

**CITY OF PHOENIX
CITY COUNCIL MEETING
PUBLIC WORKS OFFICE
1000 S. "B" STREET
MONDAY, MARCH 21, 2016
6:30 P.M.**

- 6:30 p.m. **1) Call to order/Roll call**
- 6:31 p.m. **2) Pledge of Allegiance**
- 6:33 p.m. **3) Mayor's Comments**
- 6:38 p.m. **4) Citizens Comments:** of any matter not on the agenda, with each speaker allowed three minutes unless Presiding Officer extends time
Note: Comments on agenda items will be allowed when these items come before Council
(Persons wishing to address Council on any matter are encouraged to do so. Please sign up, and if applicable, indicate the agenda item you want to discuss. When your name is called, step up to the podium, state your name and address for the record and limit your comments to the time allowed by the Presiding Officer. In accordance with state law, copies of the complete recording of this meeting will be available at City Hall. If you are hearing impaired and need accommodation, please give 48 hours prior notice to City Hall).
- 6:45 p.m. **5) Presentations:**
a) Appreciation Awards presented by Phoenix Community Kitchen
b) Risk Management Discussion Presented by Ryan Kirchoff
- 7:05 p.m. **6) Updates/Reports/Appointments:**
a) Appoint Nancy Flowers to the Parks Commission
b) Re-Appoint Dorothy Cotton to Budget Committee
c) PHURA
d) Parks Commission
e) Update City Council Issue Tracking Log
- 7:25 p.m. **7) Public Hearing(s)**
- 7:25 p.m. **8) Ordinances, including reading and/or adoption**
- 7:25 p.m. **9) Consent Calendar:**
a) Approval of Minutes from February 16, 2016 Regular City Council Meeting
b) Acknowledge Planning Commission minutes
c) January 2016 Financial Report
d) February 2016 Financial Report
- 7:35 p.m. **10) Unfinished Business:**
a) Resolution for Amendment Number 3 to ODOT Contract No. 22485

7:40 p.m. 11) New Business:

- a) Discuss Placing a 3% Sales Tax of Recreational Marijuana on the November Ballot
- b) Resolution Approving the Rose Street Waterline Project
- c) Resolution Approving the MOU for Wetland
- d) Resolution Allowing a Budget Increase for the receipt and Expenditure of Unexpected Monies for Fiscal Year 2015-2016 (Grant Proceeds)
- e) Update on Public Works Organization
- f) Discussion of Location of Plaza Building

8:40 p.m. 12) Questions for Staff:

- a) Attorney's report
- b) City Manager's report

8:50 p.m. 13) Council items, comments/reports *(any councilor may bring before the Council any business not on the agenda the councilor feels should be deliberated upon by the Council, but the Council may decline formal action on such matters or defer them to a subsequent meeting)*

9:00 p.m. 14) Adjournment

Next City of Phoenix Scheduled Meetings:

March 28, 2016
April 4, 2016
April 11, 2016
April 12, 2016
April 18, 2016
April 25, 2016

Planning Commission Meeting
City Council Meeting
Planning Commission Meeting
Phoenix Urban Renewal Board Meeting
City Council Meeting
Planning Commission Meeting

AGENDA BILL

AGENDA ITEM: lea

AGENDA TITLE: Appointment of Nancy Flowers to
Parks and Greenway Commission

DATE: March 16, 2016

ACTION REQUIRED:

ORDINANCE: _____

RESOLUTION: _____

MOTION: _____

INFORMATION: xx

EXPLANATION:

In February of 2016, Nancy Flowers submitted an application to be on the City's Parks and Greenway Commission. At the February 18, 2016 Parks And Greenway Commission meeting, the commissioners reviewed her application and interviewed her. It is the Parks and Greenway Commission's recommendation to appoint her to the commission. If Council concurs, the Mayor will appoint. Attached is the recommendation and a copy of her application.

FISCAL IMPACT:

N/A

ALTERNATIVES:

None offered.

STAFF RECOMMENDATION:

Staff recommends Council authorize the Mayor to appoint Nancy Flowers to the Parks and Greenway Commission.

MOTION: “.”

PREPARED BY: Janette Boothe **REVIEWED BY:** _____



Public Works

P.O. Box 330 • Phoenix, Oregon 97535 • (541) 535-2226

FAX (541) 535-9594

CITY OF PHOENIX PARKS AND GREENWAY COMMISSION

Date: February 19, 2016
To: Mayor and City Council
From: City of Phoenix Parks Commission
RE: PGC Member Recommendation - Nancy Flowers

Mayor and Council members,

At the February 18th Parks and Greenway Commission meeting the commissioners reviewed the volunteer application to be on the Parks and Greenway Commission received from Nancy Flowers.

The commissioners met Ms. Flowers and, after reviewing her application and meeting her, agreed to recommend the City Council appoint her to the Commission.

Please accept this as a formal recommendation of Ms. Flower's appointment to the Parks and Greenway Commission.

Application for Boards/Commission



Contact Information

Name:	Nancy Flowers
Street Address:	300 Luman Rd. # 12, Phoenix 97535
Mailing Address:	same
City/State/Zip:	same
Home Phone:	(541) 778-4319
Work Phone:	n/a
E:Mail Address:	nancy.flowers28@gmail.com

Background

Years of Residence in Phoenix:	3 yrs. 3 mos.
Place of Employment:	not employed
Occupation:	retired
City/State/Zip:	
Educational Background:	High School +
Prior Civic Activities:	Helped plan Sat. activities at Union Creek Amphitheater, Chair Chair of Watershed Council. County of Los Angeles Planning Commission from '75-'80.

Boards/Commissions of Interest

Please check all of the following that interest you:

- City Council
- Planning Commission
- Community Events Committee
- Budget Committee
- Parks and Greenway Commission
- Other short-term task or focus groups that meet for a specific purpose and then disband when the business is complete

Council Action Log

Open Issue		Action			Responsibility		Priority		Estimated Next Step Date		Needs Council Approval and/or Feedback	
City Manager Performance Review		Appraisal Forms sent out on December 10, 2015. First preliminary evaluation discussion held in Exec Session on January 17, 2016. CM asked to bring a plan and response to the Exec Session on February 1, 2016			Council	High	Process should be complete by Council Meeting on 2/16/16					
Water Rights		From the 3/9 meeting Council would like four items to happen. 1) Send Oregon Water Commission Letter asking for more response time. 2) Meet with water recourses 3) Meet with Oregon Fish and Wildlife 4) Meet with Central Point 5) Meet with Medford Water Commission			Council, CM		March 16					
Personnel Manual		City Manager will highlight changes in new personnel manual for council to review.			CM		Dec 16					
County Marijuana Setbacks		Council has sent a letter to County Commission asking for 1000ft setbacks from City Boundaries.			Council		?					
Fire District Five Contract		Council Leadership had preliminary talks with FD5 to renegotiate the use of the Fire Station.			CM, Council		April 16					
3% Marijuana Tax		Mayor asked that the tax proceeds be earmarked for specific activities so Council will discuss that idea at the March 21 Council Meeting			CA, CM, REC		March 16					
Negotiate Union Contracts		Need to have an executive session to discuss councils goals for the union contracts			CM, Council	High	April 16					
City Website re-design		Website is now live and changes are being made to it through Council suggestions			CM	High	March 16	Council has already indicated that website must be kept up on a daily basis for content.				
N. Rose Connection TAP Line		Council will look to approve the contract at the March 21st meeting.			PD, CM, PWD	High	March 16					
Talent/Phoenix Water Meter		City Manager has contacted counterpart in Talent to set up the meeting. Meeting has been tentatively set for March 31 at 1 pm			CM	High	April 16	Needs update on strategies and negotiations with Talent				
SCADA Upgrade		Contractor has purchased parts and is seeking a time to install and work out the programming issues.			PWD, CM	Medium	May 16	Approved				

Open Issue	Action	Responsibility	Priority	Estimated Next Step Date	Needs Council Approval and/or Feedback
Water Loss Program	Staff replaced last large meter this week. Have also developed a list of faulty meters that need to be replaced over the next five months. Will have to wait until new budget year	PWD	Medium	August 16	
Review of Contracts	Have reviewed Attorney, Engineering, Auditing Contracts, Will review Building. Planning will have an RFP developed for release in early January. RFP has been completed will go out end of this week early next. Have pulled the RFP for planning services. We have a contract that runs the life of the building code. Will be able to review in two years.	CM, PD	Medium	Feb 16	It appears the Building Inspector already has a new contract? If true, should it have come to council per this item?
Annual Attorney Contract Review	At the request of the attorney has been moved to first meeting in April	Council		April 16	
Transportation system Plan	Council will receive a presentation on this on April 4th.	PD	Low	April 16	
Strategic Planning Session	Council has prioritized goals developed in February workshop at the March 9th workshop. CM and Staff are now working to develop processes to reach goals	CM	Low	March 16	
Create low income subsidy for water bills	Staff has sent draft of program to water committee for their suggestions	CM FD	Low	April 16	
Update Parks Master Plan	First Meeting with Public and Plan Contractor is Scheduled for March 16th	PWD, PD	Low	Dec-16	
Urban Growth Management Plan	Housing needs analysis and Economic Study draft have been sent to the council for review.	Planning	Low	Dec-17	
Swings at Culver Park	Investigating-waiting on results from Master Plan. Cost for purchase of swings sent to council 12/4. Will be reviewed by parks committee at January meeting. Postponed till after Parks Masterplan.	PWD	Low	Sep-16	
First Street Sidewalk and Storm Drain	Should go out to bid starting in April. Will look for a start and completion date in September/October to decrease the cost.	PWD, CM, PD	Low	Jun-16	
New TAP Line Agreement	Group will hire a financial expert to design a system where the percentage of water you use will be used for the cost percentage of what you have to pay to maintain the system.	CM	Low	Jul-16	Council should be briefed in detail re: substantial changes long before final document is presented.
Slurry sealing and stripping main street	Postponed until 2016 because a multitude of issues	CM, UR, PW	Low	July 16	This will necessitate restriping the lanes

Open Issue	Action	Responsibility	Priority	Estimated Next Step Date	Needs Council Approval and/or Feedback
3-5 year financial for budget	after goal setting. Moved to March	CM, FD		March 16	Need to discuss at this week's session on Saturday.
Bridge Medallions	Council has had one session on them. They have sent ideas to CM. Next Workshop will be Jan 4. Because of full agenda this has been postponed to the January 19th meeting. Postponed till April.	CM, PW	Low	April 16	
Recruitment for new Council Member	Open for citizen applications after discussion on February 1, 2016. Ad is on website and will run for a week in the Mail Tribune starting Feb. 10. One application as of 3/4	CM	High	April 16	Discuss process to follow at the Feb 1, 2016 Council Meeting
List of study sessions needed for Council	List at this time for scheduling includes TSP, COUNCIL FILL IN THE REST WITH THE CM	CM	Medium	ONGOING	Discuss at the Feb 1, 2916 Council Meeting
PHURA to Present 2016 projects and costs to City Council	Working on the presentation for sometime in March.	PHURA Exec Director		March	
Phoenix Urban Renewal	Couplet project 98% completed just need to get slurry sealing done next year	PHURA Exec Director			
Phoenix Urban Renewal	Working on the putting 20 foot trees in area-approval from Board on 11/10 agenda. Push off until spring.	PHURA Exec Director			Needs Council Approval per IGA
Phoenix Urban Renewal	Preparing RFQ to attract builders to Phoenix. Will go out for an RFP in Middle of January. RFQ has been sent out replies are due March 7th. Staff is working with respondent to RFP along with UR to develop marketing strategies	PHURA Exec Director			
Phoenix Urban Renewal	Design program to encourage businesses to come to Phoenix - will come to Board at Dec meeting. Has been pushed off indefinitely.	PHURA Exec Director			
Phoenix Urban Renewal	Public Meeting for citizen input was held on Thursday 3/3 and on Saturday 3/5-Location of the plaza building and type of building.	PHURA Exec Director			Council must approve change in location and façade

Open Issue	Action	Responsibility	Priority	Estimated Next Step Date	Needs Council Approval and/or Feedback
Phoenix Urban Renewal	Sidewalk on couplet area in the week of 11/13. Still working on it. Completed	PHURA Exec Director			Needs Council approval for plant areas in sidewalk per IGA
Phoenix Urban Renewal	Sewer and Water work in couplet completed.	PHURA Exec Director			
Phoenix Urban Renewal	Work signed off for creating road in couplet for 2nd and 3rd Street. Work on putting in the pavers is started week of 3/4.	PHURA Exec Director		Mar-16	
Yellow Added requests					
Orange does Council want to remove					

**City of Phoenix
City Council Meeting
Public Works Office
1000 S. "B" Street
Tuesday, February 16, 2016**

DRAFT

CALL TO ORDER

Mayor Jeff Bellah called the regular meeting of the City Council to order on Tuesday, February 16, 2016 at 6:30 p.m. in the Public Works Office.

ROLL CALL

PRESENT: Stan Bartell, Bruce Sophie, Carolyn Bartell, Terry Helfrich, Chris Luz, Jeff Bellah

Staff Present: Steve Dahl, City Manager
Janette Boothe, City Recorder
Derek Bowker, Chief of Police
Steve Weber, Finance Director
Matt Brinkley, Planning Director
J. Ryan Kirchoff, City Attorney

PLEDGE OF ALLEGIANCE

PRESENTATIONS:

Reserve Officer Appreciation. Mayor Bellah requested Joshua McOمبر, Matthew Curtis, and Shawn Deboer come forward. He announced all of the City events they serve at and noted other duties assigned. Chief Bowker added that they are the reason the City does not have to require more overtime for the police officers. As he commended the reserve officers, he distributed gift cards for Subway as a token of appreciation. Chief Bowker recognized Officer Richmond as the new Reserve Officer Coordinator.

UPDATES/REPORTS:

- 1) PHURA – Mayor Bellah announced the Executive Director's Report has been postponed. Councilor Helfrich commented on the planters and build outs along Main Street that PHURA is currently working on. He added that PHURA is responsible for placing the radar sign on Main Street. Continued discussion followed regarding updates on developments performed by PHURA.
- 2) Parks Commission – Councilor C. Bartell announced the next meeting will be held Thursday, February 18, 2018. She mentioned the topics of discussion will be on a Bee City event, the Easter Egg Hunt preparation, and the introduction of an individual interested in being on the Parks Commission.

CITIZEN COMMENTS:

- 1) Paul Kay, Phoenix, came forward to comment on a few topics. He noted he is in favor of the road diet, as the south end of the couplet seems to be experiencing a slower traffic flow, where he owns a piece of property. He also suggested the cost of the TAP water transmission be split between all three cities from Medford to Phoenix, then split between Talent and Ashland for the transmission from Talent. In addition, he noted the RFP deadline regarding the PHURA redevelopment is incorrectly stated in the newspaper. He added that PHURA should consider a ground lease, rather than selling PHURA property. Continued discussion followed, as Council suggested he bring his ideas forward to a PHURA meeting.
- 2) Tonia Moro, Rogue Valley Transportation District (RVTD), explained RVTD is going to place a 13 cents tax levy on the May ballot. She further explained 8 cents would be applied towards maintaining the current services provided by RVTD, and the remainder of the funds would go towards moderate improvements, such as returning Saturday service, increasing the frequency of bus schedules, and adding a couple new routes. Ms. Moro noted RVTD is requesting the City's support on the ballot by placing a section in the voter's pamphlet that would cost \$400. She added the deadline for the additions to the voter's pamphlet is March 21, 2016.

UPDATES/REPORTS (continued):

- 3) Review of Council Action Log – Mayor Bellah suggested moving completed items to another page, titling it History. Councilor C. Bartell noted that it would be easier to read if the strikeouts were deleted from the log. Further discussion followed, as Council's consensus was to have two worksheets on one Excel document and labeling them Current and Historical. Another suggestion was to note an estimated completion date for each segment during the process, rather than a final completion date for a project.

Continued discussion followed regarding each of the items on the log, as Council suggested adding a 3-5 year financial projection for the budget to the log. Councilor Luz suggested adding approaching the commissioners regarding setbacks for cultivation of marijuana. Councilor C. Bartell suggested adding the Fire District 5 contract to the log. She further inquired about the Personnel Manual. Immediately following the discussion, Mr. Dahl requested clarification regarding additions to the Council Action Log. Council verified that each addition would need to be made by Council's consensus. Mr. Dahl announced he would update the action log with the suggestions and send it out by Friday with the weekly report.

NEW BUSINESS:

Discussion of Placing a 3% Sales Tax on Recreational Marijuana. Mayor Bellah referred to the staff report presented by Mr. Dahl. Councilor Sophie suggested adding recreational to the ballot title. Councilor Luz noted some typographical errors. Council further suggested placing this item on the Council Action Log. Continued discussion followed, as Council's consensus was to move forward and add this item to the March 21, 2016 agenda.

CONSENT CALENDAR:

Approval of Minutes from February 1, 2016 Regular City Council Meeting. MOVED BY S. BARTELL, SECONDED BY LUZ, TO APPROVE THE CONSENT CALENDAR. There was no further discussion.

ROLL CALL VOTE AS FOLLOWS:

Ayes: Sophie, C. Bartell, S. Bartell, Luz, and Helfrich
MOTION APPROVED WITH FIVE AYES

UNFINISHED BUSINESS:

- 1) **Approval of Letter to Commissioners Regarding Setbacks.** Mayor Bellah read aloud the letter and inquired whether Council would like to individually sign the letter. Council's consensus was to each sign the letter. Councilor C. Bartell suggested adding wording to the last sentence of the letter, to better clarify the distance mentioned to be from all City limits. Continued discussion followed, as Council's consensus was to add the verbiage, from all City property lines, to the 1,000 feet mentioned in the sentence. **MOVED BY SOPHIE, SECONDED BY LUZ, TO APPROVE THE LETTER TO THE JACKSON COUNTY COMMISSIONERS WITH THE SUGGESTED AMENDMENT.** There was no further discussion.

ROLL CALL VOTE AS FOLLOWS:

Ayes: Sophie, C. Bartell, S. Bartell, Luz, and Helfrich
MOTION APPROVED WITH FIVE AYES

Mayor Bellah recessed the meeting for a 10 minute break at 8:09 p.m.

UNFINISHED BUSINESS (continued):

- 2) **Approval of City Manager Review/Performance Standards.** Mayor Bellah distributed a summary of the performance review and a performance plan that will run from February 17, 2016 through June 17, 2016. Councilor Sophie clarified the City Manager received this document prior to the meeting, as Council requested Mr. Dahl's input. Mr. Dahl responded he understands the items presented; however, he disagrees with parts of Appendix B and that he was not going to go into further detail.

Continued discussion followed, as Mayor Bellah noted Mr. Dahl's communication has improved recently, due to the review process. Councilor Helfrich questioned what Council deems a significant issue. He pointed out item 2, noting Council needs to clarify the word significant, to demonstrate to Mr. Dahl what is being asked of him. Continued discussion followed, as Councilor Luz explained he is confident Mr. Dahl is aware of the type of items that need to be brought to Council's attention promptly and that there are too many different scenarios to outline specific items to bring before Council before taking action.

Mr. Dahl noted the City has been through a significantly busy year and the upcoming couple of years will be easier to manage, as things should slow down for the City. Councilor C. Bartell commented that management of the City should be improved with keeping the Council Action Log updated as well. **MOVED BY SOPHIE, SECONDED BY S.**

BARTELL, TO APPROVE THE CITY MANAGER'S PERFORMANCE REVIEW FOR THE LAST YEAR AND THE CREATION OF THE PERFORMANCE STANDARDS.

ROLL CALL VOTE AS FOLLOWS:

Ayes: Sophie, C. Bartell, S. Bartell, Luz, and Helfrich
MOTION APPROVED WITH FIVE AYES

- 3) Approval of Contract for Rose Street Water Project. Mayor Bellah announced this item has been pulled and moved to the March 21, 2016 agenda.

STAFF REPORTS:

1) City Attorney's Report:

- a) Attorney Kirchoff had nothing to report.

2) City Manager's Report:

- a) Mr. Dahl distributed a letter received from the Water Resources Department, noting he is uncertain of how to respond and he plans to meet with the Jeff Ballard, RH2 Engineer, in the morning to better understand the document and to gain assistance with preparing a response regarding water rights. Councilor C. Bartell suggested placing this item on the Council Action Log.
- b) Councilor Sophie suggested adding the Collective Bargaining Unit negotiations to the Council Action Log.

MAYOR'S COMMENTS:

Mayor Bellah reported there was a meeting held last Thursday with Jim Sharp and Al Muelhoefer regarding the projected costs for the rest of the year, and it was decided to discuss this item at a joint meeting on February 18, 2016. He further noted Mr. Sharp then decided to request that the remaining funds be transferred to PHURA, rather than holding a joint meeting. Mayor Bellah proposed the City take action and no longer transfer funds until the City has a better understanding of the projected costs for the City Center Plaza. Councilor S. Bartell noted he wanted PHURA to present their financial status before releasing any more funds. Councilor Helfrich stated Mr. Sharp cannot put a number on the projected cost without specific plans.

EXTENSION OF MEETING:

MOVED BY SOPHIE, SECONDED BY C. BARTELL, TO EXTEND THE MEETING UNTIL 9:30 P.M. Council approved the motion by consensus.

Councilor Sophie suggested a motion to create a letter to PHURA, rather than to the Director, to state the City is placing a hold on funds until many of the items Council is questioning be answered. Mr. Dahl clarified Councilor Sophie's informal motion to state the letter from the Council will be requesting the liabilities and revenues projected for the remainder of the fiscal year and to place a hold on the funds until this information is received. Continued discussion followed, as Council's consensus was to request this information. **MOVED BY SOPHIE, SECONDED BY S. BARTELL, TO DIRECT THE CITY MANAGER TO CREATE A LETTER TO PHURA REGARDING PLACING A HOLD ON FUNDS.** There was no further discussion.

ROLL CALL VOTE AS FOLLOWS:

Ayes: Sophie, C. Bartell, S. Bartell, and Luz

Nays: Helfrich

MOTION APPROVED WITH FOUR AYES TO ONE NAY

COUNCIL ITEMS, COMMENTS/REPORTS:

Councilor Sophie announced his seat on the MPO board is set to expire, and he has been asked to serve again and unless Council objects, he plans to remain on the board.

The meeting adjourned at 9:14 p.m.

Respectfully submitted,

Janette Boothe
Assistant Finance Director/City Recorder



**CITY OF PHOENIX PLANNING COMMISSION
REGULAR MEETING
MONDAY, SEPTMEBER 14, 2015 6:30PM
1000 SOUTH B STREET, PHOENIX OREGON**

- I. **CALL TO ORDER/ROLL CALL/INTRODUCTIONS:** Chair Summerhays called the meeting to order at 6:35 PM. In attendance were Commissioners Eisenhauer, Atkin, Weiss & Couch as well as Chair Summerhays. Commissioners Lewin and Farlow were absent. There was a quorum. Staff in attendance were Planning Director Matt Brinkley and Assistant Planner Steffen Roennfeldt.
- II. **CHANGES TO THE AGENDA:** None.
- III. **CONSENT CALENDAR:**
 - A. Minutes from August 24, 2015 Regular Planning Commission. **MOVED BY COUCH, SUPPORTED BY EISENHAUER, TO APPROVE THE MINUTES.**
- IV. **NEW BUSINESS:**
 - A. **PRESENTATION OF FINAL DRAFT OF THE TRANSPORTATION SYSTEM PLAN UPDATE:**

Mr. Brinkley went over the updates that were made during the last comment period to the draft Transportation System Plan in detail. There was discussion about certain projects and how to prioritize them.

Commissioner Couch commented on the projects included in the Street System Plan. He said that he is concerned about cars speeding on West 1st Street. He'd like to see some (temporary) speed bumps to reduce the speed of traffic before anybody gets hurt.

Mr. Brinkley said that the Commissioners should read and submit any comments they have at the next meeting. He pointed out that the priority list is the most important thing to look at. A joint study session with City Council will be set up in the near future.
- V. **OLD BUSINESS:**
 - A. **DISCUSSION OF THE 2015 HOUSING NEDDS ASSESSMENT, RESIDENTIAL BLI, AND COMPREHENSIVE PLAN HOUSING ELEMENT UPDATE:**

Commissioner Couch wanted to know what the City can do reduce the deficiencies the City currently has, especially affordable housing. Mr. Brinkley said that the City has already started working with the Jackson County Housing Authority to address affordable housing within the City. He praised JCA and said that they are building at a very high standard, are a good partner and maintain their properties well.

The discussion about affordable housing in Phoenix and surrounding cities continued.

Mr. Brinkley also explained other options the City has to build affordable housing.



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Commissioner Eisenhauer wanted to know what type of units the City was looking at regarding affordable housing. Mr. Brinkley said that it could be a variety of houses, including single-family residences, duplexes, apartments, etc.

Chair Summerhays wanted to know if there is a way to encourage infill development. Mr. Brinkley said that there are some ways to do that, for example, reducing or waiving System Development Charges. There was discussion about System Development Charges and how to use them.

Mr. Brinkley continued his presentation by talking about the growing disparity between incomes in the Rogue Valley and rising housing costs. He said that the next step for the consultants will be to determine how much of the projected demand for housing can be accommodated within the land the City currently has within its Urban Growth Boundary, and, how much land the City will need in the future. In addition, the Housing Element of the Comprehensive Plan will be updated.

Commissioner Eisenhauer pointed out that there is also a deficiency in affordable housing for senior citizens. Commissioner Couch agreed. There was discussion.

VI. PUBLIC COMMENT: None.

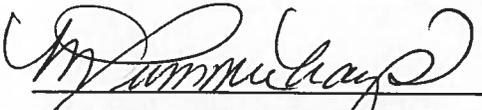
VII. COMMENTS FROM COMMISSIONERS:

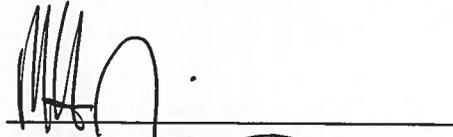
Commissioner Weiss said that as a landlord, she had experienced firsthand how tight the rental housing market is.

Chair Summerhays reminded the Commissioners that an election is coming up.

VIII. PLANNING DIRECTOR'S REPORT: None.

IX. ADJOURNMENT: Chair Summerhays adjourned the meeting at 7:45PM.



Micki Summerhays, Chair

Matt Brinkley, Planning Director



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yes, the Council ultimately could bypass the Planning Commission and modify the Land Development Code though it is not a recommended practice.

MOVED BY COMMISSIONER COUCH TO DIRECT STAFF TO INFORM CITY COUNCIL THAT AT THIS TIME THE PLANNING COMMISSION FEELS THAT THE REQUEST TO CONSIDER AMENDMENT OF THE LAND DEVELOPMENT CODE WOULD BE ARBITRARY AND CAPRICIOUS. IF, HOWEVER, THE CITY EXPERIENCES PROBLEMS WITH THE CURRENT REGULATIONS, THE PLANNING COMMISSION WOULD BE HAPPY TO ADDRESS THE ISSUE AGAIN AT THAT TIME. SECONDED BY COMMISSIONER ATKIN.

Discussion: Vice Chair Lewin suggested amending the motion for clarity and to better express the Planning Commission's concerns. Commissioners Couch and Farlow agreed. Lewin wanted to be clear that the Planning Commission had considered Council's concerns; however, at this point the Planning Commission does not share these concerns.

MOVED BY VICE CHAIR LEWIN TO AMEND COMMISSIONER COUCH'S MOTION TO DIRECT STAFF TO INFORM CITY THAT THE PLANNING COMMISSION HAS CONSIDERED THEIR CONCERNS, HOWEVER, THE PLANNING COMMISSION DOES NOT SEE A NEED AT THE PRESENT TIME TO MAKE CHANGES AS THE EXPECTED AMOUNT OF CANNBIS CULTIVATION WITHIN THE CITY WILL BE SUCH THAT MAKING ANY REVISION WOULD NOT MAKE A SUBSTANTIVE DIFFERENCE. IF THERE IS EVIDENCE SUBSEQUENTLY THAT THERE IS IN FACT AN ISSUE, THE PLANNING COMMISSION WILL PROMPLTY ADDRESS THE ISSUE AGAIN. COMMISSIONER COUCH SECONDED THE FRIENDLY AMENDMENT.

**ROLL CALL VOTE ON THE AMENDED MOTION AS FOLLOWS:
AYES: 5
NAYES: 0
THE MOTION PASSED**

V. OLD BUSINESS:

A. DISCUSSION OF THE FINAL DRAFT OF THE TRANSPORTATION SYSTEM PLAN UPDATE:

Mr. Brinkley said that a joint meeting with Council is coming up to review and deliberate over the final draft of the Transportation System Plan. He added that the revisions that staff requested have been made. He asked the Commissioners for any additional comments:



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Vice Chair Lewin asked about the bicycle connection from Blue Heron Park to Colver Park. There was discussion.

Lewin also asked about the current Urban Growth Boundary shown on the maps. Mr. Roennfeldt answered that he couldn't find anything different. It appears to be the correct UGB.

There was also discussion about the bus and rapid transit systems.

Vice Chair Lewin wanted to know how delivery trucks will be handled in downtown Phoenix once it is a one-lane street. Mr. Brinkley said that, for example, Ashland addressed this issue by contacting all shippers and provided designated loading areas. He added that there is also a need for a parking study for all of downtown.

Commissioner Farlow wanted to know why a specific problem (repair of culvert on OR99 over Coleman Creek) wasn't funded. Mr. Brinkley said that this particular project is actually under ODOT's jurisdiction. There might be additional funding sources in the future though.

B. DISCUSSION OF THE 2015 HOUSING NEEDS ASSESSMENT, RESIDENTIAL BLI, AND COMPREHENISVE PLAN HOUSING ELEMENT UPDATE.

Mr. Brinkley said that the Housing Needs Assessment will be wrapped up by the end of October.

VI. PUBLIC COMMENT: None.

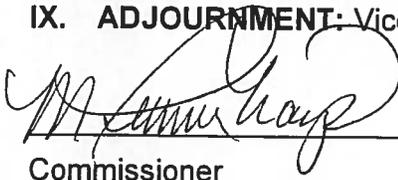
VII. COMMENTS FROM COMMISSIONERS:

Commissioner Eisenhauer said that he was very happy with the contractor working on the Fern Valley Interchange.

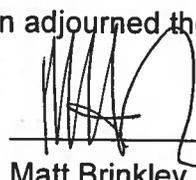
Commissioner Couch pointed out that, at an earlier meeting with Council and PHURA, he brought up specifically if there were any big trees to be removed for the downtown project. He was very surprised today when he saw that one very old almond tree was removed. He pointed out that he is not happy with the supervision of the contractors for the downtown project. Mr. Brinkley said that he is not sure of why the tree was removed. He will investigate what exactly happened.

VIII. PLANNING DIRECTOR'S REPORT: Mr. Brinkley announced that the City received a Park & Recreation grant from the Oregon Department of Parks & Recreation to update the Parks & Recreation Element of the Comprehensive Plan

IX. ADJOURNMENT: Vice Chair Lewin adjourned the meeting at 8.25PM.



Commissioner



Matt Brinkley, Planning Director



**CITY OF PHOENIX PLANNING COMMISSION
REGULAR MEETING
MONDAY, SEPTMEBER 28, 2015 6:30PM
1000 SOUTH B STREET, PHOENIX OREGON**

- I. **CALL TO ORDER/ROLL CALL/INTRODUCTIONS:** Vice Chair Lewin called the meeting to order at 6:30 PM. In attendance were Commissioners Farlow, Eisenhower, Atkin, and Couch as well as Vice Chair Lewin. Chair Summerhays and Commissioner Weiss were absent. There was a quorum. Staff in attendance were Planning Director Matt Brinkley and Assistant Planner Steffen Roennfeldt.
- II. **CHANGES TO THE AGENDA:** None.
- III. **CONSENT CALENDAR:**
 - A. Minutes from September 14, 2015 Regular Planning Commission. **MOVED BY ATKIN, SUPPORTED BY COUCH, TO APPROVE THE MINUTES.**

IV. **NEW BUSINESS:**

A. **PRESENTATION – SARAH RED-LAIRD, EXECUTIVE DIRECTOR, BEE GIRL:**

Mr. Brinkley introduced Ms. Red-Laird to the Commissioners. Ms. Red-Laird thanked the City for being a “Bee City USA” town and talked about some of the work she has done with bees and the work bees can do.

Ms. Red-Laird talked extensively about bees and bee-keepers and how important bees are for the economy. She pointed out how important it is to protect and create habitats for bees.

She answered several questions the Commissioners had for her and thanked them for the opportunity for allowing her speak before the Commission.

Ms. Red-Laird said she would love to be part of the riparian restoration project.

B. **DISCUSSION OF COMMERCIAL CANNABIS CULTIVATION LAND USE REGULATIONS:**

Mr. Brinkley said that the City Council asked him to talk to the Planning Commission about amending the Land Development Code to restrict the total square footage for cultivation down to 1,000 square feet per site. Right now it is between 5,000, 10,000 and 40,000 square feet. His initial opinion is that he would have a hard time providing finding of fact to explain why 1,000 square feet is preferable to 5,000 square feet. Without findings of fact, the distinction between 1,000 and 5,000 square feet could be viewed as arbitrary and capricious.

There was discussion. Vice Chair Lewin said that the Planning Commission would need some explanation from Council justifying the need to make changes.

Commissioner Couch said that he attended almost all of the meetings regarding marijuana in Phoenix. He does not agree with the Council’s request.

Commissioner Farlow concurred.

Vice Chair Lewin asked Mr. Brinkley if Council could still change the Land Development Code without Planning Commission approval. Mr. Brinkley said that



**CITY OF PHOENIX PLANNING COMMISSION
ACTING AS PHOENIX ARTS COUNCIL
MONDAY, NOVEMBER 5, 5:30PM
1000 SOUTH B STREET, PHOENIX OREGON**

I. CALL TO ORDER/ROLL CALL/INTRODUCTIONS: Chair Summerhays called the meeting to order at 5:30 PM. In attendance were Commissioners Eisenhauer, Atkin, Lewin as well as Chair Summerhays. Commissioners Weiss, Couch and Farlow were absent. There was a quorum. Staff in attendance were Planning Director Matt Brinkley and Assistant Planner Steffen Roennfeldt.

II. CHANGES TO THE AGENDA: None.

III. NEW BUSINESS:

A. ROGUE VALLEY BRAINERY & LUDOTECA (3721 COLVER ROAD) – 6ft ART FENCE:

Mr. Brinkley described the process on how to obtain a public art permit and explained the project to the Commissioners.

The applicant, Mr. Larsen, wanted to install old fence panels, doors, etc. to build an “Art Fence” around his property at 3721 Colver Road. Mr. Larsen described his planned public art display in depth.

Mr. Brinkley clarified that this is neither a public hearing nor a variance. He said that the ordinance will have to be cleaned-up in the future to clarify what type of review a public art permit will require.

There was discussion about the concept and several smaller issues. Mr. Brinkley said that the most important part is that the public art project substantially fits the underlying Land Development Code regulations.

MOVED BY COMMISSIONER ATKIN TO APPROVE THE PUBLIC ART PLAN AS PRESENTED AND DIRECT STAFF TO MAKE RELEVANT FINDINGS AND EXECUTE A MAINTENANCE AGREEMENT BETWEEN THE CITY AND THE APPLICANT. SECONDED BY COMMISSIONER EISENHAUER.

ROLL CALL VOTE AS FOLLOWS:

AYES: 4

NAYES: 0

THE MOTION PASSED UNANIMOUSLY

Mr. Brinkley pointed out that in the future, staff will have to go back and make some smaller changes to the sign and public art program ordinance to clarify several sections.

IV. OLD BUSINESS: NONE

V. PUBLIC COMMENT: None.

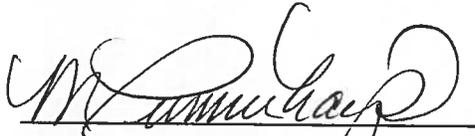


**CITY OF PHOENIX PLANNING COMMISSION
ACTING AS PHOENIX ARTS COUNCIL
MONDAY, NOVEMBER 5, 5:30PM
1000 SOUTH B STREET, PHOENIX OREGON**

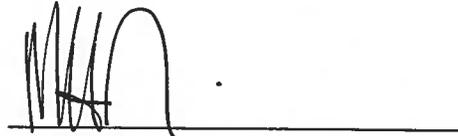
VI. COMMENTS FROM COMMISSIONERS: None

VII. PLANNING DIRECTOR'S REPORT: Mr. Brinkley said that there will be no Planning Commission meeting on November 23, 2015.

VIII. ADJOURNMENT: Chair Summerhays adjourned the meeting at 6:30PM.



Micki Summerhays, Chair



Matt Brinkley, Planning Director



**CITY OF PHOENIX PLANNING COMMISSION
JOINT MEETING CITY COUNCIL, PLANNING COMMISSION AND
URBAN RENEWAL BOARD
MONDAY, DECEMBER 14, 2015 5:30PM
1000 SOUTH B STREET, PHOENIX OREGON**

I. CALL TO ORDER/ROLL CALL/INTRODUCTIONS: Director Sharp called the meeting to order at 5:30 PM. In attendance were Urban Renewal Members Jones, Helfrich, Luz, Reilling and Mulhofer, City Manager Mr. Dahl, City Councilors S. Bartell, C. Bartell, Jones, Sophie, Luz & Helfrich, Mayor Bellah, Planning Commissioners Eisenhauer, Atkin, Lewin, Couch and Chair Summerhays. Commissioners Weiss and Farlow were absent Staff in attendance were Planning Director Matt Brinkley, Assistant Planner Steffen Roennfeldt and Urban Renewal Director Jim Sharp.

II. APPROVAL OF THE AGENDA: None.

III. NEW BUSINESS:

A. WORKSHOP: CITY CENTER COMPREHENSIVE PLAN ELEMENT AND OTHER RELEVATED PLANNING DOCUMENTS, THE CITY CENTER LAND USE DISTRICT, AND THE PHOENIX PLAZA PROJECT.

Mr. Brinkley gave a brief explanation of the purpose of the joint study session as well as land use and planning laws in Oregon in general.

He described the history and purpose of the City Center Element of the Comprehensive Plan.

Mr. Brinkley also pointed out that the last document for the City Center Element that was formally adopted dates back to 2002.

In 2013 a "Market Hall" study along with other studies and conceptual designs were conducted. He added that there was extensive public participation as part of these studies.

Mr. Brinkley pointed out that the "Market Hall" plan was never adopted as a part of the Comprehensive Plan. They are merely guidance documents that provide a vision.

Mr. Brinkley continued his presentation by explaining the importance of the Land Development Code and, in particular, the City Center design standards.

He emphasized that no decision have been made of what exactly is going to be built in the city center at this time.

Mr. Sharp talked about the current state of the properties and plans for the city center. He explained the most current changes to the development plans in detail.

He said that a RFP for information and ideas for the development of the PHURA-owned parcels will go out in the near future.

Commissioner Couch said that he was very surprised to see a very old tree being removed, in his opinion illegally, as part of the road construction. He wanted to know what will be done in the future to protect important trees. Mr. Sharp said that in the process of working with all the sites there were several arborists on the



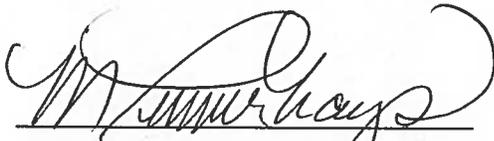
**CITY OF PHOENIX PLANNING COMMISSION
JOINT MEETING CITY COUNCIL, PLANNING COMMISSION AND
URBAN RENEWAL BOARD
MONDAY, DECEMBER 14, 2015 5:30PM
1000 SOUTH B STREET, PHOENIX OREGON**

various properties and none indicated that the tree was worth saving. Mr. Brinkley explained the rules on tree removal and indicated that it should have been addressed by the Civil Engineer.

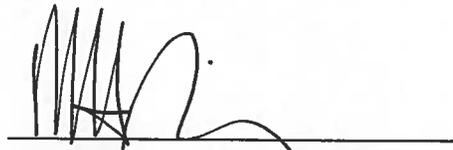
IV. OLD BUSINESS: None.

V. PUBLIC COMMENT: None.

VI. ADJOURNMENT: Planning Commission Chair Summerhays adjourned the meeting at 8.32PM.



Micki Summerhays, Chair



Matt Brinkley, Planning Director



**CITY OF PHOENIX PLANNING COMMISSION
REGULAR MEETING
MONDAY, DECEMBER 14, 2015 6:30PM
1000 SOUTH B STREET, PHOENIX OREGON**

I. CALL TO ORDER/ROLL CALL/INTRODUCTIONS: Chair Summerhays called the meeting to order at 6:35 PM. In attendance were Commissioners Eisenhauer, Atkin, Lewin and Couch as well as Chair Summerhays. Commissioners Farlow was absent. There was a quorum. Staff in attendance were Planning Director Matt Brinkley and Assistant Planner Steffen Roennfeldt.

II. CHANGES TO THE AGENDA: None.

III. NEW BUSINESS:

A. PUBLIC HEARING FOR SP15-03, A REQUEST FOR TYPE III SITE DESIGN REVIEW:

Mr. Brinkley explained and presented the main parts of the proposed self-storage development to the Commissioners.

He said that the Land Development Code does not have a clear standard on the number of parking spaces for self-storage facilities. He explained that staff looked at previously approved self-storage facilities and standards in other cities to come up with a good standard. There was discussion.

The applicant, Mr. Kellenbeck, further described and explained the project and its 2 phases to the Planning Commissioners.

Mr. John Galbraith presented the proposed landscape and streetscape plan. There was discussion whether certain trees could be saved during construction.

Mr. Martin presented the riparian and wetland plan for the project. He said that the main concept is to remove most of the fill to broaden the channel of Payne Creek. He emphasized that all of the work will take place above the high-water line. Mr. Martin said that the applicant is currently in talks with the City to allow for a pocket park along Fern Valley Road.

Mr. Kellenbeck, further clarified parking for the facility. He said that condition #9 should be, as discussed with Mr. Brinkley, to mark all parking spaces in Phase 2 as "Rental Spaces" as they are not intended to be client parking. In the first phase this would leave 9 parking spaces. He thinks that 9 spaces will be adequate. There was discussion.

Chair Summerhays opened the meeting to the public:

Ms. Kellenbeck, 104 Meadow View Dr., spoke in favor of the project.

Chair Summerhays closed the meeting to the public.

Mr. Brinkley said that he appreciated working with the developer. He added that the possible pocket park would be the only public park on the east side of the I-5.

Deliberation: There was no further discussion as all questions had been addressed during earlier parts of the meeting.



**CITY OF PHOENIX PLANNING COMMISSION
REGULAR MEETING
MONDAY, DECEMBER 14, 2015 6:30PM
1000 SOUTH B STREET, PHOENIX OREGON**

**MOVED BY COMMISSIONER LEWIN TO APPROVE SITE DESIGN
REVIEW APPLICATION (SP15-03) WITH AMENDED CONDITION #9.
SECONDED BY COMMISSIONER EISENHAUER.**

ROLL CALL VOTE AS FOLLOWS:

AYES: 6

NAYES: 0

THE MOTION PASSED UNANIMOUSLY

B. DISCUSSION OF SP15-02 (PREVIOUSLY APPROVED AUGUST 24, 2015):

Mr. Brinkley said that this was actually discussed towards the end of the joint study session but he wanted to further discuss this. He said that the Civil Engineer did not do a thorough job in identifying significant trees on the site. It was not something that was looked at very carefully. The main conflict was the installation of a water and sewer line. Chair Summerhays said that everybody shared an amount of responsibility.

Commissioner Lewin wanted to know if the tree could have been saved. Mr. Brinkley said that they at least could have tried. It was a complicated project and the design changed several times.

He added that in the future, protecting trees will become a priority. The change in design of the public square will preserve a maple tree. He further described that the City is planning on planting several more trees as part of the city center redevelopment project.

IV. OLD BUSINESS: None.

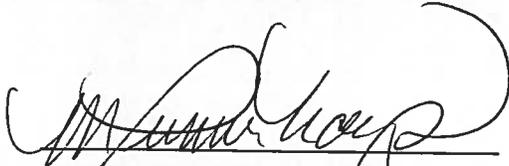
V. PUBLIC COMMENT: None.

VI. COMMENTS FROM COMMISSIONERS:

Commissioner Lewin wanted to know the latest on the "Furry House." Mr. Brinkley said that it was demolished and several pieces were salvaged.

VII. PLANNING DIRECTOR'S REPORT: Mr. Brinkley said that a consultant was selected to update the Parks and Recreation Element. The University of Oregon Community Planning Workshop was selected.

VIII. ADJOURNMENT: Chair Summerhays adjourned the meeting at 8.05PM.



Micki Summerhays, Chair



Matt Brinkley, Planning Director

AGENDA BILL

AGENDA ITEM: 9C

AGENDA TITLE: Financial Report for Period Ending January 31, 2016.

DATE: March 7, 2016

ACTION REQUIRED:

ORDINANCE: _____

RESOLUTION: _____

MOTION: _____

INFORMATION: XX

EXPLANATION:

Attached is summary report for City financial statements for the period ending January 31, 2016.

FISCAL IMPACT:

N/A

ALTERNATIVES:

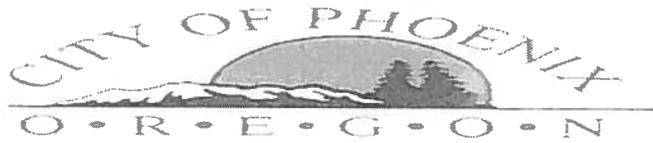
N/A

STAFF RECOMMENDATION:

That Council accepts the January 31, 2016 financial statements as presented

MOTION:

PREPARED BY: Steve Weber **REVIEWED BY:** _____



To: Mayor and Council

From: Steve Weber, Finance Director

Date: February 17, 2016

Subject: January 2016 Financial Statements

Background:

The January 31, 2016 financial statements reflect the first seven months of the fiscal year. Following a review of the activity for the first 7 months of the fiscal year, I am pleased to report that, for the most part, revenues are coming in as expected and that expenditures are in line with the period. There are no issues that raise red flags at this point in the fiscal year.

General Fund	Year-to-Date	Budget	% of Budget	Prior Year
Revenues	\$ 1,362,102	\$ 1,789,615	76%	\$ 1,289,703
Expenditures				
Executive	\$ 62,495	\$ 89,150	70%	\$ 52,981
Admin	\$ 75,044	\$ 127,455	59%	\$ 60,695
Police	\$ 730,676	\$ 1,192,590	61%	\$ 677,406
Planning	\$ 67,432	\$ 133,010	51%	\$ 76,693
Building	\$ 56,346	\$ 102,110	55%	\$ 44,864
Parks	\$ 55,950	\$ 99,160	56%	\$ 39,810
Interdepartment	\$ 46,002	\$ 52,730	87%	\$ 46,089
Transfers	\$ -	\$ 2,000	0%	\$ -
Contingency		\$ 154,280	0%	\$ -
Total Expenditures	\$ 1,093,945	\$ 1,952,485	56%	\$ 998,538
Revenues over/(under)				
Expenditures	\$ 268,157	\$ (162,870)		\$ 291,165

General Fund: Year to date, revenues exceed expenditures by \$268,127 (\$1,362,102 vs. \$1,093,945). This has been aided by Property Tax receipts coming in at 92.36% as well as Fines & Forfeiture receipts coming in at 71.52%. Other revenue items are coming in as expected for the time period. Overall, revenues are at 74.69% for the year. Although total general fund expenditures are at 55.06% for the year we continue to monitor certain expenditure line items to get them back in line with amounts expected for the time period. Overall, the General Fund is where we expected it to be through the first 7 months of the fiscal year.

Street Fund	Year-to-Date	Budget	% of Budget	Prior Year
Revenues	\$ 357,105	\$ 804,780	44%	\$ 274,132
Expenditures				
Operating				
Personal Services	\$ 102,172	\$ 174,085	59%	\$ 80,923
Materials & Supplies	\$ 157,814	\$ 250,985	63%	\$ 98,408
Capital Outlay	\$ 10,837	\$ 12,500	87%	\$ -
Non-Operating				
Transfers	\$ -	\$ 123,886	0%	\$ -
Contingency	\$ -	\$ 75,000	0%	\$ -
Total Expenditures	\$ 270,823	\$ 636,456	43%	\$ 179,331
Revenues over/(under)				
Expenditures	\$ 86,282	\$ 168,324		\$ 94,801

Street Fund: Revenues overall show below the 58.33% expected for the time period. Primary factors contributing to this variance are proceeds from ODOT for state gas tax. Although total street fund expenditures are at 42.55% for the year, there are several line items that are higher in the current year compared to the prior fiscal year; Professional Services, Storm Sewer Maint., Street Repairs, and Street Signs which also causes more staff time to be spent on street related items. These factors contribute to the revenues exceeding expenditures year to date by \$86,282 (\$357,105 vs. \$270,823).

Water Fund	Year-to-Date	Budget	% of Budget	Prior Year
Revenues	\$ 764,842	\$ 1,472,855	52%	\$ 883,683
Expenditures				
Operating				
Personal Services	\$ 244,801	\$ 387,835	63%	\$ 224,749
Materials & Supplies	\$ 379,065	\$ 525,205	72%	\$ 312,169
Capital Outlay	\$ 10,837	\$ 12,500	87%	\$ 10,020
Debt Service	\$ 100,829	\$ 134,160	75%	\$ 134,160
Non-Operating				
Transfers	\$ -	\$ 134,179	0%	\$ -
Contingency	\$ -	\$ 100,000	0%	\$ -
Total Expenditures	\$ 735,532	\$ 1,293,879	57%	\$ 681,098
Revenues over/(under)				
Expenditures	\$ 29,310	\$ 178,976		\$ 202,585

Water Fund: Although revenues overall show just below the 58.33% expected for the time period, water sales revenue is coming in at just under 59%. Materials and Services expenditures continue to be above the levels expected for the time period; due to paying our general liability and property insurance premiums, the annual maintenance charges for the Lost Creek Reservoir, as well as the purchase of new meters approved by Council in September. Despite the effects of the items mentioned above as well as other line items that will be monitored throughout the remainder of the fiscal year, total expenditures are at 56.85%. Overall, revenues exceed expenditures for the year by \$29,310 (\$764,842 vs. \$735,532).

AGENDA BILL

AGENDA ITEM: 9d

AGENDA TITLE: Financial Report for Period Ending February 29, 2016.

DATE: March 15, 2016

ACTION REQUIRED:

ORDINANCE: _____

RESOLUTION: _____

MOTION: _____

INFORMATION: XX

EXPLANATION:

Attached is summary report for City financial statements for the period ending February 29, 2016.

FISCAL IMPACT:

N/A

ALTERNATIVES:

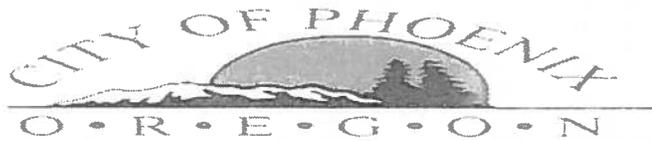
N/A

STAFF RECOMMENDATION:

That Council accepts the February 29, 2016 financial statements as presented

MOTION:

PREPARED BY: Steve Weber REVIEWED BY: 



To: Mayor and Council
 From: Steve Weber, Finance Director
 Date: March 15, 2016
 Subject: February 2016 Financial Statements

Background:

The February 29, 2016 financial statements reflect the first eight months of the fiscal year. Following a review of the activity for the first two-thirds of the fiscal year, I am pleased to report that, for the most part, revenues are coming in as expected and that expenditures are in line with the period. There are no issues that raise red flags at this point in the fiscal year.

General Fund	Year-to-Date	Budget	% of Budget	Prior Year
Revenues	\$ 1,427,549	\$ 1,789,615	80%	\$ 1,354,975
Expenditures				
Executive	\$ 69,883	\$ 89,150	78%	\$ 68,271
Admin	\$ 87,885	\$ 127,455	69%	\$ 76,483
Police	\$ 827,613	\$ 1,192,590	69%	\$ 757,848
Planning	\$ 81,949	\$ 133,010	62%	\$ 71,039
Building	\$ 64,795	\$ 102,110	63%	\$ 62,197
Parks	\$ 61,031	\$ 99,160	62%	\$ 50,796
Interdepartment	\$ 49,175	\$ 52,730	93%	\$ 48,460
Transfers	\$ -	\$ 2,000	0%	\$ -
Contingency		\$ 154,280	0%	\$ -
Total Expenditures	\$ 1,242,331	\$ 1,952,485	64%	\$ 1,135,094
Revenues over/(under)				
Expenditures	\$ 185,218	\$ (162,870)		\$ 219,881

General Fund: Year to date, revenues exceed expenditures by \$185,218 (\$1,427,549 vs. \$1,242,331). This has been aided by Property Tax receipts coming in at 92.69% as well as Fines & Forfeiture receipts coming in at 76.46%. Overall, revenues are at 79.77% for the year. Two main areas of cost increase in current year actuals compared to prior year are Contract Services (temp. personnel, attorney fees, and professional fees) and vehicles which account for \$86,933 (81.07%) of the change. We continue to monitor the cost line items that are higher than expected for the time period. Total general fund expenditures are at 62.53% for the year.

Street Fund	Year-to-Date	Budget	% of Budget	Prior Year
Revenues	\$ 456,093	\$ 804,780	57%	\$ 319,594
Expenditures				
Operating				
Personal Services	\$ 112,041	\$ 174,085	64%	\$ 92,800
Materials & Supplies	\$ 198,648	\$ 250,985	79%	\$ 120,522
Capital Outlay	\$ 10,837	\$ 12,500	87%	\$ -
Non-Operating				
Transfers	\$ -	\$ 123,886	0%	\$ -
Contingency	\$ -	\$ 75,000	0%	\$ -
Total Expenditures	\$ 321,526	\$ 636,456	51%	\$ 213,322
Revenues over/(under)				
Expenditures	\$ 134,567	\$ 168,324		\$ 106,272

Street Fund: Although revenues overall show below the 66.67% expected for the time period, that is primarily attributed to the ODOT jurisdictional transfer of \$250,000 budgeted. Actual receipts are at 82.21% aided by franchise fees (\$64,047) and diesel fuel tax (\$25,760). Although several line items are higher in the current year compared to the prior fiscal year; Professional Services, Storm Sewer Maintenance, Street Repairs, and Street Signs which also causes more staff time to be spent on street related items overall fund expenditures are only at 50.52%. These factors contribute to the revenues exceeding expenditures year to date by \$134,567 (\$456,093 vs. \$321,526).

Water Fund	Year-to-Date	Budget	% of Budget	Prior Year
Revenues	\$ 864,063	\$ 1,472,855	59%	\$ 966,579
Expenditures				
Operating				
Personal Services	\$ 274,277	\$ 387,835	71%	\$ 256,001
Materials & Supplies	\$ 410,180	\$ 525,205	78%	\$ 351,653
Capital Outlay	\$ 10,837	\$ 12,500	87%	\$ 10,020
Debt Service	\$ 100,829	\$ 134,160	75%	\$ 134,160
Non-Operating				
Transfers	\$ -	\$ 134,179	0%	\$ -
Contingency	\$ -	\$ 100,000	0%	\$ -
Total Expenditures	\$ 796,123	\$ 1,293,879	62%	\$ 751,834
Revenues over/(under)				
Expenditures	\$ 67,940	\$ 178,976		\$ 214,745

Water Fund: Revenues overall show below the 66.67% expected for the time period but this is attributable to the interfund transfers which happen at year-end. Water sales revenue is coming in at just under 66%. Although certain expenditure areas are above the percentages expected for this time of year, most of the variances are attributable to the timing of annual payments (insurance premiums, Lost Creek Reservoir maintenance, debt service payments). Despite the effects of the items mentioned above total expenditures are at 61.53%. Overall, revenues exceed expenditures for the year by \$67,940 (\$864,063 vs. \$796,123) which compares favorably to the prior year when considering the \$155,000 received from Medford Water Commission at this point last year.

AGENDA BILL

AGENDA ITEM: 10a

AGENDA TITLE: Approval of Resolution amending the Agreement 22845:Fern Valley Interchange Funding and Policy Agreement between the City of Phoenix and ODOT, to update language and funding obligations

DATE: 3/21/2016

ACTION REQUIRED:

ORDINANCE: _____

RESOLUTION: _____

MOTION: XX

INFORMATION: XX

EXPLANATION:

At the September 8, 2015 meeting the City Council of Phoenix, reviewed the third set of changes to Oregon Department of Transportation Contract 22485 (contract 22485-03). The changes to the contract are listed below. The council asked for non-substantive changes to the contract. The first was that all money paid from the City to ODOT be highlighted. Second was that what Phoenix still owes ODOT be highlighted and finally, a guarantee that the City will be responsible only for the Interchange System Development Charges that were associated with the interchange buildout and not a total number.

ODOT was not able to meet these requests in the contract, however, Art Anderson Rogue Valley Area Manager has produced a letter highlighting what the City of Phoenix has paid, what is still owed and the area in the contract that states the City of Phoenix is responsible for the money that comes with the interchange build out. When that area is built out there will be no more money owed to ODOT regardless of the total money collected.

Contract 22485-02 is the agreement where the City agrees to pay the Oregon Department of Transportation (ODOT) \$4,650,000 from various sources. Of these sources \$200,000 was from non-interchange system development charges (SDC) and \$800,000 from SDC's collected from Home Depot. The rest of the funds will come from different SDC's and other government bodies. The City has paid \$734,819 towards the payment of the \$1,000,000 the city owes. Leaving the city owing \$265,191 that the City paid in a letter of credit. In Contract 766 the City agreed to take over the couplet area. In exchange \$400,000 was credited towards the \$4,650,000 and the City would receive \$270,000 in cash.

Contract 22485-03 would no longer require the city to pay the \$265,191 that the city holds in a line of credit to be paid to ODOT and ODOT would no longer pay the \$270,000 that the city is owed for taking over the couplet but would pay \$4,819 to the City the difference between the two amounts.

FISCAL IMPACT:

None

ALTERNATIVES:

Not change the contract and have each organization write the required check.

STAFF RECOMMENDATION:

MOTION: "I MOVE TO APPROVE RESOLUTION NO. _____, AMENDING THE AGREEMENT 22485: FERN VALLEY INTERCHANGE FUNDING AND POLICY AGREEMENT BETWEEN THE CITY OF PHOENIX AND OREGON DEPARTMENT OF TRANSPORTATION, TO UPDATE LANGUAGE AND FUNDING OBLIGATIONS."

PREPARED BY: Steve Dahl REVIEWED BY: _____

**CITY OF PHOENIX
PHOENIX, OREGON**

RESOLUTION NO. _____

**A RESOLUTION AMENDING THE AGREEMENT 22485: FERN VALLEY
INTERCHANGE FUNDING AND POLICY AGREEMENT BETWEEN THE CITY OF
PHOENIX AND OREGON DEPARTMENT OF TRANSPORTATION, TO UPDATE
LANGUAGE AND FUNDING OBLIGATIONS**

RECITALS:

WHEREAS, the City of Phoenix has agreed in the past to take a position of financially helping rebuild the Fern Valley Interchange;

WHEREAS, the City of Phoenix realizes that having a positive working relationship with the Oregon Department of Transportation is critical in the growth and future of Phoenix;

WHEREAS, the City of Phoenix appreciates Oregon Department of Transportation willingness to work with the City and delay payment, saving the City thousands of dollars;

WHEREAS, the City of Phoenix accepts \$4,819 from ODOT as a net exchange of the \$265,191 the City owes for the Interchange project and the \$270,000 ODOT owes the City for future overlaying OR 99 South

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Phoenix, amend ODOT contract agreement 22485, to update language and funding obligations.

PASSED AND APPROVED by the City Council of the City of Phoenix and signed in authentication thereof at a regular meeting on the 21st day of March, 2016

Jeff Bellah, Mayor

ATTEST:

Janette Boothe, City Recorder

**AMENDMENT NUMBER 03
INTERGOVERNMENTAL AGREEMENT
I-5: Fern Valley Interchange
Funding and Policy Agreement**

City of Phoenix

This is Amendment No. 03 to the Agreement between the **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "State," and the **City of Phoenix**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on December 12, 2005 and Amendment Number 01 on January 11, 2012 and Amendment Number 02 on November 20, 2014.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to adjust funding, extend time and update contact.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.
2. **Amendment to Agreement.**

Revised Exhibit C shall be deleted in its entirety and replaced with the attached Revised Exhibit C-1. All references to "Revised Exhibit C" shall hereinafter be referred to as "Revised Exhibit C-1."

a. **TERMS OF AGREEMENT, Paragraph 2, Page 3, which reads:**

2. The Interchange improvements will be funded with a combination of federal, state and Agency funds. The estimated cost of the Interchange improvements is \$70,270,000. Agency's contribution shall be limited to \$4,650,000 under this Agreement, as identified further on Revised Exhibit C, attached hereto and by this reference made a part hereof. State shall be responsible for all costs of the Policy Project and all costs for the Interchange improvements which are in excess of Agency's contribution.

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

2. The Interchange improvements will be funded with a combination of federal, state and Agency funds. The estimated cost of the Interchange improvements is \$70,270,000. Agency's contribution shall be limited to \$4,380,000 under this Agreement, as identified further on Revised Exhibit C-1, attached hereto and by this reference made a part hereof. State shall be responsible for all costs of the Policy Project and all costs for the Interchange improvements which are in excess of Agency's contribution.

3. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Recipient certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

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

This Project is in the 2015-2018 Statewide Transportation Improvement Program (STIP), (Key #12723) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently by amendment to the STIP).

Signature Page to Follow

REVISED EXHIBIT C-1
AGREEMENT NO. 22485

Agency Contribution to the Interchange Improvements

- \$530,000 – Phoenix IDC – Anticipated to be generated from the Home Depot Development – Completed 2014
- \$200,000 – Non-interchange related system development charges – Completed 2014
- \$450,000 – Phoenix IDC – Anticipated to be generated from the property owner (developer) of Tax lot 2300, Township 38S, section 1W, Range 09A and Tax lots 200 and 202, Township 38S, Section 1W, Range 10, Willamette Meridian, Jackson County, Oregon.
- \$400,000 – Jurisdictional Transfer Agreement No. 766 – The transfer of a portion of OR 99 to Agency, funds credited to Agency by State – Completed 2015
- \$1,800,000 – Phoenix IDC – Future development charges to be collected by Agency
- \$1,000,000 – Rogue Valley MPO contribution to the improvements on behalf of Agency (separated MPO agreement to be executed by State and MPO)

Total Agency Contribution: \$4,380,000



Oregon

Kate Brown, Governor

Arthur H. Anderson, Jr.
ODOT Area Manager
Rogue Valley Office
100 Antelope Road
White City, Oregon 97503
Tele (541) 774-6353
Cell (541) 890-2842

Arthur.H.Anderson@odot.state.or.us

February 8, 2016

Steve Dahl
Phoenix City Manager
112 W. 2nd Street
Phoenix, OR 97535

SUBJ: Past Payments from the City of Phoenix for the Fern Valley Interchange Project

Dear Steve,

Per our recent telephone conversation, I am providing the following information to ensure ODOT and the City of Phoenix are in agreement with payments made, and those due, for the Fern Valley Interchange project. I have also included full copies of the original agreement, two amendments and the proposed third amendment for reference (Atchs 4-7).

The original I-5: Fern Valley Interchange Funding and Policy Agreement (22485-0) was approved on 12/12/2005. Attachment 1 is a copy of Exhibit C from that document, listing the funding contributions from Phoenix and others totaling \$4,700,000.

On 1/11/2012 Amendment 1 to the agreement was approved. The only change in Revised Exhibit C was a \$50,000 reduction in the Phoenix IDCs tied to tax lots 200, 202 and 2300 (see Atch 2). This reduced the total contributions to \$4,650,000.

There were no changes in Exhibit C for Amendment 2 to the agreement, but Amendment 3 has additional reductions in Revised Exhibit C-1 based on several factors (see Atch 3):

- The City paid ODOT \$1,000,000 to cover Phoenix IDC costs and a reimbursement bill for utilities (\$734,819 towards Phoenix IDCs, \$265,181 towards utilities).
- However, the entire \$1,000,000 was intended to go towards the \$800,000 Phoenix IDCs and \$200,000 non-interchange SDCs.
- To simplify the process of amending several agreements with the City, the City agreed to forgo the \$270,000 that was intended to be paid by ODOT to Phoenix for the overlay of the southbound lanes of the OR 99 Jurisdictional Transfer, or the Couplet (Agreement 22485-2, pg. 2, para. 3).
- This \$270,000 was then credited towards the \$800,000 Phoenix IDCs, with the extra \$4,819 to be paid to Phoenix at Second Notification of the project (difference between the \$270,000 and the \$265,181 paid towards utilities, which should have been paid towards the Phoenix IDC bill).

- These changes have been noted in the proposed Agreement 22485-3, pg. 2, para. d., State Funding Obligations; as well as Revised Exhibit C-1 (see Atch 3).
- The contributions listed in Agreement 22485-3, Revised Exhibit C-1 that have been met by Phoenix are indicated as "Completed".

Any concerns regarding the City's obligations to repay IDCs in perpetuity, or being hit with a large bill at a date years down the line, are alleviated by the language contained in Agreement 22485-1, pg. 3, para. c., which states:

"c. Agency has identified an additional \$2,250,000 in future PIDC within Agency's jurisdiction. Agency shall transfer to State, on an annual basis, funds collected in PIDC for each fiscal year until either (1) the \$2,250,000 Agency contribution is met, or (2) full build-out of the area within the trip cap overlay as adopted by the City of Phoenix occurs, whichever occurs first. Agency shall make annual payments, less ten percent of the PIDC to cover costs for Agency's administration of the PIDC program."

If you have additional questions or concerns, feel free to contact me directly at 541-774-6353, or at my contact information in the header above. Thank you.

Sincerely,



Arthur H. Anderson, Jr., ODOT
Rogue Valley Area Manager

Atchs:

1. Exhibit C (Agreement 22485-0)
2. Revised Exhibit C (Agreement 22485-1)
3. Revised Exhibit C-1 (Agreement 22485-3)
4. Full Agreement 22485-0
5. Full Agreement 22485-1
6. Full Agreement 22485-2
7. Proposed Agreement 22485-3

EXHIBIT C

AGREEMENT NO. 22485-0

(Approved 12/12/2005)

City of Phoenix Contribution to the Interchange Improvements:

- **\$800,000 – Phoenix IDC – Anticipated to be generated from the Home Depot Development**
- **\$200,000 – Non-interchange related system development charges**
- **\$500,000 – Phoenix IDC – Anticipated to be generated from the property owner (developer) of Taxlot 200, Township 38S, Section 1W, Range 09A and Taxlots 200 and 300, Township 38S, Section 1W, Range 10, Willamette Meridian, Jackson County, Oregon**
- **\$400,000 – Jurisdictional Transfer Agreement No. 766 – The transfer of a portion of Hwy 99 to the City of Phoenix, funds credited to Agency by State**
- **\$1,800,000 – Phoenix IDC – Future development charges to be collected by Agency**
- **\$1,000,000 – Rogue Valley Metropolitan Planning Organization contribution to the improvements on behalf of Agency**

Total Agency Contribution: \$4,700,000

REVISED EXHIBIT C

AGREEMENT NO. 22485-1

(Approved 1/11/2012)

Agency Contribution to the Interchange Improvements

- **\$800,000 – Phoenix IDC – Anticipated to be generated from the Home Depot Development**
- **\$200,000 – Non-interchange related system development charges**
- **\$450,000 – Phoenix IDC – Anticipated to be generated from the property owner (developer) of Tax lot 2300, Township 38S, Section 1W, Range 09A and Tax lots 200 and 202, Township 38S, Section 1W, Range 10, Willamette Meridian, Jackson County, Oregon**
- **\$400,000 – Jurisdictional Transfer Agreement No. 766 – The transfer of a portion of OR 99 to Agency, funds credited to Agency by State**
- **\$1,800,000 – Phoenix IDC – Future development charges to be collected by Agency**
- **\$1,000,000 – Rogue Valley MPO contribution to the improvements on behalf of Agency (separate MPO agreement to be executed by State and MPO)**

Total Agency Contribution: \$4,650,000

REVISED EXHIBIT C-1

AGREEMENT NO. 22485-3

(Awaiting Signature)

Agency Contribution to the Interchange Improvements

- **\$530,000 – Phoenix IDC – Anticipated to be generated from the Home Depot Development – Completed 2014**
- **\$200,000 – Non-interchange related system development charges – Completed 2014**
- **\$450,000 – Phoenix IDC – Anticipated to be generated from the property owner (developer) of Tax lot 2300, Township 38S, section 1W, Range 09A and Tax lots 200 and 202, Township 38S, Section 1W, Range 10, Willamette Meridian, Jackson County, Oregon**
- **\$400,000 – Jurisdictional Transfer Agreement No. 766 – The transfer of a portion of OR 99 to Agency, funds credited to Agency by State – Completed 2015**
- **\$1,800,000 – Phoenix IDC – Future development charges to be collected by Agency**
- **\$1,000,000 – Rogue Valley MPO contribution to the improvements on behalf of Agency (separate MPO agreement to be executed by State and MPO)**

Total Agency Contribution: \$4,380,000

**INTERGOVERNMENTAL AGREEMENT
I-5: Fern Valley Interchange
Funding and Policy Agreement
City of Phoenix**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and the CITY OF PHOENIX, acting by and through its elected officials, hereinafter referred to as "Agency", referred to collectively as "Parties".

RECITALS

1. By the authority granted in ORS 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. Pacific Highway (I-5) is under the jurisdiction and control of the Oregon Transportation Commission (OTC).
4. State and Agency are conducting an Environmental Assessment (EA) of the Fern Valley Interchange (Interchange) as described in Agreement Number 20539, hereinafter referred to as study. The study is evaluating current and proposed traffic impacts to the transportation system and considering impacts on land use patterns and the local street network, considering impacts on local businesses, major institutions, public facilities and historic resources, and analyzing natural, social, economic and environmental impacts, including the management of land use impacts on communities and natural resources. The results of the EA will be an alternative for a new interchange near, or at, the existing interchange. A map of the study area is attached as Exhibit "A", and by this reference made a part hereof.
5. The Interchange serves as the main link between the I-5 corridor and the City of Phoenix. It is being put under pressure by continuing growth in Phoenix and southeast Medford. State has identified the Fern Valley Interchange Project (Interchange improvements), Key No. 12723, to solve the continued growth problem. The Interchange improvements include widening and possible realigning of Fern Valley Road from Highway 99 to North Phoenix Road. The Interchange

Key No. 12723

improvements will add capacity on Fern Valley Road, and provide safe pedestrian and bicycle movements.

6. In December 2004, State appealed a decision by Agency to rezone property in the vicinity of the Interchange and allow certain commercial construction. The appeal is pending before the Land Use Board of Appeals (LUBA), case number 2004-217.
7. The OTC has established rules and policies in its State Agency Coordination Program (SAC), OAR 731-015-0005 *et seq.*, to ensure that State land use programs are carried out in compliance with statewide planning goals and in a manner compatible with acknowledged comprehensive plans as required by ORS 197.180 and OAR 660, Division 30. These policies identify procedures for coordination of land use issues with the development of transportation projects.
8. By the authority granted in ORS 184.618, the OTC can develop comprehensive long-range plans for State's highway system that encompass economic efficiency, orderly development and environmental quality.
9. The OTC adopted the Oregon Highway Plan (OHP) in 1999, which includes policies for the development of major improvements to highway facilities. Those policies require:
 - a. Planning for Interchange Management Areas to protect the function of interchanges and to provide safe and efficient operations between connecting roadways and to minimize the need for major improvements to interchanges;
 - b. Partnerships with local governments to address highway performance and safety needs prior to adding new facilities to the system; and
 - c. Local and state policy coordination involving land use, local street patterns, access control, design characteristics and jurisdictional transfer to maintain and enhance the utility of state highway investment in an interchange facility.
10. The OTC has adopted OAR 734-051-0285, which defines the process and requirements for the development of an Interchange Area Management Plan (IAMP) as part of interchange modernization projects.

DEFINITIONS

1. The Date of Second Notification is the date that, in accordance with Section 00180.50(g) of the 2002 Standard Specifications, the State Engineer acknowledges that all required construction work, including change order work and extra work, has been satisfactorily completed and, therefore, time charges stop for one or all of the completion times for the Interchange improvements.

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

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to establish policy guidelines for the Interchange improvements and for land use within the impacted area of the Interchange improvements, hereinafter referred to as Policy Project. State and Agency agree to the terms and conditions of Agency's contribution to the funding for the Interchange improvements, hereinafter referred to as Agency contribution.
2. The Interchange improvements will be funded with a combination of federal, state and Agency funds. The estimated cost of the Interchange improvements is \$45,000,000. Agency's contribution shall be limited to \$4,700,000 under this Agreement, as identified further on Exhibit C, attached hereto and by this reference made a part hereof. State shall be responsible for all costs of Policy Project and all costs for the Interchange improvements which are in excess of Agency's contribution.
3. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Interchange improvements and final Agency payment or ten calendar years following the date all required signatures are obtained, whichever is sooner.

I. AGENCY CONTRIBUTION

AGENCY FUNDING OBLIGATIONS

1. In consideration of State's design and construction of the Interchange improvements, Agency agrees to the following:
 - a. Agency shall, upon receipt of a fully executed copy of this Agreement and letter of request from State, forward to State Agency's contribution for the Interchange improvements as outlined in the following schedule:
 - i. No later than 8 weeks prior to advertisement to bid for the Interchange improvements contract, Agency shall forward to State \$1,000,000, comprised of \$800,000 from the Phoenix Interchange Development Charges (PIDC) and \$200,000 from non-interchange System Development Charges.
 - ii. No later than one month after second notification has been issued for the Interchange improvements or upon issuance of building permits for the property described as Taxlot 200, Township 38S, Section 1W, Range 09A and Taxlots 200 and 300 Township 38S, Section 1W, Range 10, Willamette

Meridian, Jackson County, Oregon, whichever is sooner, Agency shall forward to State \$500,000 in Agency funds from the PIDC.

- b. State shall credit \$400,000 towards Agency's contribution for the transfer of a portion of the Rogue Valley Highway from State's jurisdiction to Agency's jurisdiction, as described in Jurisdictional Transfer number 766.
 - c. Agency has identified an additional \$1,800,000 in future PIDC's within the Agency's jurisdiction. Agency shall identify, in writing, State as the first priority of payment of these future PIDC funds for the ten years following the execution of this Agreement or until the \$1,800,000 Agency contribution is fulfilled, whatever occurs first. If the Agency's \$1,800,000 is not fully paid within ten years of execution of this Agreement, the balance shall be due and payable at that time. In order to meet the obligation, Agency may elect to obtain a loan from the Oregon Transportation Infrastructure Bank (OTIB), related solely to Agency's collection of PIDC funds. Said loan will be disbursed to State for any remaining Agency's contribution due under this Agreement.
 - d. Rogue Valley Metropolitan Planning Organization (RVMPO) shall contribute \$1,000,000 in RVMPO funds as a portion of Agency's contribution no later than eight weeks prior to advertisement to bid for the Interchange improvements contract. Said funds shall be paid to State by RVMPO, on behalf of Agency. A separate agreement shall be executed with RVMPO addressing this portion of Agency's contribution.
2. Pending the results of a traffic investigation, Agency shall ensure the installation of temporary traffic signals at the intersection of Fern Valley Road and North Phoenix Road and at the intersection of North Phoenix Road and the entrance to the property development located on Taxlot 200, Township 38S, Section 1W, Range 09A and Taxlots 200 and 300 Township 38S, Section 1W, Range 10, Willamette Meridian, Jackson County, Oregon. The temporary signals shall be installed only if shown to be warranted and are subsequently approved by the State Traffic Engineer. The temporary signals shall be installed and operational prior to Agency issuing a certificate of occupancy for any development located at the properties mentioned above. Agency shall be responsible for the installation, ongoing maintenance and electrical energy charges for the temporary signals. The temporary signals shall remain in operation until replaced by a permanent traffic signal(s), which shall be installed by State as part of the Interchange improvements, if shown to meet signal warrants.

STATE FUNDING OBLIGATIONS

1. State shall upon execution of this Agreement, forward to Agency a letter of request for payment of Agency's contribution in accordance with the schedule outlined in Agency Contribution Obligation, Paragraph 1a.

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2. State shall deliver to Agency statements each month which shall identify 100 percent of State's costs for the Interchange Improvements incurred to date. Upon completion of the Interchange Improvements, State shall provide an itemized statement of the total costs of the Interchange Improvements.
3. State shall credit \$400,000 to Agency as consideration for Agency accepting jurisdiction of a portion of the Rogue Valley Highway (OR 99) when Jurisdictional Transfer Agreement No. 766 is executed.
4. State shall collect an additional \$1,800,000 from Agency as outlined in Agency Funding Obligations, Paragraph 1c. In the event Agency is unable to uphold their funding obligation through PIDC funds or an OTIB loan, State reserves the right to withhold a proportional amount of Agency's future Surface Transportation Program funds until the obligation is fulfilled.
5. Pending a traffic investigation, and only if shown to be warranted and approved by the State Traffic Engineer, State shall install, at its own expense, a permanent traffic signal(s), which shall replace the temporary signals indicated in Agency Funding Obligations, paragraph 2, as part of the Interchange Improvements.

II. POLICY PROJECT

AGENCY POLICY OBLIGATIONS

1. Agency shall jointly prepare with State an Interchange Area Management Plan (IAMP) for the Fern Valley Interchange improvements. The IAMP will be prepared in conformance with the 1999 Oregon Highway Plan (OHP), Policy 3C and OAR 734-0051-0010 and 734-0051-0285 and will be completed prior to advertisement for the Interchange improvements (Key No. 12723). It shall include analysis of the relationships between existing local land uses, zoning and long range plans and the state and local roadway network within the study area around the existing Interchange, and shall identify necessary improvements to approach roads and the local street network to support the long-term safety and efficiency of the Interchange. State and Agency shall use the data generated from the IAMP for determination of future land use actions and development applications within the boundary of the IAMP. The IAMP shall be funded by State in its entirety as part of the Interchange improvements.
2. Agency agrees to conduct public hearings as needed to adopt the IAMP into Agency's existing Transportation System Plan (TSP). Upon adoption, Agency and State agree to use the IAMP to evaluate land use actions and development applications within the boundaries of the IAMP.
3. Agency agrees to implement the "*City of Phoenix Concurrency Policy Memo*", dated November 24, 2004, attached hereto as Exhibit B and by this reference made part hereof, for all future land use actions within the Agency's UGB.

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4. Agency council shall pass a resolution authorizing the Mayor or City Administrator to enter into this Agreement on behalf of the Agency.
5. Agency's Project Manager for this Agreement is the City Planning Director, City of Phoenix, 510 W. First Street, Phoenix, OR 97535, (541) 535-1955.

STATE POLICY OBLIGATIONS

1. State shall jointly prepare with Agency an IAMP for the Interchange improvements. The IAMP will be prepared in conformance with the 1999 Oregon Highway Plan (OHP), Policy 3C and OAR 734-0051-0010 and 734-0051-0285 and will be completed prior to advertisement for the Interchange improvements (Key No. 12723). It shall include analysis of the relationships between existing local land uses, zoning and long range plans and the state and local roadway network within the study area around the existing Interchange, and shall identify necessary improvements to approach roads and the local street network to support the long-term safety and efficiency of the Interchange. State and Agency shall use the data generated from the IAMP for determination of future land use actions and development applications within the boundary of the IAMP. The IAMP shall be funded by State in its entirety as part of the Interchange improvements.
2. State shall initiate a review of the IAMP for adoption by the OTC as a facility plan and a part of the OHP after Agency adopts the IAMP into their existing TSP.
3. Upon execution of this Agreement, but no later than December 31, 2005, State agrees to petition the OTC for the dismissal of State's LUBA appeal, case number 2004-217.
4. State's project manager for this Agreement is Rogue Valley Area Manager, 100 Antelope Road, White City OR, 97503, (541) 774-6353.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written

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- notice from State fails to correct such failures within 10 days or such longer period as State may authorize.
- c. If Agency fails to provide payment of its share of the cost of the Interchange improvements.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. 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 State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
 4. Agency acknowledges and agrees that State, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
 5. Both parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, both parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
 6. Both parties shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
 7. All employers, including State and Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and

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provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. State and Agency shall ensure that each of its subcontractors complies with these requirements.

8. If Agency fails to maintain the temporary signals in accordance with the terms of this Agreement, State, at its option, may maintain the facility and bill Agency, seek an injunction to enforce the duties and obligations of this Agreement or take any other action allowed by law. State shall make every effort to notify Agency prior to performing any maintenance of the signals.
9. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. State and Agency shall also enter into Jurisdictional Transfer Agreement No. 766 which details the transfer of a portion of the Rogue Valley Highway and provides funding for this Agreement. There are no other understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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

This Project is in the 2004-2007 Statewide Transportation Improvement Program (STIP), (Key number 12723) that was approved by the Oregon Transportation Commission on November 17, 2003.

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

Signature Page to Follow

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On November 10, 2004, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates to the Deputy Director, Highways the authority to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

CITY OF PHOENIX, by and through its
elected officials

By Mayor Vicki G. Bean

Date November 8, 2005

By Betty Smith

Date November 8, 2005

**APPROVED AS TO LEGAL
SUFFICIENCY**

By [Signature]
Counsel

Date 11-17-05

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Kathy G. Lincoln
Assistant Attorney General

Date: 12/6/05

Agency Contact:
City of Phoenix
Attn: City Recorder
510 W. First Street
Phoenix, OR 97435

STATE OF OREGON, by and through
its Department of Transportation

By U.M. Tam

Deputy Director, Highways

Date 12/28/05

APPROVAL RECOMMENDED

By A.M. NL 12-9-05
Technical Services Manager/Chief
Engineer

By [Signature]
State Traffic Engineer

Date 12/9/05

By [Signature]
Region 3 Manager

Date 11/23/05

By [Signature]
Southwest Area Manager
Rogue Valley

Date 11-22-05

By [Signature]
Region 3 Planning Manager

Date 11/22/05



EXHIBIT B – City of Phoenix CONCURRENCY Policy Memo

TO: ODOT Region 3
FROM: David Pyles, Reg.3/Dist 8 Development Review Planner
DATE: November 24, 2004
SUBJECT: City of Phoenix – CITY CODE & TRANSPORTATION CONCURRENCY

The following statements are taken from the City of Phoenix Comprehensive Plan, Zoning Ordinance, and Transportation System Plan (TSP), concerning concurrency requirements for land use/transportation development. These concurrency policy statements are for use on the Home Depot mixed-use development project, proposed within the northeast quadrant of the Interstate-5 / Fern Valley Road Interchange (I-5 Exit #24). Red text indicates key City concurrency language.

CITY PROCEDURAL REQUIREMENTS

- **10.205 – Zone Change Criteria.** The approving authority shall approve a quasi-judicial [Type II] zone change if it finds that the request complies with all of the following criteria:
 1. The change is consistent with the Comprehensive Plan’s Goals, Policies, and Land Use Map.
 2. **Urban services and facilities are available to adequately serve the property, or will be made upon development.**
 3. Other zone change criteria included in the City’s Zoning Ordinance and Comprehensive Plan.

CITY FACILITIES & CONCURRENCY POLICY (Phoenix Comprehensive Plan [PCP] - Economic Element, as amended March 1998):

- **Goal 4:** Designate lands within the I5 interchange area to provide services and goods for the traveling public as well as business locations serving the community and the region.
- **Policy 4.1:** Ensure the list of permitted and conditional uses within the Interchange Business zoning district is consistent with the purpose of the Plan designation and Goal 4.
- **Policy 4.1a:** Develop performance standards for the Interchange Business zoning district to ensure uses locating in the interchange area are of a scale, function, and character appropriate to the interchange and inappropriate within the City Center.

- **Policy 4.2:** Within the Fern Valley Road Interchange area (including all lands east of Bear Creek Bridge within the UGB) any annexation, zone change, or change of existing uses which is expected to significantly increase travel demand in the interchange area must be predicated upon facts (supported by special traffic studies) and findings that sufficient capacity exists or will be available upon completion of funded improvement(s) to satisfy the proposed development's travel demand (including background traffic) concurrent with its opening.
- **Policy 4.3:** The Fern Valley Interchange and Fern Valley Road within the City's UGB are regionally significant transportation facilities. Developments occurring outside of the interchange area (in Southeast Medford and rural Jackson County) have the potential to exhaust the interchange's remaining unused capacity. The transportation impacts of Southwest Medford and Jackson County developments, like those of development within the interchange area, should also be offset by improvements, when necessary, to ensure 'sufficient capacity' in the interchange area and ensure the protection of the public's health, safety, and general welfare. The City shall endeavor to: 1) secure regional support for interchange improvements, and 2) participate in any land use action that will 'significantly increase travel demand' in the interchange area.

TRANSPORTATION ELEMENT (PCP, October 1999)

- "The concept of transportation balance and the land use connection is pertinent to virtually every area within the community" (PCP – Trans. Element, 1999: p. 21).
- "Needs are defined as either deficiencies or failures of the current transportation system based upon existing or forecast travel demand. The needs are categorized as safety, geometrics, operations, maintenance, or modal....A deficiency arises when the transportation system does not operate efficiently" (PCP – Trans. Element, 1999: p. 23).
- Oregon Transportation Plan Policy 1.B, Efficiency, states: "It is the policy of the State of Oregon to assure provision of an efficient transportation system. The system is efficient when (1) it is fast and economic for the user; (2) users face prices that reflect the full costs of their transportation choices, and (3) transportation investment decisions maximize the net benefits of the system. (Full benefits and costs include social and environmental impacts, as well as the benefits of mobility to users, and construction, operations and maintenance.)"¹⁴ It is this context in which transportation needs should be considered. (PCP – Trans. Element, 1999: p. 23).
- **Truck Mode:** "In the immediate vicinity of the interchange on Fern Valley Road, trucks represent approximately 20 percent of average daily traffic. These volumes are considered high but not atypical. Usually, trucks account for three to five percent of average daily traffic on arterial streets. The truck stop in the immediate vicinity of the interchange attracts as estimated ninety-five percent of the total truck volumes. Their presence creates congestion that can be especially pronounced on winter days when the Siskiyou Summit on Interstate 5 is closed."

Chapter 9 – Modal Plans and Policies:

- **Goal 1:** The City shall ensure that the TSP is consistent with the Rogue Valley Metropolitan Planning Organization's Regional Transportation Plan.
- **Goal 2:** The City shall coordinate its transportation decision-making with other land use planning decisions and with public agencies providing transportation services or facilities.
- **Goal 3:** Utilize the volume to capacity standards specified in Table 4-3 to determine transportation facility adequacy.
 - **Policy 3.1 – Manage the transportation systems and pursue facility improvements consistent with the specified performance standards.**
 - **Policy 3.2 – Actively pursue, as signal warrants are met, timely implementation of all TSM projects listed in Table 9-1. [E.g., Signals at Fern Valley Interchange east and west ramp terminals, Fern Valley and Luman Rd., and Fern Valley and North Phoenix Rd.]**
- **Goal 5:** Preserve the function and value of transportation facilities consistent with their classification [via Access Management strategies].
- **Goal 11:** Ensure that the cost for construction, reconstruction, and maintenance is distributed to the individual household or transportation consumer, general public, new development, Jackson County, and State, consistent with the benefits of the project.

Please contact me if you have questions, or require additional information – (541) 774-6399.

EXHIBIT C
AGREEMENT NO. 22485

City of Phoenix Contribution to the Interchange Improvements:

- \$800,000 – Phoenix IDC – Anticipated to be generated from the Home Depot Development
- \$200,000 – Non interchange related system development charges
- \$500,000 – Phoenix IDC – Anticipated to be generated from the property owner (developer) of Taxlot 200, Township 38S, Section 1W, Range 09A and Taxlots 200 and 300 Township 38S, Section 1W, Range 10, Willamette Meridian, Jackson County, Oregon
- \$400,000 – Jurisdictional Transfer Agreement No. 766 – The transfer of a portion of Hwy 99 to the City of Phoenix, funds credited to Agency by State
- \$1,800,000 – Phoenix IDC – Future development charges to be collected by Agency
- \$1,000,000 – Rogue Valley Metropolitan Planning Organization contribution to the improvements on behalf of Agency

Total Agency Contribution: \$4,700,000

AMENDMENT NUMBER 01

**INTERGOVERNMENTAL AGREEMENT
I-5: Fern Valley Interchange
Funding and Policy Agreement
City of Phoenix**

The **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State," and the **CITY OF PHOENIX**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on December 12, 2005. Said Agreement covers land use policies and funding for interchange improvements.

It has now been determined by State and Agency that the Agreement referenced above, shall be amended to update language and increase funding. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

Exhibit C shall be deleted in its entirety and replaced with the attached Revised Exhibit C. All references to "Exhibit C" shall be replaced with "Revised Exhibit C."

TERMS OF AGREEMENT, Paragraph 2, Page 3, which reads:

The Interchange improvements will be funded with a combination of federal, state and Agency funds. The estimated cost of the Interchange improvements is \$45,000,000. Agency's contribution shall be limited to \$4,700,000 under this Agreement, as identified further on Exhibit C, attached hereto and by this reference made a part hereof. State shall be responsible for all costs of the Policy Project and all costs for the Interchange improvements which are in excess of Agency's contribution.

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

The Interchange improvements will be funded with a combination of federal, state and Agency funds. The estimated cost of the Interchange improvements is \$70,000,000. Agency's contribution shall be limited to \$4,650,000 under this Agreement, as identified further on Revised Exhibit C, attached hereto and by this reference made a part hereof. State shall be responsible for all costs of the Policy Project and all costs for the Interchange improvements which are in excess of Agency's contribution.

AGENCY FUNDING OBLIGATIONS, Paragraph 1, Page 3, which reads:

In consideration of State's design and construction of the Interchange improvements, Agency agrees to the following:

- a. Agency shall, upon receipt of a fully executed copy of this Agreement and letter of request from State, forward to State Agency's contribution for the Interchange improvements as outlined in the following schedule:
 - i. No later than 8 weeks prior to advertisement to bid for the Interchange improvements contract, Agency shall forward to State \$1,000,000, comprised of \$800,000 from the Phoenix Interchange Development Charges (PIDC) and \$200,000 from non-interchange System Development Charges.
 - ii. No later than one month after second notification has been issued for the Interchange improvements or upon issuance of building permits for the property described as Taxlot 200, Township 38S, Section 1W, Range 09A and Taxlots 200 and 300 Township 38S, Section 1W, Range 10, Willamette Meridian, Jackson County, Oregon, whichever is sooner, Agency shall forward to State \$500,000 in Agency funds from the PIDC.
- b. State shall credit \$400,000 towards Agency's contribution for the transfer of a portion of the Rogue Valley Highway from State's jurisdiction to Agency's jurisdiction, as described in Jurisdictional Transfer number 766.
- c. Agency has identified an additional \$1,800,000 in future PIDC's within the Agency's jurisdiction. Agency shall identify, in writing, State as the first priority of payment of these future PIDC funds for the ten years following the execution of this Agreement or until the \$1,800,000 Agency contribution is fulfilled, whatever occurs first. If the Agency's \$1,800,000 is not fully paid within ten years of execution of this Agreement, the balance shall be due and payable at that time. In order to meet the obligation, Agency may elect to obtain a loan from the Oregon Transportation Infrastructure Bank (OTIB), related solely to Agency's collection of PIDC funds. Said loan will be disbursed to State for any remaining Agency's contribution due under this Agreement.
- d. Rogue Valley Metropolitan Planning Organization (RVMPO) shall contribute \$1,000,000 in RVMPO funds as a portion of Agency's contribution no later than eight weeks prior to advertisement to bid for the Interchange improvements contract. Said funds shall be paid to State by RVMPO, on behalf of Agency. A

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separate agreement shall be executed with RVMPO addressing this portion of Agency's contribution.

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

In consideration of State's design and construction of the Interchange improvements, Agency agrees to the following:

- a. Agency shall, upon receipt of a fully executed copy of this Agreement and letter of request from State, forward to State a payment of \$1,000,000, comprised of \$800,000 from the Phoenix Interchange Development Charges (PIDC) and \$200,000 from non-interchange System Development Charges. The payment shall be made no later than eight weeks prior to advertisement to bid for the Interchange improvements contract.
- b. State shall credit \$400,000 towards Agency's contribution for the transfer of a portion of the Rogue Valley Highway from State's jurisdiction to Agency's jurisdiction, as described in Jurisdictional Transfer No. 766.
- c. Agency has identified an additional \$2,250,000 in future PIDC within Agency's jurisdiction. Agency shall transfer to State, on an annual basis, funds collected in PIDC for each fiscal year until either (1) the \$2,250,000 Agency contribution is met, or (2) full build-out of the area within the trip cap overlay as adopted by the City of Phoenix occurs, whichever occurs first. Agency shall make annual payments, less ten percent of the PIDC to cover costs for Agency's administration of the PIDC program.
- d. Rogue Valley Metropolitan Planning Organization (RVMPO) shall contribute \$1,000,000 divided into three payments, each due on October 1 of that year. Said funds shall be paid to State by RVMPO, on behalf of Agency. A separate agreement shall be executed with RVMPO addressing this portion of Agency's contribution.

AGENCY FUNDING OBLIGATIONS, Paragraph 2, Page 4, which reads:

Agency shall install temporary traffic signals at the intersection of Fern Valley Road and North Phoenix Road and at the intersection of North Phoenix Road and the entrance to the property development located on Taxlot 200, Township 38S, Section 1W, Range 09A and Taxlots 200 and 300 Township 38S, Section 1W, Range 10, Willamette Meridian, Jackson County, Oregon. The temporary signals shall be installed and operational prior to Agency issuing a certificate of occupancy for any development located at the properties mentioned above. Agency shall be responsible for the installation, ongoing maintenance and electrical energy charges for the temporary signals. The temporary signals shall remain in operation until replaced by a permanent

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traffic signal(s), which shall be installed by State as part of the Interchange improvements.

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

Agency shall install temporary traffic signals at the intersection of Fern Valley Road and North Phoenix Road and at the intersection of North Phoenix Road and the entrance to the property development located on Tax lot 2300, Township 38S, Range 1W, Section 09A and Tax lots 200 and 202, Township 38S, Range 1W, Section 10, Willamette Meridian, Jackson County, Oregon. The temporary signals shall be installed and operational prior to Agency issuing a certificate of occupancy for any development located at the properties mentioned above. Agency shall be responsible for the installation, ongoing maintenance and electrical energy charges for the temporary signals. The temporary signals shall remain in operation until replaced by a permanent traffic signal(s), which shall be installed by State as part of the Interchange improvements.

STATE FUNDING OBLIGATIONS, paragraph 3, page 5, which reads:

State shall credit \$400,000 to Agency as consideration for Agency accepting jurisdiction of a portion of the Rogue Valley Highway (OR 99), when Jurisdictional Transfer Agreement No. 766 is executed.

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

State shall credit \$400,000 to Agency as consideration for Agency accepting jurisdiction of a portion of the Rogue Valley Highway (OR 99), when Jurisdictional Transfer Agreement No. 766 is executed. State shall fund and construct the overlay work for the southbound lanes of OR 99.

Insert new STATE FUNDING OBLIGATIONS, paragraph 6, to read as follows:

In the event that Agency's decision to adopt the trip budget ordinance for the Fern Valley Road/OR-99 intersection is challenged to the Land Use Board of Appeals (LUBA), State shall take actions to intervene and participate in the proceeding.

Insert new STATE POLICY OBLIGATIONS, paragraph 5, to read as follows:

During the design phase of the Fern Valley Interchange (Key Number 12723) project, State shall seek review and comment from Agency for project design according to the

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following milestones: Preliminary or Progress Plans at seventy percent completion, Advanced Plans at ninety percent completion and Final Plans at 100 percent completion.

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

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

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

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

GENERAL PROVISIONS, Paragraph 7, Pages 7 and 8, which reads:

All employers, including State and Agency, 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. State and Agency shall ensure that each of its subcontractors complies with these requirements.

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

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

Insert new GENERAL PROVISIONS, Paragraphs 10 through 13, to read as follows:

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 State or Agency with respect to which the 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 a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State 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 Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency 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 State on the one hand and of Agency 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. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency 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 State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State 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 Agency on the one hand and of State 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. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law,

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including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

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

THE PARTIES, by execution of this Amendment, hereby acknowledge that each Party has read this Amendment, understands it, and agrees to be bound by its terms and conditions.

This Project is amended into the 2008-2011 Statewide Transportation Improvement Program, (Key #12723) that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

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CITY OF PHOENIX, by and through its
elected officials

By *Carla S. Bette, Mayor*

Date 11-3-11

By *Deana M. Nelson*

Date 11/4/11

**APPROVED AS TO LEGAL
SUFFICIENCY**

By *[Signature]*
Agency Counsel

Date 11-8-11

**APPROVED AS TO LEGAL
SUFFICIENCY**

By *Kathy A. Lucey*
Assistant Attorney General

Date: 1/5/12

Agency Contact:

Jane Turner
City of Phoenix
510 W. First Street
Phoenix, OR 97435
(541) 535-1955
jane@phoenixoregon.gov

State Contact:

Jay Harris, ODOT Region 3 HQ
3500 NW Stewart Pkwy
Roseburg, OR 97470
(541) 957-3510
Jay.HARRIS@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By *[Signature]*
Highway Division Administrator

Date 1/11/12

APPROVAL RECOMMENDED

By *[Signature]* 1-10-12
Technical Services Manager/Chief
Engineer

By *[Signature]*
State Traffic Engineer

Date JAN 09, 2012

By *[Signature]*
Region 3 Manager

Date 1/6/12

By *[Signature]*
Rogue Valley Area Manager

Date 12-21-11

By *[Signature]*
Region 3 Planning Manager

Date 12-19-11

Agency/State
Agreement No. 22485

REVISED EXHIBIT C

AGREEMENT NO. 22485

Agency Contribution to the Interchange Improvements

- \$800,000 – Phoenix IDC – Anticipated to be generated from the Home Depot Development
- \$200,000 – Non-interchange related system development charges
- \$450,000 – Phoenix IDC – Anticipated to be generated from the property owner (developer) of Tax lot 2300, Township 38S, Section 1W, Range 09A and Tax lots 200 and 202, Township 38S, Section 1W, Range 10, Willamette Meridian, Jackson County, Oregon
- \$400,000 – Jurisdictional Transfer Agreement No. 766 – The transfer of a portion of OR 99 to Agency, funds credited to Agency by State
- \$1,800,000 – Phoenix IDC – Future development charges to be collected by Agency
- \$1,000,000 – Rogue Valley MPO contribution to the improvements on behalf of Agency (separate MPO agreement to be executed by State and MPO)

Total Agency Contribution: \$4,650,000

**AMENDMENT NUMBER 02
INTERGOVERNMENTAL AGREEMENT
I-5: Fern Valley Interchange
Funding and Policy Agreement
City of Phoenix**

The STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the CITY OF PHOENIX, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on December 9, 2005, and Amendment Number 01 on January 11, 2012. Said Agreement covers policy guidelines, land use policies and funding for the interchange improvements.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to increase funding, update language and funding obligations. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

DEFINITIONS, Paragraph 1, Page 2, which reads:

1. The Date of Second Notification is the date that, in accordance with Section 00180.50(g) of the 2002 Standard Specifications, the State Engineer acknowledges that all required construction work, including change order work and extra work, has been satisfactorily completed and, therefore, time charges stop for one or all of the completion times for the Interchange Improvements.

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

1. "Second Notification" means a written acknowledgment by the Engineer or Project Manager that according to 00180.50(g) of the Oregon Standard Specifications for Construction, all on-site work is complete. Second Notification also establishes the end of time for completing the bid item work under the contract and lists remaining requirements for the contractor to complete prior to Third Notification.

Insert new DEFINITION, Paragraph 2, to read as follows:

2. "Third Notification" means written acknowledgement by the Engineer or Project Manager, subject to Final Acceptance, that as of the date of the notification the contractor has completed the project according to the contract, including without limitation completion of all minor corrective work, equipment and plant removal, site clean-up and submittal of all certifications, bills, forms and documents required under the contract.

TERMS OF AGREEMENT, Paragraph 2, Page 3, which reads:

2. The Interchange improvements will be funded with a combination of federal, state and Agency funds. The estimated cost for the Interchange improvements is \$70,000,000. Agency's contribution shall be limited to \$4,650,000 under this Agreement, as identified further on Revised Exhibit C, attached hereto and by this reference made a part hereof. State shall be responsible for all costs of the Policy Project and all costs for the Interchange improvements which are in excess of Agency's contribution.

Agency/State
Agreement No. 22485-02

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

2. The Interchange improvements will be funded with a combination of federal, state and Agency funds. The estimated cost of the Interchange improvements is \$70,270,000. Agency's contribution shall be limited to \$4,650,000 under this Agreement, as identified further on Revised Exhibit C, attached hereto and by this reference made a part hereof. State shall be responsible for all costs of the Policy Project and all costs for the Interchange improvements which are in excess of Agency's contribution.

AGENCY FUNDING OBLIGATIONS, Paragraph 1, Subsection a, Page 3, which reads:

- a. Agency shall, upon receipt of a fully executed copy of this Agreement and letter of request from State, forward to State a payment of \$1,000,000, comprised of \$800,000 from the Phoenix Interchange Development Charges (PIDC) and \$200,000 from non-interchange System Development Charges. The payment shall be made no later than eight weeks prior to advertisement to bid for the Interchange improvements contract.

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

- a. Agency shall, upon receipt of a fully executed copy of this Agreement and letter of request from State, forward to State a payment of \$1,000,000, comprised of \$800,000 from the Phoenix Interchange Development Charges (PIDC) and \$200,000 from non-interchange System Development Charges. The payment shall be made no later than July 1, 2015.

STATE FUNDING OBLIGATIONS, Paragraph 3, Page 5, which reads:

3. State shall credit \$400,000 to Agency as consideration for Agency accepting jurisdiction of a portion of the Rogue Valley Highway (OR 99), when Jurisdictional Transfer Agreement No. 766 is executed. State shall fund and construct the overlay work for the southbound lanes of OR 99.

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

3. State shall credit \$400,000 to Agency as consideration for Agency accepting jurisdiction of a portion of the Rogue Valley Highway (OR 99), when Jurisdictional Transfer Agreement No. 766 is executed. State shall provide funding in the amount of \$270,000 at Second Notification of the Fern Valley Interchange project for the overlay of the southbound lanes of the OR 99 Jurisdictional Transfer.

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

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

Agency/State
Agreement No. 22485-02

This Project is in the 2012-2016 Statewide Transportation Improvement Program. (Key #12723) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

CITY OF PHOENIX, by and through its
elected officials

By [Signature] - Mayor

Date 11-13-2014

By [Signature] - Council President

Date 11-13-2014

APPROVED AS TO LEGAL
SUFFICIENCY

By [Signature]
Agency Counsel

Date 11-13-14

Agency Contact:
Steve Dahl
City Manager
112 W 2nd Street
Phoenix, OR 97535
541-595-1855
sdahl@phoenixoregon.gov

State Contact:
Richard Randleman
Project Leader
100 Antelope road
White City, OR 97503
541-864-8828
Richard.randleman@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By [Signature]
Highway Division Administrator

Date 11/20/14

APPROVAL RECOMMENDED

By [Signature]
Technical Services Manager/Chief
Engineer

Date 11/18/14

By [Signature]
State Traffic Engineer

Date 11-17-14

By [Signature]
Region 3 Manager

Date 11-17-14

By [Signature]
Rogue Valley Area Manager

Date 11-14-14

By [Signature]
Region 3 Planning Manager

Date 11-14-2014

APPROVED AS TO LEGAL
SUFFICIENCY

By Approved Via Email Bonnie Heitsch
Assistant Attorney General

Date: October 15, 2014

**AMENDMENT NUMBER 03
INTERGOVERNMENTAL AGREEMENT
I-5: Fern Valley Interchange
Funding and Policy Agreement**

City of Phoenix

This is Amendment No. 03 to the Agreement between the **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "State," and the **City of Phoenix**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on December 12, 2005 and Amendment Number 01 on January 11, 2012 and Amendment Number 02 on November 20, 2014.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to adjust funding, extend time and update contact.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.
2. **Amendment to Agreement.**

Revised Exhibit C shall be deleted in its entirety and replaced with the attached Revised Exhibit C-1. All references to "Revised Exhibit C" shall hereinafter be referred to as "Revised Exhibit C-1."

a. **TERMS OF AGREEMENT, Paragraph 2, Page 3, which reads:**

2. The Interchange improvements will be funded with a combination of federal, state and Agency funds. The estimated cost of the Interchange improvements is \$70,270,000. Agency's contribution shall be limited to \$4,650,000 under this Agreement, as identified further on Revised Exhibit C, attached hereto and by this reference made a part hereof. State shall be responsible for all costs of the Policy Project and all costs for the Interchange improvements which are in excess of Agency's contribution.

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

2. The Interchange improvements will be funded with a combination of federal, state and Agency funds. The estimated cost of the Interchange improvements is \$70,270,000. Agency's contribution shall be limited to \$4,380,000 under this Agreement, as identified further on Revised Exhibit C-1, attached hereto and by this reference made a part hereof. State shall be responsible for all costs of the Policy Project and all costs for the Interchange improvements which are in excess of Agency's contribution.

b. TERMS OF AGREEMENT, Paragraph 3, Page 3, which reads:

3. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Interchange improvements and final Agency payment or ten calendar years following the date all required signatures are obtained, whichever is sooner.

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

3. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Interchange improvements and final Agency payment or twenty calendar years following the date all required signatures are obtained, whichever is sooner.

c. TERMS OF AGREEMENT, Paragraph 1, Subsection a, which reads:

- a. Agency shall, upon receipt of a fully executed copy of this Agreement and letter of request from State, forward to State a payment of \$1,000,000, comprised of \$800,000 from the Phoenix Interchange Development Charges (PIDC) and \$200,000 from non-interchange System Development Charges. The payment shall be made no later than July 1, 2015.

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

- a. Agency shall, upon receipt of a fully executed copy of this Agreement and letter of request from State, forward to State a payment of \$730,000, comprised of \$530,000 from the Phoenix Interchange Development Charges (PIDC) and \$200,000 from non-interchange System Development Charges. The payment shall be made no later than July 1, 2015.

d. STATE FUNDING OBLIGATIONS, Paragraph 3, which reads:

3. State shall credit \$400,000 to Agency as consideration for Agency accepting jurisdiction of a portion of the Rogue Valley Highway (OR 99), when Jurisdictional Transfer Agreement No. 766 is executed. State shall provide funding in the amount of \$270,000 at Second Notification of the Fern Valley Interchange project for the overlay of the southbound lanes of the OR 99 Jurisdictional Transfer.

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

3. State shall credit \$400,000 to Agency as consideration for Agency accepting jurisdiction of a portion of the Rogue Valley Highway (OR 99), when Jurisdictional Transfer Agreement No. 766 is executed. State shall provide funding in the amount of \$4,819 at Second Notification of the Fern Valley Interchange project for the overlay of the southbound lanes of the OR 99 Jurisdictional Transfer.

3. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Recipient certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

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

This Project is in the 2015-2018 Statewide Transportation Improvement Program (STIP), (Key #12723) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently by amendment to the STIP).

Signature Page to Follow

Agency/State
Agreement No. 22485

CITY OF PHOENIX, by and through its
elected officials

By _____

Date _____

By _____

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____

Agency Counsel

Date _____

Agency Contact:

Steve Dahl
City Manager
112 W. 2nd Street
Phoenix, OR 97535
541-595-1955
sdahl@phoenixoregon.gov

State Contact:

Art Anderson
District 8 Area Manager
100 Antelope Road
White City, OR 97503
541-774-6353
Arthur.h.anderson@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____

Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____

State Traffic Engineer

Date _____

By _____

Region 3 Manager

Date _____

By _____

District 8 Area Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____

Assistant Attorney General

Date: _____

REVISED EXHIBIT C-1
AGREEMENT NO. 22485

Agency Contribution to the Interchange Improvements

- \$530,000 – Phoenix IDC – Anticipated to be generated from the Home Depot Development – **Completed 2014**
- \$200,000 – Non-interchange related system development charges – **Completed 2014**
- \$450,000 – Phoenix IDC – Anticipated to be generated from the property owner (developer) of Tax lot 2300, Township 38S, section 1W, Range 09A and Tax lots 200 and 202, Township 38S, Section 1W, Range 10, Willamette Meridian, Jackson County, Oregon.
- \$400,000 – Jurisdictional Transfer Agreement No. 766 – The transfer of a portion of OR 99 to Agency, funds credited to Agency by State – **Completed 2015**
- \$1,800,000 – Phoenix IDC – Future development charges to be collected by Agency
- \$1,000,000 – Rogue Valley MPO contribution to the improvements on behalf of Agency (separated MPO agreement to be executed by State and MPO)

Total Agency Contribution: \$4,380,000

AGENDA BILL

AGENDA ITEM: 11a

AGENDA TITLE: Discussion of putting on the November Ballot a 3% sales tax of recreational marijuana

DATE: 3/21/2016

ACTION REQUIRED:

ORDINANCE: _____

RESOLUTION: _____

MOTION: _____

INFORMATION: XX

EXPLANATION:

At the Council Workshop on February 5 & 6, 2016 the Council expressed interest in finding new revenue sources. A possible new source could be a 3% tax on recreational marijuana.

House Bill 3400 section 34a allows for cities to put on the ballot up to a 3% tax or fee on the sale of marijuana items.

The Mayor and Council Leadership would like to dedicate 60% of the revenue of this tax to parks, 30% for Capital Improvements and 10% for overhead.

Oregon Revised Statutes 250 lays out the process to put the fee on the ballot. An outline of the process follows:

Council begins process by requesting from the city attorney an official ballot title.

City attorney prepares and file ballot title that impartially summarizes the referral and its major effect.

City publishes receipt of ballot title in the next available edition of a newspaper of general circulation in the city along with having it on the website for a minimum of seven days.

Registered voter(s) who are dissatisfied with ballot title can petition circuit court for review and notifies city elections official of petition filing by 5 pm 1st business day after the petition is filed with the circuit court.

City files with the county elections official form containing the final ballot title and an explanatory statement.

County elections official assigns measure number.

The city must file for election before August 10, 2016.

The county elections officials would like cities to wait until after July 22nd to file the petition.

FISCAL IMPACT:

None at this time.

ALTERNATIVES:

N/A

STAFF RECOMMENDATION:

N/A

MOTION:

PREPARED BY: Steve Dahl **REVIEWED BY:** _____

AGENDA BILL

AGENDA ITEM: 11b

AGENDA TITLE: Approval for City Manager to sign the Contract for the Rose Street Water Project

DATE: 3/21/2016

ACTION REQUIRED:

ORDINANCE: _____

RESOLUTION: XX

MOTION: _____

INFORMATION: _____

EXPLANATION:

At the February 1, 2016 Council Meeting the Council accepted the bid from Pilot Rock to complete the Rose Street Water Project. At that meeting the Council also noticed a change in the project to shorten the amount of pipe needed to complete the project. The Council did not feel this required a new bid process but the expected change is noted in the contract.

FISCAL IMPACT:

The contract states the project will cost \$92,326 but because of the change order the actual cost will be \$72,025. The money for the project will come out of the Capital Reserve Fund.

ALTERNATIVES:

Council can go out again for new bids, decide not to do the project at this time, or go back to the original bid estimates

STAFF RECOMMENDATION:

To approve the contract as presented and have the change order completed after the contract is signed.

MOTION: I MOVE TO APPROVE RESOLUTION NO. _____, AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT FOR THE ROSE STREET PROJECT

PREPARED BY: Steve Dahl REVIEWED BY: _____

CITY OF PHOENIX
PHOENIX, OREGON

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT FOR THE ROSE STREET WATER PROJECT.

WHEREAS, the City of Phoenix has an interest in improving its water system; and

WHEREAS, by rerouting the water up Rose Street will improve the water system; and

WHEREAS, the City of Phoenix rerouting the water will decrease the cost of the water by making it take a quicker route;

WHEREAS, the City of Phoenix has accepted a bid of \$92,326;

WHEREAS, the City will do a change order that will bring the cost down to \$72,025; and

NOW, THEREFORE, THE CITY OF PHOENIX RESOLVES AS FOLLOWS A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT FOR THE ROSE STREET WATER PROJECT.

PASSED AND APPROVED by the City Council of the City of Phoenix and signed in authentication thereof at a regular meeting on the 21st day of March, 2016

Jeff Bellah, Mayor

Attest:

Janette Boothe

**CERTIFICATE OF INSURANCE PROTECTIVE, COMMERCIAL GENERAL
LIABILITY, COMMERCIAL AUTOMOTIVE LIABILITY**

Contractor to provide form from their insurance agency to insert here:

WORKER'S COMPENSATION EMPLOYER'S LIABILITY ENDORSEMENT

City of Phoenix Public Works Department
1000 B Street
Phoenix, OR 97535

A. Policy Information:

1. Insurance Company Policy Number: _____
2. Effective Date of This Endorsement: _____
3. Named Insured: _____
4. Employer's Liability Limit (Coverage B): _____

B. Policy Amendments: In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:

1. Cancellation Notice. The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by Certified Mail Return Receipt Requested has been given to Owner. Such notice shall be sent to the address given in the heading of this endorsement.

C. Signature of Insurer or Authorized Representative of the Insurer:

I, _____, warrant that I have authority to bind the below listed insurance company and by my signature hereon do so bind this company.

(Signature of Authorized Representative and Title)

(original signature required on endorsement furnished to the City of Phoenix)

Organization Pilot Rock Excavation, Inc.
5 South Stage Road
Medford OR 97501
Telephone 541/779-4196

PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: THAT whereas City of Phoenix, Oregon, a municipal corporation has awarded to: Pilot Rock Excavation, Inc. (Contractor) hereinafter designated as the "Principal" a contract for work items, which contract consists of the Proposal/Agreement, together with the Contract Documents, Specifications, Addenda and Plans, all as hereto attached and made a part hereof, and more particularly described as: Rose Street Waterline and whereas said principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract:

NOW, THEREFORE, we the Principal and Pilot Rock Excavation, a corporation, organized and existing under and by virtue of the laws of the State of OR, and duly authorized to do business in the State of Oregon as surety, are firmly bound unto City of Phoenix in the sum of \$72,025.00, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bonded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in said contract, and shall faithfully perform all the provisions of such contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, at the time and in the manner therein specified; and shall pay all laborers, mechanics, subcontractors, and material men, and all persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work on his or their parts; and shall indemnify, save harmless, and defend the Owner, the Project Engineer, and their officers, employees, and agents, from any loss or damage occasioned to any person or property by reason of any carelessness or negligence on the part of said principal, or any subcontractor, in the performance of said contract or any modifications thereof; and shall further indemnify, save harmless, and defend Owner, its officers and agents, from any damage or expense by reason of failure of performance as required by said contract, or any modifications thereof, or from defects appearing or developing in the material or workmanship provided or performed under said contract within a period of one (1) year after acceptance thereof by Owner, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

And the said surety, for value received, hereby further stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alternations or additions to the terms of the contract or the

EXHIBIT A

CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS

1 CONTRACTOR'S INSURANCE AND INDEMNITY.

1.1. Comprehensive General or Commercial Liability: Contractor shall, at contractor's own expense, at all times during the term of this agreement, maintain in force a comprehensive or commercial general liability policy including coverage for contractual liability for obligations assumed under this Contract, blanket contractual liability, products and completed operations, owner's and Contractor's protective insurance and comprehensive automobile liability including owned and non-owned automobiles. The liability under each policy shall be a minimum of \$1,000,000.00 combined single limits for bodily injury and property damage. Liability coverage shall be provided on an occurrence not claims basis. The City of Phoenix, its officers, employees and agents shall be named as additional insured. Certificates of insurance acceptable to the City shall be filed with City's Finance Director prior to the commencement of any services by contractor under this agreement. These certificates shall contain provision that coverage afforded under the policies can not be cancelled and restrictive modifications cannot be made until at least 30 days prior written notice has been given to City. A certificate which states merely that the issuing company "will endeavor to mail" written notice is unacceptable.

1.2. Workers' Compensation: All employers, including contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless the employer is exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

1.3. Primary Coverage: Insurance carried by contractor under this contract shall be the primary coverage, and the City's insurance is excess and solely for damages or losses for which the City is responsible.

1.4. Indemnification: Contractor agrees to defend, indemnify and save City, its officer, employees and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, subrogation, or other damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to property, of whatsoever nature arising out of or incident to the performance of this agreement by contractor (including, but not limited to, contractor's employees, agents, and other designated by contractor to perform work or services attendant to this agreement). Contractor shall not be held responsible for damages caused by the negligence of City. The contractor agrees that contractor will be solely responsible for any damage or trespass to or upon adjacent property or injury thereto, resulting from or in connection with contractor's operation, and that contractor will defend, indemnify and hold the City harmless from any claim, liability or obligation arising from such entry or trespass.

2. PAYMENTS OF LABORERS; PAYMENT OF CLAIMS; HOURS OF LABOR;

PAYMENT OF MEDICAL CARE AND WORKER'S COMPENSATION.

2.1 ORS 279C.505(1) Payment of Laborers and Suppliers:

2.1.1 Contractor shall make payment promptly, as due, to all persons supplying the contractor labor or material for the performance of the work provided for in this contract.

2.1.2 Contractor shall pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of this contract.

2.1.3 Contractor shall not permit any lien or claim to be filed or prosecuted against the state, or a county, school district, municipality, municipal corporation or subdivision thereof on account of any labor or material furnished.

2.1.4 Contractor shall pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

2.2 ORS 279C.515 Payment of Claims by Public Officers:

2.2.1 If contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing the city may pay the claim to the persons furnishing the labor or services and charge the account of the payment against funds due or to become due the contractor under this contract.

2.2.2 If the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this contract within 30 days after receipt of payment from the city or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 2796.580. The rate of interest shall be as provided in ORS 279C.515(2).

2.2.3 The following provision applies to this contract and every contract related to this contract: If a contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

2.2.4 Payment of a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.

2.3 ORS 279C.520, 279C.540, and 279C.545 Maximum Hours of Labor and Overtime

2.3.1 No person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, the employee shall be paid at least time and a half pay pursuant to ORS 279C.520(1) and 279C.540(1). 2.3.2 All employers must give notice to employees who work on this contract or any contract related to this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting notice in a location frequented by employees, of the number of hours per day and days per week that employees may be required to work.

2.3.3 Claims for overtime are subject to the time limits on ORS 279C.545.

2.4 ORS 279C.530 Payment of Medical Care and Providing Worker's Compensation

2.4.1 Contractor shall promptly, as due, make payments to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

2.4.2 All employers working under this contract are either subject employers that will comply with ORS 656.017 or are exempt under ORS 656.126.

3. DRUG TESTING PROGRAM. Contractor shall demonstrate that an employee drug testing program is in place pursuant to ORS 279C.505(2). Contractor's execution of the attached Certification satisfies this provision.

4. INSPECTION. The City Engineer shall be the Engineer for this project in accordance with the provisions of the General Conditions Article 9. The Engineer or his designated representative will be the resident project representative per article 9.03 of the General Conditions.

5. PERSONAL LIABILITY OF PUBLIC OFFICIALS. In carrying out the provisions of the contract documents, or in exercising any power or authority granted to the contractor by the contract, the contractor agrees there will be no liability upon the officials, officers, or employees of the City, either personally or as officials of the City; it being always understood that in such matters they act as the agents and representatives of the City.

6. NO BUSINESS LICENSE REQUIRED. No business license is required at this time.

7. SUBLETTING OR ASSIGNMENT OF CONTRACT. The contractor agrees not to assign, transfer, convey or otherwise dispose of the contract or any right, title, or interest either in whole or in part, or the contractor's power to execute such contract to any other person, firm, or corporation, or to subcontract any part of the work without the

previous consent in writing of the City. It is understood and agreed that if any part of the work to be done under the contract is subcontracted, the subcontracting shall be done in accordance with, and the contractor shall be bound by, the following provisions:

7.1. All subcontracts shall be in writing and shall provide that all work to be performed shall be conducted and performed in accordance with the terms of the prime contract. Upon request, certified copies of any or all subcontracts shall be furnished to the City's representative.

7.5. In case the work being done or to be done under any subcontract is not conducted in a manner satisfactory to the City's representative, contractor shall upon written notice to this effect cause such subcontract to be terminated, and the subcontractor and the sub-contractor's employees to be removed from the work. Any loss or damage that may be suffered on account of such action shall be borne by the contractor.

7.6. The contractor agrees that the contractor is as fully responsible to City for the acts and omissions of sub-contractors and of persons either directly or indirectly employed by them as contractor is for the acts and omissions of the contractor's own employees. Nothing contained in the contract documents shall create any contractual relation between any sub-contractor and the owner.

7.4 Contractor shall certify that all subcontractors performing construction work as defined in ORS 701.005(2) will be registered with the Construction Contractor's Board or licensed by the State Landscape Contractor's Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract.

8. PROGRESS PAYMENTS AND RETAINAGE.

8.1. General: Progress payments will be made and retainage withheld in accordance with ORS 279C.500 to 279C.570. At a regular period each month the Owner's representative will make an estimate of the amount and value of work accomplished.

8.1.1. The estimates upon which progress payments are based are not represented to be accurate estimates, and all quantities shown are subject to correction in the final estimate.

8.1.2. Progress payments are not an acceptance or approval of any part of the work or a waiver of any defects therein, and in no manner relieve the contractor or contractor's sureties from obligations under the contract.

8.1.3. No payment shall release the contractor or contractor's sureties.

8.2. Progress Payments: Progress payments will be based on the estimate in 8.1 .1, less such amounts as may have been previously paid, less such other amounts as may be deductible or as may be owing and due to the owner, and less an amount to be retained.

8.3. Retainage: The amount to be retained will equal five percent (5%) of the value of completed work except as follows:

8.3.1. When the contract work is fifty percent (50%) completed, the Owner's representative may, in its discretion, reduce or eliminate the retainage on the progress payments for the remaining work accomplished. Reduction or elimination will only be considered upon written application by the contractor, which must include written approval of the contractor's surety.

8.4 ORS 279C.845 Retainage: If a contractor is required to file certified statements under ORS 279C.845, Owner will retain 25% of any amount earned by the contractor until the contractor has filed the certified statements. Retainage under this section will be returned only in accordance with ORS 279C.845.

9. CLAIMS FOR EXTRA COMPENSATION. In any case where the contractor deems extra compensation is due for work or materials not allowed by the Owner's representative, the contractor shall in writing notify the Owner's representative of the contractor's intention to make claim for such compensation before the contractor begins Conditions for Public Improvement Contracts 4 08 Page 4 of 9 the work on which the contractor bases the claim. If such notification is not given or the Owner's representative is not afforded proper facilities by the contractor for keeping strict account of actual cost, then the contractor agrees to waive the claim fore extra compensation. Such notice by the contractor and the fact that the Owner's representative has kept account of the cost, shall not in any way be construed as proving the validity of the claim. Notwithstanding any other notices that are required, in the event contractor discovers any subsurface, latent or other conditions at the site differing materially from those indicated in the contract documents, the contractor shall immediately notify Owner's representative and not disturb them until the Owner's representative has review such conditions.

10. PRE-CONSTRUCTION CONFERENCE. Prior to receiving a written notice to proceed with construction, the contractor shall attend a pre-construction conference to be held at a location designated by the Owner or Engineer. The conference shall be attended by the contractor, sub-contractor(s), and the Owner's representative and other interested parties.

11. MAINTENANCE OF EXISTING STREETS. The contractor shall clean and maintain existing streets if dirtied or damaged without added payment. The provisions of the Phoenix Municipal Code and the Engineering Standards adopted there under apply.

12. PERMITS. Contractor shall obtain and pay for all necessary permits and licenses, for the construction of the project, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, and environmental, as required for the project. Contractor shall be responsible for all violations of the law, in connection with the construction or caused by obstructing streets, sidewalks or otherwise. Contractor shall give all requisite notices to public authorities. The contractor shall pay all royalties and license fees and shall defend all suits or claims for infringement of any patent right and save the City harmless and blameless from loss on account of such claims.

13. COMPLIANCE WITH ALL GOVERNMENT REGULATIONS. Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work. Failure to comply with such requirements shall constitute a breach of contract and shall be grounds for contract termination. Damages or costs resulting from noncompliance shall be the responsibility of contractor.

13.1. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and

13.2. Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this contract when performing the Work.

14. PREVENTION OF ENVIRONMENTAL POLLUTION. It is mutually understood and agreed that the Department of Environmental Quality of the State of Oregon has enacted regulations dealing with the prevention of environmental pollution and preservation of natural resources which regulations may affect the performance of the contract. The contractor shall comply with all such applicable regulations in the performance of this contract. Unless disposition of environmental pollution is specifically a part of this Contract, contractor shall immediately notify City of any hazardous substances which contractor discovers or encounters during performance of the work required by this Contract. "Hazardous substances" are those substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying City of any hazardous substances discovered or encountered, contractor shall immediately cease working in any particular area of the project where a hazardous substance has been discovered or encountered if continued work in such area would present a bona fide risk or danger to the health or well being of contractor's or any sub-contractor's work force.

14.1. Spill Responsibility Contractor will be held responsible for any and all releases of environmental pollution during performance of the contract which occur as a result of, or are contributed by, actions of its agent, personnel, or sub-contractors. Contractor agrees to promptly dispose of such spills or leaks to satisfaction of the City and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the City. Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR, Part 302, Table 302.4 for hazardous substances and in OAR 340-108 for petroleum products. Upon discovery, regardless of quantity, contractor must telephonically report all releases to the City. A written follow-up report shall be submitted to City within 48 hours of the telephonic report. The written report shall contain, at a minimum:

14.1 .1. Description of items released (identity, quantity, manifest no., and all other documentation required by law.)

14.1.2. Whether amount of items released is EPAID EQ reportable, and, if so, when it was reported.

14.1.3. Exact time and location of release, including a description of the area involved.

14.1.4. Containment procedures initiated.

14.1.5. Summary of communications about the release contractor has had with members of the press or State officials.

14.1.6. Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.

14.1.7. Personnel injuries, if any, resulting from, or aggravated by, the release.

15. LOCATION OF EXISTING UTILITIES. It is the contractor's responsibility to secure field locations for all existing underground utilities in the project area. The contractor shall maintain these locations for the duration of the project. The contractor shall bear all costs to repair damage to utilities directly resulting from the contractor's actions.

16. BARRICADES AND SIGNS. The contractor shall provide, erect and maintain all necessary barricades, signs, danger signals and lights for the protection of the public.

17. FINAL CLEAN-UP. Upon completion of the work and before acceptance and final payment shall be made, the contractor shall clean up and remove from the right-of-ways, easements, and adjacent properties all surplus and discarded materials, rubbish, temporary structures and debris of all kinds. The contractor shall tear down and remove all buildings and other construction structures erected by or for the contractor or by or for sub-contractors or employees, whether the same be on the street or on privately owned property and whether the title to the buildings or structures does or does not rest with the contractor. The contractor shall restore in an acceptable manner all property, both public and private, which has been damaged during the prosecution of the work.

18. REPLACEMENT OF DAMAGED PAVEMENT. Any pavement or roadway surfacing which is distributed or damaged as a result of operations of the contractor shall be repaired or replaced by the contractor at the contractor's own expense with material equivalent to the existing pavement and to the satisfaction of the City Engineer and in accordance with the City's Engineering Standards.

19. NOISE CONTROLS. The contractor shall at all times eliminate noise to the maximum practicable extent. Air compressing plants shall be equipped with silencers, and the exhaust of all gasoline motors or other power equipment shall be provided with mufflers. Special care shall be used to avoid noise or create nuisances, and the contractor shall strictly observe all federal, state, and local regulations concerning noise.

20. WORKING HOURS. Except in the event of an emergency, all work shall be performed as stated in Exhibit A.

21. PROTECTION OF WORKERS. The contractor shall comply with the current safety

standards of applicable building and construction laws and codes, including the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, and the United States Department of Labor (Occupational Safety and Health Administration) Safety and Health Regulations for Construction, 29 CFR 1910, as revised November, 1978, and the Oregon Occupational Safety and Health Code, OAR Ch. 437, Div. 3 Construction. The contractor shall be solely and completely responsible for all persons and property during performance of work. These requirements shall apply continuously and shall not be limited to normal working hours. The contractor shall maintain at a well-known place at the job site all articles necessary for giving first aid to the injured and, before employees shall be permitted to work at the job site, the contractor shall make standing arrangements for the immediate removal to a hospital or to a doctor's care of persons, including employees who may be injured on the job site.

22. CONTRACTOR'S RELATIONS WITH SUBCONTRACTORS.

22.1 Contractor shall not request payment from the city of any amount withheld or retained in accordance with ORS 279C.580(5) until such time as the contractor has determined and certified to the city that the subcontractor is entitled to payment of such amount.

22.2 Contractor shall include in each subcontract for property or services entered into by the contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract the clauses required by ORS 279C.580(3). Contractor shall also include in each of its subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include a payment clause and interest penalty clause in conformance with ORS 279C.580(3) and to require inclusion such clauses in their subcontracts with each lower-tier subcontractor or supplier.

23. FORM OF NOTICE OF PAYMENT BOND CLAIM. Any person with a right of action on a contractor's bond must provide written notice of the claim on the bond in the form and manner prescribed in ORS 279C.605.

24. SALVAGE OR RECYCLING FOR DEMOLITION WORK. If the work includes demolition, the contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

25. COMPOST OR MULCH YARD WASTE MATERIAL. If the work includes lawn or landscape maintenance, the contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

26. PUBLIC WORKS BOND. If this contract is for a public work, the contractor must file a public works bond with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(7), (8) or (9). If the contractor is required to file a public works bond, the contractor must include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the

Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(7), (8) or (9).

27. PREVAILING WAGE REQUIREMENTS. The existing state prevailing rate of wage, if the contract is for a public works project that will be for more than \$50,000, and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) shall be paid to workers in each trade or occupation required for the public works employed in the performance of the contract either by the contractor, subcontractor, or other person doing or contracting to do the whole or any part of the work under this contract. If the state and federal prevailing rates of wage are not included with this Exhibit B, the prevailing rates of wage are available electronically at the following address:

www.oregon.gov/BOLI/WHD/PWR/Jul08/Jul.1,2008~RateBook.pdf. If the state and federal prevailing rates of wage are included with this Exhibit B, information is also included showing which prevailing rate of wage is higher for workers in each trade or occupation in each locality as determined by the Commissioner of the Bureau of Labor and Industries under ORS 279C.815(2)(b). The workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

28. BOLI FEE. If (28) above applies, the Owner will pay the fee to the Bureau of Labor and Industries (BOLI) pursuant to the provisions of ORS 279C.825(1).

29. PERFORMANCE AND PAYMENT BONDS. The contractor will furnish a performance bond and payment bond for the project as provided in the Invitation to Bid.

AGENDA BILL

AGENDA ITEM:

11c

AGENDA TITLE: A RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT TO RESTORE WETLANDS ON CITY OWNED PROPERTY.

DATE: March 21, 2016

ACTION REQUIRED:

ORDINANCE: N/A

MOTION: N/A

RESOLUTION: XX

INFORMATION: N/A

EXPLANATION: The City has begun restoration of an existing delineated wetland located between Main Street and Bear Creek Drive. The wetland will eventually become the central feature of a “wetland park” and city center redevelopment project that has been discussed in the City’s comprehensive plan since 1997. Mark Kellenbeck is the developer of a self storage facility to be constructed at 3850 Fern Valley Road, beginning later this spring. While purchasing the property, Mr. Kellenbeck’s environmental consultant discovered that a wetland had been illegally filled more than 10 years ago. In purchasing the property he has assumed legal responsibility to mitigate the loss. The Department of State Lands has given preliminary approval of a mitigation plan that would involve restoration of impacted wetland on City owned property. Mr. Kellenbeck would pay the City to perform this function on land that it would have restored or improved as a part of its own wetland park project. The City would enter into a separate contract with its wetland consultant to design, build, and then maintain the restored wetland for a period of 5 years.

FISCAL IMPACT: A wetland consultant has estimated a cost of \$49,900 for restoration work and the state required 5 years of maintenance and monitoring. Mr. Kellenbeck would compensate the City for the full amount.

STAFF RECOMMENDATION: Approve the enclosed resolution which will authorize the City Manager to negotiate and execute the agreement.

MOTION: “I MOVE TO ADOPT RESOLUTION NUMBER _____ AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT TO RESTORE WETLANDS CITY PROPERTY OWNED BY THE CITY THAT SUBSTANTIALLY CONFORMS TO THAT PRESENTED.

PREPARED BY: M. Brinkley

REVIEWED BY:

CITY OF PHOENIX

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT TO RESTORE WETLANDS ON CITY OWNED PROPERTY.

WHEREAS, the City of Phoenix and its Urban Renewal Agency have begun to restore a wetland located east of Bear Creek Drive and adjacent to its city center redevelopment project; and

WHEREAS, Mr. Mark Kellenbeck has acquired property within the City of Phoenix for the purposes of developing a self storage facility, and in doing so has assumed a regulatory obligation to mitigate for the unpermitted removal of wetlands; and

WHEREAS, it is mutually beneficial for the City and Mr. Kellenbeck to enter into an agreement whereby the City will restore ¼ acre of wetland to assist Mr. Kellenbeck in meeting his mitigation obligations; and

WHEREAS, Mr. Kellenbeck would compensate the City in the amount of \$49,900.00 for the estimated costs to restore, maintain and monitor the restored wetland.

NOW, THEREFORE, BE IT RESOLVED that the City of Phoenix hereby authorizes the City Manager to negotiate and execute a professional services agreement that substantially conforms to that presented in Exhibit "A".

APPROVED by the City of Phoenix this 21st day of March, 2016.

Mayor

Attest:

City Recorder

EXHIBIT "A"

DEVELOPMENT AGREEMENT BETWEEN CITY OF PHOENIX AND MARK KELLENBECK

RECITALS

WHEREAS, the City of Phoenix ("City") is a duly authorized municipal corporation under the laws of the State of Oregon; and

WHEREAS, Mark Kellenbeck ("Kellenbeck"), is the owner and developer of property located at 3840 Fen Valley Road (the "Property").

WHEREAS, Kellenbeck has assumed wetland mitigation obligations in connection with his purchase of the Property;

WHEREAS, the City and the City of Phoenix Urban Renewal Agency ("PHURA) is undertaking wetland restoration on property in connection with its City Center Project;

WHEREAS, the parties have agreed that the City will make available one-quarter acre of the wetland restoration area, already designated and agreed upon by the parties, to Kellenbeck to meet his mitigation obligations assumed in his purchase of the Property.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

TERMS

1. Duration. This contract shall become effective the date this contract is fully executed as required by applicable law. The term of this Development Agreement ("Contract") is for two years from the date of its execution. Terms of this contract may be modified, supplemented or amended upon the parties' mutual agreement.

2. Payment. The City, in consideration of \$49,900.00, will restore one-quarter (¼) acre of designated wetland within the area designated by the City that may be used by Kellenbeck, pursuant to approval of the Department of State Lands ("DSL"), for the purposes of satisfying wetland mitigation obligations incurred by Kellenbeck in connection with his acquisition of 3850 Fen Valley Road. It is understood by both parties that these funds are to be used to compensate the City for the costs of construction, maintenance, and monitoring of the Site as prescribed by the Compensatory Wetland Mitigation Plan ("CWMP"). Payment for the full amount shall be made to the City after the approval of the CWMP and Joint Permit Application to DSL and no later than May 31, 2016.

3. Modification, amendment and waiver. This contract constitutes the entire agreement between the parties on the subject matters addressed herein. The terms of this contract cannot be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the parties and containing all required city approvals. Any such waiver, alteration, modification, supplementation or amendment shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, regarding this contract except as contained, incorporated or

1 – DEVELOPMENT AGREEMENT BETWEEN CITY OF PHOENIX AND MARK
KELLENBECK.

Contractor's Services under this Contract shall be performed solely for City's benefit and no other entity or person shall have any claim against Contractor because of this Contract for the performance or nonperformance of Services hereunder

11. Termination by mutual agreement. With the exception of a material breach of contract, for which the parties hereby acknowledge that time is of the essence, this Contract may be terminated at any time, in whole or in part, by written mutual consent of the Parties.

12. Obligations of Kellenbeck; Obligations of City. Kellenbeck shall assist the City in preparation of the CWMP, and preparation and filing of the JPA. City shall be responsible for the maintenance and monitoring of the mitigation site, as required by the anticipated CWMP subject to the City's approval and the conditions and obligations set forth in the CWMP. City shall also record a conservation easement for the mitigation site pursuant to the conditions and requirements of DSL for compensatory wetland mitigation.

13. Indemnification. City shall indemnify Kellenbeck from liability caused and directly attributable to the performance of the mitigation in the designated mitigation area, excepting any obligations presently unknown to the parties which may cause additional liabilities or regulatory obligations under state law.

MARK KELLENBECK

CITY OF PHOENIX

Date: _____

City Manager

Date: _____

Mayor

Approved as to form:

City Attorney



NORTHWEST BIOLOGICAL CONSULTING

HABITAT RESTORATION & ENVIRONMENTAL PLANNING

Engineering Contractor CA-599428 & OR-137378

Revised NBC Construction and Planting Cost Estimate for: REVISED 2/4/2016

1. Restoration of ¼ + Acre Mitigation Wetland

- Clearing, Grubbing, Excavation, Shaping and Grading of Approximately 2000 Cu Yds of Soil Material. Includes Off-site Trucking and Disposal of Excess Material.

Estimate \$15,000

- Addition and placement of 200 cu yds of amended soil

Estimate \$1,000

- NBC Supervision of Layout and Grading

Estimate..... \$1,000

- Construction of one Rock Grade Control Structure , Including Purchase

Estimate..... \$3,000

- Purchase of Trees, Shrubs, Forbs, Seed, and Emergent Wetland Plants

- Estimate..... **\$5,000** (See Attached Proposed Plant List)

- Installation of All Plant Materials

Estimate..... \$2,000

- Soil Amendments MULCH

Estimate..... \$500

- Irrigation System Purchase and Installation

Estimate..... \$3,500

- Annual Maintenance Cost for Five Years

Estimate \$5,900...

- Annual Monitoring Report to DSL for Five Years + As Built Report

Estimate \$8,000

- Compensatory Wetland Mitigation Plan & Joint Permit Application

Estimate... ... \$5,000...

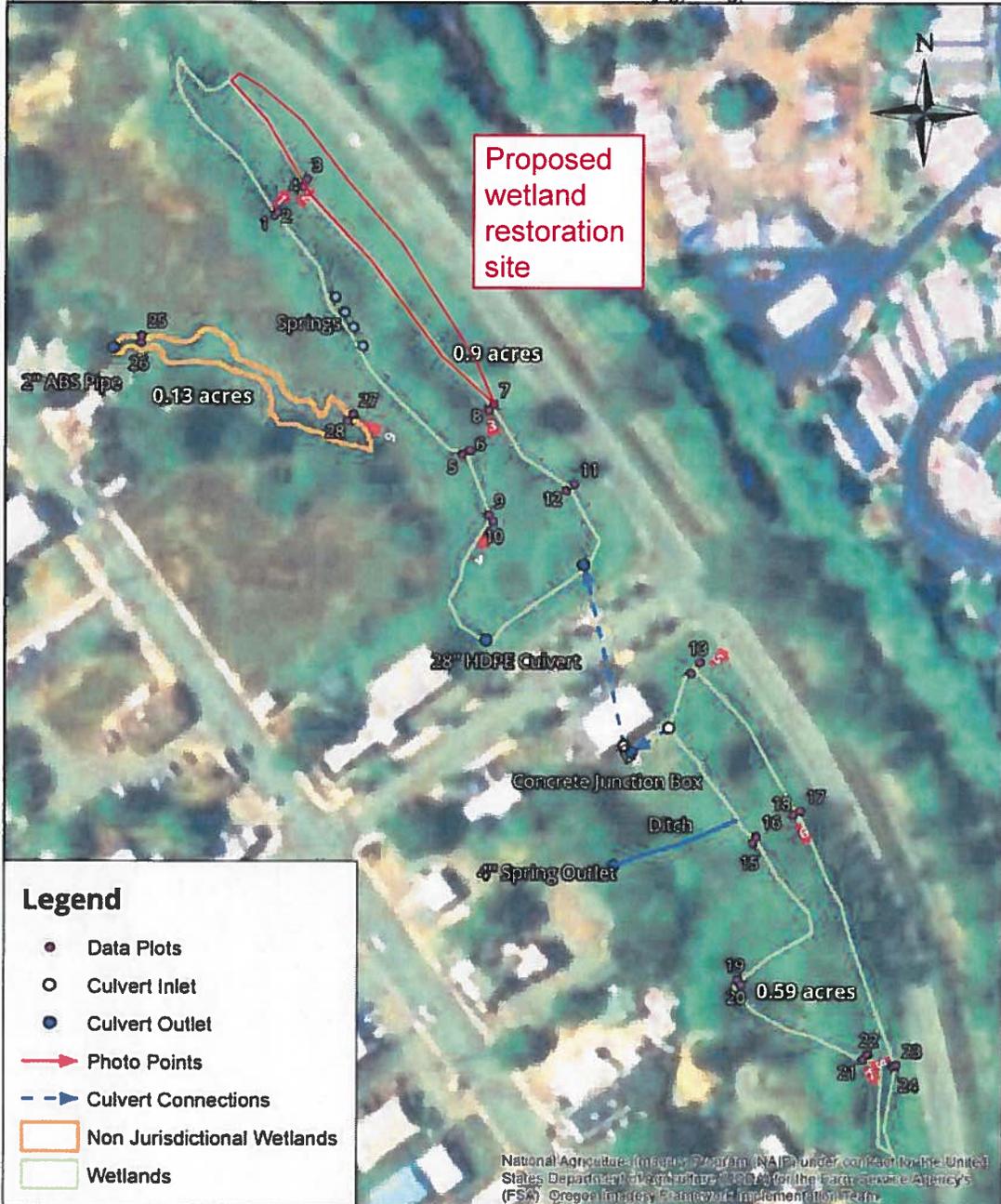
Total Cost \$49,900...

Phoenix Wetland Delineation

Northwest Biological Consulting
 Habitat Restoration,
 Environmental Planning
 CA Engineering Contractor
 OR General Contractor
 324 Terrace St. P.O. Box 671 mwbiolog.com
 Ashland, OR 97520 Ph/Fax (541) 488-1061

0 50 100 200 300 400
 Feet

July 5, 2015



AGENDA BILL

AGENDA ITEM: 11d

AGENDA TITLE: A Resolution allowing a budget increase pursuant to ORS 294.326(3) providing for the receipt and expenditure of Unexpected Monies for FY 2015-2016 (Grant Proceeds).

DATE: March 7, 2016

ACTION REQUIRED:

ORDINANCE: _____

RESOLUTION: XX

MOTION: _____

INFORMATION: _____

EXPLANATION:

On August 17, 2015, the City Council authorized the Public Works Superintendent to sign an intergovernmental project agreement with Oregon Department of Transportation (ODOT) for ADA ramp improvements at various locations within the City. Part of the agreement was the award of a grant in the amount of \$44,850.00 to help with the cost of the ramp improvements.

Attached is a Resolution increasing the budget pursuant to ORS 294.326(3) providing for the receipt and expenditure of the insurance proceeds.

FISCAL IMPACT:

\$44,850.00 Increase Revenue
\$44,850.00 Increase Expenditure

ALTERNATIVES:

None offered.

STAFF RECOMMENDATION:

Staff recommends that Council approve the Resolution allowing a budget increase for the receipt and expenditure of unexpected monies in FY 2015-2016.

MOTION: "I MOVE TO ADOPT RESOLUTION NO. _____, ALLOWING A BUDGET INCREASE PURSUANT TO ORS 294.326(3) PROVIDING FOR THE RECEIPT AND EXPENDITURE OF UNEXPECTED MONIES FOR FISCAL YEAR 2015-2016."

PREPARED BY: Steve Weber REVIEWED BY: _____

CITY OF PHOENIX
PHOENIX, OREGON

RESOLUTION NO. ____

A RESOLUTION ALLOWING A BUDGET INCREASE PURSUANT TO ORS 294.326 (3), PROVIDING FOR THE RECEIPT AND EXPENDITURE OF UNANTICIPATED MONIES IN FISCAL YEAR 2015-2016.

WHEREAS, the City of Phoenix, received \$44,850.00 from Oregon Department of Transportation (ODOT) as part of the Intergovernmental Project Agreement for ADA Ramp Improvements approved by City Council on August 17, 2015; and

WHEREAS, the City of Phoenix would like to use the proceeds for ADA ramp improvements; and

WHEREAS, this revenue was unanticipated when the fiscal year 2015-2016 budget was adopted; and

WHEREAS, ORS 294.326 (3) allows budget increases after the adoption of the budget by providing for the expenditure of gifts, grants, bequests or devises transferred to a municipal corporation for specific purposes; now therefore

BE IT RESOLVED, by the City Council of Phoenix, Oregon, to appropriate the unanticipated \$44,850.00 to the following budget line items.

<u>STREET FUND</u>	<u>ADOPTED</u>	<u>INCREASE/ DECREASE</u>	<u>AS AMENDED</u>
Revenue:			
Miscellaneous	\$ 500	\$44,850	\$ 45,350
Expenditure:			
Street Repairs & Maintenance:	\$75,000	\$45,850	\$119,850

PASSED AND ADOPTED by the City Council of the City of Phoenix, Oregon, on the 21st day of March, 2016, and signed by me in authentication thereof.

Jeff Bellah, Mayor

ATTEST:

Janette Boothe, City Recorder

AGENDA BILL

AGENDA ITEM: 11e

AGENDA TITLE: City of Phoenix Organizational Chart: Public Works

DATE: 1/19/16

ACTION REQUIRED:

ORDINANCE: _____

RESOLUTION: _____

MOTION: _____

INFORMATION: xx

EXPLANATION:

Council asked the City Manager for an update on the Organization of Public Works once decisions have been made after the removal of the previous superintendent.

The City Manager has decided to go with a lead position and hiring of a third utility worker. The City will then Contract out on an as needed basis for a Project Manager. The cost of this would be approximately around the same price as we were paying for the Public Works Superintendent.

In doing research for this decision the City Manager interviewed other Public Works Directors in Southern Oregon, reviewed with staff the needs addressed by the position. He also looked at the cost and probability of finding someone with the qualifications for the Superintendent Position within the area and decided it was best to hire it out considering the limited needs of the City.

FISCAL IMPACT:

None

ALTERNATIVES:

None

STAFF RECOMMENDATION:

To approve as presented.

MOTION: "I MOVE TO ." Approve the City of Phoenix Organizational Chart as presented.

PREPARED BY: Steve Dahl

REVIEWED BY: _____

AGENDA BILL

AGENDA ITEM:

11f

**AGENDA TITLE: DISCUSSION OF ALTERNATIVE
LOCATION FOR THE PLAZA BUILDING.**

DATE: March 21, 2016

ACTION REQUIRED:

ORDINANCE: N/A

MOTION: N/A

RESOLUTION: N/A

INFORMATION: XX

EXPLANATION: Phoenix Urban Renewal and the City worked with Pivot Architecture from 2013-2014 to plan for the construction of the "Market Hall" building and grounds. At the time, PHURA only owned 1 property that could accommodate the project. PHURA has since acquired additional properties, and an alternative location between the newly constructed extensions of 2nd and 3rd Streets on Main Street may be preferable to the location that was previously considered. The discussion will address the relative merits of each of the 2 potential locations for the "Market Hall" or "Plaza Building".

STAFF RECOMMENDATION: Approve the enclosed resolution which will authorize the City Manager to negotiate and execute the agreement.

MOTION: NO ACTION TO BE TAKEN—INFORMATION AND DISCUSSION ONLY

PREPARED BY: M. Brinkley

REVIEWED BY:

The PHURA Board's selection of Option Two is based on the following rationale:
(See labeled plat map and the new rendering of the Plaza Building on Option Two site)

1. There is more space for development and events in Option Two.
2. The Option Two land is totally owned by PHURA and is not abutted against private land as in the case of Option One.
3. The newly developed 44 space parking lot is right behind the proposed Option 2 development site, allowing better access for disabled and senior drivers needing close parking.
4. The cost of preparing the land for construction and building the Plaza Building is considered the same for both Option One and Two.
5. The outdoor public space to the south of the proposed Plaza building is very visible to Main Street traffic, thus inviting the public to stop and explore the area and any outdoor events.
6. Option One land is more desirable for commercial development since the area is on a major corner (Main and First Streets).