

To be filed with Clark County Auditor

Pacific Northwest Interagency Cooperative

**Intergovernmental Agreement
For
Equipment and Services**

This Agreement, made and entered into this ___ day of _____, 2005 by and between the undersigned parties under virtue of Titles 39.34 and 47.28 RCW.

WHEREAS, the parties hereto are charged with the responsibility of constructing and maintaining their facilities, streets, roads, and highways and maintaining staff, equipment and materials to perform the necessary work, and;

WHEREAS, this Agreement is formed to be consistent with the provisions and term of the “Interlocal Cooperation Act” pursuant to RCW 39.34 et. seq., and with the provisions of the “Highways and Transportation Improvements Cooperative Agreements Act” pursuant to RCW 47.28.140, and;

WHEREAS, it is believed that each of the undersigned public agencies and/or entities to this Agreement will benefit through greater efficiencies and economies of scale in the sharing of equipment and labor for services, roadway construction, roadway maintenance and facilities support, and;

WHEREAS, it is intended that general purpose governmental jurisdictions and public service providers may in the future join in this Agreement by executing a signature page that incorporates the terms of this Agreement by reference, and;

WHEREAS, the parties may from time to time need additional labor, equipment, or materials or have labor, equipment and materials available in certain locations which could be used by the other party to this Agreement;

NOW THEREFORE, in accordance with RCW 39.34.060 and RCW 47.28.140, and in consideration of the terms, conditions, covenants and performances contained herein, or attached and incorporated and made part hereof,

NOW, THEREFORE,

THE PARTIES AGREE AS FOLLOWS:

I. PURPOSES

It is the purpose of the Agreement to permit the parties to make the most efficient use of their resources by enabling them to cooperate by furnishing each other labor, equipment and materials when available on a reimbursable basis for services, roadway construction, maintenance activities, and facilities support. This will be done with the understanding that the work of the owner of the requested resources takes first priority. The party supplying the services or the vehicles, machinery, and equipment shall be designated as the "Provider" herein. The party receiving the services or assuming the use of vehicles, machinery or equipment shall be designated the "User" herein.

II. PARTICIPATION

The City of Vancouver, Washington (hereinafter referred to as "Vancouver"), Clark County Public Works, the Department of Transportation for the State of Washington (hereinafter referred to as "WASHDOT"), the City of Camas, Washington (hereinafter referred to as "Camas"), Clark County Public Transportation Benefit Area d/b/a C-Tran (hereinafter referred to as "C-Tran), Clark County Fire District No. 5, the City of Battle Ground, Washington (hereinafter referred to as "Battle Ground"), the City of Washougal, Washington (hereinafter referred to as "Washougal"), the City of Ridgefield, Washington (hereinafter referred to as "Ridgefield"), the City of Woodland, Washington (hereinafter referred to as "Woodland"), the Town of Yacolt, Washington (hereinafter referred to as "Yacolt"), the City of Longview, Washington (hereinafter referred to as "Longview"), the City of LaCenter, Washington (hereinafter referred to as "LaCenter"), The Port of Camas/Washougal, the Port of Vancouver and the Hazel Dell Sewer District are the initial parties to this agreement.

General purpose governmental jurisdictions and public service providers may in the future join in this agreement by executing a signature page that incorporates the terms of this agreement by reference.

Other organizations who are neither general purpose governmental jurisdictions nor public service providers may also be allowed to participate in similar or identical, but separate, service agreements.

III. TERM OF AGREEMENT

The term of this Agreement is for the period from _____, 2005 to _____, 2010. Such term may be extended in accordance with Section IV of this Agreement.

IV. EXTENSIONS

The term of this Agreement may be extended in five-year increments from the date that this Agreement was initially executed by mutual written agreement of one or more of the parties. The extension agreements shall be executed at least fifteen (15) days prior to the expiration of the Agreement. If such Agreement is extended, then there will be a review of the cost of services provided under this Agreement. If such review(s) result in a finding of increased costs then such increased costs will be available upon request. The Administrator for each respective party is authorized to approve and execute such five-year extensions without further authorization from the legislative body of the respective governmental entities

V. REQUEST FOR SERVICES

Each request for service shall be in writing and shall specify the particular service required, the amounts and types of labor, equipment, and material required, the location of the work, the estimated cost of the work and other information pertinent to the request. Upon receipt of the request, the party which has been requested to supply the service shall indicate their acceptance or rejection of the request, provide an estimated cost of the work, have it signed by their authorized official, and return one copy to the requesting party. In cases of emergency or unforeseen circumstance necessitating prompt action the request and approval may be done verbally but must be documented in writing within 48 hours of the verbal request.

VI. PAYMENT

The parties to this Agreement agree that the User under this Agreement shall reimburse, upon request, the Provider for their actual direct and related indirect costs including any administrative overhead charges. Administrative charges between two separate entities may be waived by virtue of a written separate reciprocal agreement among the parties. Users will pay Provider's invoices in full within thirty (30) days of billing.

The maximum amount payable for work performed under this Agreement is fifty thousand dollars (\$50,000) per calendar year by each party to the Agreement.

VII. RECORDS RETENTION AND AUDIT

The parties agree to maintain records of all costs incurred under this Agreement, in accordance with an accounting system as prescribed and approved by the Washington State Auditors Office. These records shall be kept available for inspection and audit by the party requesting the service for six (6) years after payment of the requested service.

VIII. CARE AND MAINTENANCE OF EQUIPMENT

The parties agree that any time a request is made for the use of equipment that the User shall be responsible for the proper care, maintenance and security of the equipment until the

equipment is returned to the Provider. The User shall permit the equipment to be used only by properly trained and supervised operators. Any damage other than normal wear and tear will be the responsibility of the party in possession of the equipment at the time the equipment is damaged. The Provider may require, at its sole discretion, that only Provider's personnel operate certain equipment. In doing so, Provider shall be deemed an independent contractor and Provider's employees shall not be deemed employees of the User. The Provider's operator shall perform under the general direction and control of the User but shall retain full control of the manner and means of using the equipment.

IX. RIGHT OF ENTRY

The parties to this Agreement hereby grant and convey to each other the right to enter upon all land in which the parties have an interest, within or adjacent to the right of way of a highway, road or street for the purpose of accomplishing all work or services requested as part of this Agreement.

X. ADMINISTRATORS

The respective parties to this Agreement shall select one Administrator per governmental entity. The Administrator will be specifically appointed by the legislative and/or governing body of the governmental entity/organization, and shall have full powers to act on behalf of his or her respective governmental entity/organization. The Administrator may appoint another person to act in his or her capacity as Administrator for purposes of this Agreement.

XI. DISPUTE CLAUSE AND VENUE

In the event that a dispute arises under this Agreement, it shall be resolved as follows:

The Administrator for the Provider and the User shall each appoint a member to a disputes board, these two members shall select a third member not affiliated with either Agency. The dispute resolution hearing shall be informal and unrecorded. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute.

In the event that any Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action or proceedings shall be brought in a court of competent jurisdiction in Clark County, Washington. The laws of the State of Washington shall apply to this Agreement.

XII. HOLD HARMLESS AND INDEMNIFICATION

A. Usage of Equipment. The User will protect, save and hold harmless the Provider and their officers, agents, and employees from all claims, actions, damages, or expenses of any nature whatsoever by reasons of the acts or omissions of the Provider their assigns, agents, contractors, licensees, invitees, employees, or any person whomsoever arising out of or in connection with any acts or activities authorized by this agreement arising

solely out of the use of the Provider's equipment. In such cases, the User further agrees to defend the Provider and their authorized agents and employees in any litigation, including payment of any costs or attorney fees for any claims or action commenced thereon arising out of or in connection with the acts or activities authorized by this Agreement. This obligation shall not include such claims, costs, damages or expenses which are caused by the sole negligence of the Provider or their authorized agents or employees.

B. Usage of Both Equipment and Labor. The Provider will protect, save and hold harmless the User and their officers, agents, and employees from all claims, actions, damages, or expenses of any nature whatsoever by reasons of the acts or omissions of the User their assigns, agents, contractors, licensees, invitees, employees, or any person whomsoever arising out of or in connection with any acts or activities authorized by this agreement arising out of the use of both the Provider's equipment and labor. In such cases, the Provider further agrees to defend the User and their authorized agents and employees in any litigation, including payment of any costs or attorney fees for any claims or action commenced thereon arising out of or in connection with the acts or activities authorized by this Agreement. This obligation shall not include such claims, costs, damages or expenses which are caused by the sole negligence of the User or their authorized agents or employees.

C. Concurrent Negligence. If the claims or damages are caused by or result from the concurrent negligence of the Provider and their agents or employees, and the User, its agents or employees, and involves those actions covered by RCW 4.24.115, both the Provider and the User shall be liable only to the proportional extent of their respective negligence.

XIII. CIVIL RIGHTS ACT

Nondiscrimination --Title VI of the Civil Rights Act. All participants agree to comply, and assure the compliance of each third party contractor and each sub-recipient at any tier of the Project, with all requirements prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(d) and (e), et seq., and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21, and any implementing requirements the Federal Transit Authority (hereinafter referred to as "FTA") may issue.

Equal Employment Opportunity – Title VII of the Civil Rights Act

All participants agree to comply, and assures the compliance of each third party contractor and each sub-recipient at any tier of the Project, with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements the FTA may issue.

XIV. DBE PARTICIPATION

No Disadvantaged Business Enterprise (hereinafter referred to as "DBE") goals have been assigned as a part of this Agreement.

DBE firms shall have equal opportunity to compete for and perform subcontracts with the parties to this Agreement. The parties to this Agreement are encouraged to:

1. Advertise opportunities for subcontractor or supplier in a manner reasonably designed to provide DBEs capable of performing the work with timely notice of such opportunities. All advertisements should include a provision encouraging participation by DBE firms and may be done through general advertisements (e.g. newspapers, journals, etc.) or by soliciting bids/proposals directly from DBEs.
2. Utilize the services of available minority community-based organizations, minority contractor groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of DBEs and other small businesses.

In addition, the Office of Minority and Women's Business Enterprises has two DBE Supportive Services Offices available to assist you as follows:

Seattle: (206) 553-7356
Tacoma: (253) 680-7393

XV. FRAUD OR FALSE STATEMENTS

Upon execution of this Agreement, the contracting agency affirms the truthfulness and accuracy of any statement it has made, it makes, or may make or cause to be made, pertaining to this FTA assisted project for which this Agreement has been executed.

The contracting agency also acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification to the Federal Government under a contract that is financed in whole, or in part, by Federal assistance, the Government reserves the right to impose the penalties of 18 USC sec 1001 and 49 USC sec 5307 to the extent the Federal Government deems appropriate.

XVI. FTA APPROVAL AND FEDERAL CHANGES

The contracting agency, when contracting with an FTA regulated agency, shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including those listed by reference in the Agreement between C-TRAN and the FTA, as they may be amended or promulgated from time to time during the term of this contract at any tier of the project. The agency's failure to do so shall constitute a material breach of this contract.

XVII. DRUG AND ALCOHOL TESTING

If involved with the maintenance, repair or operation of revenue service vehicles, the contracting agency shall agree to participate in a drug and alcohol program established in the compliance the Department of Transportation 49 CFR 653 and 654. Employees who

perform “safety-sensitive” functions must be included in the substance abuse management program. The FTA has determined that safety-sensitive functions are performed by the following personnel who:

- 1) operate revenue service vehicles including when not in revenue service,
- 2) operate non-revenue service vehicles that require drivers to hold commercial driver’s licenses (CDLs)
- 3) dispatch or control revenue service vehicles,
- 4) maintain revenue service vehicles or equipment used in revenue service except for contractors to Section 18 transit agencies.
- 5) Provide security and carry a firearm.

The FTA has also determined that regulations apply to employees of a contractor hired by participants to provide transit and/or maintenance services. These categories included supervisors who perform these functions. Supervisors of employees in these categories buy who do not themselves perform these functions are excluded.

Copies of participating agency’s Drug and Alcohol Policy may be requested from their respective Human Resources Departments.

XIII. ACCESS TO RECORDS

All participating agencies agree to maintain records and reports required under this Agreement for a period of not less than three years after the date of termination or expiration, except in the event of litigation or settlement of claims arising from the performance of any part of this Agreement, in which case all records shall be retained until the participating agency, the FTA, or the Comptroller General have disposed of all litigations, appeals or claims related to this cooperative activity.

XIX. INCORPORATION OF FTA TERMS AND CONDITIONS

The preceding provisions include, in part, certain Terms and Conditions required by the United States Department of Transportation (hereinafter referred to as “DOT”) whether or not expressly set forth in the preceding contract provision. All contractual provisions required by DOT as set forth in the FTA Circular 4220.IE, dated June 19, 2003 , are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contracting agency shall not perform any act, fail to perform any act, or refuse to comply with any participating agency’s requests, which would cause other participating agencies to be in violation of the FTA terms and conditions.

XX. TERMINATION OF AGREEMENT

The right is reserved by the parties to this Agreement to terminate the agreement at any time by giving 30 days written notice to the other party or parties.

XXI. INTERLOCAL COOPERATION ACT COMPLIANCE

This is an Agreement entered into pursuant to Chapter 39.34 and Chapter 47.28 RCW. Its purpose is as set forth in Section I. Its duration is as specified in Sections II (Term) and IV (Extensions). Its method of termination is set forth in Section XX. Its manner of financing and of establishing and maintaining a budget therefore is described in Section VI (Payment). No property shall be acquired pursuant to this Agreement which will need to be disposed of upon partial or complete termination of this Agreement.

XXII. DOCUMENT EXECUTION AND FILING

The parties to this Agreement agree that there shall be four (4) signed originals of this Agreement procured and distributed for signature by the necessary officials of the respective parties to this Agreement. Upon execution, the executed originals of this Agreement shall be returned to the Vancouver City Manager, or designee, who shall file copies of this Agreement with the Vancouver City Clerk and the Clark County Auditor. Upon receipt by the Clark County Auditor of the signed originals, each such signed original shall constitute an Agreement binding upon the respective parties.

Subsequent parties may also sign original signature pages to this Agreement that will incorporate by reference all of the terms of this Agreement. The executed originals of such signature pages shall be returned to the Vancouver City Manager, or designee, who shall file copies of such signature pages to this Agreement with the Vancouver City Clerk and the Clark County Auditor. Upon receipt by the Clark County Auditor of the signed original signature pages, each such signed original signature page shall constitute a complete and binding Agreement.

XXIII. RATIFICATION

Acts taken in conformity with this Agreement prior to its execution are hereby ratified and affirmed.

XXIV. WAIVER

No waiver by either party of any term or condition of this Agreement incorporated in this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or different provision.

XXV. SEVERABILITY

If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CLARK COUNTY

By: _____

Date: _____

Attested to : _____

Approved as to Form:

**STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION**

By: _____

Date: _____

Attested to: _____

Approved as to Form:

CITY OF VANCOUVER

By:: _____

Date: _____

Attested to : _____

Approved as to Form:

CITY OF CAMAS

By: _____

Date: _____

Attested to: _____

Approved as to Form:

C-TRAN

Clark County Fire Dist 5:

By: _____

By: _____

Date: _____

Date: _____

Attested to : _____

Attested to: _____

Approved as to Form:

Approved as to Form:

CITY OF BATTLE GROUND

CITY OF WASHOUGAL

By:: _____

By: _____

Date: _____

Date: _____

Attested to : _____

Attested to: _____

Approved as to Form:

Approved as to Form:

CITY OF RIDGEFIELD

CITY OF WOODLAND

By:: _____

By: _____

Date: _____

Date: _____

Attested to : _____

Attested to: _____

Approved as to Form:

Approved as to Form:

TOWN OF YACOLT

PORT OF CAMAS/WASHOUGAL

By:: _____

Date: _____

Attested to : _____

Approved as to Form:

PORT OF VANCOUVER

By:: _____

Date: _____

Attested to : _____

Approved as to Form:

CITY OF LONGVIEW

By:: _____

Date: _____

Attested to : _____

Approved as to Form:

By: _____

Date: _____

Attested to: _____

Approved as to Form:

HAZEL DELL SEWER DISTRICT

By: _____

Date: _____

Attested to: _____

Approved as to Form:

CITY OF LACENTER

By: _____

Date: _____

Attested to: _____

Approved as to Form:
