

EXHIBIT A

CITY OF PORTLAND CONTRACT NO. 30007894

INTERGOVERNMENTAL AGREEMENT

TNC Regulatory Services performed by the Portland Bureau of Transportation on behalf of the City of Gresham, Oregon

This AGREEMENT is made and entered into by and between the CITY OF GRESHAM, OREGON (“GRESHAM”) and the CITY OF PORTLAND (“CITY”), acting by and through its Portland Bureau of Transportation. GRESHAM and CITY are referred to individually or collectively as “Party” or “Parties.”

I. PURPOSE

CITY and GRESHAM aim to formalize an agreement by which CITY will perform regulatory functions pertaining to Transportation Network Company (“TNC”) permitting requirements and compliance functions on behalf of GRESHAM in accordance with GRESHAM City Code.

II. RECITALS

- A. GRESHAM has the authority, delegated by ORS 221.495, to license, control, and regulate privately owned vehicles for hire operating within the City of Gresham.
- B. Under this authority, GRESHAM has the desire to ensure the safety and reliability of Private for-Hire Transportation and manage the impact TNCs have on local streets.
- C. CITY will provide all services outlined in EXHIBIT A.
- D. The rate for all services rendered under this agreement between Parties are outlined in EXHIBIT B.

III. DURATION AND TERMINATION OF AGREEMENT

- A. The term of this agreement will commence on December 31, 2020.
- B. This agreement is effective for one (1) year and six (6) months and terminates on June 30, 2022.
- C. This IGA may be extended by mutual written agreement.
- D. Early Termination of Agreement. This Agreement may be terminated at any time by mutual written agreement of the Parties. Upon ninety (90) days written notice, either Party may terminate this Agreement.

IV. DEFINITIONS:

- A. "TNC" means Transportation Network Company.
- B. "TNC Company" means private for-hire company that offers transportation services to a passenger by a TNC driver and TNC vehicle on behalf of or by an affiliated "TNC Company," exclusively through a mobile application.
- C. "Certification" means the document or certification issued by the CITY affirming the driver is approved and certified as a PFHT driver under the terms of this agreement.
- D. "Regulatory Online Portal" means CITY's Software Portal, Fast Track Gov, used by drivers and companies to apply for permits and pay permit fees.
- E. "TNC Driver" means any individual operating a PFHT vehicle who connects with passengers through an Internet-based digital or software platform/application operated by an affiliated TNC.
- F. "TNC Vehicle" means any vehicle driven by a TNC driver to offer and/or provide TNC services.

V. GENERAL AGREEMENT PROVISIONS

- A. **NON-DISCRIMINATION.** In carrying out activities under this contract, neither Party shall discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, familial status or national origin. The Parties shall take affirmative actions to ensure that applicants for employment and employees are treated without regard to race, color, religion, sex, age, disability, familial status or national origin. Such action shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- B. **ACCESS TO RECORDS.** Each Party shall have access to the books, documents and other records of the other that are related to this Agreement for the purpose of examination, copy and audit.
- C. **INDEMNIFICATION.** Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the Parties shall hold harmless, indemnify and defend the other and its officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of,

or results from, the negligent acts or omissions of the indemnitor, its officers, employees, or agents.

- D. **INSURANCE.** GRESHAM as an agency of the State of Oregon is self-insured through the State Insurance Fund, administered by Risk Management Division, Department of Administrative Services. All GRESHAM personnel, officers and employees, acting within the scope of their employment are covered by ORS 30.270. GRESHAM is a subject employer under the Oregon Workers' Compensations law in compliance with ORS 656.017, and shall maintain workers' compensation insurance through the duration of this Agreement.
- E. **OREGON LAWS AND FORUM.** This Agreement shall be construed according to the laws of the State of Oregon. Any litigation between CITY and GRESHAM arising under this contract or out of work performed under this contract shall occur, in the Multnomah County Circuit Court and if in the federal Courts, in the United States District Court for the State of Oregon.
- F. **FUNDS AVAILABLE AND AUTHORIZED.** GRESHAM certifies that at the time the Agreement is written that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within current appropriation and limitation. In the event of any extension or non-appropriation, GRESHAM shall notify CITY its intent to terminate this Agreement.
- G. **CAPTIONS.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.
- 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 Agreement did not contain the particular term or provision held to be invalid.
- I. **COMPLIANCE WITH APPLICABLE LAW.** Both Parties shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this IGA. Without limiting the generality of the foregoing, the Parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; (v) Any applicable sections of ORS Chapter 279, and (vi) all other applicable requirements of Federal and State civil rights and rehabilitation statues, rules and regulations.

- J. FORCE MAJEURE. Neither Party shall be held responsible for delay or default caused by an event beyond its reasonable control (“Force Majeure Event”). The Party that cannot perform due to a Force Majeure Event shall make all reasonable efforts to remove or eliminate any cause of delay or default and shall, upon cessation of the Force Majeure Event, diligently pursue performance of its obligation under the Agreement.
- K. NO THIRD-PARTY BENEFICIARIES. CITY and GRESHAM are the only Parties to this Agreement and are the only parties entitled to enforce its terms. Nothing contained in this Agreement gives or provides any benefit, direct, indirect, or otherwise to third parties.
- L. MERGER CLAUSE. This Agreement constitutes the entire agreement between the Parties. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless made by written agreement signed by both Parties. Such waiver, consent modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written not specified herein regarding this Agreement.
- M. AMENDMENTS. CITY and GRESHAM may amend this Agreement at any time by written amendment executed by CITY and GRESHAM.
- N. CITY PROJECT MANAGER. CITY Project Manager is Mark Williams or such other person as shall be designated in writing by CITY. All notices to CITY shall be directed to:
- Mark Williams, CITY Project Manager
City of Portland
1120 SW 5th Ave – 6th floor
Portland, OR 97204
- O. The GRESHAM Project Manager shall be Allison Don or such other person designated in writing by the GRESHAM. All notices to GRESHAM shall be directed to:
- Allison Don**, GRESHAM Project Manager
City of Gresham
1333 NW Eastman Pkwy
Gresham, OR 97030

VI. SIGNATURES

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

City of Portland, Portland Bureau of Transportation

City of Gresham, Office of Governance and Management

By 

By **Nina Vetter** Digitally signed by Nina Vetter
Date: 2021 08 31 10:48:08 -07'00'

Print Name Chris Warner

Print Name Nina Vetter

Title PBOT Director

Title City Manager

Date 9/24/2021

Date _____

APPROVED AS TO FORM

APPROVED AS TO FORM

By **Ken McGair** Digitally signed by Ken McGair
Date: 2021 09 08 15:35:18 -07'00'

By **Kevin R. McConnell** Digitally signed by Kevin R. McConnell
Date: 2021.08.13 11:01:50 -07'00'

Date _____
City Attorney

Date _____

EXHIBIT A
MASTER AGREEMENT

A. DUTIES AND RESPONSIBILITIES

- 1) The Parties agree that CITY, under this agreement with GRESHAM, will verify that TNC Companies, TNC Drivers, and TNC Vehicles meet the requirements of GRESHAM City Code based on the information submitted to the City by permitted TNC Companies.

- 2) For the purpose of administering the program, CITY and GRESHAM agree to share data collected from TNC Companies. The Parties agree to enter into a non-disclosure agreement with TNC Companies regarding the sharing of disaggregated data pertaining to drivers, vehicles, and trip data for all rides originating in the City of Gresham.

- 3) GRESHAM agrees that the Gresham City Code will be amended in a manner to provide any license requirements to operate a TNC Vehicle within the City of Gresham upon the successful execution of this agreement.

- 4) The CITY and GRESHAM agree that they will notify each other in advance of any proposed code or rule changes. After notice provided by CITY of amendments to Portland City Code Chapter 16.40 relating to TNC Driver, TNC Company or TNC Vehicle requirements, GRESHAM will adopt an ordinance amending Gresham City Code Chapter 9, Article 9.65 to conform its TNC Driver, TNC Company and TNC Vehicle requirements consistent with this Agreement, within a reasonably practicable period of time.

B. DRIVER AND VEHICLE SCREENING

- 1) Pursuant to section 9.65.125, GRESHAM shall recognize all existing TNC Drivers permitted to operate in Portland as permitted drivers, adopt the current dates for TNC Driver certification and background check compliance for each permitted Portland TNC Driver, and adopt the current permit status for each permitted TNC Company. TNC Companies and TNC Vehicles certified and recertified by Portland after the effective date of Article 9.65 shall be issued a permit authorizing the TNC Driver and Company to operate in the City and GRESHAM so long as all applicable standards, conditions and operating requirements continue to be met.

- 2) CITY will provide reasonable access to GRESHAM, through the Regulatory Online Portal, that will display every permitted TNC Driver and TNC Vehicle permitted to operate within the City of Gresham in real-time.

C. CUSTOMER SERVICE

- 1) CITY will provide GRESHAM a phone number that can be issued to TNC Drivers to answer questions regarding their permit status and activity in the City of Gresham. Questions regarding a TNC Driver's business license will be directed to GRESHAM's Business License Division.

D. BUSINESS LICENSE

- 1) Any permit or certification issued to a TNC Driver from CITY also serves as the TNC Driver's business license for the purpose of operating as a TNC Driver in the City of Gresham.

E. SUSPENSIONS

- 1) CITY will not be responsible for conducting field enforcement within the City of Gresham. However, CITY will notify GRESHAM immediately when a TNC Driver failed to comply with any regulations established by GRESHAM or CITY and a permit suspension is recommended. Any time a driver suspension is recommended for failure to comply with any regulation established by GRESHAM or CITY, CITY will notify GRESHAM immediately.

F. COMPLIANCE AUDITS

- 1) CITY will conduct a monthly compliance audit on a mutually agreed number of TNC Drivers that reside in GRESHAM. TNC Drivers will be randomly selected and subject to a compliance audit. TNC Drivers that fail to cooperate with the audit may be suspended pursuant to section (E) of Exhibit A of this agreement.
- 2) On a monthly basis, the CITY will provide to GRESHAM a list of the randomly selected TNC Drivers subject to the compliance audit and whether the drivers passed or failed the compliance audit.

G. RIDE DATA

- 1) Each month, the CITY will receive from the TNC Companies data pertaining to trips originating in the City of Portland and the City of Gresham, pursuant to Gresham code section 9.65.070. CITY will analyze the data to determine the number of rides that originated within the City of Gresham. Subject to the provisions of a non-disclosure agreement to be executed by CITY, GRESHAM and the TNCs, CITY will provide the total

number of rides and supporting data to GRESHAM through a secure FTP Portal. GRESHAM will be responsible for collecting any taxes, fees, or surcharges from each permitted TNC Company permitted to pick up passengers within the City of Gresham.

H. TNC DRIVER SANCTIONS AND APPEALS

- 1) GRESHAM, will issue all penalties to TNC Companies and TNC Drivers for violations of Gresham City Code, and will collect any fines associated with violations of Gresham City Code. The CITY may provide GRESHAM supporting documentation or evidence that GRESHAM may consider prior to issuing penalties upon request.
- 2) GRESHAM, or CITY on behalf of GRESHAM, may suspend or revoke the certification of a Gresham TNC Driver for applicable violations of Gresham City Code or Portland City Code Chapter 16.40. In the event a Gresham TNC Driver files a written appeal of a penalty, or revocation or suspension of TNC Driver certification, the appeal will be processed by GRESHAM pursuant to Chapter 7 of the City of Gresham City Code section 7.50.030, Protest and Hearings at GRESHAM'S expense.

EXHIBIT B

A. FEES

- 1) CITY is responsible for the up-front cost associated with carrying out the responsibilities listed in section (B) through (H) of Exhibit A.
- 2) Each quarter, on behalf of GRESHAM, the CITY will be responsible for billing and collecting surcharge funds from the TNC Companies. After payments are received from the TNC Companies each quarter, GRESHAM will invoice the CITY for the value of the surcharge funds collected by the CITY on behalf of GRESHAM, minus the cost for administrative services described in this Agreement.
- 3) The total value of the funds the CITY will pass through to GRESHAM from surcharges collected from the TNCs on behalf of GRESHAM will not exceed \$49,999 for the term of this Agreement.
- 4) The cost to GRESHAM paid to the CITY to administer sections (B) through (H) of Exhibit A will be set at 15% of the established ride fee for each trip originating within the City of Gresham each month, not to exceed \$49,999 for the term of this Agreement.