

RESOLUTION NO. 2124

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF GRESHAM AND THE CITY OF TROUTDALE FOR EXTRA-TERRITORIAL SANITARY SEWER SERVICE AND INDUSTRIAL PRETREATMENT

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City of Troutdale and City of Gresham each own and operate a sanitary sewerage system.
2. Existing facilities are located within incorporated limits of the City of Gresham that currently utilize or propose to utilize the Troutdale sanitary sewerage system. These connections predate the prohibition of extraterritorial sanitary sewer extension contained in 12.01.110.
3. Facilities located within the incorporated limits of the City of contribute or propose to contribute wastewater which may or may not include non-domestic wastewater. Those users that are a source of non-domestic wastewater are referred to as "Industrial Users" in accordance with Chapter 12.07.030 of the Troutdale Municipal Code.
4. The City of Troutdale must implement and enforce a pretreatment program to control discharges from all industrial users of its sanitary sewerage system pursuant to requirements set out in the General Pretreatment Regulations (40 CFR Part 403) and set forth in its NPDES Waste Discharge Permit.
5. The Intergovernmental Agreement defers to the City of Troutdale to implement Troutdale's pretreatment program that subjects the industrial users within the incorporated limits of the City of Gresham that utilize the Troutdale sanitary sewerage system to the necessary pretreatment controls, including implementation and enforcement of the Troutdale sewer use ordinance.
6. The Intergovernmental Agreement has been approved by the Oregon Department of Environmental Quality and City of Gresham.


NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE


Section 1. The City of Troutdale hereby approves the IGA attached as Exhibit "A" to the staff report for extra-territorial sanitary sewer service and pretreatment.

Section 2. The Mayor and City Manager are authorized to sign the IGA, on behalf of the City of Troutdale.

Section 3. This resolution is effective immediately upon adoption.

YEAS: 7
NAYS: 0
ABSTAINED: 0



Mayor Jim Kight


Date



Debbie Stickney, City Recorder

Adopted: November 8, 2011

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF TROUTDALE
AND
THE CITY OF GRESHAM
FOR SANITARY SEWER SERVICE AND INDUSTRIAL PRETREATMENT**

This Agreement is entered into pursuant to ORS 190.010 and ORS 454.165 between the City of Troutdale (hereinafter called Troutdale) and the City of Gresham (hereinafter called Gresham), both municipal corporations of the State of Oregon, under the authority of the charters and laws applicable to Troutdale and Gresham.

This agreement is for the purposes set forth below and supersedes all previous agreements between Troutdale and Gresham relating to sanitary sewer service and industrial pretreatment for facilities located within Gresham city limits but connected to Troutdale's sanitary sewerage system.

Whereas Troutdale and Gresham each own and operate a sanitary sewerage system; and

Whereas facilities within Gresham city limits currently utilize or propose to utilize the Troutdale sanitary sewerage system; and

Whereas facilities are located within the Gresham city limits that contribute or propose to contribute wastewater which may or may not include non-domestic wastewater. Those users that are a source of non-domestic wastewater are hereinafter referred to as "Industrial Users"; and

Whereas Troutdale must implement and enforce a pretreatment program to control discharges from all industrial users of its sanitary sewerage system pursuant to requirements set out in the General Pretreatment Regulations (40 CFR Part 403) and set forth in its NPDES Waste Discharge Permit; and

Whereas in this agreement Gresham authorizes Troutdale to implement and enforce *Chapter 12.07, Pretreatment Program, Troutdale Municipal Code* for Industrial Users within the Gresham City limits that utilize the Troutdale sanitary sewerage system and defers to the City of Troutdale to implement Troutdale's pretreatment program that subjects the Industrial Users within Gresham's boundaries that utilize the Troutdale sanitary sewerage system to the necessary pretreatment controls, including implementation and enforcement of the Troutdale sewer use ordinance.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

I. SEWER USE ORDINANCE

Gresham authorizes Troutdale to implement and enforce *Chapter 12.07, Pretreatment Program, Troutdale Municipal Code* for Industrial Users within the Gresham City limits that utilize the Troutdale sanitary sewerage system

II. INDUSTRIAL USER SURVEY ADMINISTRATION

- A. At the pre-application conference or upon receipt of a building permit or land use action for any commercial or industrial development or any other user that may impact the wastewater flows in volume and/or strength, and if such user requests to connect to Troutdale's sanitary sewerage system, the City of Gresham will notify Troutdale of the request and will require, where applicable, the applicant to submit a Troutdale Industrial User Wastewater Survey to the City of Troutdale.
- B. The Industrial User, as defined by Troutdale's Code, may be required to obtain an Industrial Wastewater Discharge Permit from Troutdale.
- C. Troutdale shall not allow connection for such users without specific authorization by Troutdale's City Manager or his designee.

- D. Troutdale shall perform industrial user surveying of industrial users connected to the Troutdale sanitary sewerage system consistent with Troutdale's approved pretreatment program procedures.

III. PRETREATMENT PROGRAM ADMINISTRATION

- A. Gresham authorizes Troutdale to implement and enforce Troutdale's pretreatment regulations for Industrial Users located in Gresham and connected to the Troutdale sanitary sewerage system.
- B. Troutdale shall perform technical and administrative duties necessary to implement and enforce pretreatment regulations for industrial users connected to the Troutdale sanitary sewerage system. Troutdale will: (1) update the industrial user wastewater survey; (2) issue permits to all industrial users required to obtain a permit; (3) conduct inspections, sampling and analysis; (4) take all appropriate enforcement action as outlined in Troutdale's enforcement response plan and provided for in Troutdale's sewer use ordinance; and (5) perform any other technical or administrative duties the Parties deem appropriate. In addition, Troutdale may take emergency action to stop or prevent any discharge which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, pass through, or sludge contamination.
- C. Gresham shall submit to Troutdale a revised user inventory on at least an annual basis.
- D. The City Manager of Troutdale, or his designee, may enter the property of Industrial Users located in Gresham but served by Troutdale to conduct inspections in accordance with *Troutdale Municipal Code, Chapter 12.07, Pretreatment Program*. This inspection may include, but is not limited to, the right to inspect any industrial process and chemical storage areas and to sample, measure, or test wastewater discharges from industries located in Gresham but served by Troutdale.

IV. PRETREATMENT PROGRAM AND SERVICES COSTS

- A. Troutdale will be responsible for all costs incurred in implementing and enforcing pretreatment provisions for industrial users located in Gresham and served by the Troutdale sanitary sewerage system. Program and service costs may be adjusted with negotiation between the parties with future rate and cost studies.
- B. Gresham authorizes Troutdale to recover wastewater treatment, conveyance, pretreatment administrative costs through permit fees, system development charges, monthly user fees, or other charges from users located in Gresham that discharge to Troutdale's sanitary sewerage system. The fees and charges shall be based on the same methodology Troutdale uses for industrial users located in Troutdale and will be directly billed to the user.

V. CONNECTION TO AND USE OF FACILITIES

To avoid duplication of sewer construction, to allow for economies of scale, and for other reasons, both party's to this Agreement shall allow Gresham properties to connect to Troutdale's sanitary sewerage system. For Properties or buildings in Gresham which border the City of Troutdale and can not reasonably connect to Gresham's system, Troutdale shall allow the connection to and use of Troutdale's sanitary sewerage system provided user's obtain a Troutdale public works permit for said connection and pays all applicable connection fees and charges to Troutdale. In addition, Troutdale shall receive approval from the City of Gresham to issue the Public Works Permit to the user prior to issuance. Both party's shall agree that the new connection is appropriate and in the best interest of both party's.

VI. SUCCESSORS IN INTEREST

The provisions of this agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, and their respective successors and assigns, if any.

VII. GOVERNING LAW

The provisions of this agreement shall be construed in accordance with the laws of the State of Oregon and ordinances of the cities of Troutdale and Gresham, Oregon. Any action or suits involving any issue arising under this agreement must be brought before the appropriate court in Multnomah County, Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the District of Oregon.

VIII. REVISIONS AND AMENDMENTS

- A. The Parties will review and revise this agreement to ensure compliance with the Federal Clean Water Act (42 U.S.C. 1251 et seq.) and rules and regulations (40 CFR Part 403) issued thereunder, as necessary, but at least once every five years on a date to be determined by the Parties.
- B. If the authority of Troutdale under this agreement is questioned by an industrial user, court of law, or otherwise, Gresham will take whatever action is necessary to ensure the implementation and enforcement of Troutdale's sewer use ordinance as applied to its industrial users, including, but not limited to, implementing and enforcing Troutdale's sewer use ordinance on its own behalf and/or amending this agreement to clarify Troutdale's authority.

IX. TERMS OF AGREEMENT

- A. This Agreement shall be in effect upon the last date of signature of the parties and be in effect in perpetuity or until terminated by either party. Either party may terminate this Agreement by giving the other party 12 months written notice. After such notice is given, the Agreement shall automatically terminate at the end of the 12 month period. Either party may terminate this agreement within 30 days for breach of the terms of the IGA, provided the other party is provided the ability to cure the breach within 10 days of such notice. Either party may reopen negotiations of any or all terms of the Agreement by giving the other party six months written notice of its desire to renegotiate the Agreement.
- B. The City Manager of Troutdale and the City Manager of Gresham may amend this agreement as may be required in order to administer any minor changes to pretreatment program requirements which may be imposed by DEQ, or to clarify any issues relating to Troutdale's authority under this agreement.

X. SEVERABILITY

If any term or provision of this agreement is held to be invalid in any judicial action, 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 invalid.

XI. WAIVER

One or more waivers by either party of any provision, condition, or covenant shall not be construed by the other party as a waiver or subsequent breach of the same by the other party. This waiver provision shall not be construed to allow waiver of any obligation by any industrial user regulated by this agreement.

XII. INTERPRETATION

This Agreement was drafted as a joint effort of Troutdale and Gresham. It therefore shall not be construed against any party preparing it, but shall be construed as if both parties had prepared it.

XIII. INDEMNIFICATION

A. Indemnification by the City of Troutdale

To the extent permitted by Oregon Constitution and the Oregon Tort Claims Act, Troutdale shall hold harmless Gresham, its officers and employees and shall indemnify Gresham, its officers and employees for any claims or damages to property or injury to persons or for any penalties or fines which may be occasioned in whole or in part by Troutdale's failure to fully perform the obligations undertaken by Troutdale in this Agreement.

B. Indemnification by the City of Gresham

To the extent permitted by Oregon Constitution and the Oregon Tort Claims Act, Gresham shall hold harmless Troutdale, its officers and employees and shall indemnify Troutdale, its officers and employees, for any claims or damages to property or injury to persons or for any penalties or fines which may be occasioned, in whole or in part, by Gresham's failure to fully perform the obligations undertaken by Gresham in this Agreement.

APPROVED AND EXECUTED pursuant to the authority of the City Councils of the CITY OF TROUTDALE and the CITY OF GRESHAM.

CITY OF TROUTDALE

CITY OF GRESHAM




Craig Ward, City Manager



Erik Kvarsten, City Manager

Date: 11/21/11

Date: 12-11



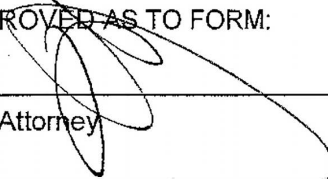
Jim Kight, Mayor



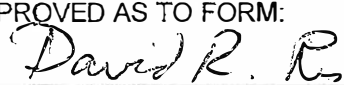
Shane T. Bemis, Mayor

Date: November 9, 2011

Date: 11/30/11

APPROVED AS TO FORM:


City Attorney

APPROVED AS TO FORM:


City Attorney