

INTERGOVERNMENTAL AGREEMENT TO PROVIDE STREET MAINTENANCE SERVICES BY MULTNOMAH COUNTY TO THE CITY OF GRESHAM

This Intergovernmental Agreement (“Agreement”) is made and entered into pursuant to ORS 190.010, effective December 31, 2005, between Multnomah County (“County”) and the City of Gresham (“City”). This agreement shall be henceforth referred to as the **“2005 COUNTY/ GRESHAM STREET MAINTENANCE IGA”**. Contemporaneous with this agreement, the parties are entering into an Intergovernmental Agreement to transfer certain County Roads from Multnomah County to the City of Gresham.

ARTICLE ONE: PURPOSE

The general purposes of this agreement are to:

- A. Provide for the maintenance activities to be performed on City Streets and associated drainage facilities by County personnel.
- B. Provide a mutual understanding of services to be delivered by the County and the level of service to be provided.
- C. Provide for monitoring and reporting of the services to be delivered by the County.
- D. Provide a mutual understanding of the responsibilities between the City and the County.

ARTICLE TWO: DEFINITIONS

CITY: The City of Gresham, a municipal corporation located in Multnomah County, Oregon.

CITY STREET: All public roads and rights-of-way, including Roadway Facilities (as defined below) transferred from the County to the City under the December 31, 2005 “Intergovernmental Agreement to Transfer County Roads from Multnomah County to the City of Gresham”.

COSTS: Costs for Maintenance activities will be calculated using a burdened labor rate on a time and material basis.

COUNTY: Multnomah County, a political subdivision of the State of Oregon.

COUNTY STANDARDS: Standards, policies, guidelines and/or practices of the County relating to maintenance of streets and roads as of the effective date of this Agreement, incorporated herein by this reference.

COUNTY STORMWATER MANAGEMENT PLAN: Best Management Practices that describe road maintenance practices pursuant to NPDES permit No. 101315.

DRAINAGE FACILITY MAINTENANCE: Cleaning and repair of drainage facilities as described in Section I (B) to maintain stormwater flow and the general condition of the system.

Exhibit D

EMERGENCY: Events including snow and ice, wind storms, flooding, landslides and other natural or manmade incidents that require immediate action to protect people and property.

HAZARDOUS SUBSTANCE: Any hazardous, toxic, infectious, or radioactive substance, waste, and material as defined or listed by any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment and shall include, without limitation, petroleum oil and its fractions.

IMPROVEMENT: Capital construction of new facilities, and upgrading or expanding existing facilities. Examples include, but are not limited to, construction of new roadways, overlays, reconstruction of failed roads, roadway widening, and expansion of drainage facilities.

MAINTENANCE SERVICES: Ordinary maintenance and repair work necessary to preserve the public infrastructure. When necessary, repairs by in-kind replacement of facilities will be made. Maintenance includes, Surface Maintenance, Drainage Facility Maintenance, Right of Way and Vegetation Maintenance, Traffic Aids Maintenance, and Emergency Response.

PMAT IGA: The **PORTLAND METROPOLITAN AREA TRANSPORTATION CO-OPERATIVE INTERGOVERNMENTAL AGREEMENT FOR EQUIPMENT AND SERVICES** is a multi-jurisdiction agreement signed by Multnomah County and the City of Gresham and other local governments. All work performed and the exchange of services on County and City roads, other than City Streets as defined above, will be in accordance with provisions of the PMAT-IGA.

RIGHT-OF-WAY AND VEGETATION MAINTENANCE: Maintenance as described in Section I (C) to maintain the general condition of the system and eliminate hazards caused by deteriorating conditions, drainage and vegetation problems.

ROADWAY FACILITIES: Public improvements associated with City Streets including but not limited to, pavement surface and subsurface, pavement markings, signs, shoulders, ditches, culverts, structures, storm sewers, manholes, sumps, and catch basins.

SURFACE MAINTENANCE: Maintenance of the pavement surface as described in Section I (A) to prevent surface distortions and avoid major reconstruction.

TRAFFIC AIDS MAINTENANCE: Installation and maintenance of traffic aids as described in Section I (D) to prevent driving hazards and maintain public safety.

URGENT AND UNFORESEEN WORK: Any work that is requested to be performed beyond the scope of this Agreement.

ARTICLE THREE: EXISTING MAINTENANCE AGREEMENTS

SECTION I: PMAT-IGA

The **PORTLAND METROPOLITAN AREA TRANSPORTATION CO-OPERATIVE INTERGOVERNMENTAL AGREEMENT FOR EQUIPMENT AND SERVICES** (PMAT-IGA) is a multi-jurisdiction agreement, pursuant to the authority of ORS Chapter 190. The PMAT-IGA was signed by Multnomah County on August 15, 2002 and the City of Gresham on August 27, 2002, as well as other local public works agencies.

- A. All work performed and the exchange of services on County and City roads other than City Streets will be done in accordance with the PMAT-IGA.
- B. A separate cost accounting for work on roads other than those arterial roads transferred will be maintained by both agencies in accordance with the PMAT-IGA.

SECTION II: OREGON PUBLIC WORKS EMERGENCY RESPONSE COOPERATIVE ASSISTANCE AGREEMENT

The **OREGON PUBLIC WORKS EMERGENCY RESPONSE COOPERATIVE ASSISTANCE AGREEMENT** is a multi-jurisdiction mutual aid agreement pursuant to the authority of ORS Chapters 190 and 401.480. Oregon Department of Transportation is the author of and maintains the agreement. Both County and City have signed the agreement, as well as other local public works agencies throughout the State of Oregon. The "parties to this agreement are responsible for construction and maintenance of public facilities such as roads, streets, highway, sewer, water and related systems during routine and emergency conditions;..."[page 1]. The language of the agreement focuses on providing mutual emergency aid between all signed parties.

ARTICLE FOUR: TERM OF AGREEMENT; TERMINATION

The original term of this agreement shall be January 1, 2006 through December 31, 2009. City agrees to provide County notice on or before December 31, 2008 if City intends to terminate the agreement on December 31, 2009. If no such notice is given, this agreement shall thereafter continue year to year and may thereafter be terminated by either party upon written notice given to the other party not less than one year prior to the termination date.

ARTICLE FIVE: AGREEMENT

SECTION I: COUNTY RESPONSIBILITIES

Beginning January 1, 2006, the County shall provide the following Roadway Facility Maintenance Services on City Streets. The level of maintenance provided for each activity listed below will be defined in a separate service level agreement that shall be agreed upon by City and County Managers. The level of maintenance for January 1, 2006 to June 30, 2006 shall be substantially the same as the level of maintenance for July 1, 2005 to December 31, 2005. The level of maintenance for fiscal year 2006-2007 shall be agreed upon by April 15, 2006. Thereafter, the level of maintenance shall be agreed upon six-months prior to the effective date.

A. Surface Maintenance:

1. **Asphalt Concrete Patching.** Based on need, as determined by the City through assessment of data from the City's pavement management system and in response to citizen complaints, the County will use asphalt concrete for general maintenance and

in preparation of pavement overlays.

2. **Asphalt Concrete Grinder Patching:** Based on need, as determined by the City through assessment of data from the City's pavement management system, the County will use grinder plug cutting and profiling to repair pavement distress and remove old asphalt build-up for general maintenance and in preparation of pavement overlays. The County will be the repository of all asphalt grindings collected on City Streets.
3. **Oil and Sealing:** Based on need, as determined by the City through assessment of data from the City's pavement management system, the County will perform surface treatment for general maintenance and in preparation of pavement overlays.
4. **Street Sweeping:** Curbed City Streets will be swept at a frequency consistent with County street sweeping standards. The County will be the repository of all sweeping materials collected on City Streets.

B. Drainage Facility Maintenance:

1. **Catch Basin Cleaning and Repair:** Clean and repair catch basins and laterals to County Standards.
2. **Culvert Cleaning and Repair:** Clean and repair culverts to County Standards.
3. **Ditch Cleaning:** Clean ditches to County Standards.
4. **Sump Cleaning:** Clean sumps and manholes to County Standards.
5. **Drainage Road Waste:** The City of Gresham will be the repository of all sump and catch basin materials and woody/leafy debris from ditches collected from drainage facilities associated with City Streets. All costs associated with the disposal processes will be the responsibility of the City. The County will be the repository for all dirt/sod/mud from reshaping or reworking ditches.

C. Right-of-Way and Vegetation Maintenance:

1. **Guardrail, Terminal, Barrier and Guard post:** Maintenance will be provided using County Standards.
2. **Curb, Median and Sidewalk:** Maintenance will be provided using County Standards.
3. **Shoulder Maintenance, Grading, Re-rocking and Pothole Repair:** Shoulder maintenance, grading, re-rocking and pothole repair will be provided on non-curbed City Streets.
4. **Graffiti, Litter, and Illegal Dump Site Removal:** The County will remove surface debris from the roadway that is a threat to public safety. Maintenance services will be provided using the County Standards. The County will be the repository for all litter and illegal dump site material.
5. **Roadside Vegetation:** Machine and hand cutting of roadside vegetation will be provided to prevent drainage and public safety problems.

6. **Herbicide Spraying:** Non-residual herbicides will be applied where appropriate. Spray records will be maintained and reported by County to Department of Agriculture, with copies supplied to the City.
7. **Vegetation Investigations:** The City will investigate complaints of vegetation that create sight distance problems and vegetation that block traffic control devices as notified. If work is required, City will notify County who will perform the work.
8. **Existing County Adopt-A-Road Permits:** The County will exchange contact information with the City of existing County Adopt-A-Road Program permit holders. Existing County Adopt-A-Road permits on City Streets will be assigned to City effective January 1, 2006. City will be responsible for notifying permit holders of the transfer of the program.
9. **Vegetation Materials:** The County will be the repository of all vegetation materials collected on City Streets.

D. Traffic Aids Maintenance:

1. **Pavement Markings:** Services shall be provided for maintenance of existing and future pavement markings. Pavement markings include center, turn and edge lines; stop lines, crosswalks, and legends. Pavement markings will be performed to County Standards.
2. **Signs:** Maintain signs and sign posts. Replacement of damaged and missing signs and signposts will be performed to County Standards.
3. **Other Traffic Control Devices.** Maintain other traffic control devices. Replacement of damaged and missing items will be performed to County Standards.
4. Traffic Aids does not include signals, which are addressed in a separate agreement.

E. Emergency Response: The County will respond to all Emergencies including snow and ice, windstorms, flooding, landslides and other natural or manmade incidents. Emergencies that would normally be responded to by County crews on County streets, such as landslides, downed trees, snow and ice treatments, and flooding, will be responded to if they occur on City Streets. All work done in response to Emergencies will be performed by the County according to County Standards. If the County determines that outside assistance is needed to respond to the event, the County will notify the City and the parties will promptly confer to determine how to respond to the event. The County will provide services related to Emergencies as specified below:

1. **Responding 24/7:** The County will maintain 24-hour capability for response to Emergencies. The County shall respond to Emergencies on City Streets in accordance with the priorities in place for responding to emergencies on roads under County jurisdiction as of December 31, 2005.
2. **911/ Emergency Contact:** The City will be the first contact point for 911 and other emergency calls related to incidents on City Streets. The City may elect to contact County to aid in responding to Emergency events.

3. **Hazardous Substance Spills and Incident Response:** In the event a Hazardous Substance spill occurs on a City Street, if the County is the first responder to the spill it will notify 911 to be sure that City has been notified of the spill. The County will provide traffic control until the City arrives to clean up the spill. County shall have no responsibility for clean-up, transportation or disposal of hazardous substances.
 4. **Landslides and Trees:** The County will move or remove landslide debris and trees and other vegetation that fall onto the right-of-way to maintain traffic movement and keep drainage facilities operational. The City of Gresham will be the repository of all such landslide debris and trees and vegetation.
 5. **Plowing, Sanding, and Anti Icing Materials:** The County will provide plowing, sanding and anti-icing materials to maintain traffic movement. The County will clean up sanding materials from snow routes. The parties will agree on the disposition of the sanding material collected from snow routes.
 6. **Disposal of Hazardous Substances:** Hazardous Substances or material suspected of being a hazardous substance will be disposed of by City in accordance with all applicable environmental regulations. All costs associated with hazardous substance disposal will be the responsibility of the City.
- F. **Urgent Work/Unforeseen Work:** The City may request that the County perform urgent or and unforeseen work which is not otherwise described in this agreement. Any such work shall be performed by County only upon request by the City.
- G. **Environmental Compliance:** All Maintenance Services shall be provided in a manner consistent with the County Stormwater Management Plan and other environmental standards that pertain to County and City maintenance activities, including but not limited to the "Routine Road Maintenance Standards pursuant to limit 10(i) under the 4(d) rule of the federal Endangered Species Act when adopted and, after adoption, as may be subsequently amended.

SECTION II: CITY RESPONSIBILITIES

A. Coordination of Operational Changes and Improvements:

1. The City will notify County of proposed traffic operational changes and roadway improvements.
2. The City will notify the County of changes to the City Streets that are constructed as part of subdivision construction and local improvements.
3. When making operational changes and roadway improvements, the City will notify the County prior to making physical improvements.

B. Public Inquiries:

1. The City will maintain a one-call number for public inquiries regarding general roadway maintenance and pavement hazards. City will notify County of inquiries regarding City

Streets that relate to work to be performed under this agreement. After notification, County will investigate. If the investigation reveals that work needs to be done that is covered by this agreement, County will perform the work. If the investigation reveals that a condition exists that is not related to work to be done under this agreement, County will inform City.

2. City will be notified by the **Oregon Utility Notification Center** when locates are required for a project. City may request that County perform necessary locates.
- C. **Accident Information:** The City will provide County with accident and responsible party information to aid the County in pursuing claims.
- D. **Code Enforcement:** The City will be responsible for monitoring conditions on private property that affect City Streets and for notification of property owners regarding enforcement of code violations, whether on private property or in the public right of way.
- E. **Easements:** The City will secure at City expense an additional easement or temporary easement when the City determines that an existing easement is insufficient for proper drainage facility maintenance. If the County believes that an existing easement is insufficient for proper drainage facility maintenance, County shall notify the City.
- F. **Vegetation:** If correction of a vegetation problem requires major pruning or removal of vegetation on private property, the City will notify the property owner. County will enter private property to prune or remove the vegetation only upon request from the City after the City provides evidence to the County that the City has the right to enter the property for this purpose.
- G. **Emergency Response:** When the County advises City that outside assistance is needed to respond to an Emergency, the City will promptly confer with the County to determine how to respond to the event.

SECTION III: REPORTING

The County shall submit the following reports to the City:

- A. **Financial and Performance Reports** will be submitted to the City quarterly to document costs and work accomplishments. Financial and Maintenance reports shall show work done related to Surface Maintenance, Drainage Facility Maintenance, Right-of-Way and Vegetation Maintenance, Traffic Aids Maintenance, Emergency Services, Urgent and Unforeseen Work.
- B. **Road Maintenance Reporting:** The County's Road Maintenance activity reports shall be supplied quarterly to the City. The County shall generate such reports by providing data related to the performance of road maintenance best management practices to support City's environmental compliance reporting, including annual reporting.

- C. **DEQ/EPA Compliance Reporting:** The County will provide information required to comply with City NPDES permits and state and federal rules, in time for inclusion in required reports. Normally, this will be on an annual basis, to cover July 1 through June 30 of a given year. County staff will also report the status of data collection at the midpoint of each compliance year, and will provide information as needed to fulfill other regulatory requirements.

SECTION IV: SERVICE AGREEMENT MANAGEMENT

- A. The County managers for this agreement shall be:

1. **Administrative Issues:** Transportation Support Services Manager. Administrative issues include tracking of costs, and coordinating the delivery of reports and documentation to the City.
2. **Operational Issues:** Road Maintenance Manager. Operation issues include day-to-day provision of roadway facility services.

- B. The City managers for this agreement shall be:

1. **Administrative Issues:** Transportation Division Manager and the Stormwater Division Manager. Administrative issues include service level negotiation, defining City reporting needs, and communicating City requirements.
2. **Operational Issues:** Transportation and Stormwater Superintendents. Operation issues include day-to-day provision of roadway facility services.

- C. **Changes in Management Responsibilities.** Each party shall notify the other in writing of all changes management responsibilities.

- D. **Policy and Code Differences:** It is understood that County and City policy and code differences, may, from time to time, preclude the County from responding to all maintenance and Emergencies in the same manner that the City would if it were providing services directly. In those instances, the City and County managers responsible for operational issues under this agreement shall work together to determine which party will respond and how.

SECTION V: LIMIT ON SERVICE TO BE PROVIDED

- A. **DOLLAR LIMIT.** The services to be provided under this agreement shall be limited as follows:

1. The value of the services to be provided to the City on a time and materials basis as provided above for the period January 1, 2006 to June 30, 2006 shall be \$1,127,000 less the amounts spent between July 1, 2005 and December 31, 2005.

2. The value of services to be provided commencing July 1, 2006 and thereafter shall be the sum of \$1,127,000 adjusted to reflect the increase or decrease from the previous year in the total of the county gas tax, state gas tax and motor vehicle registration fee shared revenue, excluding increases in the County gas tax after the effective date of this agreement authorized by the Board for a specific project or use and not for the benefit of County roads generally. The value of services for subsequent years shall be similarly adjusted.
3. The intent of the parties in calculating the amount paid under Section 4.1.3 of the Transfer Agreement is that the level of service to maintain County Roads during the three-year annual average period was substantially similar to the level of service that will be provided by the County in the first year of this Maintenance Agreement. The parties agree that in subsequent years, the level of service will vary depending on adjustments to revenue under section 4.5, labor and material cost increases, weather events and other factors beyond the control of the parties.

B. SERVICES LESS THAN THE DOLLAR LIMIT; SERVICES IN EXCESS OF THE DOLLAR LIMIT

1. If the County provides services to the City in any fiscal year that are less than the dollar limit provided for in this section, County shall consult with the City regarding the difference to discuss provision of additional services or payment of the difference, at the option of the City.
2. In the event services provided in any fiscal year meet the dollar limit provided for in this section prior to the end of the fiscal year, County shall consult with City to determine discuss delivery of additional services. Any additional services in excess of the dollar limit shall only be provided if there is a written agreement between the parties for provision of such services which provides for a description of the services to be provided and a provision for payment for such services by City.

SECTION VI: BILLING STATEMENTS

- A. County will invoice City on a time and materials basis for maintenance services performed not more than 30 days after the end of each quarter of the fiscal year. City will pay County within 30 days of receipt of the invoice.
- B. The City may, at any time, investigate any report submitted pursuant to Section III above and determine the accuracy of the report or an amount billed. The County shall make available for investigation, at no cost to City, all records, including historical records and books of the County relating to performance of this Agreement necessary for verification of a report. Such investigation may be done by the City or any person selected by the City. Neither payment of a billing nor a failure to make an investigation shall be deemed to prevent subsequent investigation by the City.

SECTION VII: GENERAL PROVISIONS

- A. All notices and other communications to the parties under this IGA must be in writing, and shall be addressed respectively as follows:

City of Gresham
Attention: Transportation Division Manager
Department of Environmental Services
1333 NW Eastman Parkway
Gresham, OR 97030

Multnomah County
Attention: Transportation Support Services Manager
Department of Community Services
1620 SE 190th Ave.
Portland, OR 97233

All payments shall be addressed as follows:

Multnomah County
Attention: Transportation Support Services Manager
Department of Community Services
1620 SE 190th Ave.
Portland, OR 97233

All notices shall be given (i) by personal delivery to the party, (ii) certified or registered mail, return receipt requested, or (iii) by electronic communication followed immediately by registered or certified mail return receipt requested. All notices shall be effective and shall be deemed delivered (a) if by personal delivery, on the date of delivery, (b) if by certified or registered mail on the date delivered to the United States Postal Service as shown on the receipt; and (c) if by electronic communication, on the date the confirmation is delivered to the United States Postal Service as shown on the actual receipt. A party may change its address from time to time by notice to the other party.

- B. The failure of a party to insist on the strict performance of any provision of this IGA or to exercise any right, power or remedy upon a breach of any provision of this IGA shall not constitute a waiver of any provision of this IGA or limit the party's right thereafter to enforce any provision or exercise any right.
- C. No modification of this IGA shall be valid unless made in writing and duly executed by the parties.
- D. The parties agree that in construing this IGA no covenants shall be implied between the parties except the covenants of good faith and fair dealing.

- E. This IGA shall be governed by and interpreted in accordance with the laws of the State of Oregon.
- F. Each party shall take from time to time, for no additional consideration, such actions and execute such instruments as may be reasonably necessary or convenient to implement and carry out the intent and purpose of this IGA.
- G. Each and every power and remedy specifically given to the non-defaulting parties shall be in addition to every other power and remedy now or hereafter available at law or in equity (including the right to specific performance), and each and every power and remedy may be exercised from time to time and as often and in such order as may be deemed expedient. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission in the exercise of any such power or remedy and no renewal or extension of any payments due under this IGA shall impair such power or remedy or shall be construed to be a waiver of any default.
- H. The provisions of this IGA shall survive its termination to the full extent necessary for their enforcement and the protection of the party in whose favor they run.
- I. This IGA shall bind and inure to the benefit of the parties and their successors and assigns.
- J. A material consideration of the parties entering into this IGA is that parties will make all payments as and when due and will perform all other obligations under this IGA in a timely manner. Time is of the essence of each and every provision of this IGA.
- K. This IGA may be executed in counterparts, all of which taken together shall constitute a single Agreement.
- L. This IGA shall not be construed to create a partnership between the parties or to authorize any party to act as agent for any other party or parties except as expressly provided in this IGA.
- M. This IGA, including all attached exhibits, contains the entire and final understanding of the parties relating to the transfer and maintenance of roads and associated drainage facilities. . This IGA may only be amended by the mutual agreement of the parties.
- N. In the event a dispute arises concerning this Agreement, the City and the County agree that the dispute shall initially be referred to the City Manager and County Chief Financial Officer, or their designees. If negotiation does not resolve the dispute, the City and County agree that the dispute shall be submitted to mediation. The mediator will be selected by mutual agreement, and will be compensated equally by both parties. If the parties fail to agree on a mediator within 10 days of written notice by either party to the other requesting mediation, then each party shall appoint a representative who has been qualified as a mediator in Oregon. The representatives shall choose a mediator who shall serve as the mediator in the dispute.

O. The parties recognize that this Agreement may not address all details that might arise in during the term of this agreement. Each party shall negotiate in good faith such additional details and all additional agreements shall be memorialized in writing.

MULTNOMAH COUNTY, OREGON

CITY OF GRESHAM

By _____

By _____

Title: _____

Title: Mayor

By _____

Title: City Manager

Reviewed:

Approved as to form:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
John Thomas
Deputy County Attorney

Gresham City Attorney's Office