



CLACKAMAS COUNTY SHERIFF

Sheriff Angela Brandenburg

Jesse Ashby, Undersheriff

Michael Copenhaver, Undersheriff

Jenna Morrison, Undersheriff

December 12, 2023

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of an Intergovernmental Agreement between the Water Environment Services (WES) and Clackamas County for Work Crew services. Agreement value is \$260,000.

Previous Board Action/Review	No prior board action.		
Performance Clackamas	Ensure safe, healthy and secure communities.		
Counsel Review	Yes	Procurement Review	No
Contact Person	Nancy Artmann	Contact Phone	503-785-5012

EXECUTIVE SUMMARY: Clackamas County Sheriff's Office – Parole & Probation Division will provide community service work crews on an as-needed basis to conduct general landscape clean-up services requested by WES.

RECOMMENDATION: Staff recommends approval of this agreement.

Respectfully submitted,

Sheriff Angela Brandenburg

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A Tradition of Service Since 1845

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**INTERGOVERNMENTAL AGREEMENT
BETWEEN WATER ENVIRONMENT SERVICES
AND CLACKAMAS COUNTY**

THIS AGREEMENT (this "Agreement") is entered into and between Water Environment Services ("District"), an intergovernmental entity formed under ORS Chapter 190, and Clackamas County ("County"), a political subdivision of the State of Oregon, 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.

The District is responsible for maintaining approximately 300 vegetated water quality facilities, including swales and ponds, throughout its service area. District desires to contract with Clackamas County, through the Parole and Probation Division of the Sheriff's Office, to provide supervised work crews to primarily perform general maintenance services at District-operated vegetated water quality facilities. These maintenance services are necessary for the vegetated water quality facilities to function as designed, in addition to providing access for annual inspections and emergency response investigations.

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 **December 31, 2027**, whichever is sooner.
2. **Scope of Work.** The County agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** The District agrees to pay County, from available and authorized funds, a sum not to exceed **Two Hundred Sixty Thousand Dollars** (\$260,000.00) for accomplishing the Work required by this Agreement. The Work shall be billed at the rates included in Exhibit B, attached hereto and incorporated herein ("Rates").
4. **Payment.** Unless otherwise specified, the County shall submit monthly invoices for Work performed and shall include the total amount billed to date by the County prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to County following the District's review and approval of invoices submitted by County. District shall pay invoices on undisputed amounts within thirty (30) days. Failure of District to pay County in accordance with the terms of this Agreement constitutes an event of default and County may pursue any remedies provided in this Agreement including, but not limited to, terminating the Agreement and pursuing all remedies available to it at law or in equity. County shall not submit invoices for, and the District will not pay, any amount in excess of the maximum compensation amount set forth above.
5. **Representations and Warranties.**

- A. *County Representations and Warranties*: County represents and warrants to District that County 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.
- B. *District Representations and Warranties*: District represents and warrants to County that District 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 District 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 District or the County may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the District 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 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 District or the County 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 District or County may terminate this Agreement in the event the District or County fail to receive expenditure authority sufficient to allow the District or County, in the exercise of their reasonable administrative discretion, to continue to perform under 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 District or County 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 District 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 arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the District or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the District has a right to control.

B. 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 District, 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 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.

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.** Any notice provided under this Agreement shall be delivered by email or by first class US mail to the individuals identified below. Any communication or notice mailed by first class US mail shall be deemed to be given three days after the date it is sent. Any communication or notice sent by electronic mail is deemed to be received on the date sent, unless the sender receives an automated message or other indication that the email has not been delivered. Either Party may change the Party contact information, or the invoice or payment addresses, by giving prior written notice to the other Party.

A. Kyle Bean or their designee will act as liaison for the District.

Contact Information:

Kyle Bean
Field Operations Supervisor
Water Environment Services
Desk: (503) 557-2805

Fred Wienberg and Ellen Dickerson or their designee will act as liaison for the County.

Contact Information:

Fred Wienberg
Coordinator
Clackamas County Sheriff's Office
Desk: (503) 650-8929

Ellen Dickerson
Accounting Specialist 2
Clackamas County Sheriff's Office
Desk: (503) 655-8746

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 the District and Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between District and County 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 District 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. County, by execution of this Agreement, hereby consents to the in personam 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.** County 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. County 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, County shall permit the District's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** Reserved.
- F. **Hazard Communication.** County shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material

that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon District's request, County shall immediately provide Material Safety Data Sheets for the products subject to this provision.

- G. **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.
- H. **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.
- I. **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.
- J. **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.
- K. **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.
- L. **No Third-Party Beneficiary.** County and District 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.

- M. **Subcontract and Assignment.** County 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 District, which shall be granted or denied in the District's sole discretion. District's consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.
- N. **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.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **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.
- Q. **Time is of the Essence.** County agrees that time is of the essence in the performance this Agreement.
- R. **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.
- S. **Force Majeure.** Neither County nor District shall be held responsible for delay or default caused by events outside of the County or District's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, County 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.
- T. **Confidentiality.** Reserved.
- U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

Signature Page Follows

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

Water Environment Services

Clackamas County

Chair

Chair

Date

Date

Approved as to Form:

Approved as to Form:



12/6/23

County Counsel

Date



Andrew R Naylor (Dec 6, 2023 10:53 PST)

County Counsel

Date

EXHIBIT A

SCOPE OF WORK

1. County Obligations: County will provide, on an as-needed basis, general landscape clean-up services (“Work”) to District’s real properties to be identified in District’s written request for services. County’s obligations to provide Work is contingent upon availability of resources, as determined by County in its sole discretion. County may, for any reason, decline to provide Work when requested. If County determines it is able to provide Work, County will:
 - i. Provide, on an as-needed basis, general landscape clean-up, mowing, weeding, power washing, clearing brush, and graffiti removal. If graffiti removal is needed, District will submit a description of the location and nature of graffiti to be removed. If County agrees to perform the graffiti removal Work, the parties will negotiate an agreed upon schedule and scope of work.
 - ii. Bill District within one week following the last working day of each calendar month in which Work is performed. Payments shall be made on a basis of requests for payment submitted.
 - iii. Provide all basic tools to perform the Work.
 - iv. Submit monthly reports to the District summarizing what work was conducted where and when, and how many work crew hours were spent on each stormwater facility or site.
2. District Obligations: District agrees to:
 - i. Submit a written request for service to County detailing the Work needed, proposed dates for performing the Work, the real property owned by District where the Work will be performed, and whether the Work involves the removal of graffiti and the nature of the graffiti to be removed.
 - ii. Obtain any right of entry or other access authorization is required. District is solely responsible for obtaining such rights of entry or access.
 - iii. Provide any necessary materials to perform the Work as may reasonably be requested by County.
 - iv. If County agrees to perform the Work, the parties will negotiate an agreed upon schedule and scope of work.
3. Hazardous Substances. County will not perform Work that requires the handling or removal of, or potential exposure to, any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. In the event County discovers known or suspected hazardous materials at any work site, County shall immediately cease the activities until such time as the site is inspected and declared or made safe by the appropriate hazardous materials authority.

EXHIBIT B

RATES

County rates, as of the date of execution of this Agreement, are as follows:

- \$425.00 per work crew, per day.
- \$200 per work crew per day for graffiti removal only

County may adjust its rates annually. District is responsible for requesting the current fee and rate schedule prior to requesting Work.