

**FIRST AMENDMENT
TO MEMORANDUM OF AGREEMENT CC-98021
BETWEEN PIERCE COUNTY AND THE CITY OF EDGEWOOD**

THIS FIRST AMENDMENT is entered into by and between PIERCE COUNTY, a political subdivision of the State of Washington, hereinafter referred to as "COUNTY," and the undersigned, CITY OF EDGEWOOD, a municipal corporation of the State of Washington, hereinafter referred to as "CITY".

WHEREAS, the parties have previously entered into an Agreement dated February 10, 2015, regarding road and traffic maintenance services; and

WHEREAS, the parties desire to execute a First Amendment to replace Section 4 Compensation and Billing Procedure,

NOW THEREFORE, in consideration of the mutual benefits and advantages to be derived by each of the parties,

IS IT HEREBY AGREED as follows:

1. The MEMORANDUM OF AGREEMENT number CC-98021 shall be amended to replace Section 4, as shown in Attachment 1.
2. ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL AGREEMENT AND ALL SUPPLEMENTS, MODIFICATIONS, AND AMENDMENTS THERETO SHALL REMAIN IN FULL FORCE AND EFFECT.

Attachment 1

**FIRST AMENDMENT TO
MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF EDGEWOOD
AND PIERCE COUNTY**

Section I. Date and Parties.

This document ("First Amendment"), is dated the 27th day of August, 2019, and is entered into by and between the CITY OF EDGEWOOD, a Washington municipal corporation ("City") and PIERCE COUNTY ("County"). This First Amendment modifies the Memorandum of Agreement dated February 10, 2015, by and between the parties (the "Agreement").

Section II. Amendments to the Agreement.

Section 4. Compensation and Billing Procedure. Section 4 of the Agreement is hereby amended by replacing the entirety of the section to read as follows:

SECTION 4. COMPENSATION AND BILLING PROCEDURE. The CITY certifies that sufficient budgeted funds are available to cover the costs of the requested services and agrees to make payment to the COUNTY.

In consideration for the provision of maintenance services 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. Labor cost rates will be calculated based on the County's labor cost rates in effect during the period of service performance. Labor cost rates will be calculated based on the hours worked (in 0.1 increments) for in a specific job class and billed the CITY. The labor cost rates will include all Maintenance and Department Administration costs, as well as material and supply markup costs. No office costs related to management or maintenance will be charged directly.

B. Equipment cost rates will be calculated based on the County's equipment rental rate in effect during the period of service performance. Equipment charges will be calculated based on the hours in use (in 0.1 increments) for each type of equipment and billed to the CITY.

C. Materials and supplies will be billed at cost.

D. The costs of services as outlined will be calculated and invoiced based on the services or supplies provided in a previous month. The COUNTY will make every effort to bill the monthly charges by the thirtieth (30th) day of the following month. Payments by the CITY will be due within thirty days of receipt of the invoice. 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 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 also be included in any increases to billing rates. A list of labor and/or equipment cost rates can be provided upon request.

Section III. Other Terms Unchanged. All other terms of the Agreement remain unchanged and enforceable. The First Amendment is intended to modify the terms and conditions of the original Agreement only insofar as such modifications are set forth in this Amendment. In the case of any conflict between the terms of the Agreement and the terms of the First Amendment, the provisions of the First Amendment shall control.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be duly executed, such parties acting by their representatives being thereunto duly authorized.

DATED this 27th day of August, 2019.

CITY OF EDGEWOOD:

By: _____
Mayor _____ Date

Approved as to form only:

By: h Z S 8/27/19
City Attorney _____ Date

Attest:
By: Rachel Hymel 8/27/19
City Clerk _____ Date

PIERCE COUNTY:

By: 243 9-10-19
Deputy Prosecuting Attorney _____ Date

Approved:

By: Tonya 9/6/19
Department Director _____ Date

By: Raymond 9/16/19
Finance _____ Date

RESOLUTION NO. 19-0471

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A FIRST AMENDMENT TO THE MEMORANDUM OF AGREEMENT CC-98021, BETWEEN THE CITY OF EDGEWOOD AND PIERCE COUNTY FOR ROAD AND TRAFFIC MAINTENANCE SERVICES.

WHEREAS, the parties have previously entered into an Agreement dated February 10, 2015, regarding road and traffic maintenance services; and

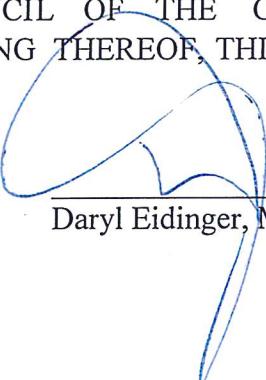
WHEREAS, the parties desire to execute a First Amendment to replace Section 4 Compensation and Billing Procedure;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. First Amendment Authorized. The Mayor is authorized to execute the First Amendment to the Memorandum of Agreement, Agreement No. CC-98021, between the City of Edgewood and Pierce County as shown in Exhibit A, attached hereto and incorporated herein by this reference.

Section 2. Effective Date. This resolution will take effect immediately upon passage by the City Council.

PASSED BY THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 27th DAY OF August, 2019.


Daryl Eidinger, Mayor

ATTEST:


Rachel Pitzel, City Clerk

ORIGINAL

**MEMORANDUM OF AGREEMENT
BETWEEN PIERCE COUNTY AND THE CITY OF EDGEWOOD
REGARDING ROAD AND TRAFFIC MAINTENANCE SERVICES**

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

WHEREAS, the CITY has a need for specific road and traffic maintenance services and has requested said services as described below to be performed by the Pierce County Public Works and Utilities Department.

WHEREAS, the COUNTY agrees to perform the work described below at the convenience of the Pierce County Public Works and Utilities Department and that the CITY will reimburse the COUNTY for all costs incurred.

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 and traffic maintenance services requested by the CITY and any costs associated with this work.

SECTION 2. COUNTY'S RESPONSIBILITY. The COUNTY will perform the following road and traffic maintenance services for the CITY under the direction and control of the CITY.

A. The COUNTY will provide road and traffic maintenance, including but not limited to, traffic signals, street lighting, traffic signs, roadway markings, roadway striping, raised pavement markers, general street repair, material hauling, street sanding, street sweeping, vactor service, snow plowing, small engineering projects, grading, and street resurfacing.

Street resurfacing project may include, but are not limited to, full depth asphalt grinding, HMA patching, and chip seal resurfacing.

De-icing/Anti-icing products will be available at the COUNTY's discretion. See Attachment 1 for the guidelines related to the supply of these materials.

B. The COUNTY may also provide services on an on-call basis, if needed. Charges for these services shall include a call out fee and an hourly fee.

C. If in the opinion of COUNTY staff the maintenance services requested are not appropriate, the COUNTY may refuse to perform such work for any reason.

SECTION 3. CITY'S RESPONSIBILITY.

- A. The CITY shall specify the location of the work to be provided by the COUNTY. The CITY shall provide the COUNTY with a list of work for each year of this agreement.
- B. Any work requested from the COUNTY shall be through written "Work Authorizations" which shall identify the specific activities to be performed.
- C. The CITY shall be responsible for locating utilities in the area in which the COUNTY shall perform work. The CITY shall be solely responsible for all costs and damage to the utility lines.
- D. All work requested by the CITY must be performed in compliance with the COUNTY's NPDES permit.

SECTION 4. COMPENSATION AND BILLING PROCEDURE. The CITY anticipates budgeted funds to accomplish work under this Agreement estimated in the amount of \$500,000.00 each year. Annually, following the adoption of the CITY's budget, no later than December 31st, the CITY shall provide, in writing (email acceptable), to the COUNTY the amount of budgeted funds anticipated to be utilized to pay for services under this Agreement for the following calendar year.

In consideration for the provision of maintenance services 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. -Equipment Rental & Revolving Fund (ERR) inventory stocked items will be billed at the Pierce County ERR 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 2015 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 2015.

SECTION 5. DURATION. Unless sooner terminated as provided elsewhere in the Agreement, this agreement shall have an initial term commencing on the date that the last signature is affixed hereto until midnight December 31, 2015. After which, the contract shall be automatically renewed annually on January 1 of each year for an additional one year term, unless either party gives notice of non-renewal not less than 60 days prior to the expiration of the current term.

SECTION 6. INDEMNIFICATION AND HOLD HARMLESS. The COUNTY shall defend, indemnify, and save harmless the CITY, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the COUNTY, its officers, employees, or agents associated with this Agreement. In executing this Agreement, the COUNTY does not assume liability or responsibility for or in any way release the CITY from any liability or responsibility which arises in whole or in part from the existence or effect of CITY ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability and/or validity of any such CITY ordinance, rule, regulation, resolution, custom, policy, or practice is at issue, the CITY shall defend the same at its sole expense and if judgment is entered or damages are awarded against the CITY, the COUNTY, or both, the CITY shall satisfy the same, including all chargeable costs and attorney's service charges.

The CITY shall defend, indemnify and save harmless the COUNTY, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the CITY, its officers, employees, or agents associated with this Agreement. In executing this Agreement, the CITY does not assume liability or responsibility for or in any way release the COUNTY from any liability or responsibility which arises in whole or in part from the existence or effect of COUNTY ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability and/or validity of any such COUNTY ordinance, rule, regulation, resolution, custom, policy, or practice is at issue, the COUNTY shall defend the same at its sole expense and if judgment is entered or damages are awarded against the COUNTY, the CITY, or both, the COUNTY shall satisfy the same, including all chargeable costs and attorney's service charges.

SECTION 7. 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 8. 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 9. NON-DISCRIMINATION. The COUNTY and the CITY certify that they are Equal Opportunity Employers.

SECTION 10. 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 11. 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 Edgewood
2221 Meridian Avenue East
Edgewood, WA 98371
attn: Public Works Director

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
4301 South Pine Street, Suite 446
Tacoma, WA 98409
Attention: County Traffic Engineer

AND

Pierce County Public Works & Utilities
4812 196th Street East
Spanaway, WA 98387
Attention: Road Operations Manager

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 12. 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 13. 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 14. TERMINATION FOR DEFAULT. If the CITY defaults by failing to perform any of the obligations of this agreement or fails to timely pay for County services, the COUNTY may, by depositing written notice to the CITY in the U.S. mail, postage prepaid, terminate the agreement.

SECTION 15. TERMINATION FOR PUBLIC CONVENIENCE. The COUNTY may terminate the contract in whole or in part whenever the COUNTY determines, in its sole discretion that such termination is in the interests of the COUNTY. Whenever the contract is terminated in accordance with this paragraph, the COUNTY shall be entitled to payment for actual work performed at unit contract prices for completed items of work. Termination of this contract by the COUNTY at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the COUNTY.

SECTION 16. 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 17. 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 18. 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 19. 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 WHEREOF, the parties have executed this Agreement this 10 day of Feb,
2015,

CITY OF EDGEWOOD

By: Mark J. Bauer 12-11-14
City Manager Date

Approved as to form only:

By: Zach Riddle 12/9/14
City Attorney Date

Attest:

By: Jane Montgomery
City Clerk Date

PIERCE COUNTY:

Approved as to legal form only:

By: Phil Peltzman 1-14-15
Deputy Prosecuting Attorney Date

Recommended:

By: W. Gary Zermuda 2/2/15
Budget & Finance Date

Approved:

By: Mark J. Bauer 1/7/15
Department Director
(less than \$250,000) Date

By: Pat McCarthy 2/10/15
Pierce County Executive
(\$250,000 or more) Date

Attachment 1 - Page 1 of 1

	<p>Pierce County Department of Public Works and Utilities Transportation Services Road Operations Division Standard Policy #1120</p>	<p>Page 1 of 1 Effective Date 05-13-2008 Revision Date 11-06-2008</p>
---	---	---

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