

INTERGOVERNMENTAL AGREEMENT
(Area 93 Concept Planning)
County No. 4600007202

This is an Agreement between the City of Portland (City) and Multnomah County (County).

PURPOSE: The City, through its Bureau of Planning, agrees to enter into an Intergovernmental Agreement in which City will provide to the County a concept plan for Metro urban expansion Area 93, an unincorporated area within the County and Urban Growth Boundary, and non-contiguous to the Portland Urban Service Boundary.

The purpose of this agreement is to allow the City to use its urban planning expertise to assist the County in satisfying mandates under Title 11 of Metro's *Urban Growth Management Functional Plan* in a client-consultant relationship.

The parties agree as follows:

1. **TERM.** The term of this agreement shall be from the date of execution by both parties and shall terminate January 1, 2010, or upon proper notice by the parties as provided in this agreement.
2. **RECITALS.**
 - A. Title 11 of Metro's *Urban Growth Management Function Plan* requires that concept plans be prepared for urban expansion areas, and that the plan be adopted by the governing body with jurisdiction.
 - B. Area 93 is an urban expansion area in unincorporated Multnomah County brought into the Urban Growth Boundary by Metro in 2002. It is more specifically described as:

An area of land lying approximately ¾ mile west of the western edge of Portland's Urban Service Boundary. It is located in the western portion of Bonny Slope in unincorporated Multnomah County, bordering unincorporated Washington County to the west and south, and unincorporated Multnomah County to the north and east, as shown on Exhibit N of Metro Ordinance 02-969B (attached) and the amended Metro UGB map.
 - C. Metro Title 11 requires that concept plans be incorporated into governing bodies' Comprehensive Plans. The County has the obligation to provide a concept plan for Area 93, an unincorporated area of Multnomah County near but not contiguous to City's existing city limits or current Urban Service Boundary.
 - D. Under current state law and Portland's Comprehensive Plan policies, Portland can neither annex nor provide services to Area 93 because the area is not contiguous with Portland's existing city limits or current Urban Service Boundary. Similarly, the County, through a series of agreements, transitioned urban services to its cities and thus does not have the capacity to provide services or administer urban planning and zoning designations.

While the City cannot currently provide services to Area 93, it has a critical interest in ensuring that any future urbanization of this area complements the surrounding transportation network and development pattern and is designed to respect the area's terrain and watershed features and functions, and conserves wildlife habitat and corridors linking Forest Park with significant natural areas to the west, north and south.

- E. Recognizing the City's interests and that the County provides neither urban services nor zoning, the County proposes to contract with the City to prepare a Title 11 concept plan for Area 93. This client-consultant relationship, with the City acting in an independent contractor/consultant relationship to the County, is established through this intergovernmental agreement. The City will be responsible for managing and carrying out project-related communications with its subcontractors, Metro and County elected officials and their staff, as well as providing public outreach in accordance with a Public Involvement Plan that will be developed. (See deliverable 3.B.2.)
- F. City and County are authorized under the provisions of ORS 190.003 to 190.030 to enter into intergovernmental agreements for the performance of any and all functions that a party to the agreement has authority to perform. This agreement is made pursuant to the Authority granted by ORS Chapter 190.

3. **RESPONSIBILITIES OF CITY.** The City agrees to lead and manage the following:

A. Scope of Work

- 1. Development of a concept plan. As consultant to County, City will prepare a conceptual plan for Area 93 suitable for adoption into the County Comprehensive Plan. The plan will include an urban growth diagram, corresponding written policies, and options for governance and future service delivery. Some components may vary depending upon the service option; however, in sum the plan will provide a uniform vision for how the area will urbanize, in accordance with:
 - i. Applicable Statewide Planning Goals, statutes, and administrative rules, as well as Metro's Urban Framework Plan and Urban Growth Management Plan; and
 - ii. Metro Title 11 criteria, including the assigned or expected residential neighborhood designation that requires average residential densities of at least 10 dwelling units per net developable residential acre. "Net developable acre" is calculated by subtracting fish and wildlife habitat and other important natural areas, as well as hazard-prone areas, from the total site area.
- 2. Evaluation of service options. Preliminary service options will be studied as part of the concept planning process. Options may include annexation to Portland with city services, annexation to Portland with service by districts, or governance by the County with service by districts. Preliminary cost

estimates will be prepared and funding strategies and potential financing approaches identified.

3. Inventory work. City will perform technical analysis, including preparation of background reports and maps sufficient to document existing conditions, and support proposed plan designations and service options.
4. Stakeholder outreach. City will communicate with individual stakeholders and/or their representatives as needed to efficiently facilitate preparation of the concept plan and accompanying analyses of service options. City will also communicate as needed with Metro, City, and County elected officials, and will participate in public meetings and/or other public forums that County and City agree to in a Public Involvement Plan that are appropriate to the scale of the project.
5. Agency coordination. City will coordinate with potential service providers, Metro, and other affected agencies when preparing the concept plan and developing service options.
6. Recommendations for implementation. City will provide recommendations on the steps or actions that would need to occur before urban services can be provided and urbanization could commence.
7. Additional requirements. City or its subcontractor or consultants will prepare deliverables as described in Paragraph 3.b that will satisfy the substantive concept planning criteria set forth in Metro's Title 11.

B. Deliverables.

1. Preparation of an existing-conditions report and maps, including an analysis of buildable lands based on mapping of natural areas, wetlands, floodplains, steep slopes, and hazard areas. This work will be based on information in existing databases and GIS layers and may be field checked for minor adjustments. Original field work is subject to budget constraints and will be limited to addressing gaps in existing datasets.
2. Preparation of a Public Involvement Plan appropriate to the scale of the project that includes outlining the membership, roles, responsibilities, and functions of advisory group(s) to assist and advise project staff.
3. Draft Urban Growth Diagrams illustrating alternatives for satisfying Title 11, including an assessment of infrastructure needs and preliminary service options.
4. Draft the County's preferred Urban Growth Diagram as well as the required written policies, integrating, depicting, and satisfying those criteria set forth in Title 11. The diagram and written policies shall be structured such that they can be carried forward by the County as part of a legislative process. The components of the conceptual plan will include:

- a. A conceptual transportation network and connectivity plan;
- b. A conceptual public facilities and service plan for sanitary sewer, water, storm drainage, street maintenance, open space protection, parks and police, and fire protection;
- c. A conceptual plan for locations for any needed public facilities including but not limited to schools, parks, or fire stations;
- d. A conceptual natural resource protection and conservation plan to protect fish and wildlife habitat, water quality, and natural hazard areas, including potential mechanisms to avoid, minimize, and mitigate impacts on significant riparian and wildlife resources and water quality; and
- e. Urban service options and recommendations on the steps or actions that would need to occur before urban services can be provided and urbanization can commence.

C. Limitations.

1. Geographic. While the plan will consider Portland as a potential service provider, current state law and City Comprehensive Plan policies prohibit the City from providing service because Area 93 is not contiguous to the City or its current Urban Service Boundary. City policy requires annexation as a condition of receiving urban services.
2. Level of detail. Because of urban service delivery questions, the concept plan will be prepared at a level of detail sufficient for capital improvement plan budgeting. Service costs will be estimated on an order-of-magnitude basis, based on unit cost assumptions for each type of service, i.e., big picture numbers that may be a range and would not be appropriate for development or implementation plans. This level of detail is assumed to be less than what would be required to proceed directly with implementation but would be sufficient for a considered decision for the County Board. If and when the service delivery questions are resolved, a package of detailed Comprehensive Plan provisions and implementing regulations can be advanced through a separate agreement and timeline.

- D. Record keeping. City shall maintain a record of parties who are contacted and feedback that is received as part of the public process. The City shall retain copies of notices and other documents to support the legislative record for amendments to the County's Comprehensive Plan and Zoning Code. The City shall provide a complete copy of the legislative record within 30 days of a written notice from the County for preparation for its legislative actions. 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.

- E. Subcontract management. It is contemplated that the City will subcontract with consultants for some aspects of this agreement. The City will be responsible for managing any contracts with consultants to assist with plan preparation.
- F. Plan adoption. While the concept plan will be adopted by the County, City staff or the City's subcontractors or consultants will serve as the County's consultant throughout the legislative adoption process. In this role, City staff or the City's subcontractors or consultants will provide exhibits and assist County staff in preparing materials for public review and Planning Commission/Board of Commissioners' consideration. City staff or the City's subcontractor or consultants will also attend all public hearings in the role of consultant, assist County staff in making presentations, help answer questions, and make refinements to diagrams and policies, as needed, in response to direction from the Planning Commission and Board of Commissioners.

4. **RESPONSIBILITIES OF COUNTY.** The County agrees:

- A. Technical resources. County agrees to provide City with technical information it currently possesses to assist in the preparation of the plan to the extent County has data and will assist with acquiring additional data and GIS mapping from Metro for Area 93 and vicinity. Such information includes, but is not limited to, inventories and maps of land uses, natural resources, floodplains, and steep slopes.
- B. Assessment data. County will provide City with property ownership information in order to facilitate public outreach and will make available other assessment information as needed to assist in the preparation of the plan.
- C. Public information and outreach. The County will take primary responsibility for managing public outreach and information for this project. This includes responding to day-to-day inquiries about the project from the general public. City staff will field project specific inquiries from the public where the City and County agree that city staff is the most appropriate point of contact. County staff shall participate and provide expertise at meetings related to development and adoption of the concept plan with citizen and technical advisory groups and at open houses and workshops. The County agrees to use its best efforts to encourage Metro to participate and provide expertise at meetings related to development and adoption of the concept plan with citizen and technical advisory groups and at open houses and workshops.
- D. Adoption of the plan. County will incorporate the concept plan into its Comprehensive Framework Plan. The plan will be adopted by ordinance. County will oversee the legislative process and will provide notices of the proposed amendments as required by state law and County code. The concept plan will include public service options presented by the City; however, selection and implementation of one of the options will require subsequent action that is outside the scope of this agreement.

- E. In the event an appeal is filed challenging any legislative actions taken by the County based on the subject matter of this agreement, the County shall defend its legislation.

5. **COMPENSATION.**

- A. The County shall pay the City up to \$150,000 for the City's responsibilities set forth in this agreement. The scheduling of payments shall be in accordance with subsection C and D below.
- B. The County shall reserve an additional \$50,000 as a contingency for additional scope of work. A written addendum to this agreement setting out the tasks and costs for expenditures from this fund, in compliance with section 10 below, is required before any disbursements from the fund.
- C. City will be paid a portion of the total compensation upon completion of each of four (4) milestones, which may include a charge for City staff time related to the milestones. The four (4) milestones requiring a payment to City upon completion are the following:
 - 1. Execution of CET Grant IGA;
 - 2. Existing conditions report and maps including a public involvement plan and analysis of buildable land based on mapping of natural areas, wetlands, floodplains, steep slopes, and hazard areas;
 - 3. Draft urban growth diagrams illustrating alternatives for satisfying Title 11 including an assessment of infrastructure needs and preliminary service options; and
 - 4. Recommendation for the County's preferred Urban Growth Diagram, showing at least those elements set forth in Title 11.
- D. The amount of compensation that the County will pay the City upon completion of each milestone will be agreed upon by the Planning Directors for the County and City as an amendment to this Agreement, but the total amount shall equal the total amount of compensation set forth in Paragraph 5.A. In the event there is a dispute regarding the amount of any individual payment, which the Planning Directors cannot agree upon, the matter shall be subject to binding arbitration pursuant to section 15 below.
- E. The County shall pay the City the amount specified pursuant to paragraph 5.D for each milestone set out in paragraph 5.C within thirty (30) days after completion of the milestone. The request for final payment for services under this agreement must be received by County within 30 days following the end of the contract term. Final requests for payment received after that date shall not be paid.
- F. County is relying upon funds from Metro to pay the amounts due under this agreement. In the event the funds cease to be available to County in the amounts anticipated for this agreement, County or City may terminate the

agreement in accordance with the notice provisions of Paragraph 18, Termination, or reduce the scope of services to be provided, in accordance with Paragraph 10, Amendments. However, City is not obligated to complete work specified in this agreement without compensation from County if funding from County is not available. If County or City terminates the agreement or reduces the scope of the services to be provided due to unavailability or reduction of anticipated funds, County will compensate City for that portion of deliverable work that has been performed prior to such termination or amendment.

- G. In the event that all consultant bids obtained by the City to complete the work outlined in this agreement plus compensation for city staff time exceed the amount of funding allocated by the County to the City for this work (up to \$150,000), the City reserves the right to renegotiate or terminate this agreement.

6. **CITY CONTACT PERSON.**

For information concerning this Agreement, contact:

Robert E. Clay, AICP, Supervising Planner
1900 SW Fourth Avenue
Portland OR 97201

7. **COUNTY CONTACT PERSON.**

For information concerning this Agreement, contact:

Derrick I. Tokos, AICP, Principal Planner
1600 SE 190th Avenue
Portland OR 97233

8. **NOTICE.**

Any notice provided for under this agreement shall be sufficient if in writing and delivered personally to the following address or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the City: Robert E. Clay, AICP, Supervising Planner
1900 SW Fourth Avenue
Portland OR 97201
Phone: (503) 823-7713

If to the County: Derrick Tokos, AICP, Principal Planner
1600 SE 190th Avenue
Portland OR 97233
Phone: (503) 988-3043 x22682

9. **PROPERTY OF THE COUNTY.**

All work products of the City that result from this agreement shall be the property of the County. Requests for public records received by City related to work performed under this agreement will be forwarded to County for response. City will provide all requested public records to County in a timely manner. Upon completion or termination of this agreement, City will transfer all records and work products resulting from this agreement to County.

10. **AMENDMENTS.**

The City and the County may amend this agreement at any time by written amendments. To the extent that an amendment has no budgetary impact, the City Council and County Board of Commissioners grant authority to the County Planning Director and the City Planning Director to make changes to this agreement needed to carry out the intent and provisions of the agreement. Amendments that will result in a budgetary impact need to be made by the City Council and the Board of County Commissioners, except as provided otherwise in Paragraph 5.D. regarding the portion of the total payment from the County that will be paid upon completion of each milestone.

11. **COMPLIANCE WITH LAWS.**

The City and County shall comply with all applicable federal, state, and local laws and regulations applicable to this agreement including, but not limited to, civil rights and rehabilitation statutes and local non-discrimination ordinances.

12. **INDEMNIFICATION.**

Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, City shall indemnify, defend, and hold harmless County from and against all liability, loss and costs arising out of or resulting from the acts of City, its officers, employees, and agents in the performance of this agreement. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall indemnify, defend and hold harmless City from and against all liability, loss, and costs arising out of or resulting from the acts of County, its officers, employees, and agents in the performance of this agreement.

13. **INSURANCE.**

Each party shall each be responsible for providing workers' compensation insurance as required by law. Neither party shall be required to provide or show proof of any other insurance coverage.

14. **REMEDIES.**

In the event of a breach of the provisions of this agreement, the County's remedies shall include the right to enter into a contract with another consultant to finish the project and to obtain as damages any costs in excess of the remaining payments under this agreement.

If County fails to provide timely notice of unavailability of funds, City's remedies shall include recovery of all costs incurred for work performed prior to actual notice. If County fails to pay for work performed under this agreement, City damages shall include all costs incurred in performing such work.

15. **ARBITRATION.**

Any dispute under this agreement which is not settled by mutual agreement of County and the City within sixty (60) days of notification in writing by either party shall be submitted to an arbitration panel. The panel shall be composed of three (3) persons, one of whom shall be appointed by City, one of whom shall be appointed by the County, and one of whom shall be appointed by the County and the City. In the event the two cannot agree on the third arbitrator, then the third person shall be appointed by the Presiding Judge (Civil) of the Circuit Court of the State of Oregon for the County of Multnomah. The arbitrators shall be selected within thirty (30) days of the expiration of the sixty (60) day period. The arbitration shall be conducted in Portland, Oregon, and shall be as speedy as reasonably possible. County and City shall agree on the rules governing the arbitration (including appropriation of costs); or, if County and City cannot agree on the rules, the arbitrators shall adopt rules consistent with this section. The arbitrators shall render their decision within forty-five (45) days of their first meeting with County and City. Insofar as County and City legally may do so, they shall be bound by the decision of the panel.

16. **INTEGRATION.**

This agreement contains the entire agreement between City and the County and supersedes all prior written or oral agreements.

17. **SUBCONTRACTS AND ASSIGNMENT.**

Neither party will transfer, subcontract, or assign any part of this agreement without the written consent of the other party, except as provided in section 3.E above.

18. **TERMINATION.**

As provided in Paragraph 5.F, City or County may terminate this agreement if funds from Metro cease to be available to County in the amounts anticipated for this Agreement. County shall notify City in writing as soon as practicable after the County becomes aware that funds are not or may not be available so that City can direct subcontractors or consultants to stop work. In the event of such termination, County shall pay the City for all deliverable work performed prior to termination.

The City may terminate this agreement if County fails to make timely payments for deliverable work as provided in Paragraph 5, or if agreed responsibilities are not met or resources are not provided.

In addition to notice of lack of funds as described above, City and County shall provide 14 days prior written notice of termination to the other party.

MULTNOMAH COUNTY, OREGON

CITY OF PORTLAND

By: _____
Ted Wheeler, Chair
Board of County Commissioners

By: _____
Tom Potter, Mayor
City of Portland

Date: _____, 2008

Date: _____, 2008


Reviewed:

Approved as to form:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY

FOR THE CITY OF PORTLAND

By _____
Sandra N. Duffy
Assistant County Attorney



Linda Meng
City Attorney

Date: _____, 2008

Date: 4/17, 2008