

JAN 14 2014

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**MEMORANDUM OF AGREEMENT
BETWEEN PIERCE COUNTY AND THE CITY OF FIRCREST
FOR THE PROVISION OF ROAD MAINTENANCE SUPPLIES**

THIS MEMORANDUM OF AGREEMENT is entered into this day by and between **PIERCE COUNTY**, a political subdivision of the State of Washington (herein referred to as "COUNTY") and the undersigned, **CITY OF FIRCREST, a municipal corporation** of the State of Washington (herein referred to as "CITY").

WHEREAS, the CITY has a need for specific road maintenance supplies that it cannot obtain commercially at this time; and

WHEREAS, the CITY has requested and the COUNTY has agreed to provide said supplies as described below through its Public Works and Utilities, Road Operations Division ("Road Operations"); and

WHEREAS, the COUNTY agrees to provide the supplies described below under specific terms and conditions which the CITY has reviewed and agreed to, including the reimbursement of the COUNTY for all costs incurred in providing the supplies.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, it is mutually agreed by and between the COUNTY and the CITY as follows:

SECTION 1. PURPOSE. The purpose of this agreement is to establish the rights, duties and responsibilities of the parties with regards to the road maintenance supplies requested by the CITY and being provided by the COUNTY.

SECTION 2. COUNTY'S RESPONSIBILITY. The COUNTY agrees to provide de-icing/anti-icing solid road salt or salt brine product in accordance with its adopted policy for providing such materials attached to this Agreement as Exhibit 1. Specifically, the COUNTY will be providing the following to the CITY during the term of this agreement:

1. Upon execution of this agreement, the COUNTY will incrementally manufacture salt brine in quantities requested by the CITY's designated representative and coordinate with the CITY to schedule pick up times for the CITY to retrieve the salt brine from the COUNTY's designated pick up location and transport it to the CITY's storage facility. The CITY may also request the COUNTY to delivery salt brine in County equipment by County personnel to the CITY's storage facility.
2. At the time of pickup, the COUNTY will confirm that the salinity liquid salt brine product is within a range of 23.0% to 23.9% by weight.

3. If requested by the CITY and rock salt is available from the COUNTY's vendor, the COUNTY will order additional amounts of rock salt for the CITY as determined by the COUNTY to optimally manage on hand salt inventories.

SECTION 3. CITY'S RESPONSIBILITY. In exchange for the COUNTY's provision of supplies, the CITY will perform as follows:

1. CITY shall provide written confirmation that it has reviewed the composition of the COUNTY's salt brine and has found it suitable for use in CITY equipment and for application on the CITY's street network.
2. CITY will designate a representative who will be the COUNTY's primary point of contact for this agreement.
3. CITY will compensate the COUNTY up to **\$10,000.00** per year. The CITY certifies that sufficient budgeted funds are available to cover the costs of the requested work or services, and agrees to make payment to the Pierce County Road Fund.
4. The CITY will utilize its own equipment or transport vendor to pick up and transport the rock salt or salt brine from the COUNTY's Central Maintenance Facility in Spanaway, Washington to the CITY's storage facility of its choosing.

SECTION 4. NO EXPRESSED OR IMPLIED WARRANTY. Nothing in this agreement shall be construed to provide an express or implied warranty to the CITY or to a third party. The parties agree that the COUNTY will provide salt brine that is suitable for application on COUNTY road system and the CITY has reviewed the composition of the salt brine and has agreed it is appropriate for application on the CITY street network.

SECTION 5. COMPENSATION AND BILLING PROCEDURE. In consideration for the provisions described herein, the CITY agrees to pay the COUNTY for the actual work completed based on monthly billings and in accordance with the provisions of Section 2 and 3 above. Monthly billings will be calculated as indicated below.

- A. The labor rate billed to the CITY shall be increased by thirty percent (30%) to account for administration overhead. The rate of overhead includes Maintenance Administration costs and Department Administration costs. No supervision or maintenance office costs will be charged directly.

- B. Equipment use will be charged to the CITY based upon the hours used times the Pierce County Equipment Services Division (ESD) rental rate. A five percent (5%) administration charge will be assessed for processing.
- C. Materials and supplies will be billed at cost plus a ten percent (10%) administration processing fee. ESD inventory stocked items will be billed at the Pierce County ESD materials rate.
- D. The costs of services as outlined will be billed no later than the thirtieth (30th) day of the month by the County based on services provided in the previous month. Payments by the CITY will be due within thirty days of receipt of the billing. Monthly payments that are not paid within the allotted time period shall be considered delinquent. Delinquent charges shall accrue interest on the unpaid balance, from the date of delinquency until paid, at an interest rate of one half of one percent (.5%) per month.
- E. The billing rates for labor and equipment related to providing the functions and services each year after 2013 shall be adjusted annually, effective January 1st of each year to reflect current costs. Increases in the costs that are the results of changes in regulatory requirements will be included in any increases to billing rates after 2013.

SECTION 6. DURATION. This Agreement shall remain in full force and effect upon the date that the last signature is affixed hereto until midnight December 31, 2014, and will automatically be renewed for 2 consecutive 1 year terms unless either party or both give(s) written 2 week advance notice to the other party of intent not to renew agreement.

The COUNTY reserves the right to discontinue supplying salt brine to the CITY immediately if it's ability to provide salt brine in quantities sufficient for application to the COUNTY's road system is negatively impacted or if the COUNTY cannot manufacture the amount and quality of product required due to operational or storage limitations. Specifically, the COUNTY may give as little as **30 minutes** notice to the CITY that the COUNTY will discontinue supplying salt brine, but will resume supply once COUNTY's Road Operations are no longer impacted.

SECTION 7. INDEMNITY AND HOLD HARMLESS PROVISION. The CITY agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the COUNTY, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting

therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the CITY, his/her Subcontractors, its successor or assigns, or its or their agent, servants, or employees, the COUNTY, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the COUNTY, its appointed or elected officials or employees.

The preceding paragraph is valid and enforceable only to the extent of the CITY's negligence where the damages arise out of services or work in connection with or collateral to, a contract or agreement relative to construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, a contract or agreement for architectural, landscape architectural, engineering, or land surveying services, or a motor carrier transportation contract and where the damages are caused by or result from the concurrent negligence of (i) the County or its agents or employees, and (ii) the Contractor or the Contractor's agents or employees

With respect to the performance of this Agreement and as to claims against the County, its officers, agents and employees, the CITY expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this Agreement.

SECTION 8. NO THIRD-PARTY BENEFICIARY. The COUNTY does not intend by this agreement to assume any contractual obligations to anyone other than the CITY, and the CITY does not intend by this agreement to assume any contractual obligations to anyone other than the COUNTY. The COUNTY and the CITY do not intend that there be any third-party beneficiary to this agreement.

SECTION 9. INSURANCE COVERAGE. The CITY shall maintain at all times during the course of this agreement a general liability insurance policy or other comparable coverage with a self-insured retention of no more than \$500,000.00 and a policy limit of no less than \$5,000,000.00 dollars.

SECTION 10. NON-DISCRIMINATION. The COUNTY and the CITY certify that they are Equal Opportunity Employers.

SECTION 11. ASSIGNMENT. Neither the COUNTY nor the CITY shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

SECTION 12. NOTICE. Any formal notice or communication to be given by the COUNTY to the CITY under this Agreement shall be deemed properly given, if

delivered, or if mailed postage prepaid and addressed to:

CITY of FIRCREST
115 Ramsdell Street
Fircrest, WA 98466
Attn: City Manager

Any formal notice or communication to be given by the CITY to the COUNTY under this Agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

Pierce County Public Works & Utilities
Road Operations Administration
4812 196 St E
Spanaway, WA 98387
Attention: Maintenance Office Administrator

The name and address to which notices and communications shall be directed may be changed at any time, and from time to time, by either the CITY or the COUNTY giving notice thereof to the other as herein provided.

SECTION 13. WAIVER. No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Agreement.

SECTION 14. ENTIRE AGREEMENT. This Agreement contains all of the Agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

SECTION 15. AMENDMENT. Provisions within this Agreement may be amended with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing, formally approved, and executed by duly authorized agents of both parties.

SECTION 16. SEVERABILITY. If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

SECTION 17. CHOICE OF LAW, JURISDICTION AND VENUE. This agreement shall be governed by, construed, and enforced in accordance with the laws and regulations of the United States, the State of Washington, and the ordinances of Pierce County.

SECTION 18. ATTORNEY FEES AND COSTS. In the event of any

controversy, claim, or dispute arising out of or in any way relating to this agreement or its breach, the prevailing party shall be entitled to recover its cost and reasonable attorney fees.

IN WITNESS WHERE OF, the parties have caused this Agreement to be executed on this 10th day of December, 2013.

CITY of FIRCREST

Rick Rosenblatt 12/10/13
Rick Rosenblatt Date
City Manager, City of Fircrest

PIERCE COUNTY

[Signature]
Bruce Wagner Date
Maintenance Manager,
Public Works & Utilities


[Signature] 12/30/13
Brian Ziegler Date
Director, Public Works & Utilities

[Signature] 1-2-14
DEP. PROSECUTING ATTY Date
(as to form only)

[Signature] 1/8/13
BUDGET AND FINANCE Date

[Signature]
RISK MANAGER Date

[Signature]
COUNTY EXECUTIVE Date
(if over \$250,000)

	<p style="text-align: center;">Pierce County Department of Public Works and Utilities Transportation Services Road Operations Division</p> <p style="text-align: center;">Standard Policy #1120</p>	<p style="text-align: center;">Page 1 of 1</p> <p style="text-align: center;">Effective Date 05-13-2008</p> <p style="text-align: center;">Revision Date 11-06-2008</p>
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Providing of De-Icing/Anti-Icing Products to Other Agencies

Purpose: To ensure that Road Operations may appropriately support other agencies in the region without compromise to the delivery of service as outlined in the Division's snow and ice response plans.

It is understood that typical winter weather in Pierce County is generally mild with an occasional black ice event, and that it is an exceptional winter weather event that produces a heavy snowstorm and/or freezing event over the entire County. Since this happens very infrequently, it would be an inefficient management of resources to size and base a winter maintenance program for this type of exceptional winter storm. Such planning would result in an excess of resources sitting idle for most of the winter season.

The Division's snow and ice program is based on history and the expected average conditions of winter weather in Pierce County. Therefore, when the rare heavy snow storm occurs, the Division must maximize the use of all available resources on county roads in order to reduce the threat to public safety from a significant snow and ice emergency. This means that requests for de-icing/anti-icing products and services from other agencies may be denied when these significant weather events occur.

The following guidelines shall be followed when other agencies request de-icing/anti-icing products for purchase:

- The requesting agency must have an active service contract with Pierce County Public Works and Utilities which provides for the sale of snow and ice services and/or products; or,
- The requesting agency must procure a Memo of Agreement with Pierce County Public Works and Utilities which provides for the sale of snow and ice services and/or products.
- The requesting agency must make their request directly to Road Operations Administration: (253)798-7364 - 3619 Pacific Ave E Tacoma, WA 98418
- The request must specify the volume of product desired and the time of intended pick up.
- The request will be evaluated and approved or denied based upon resource availability and current and forecast conditions.
- A denied request is non-negotiable.
- Requests for de-icing/anti-icing products will be pick-up only and at the convenience of the Division.
- The requesting agency will be billed force account at city billing rates for all labor, equipment and material resources required to procure, produce and dispense the product.
- Pierce County Public Works and Utilities Department provides no warranty and accepts no responsibility for the application or effectiveness of any de-icing/anti-icing products provided to outside agencies.

APPROVED:


 BRUCE S. WAGNER, MANAGER
 Road Operations and Maintenance