

**INTERGOVERNMENTAL AGREEMENT
BETWEEN MULTNOMAH COUNTY AND THE CITY OF GRESHAM
FOR JOINT SERVICES RELATED TO NPDES MUNICIPAL SEPARATE STORM
SEWER PERMIT AND TMDL PROGRAM IMPLEMENTATION
County No. 460008715
City of Gresham No. 5232**

This Agreement is between the City of Gresham, Oregon (Gresham), and Multnomah County, Oregon (County), hereinafter collectively referred to as the Parties.

RECITALS

WHEREAS, the Parties' goal is to work cooperatively through this Agreement to comply with existing federal and state National Pollutant Discharge Elimination System (NPDES) and Total Maximum Daily Load (TMDL) laws and regulations; and

WHEREAS, the Gresham City Council and the Board of Multnomah County Commissioners recognize the need to identify and control pollutants entering the municipal separate storm sewer systems (hereinafter "MS4") through the application of best management practices established and implemented by each jurisdiction; and

WHEREAS, it has been determined that urban stormwater runoff transports pollutants into our rivers and streams; and

WHEREAS, pollutant allocations for streams within the jurisdictions of Gresham and the County are identified in the Total Maximum Daily Loads (TMDL) for the respective streams; and

WHEREAS, Gresham and the County are authorized to implement stormwater management programs to reduce the contribution of pollutants in stormwater to the maximum extent practicable and to discharge stormwater to public waters in conformance with the requirements and conditions set forth in the municipal permit conditions of their respective NPDES permits issued by Oregon Department of Environmental Quality (DEQ); and

WHEREAS, Gresham and the County are Designated Management Agencies responsible for developing and implementing pollutant reduction plans for TMDL streams; and

WHEREAS, the development of a consistent and comprehensive stormwater monitoring plan that satisfies Gresham and Multnomah County's federal NPDES stormwater requirements can best be realized by a coordinated monitoring approach between Gresham and the County within the Urban Services Boundary.

NOW, THEREFORE, the Parties agree as follows:

A. PARTIES' EXISTING PERMITS.

1. Gresham has a five-year municipal MS4 NPDES permit as required under 40 CFR Section 122.26; and permitted by Oregon DEQ Municipal NPDES Permit #101315, dated December 30, 2010. This permit serves as the TMDL implementation plan for the waste load allocations for stormwater within the permit boundary.

2. The County has a five-year municipal MS4 NPDES permit as required under 40 CFR Section 122.26; and permitted by Oregon DEQ Municipal NPDES Permit #103004 dated December 30, 2010. This permit serves as the TMDL implementation plan for the waste load allocations for stormwater covered by the permit boundary.
3. Each Party is responsible for complying with its own permit conditions relating to stormwater discharges from those parts of the respective MS4 that the Party continues to operate or own. No Party is responsible for another Party's non-compliance with its respective permit.

B. PARTIES' OBLIGATIONS.

1. The County.

- 1.1 The County shall assist Gresham in developing procedures to best implement the monitoring and compliance actions in the areas subject to the County's MS4 NPDES permit under Section A. 3 above.
- 1.2 The County may undertake tasks to assist Gresham with monitoring activities in the compliance areas subject to the County's MS4 NPDES permit under Section A.3 above. The County will only perform such work based upon a mutual written agreement of the County and Gresham which shall be in the form of a "Notice to Proceed," signed by the County and Gresham, which expressly identifies the dates and specific tasks the County is to perform.

2. Gresham.

- 2.1 Gresham shall perform the monitoring services required by its own NPDES MS4 Permit under Section A.1 above and any other TMDL requirements set forth in the Scope of Work in Exhibit A.
- 2.2 Gresham shall compile and report the relevant and applicable water quality data collected for all of the Parties' permitted areas identified in Section A and provide the monitoring data directly to Troutdale and the County annually, or as otherwise agreed to by the Parties.

C. PERIODIC REVIEW. Every five years, or more frequently if the Parties desire, the County and Gresham will update and/or prepare projected annual budgets for the next five fiscal years for the monitoring tasks conducted by Gresham. Upon written approval of the budgets by the MS4 permit compliance representative for each Party, Exhibit A will be updated and will be subject to the payment terms of Section E. Budget projections are understood to be estimates only, subject to the oversight and appropriation authority of the Parties' respective governing bodies, and shall not be binding.

D. EFFECTIVE AND TERMINATION DATES. This Agreement shall be effective on July 1, 2011, and shall continue indefinitely, unless otherwise terminated in accordance with Section F.

E. INVOICING PROCEDURE AND COSTS.

1. Not later than June 30th of each calendar year during the term of this Agreement, Gresham shall submit invoices for work performed during the preceding fiscal year (July 1 to June 30) to the County for the cost of the services performed.
2. Each Gresham invoice shall be on City letterhead and shall include the total amount due and shall include the specific dates, times, services, employees' hourly rates, services performed and/or product being invoiced, as needed, to satisfy the County's fiscal and financial reporting requirements.
3. The County's payment to Gresham shall be full compensation for services rendered, including all labor, materials, supplies, equipment, and authorized incidental costs necessary to perform the work and services.
4. Invoiced payments that are payable to the City of Gresham are due within 60 days of the invoice date. Payments to Gresham shall be made payable to the City of Gresham and delivered to City of Gresham, Financial Services Division, 1333 NW Eastman Parkway, Gresham, Oregon, 97030.
5. The Cost Estimate for the work and scope of services to be performed under this Agreement is set forth in Exhibit A.

F. EARLY TERMINATION OF THE AGREEMENT.

1. The Parties may mutually agree to terminate the Agreement in writing. A Party may terminate its participation in this agreement unilaterally for any reason on 90 days' written notice to the other Party.
2. Any Party may terminate its participation in this Agreement in the event of a breach of the Agreement by the other Party. Prior to such termination, however, the Party seeking the termination shall give to the other Party written notice of the breach and of the Party's intent to terminate. If the breach is not cured within thirty (30) days of the notice, then the Party giving the notice may immediately terminate the Agreement at any time thereafter by giving a written notice of termination.

G. 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.

H. INDEMNIFICATION. To the extent permitted by the Oregon Tort Claims Act, Gresham agrees to indemnify, defend, and hold harmless Multnomah County from any and all claims, demands, suits, and actions (including attorney fees and costs) resulting from or arising out of the acts of Gresham and its officers, employees, and agents in performance of this intergovernmental agreement. To the extent permitted by the Oregon Tort Claims Act, Multnomah County agrees to indemnify, defend, and hold harmless Gresham from any claims, demands, suits, and actions (including attorney fees and costs) resulting from or arising out of the acts of Multnomah County and their officers, employees, and agents in performance of this intergovernmental agreement.

- I. DISPUTE RESOLUTION.** If disputes arise under this Agreement, the parties agree to negotiate in good faith to resolve the disputes in a cost effective manner. If the parties cannot resolve the dispute by negotiation, the parties agree to submit the dispute to mediation before a mediator agreed upon by the parties. If the parties cannot agree upon a mediator, either party may ask the Presiding Judge in Multnomah County Circuit Court to designate a neutral mediator. That designation shall be binding upon the parties. Regardless of the outcome of the mediation, the parties shall share the costs of the mediator equally. If mediation fails to resolve the dispute, the parties may agree to submit the dispute to arbitration, or either party may initiate litigation in an appropriate court to resolve the dispute.
- J. NON-APPROPRIATION CLAUSE.** This agreement is subject to future appropriations by any future City Council or Board of County Commissioners.
- K. ASSIGNMENT.** This Agreement is binding on each Party, its successors, assigns, and legal representatives and may not, under any condition, be assigned or transferred by the Parties without prior written approval by the other Parties.
- L. SEVERABILITY.** If any portion of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken.
- M. ADHERENCE TO LAW.** Each party shall comply with all federal, state, and local laws and ordinances applicable to this agreement.
- N. NON-DISCRIMINATION.** Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and the Parties' respective local non-discrimination ordinances.
- O. 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.

CITY OF GRESHAM

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

By: _____
Erick Kvarsten, City Manager

By: _____
Jeff Cogen, Chair

Date: _____

Date: _____

APPROVED AS TO FORM:

REVIEWED:

HENRY H. LAZENBY, JR., COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By: _____
David Ris, City Attorney for City of Gresham

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

Date: _____

Date: May 31, 2011

EXHIBIT A

A. GRESHAM'S SCOPE OF WORK.

1. Each quarter of each calendar year of the term of this Agreement Gresham shall complete in-stream monitoring and annual macro invertebrate monitoring at two (2) sites on Beaver Creek. The sites shall be selected by mutual agreement of the Parties. In-stream monitoring includes sampling and/or analyses of the following, as per the Gresham Stormwater Monitoring Plan:
 - a. Total metals (Copper, Lead, Nickel, Zinc)
 - b. Dissolved metals (Copper, Lead, Nickel, Zinc)
 - c. Mercury
 - d. E. coli
 - e. Nutrients (Chloride, Ammonia-Nitrogen, Nitrate-Nitrogen, o-Phosphate-Phosphorus-Dissolved, Total Kjeldahl Nitrogen, Total Phosphorus)
 - f. Conventional (BOD5, Total Suspended Solids, Chlorophyll-a, Total Hardness)
 - g. Field parameters (pH, Temperature, Dissolved Oxygen)

2. Following the requirements of the County's stormwater mercury monitoring requirement, Gresham shall complete monitoring for mercury and methyl mercury from a regional stormwater source.

B. COST ESTIMATE. Monitoring cost estimate for quarterly in-stream monitoring and annual macro invertebrate monitoring at two (2) sites on Beaver Creek are included as Task 1 below. Annual mercury monitoring in stormwater at one site is included as Task 2 below.

	Task 1. Beaver Creek	Task 2. Mercury - Stormwater
FY 2011/12	\$10,000	\$1,500
FY 2012/13	\$10,250	\$1,600
FY 2013/14	\$10,500	\$1,700
FY 2014/15	\$10,750	\$1,800
FY 2015/16	\$11,000	\$1,900
Estimated 5-year Total	\$52,500	\$8,500

1. Multnomah County shall reimburse Gresham for the cost of laboratory, taxonomic identification, equipment use, and sampling personnel services at two sites on Beaver Creek.
2. Multnomah County shall reimburse Gresham for the cost of laboratory equipment and personnel services for stormwater mercury monitoring at one location according to the requirements in the Multnomah County NPDES permit.
2. The Parties stipulate that the cost estimates provided herein are solely for the purpose of budget planning; actual costs may vary depending upon laboratory costs, staff time, and vehicle/equipment required for acquiring and delivering samples provided, however, that actual costs exceeding 20% of the estimated costs set forth herein shall require an update of Exhibit A, and any such cost increase shall be reimbursed only if agreed to in writing by the affected Parties.