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Nick Fish, Commissioner
David G. Shaff, Administrator

1120 SW 5th Avenue, Room 600
Portland, Oregon 97204-1926
Information: 503-823-7404
www.portlandoregon.gov/water



EXHIBIT A

INTERGOVERNMENTAL AGREEMENT

CITY OF PORTLAND AGREEMENT NO.: _____

This Intergovernmental Agreement (IGA or Agreement) is entered into by and between the CITY of Portland, Oregon, acting by and through its Water Bureau, hereafter called "CITY" and the Multnomah COUNTY Department of Community Justice, hereafter called "COUNTY". The COUNTY will provide to the CITY General Heavy Brushing and Cleanup work on right of ways, roadsides, trails and CITY of Portland properties. This IGA is authorized pursuant to ORS 190.110 and becomes effective upon full execution of this document.

RECITALS

- A. The CITY, as part of its operational plan hires seasonal workers to supplement existing resources to address temporary, fluctuating workloads and is interested 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.
- B. The CITY needs General Heavy Brushing and Cleanup work to be completed to provide adequate access in designated areas in case of a fire. The heavy brushing work is usually conducted best during the dry season however is completed throughout the year being completed as required.
- C. The CITY shall enter into an Intergovernmental Agreement with Multnomah County to conduct General Heavy Brushing and Cleanup work in the City's communities. Multnomah County has successfully worked with the Water Bureau to address the programs objectives and it has been determined that Multnomah County is best suited to provide these services.
- D. The CITY has authorized a total not to exceed amount of \$200,000 to fund the program and enter into a formal agreement for a period of five (5) years with the COUNTY. Funding of \$40,000 is available in the Fiscal Year 2014-15. Funding of \$40,000 shall be requested in each additional fiscal year through Fiscal Year 2018-19. The CITY's Fiscal Year is defined as July 1 through June 30 of each year.

NOW, THEREFORE, THE PARTICIPANTS AGREE AS FOLLOWS:

1. STATEMENT OF WORK

The CITY shall provide funding for this program and general support in accordance with the terms and conditions of this agreement. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

The COUNTY shall provide the CITY the services set out below:

- A. Provide a crew of no fewer than six (6) individuals performing heavy brushing work on right of ways, roadsides, trails and CITY of Portland properties.
- B. Work crews that shall be available up to 10 hours per day, up to four (4) days per week, for a period of up to 26 weeks per the CITY's Fiscal Year.
- C. COUNTY shall respond to requests for services from CITY through the COUNTY's Community Justice Manager as listed below under section 5. **NOTICES**.
- D. COUNTY shall provide transportation for all COUNTY crewmembers to and from CITY job locations as well as while working at specific locations.
- E. COUNTY shall provide equipment, tools and supplies needed to perform the work including but not limited to the following: Hand brushing tools, 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. The CITY will be responsible for disposal of debris resulting from the work.

2. **PROGRESS REPORTING REQUIREMENTS**

The COUNTY shall provide continuous on-site supervision for all COUNTY crewmembers and shall track and record days and hours worked. The COUNTY shall submit a written summary of these days and hours to designate CITY Project Manager on a weekly basis. The COUNTY shall submit one (1) hard copy and one (1) copy of the report in an electronic version of Microsoft Word or a format accessible to the CITY's Project Manager.

3. **TERM**

Work shall commence on the effective date of this Agreement. The effective date of this Agreement shall be July 1, 2014. The expiration date of this agreement shall be June 30, 2019. This Agreement is subject to renewal only by an amendment signed by the designated authority for each of the parties.

4. **BILLING PROCEDURES AND COMPENSATION**

- A. The CITY has authorized a total not to exceed amount of \$200,000 to fund the program and enter into a formal agreement for a period of five (5) years with the COUNTY. Funding of \$40,000 is available in the Fiscal Year 2014-15. Funding of \$40,000 shall be requested in each additional fiscal year through Fiscal Year 2018-19.
- B. The CITY's policy is to pay its invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices, COUNTY shall execute the CITY's standard ACH Vendor Payment Authorization Agreement which is available on the CITY's website at <http://www.portlandoregon.gov/bfs/article/409834?>
- C. Upon verification of the data provided, the Payment Authorization Agreement shall authorize the CITY to deposit payment for services rendered directly into COUNTY accounts with

financial institutions. All payments shall be in United States currency. Payment of any invoice, however, does not preclude the Collaborator from later determining that an error in payment was made and from withholding the disputed sum from the next monthly payment until the dispute is resolved.

- D. By the 15th of the month following the end of the previous month after the effective date, the COUNTY shall submit to the CITY an invoice for work performed during the previous month. Each invoice shall identify the work completed by the COUNTY the terms of this Agreement.
- E. Invoices submitted by the COUNTY to the CITY shall only be submitted to the Portland Water Bureau Finance Office electronically. Email address is as follows:
wbaps@portlandoregon.gov
- F. The CITY has the authority to audit the COUNTY's records associated with this Agreement upon notice. The COUNTY shall fully cooperate with a CITY Audit of the records at any time. The COUNTY shall also fully cooperate with an audit to account for all expenses if necessary.
- G. In the event this Agreement is terminated pursuant to all unexpended funds shall be returned to the CITY within 60 days of said termination.

5. NOTICES

Any notice required to be given or which shall be given under this Agreement shall be in writing and delivered by first class mail or by email as agreed to by the parties as follows:

COUNTY (Community Justice Manager):

Name: Gerard A. Welch
Address: 421 SW 5th Ave., Suite 600
Portland, OR 97204
Phone:
Email: Garard.a.welch@co.multnomah.or.us

CITY (Project Manager):

Name: Thomas S. Klutz, Jr.
Address: 1120 SW 5th Ave., 6th Floor,
Portland, OR 97204-1926
Phone: (503) 823-7503
Email: tom.klutz@portlandoregon.gov

6. TERMINATION

This Agreement may be terminated by either party. The CITY on thirty (30) days written notice may terminate this Agreement. COUNTY may terminate this Agreement for any reason deemed appropriate in its sole discretion. Either CITY or 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.

7. NON-DISCRIMINATION

In carrying out activities under this contract, neither party shall discriminate against any employee or applicant for employment because of race, color, religion, sex, age handicap, familial status or national origin. Either party shall take affirmative actions to insure that applicants for employment are employed and that employees are treated during employment, without regard to their race, color religion, sex, age, handicap, familial status or national origin. Such action shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

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.

8. ACCESS TO RECORDS

Both parties and their duly authorized representatives shall have access to the books, documents, and records which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts and transcript.

9. INDEMNIFICATION

Subject to the conditions and limitations of the Oregon Constitution and Oregon Tort Claims Act, ORS 30.260 through 30.300, COUNTY shall indemnify, defend and hold harmless the CITY from and against all liability, loss and costs arising out of or resulting from the acts of COUNTY, its officers, employees and agents in the performance of this agreement.

Subject to the conditions and limitations of the Oregon Constitution and Oregon Tort Claims Act, ORS 30.260 through 30.300, CITY shall indemnify, defend and hold harmless the COUNTY from and against all liability, loss and costs arising out of or resulting from the acts of CITY, its officers, employees and agents in the performance of this agreement.

10. INSURANCE

COUNTY as an agency of the State of Oregon is self insured through the State Insurance Fund, administered by Risk Management Division, Department of Administrative Services. All COUNTY personnel, officers and employees, acting within the scope of their employment are covered by ORS 30.270. COUNTY is a subject employer under the Oregon Workers' Compensation law in compliance with ORS 656.017, and shall maintain workers' compensation insurance through the duration of this Agreement.

11. SUBCONTRACTING AND ASSIGNMENT

COUNTY shall not subcontract its work under this Agreement, with the exception of work identified in this Agreement, without the written consent of the other party. COUNTY shall assure that all subcontractors used to perform the services under this Agreement, meet the CITY'S Codes pertaining to permits, workmen's compensation, licensing, and all other requirements.

12. DISPUTES

The signatories to this Agreement shall expend their best efforts to amicably resolve any dispute that may arise under this Agreement. Any dispute that the signatories are unable to resolve shall be submitted to the Director of the COUNTY or his/her designee and the CITY of Portland Water Bureau Administrator or his/her designee for resolution.

13. OREGON LAWS AND FORUM

This Agreement shall be construed according to the laws of the State of Oregon. Any litigation between the CITY and COUNTY arising under this contract or out of work performed under this contract shall occur, 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 State of Oregon.

14. FUNDS AVAILABLE AND AUTHORIZED

The CITY certifies that at the time the Agreement is written that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within current appropriation and limitation. In the event of any extension or non-appropriation, the CITY shall notify COUNTY its intent to terminate this Agreement. The CITY's contribution for the five (5) year term of the Agreement is contingent upon receipt of approval by CITY Council and upon continuation of funding.

15. SEVERABILITY

If any term or provision of this Agreement 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 Agreement did not contain the particular term or provision held to be invalid.

16. COMPLIANCE WITH APPLICABLE LAW

Both parties shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this IGA. Without limiting the generality of the foregoing, parties expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; (v) Any applicable sections of ORS Chapter 279, and (vi) all other applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations.

17. FORCE MAJURE

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 Agreement.

18. NO THIRD PARTY BENEFICIARY

The CITY and COUNTY are the only parties to this Agreement and such are the only parties entitled to enforce its terms. Nothing contained in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

19. MERGER CLAUSE

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written not specified herein regarding this Agreement.

20. AMENDMENTS

The CITY and COUNTY may amend this Agreement at any time only by written amendment executed by the CITY and COUNTY. The CITY's Water Bureau Administrator, upon approval by CITY Council, is authorized to approve amendments for the CITY to this Agreement that do not increase the total contract amount above 25% of the original Agreement amount. The COUNTY shall submit a written request to the CITY's Technical Contact/Project Manager prior to any amendments to the Agreement. Any amendment to the Agreement shall require the signature of both parties approving authorities.

21. OWNERSHIP OF DOCUMENTS

- A. The CITY and COUNTY shall jointly own any and all data, documents, plans copyrights, specifications, working papers, and any other materials produced in connection with this Agreement.
- B. COUNTY upon request by the CITY shall provide the CITY copies of the materials referred to above, including any electronic files containing the materials.

22. SEVERABILITY/SURVIVAL

If any of the provisions contained in this IGA are held unconstitutional or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this IGA for any cause.

23. CONFLICTS OF INTEREST

No CITY Officer or employee, during his or her tenure or for one year thereafter, shall have any interest, direct, or indirect, in this Agreement or the proceeds thereof. No board of director member or employee of COUNTY, during his or her tenure or for one year thereafter, shall have any direct financial interest in the Agreement or the proceeds thereof. No CITY Officer or employees who participated in the award of this agreement shall be employed by COUNTY during this Agreement.

24. CONTRIBUTION

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (Third Party Claim) against a party (the Notified Party) with respect to which the other party (Other Party) may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which COUNTY, is jointly liable with the CITY (or would be if joined in the Third Party Claim), COUNTY shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the CITY in such proportion as is appropriate to reflect the relative fault of on the one hand and of the COUNTY on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of on the one hand and of the CITY on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. COUNTY contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

25. EFFECTIVE DATE AND DURATION

This Agreement shall be effective shall be July 1, 2014. and terminate on June 30, 2019, unless otherwise agreed to by both parties under the provisions of this Agreement.

CITY OF PORTLAND

APPROVED AS TO FORM:

David G. Shaff
Portland Water Bureau Administrator

CITY of Portland
City Attorney

Date

Date

MULTNOMAH COUNTY DEPARTMENT OF COMMUNITY JUSTICE

Signature

Title

Date