

INTERGOVERNMENTAL AGREEMENT

TIGARD Contract No. _____

METRO Contract No. 933506

This Intergovernmental Agreement (“Agreement”) is made under the authority found in ORS 190.010, et seq., and ORS 206.345 between the City of Tigard (“TIGARD”) and METRO.

RECITALS

WHEREAS, TIGARD is an Oregon municipal corporation and is a unit of local government authorized to enter into intergovernmental agreements pursuant to ORS 190.010, et seq.; and

WHEREAS, METRO is an Oregon municipal corporation formed and operating under state law and the Metro Charter, and is a unit of local government authorized to enter into intergovernmental agreements pursuant to ORS 190.010, et seq.; and

WHEREAS, METRO desires to contract with TIGARD for the performance of certain law enforcement functions to be performed by TIGARD; and

WHEREAS, TIGARD is able and prepared to provide the services required by METRO under the terms and conditions set forth in this Agreement; now, therefore,

IN CONSIDERATION of those mutual promises and the terms and conditions set forth hereafter, and pursuant to the provisions of ORS chapter 190, the parties agree to be bound as follows:

1. **TERM** The term of this Agreement shall be from July 1, 2015, through June 30, 2016, unless extended.
2. **TERMINATION** This Agreement may be terminated as follows:
 - a. Any party to this Agreement may terminate this Agreement for its convenience and without penalty upon thirty (30) days written notice of its intention to terminate.
 - b. If METRO is unable to appropriate sufficient funds to pay TIGARD for its services under this Agreement, METRO must notify TIGARD and the Agreement shall terminate as of the end of the last fiscal year for which such appropriations are available.
 - c. Any obligations arising prior to the date of termination survive the termination, including any obligation to defend and indemnify any other jurisdictions.



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3. INDEMNIFICATION AND LIABILITY

- a. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, TIGARD shall indemnify, defend and hold harmless METRO from and against all liability, loss, and costs arising out of or resulting from the acts of TIGARD, 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, METRO shall indemnify, defend, and hold harmless TIGARD from and against all liability, loss, and costs arising out of or resulting from the acts of METRO, its officers, employees, and agents in the performance of this Agreement.

4. **ADHERENCE TO LAW** Each party must comply with all federal, state, and local laws and ordinances applicable to this Agreement.

5. **ACCESS TO RECORDS** Each party must have access to the books, documents, and other records of the other parties related to this Agreement for the purpose of examination, copying, and audit, unless otherwise limited by law.

6. **ENTIRE AGREEMENT** This Agreement and Exhibit A constitute the entire agreement between the parties. This Agreement may be modified or amended only by the written agreement of the parties.

7. **SEVERABILITY** The parties agree that, if any term of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms will not be affected.

8. **NOTICES** The parties must send any notices, bills, invoices, reports, or other written communications required by this Agreement through the United States Mail, first-class postage paid, or personally delivered to the addresses below:

Tigard
 Marty Wine
 City Manager
 13125 SW Hall Blvd
 Tigard, OR 97223

Metro
 Roy W. Brower
 Solid Waste Compliance & Cleanup Manager
 600 NE Grand Avenue
 Portland, OR 97232

INVESTIGATION:

9. TIGARD shall provide one TIGARD police officer (“Officer”) for general investigative law enforcement service to METRO at METRO’s direction. This service shall



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include:

- (a) Enforcement of the METRO code and regulations, including without limitation provisions related to flow control investigation, illegal dumping investigation and solid waste management;
 - (b) Random and directed surveillance of persons collecting, transporting, storing, treating, and disposing of solid and liquid waste to ensure such persons are complying with the METRO code and regulations;
 - (c) Assistance with investigation, case preparation, and prosecution in cases involving offenses (including without limitation fraud, racketeering, and material breach of contract) allegedly committed by vendors, contractors, or subcontractors doing business with METRO or by facilities, firms or individuals subject to METRO ordinances and regulations;
 - (d) Investigations of suspected violations of environmental laws, rules, and ordinances; and
 - (e) Other general investigative work as requested by METRO.
10. During the existence of this Agreement, the Officer shall exercise such authority as may be vested by law or by terms of this Agreement, including full power and authority to cite, arrest, and take other enforcement action for violations of all METRO code provisions and regulations, including without limitation those relating to flow control, illegal dumping, and solid waste management.

PERSONNEL MATTERS:

11. TIGARD shall provide for the performance of the duties hereunder one FTE officer position. For the purpose of this Agreement, one FTE position means an employee who is regularly scheduled to work at least 40 hours per week performing the services required under this Agreement.
12. TIGARD shall be responsible for assuring that Officer assigned to METRO are certified by the State's Department of Public Safety Standards and Training and that the Officers maintain such certification.
13. For an Officer who has been assigned to METRO for one (1) year or longer, METRO shall pay one-half (1/2) of personnel costs for absences due to general law enforcement training. METRO shall not pay personnel costs for absences due to specialized law enforcement training that does not relate directly to the services provided under the terms of this Agreement.
14. The Officer shall be and remain employees of TIGARD. TIGARD shall ensure that the Officer performs their duties in accordance with the administrative and operational procedures of TIGARD.



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15. METRO has the right, upon request and for cause stated, to have an Officer promptly removed from assignment under this Agreement and replaced within three weeks by another Officer meeting the requirements of this Agreement.
16. METRO will not pay wages, salaries, or other compensation directly to the Officer performing services under this Agreement or for any other liability not provided for in this Agreement.
17. TIGARD shall maintain Workers' Compensation insurance coverage for the Officer, either as a carrier insured employer or a self-insured employer as provided in ORS Chapter 656.
18. The collective bargaining agreement between the Officer and TIGARD ("collective bargaining agreement") governs all matters related to benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment of the Officer.
19. The collective bargaining agreement and the TIGARD personnel rules govern all labor disputes arising out of this Agreement.
20. The Officer shall work 40-hours per week and may be assigned by Metro to either five eight-hour shifts or four ten-hour shifts, based on Metro's needs.
21. The Officer may be absent from duty for various reasons, including but not limited to vacation, holidays, illness, training, leave of absence, and administrative leave in accordance with the foregoing acknowledgment:
 - (a) TIGARD will not be responsible or otherwise obligated to replace an Officer who is absent due to paid accrued leave, including without limitation vacation, holiday, sick, and training leave. TIGARD will make a good faith effort to schedule planned absences to minimize the impact on its ability to perform under this Agreement and to provide a replacement in the event that an absence is anticipated to last longer than three weeks.
 - (b) TIGARD may invoice METRO, and METRO shall pay up to a total combined annual contract year (July 1- June 30) maximum of 192 hours of the personnel costs, not to exceed the contract costs listed in Exhibit A, of an Officer absent on vacation, holiday, leave of absence, bereavement, personal holiday, sick, or administrative leave, only if the Officer has been assigned to METRO for six months or longer. For absences due to general law enforcement training, refer to paragraph 13. Unless otherwise directed by METRO, the Officer assigned to METRO shall not work when METRO's offices are closed, including during the following nine (9) holidays:



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- (1) New Years Day;
- (2) Martin Luther King Day;
- (3) Presidents' Day;
- (4) Memorial Day;
- (5) Independence Day;
- (6) Labor Day;
- (7) Veterans Day;
- (8) Thanksgiving Day; and
- (9) Christmas Day.

OFFICE SPACE:

22. METRO shall provide the Officer with office space and shall pay the costs for utilities including without limitation telephone costs, at METRO's premises or at a site mutually agreed upon by TIGARD and METRO.

EQUIPMENT PURCHASE, USE AND DISPOSITION

23. The parties will purchase materials and supplies necessary for this Agreement as provided in this section. "Materials" includes items with a unit cost of \$1,000 or more, and "supplies" includes items with a unit cost of less than \$1,000.
24. METRO shall purchase all materials and supplies necessary for the performance of this Agreement.
25. METRO shall own all vehicles and equipment it purchases for this Agreement, including without limitation capital equipment. TIGARD shall use METRO's vehicles and equipment only to perform its duties under this Agreement and shall not use them for any other purpose without authorization from METRO. METRO shall pay fuel and maintenance costs for its vehicles. Except as provided in paragraph 26, upon termination of this Agreement, TIGARD shall return all materials and supplies to METRO.
26. Consistent with Metro Code Chapter 2.04.064, upon termination of this Agreement METRO may grant to TIGARD an option to purchase from METRO any or all remaining materials and supplies purchased for this Agreement at a price mutually agreed upon by the parties, not to exceed the fair market value of the items at the times of purchase. TIGARD agrees to give METRO notice of TIGARD's intent to exercise this option within SIXTY (60) days following termination of this Agreement.



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USE OF METRO-OWNED VEHICLES:

27. Only the Officer assigned to Metro under this agreement shall operate Metro-assigned vehicles. The Officer may drive their assigned Metro vehicles to their residences at the end of each working day. A take-home vehicle will not be assigned to the Officer that resides more than 20 road miles (rounded to the nearest mile) beyond the Metro boundary.
28. Metro vehicles assigned to the Officer shall only be used for Metro-related business unless urgent or emergency circumstances necessitate the use of such vehicles for non-Metro related law enforcement activities, or unless another use is requested by TIGARD and approved by Metro. In such cases, the TIGARD shall assume liability for damage incurred to any Metro vehicles while being used by the Officer for non-Metro purposes. Metro vehicles shall not be used for personal use or for off-hours Metro use without prior approval by Metro.
29. The carrying of any passenger that is not a Metro employee, TIGARD Police Officer, or Multnomah County Sheriff's Deputy must be approved in advance by Metro. Officers that are in the field on Metro business during meal or break times may use their assigned vehicles to drive to a restaurant, convenience store, or similar stop, provided that it is within a reasonable distance of their business route.
30. All traffic laws shall be adhered to when operating Metro vehicles. Whenever practical, the Officer should pull over and park in a safe place before using non-hands free cell phones, cameras, or engaging in any task that might distract from driving.
31. Vehicles must be locked when not attended. The Officer is to follow TIGARD's policy on leaving firearms in a vehicle. When an Officer is on leave for more than one week, the vehicle shall be stored either at Metro headquarters or in a locked garage at the Officer's residence. Each Officer shall be responsible for the cleanliness of his/her assigned vehicle. Vehicles shall be fueled, washed, and taken in for scheduled maintenance by Officers during regular work hours but at Metro's expense.
32. The only exception to the personal use procedures and passenger prohibition described in this section is when there is a serious emergency. In such a situation, the Officer shall notify Metro of the use of the vehicle as soon as possible after the emergency has been addressed.

CONTRACT COSTS:

33. METRO shall pay TIGARD for all costs as set forth in this Agreement. By March 1 of each year, TIGARD shall provide METRO with a good faith projection of the cost of



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this Agreement for the following fiscal year (July 1 to June 30). The parties shall agree on the amount paid by METRO for the term of the Agreement before each anniversary date of the execution of this Agreement.

34. For the Agreement beginning July 1, 2015, METRO will pay TIGARD no more than ONE HUNDRED FIFTY-FOUR THOUSAND, FOUR HUNDRED FORTY-ONE AND NO/100 DOLLARS (\$154,441.00), unless additional services are requested or directed by METRO. This amount includes all fees, costs, and expenses to which TIGARD is entitled for the term of this Agreement.
35. All costs listed on Exhibit A, which is the Budget for this Agreement prepared by METRO, are on a “not to exceed” basis. TIGARD shall submit itemized billings to METRO no more than 15 days after the end of each quarter of the contract year, and METRO shall make payment to TIGARD within 30 days of receipt of approved billings.

DISPUTE RESOLUTION:

36. If a claim, controversy, or dispute arises out of this Agreement, the complaining party shall attempt to resolve amicably by phone or in person. If unable to resolve, the party shall give written notification to the other party of the nature of the claim and the remedy requested within 10 days of the incident that forms the basis of the dispute or when oral discussions are not productive.
37. Oregon law shall govern this Agreement. The parties shall resolve all claims, controversies, or disputes that arise out of this Agreement by arbitration in accordance with the arbitration rules of the Arbitration Service of Portland or the American Arbitration Association. The party who first initiates arbitration shall designate an arbitration service by filing a claim in accordance with the rules of the organization selected. Such arbitration shall take place in Portland, Oregon, and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

CONTRACT ADMINISTRATION:

38. The designated representative of the City of Tigard will represent TIGARD in all matters pertaining to administration of this Agreement.
39. METRO designates its Solid Waste Compliance & Cleanup Manager or the Manager’s designee to represent METRO in all matters pertaining to administration of this Agreement.



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CONTRACT MODIFICATION AND THIRD PARTY RIGHTS:

- 40. This Agreement may be amended by agreement of the parties. Any amendment to this Agreement shall be effective only when incorporated herein by written amendments and signed by both METRO and TIGARD.
- 41. This Agreement shall not be deemed to vest in any third party any rights, nor shall it be deemed to be enforceable by any third party in any legal, equitable, or administrative proceeding whatsoever.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on the date written below.

CITY OF TIGARD

METRO

By: _____
Marty Wine
City Manager

By: _____
Martha Bennett
Chief Operating Officer

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:
Metro Attorney

By: _____

By: _____
Michelle Bellia
Senior Metro Attorney

Date: _____

Date: _____



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Exhibit A
Metro Regional Solid Waste Management
FY 2015-16

Personnel Services

Officer (1):

Wages	\$86,264
Benefits	53,197

Total Personnel Services	<u>\$139,461</u>
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Clothing Allowance	\$600
Equipment Allowance	100
Communications (Phones)	240

Total Materials & Services	<u>\$940</u>
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Administrative Fee	<u>\$14,040</u>
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Total Budget	<u><u>\$154,441</u></u>
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