

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (IGA) for services is between Multnomah County, acting by and through its Department of Community Justice, hereinafter referred to as COUNTY, and the City of Portland, Oregon, Bureau of Water Works hereinafter referred to as CITY. The COUNTY will provide to the CITY general heavy brushing work on right of ways, roadsides, trails and City of Portland properties.

RECITALS:

1. This IGA is authorized pursuant to ORS 190.110. The CITY, as a part of its operational plan, hires seasonal workers to supplement existing resources to address temporary, fluctuating workloads.
2. The CITY is interested in, and has objectives, in hiring Portland area adults participating in programs administered through the Multnomah County Department of Community Justice in an effort to assist broader community goals as well as filling the needs of the CITY.
3. The CITY has worked successfully with the Multnomah County Department of Community Justice to address CITY objectives, and has funds approved by Council to further these efforts via this agreement.

AGREEMENT:

1. TERM

- a) The term of this agreement shall be from July 1, 2009 through June 30, 2014.
- b) Services will be performed by the COUNTY as requested by the CITY at various times and throughout the term of the agreement. Periods of service will be discrete and discontinuous throughout the term.

2. RESPONSIBILITIES OF CITY

- a) The CITY agrees to pay the COUNTY up to but not to exceed the sum of \$40,000 for the time period of July 1, 2009 through June 30, 2010 for a crew of no fewer than 6 individuals performing heavy brushing work on right of ways, roadsides, trails and City of Portland properties. For each fiscal year thereafter, starting with FY 2010-11 through 2013-14, the CITY agrees to pay the COUNTY up to but not to exceed the sum of \$40,000 per year for a crew of no fewer than 6 individuals performing heavy brushing work on right of ways, roadsides, trails and City of Portland properties. The COUNTY will be compensated for these services based on the Payment Schedule contained in Attachment A. This compensation shall be full compensation for work performed, for services rendered, and for all labor, indirect costs, materials, supplies, equipment, and incidentals necessary to perform the work and services.

- b) The CITY does not bind itself to use the available services of the COUNTY and payment will be made only for work performed, rounded to the nearest full day.
- c) The CITY shall remit payment to the COUNTY within thirty (30) days receipt of invoice. Checks shall be made payable to Multnomah County and mailed to:
Department of Community Justice Business Services, Accounts Receivable
501 SE Hawthorne Blvd. Suite 250 Portland, OR 97214.
- d) The CITY will be responsible for disposal of any debris resulting from the work, and will provide only the equipment needed to handle disposal of any debris resulting from the work.
- e) The CITY shall request services from COUNTY by the following designated CITY contacts, or such other person as shall be designated by the Director of Operations and Maintenance of the City of Portland, Oregon, Bureau of Water Works. Designated CITY contacts are authorized to approve work and billings hereunder, to give notices referred to herein by CITY, to terminate this Agreement as provided herein, and to carry out any other CITY actions referred to herein:

TIM GRANDLE, BULL RUN SUPPLY SUPERVISOR
10991 S.E. LUSTED ROAD
SANDY, OREGON, 97055
503-663-7002,
tgrandle@water.cLportland.or.us

3. RESPONSIBILITIES OF COUNTY

The COUNTY agrees to perform general heavy brushing work on right of ways, roadsides, trails, and City of Portland properties a maximum of four days per week for up to 26 weeks per fiscal year as requested by and serving the CITY in the following manner:

- a) COUNTY shall respond to requests for services from CITY through the following designated COUNTY contact: Gerard A. Welch Program Administrator Department of Juvenile and Adult Community Justice 1401 N.E. 68th Avenue Portland, OR 97213 503-988-4628 Gerard.a.welch@co.multnomah.or.us
- b) Provide a work crew of no fewer than 6 individuals performing heavy brushing work on right of ways, roadsides, trails, and City of Portland properties. Work crew schedules will be 10 hours per day, up to four days per week, for a period of up to 26 weeks per fiscal year.
- c) Provide continuous on-site supervision for all COUNTY crewmembers.
- d) Provide transportation for all COUNTY crew members to and from CITY job locations as well as while working at specific locations.

- e) Provide equipment tools and supplies needed to perform the work including but not limited to the following: Hand brushing tools; Gasoline powered brushers, and associated wear items and fuel; Gasoline powered chainsaws, and associated wear items and fuel; Job task appropriate Personal Protective Equipment for all COUNTY crewmembers; and Sanitation facilities and supplies for all COUNTY crewmembers.
- f) Track and record the days and hours worked, and submit a written summary of these days and hours to designated CITY contact on a weekly basis.
- g) Invoices will be submitted quarterly. COUNTY agrees to invoice CITY at the end of each quarter throughout the term of this Agreement. COUNTY will mail quarterly invoices to:

City of Portland - Water Bureau
Attn: Accounting Department – Room 609
1120 SW 5th Avenue
Portland, OR 97204-1926

4. EARLY TERMINATION OF AGREEMENT

- a) The CITY and COUNTY, by mutual written agreement, may terminate this Agreement at anytime.
- b) The CITY, upon 30 days written notice to the COUNTY, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- c) Either the CITY or the COUNTY may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

5. PAYMENT ON EARLY TERMINATION

- a) In the event of termination under subsection 4 (a) or (b) EARLY TERMINATION OF AGREEMENT, hereof, the CITY shall pay the COUNTY for work performed in accordance with the Agreement prior to the termination date.
- b) In the event of termination under subsection 4 (c) EARLY TERMINATION OF AGREEMENT, hereof, by the COUNTY due to a breach by the CITY, then the CITY shall pay the COUNTY as provided in subsection (a) of this section.
- c) In the event of termination under subsection 4 (c) EARLY TERMINATION OF AGREEMENT, hereof, by the CITY due to a breach by the COUNTY, then the CITY shall pay the COUNTY as provided in subsection (a) of this section, subject to set off of excess costs, provided for in Section 6 (a), REMEDIES.

6. REMEDIES

- a) In the event of termination under subsection 4 (c) EARLY TERMINATION OF AGREEMENT, hereof, by the CITY due to a breach by the COUNTY, then the CITY may complete the work either itself or by agreement with another contractor, or by a combination thereof. In the event the cost of completing the work exceeds that amount actually paid to the COUNTY hereunder plus the remaining unpaid balance of the compensation provided under Section 2, RESPONSIBILITIES OF CITY, hereof, then the COUNTY shall pay to the CITY the amount of the excess.
- b) The remedies provided to the CITY under sections 4 EARLY TERMINATION OF AGREEMENT, and 6 REMEDIES, hereof, for a breach by the COUNTY shall not be exclusive. The CITY also shall be entitled to any other equitable and legal remedies that are available.
- c) In the event of breach of this Agreement by the CITY, then the COUNTY'S remedy shall be limited to termination of the Agreement and, receipt of payment as provided in sections 4 (c), EARLY TERMINATION OF AGREEMENT, and 5 (b), PAYMENT ON EARLY TERMINATION, hereof.

7. INDEMNIFICATION

- a) Subject to the Oregon Tort Claims Act, the COUNTY shall defend, hold harmless and indemnify the CITY and the CITY'S officers, agents, and employees against all claims, suits, demands, or actions (including all attorney fees and costs) brought against any of them arising or which are alleged to have resulted from or arisen out of the acts and omissions of the COUNTY, its officers, employees, subcontractors, or agents in the performance of this Agreement.
- b) Subject to the Oregon Tort Claims Act, the CITY shall defend, hold harmless and indemnify the COUNTY and the COUNTY'S officers, agents, and employees against all claims, suits, demands, or actions (including all attorney fees and costs) brought against any of them arising or which are alleged to have resulted from or arisen out of the acts and omissions of the CITY, its officers, employees, subcontractors, or agents in the performance of this Agreement.

8. INSURANCE

Each party shall each be responsible for providing worker's compensation insurance as required by law and for providing general liability self-insurance coverage or commercial liability coverage on their respective operations. Neither party shall be required to provide or show proof of insurance coverage.

9. ADHERENCE TO LAW

Each party shall comply with all federal, state, and local laws, and ordinances and regulations applicable to this Agreement.

10. OREGON LAW AND FORUM

- a) This Agreement shall be construed according to the law of the State of Oregon.
- b) Any litigation between the CITY and the COUNTY arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

11. MAINTENANCE OF RECORDS

Each party shall have access to the books, documents, and other records of the other which are related to this agreement for the purpose of examination, copying and audit, unless otherwise limited by law. Each party shall retain these records for inspection, audit, and copying for three (3) years from the date of completion or termination of this Agreement.

12. AUDIT OF PAYMENTS

- a) The CITY either directly or through a designated representative, may audit the records of the COUNTY at any time during the three (3) year period established by Section 11, MAINTENANCE OF RECORDS.
- b) If an audit discloses that payments to the COUNTY under Section 2, RESPONSIBILITIES OF CITY, were in excess of the amount to which the COUNTY was entitled, then the COUNTY shall repay the amount of the excess to the CITY.

13. SUB-CONTRACTS

The COUNTY shall not subcontract its work under this Agreement, in whole or in part, without the written approval of the CITY. The COUNTY shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the COUNTY as specified in this Agreement. Notwithstanding CITY approval of a subcontractor, the COUNTY shall remain obligated for full performance hereunder, and the CITY shall incur no obligation other than its obligations to the COUNTY hereunder. The COUNTY agrees that if subcontractors are employed in the performance of this Agreement, the COUNTY and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Worker's Compensation.

14. ASSIGNMENT

The COUNTY shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the CITY.

15. BREACH OF AGREEMENT

- a) The CITY or the COUNTY shall breach this Agreement if it fails to perform any substantial obligation under the Agreement, except as provided in subsection (b) of this section.
- b) Neither the CITY nor the COUNTY shall have breached this Agreement by reason of any failure to perform a substantial obligation under the

Agreement if the failure arises out of causes beyond its control and without its fault or negligence. Such causes may include, without limitation, acts of God or the public enemy, acts of the federal, state, or local governments, fires, floods, epidemics, volcanic eruptions, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. Should either the CITY or the COUNTY fail to perform because of a cause described in this subsection, the CITY and the COUNTY shall make a mutually acceptable revision in the Scope of Services, Schedule, or Compensation.

16. NOTICE

Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee (or person designated in writing to act on behalf of the COUNTY) or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

CITY

Tom Klutz
Project Manager
120 SW 5th Avenue,
Portland, OR 97204-1926

COUNTY

Gerard A. Welch
Community Justice Manager
Department of Community Justice/Adult
421 SW 5th Ave, Suite 600
Portland, OR 97204

17. SEVERABILITY

If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.

18. AMENDMENTS

- a) The CITY and COUNTY may amend this Agreement at any time only by written amendment executed by the CITY and COUNTY. Any amendment that increases the amount of compensation payable to the COUNTY must be approved by ordinance of the City Council. If authorized by the City Council, the CITY contact may agree to and execute any other amendment on behalf of the CITY.
- b) Any change in the Scope of COUNTY Services shall be deemed an amendment subject to subsection (a).

19. INTEGRATION

This Agreement contains the entire agreement between the CITY and the COUNTY and supersedes all prior written or oral discussions or agreements.

20. FUNDS

CITY certifies that sufficient funds are available and authorized for expenditure to finance the cost of this Agreement.

21. COMMENCEMENT OF WORK

COUNTY agrees that work being done pursuant to this Agreement will not be commenced until after this Agreement is fully executed by the parties and approved by the City Attorney's Office; and the effective date of this Agreement as specified in Section 1, TERM.

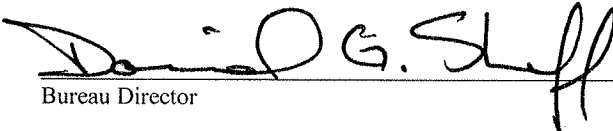
22. NON-DISCRIMINATION

Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances. However, this will not prohibit the CITY from obtaining conviction record information for the purpose of screening crew members for work in and around secure and sensitive CITY job locations.

23. City of Portland Water Bureau Accounting Data: Cost Center WAAD00005 Account 529000.

THE PARTIES, BY THEIR SIGNATURES BELOW, ACKNOWLEDGE HAVING READ THIS IGA, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

CITY OF PORTLAND SIGNATURES:

By: 
Bureau Director

Date: 7.14.2009

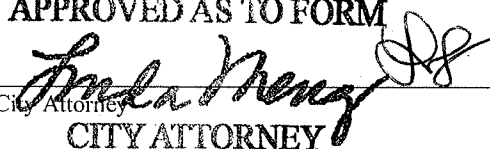
By: _____
Elected Official

Date: _____

Approved:

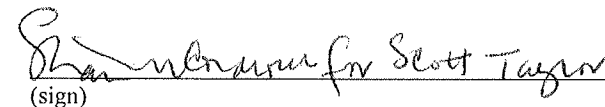
By: _____
Office of City Auditor

Date: _____

Approved as to Form: **APPROVED AS TO FORM**
By: 
Office of City Attorney
CITY ATTORNEY

Date: 7/2/09

MULTNOMAH COUNTY SIGNATURES:

By: 
(sign)
Scott Taylor, Director – Department of Community Justice
Name/Title

Date: 6/24/09

Reviewed:

By: Jacquie Weber
County Attorney

Date: June 19, 2009