



Capt. Malcolm McDonald
Director

CLACKAMAS COUNTY COMMUNITY CORRECTIONS
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July 22, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval Intergovernmental Agreement between Clackamas County Community
Corrections and Sunrise Water Authority to Provide Work Crew Services

Purpose/Outcomes	This IGA allows Community Corrections to provide offender work service crews for Sunrise Water Authority
Dollar Amount and Fiscal Impact	The IGA will provide approximately \$30,000.00 in revenue to support the Community Service program.
Funding Source	Sunrise Water Authority.
Duration	Effective once signed and terminates June 30, 2021.
Previous Board Action	New Agreement
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Provide clients with a pro-social opportunity to give back to the community and be accountable for their offense. 2. Alternative sentence saving money from jail beds not used.
Counsel Review	Attached with CSW agreement
Procurement Review	NO: This item is an IGA-CSW agreement
Contact Person	Capt. Malcolm McDonald, Director - Community Corrections 503-655-8717

BACKGROUND: Clackamas County Community Corrections will provide supervised offender work crews for sites under the control of Sunrise Water Authority. Crews consisting of a minimum of four offenders perform landscaping, cleanup, and graffiti removal for up to approximately six hours per day. Community Corrections provides a Corrections Officer to supervise each crew. This Agreement provides a way for offenders to give back to the communities they have victimized while generating revenue for the program. The \$200 to \$425 per crew fee helps to offset the cost of staff supervision, tools, and transportation to and from the site. The term of this Agreement will begin once fully executed through June 30, 2021. This serves as the first of three Agreement renewals.

RECOMMENDATION: Community Corrections respectfully requests that the Board of County Commissioners approve this Intergovernmental Agreement to provide work service crews to Sunrise Water Authority.

Respectfully submitted,

Malcolm McDonald, Director
Community Corrections

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND SUNRISE WATER AUTHORITY**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, by and through the Community Corrections Department, and Sunrise Water Authority ("Agency"), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or June 30, 2021, but may be renewed for three (3) additional one (1) year agreements upon written approval by both parties.
2. **Rights and Obligations of the County.**
 - A. The COUNTY agrees to:
 - i. Provide a Work Crew Supervisor to supervise the Work Crews and perform work when safety and work flow allow.
 - ii. Provide a minimum of four (4) clients to perform general labor on a mutually agreed-upon schedule. Work crews will take (2) 15 minute breaks (non-billable) and (1) 30 minute lunch (non-billable) per County Policy. Total labor hours including mobilization will be a minimum of twenty- four (24) per work day.
 - iii. Provide all basic tools to perform assigned scope of work. Basic tools include: (Axes, Brooms, Chainsaws, Garden Rakes, Hand Saws, Hoes, Lawn Mowers, Leaf Blowers, Litter Pickers, Loppers, Machetes, Mattocks, Pitchforks, Pruning Shears, Shovels, String Trimmers, and Wheel Barrows.) If special tools are necessary, they shall be provided by the Agency.
 - B. For Graffiti removal services COUNTY agrees to:
 - i. Provide a Work Crew Supervisor to supervise the Work Crew and perform work when safety and work flow allow;
 - ii. Provide a minimum of two (2) clients to perform labor on mutually agreed schedule;
 - iii. Provide all necessary tools to perform scope of work; including pressure washer, buckets, brushes, and AGENCY approved graffiti removal chemicals when necessary. (SDS available);
 - iv. Remedy requested work within ten (10) days of notification per code;
 - v. Take before and after photos for documentation and furnish to AGENCY upon completion;

- vi. Proactively notify AGENCY of any painted graffiti and address with consent from AGENCY.

3. Rights and Obligations of the AGENCY.

A. The AGENCY agrees to:

- i. Identify Work Crew projects, such as litter patrol, trail, and landscape maintenance in Clackamas County.
- ii. Schedule Work Crew projects on a mutually agreed-upon schedule; communicating scope of work and tool requirements to COUNTY.

B. For Graffiti removal services AGENCY agrees to:

- i. Promptly notify COUNTY of painted graffiti once it has been determined that COUNTY is going to be contracted for graffiti removal;
- ii. Provide COUNTY with a detailed description of the location and nature of the graffiti to be removed and ensure access for removal;
- iii. When paint over is the identified best remedy, AGENCY will provide paint to COUNTY for an accurate color match;
- iv. AGENCY will not Contract COUNTY in instances where ladders or man lifts are required or work has extreme grade or other inherent dangers beyond COUNTY's mutually understood capabilities.

4. Compensation.

- A. The Agency agrees to pay \$425 per crew per day for the services outlined in Section II. A.
- B. For Graffiti removal services outlined in section II.B above. Agency agrees to pay \$200 per event for maximum of nine (9) hours of labor. Events requiring more than nine (9) hours will be charged a rate of \$400 per event.
- C. Payments shall be made on the basis of requests for payment submitted as follows:
 - i. COUNTY will bill the Agency within the first week following the last working day of each calendar month in which work is performed;
 - ii. The Agency agrees to pay COUNTY within 30 days of the receipt of the COUNTY'S invoice.

5. Representations and Warranties.

- A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the Agency 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 the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. The Agency may terminate this Agreement in the event the Agency fails to receive expenditure authority sufficient to allow the Agency, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Project under this Agreement is prohibited or the Agency is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination

7. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the Agency, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof, except for attorneys' fees, arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof, except for attorneys' fees, arising out of or based upon damages or injuries to persons or property caused by the negligent or willful

acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to control.

8. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.
9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.
 - A. Fred Wienberg, or their designee, will act as liaison for the County.

Contact Information:

Fred Wienberg
Clackamas County
Community Corrections
1024 Main St.
Oregon City, OR 97045
(503) 650-8929

Toby Henderson, or their designee, will act as liaison for the Agency.

Contact Information:

Toby Henderson
Sunrise Water Authority
10602 SE 129th Ave
Happy Valley, OR 97086
503-572-0220

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by

the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in person jurisdiction of the courts referenced in this section.

- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. 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 shall bind either Party unless in

writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- J. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- K. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole and absolute discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- L. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- M. **Survival.** All provisions in sections 6, 8, and 9 shall survive the termination of this Agreement.
- N. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- O. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

- P. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- Q. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

[Signatures on Following Page]

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County
Chair Jim Bernard
Commissioner Sonia Fischer
Commissioner Ken Humberston
Commissioner Paul Savas
Commissioner Martha Schrader

Sunrise Water Authority
10602 SE 129th Ave
Happy Valley, OR 97086
(503) 572-0220

Chair, Board of County Commissioners

DocuSigned by:
Wade Hathhorn
E0EBD79D60054C1...

Authorized Signature

Date

Wade Hathhorn General Manager

Printed Name/Title

7/9/2020

Recording Secretary

Date

Approved as to form

[Signature]

County Counsel