

RESOLUTION NO. 5351-18

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT TO PROVIDE BUILDING SERVICES TO THE CITY OF DURHAM.

WHEREAS, the City of Tualatin is a public body engaged in providing municipal services, including public safety, to its citizens; and

WHEREAS, the City of Durham is a public body engaged in providing municipal services to its citizens; and

WHEREAS, ORS 190.010 et. seq. authorizes the City of Tualatin and City of Durham to enter into an intergovernmental agreement (IGA) to allow one government entity to perform services on behalf of another government entity; and

WHEREAS, the City of Tualatin and City of Durham mutually agree that the City of Tualatin will provide Building Services to the City of Durham under the terms and conditions of the IGA;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The City Manager is authorized to execute an IGA to provide Building Services to the City of Durham, which IGA is set forth in Exhibit A and incorporated by reference.

Section 2. This resolution is effective upon adoption.

INTRODUCED AND ADOPTED this 8th day of January, 2018.

CITY OF TUALATIN OREGON

BY 

Mayor

APPROVED AS TO LEGAL FORM

BY 

City Attorney

ATTEST

BY 

City Recorder

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TUALATIN AND CITY OF DURHAM FOR BUILDING SERVICES

RECITALS:

WHEREAS the City of Tualatin is an Oregon municipal corporation engaged in providing municipal services, including building services, to its citizens; and

WHEREAS the City of Durham is an Oregon municipal corporation engaged in providing municipal services, including building services, to its citizens; and

WHEREAS ORS 190.010 et. seq. authorizes the City of Tualatin and City of Durham to enter into an intergovernmental agreement; and

WHEREAS the City of Tualatin and City of Durham mutually agree to strive to enhance building services within their respective cities and in neighboring communities; and

WHEREAS the City of Durham desires to have City of Tualatin perform its building inspection and plan reviews and City of Tualatin is willing to do so.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. Term. The term of this agreement will begin upon acceptance and approval by resolution by both City of Durham and City of Tualatin City Councils and will expire on June 30, 2022, unless terminated sooner as provided under the terms of this IGA.

Section 2. Purpose. By this agreement, the City of Tualatin shall furnish basic building services to the City of Durham in exchange for 80% of the fees City of Durham charges for building plan checks and site inspections exclusive of the State surcharge. A copy of the current fees is attached as *Attachment A*.

Section 3. City of Tualatin Obligations. City of Tualatin will provide building services to City of Durham. These services could include; but are not limited to:

- A. City of Tualatin will perform building plan checks and site inspections for structural, mechanical, plumbing, and building inspections for permit applications for City of Durham by the supervision of Tualatin's Building Official.
- B. City of Tualatin Building Official will inform the City of Durham when a building permit warrants a Certificate of Occupancy. If the City of Durham agrees, the Building Official will complete the Durham Certificate of Occupancy form, issue it on City of Durham forms, and provide a copy to the City of Durham.

- C. Transmit records within five (5) business days of completion of any inspection.

Section 4. City of Durham Obligations.

- A. In exchange for the City of Tualatin providing the services outlined in section 3, the City of Durham shall pay to the City of Tualatin 80% of the permit and plan check fees collected by City of Durham exclusive of the State surcharge.
- B. The City of Durham shall not make less than quarterly payments to the City of Tualatin, provided however that should City of Durham be in arrears in payment of its fees hereunder, such default shall not be deemed a material breach unless City of Durham's entire balance is still unpaid more than 45 days after written notice by City of Tualatin.
- C. City of Durham residents will apply for permits and plan reviews with City of Durham. City of Durham shall conduct all planning and zoning reviews and inspections. City of Durham will continue to perform its own engineering review and inspections, and will continue to contract with Washington County for electrical inspections.
- D. City of Durham agrees to charge not less than those fees charged by City of Tualatin for Building Services. If, during the term of this agreement, City of Tualatin increases its fees, City of Tualatin will notify City of Durham in writing. Within sixty (60) days of City of Tualatin providing notice, City of Durham will adjust its fees to be no less than City of Tualatin's.
- E. City of Durham is responsible for fee collection and payment of the State surcharge.
- F. City of Tualatin's inspection standards and guidelines shall apply in City of Durham.
- G. City of Durham will be the official custodian of records and will comply with its own retention policy regarding any relative documents.

Section 5. Administrative Responsibility.

- A. **Employees of City of Tualatin.** City of Tualatin shall have full authority and responsibility over hiring, training, discipline, scheduling, and assignment of personnel assigned to perform and to supervise services provided under this agreement. City of Tualatin shall have full discretion and authority to assign priority service among conflicting service demands at any given time.

- B. Subcontracting.** City of Tualatin may subcontract to provide services in its discretion; provided; however, City of Tualatin shall undertake no such obligation which has the effect of diminishing or degrading the level of service provided to City of Durham.

The parties acknowledge that depending upon needs, City of Tualatin may employ consultants or subcontractors to perform work under this agreement. These consultants and subcontractors shall be responsible to City of Tualatin.

- C. Administrative or Procedural Resolution.** If an administrative or procedural problem arises, the Durham City Administrator and the Tualatin City Manager may specify procedures by written agreement after the adoption of this agreement. This agreement may be otherwise amended by written agreement of both parties.

Section 6. Other Terms and Conditions.

- A. Indemnification.** To the fullest extent permitted by the Oregon Constitution, laws of the State of Oregon regarding units of local government and subject to the monetary limits of ORS 30.260 – 30.300, each party agrees to indemnify, defend and hold the other harmless from any liability claim or injury arising from that party's acts or omissions in connection with the performance of this Agreement. Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this agreement.
- B. Insurance.** Each party agrees to maintain insurance levels or self-insurance in accordance with the Oregon tort claims act for the duration of this agreement at levels necessary to protect the public body from liability.
- C. Compliance with Applicable Law.** Both parties agree to comply with all federal, state, county and local laws, ordinances, and regulations applicable to the work to be done under this contract. Failure or neglect on the part of the other party to comply with any or all such laws, ordinances, rules, and regulations shall not relieve the other party of its obligations or requirements under this contract.
- D. Independent Contract Relationship.** The City of Tualatin through its officers, employees, and agents, will provide the services described in this agreement as an independent contractor, and nothing herein shall be interpreted or construed as creating or establishing the relationship of employer/employee, principal/agent, partnership, joint venture, association, or any other type of legal or business relationship between the City of Durham and City of Tualatin. Each party shall be solely

responsible for paying its own taxes (federal, state, and local of any type or amount); the consideration owed to its own contractors and agents; its operational expenses; the wages, salaries, benefits, withholdings, and assessments for its employees (including, for example, federal and state income taxes, social security, Medicare, unemployment insurance, workers compensation, pension or retirement, medical or life insurance); and the damages or settlements for claims arising from the negligent, reckless, or intentional acts of its employees or agents, all without contribution from the other party. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party. The City of Durham shall have no right to direct or control the manner or method by which the City of Tualatin provides the services that City of Tualatin agrees to provide through this agreement.

- E. Ownership of Work Product.** All work product produced in furtherance of this agreement belongs to the City of Durham, except that any copyright, patent, trademark proprietary, or any other protected intellectual property right shall be owned by, vest in, and is hereby assigned to the City of Tualatin. City of Tualatin retains all rights to ownership or title in any copyright, patent, trademark, proprietary or any other protected intellectual property right resulting from the work under this agreement.
- F. Workers Compensation.** City of Tualatin agrees that it will comply with ORS 656.017 or is exempt under ORS 656.126.
- G. Force Majeure.** Neither party shall be held responsible for delay or default caused by fire, riot, acts of god and war which are beyond its reasonable control. The affected party shall; however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the contract.
- H. Severability.** If any term or provision of this agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.
- I. Waiver.** The failure of a party to enforce any provision of this contract against the other party shall not constitute a waiver of that provision or any other provision.
- J. Notices.** All notices regarding this Agreement should be sent to the parties at the following addresses:

To: City of Tualatin
Alice Cannon, Assistant City Manager
18880 SW Martinazzi Avenue
Tualatin, Oregon 97062
503.691.3018
acannon@ci.tualatin.or.us

To: City of Durham
Linda Tate, City Administrator
17160 SW Upper Boones Ferry Road
Durham, Oregon 97224
503.639.6851
cityofdurham@comcast.net

Section 7. Merger. This agreement constitutes the entire agreement between the parties with respect to the subject matter hereto. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.

Section 8. Modifications of Agreement. Modifications or amendments to this agreement are valid only if made with the same formalities as this agreement was executed, in writing, and signed by all parties. Any such amendment, consent, or waiver shall be effective only in the specific instance and for the specific purpose given.

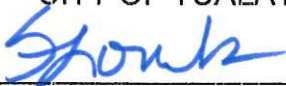
Section 9. Termination. Either party may terminate the agreement upon the giving of no fewer than 120 days prior written notice to the other party of the intent to terminate.


Section 10. Breach; Default; Disputes. If a Party breaches a covenant in this IGA, the non-breaching Party may seek all remedies available at law or equity or may revoke this IGA upon giving thirty (30) days' written notice of the alleged breach. If the breach is not cured within that time, the non-breaching party may send a second notice terminating this IGA immediately, and the IGA will be terminated unless the disputing parties request dispute resolution in writing. Upon notice of a desire for dispute resolution the following process will apply:


- A. City Manager of Tualatin and Administrator of Durham will meet in an effort to resolve the matter within 30 days of the notice.
- B. If resolution is unsuccessful, then within ten (10) days any party may request mediation. If the parties cannot agree on a mediator, they will use a mediator selected by the Presiding Judge of the Circuit Court of the State of Oregon for Washington County. Mediation will be concluded within sixty (60) days unless the disputing party agrees to a different schedule. If resolved, a written agreement shall be executed and approved by the appropriate decision maker.

- C. If mediation is unsuccessful, within fifteen (15) days, any party may seek any legal or equitable remedy in the Circuit Court of the State of Oregon for Washington County.
- D. If any suit, action, arbitration, mediation or other proceeding is instituted to enforce rights or otherwise pursue, defend, or litigate issues related to this IGA, or any other controversy arises from this IGA and regardless of any statute to the contrary, each party will bear its own attorneys fees and costs. The award of costs and expenses on appeal from a judgment entered after trial will be to the prevailing party designated as such by the appeals court.

Section 11. Signatures. The parties, by their signatures below, acknowledge having read this agreement, understand it, have authority to bind their respective governments, and agree to be bound by its terms and conditions. As evidence of their intent to make their contract, the parties' duly authorized representatives have signed this agreement on the dates noted by their signature below.

CITY OF TUALATIN
 BY 
 SHERILYN LOMBOS Date
 City Manager

CITY OF DURHAM
 BY  11-28-17
 LINDA TATE Date
 City Administrator

APPROVED AS TO FORM
 BY 
 Tualatin City Attorney