

APPENDIX J

EQUIPMENT RENTAL & SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between **LANE COUNTY**, a political subdivision of the State of Oregon, hereinafter referred to as **COUNTY**, and the **City of Dunes City**, a municipal corporation of the State of Oregon, hereinafter referred to as **CITY**.

RECITALS

1. **COUNTY** and **CITY** have determined that it is both to their mutual benefit and to the general public's benefit if they jointly utilize maintenance resources, including equipment and operators.
2. ORS 190.010 and the Lane County Home Rule Charter provide that units of local government may enter into cooperative agreements for the performance of any and all functions and activities that a party to the agreements, its officer or agents, have authority to perform with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. Under the limitations of the Oregon Constitution, **COUNTY** may only perform work on roadways and right-of ways dedicated to public use. **COUNTY** is expressly prohibited from expending road funds on private roads.

TERMS OF AGREEMENT

1. Under such authority, **COUNTY** and **CITY** desire to enter into an agreement where **COUNTY**-owned maintenance equipment operated by **COUNTY** personnel is available to **CITY** on a rental basis upon terms and conditions mutually acceptable to both parties.
2. The terms of this agreement shall be in effect from the date of the final execution of this agreement by both parties for a period of three years. The agreement may be extended at that time by mutual consent of both parties in the form of an amended agreement. Monetary payment shall not exceed a maximum amount of \$50,000 during the term of this 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:

CITY OBLIGATIONS

1. **CITY** shall present a written request to **COUNTY** when the assistance of **COUNTY**'s resources is required for the purpose of performing maintenance on public **CITY** right-of-way. Under emergency conditions, the request may be made verbally and followed up within five working days with the written request.

2. **CITY** hereby grants **COUNTY** the authority to enter onto public **CITY** right-of-way for the purpose of performing maintenance on public **CITY** right-of-way.
3. **CITY** shall supervise **COUNTY** employees who are assigned to assist **CITY** under **COUNTY** Obligation No. 1.
4. Upon receipt of billing by **COUNTY**, **CITY** will remit payment within 30 days.
5. **CITY** certifies, at the time this agreement is executed that sufficient funds are available and authorized for expenditure to finance costs of this agreement within **CITY**'s current appropriation or current budget. **CITY shall not be indebted or liable for any obligation** created by this agreement in excess of the debt limitation of Article XI, Section 7 of the Oregon Constitution.

COUNTY OBLIGATIONS

1. Upon receipt of written request by **CITY**, **COUNTY** may assign resources to assist **CITY** in maintenance work. **COUNTY** is not obligated to provide assistance to **CITY** of **COUNTY** needs the services of its resources at the time **CITY** requests assistance.
2. **COUNTY** will invoice **CITY** on a monthly basis for provided services.
3. **COUNTY** will only assign personnel to work on public **CITY** right-of-way that have similar experience on **COUNTY** right-of-way.
4. **COUNTY** shall furnish all fuel, maintenance and upkeep, and insurance for **COUNTY**-owned equipment. **COUNTY** shall furnish insurance for **COUNTY** operated rental equipment.
5. **COUNTY** shall maintain accurate and up-to-date records of All rentals of **COUNTY**-owned equipment and operators. Said records will be kept available for inspection by representative of **CITY** for a period of three (3) years after final payment.
6. **City** acknowledges and agrees that **COUNTY** and its duly authorized representatives shall have access to the books, documents, papers, and records of **CITY** that are pertinent to this specific 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.

GENERAL PROVISIONS

1. Each party shall be responsible for the following items in regard to its employees:
 - a) Payment of all wages and benefits that its employees are entitled to receive through their employment including, but not limited to, vacation, holiday and sick leave; other leaves with pay; medical, dental, life, and accident insurance; other insurance coverage; overtime; Social Security; Workers' Compensation; unemployment compensation, and retirement benefits.
 - b) Withholding Social Security, federal and state taxes, and other regular deductions from wages paid to employees.

- c) Administration of applicable civil service statutes and rules, classification and compensation plans, collective bargaining agreements, and other laws and agreement governing personal relations with employees.
- 2. Both parties shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this agreement, including, without limitation, the provisions of CRS 279.312, 279.314, 279.316, 279.320, and 279.555, by this reference made a part hereof. Without limiting the generality of the foregoing, **COUNTY** expressly agrees to comply with: (i) Title VI of Civil Rights Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- 3. The parties to this agreement are of equal authority. Each party acts independently in the performance of its obligations and functions under this agreement, and neither party is to be considered the agent of the other. Each party shall be responsible for its own negligence within the cope of the Oregon Tort Claims Act.
- 4. Neither **CITY** nor **COUNTY** shall be liable for any expenditure under this agreement without proper appropriation pursuant to ORS Chapter 291 and ORS Chapter 294 respectively.
- 5. **COUNTY** shall use its individual rental rates for labor, equipment and materials in performing work on behalf of **CITY**. **COUNTY** and **CITY** agree to meet annually for consensus on rates and services to be provided by **COUNTY** on behalf of **CITY**. The following rates apply during 7/1/2004 to 6/30/2005:

Side-flail mower with RM2 operator.....	\$84.79 per hour
Self-Propelled Sweeper with RM2 operator.....	\$71.79 per hour

- 6. Rental times, established for the purpose of record keeping and rental charges, will be as mutually agreed upon by both parties at the time the individual projects are requested. Normally, rental times will begin at the time the equipment and operator leave the owner’s shop or maintenance yard, and end when the equipment and operator return to the owner’s shop or maintenance yard.
- 7. This agreement may be terminated by mutual consent of both parties, or by either party upon 30 days notice, in writing and delivered by certified mail or in person.
- 8. Upon receipt of equipment, **CITY** shall take proper precaution in its operation, storage, and maintenance. Equipment shall be used only for its intended purpose. **CITY** shall permit the equipment to be used only by properly trained and supervised operators and shall be responsible for equipment repairs necessitated by misuse or negligent operation. **CITY** shall perform and document required written maintenance checks prior to and after use and shall provide routine daily maintenance of equipment during the period in which the equipment is in **CITY’S** possession. **CITY** shall not, however, be responsible for scheduled maintenance or repairs other than repairs necessitated by misuse or negligent operation.
- 9. **COUNTY** shall endeavor to provide equipment in good working order and to inform **CITY** of any information reasonably necessary for the proper operation of the equipment. The equipment, however, is provided “as is”, with no representations or warranties as to its fitness for a particular purpose. **CITY** shall be solely responsible for selecting the proper equipment for its needs and

inspecting equipment prior to use. It is acknowledged by the parties that **COUNTY** is not in the business of selling, leasing, renting, or otherwise providing equipment to others and that the parties are acting only for their mutual convenience and efficiency.

10. **CITY** is responsible for any damage to rental equipment considered to be beyond normal wear and tear.
11. This agreement and attached exhibit constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreement, or representations, oral or written, no 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 **COUNTY** to enforce any provision of this agreement shall not constitute a waiver by **COUNTY** of that or any other provision.

* * * * *