



**DAN JOHNSON**  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

March 24, 2022

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with the City of Rivergrove  
to Pave Dogwood Drive, Tualamere Avenue, and Marlin Avenue

<b>Purpose/Outcome</b>	This agreement with the City of Rivergrove will allow the use of a small city allotment fund grant to assist with the cost of paving Dogwood Drive, Tualamere Avenue, and Marlin Avenue.
<b>Dollar Amount and Fiscal Impact</b>	The estimated value of this project is \$190,000. The City will reimburse the County up to \$100,000. All costs in excess of \$100,000 will be the responsibility of the County.
<b>Funding Source</b>	County Road Funds
<b>Duration</b>	At time of agreement execution and will expire upon completion of the project or by December 31,2024, whichever is sooner
<b>Previous Board Action/Review</b>	3/22/22: Discussion item at issues
<b>Strategic Plan Alignment</b>	This project will provide strong infrastructure and ensure safe communities by maintaining the County's existing road infrastructure.
<b>Counsel Review</b>	Reviewed and approved by County Counsel on 03/07/22 NB
<b>Contact Person</b>	Vince Hall, Senior Civil Engineer, 503-650-3210

**Background:**

The purpose of this agreement is to allow the City of Rivergrove to reimburse the County for costs in an amount not to exceed \$100,000 incurred for paving three County Roads (Dogwood Drive, Tualamere Avenue, and Marlin Avenue) that are within the boundaries of the City.

The City will be receiving a Small City Allotment Fund Grant from Oregon Department of Transportation for \$100,000 that will be used to reimburse the County. The County is anticipating the cost to pave the three before mentioned roads is \$190,000.

**Recommendation:**

Staff respectfully recommends that the Board approve and sign the included Intergovernmental Agreement with the City of Rivergrove.

Sincerely,

*Vince Hall*

Vince Hall,  
Senior Civil Engineer

**INTERGOVERNMENTAL AGREEMENT**  
**Project Agreement**  
**City of Rivergrove Paving Project**

**THIS AGREEMENT** is entered into by and between CLACKAMAS COUNTY, hereinafter referred to as "County," and the CITY OF RIVERGROVE, hereinafter referred to as "City," each herein referred to individually as a "Party" and collectively as the "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, local governments may enter into agreements with other units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. Dogwood Drive, Tualamere Avenue, and Marlin Avenue, as shown in Exhibit 1, are County Roads as defined in ORS 368.001 and part of the County transportation system under the jurisdiction and control of the County, and lie inside the boundaries of the City.
3. The County has planned a project that would result in the repaving of Dogwood Drive, Tualamere Avenue, and Marlin Avenue (the "Project").
4. The City applied for, and the State of Oregon conditionally approved, a Small City Allotment Fund grant to assist with the costs of the Project described above. The State of Oregon requires an executed Intergovernmental Agreement between the City and the County before the state will award the grant or disburse any funds.
5. The County would not undertake the Project described in this Agreement without the contribution of funds from the City, and the City would not contribute the funds without the Small City Allotment Fund grant.
6. The Parties desire to define their respective obligations in regards to the Project.

**TERMS OF AGREEMENT**

**NOW, THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

1. **Term.** This Agreement becomes effective as of the last date of signature by a Party indicated below. Unless terminated earlier pursuant to Section 4 of this Agreement, this Agreement will expire upon the completion of the Project by the County and the final payment by the City pursuant to the terms of this Agreement, or by December 31, 2024, whichever is sooner.
2. **County Obligations.**
  - a. The County will contract for the scope of work set out in Exhibit 2. The County agrees to manage the Project, as set forth in Exhibit 2, and will timely administer any associated engineering, design and construction work. The County is responsible for the procurement of consultants and contractors under ORS 279C, as necessary.
  - b. Subject to the City's reimbursement of County costs described in Section 3(b),



County shall be exclusively responsible for all costs and expenses related to its performance of work under this agreement. The County will be responsible for any costs associated with the design, bidding, award of construction contract, and construction administration of the Project. The County will also be responsible for all costs incurred in delivering the Project in excess of One Hundred Thousand Dollars (\$100,000).

- c. The County will invoice the City monthly for its costs incurred in delivering the Project. Pursuant to Section 3(b), the City shall not be liable for amounts in excess of One Hundred Thousand Dollars (\$100,000), unless the Parties amend this Agreement in writing.
- d. The County agrees to continue maintain the roadway improvements within the right of way under County jurisdiction unless the maintenance obligation is transferred to the City pursuant to ORS 368 or ORS 373. None of the obligations in this agreement anticipate a maintenance transfer to the City.

### **3. City Obligations.**

- a. The City agrees to the scope of work set out in Exhibit 2.
- b. The City agrees to reimburse the County for costs incurred in delivering the Project in an amount not to exceed One Hundred Thousand Dollars (\$100,000). All costs of the Project in excess of One Hundred Thousand Dollars (\$100,000) shall be the responsibility of the County.
- c. Within 30 days of full execution of the Small City Allotment Fund Grant Agreement and execution of the agreement between the City and the State, the City agrees to transfer to the County Fifty Thousand Dollars (\$50,000) as a deposit to be applied toward the \$100,000 obligation of the City.
- d. The City agrees to request an advance from the State of Oregon on a portion of the Small City Allotment Fund grant, in the amount of Fifty Thousand Dollars (\$50,000). Within 30 days of the receipt by the City of any funds from the State of Oregon pursuant to such advance request, the City agrees to transfer to the County Twenty Five Thousand Dollars (\$25,000) as a deposit to be applied to costs of the Project incurred by the County. This obligation shall apply to any advance approved by the State of Oregon up to an amount of Twenty Five Thousand Dollars (\$25,000). These funds will then represent \$75,000 of the \$100,000 obligation of the City to the project.
- e. The City agrees to notify the County in writing of any objection to costs identified in any invoice within 10 days of receipt. After all of the funds that have been deposited with the County have been exhausted, the City agrees to pay the County within 30 days of the receipt of the County's invoice to the City.
- f. The City shall abide by all terms and conditions contained in the Small City Allotment Funds grant awarded to the City by the State of Oregon in the amount of One Hundred Thousand Dollars (\$100,000). The City is solely responsible for ensuring receipt of the funds subject to the grant. The expectation is that this final billing from the County to the City for funds will be no more than \$25,000.

### **4. Termination.**



- a. The County and the City, by mutual written agreement, may terminate this Agreement at any time.
- b. The City may terminate this Agreement effective upon delivery of written notice to the County, or at such later date as may be established by City, if the County fails to perform any of its obligations under this agreement, or so fails to pursue its obligations as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from City fails to correct such failures within ten (10) days or such longer period as City may authorize.
- c. The City may terminate this Agreement effective upon delivery of written notice to the County, or at such later date as may be established by City, if the State of Oregon does not award the Small City Allotment Funds grant to the City, or otherwise fails to provide funding to the City consistent with the terms of the Small City Allotment Fund grant agreement between the City and the State of Oregon.
- d. The County may terminate this Agreement effective upon delivery of written notice to the City, or at such later date as may be established by County, if the City fails to perform any of its obligations under this agreement, or under the Small City Allotment Fund grant agreement, or so fails to pursue its obligations as to endanger performance of this Agreement or the Small City Allotment Fund grant agreement in accordance with the terms of those respective agreements, and after receipt of written notice from County fails to correct such failures within ten (10) days or such longer period as County may authorize.
- e. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project or any of the obligations contained in this Agreement. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- f. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

## **5. Indemnification.**

- a. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.
- b. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

## **6. General Provisions**



- a. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- b. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- c. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- d. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- e. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- f. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- g. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- h. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- i. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent



specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- j. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the City.
- k. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
- l. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- m. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.
- n. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

**CITY OF RIVERGROVE, by and through it Council**

Sign Walt Williams

Print WALT WILLIAMS, MAYOR

Date FEB 23, 2022

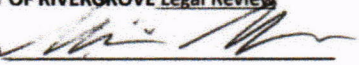
**COUNTY OF CLACKAMAS, by and through its  
Department of Transportation and  
Development**

Sign \_\_\_\_\_

Print \_\_\_\_\_

Date \_\_\_\_\_

**CITY OF RIVERGROVE Legal Review**

Sign 

Print William Koerber

Date January 15, 2022

**COUNTY OF CLACKAMASITY-OF RIVERGROVE**

**Legal Review**

Sign \_\_\_\_\_

Print \_\_\_\_\_

Date \_\_\_\_\_

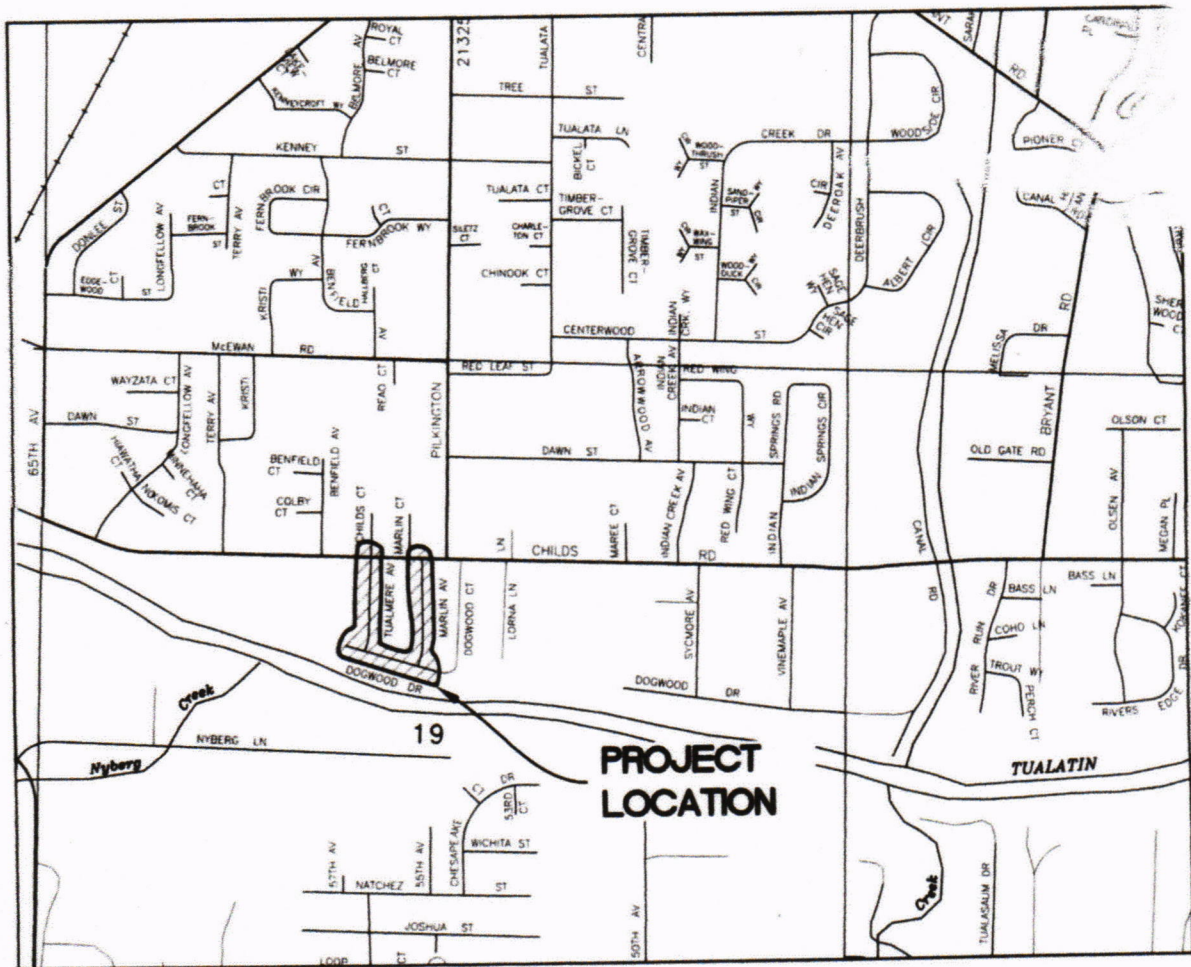
**CITY OF Rivergrove – Agency Contact**

Susie Lahsene, City Councilor  
5582 Dogwood Drive  
Lake Oswego, OR 97035  
(503) 481-3090  
susie.lahsene@gmail.com

**COUNTY OF CLACKAMAS – Agency Contact**

Vince Hall, Senior Civil Engineer  
902 Abernethy Road  
Oregon City, OR 97045  
(503) 650-3210  
vincehal@clackamas.us

**Exhibit 1 – Project Location**



**VICINITY MAP**  
NOT TO SCALE



T. 2S, R. 1E, SEC. 19



## **Exhibit 2 – Scope of Construction Work**

### **Rivergrove Paving Project**

The Rivergrove Paving Project is an asphalt paving project. This project will resurface about 0.4 miles of road. This project will resurface three local roads and they are: SW Marlin Avenue, SW Tualamere Avenue, and SW Dogwood Drive.

This project will include, but not be limited to: placing approximately 735 tons of asphalt; grinding about 6,245 square yards of asphalt; installing, maintaining, and removing temporary work zone traffic control measures; and performing additional incidental work as called for by the specifications and plans. The county is anticipating that it will cost \$190,000 to construct this project.