

# **Intergovernmental Agreement to Transition Street Maintenance Services from Multnomah County to the City of Gresham**

This Intergovernmental Agreement ("Agreement") is made and entered into pursuant to ORS 190.010, effective July 1, 2014, between Multnomah County ("County") and the City of Gresham ("City").

## **RECITALS:**

- A. On December 31, 2005, the County entered into an intergovernmental agreement (the Road Transfer IGA) transferring jurisdiction and control of all County roads within the Gresham City limits, to the City.
- B. At that time, the City and County found it a rationale and efficient method for the County to continue road maintenance services on the roads that were transferred.
- C. On December 31, 2005, the County and City entered into an intergovernmental agreement to provide street maintenance services by the County to the City (the Maintenance IGA).
- D. After eight years of operating under the Maintenance IGA, both the City and County mutually agree it is in the best public interest that the Maintenance IGA be terminated.
- E. The County and City desire by this Agreement to set forth the terms regarding transfer of equipment, personnel and to establish terms for long line striping services.

## **THE PARTIES AGREE AS FOLLOWS:**

### **1. EFFECT ON PRIOR AGREEMENTS**

- 1.1 Effective July 1, 2014, the Maintenance IGA is terminated, pursuant to Article Four of the Maintenance IGA.
- 1.2 The 2005 Road Transfer IGA, with the exception of Section 6 (Maintenance), shall remain in full force and effect.
- 1.3 The 2005 Agreement for Traffic Signal Services and Electrical Maintenance shall remain in full force and effect.
- 1.4 The 2005 Lease Agreement for the Traffic Signal Services and Electrical Maintenance Facilities shall remain in full force and effect.

1.5 The 2013 Managing Oregon Resources Efficiently (MORE) Agreement, which replaced the Portland Metropolitan Area Transportation Cooperative Agreement for Equipment and Services, shall remain in full force and effect.

1.6 The 2013 Oregon Public Works Emergency Response Cooperative Assistance Agreement for multi-jurisdictional mutual aid agreement shall remain in full force and effect.

## **2. TRANSFER OF EMPLOYEES**

2.1 Effective July 1, 2014, County will transfer to the City nine (9) total positions. The transfer will include the following positions and job classifications upon transfer:

2.1.1 One (1) position with a County job classification as “Maintenance Specialist Senior”;

2.1.2 Six (6) positions with a County job classification as “Maintenance Specialist I”, three (3) of which the parties agree are vacant ; and

2.1.3 Two (2) positions with a County job classification as “Striper Operator”, two (2) of which both parties agree are vacant.

2.1.4 The job classification at the City for the County employee classified as “Maintenance Specialist I” shall be “Public Utility Worker II”.

2.1.5 The job classification at the City for the County employee classified as “Striper Operator” shall be “Public Utility Worker II”.

2.1.6 The job classification at the City for the County employee classified as “Maintenance Specialist Senior” shall be “Senior Public Utility Worker”.

2.2 The wage rate for each employee described in sections 2.1 at City as of July 1, 2014 shall not be less than the rate paid to such employee by County on June 30, 2014. Each employee transferred will be eligible for the cost of living adjustment increase provided by the bargaining unit agreement with the City of Gresham effective July 1, 2014. This increase will be added to the rate of pay at transfer.

2.3 After the first 12 months of employment, each such employee shall be placed at the closest salary for the position as designated under City’s salary schedule.

2.4 Compensatory leave, personal leave or other similar leave shall not be transferred. County shall be responsible for any obligations which may exist with respect to accrued compensatory leave, personal leave, or other similar leave of transferring employees.

2.5 All transferring employees shall be entitled to coverage under City health insurance plans without any waiting period for preexisting conditions. County shall for a period of 12 months reimburse City for any additional premium costs incurred by City resulting from the waiver of any waiting period.

2.6 All transferring employees shall have seniority determined as follows: Where City uses years of service in a job classification for any purpose, seniority shall be determined by years of service in the City job classification plus years of services at the County in a comparable job classification. Where City uses total years of service with the City for any purpose, seniority shall be determined by total years of service with the City plus total years of service with the County.

## 2.7 Workers Compensation Issues.

2.7.1 A County employee who has sustained an on the job injury compensable under the workers' compensation laws of the state of Oregon and who has not been released to full duty on the effective date of the transfer shall not be transferred to City employment until the employee has a full duty release.

2.7.2 Responsibility for County employees who have sustained an on the job injury compensable under the workers' compensation laws of the state of Oregon and who are designated for transfer to the City shall be in accordance with law.

2.8 This Agreement is not intended to benefit any individual, employee, group of employees, corporation, or other legal entity other than City and County. This Agreement shall not be deemed to vest any rights in, nor shall it be deemed to be enforceable by, any third party in any proceeding whatsoever.

## 2.9 Accrued leave.

2.9.1 Depending on the preference of each employee being transferred, County shall transfer to City, each employee's total accrued vacation, but not to exceed the maximum allowed by the City's personnel rules, or a lesser amount as designated by the employee. Any accrued vacation not transferred shall be paid to employee by County. County shall pay City for accrued vacation transferred to City.

2.9.2 County shall transfer to City all of the accrued sick leave of each employee being transferred. County shall have no liability for payment to City on account of such transfer.

2.10 Accrued leave transferred to the City shall be subject to the City's personnel rules or union contract, as applicable, for utilization, payout and maximum accrual, except that transferring employees shall be entitled to retain and transfer all accrued sick leave regardless of sick leave limits in place at the City. Any accrued vacation hours that are transferred from the County to the City will be considered Personal Time Off (PTO) at the City.

2.11 County agrees to defend, indemnify and hold City harmless from any claim by a County employee that such employee's duties were transferred to City without transfer of the employee pursuant to ORS 236.605 et. seq.

2.12 City and County agree that City waives any claim it may have for the County to reimburse City for any PERS unfunded liability existing on June 30, 2014, and County agrees to waive any claim it may have for the City to reimburse County for any PERS surplus existing on June 30, 2014.

### **3        TRANSFER OF EQUIPMENT**

3.1 On July 1, 2014 the County shall transfer all rights, title, and interest in one 2007 Ford F450 4x4 1 ton dump truck with plow & sander, one 1993 International 4900 10-yard dump truck with plow & sander and one 2008 Freightliner panel van. In exchange the City will pay County \$80,000.

3.2 The City will pay the County within 30 days of receipt of the equipment.

### **4        SHARED EQUIPMENT AND SERVICES**

4.1 With the exception of long line striping service as further provided in this Section, no provision or sharing of services, materials or equipment shall be performed under this Agreement. The County and City to the extent such sharing of equipment and services is mutually agreed to, will share maintenance services, equipment, and materials in accordance with the Managing Oregon Resources Efficiently (MORE) IGA.

4.2 The County will provide the City with long line striping services at mutually convenient times and locations using County equipment and materials. The County is not responsible for striping layout work under this long line striping service arrangement and will rely upon the City to perform this function when markings are absent on the street surfaces. County striping services will not exceed \$200,000 per fiscal year.

4.3 The term of this striping service shall be from July 1, 2014 through June 30, 2016. If either party intends to terminate this Agreement the terminating party shall provide written notice to the other party on or before June 30, 2015 of the intent to terminate long line striping service on June 30, 2016. 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 anniversary date.

4.4 The County will invoice the City on a time and material basis for striping services performed not more than 30 days after the end of each quarter of the fiscal year.

4.5 The City will pay the County within 30 days of receipt of an invoice.

### **5        GENERAL PROVISIONS**

5.1 All Notices and other communications to the parties under this Agreement must be in writing, and shall be addressed respectively as follows:

City of Gresham  
Attention: Environmental Services Director  
Department of Environmental Services  
1333 NW Eastman Parkway  
Gresham, OR 97030

Multnomah County  
Transportation  
1620 SE 190<sup>th</sup> Avenue  
Portland, OR 97233

All payments shall be addressed as follows:

City of Gresham  
Attention: Financial Services Division Manager  
Finance and Management Services Department  
1333 NW Eastman Parkway  
Gresham, OR 97030

Multnomah County  
Transportation  
1620 SE 190<sup>th</sup> 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.

5.2 The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach of any provision of this Agreement shall not constitute a waiver of any provision of this Agreement or limit the Party's right thereafter to enforce any provision or exercise any right.

5.3 No modification of this Agreement shall be valid unless made in writing and duly executed by the Parties.

5.4 The Parties agree that in construing this Agreement no covenants shall be implied between the Parties except the covenants of good faith and fair dealing.

5.5 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon.

5.6 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 Agreement.

5.7 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 Agreement shall impair such power or remedy or shall be construed to be a waiver of any default.

5.8 The provisions of this Agreement shall survive its termination to the full extent necessary for their enforcement and the protection of the Party in whose favor they run.

5.9 A material consideration of the Parties entering into this Agreement is that Parties will make all payments as and when due and will perform all other obligations under this Agreement in a timely manner. Time is of the essence of each and provision of this Agreement.

5.10 This Agreement may be executed in counterparts, all of which taken together shall constitute a single agreement.

5.11 This Agreement 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 Agreement.

5.12 This Agreement contains the entire and final understanding of the Parties relating to the transfer of positions and maintenance of the roads. This Agreement may only be amended by the mutual agreement of the Parties.

5.13 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 DCS Director, 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 representations shall choose a mediator who shall serve as the mediator in the dispute.

5.14 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: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

Approved as to Form:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_