

INTERGOVERNMENTAL AGREEMENT

COG Contract No. 3159

Multnomah County No. 0910092

This is an Agreement between the City of Gresham, a political subdivision of the State of Oregon ("The City"), and Multnomah County, a political subdivision of the State of Oregon ("The County"), pursuant to authority granted in ORS Chapter 190.

PURPOSE:

The purpose of this Agreement is to provide for the design and construction of an asphalt concrete pavement overlay along Burnside Road (Main St. to Powell Blvd.), Kane Road (Stark St. to 17th St.), and Eastman Parkway (Stark St. to Powell Blvd.), City Streets under the jurisdiction of the City, and to establish the parties' obligations with respect to the Project. The parties have determined that the Project is necessary for the improved public safety and functionality these roads.

RECITALS:

1. The County and the City are both sub-recipients of grant funding resulting from the American Recovery and Reinvestment Act of 2009 (ARRA).
2. The City and County both desire to construct an asphalt concrete pavement overlay to various segments of their transportation systems.
3. The County had initiated project development when the City learned of additional grant funding availability and the City desires to participate in County project in order to achieve economy of scale in development and construction. The City and County agree that mutual interests and benefits are derived through a combined joint road improvement project of certain County Roads and City Streets (the "Project").
4. The Oregon Department of Transportation (ODOT) and Metropolitan Planning Organization both concur with the City and County request for the Project.
5. ODOT and Multnomah County have entered into a Local Agency Agreement (LAA) for the Project; that includes the work to be done in the City of Gresham on City Streets as well as the County Roads outside of the City. This LAA is identified ODOT Agreement No. 26312.
6. The scope and details of the Project are as set forth in that certain LAA; ODOT Agreement No. 26312.
7. ODOT is in possession of the identified ARRA funds that are to be used for this Project. The Parties stipulate and commit to the allocations of their individual portion of those ARRA funds as further provided herein.

THE PARTIES AGREE AS FOLLOWS:

1. **TERM.** The term of this agreement shall be from the date that all required signatures have been obtained to the completion of the Project and final payment, or two calendar years following the date that all required signatures have been obtained, whichever is sooner.

2. **RECITALS ARE INCORPORATED.** The above Recitals are contractual and incorporated by this reference.
3. **RESPONSIBILITIES OF THE COUNTY.** The County agrees to provide the following services:
 - A. Designate the County Project Manager, who shall be:
Name: Adam Soplop, PE
Address: 1620 SE 190th Ave., Portland OR 97233
Phone: (503) 988-5050 x22604 – Fax: (503) 988-3321
E-mail: adam.soplop@co.multnomah.or.us
 - B. County's Project Manager and/or appropriate staff shall regularly meet with City during the design and construction stages of the Project and provide timely responses to City's inquiries regarding the Project.
 - C. The County will design and manage the construction of the Project in compliance with ODOT guidelines.
 - D. County will coordinate with ODOT for the advertisement; and provided an acceptable responsive bid is received for the Project, ODOT will award the contract.
 - E. If ODOT does award the construction contract, the County shall maintain copies of all project documents, which shall be available for review by the City.
 - F. County shall furnish to ODOT, prior to advertisement, a guarantee to fund any difference between 110% of the construction estimate and available ARRA grant funding for County portion of the Project.
 - G. County's estimated ARRA allocation for its portion of the Project is \$580,000.
4. **RESPONSIBILITIES OF CITY.** City agrees to provide the following services:
 - A. Designate the City's Project Manager, who shall be:
Name: Don Bilyeu
Address: Gresham City Hall
1333 NW Eastman Parkway
Gresham OR 97030
Phone: (503) 618-2630 – Fax: (503) 665-6825
E-mail: don.bilyeu@greshamoregon.gov
 - B. Meet regularly with County during the design and construction stages of the Project.
 - C. Timely respond to County's Project Manager's inquiries regarding the Project.
 - D. Participate in all scheduled public meeting(s).
 - E. City will allow County project team unrestricted access to City segments of the Project, in order to manage construction progress and execution.
 - F. City will waive any Street or public right-of-way use, construction, or access permits normally required under the City Code for the design and construction work to be performed under this Agreement.
 - G. City will relay any construction contract concerns to County project manager for resolution and will not engage in the construction management effort unless mutually agreed on by both parties. Any construction changes requested by the City will be timely submitted in writing to County's project manager and if mutually agreed to by the Parties in writing will be funded out of City sources unless the Parties mutually agreed in writing to an alternate method.

- H. City shall furnish to ODOT, prior to advertisement, a guarantee to fund any difference between 110% of the construction estimate and available ARRA grant funding for City portion of the Project.

City's estimated ARRA allocation for its portion of the Project is \$630,000.

5. **TERMINATION.** This Agreement may be terminated by either party upon 60 days' written notice.
6. **INDEMNIFICATION.**
- A. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the financial limits therein, County shall indemnify, defend, and hold harmless City from and against all liability, loss, and costs arising out of or resulting from the acts of County, its officers, employees, and agents in the performance of this agreement.
 - B. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the financial limits therein, City shall indemnify, defend, and hold harmless County from and against all liability, loss, and costs arising out of or resulting from the acts of City, its officers, employees, and agents in the performance of this agreement.
6. **INSURANCE.** Each party shall be responsible for providing workers' compensation insurance as required by law. Neither party shall be required to provide or show proof of any other insurance coverage.
7. **ADHERENCE TO LAW.** Each party shall comply with all federal, state, and local laws and ordinances applicable to this agreement.
8. **NON-DISCRIMINATION.** Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
9. **ACCESS TO RECORDS.** Each party shall have access to the books, documents, and other records of the other which are related to this agreement for the purpose of examination, copying, and audit, unless otherwise limited by law.
10. **SUBCONTRACTS AND ASSIGNMENT.** Neither party will subcontract or assign any part of this agreement without the written consent of the other party.
11. **THIS IS THE ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties. This Agreement may be modified or amended only by the written agreement of the parties.

12. **ADDITIONAL TERMS AND CONDITIONS:**

- A. Both parties agree that the final design, specifications, plans and standards and engineer's estimate for the Project shall be mutually approved before the advertisement for bids is published.
- B. In the event the construction bids returned to the County exceed by 10% or more the estimated cost of the Project, the parties agree to meet timely to resolve how to fund the additional cost or revise the proposed project to stay within budget. If a mutually acceptable resolution is not obtained, the Project will be cancelled, and this Agreement will be terminated.
- C. Each party shall be responsible for the contractual obligations imposed upon completion of the construction phase of the Project under ODOT Agreement No. 26312 for that portion of the Project under the jurisdiction of the party, including but not limited to the maintenance and operation of the Project; as provided in the Attachment No. 1, "Special Provisions" and Attachment No. 2, "Standard Provisions" to ODOT Agreement No. 26312.


**BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

CITY OF GRESHAM

By: _____
Ted Wheeler

Title: Multnomah County Chair

Date: _____

By:  _____
Erik Kvarsten
City Manager

Title: _____

Date: _____

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY

By: /s/ Matthew O. Ryan
Matthew O. Ryan
Assistant County Attorney

Date: 12/09/2009

APPROVED AS TO FORM:

CITY ATTORNEY FOR
CITY OF GRESHAM, OREGON

By:  _____

Date: 12-18-09