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount to be determined by resolution of the city council.
 7. If satisfied that the applications, plans and documents submitted comply with all requirements of this Chapter, the public works director shall issue a permit authorizing construction of the utility facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as they may deem necessary or appropriate.
 8. Except in the case of an emergency, the permittee shall notify the public works director not less than two (2) working days in advance of any excavation or construction in the rights-of-way.
 9. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the utility facilities. The public works director and designated representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.
 10. All work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this Chapter, shall be removed or corrected at the sole expense of the permittee. The city is authorized to stop work in order to assure compliance with the provision of this Chapter. If the permittee fails to remove or correct work as required in this subsection, the city may remove or correct the work at the expense of the permittee, after notice and opportunity to cure, using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations.
 11. The permittee shall promptly complete all construction activities so as to minimize disruption of the city rights-of-way and other public and private property. All construction work within the rights-of-way, including restoration, must be completed within sixty (60) days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved by the public works director.

C. Performance Surety.

1. The city may require a performance bond or other form of surety acceptable to the city equal to at least one hundred and twenty-five percent (125%) of the estimated cost of the work within the rights-of-way of the city, which bond shall be provided before construction is commenced.
2. If required, the performance bond or other form of surety acceptable to the city shall remain in force until sixty (60) days after substantial completion of the work, as determined in writing by the city, including restoration of rights-of-way and other property affected by the construction.
3. If required, the performance bond or other form of surety acceptable to the city shall guarantee, to the satisfaction of the city:
 - a. Timely completion of the work;
 - b. That the work is performed in compliance with applicable plans, permits, technical codes and standards;
 - c. Proper location of the facilities as specified by the city;
 - d. Restoration of the rights-of-way and other property affected by the work; and
 - e. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.
4. The release of the performance bond or other surety pursuant to subsection C(1) of this section does not relieve the utility operator from its obligation to restore rights-of-way or other property as required in subsection E of this section regardless of when the failure to restore rights-of-way or other property as required by this chapter occurs or is discovered.

D. Injury to Persons or Property. A utility operator, or any person acting on its behalf, shall preserve and protect from injury or damage other utility operators' facilities in the rights-of-way, the public using the rights-of-way and any adjoining property, and take other necessary measures to protect life and property, including but not limited to buildings, walls, fences, trees or facilities that may be subject to damage from the permitted work. A utility operator shall be responsible for all injury to persons or damage to public or private property resulting from its failure to properly protect people and property and to carry out the work.

E. Restoration.

1. When a utility operator, or any person acting on its behalf, does any work in or affecting any rights-of-way, it shall, at its own expense, promptly restore such rights-of-way to the same or better condition as existed before the work was undertaken, in accordance with applicable federal, state and local laws, codes, ordinances, rules and regulations, unless otherwise directed by the city and as determined by the public works director.
2. If weather or other conditions beyond the utility operator's control do not permit the complete restoration required by the city, the utility operator shall temporarily restore the affected rights-of-way. Such temporary restoration shall be at the utility operator's sole expense and the utility operator shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the city.
3. If the utility operator fails to restore rights-of-way as required in this Chapter, the city shall give the utility operator written notice and provide the utility operator a reasonable period of time not less than ten (10) days, unless an emergency or threat to public safety is deemed to exist, and not exceeding thirty (30) days, or such additional time agreed to in writing by the city, to restore the rights-of-way. If, after said notice, the utility

operator fails to restore the rights-of-way as required in this Chapter, the city shall cause such restoration to be made at the expense of the utility operator.

F. Inspection. Every utility operator's facilities shall be subject to the right of periodic inspection by the city to determine compliance with the provisions of this Chapter and all other applicable state and city codes, ordinances, rules and regulations. Every utility operator shall cooperate with the city in permitting the inspection of utility facilities upon request of the city. The utility operator shall perform all testing, or permit the city to perform any testing at the utility operator's expense, required by the city to determine that the installation of the utility operator's facilities and the restoration of the right-of-way comply with the terms of this Chapter and applicable state and city codes, ordinances, rules and regulations.

G. Coordination of Construction. All utility operators are required to make a good faith effort to both cooperate with and coordinate their construction schedules with those of the city and other users of the rights-of-way.

1. Prior to January 1st of each year, utility operators shall provide the city with, a schedule of known proposed construction activities for that year in, around or that may affect the rights-of-way.
2. Utility operators shall meet with the city annually, or as determined by the city, to schedule and coordinate construction in the rights-of-way.
3. All construction locations, activities and schedules within the rights-of-way shall be coordinated as ordered by the public works director, to minimize public inconvenience, disruption, or damages.

H. Contractors. A utility operator may authorize a qualified contractor to perform any of the work authorized or required in this Chapter on the utility operator's behalf. Any contractor performing work on behalf of a utility operator shall be subject to applicable provisions of this Chapter. In the event a utility operator authorizes a contractor to perform work on its behalf, the utility operator shall remain responsible and liable for compliance with the provisions of this subchapter.

12.24.090. Location of Facilities.

A. Location of Facilities. Unless otherwise agreed to in writing by the city:

1. Utility facilities shall be installed underground in all areas of the city where there are no existing poles in the right-of-way, there is no space on existing poles in the right-of-way, or where the only poles in the right-of-way are used only for high voltage lines (as defined below). This requirement shall not apply to pedestals, cabinets or other above-ground equipment of any utility operator. The city reserves the right to require written approval of the location of any such above-ground equipment in the right of way.
2. Whenever any existing electric utilities, cable facilities or communications facilities are located underground within a right-of-way of the city, the utility operator with permission to occupy the same right-of-way shall install all new facilities underground at no cost to the city. This requirement shall not apply to facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts ("high voltage lines") or to pedestals, cabinets or other above-ground equipment of any utility operator. The city reserves the right to require written approval of the location of any such above-ground equipment in the right-of-way.

B. Interference with the Rights-of-Way. No utility operator or other person may locate or maintain its facilities so as to unreasonably interfere with the use of the rights-of-way by the city,

by the general public or by other persons authorized to use or be present in or upon the rights-of-way. All use of the rights-of-way shall be consistent with city codes, ordinances, rules and regulations.

C. Relocation of Utility Facilities.

1. A utility operator shall, at no cost to the city, temporarily or permanently remove, relocate, change or alter the position of any utility facility within a right-of-way, including relocation of aerial facilities underground, when requested to do so in writing by the city.
2. Nothing herein shall be deemed to preclude the utility operator from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements, provided that the utility operator shall timely comply with the requirements of this section regardless of whether or not it has requested or received such reimbursement or compensation.
3. The city shall provide written notice of the time by which the utility operator must remove, relocate, change, alter or underground its facilities. If a utility operator fails to remove, relocate, alter or underground any utility facility as requested by the city and by the date reasonably established by the city, the utility operator shall pay all costs incurred by the city due to such failure, including but not limited to costs related to project delays, and the city may cause, using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, the utility facility to be removed, relocated, altered or undergrounded at the utility operator's sole expense. Upon receipt of a detailed invoice from the city, the utility operator shall reimburse the city for the costs the city incurred within thirty (30) days.

D. Removal of Unauthorized Facilities.

1. Unless otherwise agreed to in writing by the public works director, within thirty (30) days following written notice from the city or such other time agreed to in writing by the city, a utility operator and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within the rights-of-way shall, at its own expense, remove the facility and restore the rights-of-way.
2. A utility system or facility is unauthorized under any of the following circumstances:
 - a. The utility facility is outside the scope of authority granted by the city under the license, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised but for which the license or franchise has expired or been terminated. This does not include any facility for which the city has provided written authorization for abandonment in place.
 - b. The facility has been abandoned and the city has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of twelve (12) consecutive months. A utility operator may overcome this presumption by presenting plans for future use of the facility.
 - c. The utility facility is improperly constructed or installed or is in a location not permitted by the construction permit, license, franchise or this Chapter.
 - d. The utility operator is in violation of a material provision of this Chapter and fails to cure such violation within thirty (30) days of the city sending written notice of such violation, unless the city extends such time period in writing.

E. Removal by City.

1. The city retains the right and privilege to cut or move the facilities of any utility operator or similar entity located within the rights-of-way of the city, without notice, as the city may determine to be necessary, appropriate or useful in response to a public health or safety emergency. The city will use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practicable without impeding the city's response to the emergency. The city will use best efforts to provide the utility operator with notice prior to cutting or moving facilities. If prior notice is not possible, the city will provide such notice as soon as reasonably practicable after taking such action.
2. If the utility operator fails to remove any facility when required to do so under this Chapter, the city may remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, and the utility operator shall be responsible for paying the full cost of the removal and any administrative costs incurred by the city in removing the facility and obtaining reimbursement. Upon receipt of a detailed invoice from the city, the utility operator shall reimburse the city for the costs the city incurred within thirty (30) days. The obligation to remove shall survive the termination of the license or franchise.
3. The city shall not be liable to any utility operator for any damage to utility facilities, or for any consequential losses resulting directly or indirectly therefrom, by the city or its contractor in removing, relocating or altering the facilities pursuant to subsections B, C or D of this section or undergrounding its facilities as required by subsection A of this section, or resulting from the utility operator's failure to remove, relocate, alter or underground its facilities as required by those subsections, unless such damage arises directly from the city's negligence or willful misconduct.

F. Engineering Record Drawings. The utility operator shall provide the city with two complete sets of record drawings in a form acceptable to the city upon completion of construction. The utility operator shall provide updated complete sets of as built plans upon request of the city, but not more than once per year.

12.24.100. Leased Capacity.

A utility operator may lease capacity on or in its systems to others, provided that, upon request, the utility operator provides the city with the name and business address of any lessee. A utility operator is not required to provide such information if disclosure is expressly prohibited by applicable law or a valid agreement between the utility operator and the lessee.

12.24.110. Maintenance.

A. Every utility operator shall install and maintain all facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The utility operator shall, at its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.

B. If, after written notice from the city of the need for repair or maintenance as required in subsection A of this section, a utility operator fails to repair and maintain facilities as requested by the city and by the date reasonably established by the city, the city may perform such repair or maintenance using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations at the utility operator's sole expense. Upon receipt of a detailed

invoice from the city, the utility operator shall reimburse the city for the costs the city incurred within thirty (30) days.

12.24.120. Vacation.

If the city vacates any right-of-way, or portion thereof, that a utility operator uses, the utility operator shall, at its own expense, remove its facilities from the right-of-way unless the city reserves a public utility easement, which the city shall make a reasonable effort to do provided that there is no expense to the city, or the utility operator obtains an easement for its facilities. If the utility operator fails to remove its facilities within thirty (30) days after a right-of-way is vacated, or as otherwise directed or agreed to in writing by the city, the city may remove the facilities using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations at the utility operator's sole expense. Upon receipt of an invoice from the city, the utility operator shall reimburse the city for the costs the city incurred within thirty (30) days.

12.24.130. Right-of-Way Use Fee.

A. Except as set forth in subsection B of this section, every person that owns utility facilities in the city and every person that uses utility facilities in the city to provide utility service, whether or not the person owns the utility facilities used to provide the utility services, shall pay the right-of-way use fee for every utility service provided using the rights-of-way in the amount determined by resolution of the city council.

B. A utility operator whose only facilities in the right-of-way are facilities mounted on above-ground structures within the right-of-way, which structures are owned by another person, and with no facilities strung between such structures or otherwise within, under or above the right-of-way, shall pay the attachment fee set by city council resolution for each attachment, or such other fee set forth in the license granted by the city. Unless otherwise agreed to in writing by the city, the fee shall be paid annually, in arrears, within forty-five (45) days after the end of each calendar year, and shall be accompanied by information sufficient to illustrate the calculation of the amount payable. The utility shall pay interest at the rate of nine percent (9%) per year for any payment made after the due date.

C. Right-of-way use fee payments required by this section shall be reduced by any franchise fee payments received by the city, but in no case will be less than zero dollars (\$0).

D. Unless otherwise agreed to in writing by the city, the right-of-way use fee set forth in subsection A of this section shall be paid quarterly, in arrears, for each quarter during the term of the license within forty-five (45) days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable. The utility shall pay interest at the rate of nine percent (9%) per year for any payment made after the due date.

E. The calculation of the right-of-way use fee required by this section shall be subject to all applicable limitations imposed by federal or state law.

F. The city reserves the right to enact other fees and taxes applicable to the utility operators subject to this Chapter. Unless expressly permitted by the city in enacting such fee or tax, or required by applicable state or federal law, no utility operator may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the right-of-way use fee or any other fees required by this Chapter.

12.24.140. Audits.

A. Within thirty (30) days of a written request from the city, or as otherwise agreed to in writing by the city:

1. Every provider of utility service shall furnish the city with information sufficient to demonstrate that the provider is in compliance with all the requirements of this Chapter and its franchise agreement, if any, including but not limited to payment of any applicable registration fee, right-of-way use fee, attachment fee or franchise fee.
2. Every utility operator shall make available for inspection by the city at reasonable times and intervals all maps, records, books, diagrams, plans and other documents, maintained by the utility operator with respect to its facilities within the rights-of-way. Access shall be provided within the city unless prior arrangement for access elsewhere has been made with the city.

B. If the city's audit of the books, records and other documents or information of the utility operator or utility service provider demonstrate that the utility operator or provider has underpaid the right-of-way use fee, attachment fee or franchise fee by three percent (3%) or more in any one (1) year, the utility operator shall reimburse the city for the cost of the audit, in addition to any interest owed pursuant to subsection B or subsection D of Section 12.24.130 or as specified in a franchise.

C. Any underpayment, including any interest or audit cost reimbursement, shall be paid within thirty (30) days of the city's notice to the utility service provider of such underpayment.

12.24.150. Insurance and Indemnification.

A. Insurance.

1. All utility operators shall maintain in full force and effect the following liability insurance policies that protect the utility operator and the city, as well as the city's officers, agents, and employees:
 - a. Comprehensive general liability insurance with limits not less than:
 - i. Three million dollars (\$3,000,000.00) for bodily injury or death to each person;
 - ii. Three million dollars (\$3,000,000.00) for property damage resulting from any one accident; and
 - iii. Three million dollars (\$3,000,000.00) for all other types of liability.
 - b. Commercial Automobile liability insurance for owned, non-owned and hired vehicles with a limit of one million dollars (\$1,000,000.00) for each person and three million dollars (\$3,000,000.00) for each accident.
 - c. Worker's compensation within statutory limits and employer's liability with limits of not less than one million dollars (\$1,000,000.00).
 - d. If not otherwise included in the policies required by subsection a. above, maintain comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars (\$3,000,000.00).
 - e. Utility operator may utilize primary and umbrella liability insurance policies to satisfy the preceding insurance policy limit requirements.
2. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the state of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name, or the certificate of insurance shall name, with the exception of worker's compensation, as additional insureds the city

and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the city. If the insurance is canceled or materially altered, the utility operator shall obtain a replacement policy that complies with the terms of this section and provide the city with a replacement certificate of insurance. The utility operator shall maintain continuous uninterrupted coverage, in the terms and amounts required. The utility operator may self insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.

3. The utility operator shall maintain on file with the city a certificate of insurance, or proof of self-insurance acceptable to the city, certifying the coverage required above.

B. Financial Assurance. Unless otherwise agreed to in writing by the city, before a franchise granted or license issued pursuant to this Chapter is effective, and as necessary thereafter, the utility operator shall provide a performance bond or other financial security or assurance, in a form acceptable to the city, as security for the full and complete performance of the franchise or license, if applicable, and compliance with the terms of this Chapter, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the city. This obligation is in addition to the performance surety required by subsection C of Section 12.24.080.

C. Indemnification.

1. Each utility operator shall defend, indemnify and hold the city and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility operator or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Chapter or by a franchise agreement. The acceptance of a license under Section 12.24.070 of this Chapter, or of a franchise granted by the city, shall constitute such an agreement by the applicant whether the same is expressed or not, unless expressly stated otherwise in the license or franchise. Upon notification of any such claim the city shall notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.
2. Every utility operator shall also indemnify the city for any damages, claims, additional costs or expenses assessed against or payable by the city arising out of or resulting, directly or indirectly, from the utility operator's failure to remove or relocate any of its facilities in the rights-of-way in a timely manner, unless the utility operator's failure arises directly from the city's negligence or willful misconduct.

12.24.160. Compliance.

Every utility operator shall comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable

ordinances, resolutions, rules and regulations of the city, heretofore or hereafter adopted or established during the entire term of any license granted under this Chapter.

12.24.170. Confidential/Proprietary Information.

If any person is required by this Chapter to provide books, records, maps or information to the city that the person reasonably believes to be confidential or proprietary, and such books, records, maps or information are clearly marked as confidential at the time of disclosure to the city (“confidential information”), the city shall take reasonable steps to protect the confidential information to the extent permitted by Oregon Public Records Laws. In the event the city receives a public records request to inspect any confidential information and the city determines that it will be necessary to reveal the confidential information, to the extent reasonably possible the city will notify the person that submitted the confidential information of the records request prior to releasing the confidential information. The city shall not be required to incur any costs to protect any confidential information, other than the city’s routine internal procedures for complying with the Oregon Public Records Law.

12.24.180. Penalties.

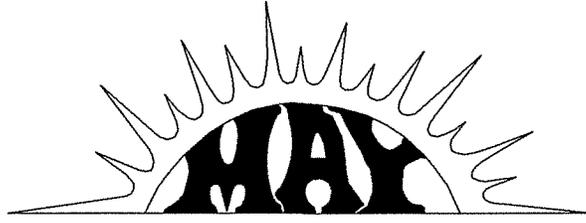
- A. Violation of the requirements of this Chapter constitutes a Class A Infraction. Each day a violation continues shall constitute a separate offense.
- B. Nothing in this Chapter shall be construed as limiting any judicial or other remedies the city may have at law or in equity, for enforcement of this Chapter.

12.24.190. Severability and Preemption.

- A. The provisions of this Chapter shall be interpreted to be consistent with applicable federal and state law, and shall be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.
- B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition or portion of this Chapter is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Chapter shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, clause, phrase, term, provision, condition, covenant and portion of this Chapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the city.

12.24.200. Application to Existing Agreements.

To the extent that this Chapter is not in conflict with and can be implemented consistent with existing franchise agreements, this Chapter shall apply to all existing franchise agreements granted to utility operators by the city.



CONSENT AGENDA

GLADSTONE CITY COUNCIL MEETING MINUTES of May 10, 2016

Meeting was called to order at 6:30 PM.

ROLL CALL:

Councilor Sieckmann, Councilor Neace, Mayor Mersereau, Councilor S. Johnson, Councilor K. Johnson, Councilor McMahon, Councilor Reisner.

ABSENT:

None.

STAFF:

Eric Swanson, City Administrator; Jolene Morishita Assistant City Administrator; David Doughman, City Attorney.

AGENDA ADDITIONS OR CORRECTIONS:

Mr. Doughman said there will be an additional executive session following executive session #3 to consider an exempt public record, specifically a confidential memo from the City Attorney's office. Mr. Swanson removed item #5 – it will be discussed at a future meeting. He introduced the newest police officer, Marina Orta. Interim Police Chief Jolley gave some background information on Officer Orta. She was sworn in by Judge Belooof.

Councilor Reisner asked that agenda item #4 and Executive Session #3 be pulled from the agenda to give the Council time to discuss in open session the process staff uses in hiring new employees. The rest of the Council disagreed.

BUSINESS FROM THE AUDIENCE:

Mr. Ben Waverly has been dealing with the City regarding a water main that flooded and damaged his property – he wants more communication. Councilor S. Johnson said that the City Attorney has advised them that since this is a legal matter that any communication should go through him. There was further discussion between Mr. Doughman and Mr. Waverly.

CONSENT AGENDA:

1. Approval of April 26, 2016 Minutes
2. Approval of Monthly Financial Reports

Councilor Sieckmann made a motion to approve the Consent Agenda. Motion was seconded by Councilor S. Johnson. Motion passed unanimously.

CORRESPONDENCE:

3. Letter from Auditors, Merina & Company – Responsibilities.

REGULAR AGENDA:

4. Appointment of Police Chief:

Mr. Swanson went over the staff report regarding appointing Interim Police Chief Jolley as the permanent Chief.

Councilor Sieckmann made a motion to appoint Interim Police Chief Jeff Jolley as permanent Police Chief and authorize the City Administrator to negotiate an offer within the salary range 51 and benefits accordingly with the budget. Motion was seconded by Councilor McMahon.

Discussion: Councilor Neace said she met with Interim Chief Jolley today and she feels he will take the Police Department in the direction it needs to go and he will be accountable. Councilor Reisner said he is not supportive of the process – he feels it should be opened up to other candidates and involve citizens in the hiring process.

Ms. Morishita took a roll call vote: Councilor Sieckmann: yes. Councilor Neace: yes. Councilor S. Johnson: yes. Councilor K. Johnson: yes. Councilor McMahon: yes. Councilor Reisner: no. Mayor Mersereau: yes. Motion passed (6-1).

BUSINESS CARRIED FORWARD:

5. City Commission, Committee and City Council Liaison Roles & Responsibilities:

Mr. Swanson gave the history and background information surrounding this issue. He would like to have a work study meeting and he is asking for direction on how to prepare. The staff action is to request the Mayor, two Councilors, and City Administrator prepare work study agenda to address City commission, committee, and Council liaison rules and responsibilities. There was discussion regarding various issues the Councilors felt should be addressed.

Councilor S. Johnson made a motion to direct the Mayor, two City Councilors, and City Administrator to prepare work study agenda to address City commission, committee, and Council liaison rules and responsibilities in addition to the things that were discussed this evening, and to recommend work study date and time within the next two months. Motion was seconded by Councilor Neace. There was no further discussion. Motion passed unanimously.

ADMINISTRATIVE ACTION:

6. Draft City of Gladstone Personnel Policies:

Mr. Swanson said this is just for information. They are updating the personnel rules and regulations to be consistent with State law.

BUSINESS FROM THE AUDIENCE:

Ms. Mindy Garlington feels that there should be input from citizens regarding the City commissions, committees, and City Council liaison roles and responsibilities since there are citizens serving on them. She also feels that Councilors should not be voting members. There was further discussion.

Mr. Chuck Gustafson asked about the status of the Library. Councilor S. Johnson said they continue to move forward as the citizens have asked them to do.

BUSINESS FROM THE COUNCIL:

Councilor Sieckmann:

He asked for discussion/decision regarding the possibility of eliminating the second “Business from the Audience” during Council meetings. It was agreed to discuss this at a later date.

He also asked if the Council is or is not going to be doing proclamations at this time. It was agreed to discuss these topics during a work session.

He, Mayor Mersereau, and Mr. Swanson had a discussion regarding having a packet and agenda review prior to them coming out. Mr. Swanson explained the reasons behind this. None of the Councilors had a problem with this.

Councilor Sieckmann said that Coffee with a Councilor has been going well. He watched the Prescription Drug Take Back and Shredding event recently – he felt it was very successful.

He attended an Urban Renewal meeting recently.

Councilor S. Johnson:

He has concerns regarding email meetings. He feels things move slowly, it is disruptive to City staff, and he finds the process frustrating. He would like the Mayor to consider having work sessions instead.

Councilor K. Johnson:

He attended his first Clackamas County Coordinating Committee meeting recently – they discussed an agenda for their upcoming retreat on June 24th & 25th. He asked if any other Councilors could attend the meetings that he can't attend.

Councilor Reisner:

He received an email from a Gladstone High School science teacher regarding a science unit he's doing on the White Oaks Savannah ecosystems. He asked if Councilor Reisner could speak to the class regarding the Gladstone Nature Park project. Councilor Reisner will not be able to do it and asked if another Councilor could step in.

Mayor Mersereau:

He attended the Charter Committee meeting on May 4th – they finished up the first pass. He has learned a lot.

He said they receive good input from citizens at the Coffee with a Councilor events.

He had heard that things are being cleaned up at Public Works – he took a look around recently and things look great.

Meeting recessed to executive session.

Meeting was reconvened to regular session.

Mr. Doughman explained that the purpose of reconvening during the regular session is to begin a process under the Council's rules, where if a fellow Councilor potentially violated those rules the Council has the opportunity to express concerns, either in writing or in an open meeting and afford that Councilor the opportunity to respond. This is concerning the article that was in the Clackamas Review recently regarding potential hire for an Assistant City Administrator. In particular, Councilor Reisner was quoted in that article and it seemed that he had information that was based on information that would have been Executive Session material. There is a rule that says unless it is required by law, no Council member may make public the discussions or information obtained in an Executive Session. The Council may censure any member who discloses a confidential matter or otherwise violates these rules. Mr. Doughman read the action that can be taken. He suggested that any concerns be put on the record and they can be delivered to Councilor Reisner and he would then have an opportunity to respond, then the rest of the Council can decide whether or not to take any action.

Councilor S. Johnson said that he is concerned that Councilor Reisner has divulged confidential executive information to the press. He is concerned that Councilor Reisner has spoken for other Council members without authorization from the other Council members or the Council as a whole. Is he concerned that Councilor Reisner has had contact with City directors and staff that may be considered supervisory in nature, including requests for employee timesheets. He is concerned about the staff time and cost of Councilor Reisner's actions and that they have become a distraction to the proper operation of the City of Gladstone.

Councilor Sieckmann said he has the same concerns that have been mentioned and he is sorry that we have gotten to this point, but the rest of the Councilors tried to talk with Councilor Reisner and ask that he stay within the rules. Councilor Sieckmann went over the various rules he feels that Councilor Reisner has violated.

Councilor K. Johnson said he was disappointed with the article. He said trying to govern the City through the newspaper is not the way to do things and he feels that Councilor Reisner has violated the rules.

Councilor McMahon said he has a lot of the same issues, has had them for a lot longer, and agrees with the other Councilors regarding the violation of rules.

Mayor Mersereau explained how he tried to work with Councilor Reisner.

Mr. Doughman agreed to write up the letter to Councilor Reisner soon so that he will have time to respond at the next Council meeting.

ADJOURN:

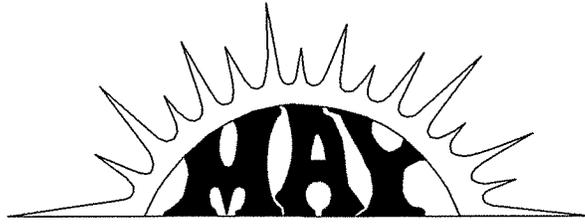
Meeting adjourned.

Approved by the Council President this _____ day of _____, 2016.

ATTEST:

Tom Mersereau, Mayor

Jolene Morishita, Assistant City Administrator



REGULAR AGENDA

**GLADSTONE
URBAN
RENEWAL
AGENCY**

GLADSTONE CITY COUNCIL/URBAN RENEWAL MEETING MINUTES of February 23, 2016

Meeting was called to order.

ROLL CALL:

Councilor Sieckmann, Councilor Johnson, Councilor McMahon, Councilor Reisner, and Council President Mersereau.

STAFF:

Eric Swanson, City Administrator; Jolene Morishita, Assistant City Administrator; David Doughman, City Attorney.

AGENDA ADDITIONS OR CORRECTIONS:

None.

BUSINESS FROM THE AUDIENCE:

None.

CONSENT AGENDA:

7. Approval of December 16, 2015 and February 9, 2016 Minutes:
Councilor Reisner made a motion to approve the consent agenda. Motion was seconded by Councilor Johnson. Motion passed unanimously.

CORRESPONDENCE:

None.

REGULAR AGENDA:

8. Exit Audit Report for Fiscal Year Ending June 30, 2015 – Merina & Company LLP:
Tonya Moffitt from Merina & Company and Carolyn Gray, Accounting Manager went over the findings. There were no budget violations. There was an error made on page 5, and Ms. Gray handed out corrected pages.

Mr. Swanson said they will be offering a budget 101 workshop on the evening of March 29th – this is an opportunity for anyone who would like to attend to learn more about the budget. He said they will be going through a competitive bidding process to select the auditors in the future.

BUSINESS CARRIED FORWARD: Updates:

None.

BUSINESS FROM THE AUDIENCE:

None.

ADJOURN:

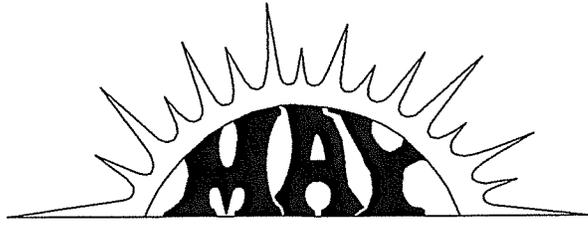
Meeting adjourned.

Approved by the Mayor this _____ day of _____, 2016.

ATTEST:

Tom Mersereau, Mayor

Jolene Morishita, Assistant City Administrator



REGULAR AGENDA

City of Gladstone Staff Report

Report Date: May 17, 2016
Meeting Date: May 24, 2016
To: Mayor Mersereau and the Gladstone City Council
From: Eric Swanson, Gladstone City Administrator

AGENDA ITEM

Discussion & Consideration of North Clackamas Chamber of Commerce Membership

History/Background

The City of Gladstone was a previous member of the North Clackamas County Chamber of Commerce (NCCC). The attached membership information provides a summary of the benefits to the City if the City Council chooses to become a member. The NCCC is offering a special annual rate of \$300 (regularly \$500) if the City Council chooses to join by May 31st.

Proposal

City Council can discuss becoming a member and vote.

Options

City staff is requesting the City Council consider joining or not becoming a member of the NCCC.

Cost Impact

\$300 to be paid out of membership dues line item.

Recommended Staff Action

Approve motion to become a member of the NCCC

Suggested Motion: "I move to authorize the City Administrator to complete membership application for the City of Gladstone to become a member of the North Clackamas Chamber of Commerce.

Department Head

Signature

Date


City Administrator

Signature

Date



Please review this packet prior to completing an application.

Incomplete or improperly submitted applications will not be considered.

OVERVIEW:

The Community Partnership Program (CPP) provides funding for tourism-related projects in local communities that have the ability to 1) increase overnight stays in lodging facilities within Clackamas County, 2) bring visitors into your community from more than 50 miles away to recreate, shop, dine or take in the arts, cultural or historic offerings, and/or 3) entice visitors to linger longer.

The statutory definition of tourism is *“economic activity resulting from tourists.”* A tourist is defined as *“a person who, for business or pleasure, recreation or participation in events related to the arts, heritage or culture, travels from the community in which that person is a resident to a different community that is separate, distinct from and unrelated to the person’s community of residence.”* It further stipulates that the travel be *“more than 50 miles from their community of residence or include an overnight stay.”*

Funding for this program comes from the County’s 6% transient room tax (TRT) as authorized by state law.

OBJECTIVE:

CPP grants provide funding for tourism related projects that have the potential to become significant and self-sustaining; that align with the goals and priorities outlined in Clackamas County Tourism and Cultural Affairs (CCTCA) Business and Master Plans; that align with the community’s updated Tourism Action Plan, and that have an ability to demonstrate a return on investment (overnight stays/visitors from 50 miles away or greater, or increase linger longer).

ELIGIBILITY:

Grant funds may be awarded to public, private, or non-profit organizations whose project demonstrates an ability to benefit the greater public interests of tourism product development, promotion, and/or marketing.

Projects will be evaluated on the following attributes and qualities:

- alignment with CCTCA and the community’s established tourism goals and plans;
- create overnight stays within Clackamas County;
- likelihood of attracting tourists/visitors from outside the community;
- inclusion of more than one community, lodging, or tourism partner;
- leverage of additional dollars and/or resources;
- are self-sustaining, have growth potential, or are capacity-building; and
- offer measurable or demonstrable ROI.

INELIGIBLE PROJECTS & EXPENSES:

- those providing profitability or benefits to a single lodging partner, business, or individual
- capital improvement projects benefiting a private, for-profit enterprise or property owner
- compensation to applicant for executing their own proposal; This means that a third party from within the program community will need to submit a project application.
- entertainment at events; although funds can be used to promote events
- community beautification, streetscape, or banner projects
- normal costs of doing business.

Note: Please read the below **Approved Scope of Work, Project Ideas, Terms & Conditions, Dates & Timelines, and Review Materials** for more information about this program and project eligibility.

- Applicants whose projects are selected must sign agreement acknowledging terms and conditions.
- Applicants who receive funding are financially responsible for funds awarded and execution of project.
- Reports are required for all projects that receive funding; copies of invoices and receipts required.

APPROVED SCOPE OF WORK:

The following summarizes the Areas of Focus from CCTCA's Business and Master Plans and defines approved categories for CPP support.

- Agritourism - provides an alternative to improve the incomes and potential economic viability of farms and rural communities. This includes the development, creation, and/or promotion of facilities/services/activities.
- Outdoor Recreation - includes the development and or promotion of facilities/services/events that enable visitors to participate in snow sports such as skiing, snowboarding, snowmobiling & inner tubing, as well as recreational endeavors such as hiking, biking, fishing, horseback riding, boating, etc. that are available in Clackamas County and showcase its outdoor assets.
- Heritage/Cultural/Arts - includes the development, creation, and/or promotion of facilities/services/activities that promote and advance the arts, culture and/or the rich heritage of Clackamas County.
- Multi-property lodging promotion or lodging facility development - (all categories including RV, B&Bs, cabins, and campsites) that seek to promote overnight stays in the county and that include a minimum of two or more attractions/activities/events that are in the county as well as a minimum of two lodging options also within the county. Unique lodging facility development or enhancement in rural areas is especially desired.
- Social Media & Internet – including efforts to create a strategic plan as well as specific projects that will increase a target visitor's awareness of an attraction, facility, event or hospitality-related organization.
- Market/Product Promotion or Development - the development or promotion of "niche vacation" packages – including Girlfriend Getaways, Man-cations, Geocaching, weddings, and reunions, etc. or regional or international travelers.

- Bicycle Tourism Promotion or Development – projects that create opportunities for bike-friendly tourism.

Application Info Packet pg. 2/7

PROJECT EXAMPLES:

- Geocaching Challenges
- Maps, Brochures, and Flyers
- Responsive Websites
- On-line Marketing
- Co-op Advertising Buys
- Interpretive Panels & Signage
- Driving or Walking Tours
- Agritourism or Heritage Loops
- Festivals and Events
- Organized Rides/Runs

Note:

Festivals, events or activities supported with CPP funds need to be **a)** open to the public; **b)** have an ability to attract visitors from outside the community, and **c)** have the ability to become significant and self-sustaining. Creation of or improvements to facilities must primarily be designed to attract tourists/visitors or increase tourism activity. As an example; improvements to a local park in and of itself would not be a legitimate tourism project. However, improving amenities at a park to make a state-designated bikeway or water trail more accommodating and attractive for through travelers would be. No capital projects shall provide financial benefit or become the property of a for-profit entity or private property owner.

GUIDELINES & DATES:

Notice & Solicitation -

- The Notice & Solicitation process shall run from January 4 through February 12, 2016 (no less than 6 weeks).
- Copies of the notice and the Application Packets shall be posted on Administrator's website in a conspicuous, easy to find location throughout the notice and solicitation window.

Review & Selection -

- Review & Selection of projects; Notice of awards to CCTCA to be completed by March 11, 2016.
- Review & Select process shall utilize the CCTCA provided evaluation materials (Review Packet), and be done in a transparent and public manner.
- The Review Committee should include an array of local tourism/heritage partners, and parties with a general interest in tourism and economic development of the area.
- The Review Committee shall evaluate proposals and makes funding decisions using the established criteria and in keeping with program's objectives, eligibility requirements, and terms and conditions.

Project Completion & Extensions -

- All Projects awarded funds in the 2016 grant cycle shall be completed by December 31, 2016.
- Extensions available for extenuating circumstances. **Extension requests due to CCTCA by November 28, 2016.** See Terms & Conditions for details.

Reporting -

- **Year-End Project Reports due to CCTCA by February 6, 2017** for all projects that received CPP funds in 2016.

TERMS & CONDITIONS:

- 1) Administrators, applicants and awardees agree to adhere to program dates and timeframes.
- 2) Administrators, applicants and awardees agree to use forms and templates provided by CCTCA.
- 3) Review and select of project proposals shall be done by via a transparent, public process utilizing standardized review materials and criteria. The review committee should include local tourism and heritage partners, and/or those with an interest in tourism, business, and economic development of the area. At a minimum, this committee must include a representative from local government, a chamber/or business association, an owner/manager of tourism related business/lodging facility or designee.
- 4) Projects selected for funding will be tourism-related and fit within in the Program OVERVIEW, OBJECTIVES, ELIGIBILITIES, SCOPE of WORK, GUIDELINES & DATES, and fit within these TERMS & CONDITIONS.
- 5) Projects selected for funding will need to offer measurable or demonstrable returns on investment (ROI). Measurement of ROI may include creation of overnight stays; numbers of attendees/participates from outside the area; increased capacity or sustainability of existing events/activities, or a demonstrable ability to get visitors to shop, dine, visit local heritage or cultural attractions, participate in recreational opportunities, or otherwise entice them to “linger longer”.
- 6) Applicants whose projects have been selected for funding will be required to sign and submit a Funds Acceptance Form it to CCTCA before funds will be released.
- 7) Funds will not to be issued to private parties. A CCTCA approved partner will need to assume financial responsibility for awards by being the signatory on the Fund Acceptance Form. Such partners should be called out in the original grant application.
- 8) Applicants who receive funds are required to provide a Year-End Report which will include an accounting of how funds were expended as well as project performance and/or measurements. A reporting form will be provided.
- 9) Mt. Hood Territory’s current logo and/or URL shall be incorporated into any marketing/promotional materials, maps, brochures, websites, etc. that are created with CPP funds. If CPP funds are used to create assets such as signs, kiosks, interpretive panels, or bike racks, CCTCA shall be accordingly recognized. Electronic copies of logo art work are available on CCTCA’s website under the Partners Section. All usage of the Mt. Hood Territory logo and/or URL will need to be reviewed and approved by CCTCA’s Marketing Manager.
- 10) CCTCA/Oregon’s Mt. Hood Territory shall be appropriately/proportionally listed as event or activity sponsor where a sponsorship program exists, and when CPP funds have been accepted.
- 11) CCTCA may request the return of any or all funds awarded should it be deemed they were used for purposes other than those specified in the grant application. Changes in scope of work may be granted on a case by case basis. Contact CCTCA’s CPP Coordinator before using funds any other purpose/scope of work.

-
- 12) All projects that receive an award in the 2016 grant cycle shall be completed by December 31, 2016.

TERMS & CONDITIONS (CONT'D):

- 13) Extensions are possible for unanticipated delays or for extenuating circumstances beyond the control of the Applicant. Advanced approval is required. If an extension is needed, contact CCTCA's Community Relations Coordinator by November 28, 2016. Extensions are generally granted for no more than 90 days.
- 14) Extensions will not be granted to "carry-over" any unexpended funds that remain at the program year.
- 15) Any awarded funds that remain unexpended at the program year - December 31, 2016 - shall be returned to CCTCA.
- 16) Administrators and Applicants will provide the scope of work/project described in their agreement and/or execute the projects supported by the CPP as independent contractors. Nothing herein shall be interpreted as establishing the relationship of employer/employee, principal/agent, legal partnership, joint venture, association, or any other type of legal or business relationship between the CCTCA or Clackamas County. Each party shall be solely responsible for paying: its own taxes (federal, state and local or any type or amount); consideration owed to its own contractors or agents; operational expenses; wages, salaries, benefits, withholdings, and assessments for employees; and damages or settlements for claims arising from the negligent, reckless, or intentional acts of its principals, employees or agents, all without contribution from CCTCA or Clackamas County.
- 17) Failure to comply with the Terms & Conditions of this agreement, and documents referenced herein, may result in an inability to receive CPP Grant funds in the future or being required to return funds to CCTCA.

City of Gladstone Staff Report

Report Date: May 17, 2016
Meeting Date: May 24, 2016
To: Mayor Mersereau and the Gladstone City Council
From: Eric Swanson, Gladstone City Administrator

AGENDA ITEM

Consideration of Oregon Department of Transportation (ODOT) Inter-governmental Agreement (IGA) for Transportation System Plan (TSP) Update

History/Background

The City of Gladstone has been meeting with ODOT officials to discuss moving forward with updating the Transportation System Plan (TSP). The TSP was last updated in 1995.

Proposal

City Council consider approval of IGA with ODOT to update TSP.

Options

City staff is requesting the City Council consider approving the IGA, defer consideration of the IGA to a later date or not approve the IGA.

Cost Impact Total cost of the update to the TSP is \$131,950 with an estimated local match of \$16,000.

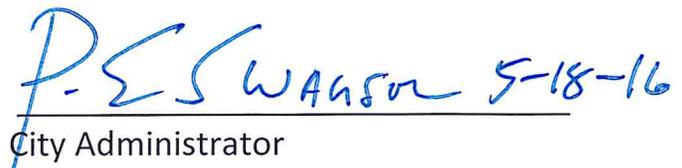
Recommended Staff Action

Approve IGA with ODOT to update the TSP.

Suggested Motion: "I move to authorize the City Administrator to sign the IGA with ODOT to complete the update to the TSP."

Department Head
Signature

Date


City Administrator
Signature

Date

INTERGOVERNMENTAL AGREEMENT
City of Gladstone, Transportation System Plan Update

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation (“ODOT” or “Agency”), and the City of Gladstone (“City” or “Grantee”).

RECITALS

1. The Transportation and Growth Management (“TGM”) Program is a joint program of ODOT and the Oregon Department of Land Conservation and Development.
2. The TGM Program includes a program of grants for local governments for planning projects. The objective of these projects is to better integrate transportation and land use planning and develop new ways to manage growth in order to achieve compact pedestrian, bicycle, and transit friendly urban development.
3. This TGM Grant (as defined below) is financed with federal the Fixing America’s Surface Transportation Act (“FAST Act”) funds. Local funds are used as match for FAST Act funds.
4. By authority granted in ORS 190.110, state agencies may enter into agreements with units of local government or other state agencies to perform any functions and activities that the parties to the agreement or their officers or agents have the duty or authority to perform.
5. City has been awarded a TGM Grant which is conditional upon the execution of this Agreement.
6. The parties desire to enter into this Agreement for their mutual benefit.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS

Unless the context requires otherwise, the following terms, when used in this Agreement, shall have the meanings assigned to them below:

A. “City's Amount” means the portion of the Grant Amount payable by ODOT to City for performing the tasks indicated in Exhibit A as being the responsibility of City.

B. “City's Matching Amount” means the amount of matching funds which City is required to expend to fund the Project.

C. “City's Project Manager” means the individual designated by City as its project manager for the Project.

D. “Consultant” means the personal services contractor(s) (if any) hired by ODOT to do the tasks indicated in Exhibit A as being the responsibility of such contractor(s).

E. “Consultant’s Amount” means the portion of the Grant Amount payable by ODOT to the Consultant for the deliverables described in Exhibit A for which the Consultant is responsible.

F. “Direct Project Costs” means those costs which are directly associated with the Project. These may include the salaries and benefits of personnel assigned to the Project and the cost of supplies, postage, travel, and printing. General administrative costs, capital costs, and overhead are not Direct Project Costs. Any jurisdiction or metropolitan planning organization that has federally approved indirect cost plans may treat such indirect costs as Direct Project Costs.

G. “Federally Eligible Costs” means those costs which are Direct Project Costs of the type listed in Exhibit D incurred by City and Consultant during the term of this Agreement.

H. “Grant Amount” or “Grant” means the total amount of financial assistance (including City's Matching Amount) disbursed under this Agreement, which disbursements consist of the City's Amount and the Consultant’s Amount. ODOT may use any of the City’s Matching Amount to substitute for an equal amount of federal MAP-21 funds used for the Project or use such funds as matching funds.

I. “ODOT’s Contract Administrator” means the individual designated by ODOT to be its contract administrator for this Agreement.

J. “PSK” means the personal services contract(s) executed between ODOT and the Consultant related to the portion of the Project that is the responsibility of the Consultant.

K. “Project” means the project described in Exhibit A.

- L. "Termination Date" has the meaning set forth in Section 2.A below.
- M. "Total Project Costs" means the total amount of money required to complete the Project.
- N. "Work Product" has the meaning set forth in Section 5.I below.

SECTION 2. TERMS OF AGREEMENT

A. Term. This Agreement becomes effective on the date on which all parties have signed this Agreement and all approvals (if any) required to be obtained by ODOT have been received. Further, ODOT's obligation to make any disbursements under this Agreement is subject to payment of the City's Matching Amount by City to ODOT. This Agreement terminates on June 30, 2017 ("Termination Date").

B. Grant Amount. The Grant Amount which includes City's Matching Amount of \$ _____ shall not exceed \$ _____.

C. City's Amount. The City's Amount shall not exceed \$ _____.

D. Consultant's Amount. The Consultant's Amount shall not exceed \$ _____.

E. City's Matching Amount. The City's Matching Amount is \$ _____. City shall pay ODOT the City's Matching Amount at time of the signing of this Agreement

SECTION 3. RESERVED

SECTION 4. CITY'S REPRESENTATIONS, WARRANTIES, AND CERTIFICATION

A. City represents and warrants to ODOT as follows:

1. It is a municipality duly organized and existing under the laws of the State of Oregon.

2. It has full legal right and authority to execute and deliver this Agreement and to observe and perform its duties, obligations, covenants and agreements hereunder and to undertake and complete the Project.

3. All official action required to be taken to authorize this Agreement has been taken, adopted and authorized in accordance with applicable state law and the organizational documents of City.

4. This Agreement has been executed and delivered by an authorized officer(s) of City and constitutes the legal, valid and binding obligation of City enforceable against it in accordance with its terms.

5. The authorization, execution and delivery of this Agreement by City, the observation and performance of its duties, obligations, covenants and agreements hereunder, and the undertaking and completion of the Project do not and will not contravene any existing law, rule or regulation or any existing order, injunction, judgment, or decree of any court or governmental or administrative agency, authority or person having jurisdiction over it or its property or violate or breach any provision of any agreement, instrument or indenture by which City or its property is bound.

6. The statement of work attached to this Agreement as Exhibit A has been reviewed and approved by the necessary official(s) of City.

B. As federal funds are involved in this Grant, City, by execution of this Agreement, makes the certifications set forth in Exhibits B and C.

C. City understands and agrees that ODOT's obligation hereunder is contingent on ODOT having received funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

SECTION 5. GENERAL COVENANTS OF CITY

A. City shall be responsible for the portion of the Total Project Costs in excess of the Grant Amount. City shall complete the Project; provided, however, that City shall not be liable for the quality or completion of that part of the Project which Exhibit A describes as the responsibility of the Consultant.

B. City shall, in a good and workmanlike manner, perform the work on the Project, and provide the deliverables for which City is identified in Exhibit A as being responsible.

C. City shall perform such work identified in Exhibit A as City's responsibility as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform such work. City shall also be responsible for providing for employment-related benefits and deductions that are required by law, including, but not limited to, federal and state income tax withholdings, unemployment taxes, workers' compensation coverage, and contributions to any retirement system.

D. All employers, including City, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126(2). Employers Liability insurance with coverage limits of not less than \$500,000 must be included. City shall require each of its subcontractors, if any, to comply with, and shall ensure that each of its subcontractors, if any, complies with these requirements.

E. City shall not enter into any subcontracts to accomplish any of the work described in Exhibit A, unless it first obtains written approval from ODOT.

F. City agrees to cooperate with ODOT's Contract Administrator. At the request of ODOT's Contract Administrator, City agrees to:

- (1) Meet with the ODOT's Contract Administrator; and
- (2) Form a project steering committee (which shall include ODOT's Contract Administrator) to oversee the Project.

G. City shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, applicable provisions of the Oregon Public Contracting Code. Without limiting the generality of the foregoing, City expressly agrees to comply with: (1) Title VI of Civil Rights Act of 1964; (2) Title V of the Rehabilitation Act of 1973; (3) the Americans with Disabilities Act of 1990 and ORS 659A.142; (4) all regulations and administrative rules established pursuant to the foregoing laws; and (5) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

H. City shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, City shall maintain any other records pertinent to this Agreement in such a manner as to clearly document City's performance. City acknowledges and agrees that ODOT, the Oregon Secretary of State's Office and the federal government and their duly authorized

representatives shall have access to such fiscal records and other books, documents, papers, plans, and writings of City that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts.

City shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

I. (1) All of City's work product related to the Project that results from this Agreement ("Work Product") is the exclusive property of ODOT. ODOT and City intend that such Work Product be deemed "work made for hire" of which ODOT shall be deemed the author. If, for any reason, such Work Product is not deemed "work made for hire", City hereby irrevocably assigns to ODOT all of its rights, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. City shall execute such further documents and instruments as ODOT may reasonably request in order to fully vest such rights in ODOT. City forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

(2) ODOT hereby grants to City a royalty free, non-exclusive license to reproduce any Work Product for distribution upon request to members of the public.

(3) City shall ensure that any work products produced pursuant to this Agreement include the following statement:

"This project is partially funded by a grant from the Transportation and Growth Management (TGM) Program, a joint program of the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development. This TGM grant is financed, in part, by the federal Fixing America's Surface Transportation Act ("FAST Act"), local government, and State of Oregon funds.

"The contents of this document do not necessarily reflect views or policies of the State of Oregon."

(4) The Oregon Department of Land Conservation and Development and ODOT may each display appropriate products on its "home page".

J. Single Audit Act Requirements. The TGM Program receives FAST Act grant funds through the Catalog of Federal Domestic Assistance (“CFDA”) No. 20.205: Highway Planning and Construction and is subject to the regulations of the U.S. Department of Transportation (“USDOT”). City is a sub-recipient.

(1) Subrecipients receiving federal funds in excess of \$750,000 in the subrecipient’s fiscal year are subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. The Grantee, if subject to this requirement, shall at its own expense submit to ODOT a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Agreement and shall submit or cause to be submitted to ODOT the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of the Grantee responsible for the financial management of funds received under this Agreement.

(2) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If the Grantee did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant received under this Agreement.

(3) The Grantee shall save, protect and hold harmless ODOT from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Agreement. The Grantee acknowledges and agrees that any audit costs incurred by the Grantee as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between the Grantee and the State of Oregon.

Exhibit E sets out the information required by 2 CFR 200331(a)(1). Records must be available as provided in Section 5.H. above.

K. Unless otherwise specified in Exhibit A, City shall submit all final products produced in accordance with this Agreement to ODOT’s Contract Administrator in the following form:

- (1) two hard copies; and
- (2) in electronic form using generally available word processing or graphics programs for personal computers via e-mail or on compact diskettes.

L. Within 30 days after the Termination Date, City shall provide to ODOT’s Contract Administrator, in a format provided by ODOT, a completion report. This completion report shall contain:

- (a) The permanent location of Project records (which may be subject to audit);
- (b) A summary of the Total Project Costs; and
- (c) A list of final deliverables.

SECTION 6. CONSULTANT

If the Grant provided pursuant to this Agreement includes a Consultant's Amount, ODOT shall enter into a PSK with the Consultant to accomplish the work described in Exhibit A as being the responsibility of the Consultant. In such a case, even though ODOT, rather than City is the party to the PSK with the Consultant, ODOT and City agree that as between themselves:

- A. Selection of the Consultant will be conducted by ODOT in accordance with ODOT procedures with the participation and input of City;
- B. ODOT will review and approve Consultant's work, billings and progress reports after having obtained input from City;
- C. City shall be responsible for prompt communication to ODOT's Contract Administrator of its comments regarding (A) and (B) above; and
- D. City will appoint a Project Manager to:
 - (1) be City's principal contact person for ODOT's Contract Administrator and the Consultant on all matters dealing with the Project;
 - (2) monitor the work of the Consultant and coordinate the work of the Consultant with ODOT's Contract Administrator and City personnel, as necessary;
 - (3) review any deliverables produced by the Consultant and communicate any concerns it may have to ODOT's Contract Administrator; and
 - (4) review disbursement requests and advise ODOT's Contract Administrator regarding payments to Consultant.

SECTION 7. ODOT'S REPRESENTATIONS AND COVENANTS

- A. Reserved
- B. ODOT represents that the statement of work attached to this Agreement as Exhibit A has been reviewed and approved by the necessary official(s) of ODOT.
- C. ODOT will assign a Contract Administrator for this Agreement who will be ODOT's principal contact person regarding administration of this Agreement and will participate in the selection of the Consultant, the monitoring of the Consultant's work, and the review and approval of the Consultant's work, billings and progress reports.
- D. If the Grant provided pursuant to this Agreement includes a Consultant's Amount, ODOT shall enter into a PSK with the Consultant to perform the work described in Exhibit A designated as being the responsibility of the Consultant, and in such a case ODOT agrees to pay the Consultant in accordance with the terms of the PSK up to the Consultant's Amount.

SECTION 8. TERMINATION

This Agreement may be terminated by mutual written consent of all parties. ODOT may terminate this Agreement effective upon delivery of written notice to City, or at such later date as may be established by ODOT under, but not limited to, any of the following conditions:

- A. City fails to complete work specified in Exhibit A within the time specified in this Agreement, including any extensions thereof, or fails to perform any of the provisions of this Agreement and does not correct any such failure within 10 days of receipt of written notice or the date specified by ODOT in such written notice.
- B. Consultant fails to complete work specified in Exhibit A within the time specified in this Agreement, including any extensions thereof, and does not correct any such failure within 10 days of receipt of written notice or the date specified by ODOT in such written notice.
- C. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or ODOT is prohibited from paying for such work from the planned funding source.

D. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

In the case of termination pursuant to A, B, C or D above, ODOT shall have any remedy at law or in equity, including but not limited to termination of any further disbursements hereunder. Any termination of this Agreement shall not prejudice any right or obligations accrued to the parties prior to termination.

SECTION 9. GENERAL PROVISIONS

A. Time is of the essence of this Agreement.

B. Except as otherwise expressly provided in this Agreement, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to ODOT or City at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed is in effect five (5) days after the date postmarked. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT's Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

C. ODOT and City are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons (including but not limited to any Consultant) unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

D. Sections 5(H), 5(I), and 9 of this Agreement and any other provision which by its terms is intended to survive termination of this Agreement shall survive.

E. The parties agree as follows:

(a) Contribution.

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Grantee ("Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which ODOT is jointly liable with the Grantee (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Grantee in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of the Grantee on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including but not limited to the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.

With respect to a Third Party Claim for which the Grantee is jointly liable with ODOT (or would be if joined in the Third Party Claim), the Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Grantee on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including but not limited to the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

(b) Choice of Law; Designation of Forum; Federal Forum.

(1) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

(2) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

(3) Notwithstanding Section 9.E (b)(2), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section 9.E(b)(3) applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section 9.E(b)(3) is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

(c) Alternative Dispute Resolution.

The parties shall attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding mediation or non-binding arbitration) to resolve the dispute short of litigation.

F. This Agreement and attached Exhibits (which are by this reference incorporated herein) constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No modification or change of terms of this Agreement shall bind either party unless in writing and signed by all parties and all necessary approvals have been obtained. Budget modifications and adjustments from the work described in Exhibit A must be processed as an amendment(s) to this Agreement and the PSK. No waiver or consent shall be effective unless in writing and signed by the party against whom such waiver or consent is asserted. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance

and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

G. This Agreement may be executed in several counterparts (facsimile or otherwise), all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

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

DRAFT

City

City of Gladstone

By: _____
(Official's Signature)

Eric Swanson, City Administrator

Date: _____

ODOT

STATE OF OREGON, by and through its Department of Transportation

By: _____
Jeri Bohard, Division Administrator or designee
Transportation Development Division

Date: _____

Contact Names:

Eric Swanson, City Administrator
City of Gladstone
525 Portland Avenue
Gladstone, OR 97027
Phone: 503-557-2767
Fax: 503-557-2761
E-Mail: swanson@ci.gladstone.or.us

Gail Curtis, Contract Administrator
Transportation and Growth Management Program
123 NW Flanders
Portland, OR 97209-4037
Phone: 503-731-8206
Fax: 503-731-3266
E-Mail: Gail.E.Curtis@odot.state.or.us

INSERT STATEMENT OF WORK

DRAFT

EXHIBIT B (Local Agency or State Agency)

CONTRACTOR CERTIFICATION

Contractor certifies by signing this contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

AGENCY OFFICIAL CERTIFICATION (ODOT)

Department official likewise certifies by signing this contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

EXHIBIT C

Federal Provisions
Oregon Department of Transportation

I. CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

Contractor certifies by signing this contract that to the best of its knowledge and belief, it and its principals:

- 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
- 2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this contract, the Contractor is deemed to have signed this certification.

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS--PRIMARY COVERED TRANSACTIONS

1. By signing this contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Oregon Department of Transportation determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous

certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.

4. The Contractor shall provide immediate written notice to the Department to whom this proposal is submitted if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by submitting this proposal that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is

suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranting, Department shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the contract, any professional or technical personnel who are or have been at any time during the period of this contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

During the performance of this contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this contract. Contractor, with regard to the work performed after award and prior to completion of the contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contract covers a program set forth in Appendix B of the Regulations.
2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this contract, Contractor agrees as follows:
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment,

without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such

direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

DBE POLICY STATEMENT

DBE Policy. It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this contract.

Required Statement For USDOT Financial Assistance Agreement. If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

DBE Obligations. The Oregon Department of Transportation (ODOT) and its contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither ODOT nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as ODOT deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this contract.

Records and Reports. Contractor shall provide monthly documentation to Department that it is

subcontracting with or purchasing materials from the DBEs identified to meet contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

DBE Definition. Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL 0 %

By signing this contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Request for Proposal/Qualification for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or

employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

**FOR INQUIRY CONCERNING ODOT'S
DBE PROGRAM REQUIREMENT
CONTACT OFFICE OF CIVIL RIGHTS
AT (503)986-4354.**

**EXHIBIT D
ELIGIBLE PARTICIPATING COST**

DESCRIPTION

PERSONNEL SERVICES

Salaries - Straight time pay for regular working hours in a monthly period. Includes standard labor distributions like Social Security Taxes, Workers' Compensation Assessments and Medical, Dental, Life Insurance. Excludes mass transit tax, vacation leave, sick leave and compensatory time taken.

Overtime - Payments to employees for work performed in excess of their regular work shift.

Shift Differential - Payments to employees, in addition to regular pay, for shift differential work as described in labor contracts or Personnel Rules.

Travel Differential - Payments to employees, in addition to regular pay, for travel time to and from work on projects in excess and beyond an 8 hour day as described in labor contracts or Personnel Rules.

SERVICES AND SUPPLIES

In-State Travel - Per Rates Identified in State Travel Handbook

Meals & Misc. - Payment for meals incurred while traveling within the State of Oregon.

Lodging & Room Tax - Payment for lodging, including room taxes, incurred while traveling within the State of Oregon. Fares, Taxi, Bus, Air, Etc.

Per Diem - Payment for per diem, incurred while traveling within the State of Oregon.

Other - Payment for other miscellaneous expense, incurred while traveling within the State of Oregon.

Private Car Mileage - Payment for private car mileage while traveling within the State of Oregon.

Office Expense

Direct Project Expenses Including:

Photo, Video & Microfilm Supplies - Payment for photography, video and microfilm supplies such as film for cameras, blank video tapes, storage folders, etc.

Printing, Reproduction & Duplication - Expenditures for services to copy, print, reproduce and/or duplicate documents.

Postage - Payment for direct project postage.

Freight & Express Mail - Payment for direct project freight services on outgoing shipments.

Telecommunications

Phone Toll Charges (long-distance) - Payment for telephone long distance charges.

Publicity & Publication

Publish & Print Photos - Payment for printing and publishing photographs to development of publicity and publications.

Conferences (costs to put on conference or seminars)

Equipment \$250 - \$4,999

NOT ELIGIBLE

Employee Training, Excluding Travel

NOT ELIGIBLE

Training In-State Travel

NOT ELIGIBLE

CAPITOL OUTLAY

NOT ELIGIBLE

EXHIBIT E

Information Required by 2 CFR Subtitle B with guidance at 2 CFR Part 200

1. Federal Award Identification: 0000(240)
2. Grantee Name (which must match the name associated with 3 below):
3. Grantee's unique entity identifier (i.e. DUNS number): 010745271
4. Federal Award Identification Number (FAIN): 0000(240)
5. Federal Award Date: September 16, 2015
6. Period of Performance Start and End Date: From to
7. Total Amount of Federal Funds Obligated by this Agreement:

A. Total Amount of Federal Award:
Federal award project description: 2015-17 Transportation and Growth Management

Program

Name of Federal awarding agency: FHWA
Contact information for awarding official: Linda Swan
Indirect cost rate: %
i.a. CFDA Number and Name: 20.205 - Highway Planning and Construction
i.b. Amount:
ii.a. CFDA Number and Name:
ii.b. Amount:
iii.a. CFDA Number and Name:
iii.b. Amount:

B. Total Amount of Federal Award:
Federal award project description:
Name of Federal awarding agency:
Contact information for awarding official:

Indirect cost rate:
i.a. CFDA Number and Name:
i.b. Amount:
ii.a. CFDA Number and Name:
ii.b. Amount:
iii.a. CFDA Number and Name:
iii.b. Amount:

C. Total Amount of Federal Award:
Federal award project description:
Name of Federal awarding agency:
Contact information for awarding official:

Indirect cost rate:

i.a. CFDA Number and Name: _____
i.b. Amount: _____
ii.a. CFDA Number and Name: _____
ii.b. Amount: _____
iii.a. CFDA Number and Name: _____
iii.b. Amount: _____

8. Total Amount of Federal Funds Obligated to Grantee: _____

9. Is Award R&D? Yes No

DRAFT

**PRE-IGA
CONSULTANT NEGOTIATED VERSION 1C-15
City of Gladstone
TSP Update**

Definitions

Agency/ODOT - Oregon Department of Transportation
APM – Agency Project Manager
City – City of Gladstone
DLCD - Department of Land Conservation and Development
OAR - Oregon Administrative Rule
OHP - Oregon Highway Plan
OR 99E – Oregon Highway 99E
PAC – Policy Advisory Committee
PC - Planning Commission
PMT - Project Management Team
RTFP - Regional Transportation Functional Plan
RTP - 2035 Regional Transportation Plan
State – State of Oregon
TAC - Technical Advisory Committee
TAZ – Transportation Analysis Zone
TDM - Transportation Demand Management
Tech Memo 1 – Policy Framework and Code Review
Tech Memo 2 – Project Goals and Objectives and Evaluation Criteria
Tech Memo 3 – TSP Financial Forecast
Tech Memo 4 – TSP Methodology and Assumptions
Tech Memo 5 – Existing Transportation System Gaps and Deficiencies Inventory
Tech Memo 6 – Needs Analysis
Tech Memo 7 – Regulatory Solutions
Tech Memo 8 – TSP Solutions
Tech Memo 9 – Planned and Financially Constrained Transportation Systems
TPR - Transportation Planning Rule
TSMO - Transportation System Management and Operations
TSP - Transportation System Plan
V/C - Volume to Capacity

PROJECT DESCRIPTION and OVERVIEW of SERVICES

Agency is contracting with Consultant for Services in connection with the following public improvement or public works project (the “Project”), generally referred to in this Work Order Contract (WOC) as the “City of Gladstone Transportation System Plan Update” and more particularly described as follows:

Project Purpose/Transportation Relationship and Benefits

The current City of Gladstone (“City”) Transportation System Plan (“TSP”) was adopted in 1995. This Project will update the 1995 TSP to reflect physical and regulatory changes that have occurred in the City, region, and State of Oregon (“State”) since 1995 and provide a 19-year

horizon (2035) for transportation planning. The Updated TSP will implement and be consistent with the State's Transportation Planning Rule ("TPR", Oregon Administrative Rule ("OAR") Chapter 660, Division 12), the Metro 2035 Regional Transportation Plan ("RTP"), and the Regional Transportation Functional Plan ("RTFP") adopted in 2010. The Project will create Updated TSP using elements of the 1995 TSP. The Project will also identify potential amendments to the City's Development Code and other implementing documents.

Project Area

The Project Area encompasses the City's urban growth boundary unless otherwise noted pertaining to bike and walkshed analysis. See Figure 1.

Background

The City has a population of about 11,724 (2013) and is comprised of mostly older residential developments with three primary, commercial areas. The City is bordered by the Clackamas River on the east and south, the Willamette River on the west, and unincorporated Clackamas County on the north. Oregon Highway 99E ("OR 99E") serves the City where the land use is dominated by car dealerships. The Oregon Department of Transportation ("ODOT") completed paving preservation improvements to OR 99E in 2012. That project included some sidewalks and the creation of planter areas. TriMet provides transit service and roughly 30% of the population are people too young, old, infirm, or poor to drive.

Project Objectives

The Project aims to develop an Updated TSP which when implemented will make progress towards several goals while complying with applicable laws. Specifically:

- A. A balanced and connected multimodal transportation system.** This Project will update the 1995 TSP plans for all transportation modes to plan for a complete multi-modal transportation system throughout the Project Area. A city-wide connectivity analysis will be completed and improvements identified to comply with RTFP and to provide prioritized investments for a multi-modal transportation system.
- B. Preservation or enhancement of state highways and local streets.** The Project will take into account the transportation capital, operational and program needs relative to a financial forecast.
- C. Increased convenient and safe bicycle and pedestrian access to key destinations.** The Project will identify pedestrian and bicycling systems and prioritize investments to address system gaps and deficiencies. An objective is to improve safe access to key destinations and identify potential or needed sidewalk and crosswalk locations and bikeway improvements.
- D. Reduced emissions through reduced automobile vehicle miles traveled.** The Project will reflect Metro's progress on goals, measurable targets, and specific strategies to reduce auto vehicle miles traveled per capita and related emissions. The City will seek to improve the operating efficiency of the street system, applying Intelligent Transportation Systems and Transportation System Management and Operations ("TSMO"), a broad array of methods to

manage the transportation system in order to minimize travel time lost due to excess demand and planned and unplanned events.

- E. Compliance with State Policies, Plans, Standards, and Requirements.** This Project will develop an Updated TSP that meets the requirements of the TPR. The Updated TSP will also meet the requirements of the Oregon Highway Plan (“OHP”) mobility standards for state highways or propose alternative mobility standards consistent with the provisions of OHP Action 1F3, while demonstrating compliance with OHP Action 1F5.

- F. Consistency with the Metro’s 2014 RTP and compliance with the RTFP.** Specifically, the Project will develop an Updated TSP consistent with the Metro 2035 RTFP Title 1 transportation system design provisions and with the RTFP provisions addressing the development of transportation needs and solutions and compliance with regional performance targets and standards. The Project will consider regional needs identified in the 2014 RTP, including Mobility Corridor Strategies for Corridors 7, 8, and 9 in Chapter 2 and 5, consistent with RTFP section 3.08.210. The Project will consider and evaluate transportation solutions and strategies in the order listed in the RTFP section 3.08.220, starting with TSMO, safety, operational and access management improvements, then transit, bicycle, and pedestrian improvements, traffic calming, land use strategies, local and arterial connectivity improvements, and finally, motor vehicle capacity increases to meet the 2014 RTP Arterial and Throughway design classifications in table 2.6. The Project will develop TSP policy and Municipal code language to implement the Updated TSP and to meet TPR and RTFP requirements.

Expectations about Project Management Team and Advisory Committee Roles and Meetings

Unless otherwise stated:

Project Management Team (“PMT”) Meetings

The PMT consists of the City Project Manager, Consultant Project Manager, and Agency Project Manager (APM), the ODOT staff Project Manager. The purpose of the PMT is to ensure completion of tasks and deliverables in accordance with the Project Scope, Schedule and Budget, and to provide strategic policy and technical input. The PMT will review and comment on draft deliverables prior to Meetings of the PMT. PMT Meetings will take place on a regular schedule or as needed but are expected to occur at least monthly. Meetings may be either in person or by conference call, as requested by any PMT member, up to the number of meetings specified in the statement of work. Consultant shall facilitate meetings, provide a draft agenda at least two business days prior to the meeting, and provide a PMT meeting summary to members with decisions and action items no later than one week following the meeting unless otherwise noted.

Policy Advisory Committee (“PAC”)

The PAC serves as the voice of the community and the caretakers of the goals and objectives of the Updated TSP. The PAC will work to ensure the evaluation criteria and performance measures used to select the preferred programs and projects are consistent with community values. The City shall assemble the PAC which may include citizens interested in the Project.

City shall make an effort to provide outreach to freight organizations, businesses, modal representatives, residents-at-large, property developers, and environmental justice communities.

Technical Advisory Committee (“TAC”)

The TAC will provide technical guidance and coordination throughout the Project. The TAC will actively work to address and resolve technical and jurisdictional issues in order to produce a timely and complete Updated TSP. The TAC will consist of representatives of partnering agencies that have jurisdiction of facilities in Gladstone, provide transportation services to the community, share common political boundaries, or serve in an advisory role. City shall assemble TAC which may include staff from Clackamas County Development and Transportation, Metro, ODOT, City, Gladstone Fire Department, Gladstone School District, City of Oregon City and TriMet.

PAC, TAC and Community Meeting Logistics

Consultant shall take the lead on scheduling meetings and providing PAC and TAC Meeting notices via the Project Website. It is assumed that all TAC and PAC meetings will occur on the same day unless otherwise noted. City shall assist Consultant with arranging meeting rooms and provide meeting notices for Community Meetings.

Consultant shall prepare and distribute draft notices, agendas, and relevant materials at least two weeks prior to PAC and TAC meetings for review by the City and APM. The City and APM will review all relevant materials and agendas and return corrections to the Consultant at least one week prior to the meeting. Consultant shall distribute revised materials at least one week prior to meeting. Consultant shall facilitate the PAC and TAC meetings, present materials and answer questions, with a minimum of two consultant team members present at each meeting. Within a week after each meeting, the Consultant shall prepare and distribute meeting summaries. APM must be invited to all PMT, TAC, PAC, PC and City Council meetings.

PC, City Council and Joint Work Sessions

City shall organize and facilitate the public hearing process for the adoption of the Project with PC, City Council through joint meetings of PC and City Council and provide regular briefings to the City and PC during the duration of this process. City shall assemble and submit all necessary land use notices. Consultant duties include presenting Project at public hearings and adoption hearing-related work sessions.

Technical Memorandums

Unless otherwise noted, the Consultant shall be responsible for only draft and final tech memos with no revisions between the draft and final versions.

Expectations for Traffic Analysis

Unless otherwise stated:

All data and calculations must be submitted to ODOT Region 1 Traffic and City for review and record-keeping. Electronic file copies of analysis data are required. These written and electronic products must be in ODOT- and City-compatible formats.

All traffic analysis work must comply with the following requirements:

- An Oregon-registered professional engineer must perform or oversee all traffic analysis work.
- Traffic count data is required for Study Intersections as determined necessary by the City. Consultant shall conduct traffic counts for all plan intersections. Intersection counts must include mid-week weekday 2-hour P.M. Peak (4-6 P.M.) manual classification turning movement counts, including truck, bicycle and pedestrian data. Count collection must be avoided in the following months: December, January and February.
- All traffic volumes on state facilities must be adjusted to reflect the 30th highest hour.
- Intersection performance must be determined using the latest Highway Capacity Manual published by the Transportation Research Board. All traffic analysis software programs used must follow Highway Capacity Manual procedures. For all signalized intersections, use Synchro/SimTraffic or similar package to perform the traffic analysis. The City Engineer may approve a different intersection analysis method prior to use for City intersections.
- Operational mobility targets for state facilities must be volume to capacity (“V/C”). Standards for non-state facilities can be V/C, level-of-service, or a combination of V/C and level-of-service, depending on the applicable City, County, and Metro standards.
- The V/C ratio for each lane group for each movement must be identified and considered in the determination of intersection performance. Signal progression must also be considered using Synchro/SimTraffic analysis procedures as described in the ODOT Analysis Procedures Manual.
- Future build network assumptions (alternatives) must be consistent with applicable City, Clackamas County and ODOT design standards. Alternative improvements may be proposed subject to the approval of the facility’s jurisdiction.
- Modeling must be done using the Metro regional transportation model (EMME2 or VISUM) to identify transportation road network deficiencies.
- The planning horizon year must be 2035 to provide consistency with the RTP and other local and regional planning efforts.
- Model volumes must be post-processed following National Cooperative Highway Research Program Report 255 guidelines.

Public Community Involvement

Community Meetings, a Project website, official City meetings, and ongoing receipt and distribution of public comments will ensure the public has multiple opportunities to take part in the development of the Project.

The public involvement program must include specific steps to provide opportunities for participation by federal Title VI communities. City and Consultant shall use the ODOT Title VI (1964 Civil Rights Act) guidance to identify Title VI populations (as identified in Task 3.1), formulate public involvement strategies, and report outreach efforts to and participation by Title VI communities, as required in Task 8.7 Title VI Report.

- 1.3 **Refined Project Schedule** – Consultant shall prepare a Refined Project Schedule and deliver to City and APM within two weeks of PMT Meeting #1. Refined Project Schedule must show specific dates that so that project processes are well understood. Consultant shall update and distribute Refined Project Schedule to City and APM for approval up to four times during the Project period.
- 1.4 **Project Website** – Consultant shall establish a Project Website for the public and post Project deliverables throughout the Project.
- 1.5 **PMT Conference Call Meetings** – City Project Manager, APM, and Consultant Project Manager shall meet via conference call at least once a month (up to 12) throughout the Project. These PMT Meetings are in addition to those specified in later tasks. Consultant shall provide a meeting agenda prior to the meeting and provide summary meeting notes the day of the meeting.
- 1.6 **“Transportation Planning 101” Training** – Consultant shall provide a transportation system planning basic training for the PC and City Council. Consultant shall provide APM a copy of the draft transportation system planning basic training presentation for APM’s review and comment and provide APM a copy of the final presentation. City shall assist with the meeting logistics.

City Deliverables

- 1a Committee Rosters (Subtask 1.1)
- 1b PMT Meeting #1 (Subtask 1.2)
- 1c PMT Meetings (Subtask 1.5)
- 1d “Transportation Planning 101” Training (Subtask 1.6)
- 1e Review and comment on Consultant deliverables

Consultant Deliverables

- 1A PMT Meeting #1 (Subtask 1.2)
- 1B Refined Project Schedule (Subtask 1.3)
- 1C Project Website (Subtask 1.4)
- 1D PMT Meetings (up to 12) (Subtask 1.5)
- 1E “Transportation Planning 101” Training (Subtask 1.6)

Task 2: Project Goals and Objectives and Funding Assumptions

Subtasks

- 2.1 **City Background Documents** – City shall provide City Background Documents to Consultant, including but not limited to the following:
 - 1995 TSP past and current transportation information for funding forecast including any City projections from System Development Charges or other existing funding mechanisms
 - A map of the City and Urban Growth Boundary
 - 1995 TSP
 - City Capital Improvement Plan

- City Comprehensive Plan (2011)
- City Municipal Code (Title 17 Zoning and Development)
- Goal 5 Inventory and Map
- Trolley Trail map and mapped routes of other major recreation trail locations and status
- City's Goal 9 Buildable Lands Inventory
- TSPs for Clackamas County and Oregon City
- Clackamas County Active Transportation Plan

2.2 Base Maps – Consultant shall prepare Base Maps of Project Area depicting property lines, streets, and existing plan and zone designations. Base Maps must include off-street trails, railroads, obstacles such as steep slopes and known designated wetlands and creeks, and major land use attractors such as commercial zones, parks and schools. Base Maps must be in a GIS-compatible data format. Base Maps must be developed so that map layers may be used in subsequent tasks, for example to produce modal maps for the Updated TSP. Consultant shall use information available from Metro, ODOT and Clackamas County.

2.3 Tech Memo 1: Policy Framework and Code Review – Consultant shall prepare Tech Memo 1 in draft and final versions in a user-friendly format with a table of contents. The purpose of Tech Memo 1 is to:

- document the City's existing comprehensive policy language that pertains to the Project;
- reference Metro Regional Transportation Functional Plan (RTFP) and document aspects that are missing from City policy or code in order to be in compliance; Consultant shall audit adopted policies and development regulations for compliance with Metro's RTFP checklist (comprehensive plan and code requirements only). This checklist will provide important guidance for Task 4, including revisions to the Municipal Code identified in Tech Memo #7. The Consultant shall provide the applicable Code citations that correspond to the RTFP requirements; Consultant shall identify where potential code amendments will be necessary for RTFP compliance. No new policy or code language is to be developed as part of this deliverable
- reference OAR 660-012-0045 and document aspects that are missing from City policy or code in order to be in compliance;
- reference the Oregon Transportation Plan (OTP), provide an explanation of its role and provide a link;
- provide a link to the OHP, reference the applicable Oregon Highway Plan (OHP) policies, including 1G1, and the applicable standards and targets; and
- document which projects are in the current State Transportation Improvement Program and those that have been completed from the 1995 TSP or other applicable plans.

Tech Memo 1 must also include a summary of the applicable state, regional and local land use and transportation policy and TSP planning requirements including the applicable regional performance measures relevant to the Project.

Consultant shall distribute draft Tech Memo 1 to PMT, TAC and PAC at least two weeks prior to respective group's Task 2 meetings. Consultant shall respond to comments and prepare final version after Task 2 meetings.

- 2.4 Tech Memo 2: Project Goals and Objectives and Evaluation Criteria** – Consultant shall prepare Tech Memo 2 in draft and final versions. The purpose of Tech Memo 2 is to document the Project Goals and Objectives and Evaluation Criteria to be used to develop and evaluate TSP Solutions in Task 4. The Project Goals and Objectives and Evaluation Criteria must be based upon the provisions of OAR 660-012-0035 and RTFP Section 3.08.220 and be presented by the listed order with an explanation of the benefit(s) and potential, generalized performance facts associated with the type of solution.

Project Goals and Objectives and Evaluation Criteria will guide the development of the Updated TSP and ensure that planned transportation solutions (projects and programs) meet identified regional and local needs (gaps and deficiencies). The Project Goals and Objectives and Evaluation Criteria will be used to identify the planned and financially-constrained transportation systems, refine the Updated TSP policies, and help prioritize capital projects or programs for implementation.

Tech Memo 2 must include recommended weighting of Evaluation Criteria and be written in a user-friendly manner for public review.

Consultant shall distribute draft Tech Memo 2 to City and APM at least two weeks prior to respective group's Task 2 meeting; City and APM shall review and provide written comments. Consultant shall respond to comments and prepare final version after Task 2 meetings.

- 2.5 Tech Memo 3: TSP Financial Forecast** – Consultant shall prepare draft and final versions of Tech Memo 3, a TSP Financial Forecast. The purpose of Tech Memo 3 is to estimate the amount of revenue the City will have over the 2035 timeframe and to develop clear expectations for the later Project work to prioritize projects and programs for implementation. Consultant shall use data provided by the City to develop Tech Memo 3, including the ten most recent years of historical financial data.

Consultant shall distribute draft Tech Memo 3 to City and APM at least two weeks prior to first Task 2 meeting; City and APM shall review and provide written comments. Consultant shall respond to comments and prepare final version after Task 3 meetings.

- 2.6 Project Flyer Mailing** – Consultant shall prepare draft and final versions of a two-page color Project Flyer. The purpose of the Project Flyer is to inform households, businesses, and institutions of the Project purpose, Project schedule with major deliverables, and to announce the first Community Meeting date and location. Project Flyer mailing must be mailed by the City to all property owners and tenants in Project Area. The draft and final Project Flyers must be approved by the PMT.

- 2.7 Tech Memo 4: TSP Methodology and Assumptions** – Consultant shall prepare and submit Tech Memo 4 to ODOT Region 1 for review and concurrence on the methodology and assumptions associated with the existing and future conditions analysis for the TSP update. Tech Memo 4 must be written in a user-friendly format to assist non-technical readers in understanding how modeling is used to develop future conditions for the TSP update.

Consultant shall distribute draft Tech Memo 2 to PMT, TAC and PAC at least two weeks prior to PMT Meeting #2.

- 2.8 PMT Meeting #2** – Consultant shall organize and facilitate PMT Meeting #2 in Gladstone. The purpose of PMT Meeting #2 is to discuss draft Tech Memos 1-4; to provide comments on the Draft Project Flyer; plan for TAC and PAC Meeting #1 and to discuss Task 3 work as needed. Consultant shall provide an agenda at least two business days prior to PMT Meeting #2 and provide a meeting summary no later than one week following PMT Meeting #2.

- 2.9 TAC Meeting #1** – Consultant shall organize and facilitate TAC Meeting #1 to introduce the Project; review and receive feedback on draft Tech Memos 1-4 and to outline the Project’s next steps. Consultant shall gain TAC members consensus of Project Goals and Objectives and Evaluation Criteria including TAC recommended revisions.

Consultant shall prepare an agenda and distribute it and the draft Tech Memos at least one week prior to TAC Meeting #1. Consultant shall prepare and distribute a meeting summary no later than one week following TAC Meeting #1.

- 2.10 PAC Meeting #1** – Consultant shall organize and facilitate PAC Meeting #1 to introduce the Project; review and receive feedback on draft Tech Memos 1-4 and to outline the Project’s next steps. Consultant shall gain PAC members consensus of Project Goals and Objectives and Evaluation Criteria including PAC recommended revisions.

Consultant shall prepare an agenda and distribute it and the draft Tech Memos at least one week prior to PAC Meeting #1. Consultant shall prepare and distribute a meeting summary no later than one week following PAC Meeting #1. It is assumed that PAC Meeting #1 will occur on the same day and back to back with TAC Meeting #1 and include the same basic materials (agendas, presentations, etc.).

City Deliverables

- 2a City Background Documents (Subtask 2.1)
- 2b Project Flyer mailing (Subtask 2.6)
- 2c PMT Meeting #2 (Subtask 2.8)
- 2c TAC Meeting #1 (Subtask 2.9)
- 2d PAC Meeting #1 (Subtask 2.10)
- 2e Review and comment on Consultant deliverables

Consultant Deliverables

- 2A Base Maps (Subtask 2.2)
- 2B Tech Memo 1 (Subtask 2.3)
- 2C Tech Memo 2 (Subtask 2.4)
- 2D Tech Memo 3 (Subtask 2.5)
- 2E Project Flyer (Subtask 2.6)
- 2F Tech Memo 4 (Subtask 2.7)
- 2G PMT Meeting #2 (Subtask 2.8)
- 2H TAC Meeting #1 (Subtask 2.9)
- 2I PAC Meeting #1 (Subtask 2.10)

Task 3: Existing Transportation System and Needs Inventory

Subtasks

3.1 Tech Memo 5: Existing Transportation System Gaps and Deficiencies Inventory –

Consultant shall prepare draft and final Tech Memo 5, an assessment of existing conditions of transportation systems and services. Tech Memo 5 must include inventory findings for the following:

- A. Public Transit – Consultant shall develop text and figures about Public Transportation to reflect current transit stop locations, the number of on and off boardings, travel times, headways, and service hours for all transit lines in Project Area from data collected from TriMet by Consultant. Consultant shall identify deficiencies in the sidewalk network that affect access to transit stops and identify missing or deficient pedestrian crossings near transit stops. The public transit chapter shall identify and acknowledge LIFT paratransit service and present summary data if provided by TriMet. Work must reflect the adopted RTP Regional Transit Network (RTP Figure 2.10).
- B. Active Transportation Options for Bicyclists and Pedestrians – Consultant shall develop text and maps for Existing Pedestrian Facilities and Destinations and Existing Bicycle Facilities and Destinations, to reflect current pedestrian and bicycle system conditions incorporating City, Metro and ODOT data into the pedestrian and bicycle inventory. Special attention must be given to identifying safe routes to schools and connecting citizens to regional centers without sole reliance on driving.
- C. TSMO and Transportation Demand Management (“TDM”) – Consultant shall prepare an Existing Conditions section addressing TSMO and TDM including a description of Clackamas County, regional and state practices currently being implemented for the Project Area.
- D. Traffic Speeds and Volumes – Summary maps, one depicting Average Daily Traffic volumes as available, PM peak hour traffic volumes, and another with posted speeds on arterial and collector streets throughout the Project Area as available.

- E. Street System and Intersection Performance – Intersection performance information for eight signalized intersections including:
- a. OR 99E and Arlington Street
 - b. OR 99E and Gloucester
 - c. OR 99E and Glen Echo
 - d. Dartmouth Street and Oatfield Road to SE 82nd Drive
 - e. Oatfield Road and Ridgeway Drive/Collins Crest Street
 - f. Oatfield Road and Glen Echo Avenue
 - g. I-205 and 82nd Drive north bound
 - h. I-205 and 82nd Drive south bound
- F. Safety – Consultant shall analyze and document the crash/collision data for the past five years on streets throughout the Project Area, including city, state, and county streets, and among all users, including people driving, walking, and riding bicycles. The analysis must identify collision patterns, types, severity (property damage, injury, or fatality), high-frequency collision locations, severe collision locations, evaluation of causes, and potential counter measures. Information from ODOT’s most recent Safety Priority Index System list may be used when preparing the safety analysis for state highways and interchanges. Consultant shall analyze offset arterial intersections and determine which of those pose a safety problem. Consultant shall analyze pedestrian crossings with pedestrian-involved crashes and determine which of those pose a safety problem.
- G. Evacuation Routes – Consultant shall document existing potential or actual evacuation routes using input from the Gladstone Fire Department.
- H. Freight – Consultant shall summarize information regarding freight connections, reliability, and deficiencies in Project Area using data from the Metro 2035 RTP and Regional Freight Plan.
- I. Environmental Justice – Consultant shall identify Title VI populations within Project Area for the purposes of meeting the City's transportation needs and avoiding undue adverse impacts when examining future projects. The Environmental Justice inventory must include maps identifying concentrations of sensitive populations in the Project Area and vehicle ownership by Census Block if available.
- J. Rail, Air, Pipeline, and Water Transportation – Consultant shall document any changes in the rail, air, pipeline, and water transportation systems in the Project Area and vicinity since the development of the 1995 TSP. The City shall provide documentation of any changes in these systems for inclusions in Tech Memo 5.

Consultant shall distribute draft Tech Memo 5 to City, PMT, TAC and PAC at least two weeks prior to group’s respective Task 3 meetings. Consultant shall respond to comments and prepare final version after Task 3 meetings.

3.2 Draft Tech Memo 6: Needs Analysis – Consultant shall prepare Draft Tech Memo 6 for committee and public review. Draft Tech Memo 6 must build upon Tech Memos 1-4 to identify transportation gaps and deficiencies consistent with RTFP Title 7 definitions. Draft Tech Memo 6 must be consistent with the TPR (OAR 660-012-0030), RTFP section 3.08.210, and RTP Mobility Corridors identified needs for OR 99E and I-205. Draft Tech Memo 6 must determine if the identified needs in the 1995 TSP remain a need and if so, include those needs in Draft Tech Memo 6. Draft Tech Memo 6 must include a summary as well as a full report including the following elements:

- A. Street Network and Connectivity Needs Analysis – Consultant shall update and bring forth the “Local Street Connectivity” map in Figure 8-6 of the 1995 TSP consistent with the TPR provisions of OAR 660-0012(045)(3), (4), and (5), and the RTFP Section 3.08.110 Street System Design requirements. The updated map must include existing and proposed arterial, collector, and local streets; and pedestrian, bicycle, and trail connections.
- B. Public Transportation and Inter-modal Connections Analysis – Consultant shall identify desired transit service levels and routes in the community, along with the actions and investments needed to support this level of transit service in coordination with TriMet and considering the regional transit classifications shown in the RTP and provisions of RTFP Section 3.08.120.C, using the Environmental Justice map from Tech Memo 3. Consultant shall identify key pedestrian and bicycle needs that will provide better access to transit stops including sidewalks and safe street crossings consistent with RTFP Section 3.08.120. Consultant shall identify the quality of existing transit stops, where more or new service is needed or desired. Needed inter-modal connections between passenger rail, commuter rail, light rail, and bus transit must also be identified. The description must identify needed connections to public transit for cyclists; and include an Oregon City transit center service description (due to the close proximity to Project Area) and reference potential passenger rail in Oregon City under the “Rail” section.
- C. Pedestrian Needs Analysis – Consultant shall perform a needs analysis for pedestrian facilities including changes since 1995. The pedestrian needs analysis must reflect the pedestrian system design requirements of RTFP section 3.08.130 and the transit system design requirements of RTFP section 3.08.120.A and B with exception to the sidewalk deficiency element. Consultant shall determine sidewalk deficiencies for collector or higher classified streets. Consultant shall identify connections needed to local trails and to the Regional Trails and Greenways network. Consultant shall update existing maps to identify missing sidewalks and document the deficient existing or recommended dimensional and design characteristics that determine whether existing sidewalks are safe, comfortable and adequate. Consultant shall develop ¼ and ½ miles travel shed diagrams to illustrate the walking distances to key destinations. Key destinations include transit stops, schools, parks, libraries and other destinations as determined by the Consultant. Consultant shall also use a pedestrian level of traffic stress analysis tool to forecast and measure network quality changes. (See “Safety Needs Analysis” below).

- D. Bicycle Needs Analysis – Consultant shall perform a needs analysis for bicycle facilities including changes since 1995. The bicycle needs analysis must be consistent with RTFP section 3.08.140. Analysis must include evaluation of providing bicycle connections to the Regional Trails and Greenways network and Regional and County Active Transportation Plan systems. Consultant shall develop one-mile and five-mile travel shed diagrams to illustrate biking distances to key destinations. Key destinations include transit stops, schools, parks, libraries and other destinations as determined by the Consultant. Consultant shall apply the bicycle level of traffic stress analysis tool to forecast and measure network quality changes. (See “Safety Needs Analysis” below).
- E. TSMO, Access Management, and TDM Needs Analysis – Consultant shall use 1995 TSP information for access management. Consultant shall evaluate the existing local and regional TSMO and TDM strategies and programs and identify gaps and opportunities to expand TSMO investments, strategies and programs, including multimodal traffic management, traveler information, and TDM, consistent with section 3.08.160(2) of the RTFP. Consultant shall identify existing “park and ride” parking lots as part of addressing TDM needs.
- F. Street Future Conditions Performance and Capacity Needs Analysis – Consultant shall update the 1995 TSP to include 2035 street forecast condition based on applicable performance standards, with explanations of problem areas. The future intersection performance information must be provided for eight signalized intersections including:
- a. OR 99E and Arlington Street
 - b. OR 99E and Gloucester
 - c. OR 99E and Glen Echo
 - d. Dartmouth Street and Oatfield Road to SE 82nd Drive
 - e. Oatfield Road and Ridgeway Drive/Collins Crest Street
 - f. Oatfield Road and Glen Echo Avenue
 - g. I-205 and 82nd Drive north bound
 - h. I-205 and 82nd Drive south bound
- G. Safety Needs Analysis – Consultant shall update the 1995 TSP section on Safety applying, in part, the performance measures identified in Tech Memo 2, to identify locations that need safety improvements including pedestrian and bicyclist crossings of streets, especially those leading to key destinations, such as employment and shopping areas and schools. Consultant shall also update the 1995 TSP section on Safety to address the “safety intersections” and problem corridors identified in the existing conditions crash analysis in Tech Memo 3. City shall provide Consultant with information about observed and perceived speeding, as well as safety and traffic diversion problems on local streets. Consultant shall also analyze needs for City-identified common safety problems and possible traffic calming measures.

- H. Freight Needs Analysis – Consultant shall identify gaps and deficiencies in the freight system using the 1995 TSP and current RTP.
- I. Air, Rail, Pipeline, and Water Needs Analysis – Consultant shall update the 1995 TSP air, rail, pipeline and water needs analysis and identify needed changes. The Rail section must include discussion about the future of passenger rail in Oregon City.
- J. Menu of Potential Solutions – Consultant shall identify a menu of solutions to help solve or address the identified gaps and deficiencies for all travel modes consistent with RTFP requirements.

Consultant shall distribute draft Tech Memo 6 to City, PMT, TAC and PAC at least two weeks prior to group's respective Task 3 meetings. Consultant shall respond to comments and prepare final version after Task 4 meetings.

- 3.3 Joint PMT and TAC Meeting #1** – Consultant shall organize and facilitate Joint PMT and TAC Meeting #1 to review and receive feedback on draft Tech Memo 5 and Draft Tech Memo 6 and to outline the Project next steps.

Consultant shall prepare an agenda and distribute it and the draft Tech Memos at least one week prior to Joint PMT and TAC Meeting #1. Consultant shall prepare and distribute a meeting summary no later than one week following Joint PMT and TAC Meeting #1.

- 3.4 PAC Meeting #2** – Consultant shall organize and facilitate PAC Meeting #2 to review and receive feedback on draft Tech Memo 5 and Draft Tech Memo 6 to share PMT and TAC comments on the memos and to outline the Project next steps.

Consultant shall prepare an agenda and distribute it and the draft Tech Memos at least one week prior to PAC Meeting #2. Consultant shall prepare and distribute a meeting summary no later than one week following PAC Meeting #2. It is assumed that PAC Meeting #2 will occur on the same day and back to back with Joint PMT and TAC Meeting #1 and include the same basic materials (agendas, presentations, etc.).

- 3.5 Community and Virtual Community Meeting #1** – City shall organize and Consultant shall lead Community Meeting #1 to present the Project purpose, opportunities for community input, and the key findings of Draft Tech Memos 5-6, summarized and in graphic form. The graphic form to gain feedback on Tech Memos 5-6 must be posted on-line as part of the Virtual Community Meeting #1. A minimum of two Consultant team members shall attend Community Meeting #1 and the City shall provide any needed staff support.

Community Meeting #1 must include an on-line Virtual Community Meeting effort that allows people to participate online to provide input. The online event must take place during the in-person community meeting and the opportunity to give input must remain available for no fewer than 14 days. The Virtual Community Meeting must include web

versions of poster boards, presentation slides, and handouts presented at the Community Meeting, as well as the opportunity to provide similar input as sought at the in-person Community Meeting. Virtual Community Meeting 1 need not include any Project videos.

Consultant shall prepare a summary of comments received from Virtual Community Meeting event along with the in-person meeting summary notes within two weeks of Community Meeting #1.

City Deliverables

- 3a Joint PMT and TAC Meeting #1 (Subtask 3.3)
- 3b PAC Meeting #2 (Subtask 3.4)
- 3c Community and Virtual Community Meeting #1 (Subtask 3.5)
- 3d Review and comment on Consultant deliverables

Consultant Deliverables

- 3A Tech Memo 5 (Subtask 3.1)
- 3B Draft Tech Memo 6 (Subtask 3.2)
- 3C Joint PMT and TAC Meeting #1 (Subtask 3.3)
- 3D PAC Meeting #2 (Subtask 3.4)
- 3E Community and Virtual Community Meeting #1 (Subtask 3.5)

TASK 4: Potential Solutions

Subtasks

4.1 Draft Tech Memo 7: Regulatory Solutions – Building on Tech Memo 1, Consultant shall prepare Draft Tech Memo 7 to recommend regulatory changes to achieve local, City Code consistency with the applicable provisions of the RTP, RTFP, and TPR, as identified in Tech Memo #1. Draft Tech Memo 7 must be in table format showing the concept to explain the intent, the existing City Code language or policy (if it exists) and the recommended City Code language or policy to achieve compliance. Recommended City Code language must be in an 80% completed format. Draft Tech Memo 7 must recommend City Code language that ensures the following:

- a. TDM language to require new development, major expansions and conditionally approved development to reduce single-occupant vehicle trips. TDM language must include a list of options to achieve compliance;
- b. Consistency with OAR 660-012-0045(3), (4), and (5);
- c. Compliance with RTFP Section 3.08.110 Street System Design including requirements pertaining to completeness of the existing street system, connectivity to support transit, walking and bicycling, building orientation, street tree locations and spacing, street lighting and furniture for pedestrians, pedestrian paths to provide reasonably direct routes;
- d. street design standards for streets, bicycle and pedestrian facilities, trails, and transit facilities, allowing implementation of complete street designs as set forth in Metro’s “Creating Livable Streets: Street Design Guidelines”, and green street designs set

- forth in Metro’s “Green Streets: Innovative Solutions for Stormwater and Street Crossings”, and “Trees for Green Streets: an Illustrated Guide”.
- e. Compliance with RTFP Section 3.08.120 Transit System Design; and
- f. Compliance with RTFP Section 3.08.130.C. and consideration of Section 3.08.130.B.

4.2 Draft Tech Memo 8: TSP Solutions – Consultant shall prepare Draft Tech Memo 8 that includes recommended TSP Solutions and updates the 1995 TSP projects and programs, building on the identified needs in Tech Memo 6. Consultant shall include the yet to be completed vehicular-system solutions from the 1995 TSP in draft Tech Memo 8 with exceptions to the “safety intersections” which may have new solutions.

Consultant shall consider the final Project Goals and Objectives and Evaluation Criteria and satisfy the standards, goals and objectives identified in Final Tech Memo 2 and select the TSP Solutions. Consultant shall identify potential projects that would help meet the performance standards, including operational improvements, local street system improvements, TDM, and walking, biking, and transit improvements with order of magnitude cost estimates. Consultant must identify, in consultation with ODOT or other facility owners, whether major improvements are feasible from financial, environmental, and land use perspectives. The objective is to avoid the need to develop alternative mobility standards for state highways within the Project Area as a future plan refinement per OHP Action 1G1 and, among other objectives, to expand travel options and reduce greenhouse gas pollution.

Consultant shall identify one to three alternative solutions, typically depending upon the identified system needs (gap or deficiency) or objectives. The City and APM shall provide direction on the number of alternative solutions, if there is a debate or question. Solutions must reflect and implement the Metro 2035 RTP Corridor Investment Strategies. Projects included in the 1995 TSP and in the Financially Constrained and State RTP systems of investments (project lists), Regional TSMO Plan, Regional Freight Plan, and Regional High Capacity Transit Plan must be considered against the Project Goals and Objectives and Evaluation Criteria in Tech Memo 2.

Solutions must be packaged by project mode and type in the order listed in RTFP section 3.08.220. Consultant must indicate, by ranking method, how the TSP solution(s) support the Project Goals and Objectives and Evaluation Criteria used during the outreach meetings. Order of magnitude planning cost estimates must be included.

Tech Memo 8 must include the following elements:

- A. Update of the 1995 TSP Safety Solutions and Improvements – Consultant shall include the 1995 TSP proposed recommended safety improvements not yet implemented for pedestrian, bicycle, transit and vehicle travel for only the “Safety Study Intersections”. Consultant shall also identify solutions for newly identified safety problems. Safety improvements are expected to potentially include traffic calming, realignment and other geometric improvements, especially those that slow traffic speed or are among the Federal Highway Administration’s Proven Safety

Countermeasures list. The description of proposed solutions must include the needed acquisition of any easements and rights-of-way.

- B. List of TSMO Solutions and Improvements – Consultant shall develop a list of TSMO solutions and improvements, including TDM, geometric, and operational improvements and including consideration of transit and freight signal priority. Consultant shall identify projects within the Project Area, County, and region that provide transportation system and demand management benefit for travelers to, through, and within the Project Area. Consultant shall use planning-level evaluation of potential strategies that effect signal timing (e.g., transit signal priority, freight signal priority, and Intelligent Transportation Systems strategies). Consultant shall also include best practices parking management strategies, TDM standards for new development, and TDM education and incentive programs. Consultant shall identify up to four potential new “park and ride” parking lot locations, if identified as a need in Draft Tech Memo 4.
- C. Access Management Solutions – Consultant shall recommend access management and spacing solutions for State facilities and City and County arterials. Solutions may be physical improvements or recommendations for City Code or street standard amendments. Consultant shall identify facilities or segments thereof where a future more detailed access management plan would encourage smoother traffic flows with fewer collisions and fewer conflicts with pedestrians and bicycles.
- D. Lists of Pedestrian, Bicycle, Trail, and Transit Solutions and Improvements – Consultant shall recommend potential improvements to the existing transit system, both locally and regionally, including sidewalk access, safe crossings of streets to access transit stops, improved quality transit stops, and other identified transit needs. Consultant shall identify new routes and areas requiring new or additional transit service and identify whether these routes are likely to be cost-effective to serve.

Any language addressing recommendations for changes in transit service must be developed in collaboration with TriMet. Consultant shall recommend solutions to meet identified bicycle and pedestrian needs, including recommendations to improve connectivity to key employment and shopping destinations, schools and transit stops and to the existing multi-use trails system. Consultant shall recommend new multi-use trail locations within the Project Area. Consultant shall conduct an access to transit opportunities analysis utilizing data from TriMet, considering the pedestrian level of traffic stress analysis results. .

Consultant shall identify three target areas that provide the most opportunity for improvement, based on the transit opportunities analysis. Solutions and improvements related to these opportunity areas must be highlighted in the prioritized list. Consultant shall determine if the Metro non-Single Occupancy Vehicle mode split targets have been met and, if not, Consultant shall assess why the target will not be met, and recommend actions the City can take to make progress toward 2035 targets. To help inform potential new actions, Consultant shall consider actions for

achieving non-Single Occupancy Vehicle mode split targets recommended by the 2005 Metro Non-Single Occupancy Vehicle Modal Target study. Bicycle and pedestrian projects must be shown as stand-alone projects, while indicating which of those offer the potential to be rolled into larger projects.

- E. List of Improvements to Improve System Connectivity – Consultant shall recommend updates to the 1995 TSP to improve street network connectivity; if and where feasible connections exist.
- F. List of Solutions and Improvements to Maintain Freight Mobility and Reliability – Consultant shall update the 1995 TSP to recommend freight route improvements (including rail) for consistency with the RTFP.
- G. List of Solutions and Improvements to Maintain or Increase Street Capacity – Consultant shall bring forth 1995 TSP projects to address capacity demands, identify where capacity expansions are not feasible and identify locations that do not or will not be likely to meet regional mobility standards based on the 1995 TSP, considering other identified Project solutions are in place.
- H. Screening – Consultant shall screen new solutions (not 1995 TSP solutions) proposed above in A through G, for obvious environmental, engineering, land use “fatal flaws” and anticipated funding capacity. This screening can be qualitative or sketch level, and need not include a full system wide traffic analysis, but does require operational analysis where alternative solutions to a specific localized operational or capacity demand are proposed.
- I. Performance Measures and Targets – Consultant shall incorporate the transportation performance measures and targets consistent with RTFP Section 3.08.230 and have performance measures for safety, vehicle miles traveled per capita, freight reliability, congestion, and walking, bicycling and transit mode shares to evaluate and monitor the TSP. Where the regional mobility standards in Table 3.08-2 of the RTFP will not likely be met, Consultant shall document where the mobility standards are not met and why, and identify future refinement plans with a timeframe and budget. For facilities where the regional mobility standards in Table 3.08-2 of the RTFP will not be met, Consultant shall provide findings explaining why the 1995 or current TSP solutions do not solve the need and respond consistent with OHP Policy Action 1F3. Responding consistent with OHP Policy Action 1F3 includes identifying in the Updated TSP project list a future refinement plan with a timeframe and budget for alternative mobility standards to be developed.
- J. Progress Toward Performance Targets– Consultant shall develop for adoption measures consistent with RTFP Section 3.08.230.E and Section 3.08.410 in order to improve system performance and reduce further degradation of highways within the City’s jurisdiction.

- 4.3 Joint PMT and TAC Meeting #2** – Consultant shall organize and facilitate Joint PMT and TAC Meeting #2 to review and receive feedback on Draft Tech Memos 7 and 8; and to outline the Project next steps.

Consultant shall prepare an agenda and distribute it and the Draft Tech Memos at least one week prior to Joint PMT and TAC Meeting #2. Consultant shall prepare and distribute a meeting summary no later than one week following Joint PMT and TAC Meeting #2.

- 4.4 PAC Meeting #3** – Consultant shall organize and facilitate PAC Meeting #3 to review and receive feedback on Draft Tech Memos 7 and 8; and to outline the Project next steps including Community and Virtual Community Meeting #1.

Consultant shall prepare an agenda and distribute it and the Draft Tech Memos at least one week prior to PAC Meeting #3. Consultant shall prepare and distribute a meeting summary no later than one week following PAC Meeting #3. It is assumed that PAC Meeting #3 will occur on the same day and back to back with Joint PMT and TAC Meeting #2 and include the same basic materials (agendas, presentations, etc.).

City Deliverables

- 4a Joint PMT and TAC Meetings #2 (Subtasks 4.3)
- 4b PAC Meeting #3 (Subtask 4.4)
- 4c Review and comment on Consultant deliverables

Consultant Deliverables

- 4A Draft Tech Memo 7 (Subtask 4.1)
- 4B Draft Tech Memo 8 (Subtask 4.2)
- 4C Joint PMT and TAC Meeting #2 (Subtask 4.3)
- 4E PAC Meeting #3 (Subtask 4.4)

TASK 5: Present Work to Date to PC and City Council

Subtasks

- 5.1 PMT Meeting #3** - Consultant shall organize and facilitate PMT Meeting #3 in Gladstone in order to plan Community and Virtual Community Meeting #1. Consultant shall provide the PMT meeting agenda and a draft Community and Virtual Community Meeting #1 agenda at least one week prior to meeting.
- 5.2 PC Meeting #1** – City shall arrange and Consultant shall facilitate PC Meeting #1, a work session to update the PC on Project work and Consultant deliverables completed to date and to receive feedback. Consultant shall facilitate a discussion to receive feedback on the transportation needs and draft solutions. Consultant’s presentation must include a 10-20 slide presentation summarizing the transportation needs and potential solutions. Consultant shall prepare a draft meeting agenda for PMT review prior to distribution to the PC by City, and a final meeting agenda incorporating input received.

- 5.3 **City Council Meeting #1** – City shall arrange and Consultant shall facilitate City Council Meeting #1, a work session to update the City Council on Project work and Consultant deliverables completed to date and to receive feedback. Consultant shall facilitate a discussion to receive feedback on the transportation needs and draft solutions. Consultant’s presentation must include a 10-20 slide presentation summarizing the transportation needs and potential solutions. Consultant shall prepare a draft meeting agenda for PMT review prior to distribution to the PC by City, and a final meeting agenda incorporating input received.
- 5.4 **Final Tech Memos 6** – Consultant shall finalize Tech Memo 6 based on the committee and community input to date and distribute to PMT, TAC and PAC.
- 5.5 **Final Tech Memo 7** – Consultant shall finalize Tech Memo 7 based on the committee and community input to date. Tech Memo 7 must include the complete recommended code and policy changes that are proposed to be noticed for public hearing and supported by the Staff Report and Findings (Task 8.2). Any new or modified language to (TAC) Draft Tech Memo 7 must be clearly distinguished in Final Tech Memo 7. Consultant shall provide copies of Final Tech Memo 7 to PMT, TAC and PAC.
- 5.6 **Final Tech Memos 8** – Consultant shall finalize Tech Memo 8 based on the committee and community input to date and distribute to PMT, TAC and PAC.

City Deliverables

- 5a PMT Meeting #3 (Subtask 5.1)
- 5b PC Meeting #1 (Subtask 5.2)
- 5c City Council Meeting #1 (Subtask 5.3)
- 5e Review and comment on Consultant deliverables

Consultant Deliverables

- 5A PMT Meeting #3 (Subtask 5.1)
- 5B PC Meeting #1 (Subtask 5.2)
- 5C City Council Meeting #1 (Subtask 5.3)
- 5D Final Tech Memo 6 (Subtask 5.4)
- 5E Final Tech Memo 7 (Subtask 5.5)
- 5F Final Tech Memo 8 (Subtask 5.6)

Task 6: Refine Solutions: Develop Draft Planned and Financially Constrained Transportation Systems

Subtasks

- 6.1 **Draft Tech Memo 9: Planned and Financially Constrained Transportation Systems -** Consultant shall prepare Draft Tech Memo 9 to describe and analyze the Planned and Financially Constrained Transportation Systems consistent with the TPR, particularly OAR 660-012-0040. The description of each of these Systems must be sufficient to describe the planned mode, function, performance standards, typical cross-section, and

general location of facilities, services, and improvements. Projects or planned improvements that involve financial contributions from sources outside the City must include a statement as to the likelihood of funding availability, developed in concert with the jurisdiction or agency expected to provide funding. One-time capital funds must be distinguished clearly from continuing operating expenditures. The development of the Planned and Financially Constrained Transportation Systems must be consistent with the Project Goals and Objectives and must be based on the Evaluation Criteria. Consultant shall consider the feedback from the PMT, TAC, PAC, PC, and City Council in previous tasks in developing the Planned and Financially Constrained Transportation Systems.

Consultant must analyze and summarize the performance of the financially constrained and planned systems consistent with Expectations for Traffic Analysis. Based on the performance analysis, Consultant shall recommend any revisions to the Draft Financially Constrained and Planned Systems. Consultant shall recommend phasing and sequencing of projects. If and where the recommended Planned System does not satisfy regional and state mobility targets, Consultant shall document the difference(s) and recommend a strategy for how this issue can best be addressed as a future action, separate from the Updated TSP.

Consultant shall provide the PMT and TAC electronic copies of Draft Tech Memo 7 with a cover memo and receive PMT and TAC comments in time to convey substantive recommendations at PAC Meeting #4.

6.2 Joint PMT and TAC Comments – Consultant shall prepare Joint PMT and TAC Comments, a written response of how PMT and TAC comments will be addressed.

6.3 PAC Meeting #4 – City shall organize and Consultant shall facilitate PAC Meeting #4 to discuss Draft Tech Memo 9 and to gain consensus on what should constitute the Planned and Financially Constrained Transportation Systems and solutions needing further refinement for Final Tech Memo 9.

Consultant shall prepare an agenda and distribute it and Draft Tech Memo 9 at least one week prior to PAC Meeting #4. Consultant shall prepare and distribute a meeting summary no later than one week following PAC Meeting #4.

6.4 Community and Virtual Community Meeting #2 – City shall organize and Consultant shall facilitate Community and Virtual Community Meeting #2 to gain citizen feedback on Draft Tech Memo 9. City shall invite City Council and PC members to attend. The virtual portion of Community Meeting #2 must be available to the public for at least 14 days. A minimum of two Consultant team members shall attend Community Meeting #2 and City shall provide staff support. Meeting materials must be previewed by the City and APM for approval and include, at a minimum, 5-10 poster boards and a 10-20 slide presentation. Consultant shall provide to City and APM a summary of the citizen comments and recommendations received at Community Meeting #2, in the form of meeting summary notes.

Community and Virtual Community Meeting #2 must allow people to participate on-line to provide input. The online event must take place during the in-person community meeting and remain available for no fewer than 14 days. The Virtual Community Meeting must include web versions of poster boards, presentation slides, and handouts presented at the Community Meeting, as well as the opportunity to provide similar input as sought at the in-person Community Meeting. Virtual Community Meeting #2 need not include any Project videos. Consultant shall prepare a summary of comments received from Virtual Community Meeting #2 event along with the in-person meeting summary notes within two weeks of Community Meeting #2.

6.5 City Council and PC Joint Work Session #1 – City shall organize and Consultant shall facilitate a joint work session to update the PC and City Council on the status of the Project and gain consensus on what should constitute the Financially Constrained and Planned Transportation Systems and any additional changes to TSP Policy and Regulatory Solutions from earlier deliverables. Consultant’s presentation must include a 10-20 slide presentation summarizing the material.

6.6 Final Tech Memo 9 – Consultant shall prepare Final Tech Memo 9 to reflect the feedback from the City Council and PC Joint Work Session #1 including additional analysis and refinements of at least ten solutions. Consultant shall gain agreement with PMT on selected, ten solutions prior to carrying out refinements. Consultant shall provide copies of Final Tech Memo 9 to the PMT, TAC and PAC.

City Deliverables

- 6a PAC Meeting #4 (Subtask 6.3)
- 6b Community and Virtual Community Meeting #2 (Subtask 6.4)
- 6c City Council and PC Joint Work Session #1 (Subtask 6.5)
- 6d Review and comment on Consultant deliverables

Consultant Deliverables

- 6A Draft Tech Memo 9 (Subtask 6.1)
- 6B Joint PMT and TAC Comments (Subtask 6.2)
- 6C PAC Meeting #4 (Subtask 6.3)
- 6D Community and Virtual Community Meeting #2 (Subtask 6.4)
- 6E City Council and PC Joint Work Session #1 (Subtask 6.5)
- 6F Final Memo 9 (Subtask 6.6)

Task 7: Draft Updated TSP and Implementing Language

Objective: Prepare the Draft Updated TSP, RTP Amendments and implementing TSP language for consideration by City officials and Metro.

Subtasks

7.1 Draft Updated TSP – Consultant shall prepare a Draft Updated TSP incorporating earlier Tech Memos and following the organization of the 1995 TSP. Draft Updated TSP must include, separately or as a part of Draft Updated TSP, as determined by City,

recommended amendments to the City Code and other implementing ordinances based on Tech Memos 7 and 9. Some or part of the Tech Memos prepared earlier in the Project may be included as an Appendix to the Draft Updated TSP and any recommended changes to the RTP project list. Consultant shall provide the PMT, TAC and PAC a link to the Draft Updated TSP with a comment deadline.

- 7.2 Metro and Department of Land Conservation and Development (DLCD) Notice –** Consultant shall submit a link to a copy of the Draft Updated TSP to Metro’s Chief Operating Officer at least 35 days prior to the first public hearing as directed in the RTFP, and make all corrections as designated by Metro prior to the public hearing. Consultant shall also submit a copy of the Draft Updated TSP to DLCD at least 35 days prior to the first evidentiary hearing as directed by ORS 197.610 and OAR 660-018-020 and make all corrections necessary prior to the public hearing.
- 7.3 Recommended Updated TSP –** Consultant shall revise the Draft Updated TSP into the Recommended Updated TSP incorporating comments from City, APM, and Community and Virtual Community Meeting #3 and shall submit six paper copies and one electronic copy to the City and one hard copy to the APM. Recommended Updated TSP must be provided concurrent with any identified amendments to the City Code and other implementing ordinances, and recommended RTP amendments. City shall send an email with a link to the Recommended Updated TSP to interested parties including the APM, TAC, PAC, DLCD and Metro.

City Deliverables

- 7a Review and comments on Consultant deliverables

Consultant Deliverables

- 7A Draft Updated TSP (Subtask 7.1)
7B Metro and Department of Land Conservation and Development (DLCD) Notice (Subtask 7.2)
7C Recommended Updated TSP (Subtask 7.3)

Task 8: Adoption

Subtasks

- 8.1 City Council and PC Joint Work Session #2 –**City shall arrange, notice, and conduct a joint work session of the City Council and PC to review the Recommended Updated TSP. Consultant shall attend to summarize comments from Community Meeting #3, provide an overview of the Recommended Updated TSP and its documentation and to answer questions.
- 8.2 TSP Staff Report and Findings –** Consultant shall prepare one (1) draft staff report for City Attorney with findings to support adoption of the Recommended Updated TSP and implementing language. City shall have an opportunity to modify or append the staff report and preliminary findings in preparation for the first evidentiary hearing. City will

modify or append the staff report as necessary to capture modifications or recommendations proposed through the adoption process.

- 8.3 Planning Commission (PC) Hearings** – City shall arrange, notice and conduct the PC Hearings to consider the Recommended Updated TSP, amendments to the City Code and other implementing ordinances, and associated Legislative application (recommended RTP amendments). Consultant shall attend and present the materials to be considered at one PC Hearing. Consultant will assist City in preparing any recommended modifications to proposed Code and policy language.
- 8.4 City Council Adoption Hearings** – City shall arrange, notice and conduct the City Council Adoption Hearings to consider adoption of the Recommended Updated TSP, amendments to the City Code and other implementing ordinances, and recommendations. Consultant shall attend and present the materials to be considered at one City Council Adoption Hearing.
- 8.5 Final Updated TSP** – Consultant shall prepare a final version of the Updated TSP with the adopting ordinance number and effective date incorporating City Council actions at adoption hearings as reported by City. Consultant shall submit six printed and bound copies of the Final Updated TSP to City, plus two hard copies to APM and submit an electronic copy of all documentation to the City and APM in PDF and a modifiable format. City shall finalize adopted updates to City Code and, if applicable, updated policies in the Comprehensive Plan.
- 8.6 Final Updated TSP to Metro and DLCD** – Consultant shall submit a hard copy of the Final Updated TSP to Metro’s Chief Operating Officer within 14 days after adoption and an electronic copy to DLCD.
- 8.7 Title VI Report** – Consultant shall prepare and submit to the APM Title VI Report documenting Project processes and outreach for all income, race, gender, and age groups for the entire Project.

City Deliverables

- 8a City Council and PC Joint Work Session #2 (Subtask 8.1)
- 8b PC Hearings (Subtask 8.3)
- 8c City Council Adoption Hearings (Subtask 8.4)

Consultant Deliverables

- 8A City Council and PC Joint Work Session #2 (Subtask 8.1)
- 8B TSP Staff Report and Findings (Subtask 8.2)
- 8C PC Adoption Hearings (Subtask 8.3)
- 8D City Council Adoption Hearings (Subtask 8.4)
- 8E Final Updated TSP (Subtask 8.5)
- 8F Final Updated TSP to Metro and DLCD (Subtask 8.6)
- 8G Title VI Report (Subtask 8.7)

TASK 9: Contingent Tasks

Contingent Task: No Services under this contingent task shall be performed without the prior written approval (e-mail acceptable) of APM. APM shall give separate written authorization for each subtask.

9.1 Contingent Meeting #1 – Upon written authorization of APM, Consultant shall attend an additional Project meeting (PMT, TAC, PAC, PC, or City Council) to present and receive feedback. Consultant shall provide summary meeting notes within one week of meeting.
 Consultant Key Staff: Matt Bell, KAI

9.2 Contingent Meeting #2 – Upon written authorization of APM, Consultant shall attend an additional Project meeting (PMT, TAC, PAC, PC, or City Council) to present and receive feedback. Consultant shall provide summary meeting notes within one week of meeting.
 Key Staff: Matt Bell, KAI

Project Schedule

TASK		<i>Schedule (Months after Notice to Proceed (NTP))</i>
1	Establish Committees and Start Project	May-June, 2016
2	Project Goals and Objectives and Funding Assumptions	May-July, 2016
3	Existing Transportation System and Needs Inventory	May – August, 2016
4	Potential Solutions	September - November, 2016
5	Present Work to Date to PC and City Council	December, 2016
6	Refine Solutions: Develop Draft Planned and Financially Constrained Transportation Systems	January-February, 2017
7	Draft Updated TSP and Implementing Language	March – April, 2017
8	Adoption	May-June, 2017

City Deliverables Estimate

Task	Description	
1	Establish Committees and Start Project	
1a	Committee Rosters (Subtask 1.1)	\$ 500
1b	PMT Meeting #1 (Subtask 1.2)	\$ 250
1c	PMT Conference Call Meetings (Subtask 1.5)	\$ 500
1d	“Transportation Planning 101” Training (subtask 1.6)	\$ 500
1e	Review and comment on Consultant deliverables	\$ 500
	Subtotal - Task 1	\$2,250
2	Project Goals and Objectives and Funding Assumptions	
2a	City Background Documents (Subtask 2.1)	\$ 500
2b	Project Flyer mailing (Subtask 2.6)	\$ 500

2c	PMT Meeting #2 (Subtask 2.8)	\$ 500
2d	TAC Meeting #1 (Subtask 2.9)	\$ 500
2e	PAC Meeting #1 (Subtask 2.10)	\$ 500
2f	Review and comment on Consultant deliverables	\$ 500
	Subtotal - Task 2	\$ 3,000
3	Existing Transportation System and Needs Inventory	
3a	Joint PMT and TAC Meeting #1 (Subtask 3.4)	\$ 500
3b	PAC Meeting #2 (Subtask 3.5)	\$ 500
3c	Community and Virtual Community Meeting #1 (Subtask 3.5)	\$ 500
3d	Review and comment on Consultant deliverables	\$ 500
	Subtotal – Task 3	\$2,000
4	Potential Solutions	
4a	Joint PMT and TAC Meetings #2 (Subtasks 4.3)	\$ 500
4b	PAC Meeting #3 (Subtask 4.4)	\$ 500
4c	Review and comment on Consultant deliverables	\$ 500
	Subtotal – Task 4	\$1,500
5	Present Work to Date to PC and City Council	
5a	PMT Meeting #3 (Subtask 5.1)	\$ 250
5b	PC Meeting #1 (Subtask 5.3)	\$ 750
5c	City Council Meeting #1 (Subtask 5.4)	\$ 750
5d	Review and comment on Consultant deliverables	\$ 250
	Subtotal – Task 5	\$2,000
6	Refine Solutions: Develop Draft Planned and Financially Constrained Updated Transportation Systems	
6a	PAC Meeting #4 (Subtask 6.3)	\$ 250
6b	Community and Virtual Community Meeting #2 (Subtask 6.4)	\$ 500
6c	City Council and PC Joint Work Session #1 (Subtask 6.4)	\$ 500
6d	Review and comment on Consultant deliverables	\$ 500
	Subtotal – Task 6	\$1,750
7	Draft Updated TSP and Implementing Language	
7b	Review and comments on Consultant deliverables	
	Subtotal – Task 7	
8	Adoption	
8a	City Council and PC Joint Work Session #2 (Subtask 8.1)	\$1,000
8b	PC Hearings (Subtask 8.3)	\$1,000
8c	City Council Adoption Hearings (Subtask 8.4)	\$1,000
	Subtotal – Task 8	\$3,000
	Subtotal Non-Contingent	\$15,500
9	Contingency Tasks	
9a	Contingent Meeting #1	\$ 250
9b	Contingent Meeting #2	\$ 250

	Subtotal Contingent	\$ 500
	TOTAL	\$16,000

Consultant Deliverables

Task	Description	Fixed Amount per Deliverable
1	Establish Committees and Start Project	
1A	PMT Meeting #1 (Subtask 1.2)	\$ 1,600
1B	Refined Project Schedule (Subtask 1.3)	\$ 1,100
1C	Project Website (Subtask 1.4)	\$ 2,200
1D	PMT Meetings (Subtask 1.5)	\$3,900
1E	“Transportation Planning 101” Training (subtask 1.6)	\$ 1,700
	Subtotal - Task 1	\$10,500
2	Project Goals and Objectives and Funding Assumptions	
2A	Base Maps (Subtask 2.2)	\$ 1,540
2B	Tech Memo 1 (Subtask 2.3)	\$ 4,560
2C	Tech Memo 2 (Subtask 2.4)	\$ 2,500
2D	Tech Memo 3 (Subtask 2.5)	\$ 2,060
2E	Project Flyer (Subtask 2.6)	\$ 1,200
2F	Tech Memo 4 (Subtask 2.7)	\$ 2,530
2G	PMT Meeting #2 (Subtask 2.8)	\$ 1,600
2H	TAC Meeting #1 (Subtask 2.9)	\$ 2,180
2I	PAC Meeting #1 (Subtask 2.10)	\$ 1,000
	Subtotal - Task 2	\$ 19,170
3	Existing Transportation System and Needs Inventory	
3A	Tech Memo 5 (Subtask 3.1)	\$ 12,690
3B	Draft Tech Memo 6 (Subtask 3.2)	\$ 12,540
3C	Joint PMT and TAC Meeting #1 (Subtask 3.4)	\$ 1,700
3D	PAC Meeting #2 (Subtask 3.5)	\$ 630
3E	Community and Virtual Community Meeting #1 (Subtask 3.5)	\$ 3,500
	Subtotal – Task 3	\$31,060
4	Potential Solutions	
4A	Draft Tech Memo 7 (Subtask 4.1)	\$ 4,560
4B	Draft Tech Memo 8 (Subtask 4.2)	\$ 9,790
4C	Joint PMT and TAC Meeting #2 (Subtask 4.3)	\$ 2,350
4D	PAC Meeting #3 (Subtask 4.4)	\$ 1,000
	Subtotal – Task 4	\$17,700
5	Present Work to Date to PC and City Council	
5A	PMT Meeting #3 (Subtask 5.1)	\$ 1,480
5B	PC Meeting #1 (Subtask 5.2)	\$ 1,380
5C	City Council Meeting #1 (Subtask 5.3)	\$ 1,380
5D	Final Tech Memo 6 (Subtask 5.4)	\$ 2,280

5E	Final Tech Memo 7 (Subtask 5.5)	\$ 1,190
5F	Final Tech Memo 8 (Subtask 5.6)	\$ 2,280
	Subtotal – Task 5	\$ 9,990
6	Refine Solutions: Develop Draft Planned and Financially Constrained Transportation Systems	
6A	Draft Tech Memo 9 (Subtask 6.1)	\$ 7,350
6B	Joint PMT and TAC Comments (Subtask 6.2)	\$ 1,000
6C	PAC Meeting #4 (Subtask 6.3)	\$1,100
6D	Community and Virtual Community Meeting #2 (Subtask 6.4)	\$ 3,750
6E	City Council and PC Joint Work Session #1 (Subtask 6.5)	\$ 1,600
6F	Final Tech Memo 9 (Subtask 6.6)	\$ 2,530
	Subtotal – Task 6	\$ 17,330
7	Draft Updated TSP and Implementing Language	
7A	Draft Updated TSP (Subtask 7.1)	\$ 7,670
7B	Metro and Department of Land Conservation and Development (DLCD) Notice (Subtask 7.2)	\$ 830
7C	Recommended Updated TSP (Subtask 7.3)	\$ 2,520
	Subtotal – Task 7	\$ 11,020
8	Adoption	
8A	City Council and PC Joint Work Session #2 (Subtask 8.1)	\$ 1,640
8B	TSP Staff Report and Findings (Subtask 8.2)	\$ 3,170
8C	PC Adoption Hearings (Subtask 8.3)	\$ 2,310
8D	City Council Adoption Hearings (Subtask 8.4)	\$ 1,400
8E	Final Updated TSP (Subtask 8.5)	\$2,520
8F	Final Updated TSP to Metro and DLCD (Subtask 8.6)	\$ 900
8G	Title VI Report (Subtask 8.7)	\$ 700
	Subtotal – Task 8	\$ 12,640
	Subtotal Non-Contingent	\$129,410
9	Contingency Tasks	
9A	Contingent Meeting #1	\$ 1,270
9B	Contingent Meeting #2	\$ 1,270
	Subtotal Contingent	\$ 2,540
	TOTAL	\$ 131,950

**BUSINESS
CARRIED
FORWARD**

Regarding the above agenda item, here is how I view the process:

1. Mayor Mersereau (or I) should recap the council's action at the May 10 meeting.
2. We should recap the fact that I forwarded to Neal the council's concerns and invited his response for the May 24 meeting.
3. Refer to his response to my email, dated yesterday, and my responses to his email, dated today.
4. Allow Neal an opportunity to respond to the council's concerns and ask any questions he may have of the council or the process.
5. The council may respond to any questions from Neal or comment on/seek clarification of his response.
6. After hearing Neal's response, the council may proceed to deciding whether it will censure Neal.

Feel free to print out a copy of this email for the packet. In the interest of time, I did not put this into a formal memo.

Thanks,

David

David F. Doughman
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Portland, OR 97201
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Good morning Neal:

Thank you for your email. My responses to your questions below are in red.

Regards,

David

David F. Doughman
BEERY ELSNER & HAMMOND LLP

From: Neal Reisner [<mailto:reisner@ci.gladstone.or.us>]
Sent: Monday, May 16, 2016 9:18 AM
To: David Doughman
Subject: RE: Council concerns regarding Clackamas Review article

David,

First, I request this discussion occur in open session and be placed as the first item on the regular agenda. **OK, the discussion will occur as an agenda item during the council's regular session on May 24. I note that you have requested it be placed first on the agenda. I will leave it to Eric and Mayor Mersereau to decide where it should go on that agenda.**

Second, is the concern we will be discussing limited to the May 6th article in the Clackamas Review or does it also include the vague accusations made by Councilor Siechmann, Councilor Steve Johnson, Councilor McMahon, and Mayor Mersereau? **You should be prepared to respond to all of the concerns the council expressed at the May 10 meeting. If you feel some of those concerns are not clear, you may request the council elaborate during the meeting on May 24.**

Third, being the Council has made public it's concerns regarding The May 6th article, is the memorandum from City Attorney Ashley Driscoll "Disclosing Executive Session Material" dated May 10, 2016 now a public document? **No, I do not believe the May 10 memo is public. A majority of the council would need to waive the privilege that attaches to that document. To be clear, that document focused on any legal exposure the city had as a result of the article. We concluded there is little to no exposure. However, that issue is separate from whether a violation of the council's rules occurred relative to the article. Whether or not the council rules have been violated is the focus of the council's inquiry.**

Thank you,

Neal Reisner
Gladstone City Council
503-657-8331

Councilor Reisner:

Attached please find an audio file capturing the council's discussion of its concerns relative to the May 6 article in the Clackamas Review in which you were quoted. After the council considered the confidential memo from our office in executive session #4 on Tuesday, the council reconvened in regular session and discussed its concerns with the article and with your potential involvement in the article.

The council rules at Section G.2. address the ability of the council to censure one of its members. Specifically, Section G.2.b. requires the council to state its concerns in an open session. That section also permits you a reasonable opportunity to respond to the concerns. The council has asked that you be prepared to respond to the concerns discussed in the attached file at the next council meeting on May 24, if you choose to respond. You are not required to. Your response, and any council discussion regarding a possible censure, could take place in an executive session, unless you request that discussion to occur during regular session. Pursuant to ORS 192.660(2)(b), you are free to choose whether the discussion occurs in open session or closed. For the sake of clarity, if the council chooses to reprimand or censure you, it would need to do so during regular session.

Please let me know if you have any questions or concerns.

Thank you.

David

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City of Gladstone Staff Report

Report Date: May 17, 2016
Meeting Date: May 24, 2016
To: Mayor Mersereau and the Gladstone City Council
From: Eric Swanson, Gladstone City Administrator

AGENDA ITEM

Council Liaison Appointments

History/Background

The Mayor appoints with City council consent Council liaisons to the various citizen appointed City Boards and Commissions.

Proposal

Several liaison vacancies exist due to the recent resignation of City Council members and the Mayor. Please find attached a listing of commissions, committee members and liaisons.

Options

Follow process to make liaison appointments. The City Council may want to also consider changing existing City Council liaison responsibilities.

Cost Impact

No cost impact.

Recommended Staff Action & Motion

I move to appoint XXXX to act as City Council liaison to the XXXX committee or XXXX commission.

Department Head
Signature

Date


City Administrator
Signature

Date

COUNCIL LIAISON APPOINTMENTS*
May 24, 2016

Volunteer Fire Department, (meets first Wednesday each month)	Councilor Pat McMahon Mayor Thomas (Tom) Mersereau
Senior Center Advisory Board, (meets quarterly, in the afternoon)	Councilor Pat McMahon
Park and Recreation Board, (meets infrequently)	Councilor Steve Johnson
Traffic Safety Commission, (meets infrequently)	Councilor Kevin Johnson
Library Board (meets first Tuesday each month)	Councilor Steve Johnson
Business & Civic Liaison	Councilor Kim Sieckmann
Public Works, Regional Issues	Mayor Thomas (Tom) Mersereau Councilor Kim Sieckmann
C-4, Clackamas County Coordinating Committee	Council Kevin Johnson Mayor Thomas (Tom) Mersereau
Emergency Management Committee	Councilor Linda Neace Mayor Thomas (Tom) Mersereau
Police Department	Councilor Pat McMahon Mayor Thomas (Tom) Mersereau
City Hall	Mayor Thomas (Tom) Mersereau
Planning	Councilor Kim Sieckmann
NCCWC	Councilor Steve Johnson
Metro	Councilor Linda Neace Mayor Thomas (Tom) Mersereau
Tri-City	Councilor Steve Johnson

*Does not preclude any City Council member from being involved in areas when they have an interest.

