

RESOLUTION NO. 5547-21

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT TO PROVIDE MUNICIPAL COURT SERVICES TO THE CITY OF DURHAM.

WHEREAS, the City of Tualatin is a public body engaged in providing municipal services, including court services, to its community;

WHEREAS, the City of Durham is a public body engaged in providing municipal services to its community;

WHEREAS, ORS 190.010 et. seq., authorizes the City of Tualatin and City of Durham to enter into an intergovernmental agreement; and

WHEREAS, the City of Tualatin and City of Durham mutually agree that the City of Tualatin will provide municipal court services to the City of Durham.

NOW THEREFORE, BET IT RESOLVED BY THE CITY OF TUALATIN, OREGON, that:

Section 1. The City Manager is authorized to execute the intergovernmental agreement to provide municipal court services to the City of Durham, which is set forth in Exhibit A and is incorporated by reference.

Section 2. This resolution is effective upon adoption.

Adopted by the City Council this 24th day of May, 2021.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO FORM

BY _____
City Attorney

ATTEST:

BY _____
City Recorder

EXHIBIT A
RESOLUTION NO. 5547-21

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TUALATIN AND
CITY OF DURHAM FOR COURT SERVICES**

RECITALS:

WHEREAS, the City of Tualatin is a public body engaged in providing municipal services, including public safety, to its citizens; and

WHEREAS, the City of Durham is a public body engaged in providing municipal services to its citizens; and

WHEREAS, ORS 190.010 et. seq. authorizes the City of Tualatin and City of Durham to enter into an intergovernmental agreement (IGA); and

WHEREAS, ORS 221.355 authorizes the City of Tualatin to provide municipal court services to the City of Durham;

WHEREAS, the City of Tualatin and City of Durham mutually agree to this IGA for Municipal Court Services;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. Term. The term of this agreement will begin upon acceptance and approval by resolution by both City of Durham and City of Tualatin City Councils and will expire on June 30, 2026, unless terminated sooner as provided under the terms of this IGA.

Section 2. Purpose. The purpose of this Agreement is for Tualatin to furnish municipal court services to Durham, as specifically set forth in this Agreement.

Section 3. Services Provided.

- A.** The City of Tualatin will provide municipal court services to Durham. The Tualatin Municipal Court Judge will have all judicial jurisdiction, authority, powers, functions and duties of the municipal court of Durham with respect to all and any violations of the charter or ordinances of Durham. The exercise of jurisdiction under such an agreement by a municipal judge shall not constitute the holding of more than one office.
- B.** Nothing in this Agreement provides legal services of any nature. If Durham wishes to prosecute any violation, such prosecution must be provided by Durham.

Section 4. Proceeds Of Fines. In exchange for the City of Tualatin providing the services, the disbursement of fines will be as follows:

- A. Traffic. 100% of the proceeds from fines collected by Tualatin for traffic violations will be retained by Tualatin;
- B. Durham Charter or Ordinances. Violations of the Durham Municipal Code occurring within the corporate limits of Durham will be split with 90% being paid to Durham and 10% being retained by Tualatin.
- C. State Requirements. The proceeds provided in Subsection A and B above are net of any requirements in ORS 153.650 (Disposition of fines for traffic offenses) to 153.680 (Costs),

Section 5. Municipal Judge. For time spent adjudicating violations of Durham Charter or Ordinances, Durham will pay Tualatin the current rate of pay for the judge based on Tualatin's adopted salary schedule, for a minimum of one hour of adjudication and rounded to the nearest half-hour. If the judge hears both one or more Durham cases and one or more Tualatin cases within an hour, each party will pay for one-half hour's time.

Section 6. Independent Contract And Administrative Responsibility.

- A. **Employees of City of Tualatin.** City of Tualatin will have full authority and responsibility over hiring, training, discipline, scheduling, and assignment of personnel assigned to perform and to supervise services provided under this Agreement. City of Tualatin will have full discretion and authority to assign priority service among conflicting service demands at any given time.
- B. **Subcontracting.** City of Tualatin may contract to provide services to other agencies in its discretion, but it may not subcontract services provided to Durham without Durham's express written consent.
- C. **Independent Contract Relationship.** Tualatin through its officers, employees, and agents, will provide the services described in this Agreement as an independent contractor, and nothing herein will be interpreted or construed as creating or establishing the relationship of employer/employee, principal/agent, partnership, joint venture, association, or any other type of legal or business relationship between the Tualatin and Durham. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- D. The City of Durham has no right to direct or control the manner or method by which Tualatin provides the services that Tualatin agrees to provide through this Agreement.

Section 7. Other Terms And Conditions.

- A. Indemnification.** To the fullest extent permitted by the Oregon Constitution, laws of the State of Oregon regarding units of local government and subject to the monetary limits of ORS 30.260 – 30.300, each party agrees to indemnify, defend and hold the other harmless from any liability claim or injury arising from that party's acts or omissions in connection with the performance of this Agreement. Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this agreement.
- B. Insurance:** Each party agrees to maintain insurance levels or self-insurance in accordance with the Oregon Tort Claims Act for the duration of this Agreement at levels necessary to protect the public body from liability.
- C. Compliance with Applicable Law.** Both parties agree to comply with all federal, state, county and local laws, ordinances, and regulations applicable to the work to be done under this contract. Failure or neglect on the part of the other party to comply with any or all such laws, ordinances, rules, and regulations shall not relieve the other party of its obligations or requirements under this contract.
- D. Force Majeure.** Neither Party shall be held responsible for delay or default caused by fire, riot, acts of God and war which are beyond its reasonable control. The affected party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the contract.
- E. Governing Law.** This Agreement shall be governed construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflicts of law rules and doctrines. Any litigation between the City of Tualatin and the City of Durham that arises out of or relates to performance of this Agreement shall occur, if in the state courts, in the Washington County Circuit Court.
- F. Severability.** If any term or provision of this contract 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 contract did not contain the particular term or provision held to be invalid.
- G. Waiver.** The failure of a party to enforce any provision of this contract against the other party shall not constitute a waiver of that provision or any other provision.
- H. Notices.** All notices regarding this Agreement should be sent to the parties at the following addresses:

To : City of Tualatin
Don Hudson, Assistant City Manager/Finance Director
18880 SW Martinazzi Avenue
Tualatin, OR 97062
503.691.3050
dhudson@ Tualatin.gov

To: City of Durham
Linda Tate, City Administrator
17160 SW Upper Boones Ferry Road
Durham, OR 97224
503.639.6851
cityofdurham@comcast.net

Section 8. Modifications Of Agreement. Modifications to this Agreement are valid only if made in writing and signed by all parties. No amendment, consent, or waiver of terms of this agreement shall bind either party unless in writing and signed by both parties. Any such amendment, consent, or waiver shall be effective only in the specific instance and for the specific purpose given.

Section 9. Termination. Either party may terminate the agreement upon the giving of no fewer than 120 days prior written notice to the other party of the intent to terminate.

Section 11. Breach; Default; Disputes. If a Party breaches a covenant in this IGA, the non-breaching Party may seek all remedies available at law or equity or may revoke this IGA upon giving thirty (30) days' written notice of the alleged breach. If the breach is not cured within that time, the non-breaching party may send a second notice terminating this IGA immediately, and the IGA will be terminated unless the disputing parties request dispute resolution in writing. Upon notice of a desire for dispute resolution the following process will apply:

- A. City Manager of Tualatin and Administrator of Durham will meet in an effort to resolve the matter within 30 days of the notice.
- B. If resolution is unsuccessful, then within ten (10) days any party may request mediation. If the parties cannot agree on a mediator, they will use a mediator selected by the Presiding Judge of the Circuit Court of the State of Oregon for Washington County. Mediation will be concluded within sixty (60) days unless the disputing party agrees to a different schedule. If resolved, a written agreement shall be executed and approved by the appropriate decision maker.
- C. If mediation is unsuccessful, within fifteen (15) days, any party may seek any legal or equitable remedy in the Circuit Court of the State of Oregon for Washington County.

D. If any suit, action, arbitration, mediation or other proceeding is instituted to enforce rights or otherwise pursue, defend, or litigate issues related to this IGA, or any other controversy arises from this IGA and regardless of any statute to the contrary, each party will bear its own attorneys fees and costs. The award of costs and expenses on appeal from a judgment entered after trial will be to the prevailing party designated as such by the appeals court.

Section 12. Signatures. The parties, by their signatures below, acknowledge having read this agreement, understand it, have authority to bind their respective governments, and agree to be bound by its terms and conditions. As evidence of their intent to make their contract, the parties' duly authorized representatives have signed this Agreement on the dates noted by their signature below.

CITY OF TUALATIN

BY _____
SHERILYN LOMBOS Date
City Manager

CITY OF DURHAM

BY _____
GERY SHIRADO Date
Mayor

APPROVED AS TO FORM

BY _____
Tualatin City Attorney

EXHIBIT A
RESOLUTION NO. 5544-21

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TUALATIN AND
CITY OF DURHAM FOR POLICE SERVICES**

RECITALS:

WHEREAS, the City of Tualatin is a public body engaged in providing municipal services, including public safety, to its citizens; and

WHEREAS, the City of Durham is a public body engaged in providing municipal services to its citizens; and

WHEREAS, ORS 190.010 et. seq. authorizes the City of Tualatin and City of Durham to enter into an intergovernmental agreement; and

WHEREAS, the City of Tualatin and City of Durham mutually agree this Agreement for Police Services;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. Term. The term of this agreement will begin upon acceptance and approval by resolution by both City of Durham and City of Tualatin City Councils and will expire on June 30, 2026, unless terminated sooner as provided under the terms of this IGA.

Section 2. Purpose. The purpose of this Agreement is for Tualatin to furnish law enforcement services to Durham in exchange for a fee for services, as specifically set forth in this Agreement.

Section 3. City Of Tualatin Obligations.

- A.** City of Tualatin will provide law enforcement services to Durham 24 hours a day, 7 days per week, 365 days per year and consider Durham as part of Tualatin's service area. These law enforcement services could include, but are not limited to:
- a.** Patrol services, both proactive and reactive, within the service area as times permits at the discretion of the Tualatin Police Department on-duty supervisor.
 - b.** Respond to calls for police services originating in or directed to Durham. Response to calls will be made according to priorities established by Interagency Agreement and the Washington County Consolidated Communications Agency.
 - c.** Traffic enforcement.
 - d.** Necessary court time as a result of citations or complaints issued by the Tualatin Police Department officers in Durham.

- e. Follow-up investigations, detective work, court time, report writing, mandated training for certified officers, supervision, vehicles, equipment and materials, records management, property/evidence storage, and administration as needed.
 - f. Services provided do not include Code Enforcement of the Durham Municipal Code.
- B.** All services include report writing, training, supervision, use of equipment and materials, and administrative needs connected to those services.
- C.** Tualatin, through the chain of command of its police department, will exercise sole discretion and responsibility for decisions as to the nature and extent of response to specific requests for emergency service, given the need to apportion response capability among both Tualatin and Durham, as well as honor mutual aid agreements. Durham recognizes at any given time conflicting demands for service may require the exercise of discretion by Tualatin in setting emergency priorities for the deployment of equipment and personnel.
- D.** Tualatin will provide Durham with a summary of police activities in Durham on a monthly basis and give an annual report / summary to the Durham City Council.

Section 4. City Of Durham Obligations.

In exchange for the City of Tualatin providing police services, City of Durham will pay the following amounts for the term of the agreement:

Year 1	FY 21/22	\$151,815
Year 2	FY 22/23	\$157,888
Year 3	FY 23/24	\$164,200
Year 4	FY 24/25	\$170,770
Year 5	FY 25/26	\$177,600

Payments will be paid on a quarterly basis. In addition, Durham shall pay any additional costs from other agencies that Tualatin incurs in providing these services. Should City of Durham be in arrears in payment of its fees hereunder, such default will not be deemed a material breach unless City of Durham’s entire uncontested balance is still unpaid more than 45 days after written notice by City of Tualatin of intent to terminate.

Section 5. Independent Contract and Administrative Responsibility.

- A. Employees of City of Tualatin.** City of Tualatin will have full authority and responsibility over hiring, training, discipline, scheduling, and assignment of personnel assigned to perform and to supervise services provided under this Agreement. City of Tualatin will have full discretion and authority to assign priority service among conflicting service demands at any given time. City of

Tualatin will indemnify, defend, and hold City of Durham harmless from any liability for the direct payment of any salaries, wages, or other compensation to any City of Tualatin personnel performing services for the City of Durham under this agreement. Except as otherwise provided herein, the City of Tualatin, its officers, agents and employees have not assumed any liability for acts of City of Durham, or of any City of Durham officer, employee, or agent.

B. Services to Other Agencies. City of Tualatin may contract to provide police services to other agencies in its discretion. City of Tualatin will provide 30 days' prior notice to City of Durham before providing police services to other agencies.

C. Independent Contract Relationship. City of Tualatin through its officers, employees, and agents, will provide the services described in this Agreement as an independent contractor, and nothing herein will be interpreted or construed as creating or establishing the relationship of employer/employee, principal/agent, partnership, joint venture, association, or any other type of legal or business relationship between City of Tualatin and City of Durham. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.

D. The City of Durham has no right to direct or control the manner or method by which City of Tualatin provides the services that Tualatin agrees to provide through this Agreement.

Section 6. Other Terms and Conditions.

A. Indemnification.

a. Tualatin will indemnify, hold and save Durham, its officers, employees, and agents harmless from any and all claims that arise against Durham, its officers, employees, or agents in the performance of the duties required by the terms of this agreement, unless such claims arise as a result of some act or omission by Durham, its officers, employee, or agents.

b. Durham will indemnify, hold and save Tualatin, its officers, employees, and agents harmless from any and all claims that arise against Tualatin, its officers, employees, or agents in the performance of the duties required by the terms of this agreement, unless such claims arise as a result of some act or omission by Tualatin, its officers, employee, or agents.

B. Insurance: Each party agrees to maintain insurance levels or self-insurance in accordance with the Oregon Tort Claims Act for the duration of this Agreement at levels necessary to protect the public body from liability.

- C. Compliance with Applicable Law.** Both parties agree to comply with all federal, state, county and local laws, ordinances, and regulations applicable to the work to be done under this contract. Failure or neglect on the part of the other party to comply with any or all such laws, ordinances, rules, and regulations shall not relieve the other party of its obligations or requirements under this contract.
- D. Force Majeure.** Neither Party shall be held responsible for delay or default caused by fire, riot, acts of God and war which are beyond its reasonable control. The affected party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the contract.
- E. Governing Law.** This Agreement shall be governed construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflicts of law rules and doctrines. Any litigation between the City of Tualatin and the City of Durham that arises out of or relates to performance of this Agreement shall occur, if in the state courts, in the Washington County Circuit Court.
- F. Severability.** If any term or provision of this contract 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 contract did not contain the particular term or provision held to be invalid.
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- H. Notices.** All notices regarding this Agreement should be sent to the parties at the following addresses:

To : City of Tualatin
 Bill Steele, Chief of Police
 8650 SW Tualatin Road
 Tualatin, OR 97062
 503.691.4820
 bsteele@tualatin.gov

To: City of Durham
 Linda Tate, City Administrator
 17160 SW Upper Boones Ferry Road
 Durham, OR 97224
 503.639.6851
 cityofdurham@comcast.net

Section 7. Merger. This agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.

Section 8. Modifications of Agreement. Modifications to this Agreement are valid only if made in writing and signed by all parties. No amendment, consent, or waiver of terms of this agreement shall bind either party unless in writing and signed by both parties. Any such amendment, consent, or waiver shall be effective only in the specific instance and for the specific purpose given.

Section 9. Termination. Either party may terminate the agreement upon the giving of no fewer than 120 days' prior written notice to the other party of the intent to terminate.

Section 10. Breach; Default; Disputes. If a Party breaches a covenant in this IGA, the non-breaching Party may seek all remedies available at law or equity or may revoke this IGA upon giving thirty (30) days' written notice of the alleged breach. If the breach is not cured within that time, the non-breaching party may send a second notice terminating this IGA immediately, and the IGA will be terminated unless the disputing parties request dispute resolution in writing. Upon notice of a desire for dispute resolution the following process will apply:

- A. City Manager of Tualatin and Administrator of Durham will meet in an effort to resolve the matter within 30 days of the notice.
- B. If resolution is unsuccessful, then within ten (10) days any party may request mediation. If the parties cannot agree on a mediator, they will use a mediator selected by the Presiding Judge of the Circuit Court of the State of Oregon for Washington County. Mediation will be concluded within sixty (60) days unless the disputing party agrees to a different schedule. If resolved, a written agreement shall be executed and approved by the appropriate decision maker.
- C. If mediation is unsuccessful, within fifteen (15) days, any party may seek any legal or equitable remedy in the Circuit Court of the State of Oregon for Washington County.
- D. If any suit, action, arbitration, mediation or other proceeding is instituted to enforce rights or otherwise pursue, defend, or litigate issues related to this IGA, or any other controversy arises from this IGA and regardless of any statute to the contrary, each party will bear its own attorneys fees and costs. The award of costs and expenses on appeal from a judgment entered after trial will be to the prevailing party designated as such by the appeals court.

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CITY OF TUALATIN

CITY OF DURHAM

BY _____
SHERILYN LOMBOS Date
City Manager

BY _____
GERY SCHIRADO Date
Mayor

APPROVED AS TO FORM

BY _____
Tualatin City Attorney