



City of Seattle & External Party

Standard Memorandum of Agreement (MOA)

MEMORANDUM OF AGREEMENT
between
City of Seattle (City)
and
Portland Bureau of Transportation (PBOT)
for

Response to Portland Snowstorm of January 12-15, 2017

This AGREEMENT is made and entered into on this date of 12 January 2017 by and between the City of Seattle, hereinafter referred to as the "City," and Portland Bureau of Transportation, hereinafter referred to as the "PBOT," both of which may be collectively referred to as the "Parties." The City's Lead Department as it pertains to this agreement will be Department of Transportation.

WHEREAS, the City has interest in the mobility and safety of its Sister City's residents; and

WHEREAS, the City has an interest in the "PBOT" Snow and Ice response; and

WHEREAS, the "PBOT" has an interest in the financial integrity of Seattle's Department of Transportation as a whole ; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. PURPOSE AND GENERAL PRINCIPLES

1.1 The purpose of this Agreement is to enter into a mutually beneficial contractual relationship to ensure a proper funding split of costs incurred during the response to the snowstorm of January 12-15, 2017 in Portland.

2. PROJECT SCOPE OF WORK

2.1 The City's Department of Transportation will mobilize a response team to travel to Portland to assist with PBOT's efforts to return Portland's streets to a navigable state by providing the services and equipment described in Exhibit A, attached hereto and incorporated herein.

3. CITY RESPONSIBILITIES

3.1 The City's Department of Transportation will mobilize a response team, travel to Portland, and perform work on affected streets as directed by PBOT's incident commander.

4. Portland Bureau of Transportation RESPONSIBILITIES

4.1 The PBOT incident commander will direct the City's Department of Transportation response crew as needed.

5. SCHEDULE

5.1 The duration of work will cover three workdays and two days of travel.

6. CHANGES AND MODIFICATIONS

6.1 No modification or amendment of the provisions hereof shall be effective unless in writing and signed by authorized representatives of the parties hereto. The parties hereto expressly reserve the right to modify this AGREEMENT by mutual agreement.

6.2 The City will notify PBOT of any potential revisions and/or change orders affecting the AGREEMENT Scope of Work, Budget or Schedule. The City will work with PBOT to resolve and agree upon any such changes. In the event that the Parties cannot reach agreement on revisions or change orders, the City retains the right to authorize revisions or change orders without PBOT approval.

6.3 The City will notify PBOT in writing, and/or forward copies of any claims including Notices of Dispute filed by any City Contractor for additional costs or delays resulting from PBOT – related impacts to the Project.

7. FINANCIAL COST RESPONSIBILITIES

7.1 See estimated financial responsibility costs outlined in Exhibit A.

8. PAYMENT AND BILLING

8.1 Upon receipt and approval of City's invoice for the actual costs incurred, "PBOT" shall pay for the costs identified in Section 7 above for a maximum not-to-exceed value of \$200,000.00 for the Project as described in Section 2 of this Agreement. Enter Contingency \$0.00.

8.2 The City will send the final invoice with backup documentation detailing locations and charges to the "PBOT" as requested for reimbursement.

8.3 The City will send all invoices electronically to PBOT via the email address below:

PBOTContracts@portlandoregon.gov

8.4 The "PBOT" will pay invoice within thirty (30) days of receipt.

9. ENTIRE AGREEMENT AND AMENDMENTS

9.1 This document contains terms, conditions and provisions agreed upon by the parties hereto, and shall not be modified except by written amendment.

9.2 Except as otherwise provided for in this AGREEMENT, amendments may be made to this AGREEMENT within the previously approved budget or other applicable authority for and on behalf of the City by its Director, and for and on behalf of the "PBOT" by its Director and shall be in writing and executed by such duly authorized representative of each party.

10. INDEMNIFICATION AND LEGAL RELATIONS

10.1 It is understood and agreed that this AGREEMENT is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as result of this AGREEMENT. No employees or agents of the "PBOT" shall be deemed, or represent themselves to be, employees of the City.

10.2 The "PBOT" shall comply, and shall insure that its contractors comply with all federal, state and local laws, regulations and ordinances applicable to the work and services to be performed under this AGREEMENT.

10.3 To the maximum extent permitted by law, and in accordance with the Oregon Constitution, Article XI, Section 9, and the Oregon Tort Claims Act (ORS 30.260 to 30.300), each party shall protect, defend, indemnify and save harmless the other party, its officers, officials, employees and agents while acting within the scope of their employment as such, from any and all suits, costs, claims, actions, losses, penalties, judgments, and/or awards of damages, of whatsoever kind arising out of, or in connection with, or incident to the services associated with this AGREEMENT caused by or resulting from each party's own negligent acts or omissions. The City's obligations under this indemnity provision are subject to having sufficient budget authority at the time the obligations must be fulfilled. Each party agrees that it is fully responsible for the acts and omissions of its owns subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. Each party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them. Each party shall require similar

indemnification language in all Agreements with subcontractors entered into in conjunction with this AGREEMENT.

10.4 The Parties' rights and remedies in this AGREEMENT are in addition to any other rights and remedies provided by law.

10.5 This AGREEMENT shall be interpreted in accordance with the laws of the State of Oregon in effect on the date of execution of this AGREEMENT. Subject to the provision contained herein, The Multnomah County Circuit Court, Oregon shall have exclusive jurisdiction and venue over any legal action arising under this AGREEMENT.

10.6 The provisions of this section shall survive any expiration or termination of AGREEMENT.

11. FORCE MAJEURE

11.1 Either Party shall be excused from performing its obligations under this AGREEMENT during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, earthquake or acts of nature; strikes or labor actions commandeering material, products, or facilities by the federal, state or local government; when satisfactory evidence of such cause is presented to the other party, and provided further that such non-performance is beyond the control and is not due to the fault or negligence of the party not performing. Upon any force majeure, either party may elect to terminate this AGREEMENT or suspend work upon written notice. In no event should this provision eliminate the need to make any payment to either party to the extent any such payment is required pursuant to this AGREEMENT.

12. TERMINATION

12.1 Either Party may terminate this AGREEMENT for its convenience. Written notice of such termination must be given certified by the Party terminating the AGREEMENT. Upon receipt of the notice, the Parties will meet to determine the disposition of any outstanding Work. The Parties can either negotiate a close out to all outstanding Work or the Parties can agree to complete all outstanding work. In any case the AGREEMENT will terminate at the latest completion date agreed upon for all outstanding approved Work in place at the time the termination notice is received.

12.2 Either Party may terminate this AGREEMENT in the event that the other Party materially breaches this AGREEMENT. Written notice of such termination and a description of the breach must be given via certified mail by the Party terminating this AGREEMENT to the other Party not less than sixty days prior to the effective date of termination. The breaching Party shall be given this sixty days in which to cure its material breach. If the breaching party fails to cure within sixty days, the AGREEMENT is

12.3 Failure to require full and timely performance of any provision at any time shall not waive or reduce the right to insist upon complete and timely performance of any other provision thereafter.

13. WAIVER OF DEFAULT

13.1 Waiver of any default shall not be a waiver of any subsequent default. Waiver of breach of any provision of the AGREEMENT shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this AGREEMENT unless stated to be such in writing, signed by authorized Parties and attached to the original AGREEMENT.

14. ASSIGNMENT

14.1 This AGREEMENT shall be binding upon the Parties, their successors and permitted assigns; provided, however, that neither Party shall assign any portion of this AGREEMENT without the other's prior written consent which consent shall not be unreasonably withheld, delayed or denied.

15. NO THIRD PARTY BENEFICIARIES

15.1 Nothing in this AGREEMENT, express or implied, is intended to confer on any person or entity other than the Parties hereto and their respective successors and assigns any rights or remedies under or by virtue of this AGREEMENT.

16. MUTUAL NEGOTIATION AND CONSTRUCTION

16.1 This AGREEMENT, and each of the terms and provisions hereof, shall be deemed to have been explicitly negotiated between, and mutually drafted by, the Parties, and the language in all parts of this AGREEMENT shall, in all cases, be construed according to its fair meaning and not strictly for or against either Party.

17. ALL TERMS AND CONDITIONS

17.1 This AGREEMENT contains all the terms and conditions agreed upon by the Parties with respect to the subject matter hereof. No other understandings, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind any of the Parties hereto.

18. ADVERTISING

18.1 Neither Party will use the other Party's name, marks, codes, drawing or specifications in any advertising, press release, promotional effort or publicity of any kind without the other's prior written permission.

19. NOTICES

19.1 Notices required under this AGREEMENT will be sent to the addresses of the Parties stated below in Section 21.1. Notice will be deemed given: (a) on the 1st day after deposit with an overnight courier, charges prepaid; (b) as of the day of receipt, if sent via First Class U.S. Mail, charges prepaid, return receipt requested, and (c) as of the day of receipt, if hand delivered.

20. IDENTIFICATION OF CONTACTS

20.1 The contacts for the administration of this AGREEMENT are as follows:

PORTLAND BUREAU OF TRANSPORTATION
ATTN: PBOT CONTRACTS
1120 SW FIFTH AVE, SUITE 800
PORTLAND, OR 97204
503-823-7031 / 503-823-6193

PBOTContracts@portlandoregon.gov

SEATTLE DEPARTMENT OF TRANSPORTATION
FINANCE AND ADMINISTRATION DIVISION
CHRISTIAN DIAZ
800 5TH AVE
Seattle, WA 98104
206-684-0468

20.2 Signature authority for the "PBOT" will reside with Dan Saltzman, PBOT Commissioner-in Charge. Signature authority for the City will reside with Karen Melanson, SDOT Deputy Director.

20.3 Any disputes between the Parties may be elevated to the "PBOT's" Director, Leah Treat, and the City's Director, Scott Kubly for resolution if such resolution cannot be reached at the lower levels of authority.

21. DURATION AND EXTENSION

21.1 This AGREEMENT shall take effect upon the latest date on which one of the parties executes this AGREEMENT provided, however, that this AGREEMENT applies to costs incurred and actions taken prior to the "Effective Date" that specifically fall within the terms of this AGREEMENT. This AGREEMENT shall expire 31 December 2017 unless extended by mutual agreement of the parties.

22. SEVERABILITY

of this AGREEMENT. This AGREEMENT shall expire 31 December 2017 unless extended by mutual agreement of the parties.

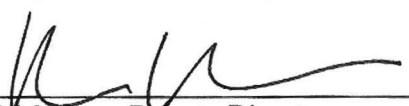
22. SEVERABILITY

22.1 If any provisions of this AGREEMENT are held invalid by a court of competent jurisdiction, the remainder of the AGREEMENT shall not be affected thereby if such remainder would then continue to serve the purposes and objectives originally contemplated by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the date affixed to their signatures.

Seattle Department of Transportation

By



Karen Melanson, Deputy Director

3/23/17
DATE

Portland Bureau of Transportation

By

Dan Saltzman, Commissioner

DATE

Office of City Attorney

DATE

Attachments:
Exhibit A

EXHIBIT A

188371

Budget Table A - Actual Costs

Summary of SDOT's activities related to Portland Snow and Ice Response

Snow Crew

Manager	1	\$4,334
Truck Drivers	4	\$26,454
Crew Chiefs	2	\$12,401
CMEO	1	\$8,568
Maint Laborers	4	\$24,108
Sr Env Analyst	1	\$5,518
Snow Labor Subtotal	13	\$81,383
Equipment	11 Vehicles	\$15,040
Deicer	2500/gallons	\$2,600
Salt	40/tons	\$4,294
Per Diem/Hotels	13/people	\$6,635
Non-Labor Subtotal		\$28,569
Grand Total		\$109,952

Tree Crew

Lead Trimmer	1	\$6,540
Tree Trimmer	2	\$11,519
Arboriculturist	1	\$7,088
Tree Crew Labor Subtotal	4	\$25,147
Equipment	2 Vehicles	\$1,947
Per Diem/Hotels	4/people	\$3,413
Non-Labor Subtotal		\$5,360
Grand Total		\$30,507

Labor Total		\$106,530
Equipment Total		\$16,987
Materials Total		\$6,894
Per Diem/Hotels Total		\$10,048
Grand Total		\$140,459