

Intergovernmental Agreement

Metro Contract No. **ADD**

This Intergovernmental Agreement (“IGA” or “Agreement”) is between Metro, an Oregon metropolitan service district organized under the laws of the State of Oregon and the Metro Charter (“Metro”) and City of Portland, a municipal corporation of the State of Oregon (“City”), each a “Party” and collectively, “Parties.”

Recitals

Metro and City have authority under ORS Chapter 190 to enter into this Agreement.

House Bill 5202 (April 4, 2022) allocates to Metro \$10 million in state funds, for “trash and sanitation services” (“HB 5202 Funds”):

“SECTION 451. In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Department of Administrative Services, for the biennium ending June 30, 2023, out of the General Fund, the amount of \$10,000,000, for distribution to the metropolitan service district established under ORS chapter 268, for trash and sanitation services.”

City has proposed projects as outlined in the Agreement below (“City Projects”) that support and meet the intent and criteria of the Oregon Legislature, Metro, and DAS for expenditure of the HB 5202 Funds.

Terms

In consideration of the foregoing recitals and the mutual promises herein, the parties agree as follows:

1. Term

This Agreement is effective on the last date signed below and terminates on June 30, 2023, unless terminated or extended as provided by this Agreement.

2. Scope of Work

This Agreement establishes responsibilities of the Parties concerning this project. The Parties will perform Work pursuant to the Scope of Work, Exhibit A, which is incorporated into this Agreement.

3. Changes to Scope of Work

City authorizes Quintin Bauer and Metro authorizes Jennifer Payne, or their designees, to modify the Scope of Work, upon mutual agreement in writing.

4. Grant Amount

The total grant amount is \$100,000. City may use funds only for City Projects.

5. Funds Contingent

Metro’s ability to meet its obligations under this Agreement is contingent on receipt of HB 5202 Funds. Metro’s funding commitment will be fulfilled solely through HB 5202 Funds. If, in the opinion of Metro or DAS, a City Project does not comply with the use restrictions for HB 5202 Funds the Parties will amend the Scope of Work to reflect only City Projects that meet the requirements.

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6. Forfeiture of Unspent Funds

If City is unable to expend funds on City Projects within two years of the effective date of this Agreement, or as mutually agreed through an amendment, any unspent funds will be returned to Metro. Metro reserves the right to reallocate unspent HB 5202 Funds.

7. Payment

Metro will disburse funds to City as set forth in the Scope of Work, Exhibit A.

8. Records Maintenance and Access

The Parties must maintain all fiscal records related to this Agreement in accordance with generally accepted accounting principles. The Parties must maintain books, documents, and other records related to the subject Agreement. The Parties must retain and keep accessible all such records for a period of six (6) years from the date of final completion of this Agreement. Each Party must make records available to the other Party and its authorized representatives, including but not limited to the staff of any department, at reasonable times and places regardless of whether litigation has been filed on any claims.

9. Ownership of Work Product

The Parties have unrestricted access to all work products relating to this Agreement. To the extent either Party uses any of its own property created or developed, whether arising from copyright, patent, trademark, trade secret or other similar right, in the performance of this Agreement, such property remains the property of the Party.

10. No Third-Party Beneficiary

Except as set forth herein, this Agreement is between the Parties and creates no third-party beneficiaries. Nothing in this Agreement gives or will 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.

11. Indemnification

Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, City must indemnify, defend, and hold harmless Metro, its officers, employees, and agents, including assigned personnel, from all claims, suits, actions, or expenses of any nature resulting from or arising out of the acts, errors, or omissions of City, its agents or assigned personnel acting within the scope of employment or pursuant to the terms of this Agreement.

12. Termination

This Agreement may be terminated as follows:

- A. By mutual written consent of the Parties.
- B. By any Party if another Party commits any breach or default of any covenant or obligation under this Agreement. To be effective, the party intending to terminate must give the other Party written notice of default and its intent to terminate. If the breaching Party does not entirely cure such breach, default, or failure within thirty (30) days after receipt of notice, or such longer period of cure as may be specified in the notice, then this Agreement may be terminated at any time thereafter by giving a written notice of termination.

Any termination of this Agreement does not prejudice any rights or obligations accrued to the parties before termination.

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13. Dispute Resolution and Forum

This Agreement is to be construed according to the laws of the State of Oregon. The Parties must negotiate in good faith to resolve any dispute arising out of this Agreement. If the Parties are unable to resolve any dispute within fourteen (14) calendar days, the Parties shall attempt to settle any dispute through mediation. The Parties shall attempt to agree on a single mediator. The cost of mediation will be shared equally. If the Parties agree on a mediator, the mediation must be held within 60 days of selection of the mediator unless the Parties otherwise agree. If the Parties cannot agree on a mediator, or the matter is not settled during mediation, the Parties will have all other remedies available at law or in equity. Any litigation between Metro and City arising under this Agreement or out of work performed under this Agreement will occur, if in the state courts, in the Multnomah City Circuit Court, and if in the Federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

14. State and Local Law Compliance

The Parties will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement.

15. Discrimination Prohibited

No recipient or proposed recipient of any services or other assistance under the provisions of this Agreement or any program related to this Agreement may be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this Agreement on the grounds of race, color, or national origin, 42 U.S.C. §2000d (Title VI), or on the grounds of religion, sex, ancestry, age, or disability as that term is defined in the Americans with Disabilities Act. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit receiving funds pursuant to this Agreement

16. Notices; Project Managers

All notices and other written communication between the Parties under this Agreement must be given in writing to the address or email set forth below and is deemed received (a) upon personal service, (b) upon electronic delivery, (c) three (3) days after deposit in the United States Mail, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier service. The Parties appoint the following representatives for receiving notice and as project managers for this Agreement.

Metro: Jennifer Payne
 600 NE Grand Ave.
 Portland, OR 97232
 503.797.1700
Jennifer.payne@oregonmetro.gov

City: Quintin Bauer
 1810 SW 5th Ave, Suite 710
 Portland, OR 97210
 971-275-3224
quintin.bauer@portlandoregon.gov

The foregoing addresses may be changed by giving written notice. Notice given in any manner other than the manners set forth above will be effective when received by the Party for whom it is intended.

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17. Assignment

A party may not subcontract, assign, or transfer any rights or obligations under this Agreement without the prior written consent of the other Party.

18. Survival

All obligations relating to indemnification, default or defect in performance, limitation of liability, publicity, proprietary rights, sections of the Scope of Work relating to reporting obligations and use of equipment requirements, and obligations to make payments that become due under this Agreement prior to termination (except that payments for services not performed by the date of termination will be prorated) survive termination or expiration of this Agreement and, to the extent applicable, remain binding and in full force and effect.

19. Entire Agreement; Modification; Waiver

This Agreement constitutes the entire agreement among the Parties on the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings, representations, or communications of every kind. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement will bind either Party unless in writing and signed by all Parties. Such waiver, consent, modification, or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of a Party to enforce any provision of this Agreement will not constitute a waiver by a Party of that or any other provision.

20. Choice of Law

The situs of this Agreement is Portland, Oregon. Any litigation over this Agreement will be governed by the laws of the State of Oregon and will be conducted in the Circuit Court of the State of Oregon for Multnomah City, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

21. Counterparts

This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which will constitute one and the same instrument.

22. Authority

The representatives signing on behalf of the Parties certify that they are authorized to make this Agreement by the Party for which they sign.

METRO

CITY

Authorized Signature

Authorized Signature

Printed Name

Printed Name

Title

Title

Date

Date

Exhibit A – Scope of Work

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HB 5202 Funds will be used for trash pick-up, debris cleanup, abandoned vehicle removal, provision of dumpsters and trash bins and related employee/contractor costs associated with voluntary trash collection and mitigation. Funds cannot be used for activities associated with camp site removal or to backfill City funding. City must use the HB 5202 Funds it receives under this Agreement only for the purposes specified in the Scope of Work and to achieve the deliverables and/or milestones as set forth in this Agreement.

City will engage in cleanup projects within the Metro district boundary to include:

- Bulky waste collection activities for single and multifamily properties throughout the city of Portland

Funding will be used by City for expenses as set forth in Table 1 below.

Table 1

| Activity | Date | Estimated Amount |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|-------------------------|
| Costs associated with planning, training, administration, and other services provided by non-profit partners and for coordination and outreach projects | October 2022-July 2023 | \$50,000 |
| Hauling and disposal costs for bulky waste collected for and/or at single and multifamily properties | October 2022-July 2023 | \$50,000 |
| | <i>Total</i> | <i>\$100,000</i> |

Reporting Requirements

Data and information collected through this project will include the following and be reported to Metro beginning January 15, 2023 on a quarterly basis through July, 2023, and annually thereafter if work is ongoing:

1. Project milestones met to date;
2. Grant funds spent to date;
3. Updated timeline for major Project deliverables; and
4. Metrics for cleanup activities:
 - a. GPS locations or addresses where activities are performed
 - b. Before and after photos
 - c. Success stories
 - d. Number of new partnerships formed (if applicable)
 - e. Tonnage, volume or weight of debris, litter or bulky waste removed

Review and Approval of Grant Deliverables

Within 30 days after receiving the City’s submittal of each report, Metro’s Project Manager will review the report and either approve the submittal, or reply with comments and/or requests for further documentation or revisions that may be necessary. Metro’s Project Manager has sole discretion in determining whether the deliverables submitted are satisfactory in meeting the grant requirements.

Payment Procedures

Upon Metro’s and City’s approval of this Agreement, City will provide an invoice for the full grant amount and Metro will disburse full grant funds to City within 30 days of Metro’s receipt of the invoice or of Metro’s receipt of the HB 5202 Funds, whichever is later.