



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

April 27, 2023

BCC Agenda Date/Item: _____

Stephen L. Madkour
County Counsel

Kathleen Rastetter
Scott C. Ciecko
Amanda Keller
Nathan K. Boderman
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
Assistants

Board of County Commissioners
Of Clackamas County

Approval of an Intergovernmental Agreement with Clackamas County Vector Control District for legal and procurement services. Agreement value is \$10,000, and term is through June 30, 2028. Funding through Vector Control. No County General Funds are involved.

Table with 4 columns: Previous Board Action/Review, Performance Clackamas, Counsel Review, Procurement Review, Contact Person, Contact Phone. Values include: None, Building trust through good government, JM, N/A, Jeffrey D. Munns, 503-742-5984.

EXECUTIVE SUMMARY:

The Clackamas County Vector Control District ("CCVCD") provides mosquito control services in Clackamas County. The members of the district board are appointed by the Board of County Commissioners. CCVCD's legal counsel retired at the end of 2022 and the CCVCD Board of Trustees sought proposals to provide legal services to the District. County Counsel contacted the District to propose an agreement to perform legal services for the District. Representatives of County Counsel's office met with the District's Board of Trustees and discussed the services needed by the District. CCVCD shared that assistance with procurement services for an upcoming remodel of their facility was needed. After the meeting the Board of Trustees voted to enter into an agreement with Clackamas County for legal and procurement services.

County Counsel would not provide legal services to the District in the event of a conflict between the District and the County. It is estimated that five hours of legal services will be utilized monthly and procurement services twice yearly. The agreement approved by the CCVCD Board of Trustees is attached and presented for approval by the Board of County Commissioners.

RECOMMENDATION:

Staff recommends approval of this Intergovernmental Agreement.

Respectfully submitted,

[Handwritten signature]

Jeffrey D. Munns
Assistant County Counsel

For Filing Use Only

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND THE CLACKAMAS COUNTY VECTOR CONTROL DISTRICT**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and the Clackamas County Vector Control District ("Agency"), a unit of local government under Oregon Revisit Statutes ("ORS") Chapter 190, collectively referred to as the "Parties" and each a "Party."

RECITALS

ORS 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.

Agency has requested that County provide certain personal services, including but not limited to, legal services from County's Office of County Counsel and procurement services from County's Department of Finance.

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, 2028, whichever is sooner. This Agreement may be extended by execution of a written amendment on terms and conditions acceptable to both Parties.
2. **Scope of Work.** Contingent upon the availability of resources, as determined by County in its sole discretion, County agrees to provide Agency the following personal services (collectively the "Work") on an as-needed basis:
 - A. **Legal services:** Agency may request legal services from County's Office of County Counsel ("County Counsel"). The Parties anticipate legal services will involve one or more areas of government law including, but not limited to, public records law, public meetings law, public contracting and procurement, local budget law, labor and employment, litigation, civil rights, elections, and government ethics.

County Counsel will not provide legal services if County Counsel determines, in its sole discretion, that (1) County Counsel's lacks the legal expertise to adequately represent Agency in the requested Work; or (2) representing Agency will create a current conflict of interest in County Counsel's representation of the County or any related service district or other entity that County Counsel currently represents. In the event a current conflict of interest arises during the course of County Counsel's representation of Agency, and that current conflict cannot be waived in accordance with applicable law, County Counsel will terminate its representation of Agency. In the event of such a current conflict of interest, or if County Counsel declines to provide legal services, Agency shall retain its own legal counsel. As used herein, "current conflict of interest" has the meaning set forth in in Rule 1.7 of the Oregon Rules of Professional Conduct.
 - B. **Procurement services.** Agency may request County provide procurement advice and services. These services may include, but are not limited to, requesting County

to assist Agency in procurement solicitations, advertisements, negotiations, evaluations, and other services reasonably related to the procurement of goods and services under ORS Chapter 279A, 279B, and 279C. In the event Agency requests County to procure goods and services on Agency's behalf, the procurement will be performed in accordance with County's procurement rules and processes.

- C. **Other services.** The Parties may agree, in writing, for County to provide other services to Agency to the extent permitted under applicable law.
3. **County Employees.** County staff performing the Work are, and will remain, solely the employees of County. County is solely responsible for all wages, benefits, supervision, discipline, control, and other human resource related matters associated with its employees.
4. **Requesting Work.** The Parties will use the following process for requesting Work:
- A. When Agency needs Work performed, Agency will submit a written request to County detailing the kind of Work needed, the proposed dates for performing the Work, the category of Work to be performed, any budgetary or financial restrictions that may apply, and any other information as may reasonable be necessary for County to determine if it can provide the Work. Agency shall use the County's task order form (found at <https://www.clackamas.us/finance/terms.html>) when submitting the request.
- B. If County determines it has sufficient resources available to perform the Work, and no other factors would prevent County from performing the Work, County will provide Agency the then-current hourly rate of each employee expected to perform the Work, together with an estimate of the total hours and/or costs necessary to complete the requested task. Agency may either accept the hourly rate of the employees performing the Work and authorize County to proceed, cancel the request, or negotiate with County any additional terms or conditions that may be applicable.
5. **Consideration.** Agency shall reimburse County for the actual costs of providing the Work, which shall be determined using the then-current hourly rate of each employee performing the Work. As of the effective date of this Agreement, the hourly rate in County Counsel is \$124.00 for attorneys and 66.00 for support staff.
- Unless the Parties agree, in writing, to other terms, Agency is responsible for reimbursing County for the total hours of each employee performing the Work, regardless of whether the total hours exceed the estimate provided by County to Agency when the Work is requested.
6. **Payment.** Unless otherwise specified, County shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, the hourly rate of each employee performing the Work, and all other expenses for which reimbursement is claimed. Payments shall be made to County, by Agency, within thirty (30) days from the date of the invoice.
7. **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 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.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

8. 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. In the event of termination each Party shall have all rights and remedies available to it under this Agreement, at law, or in equity.
- D. 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.
- E. Either Party may terminate this Agreement in the event the terminating Party fails to receive expenditure authority sufficient to allow the terminating Party, in the exercise of its 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 performance under this Agreement is prohibited or the terminating Party is prohibited from paying for such work from the planned funding source.
- F. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

9. 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 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 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.

10. **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.
11. **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 written notice to the other Party.

A. Stephen Madkour, or his designee will act as liaison for the County.

Contact Information:

Office of County Counsel
2051 Kaen Rd., Suite 254
Oregon City, OR 97045
Phone: (503) 742-5984
Email: smadkour@clackamas.us

Josh Jacobson or his designee will act as liaison for the Agency.

Contact Information:

Clackamas County Vector Control District
320 Warner Milne Road
Oregon City, OR 97045
Email: JJacobson@clackamas.us

General Provisions.

- B. **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 personam jurisdiction of the courts referenced in this section.

- C. **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.
- D. **Disputes.** In the event a dispute arises between the Parties, the Parties will attempt to first resolve the dispute informally through good faith negotiation. If the Parties are unable to resolve the dispute through good faith negotiation, the Parties agree to attend at least four hours of mediation before resorting to arbitration, litigation, or other means of dispute resolution.
- E. **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.
- F. **Hazard Communication.** Agency shall notify County prior to using products containing hazardous chemicals to which County 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 County's request, Agency 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.** 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.
- M. **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 discretion. County's consent to any subcontract shall not relieve Agency 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 7, 8, 9, and 12 (A), (C), (D), (F), (G), (H), (I), (K), (N), (P), and (R) 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. **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.
- R. **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.
- S. **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.

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

Clackamas County

Chair, Board of County Commissioners

Date

Clackamas County Vector Control District

By:  _____

Its: Chair _____

Date April 11, 2023 _____