

**INTERGOVERNMENTAL AGREEMENT
CITY OF PORTLAND and the MULTNOMAH COUNTY ELECTIONS DIVISION**

**City Agreement No.
County Agreement No.**

This intergovernmental agreement (“IGA”) is entered into between Multnomah County (“County”) and the City of Portland (“City”) acting by and through its Office of the City Auditor (collectively, the “Parties”).

RECITALS

- A. This IGA is authorized pursuant to ORS 190.010 and ORS 190.110. The City and the County are units of local government, duly organized and existing under Oregon law.
- B. City Charter Section 2-503 grants the Auditor’s Office administrative independence, and City Council ordinance no. 189027 recognizes the Auditor’s authority to enter into IGAs to carry out the duties of the Auditor’s Office.
- C. Pursuant to City Charter Section 2-507 (a), the City Auditor’s office provides supervision of elections, including processing City petitions to determine sufficiency and qualification to an election ballot.
- D. Petition review and qualification to the ballot for a measure initiated by City petition is governed by Portland City Code Title 2, Chapter 2.04, ORS Chapter 250, and Oregon Administrative Rules.
- E. The City may only accept a petition for signature verification if it contains at least 100 percent of the required number of signatures, as described in Portland City Code Section 2.04.090(B) and (C).
- F. Multnomah County’s Elections Division conducts all local, city, state, and federal elections for the citizens of Multnomah County and is uniquely qualified to assist the Auditor’s Office in required processing of a City petition to determine whether a petition contains at least 100 percent of the required number of signatures.
- G. The parties desire to enter into an agreement to facilitate processing of two City petitions intended for the November 6, 2018 General Election ballot as more fully set forth below.

NOW, THEREFORE, based on the foregoing Recitals, the Parties agree as follows:

1. Effective Date and Duration. This IGA will become effective on July 6, 2018. Unless earlier terminated or extended, this IGA shall expire on August 6, 2018.

2. Statement of Work. The statement of work (the “Work”), including the procedures applicable to such Work, is contained in Attachment A and Attachment B. The County agrees to perform the Work in accordance with the terms and conditions of this IGA.
3. Consideration. The City shall reimburse the County for the costs incurred in the performance of the Work, including the cost of hiring and employing temporary or part-time workers. The City shall reimburse the County for all reasonable business expenses incurred in the performance of the Work, with the prior consent of the City. The maximum payment under this IGA for the Work, including reimbursement of business expenses, shall not exceed \$10,000, subject to section 7, below. The City shall pay the invoice on 30-day net terms.
4. Project Representatives. Each party has designated a Project Manager to be the formal representative for this project. All reports, notices, invoices, and other communications required under or related to this IGA shall be directed to the appropriate Project Manager.

Office of the City Auditor

Project Manager: Deborah Scroggin
Phone: 503-823-3546
Email: Deborah.scroggin@portlandoregon.gov

Multnomah County Elections Division

Project Manager: Tim Scott
Phone: 503-988-3720
Email: tim.scott@multco.us

5. Petition Supervision: The City’s Project Manager will supervise the Work and will maintain all responsibility for making final sufficiency and qualification determinations regarding the petitions under review. The City’s Project Manager will ensure timely completion and compliance with all applicable laws and requirements, and will coordinate with the County to plan and oversee the review process throughout the provision of the County’s services described in Attachment A.
6. Petition Challenges: The City will maintain all responsibility for any challenges made to the sufficiency and qualification determinations, the procedures used in the Work, or any other aspect of the Work.
7. Amendments; City’s Project Manager. This IGA constitutes the entire agreement between the Parties. The terms of this IGA shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. The City’s Project Manager shall have the authority on behalf of the City to extend the term of the IGA, modify review and processing procedures, or make other no cost changes to the contract that do not increase City’s risk, if agreed to by the County in

writing. The City's Project Manager also is authorized to approve work and billings hereunder, to give notices referred to herein, to terminate this IGA as provided herein, and to carry out all other City actions referred to herein.

8. Independent Contractor Status. The County is engaged under this IGA as an independent contractor, subject to the City Project Manager's overall supervision of and responsibility for the Work described in Attachment A.
 - A. The County may assign such personnel as it deems necessary to do the Work.
 - B. The County and its employees and contractors are not employees of the City and are not eligible for any benefits through the City. Each party shall be responsible for any federal, state, and local taxes and fees attributable to that party resulting from payments under this IGA.
9. Termination. This IGA may be terminated by either party on 30 days' written notice of such termination to the other party. In the event of early termination, City shall pay the County for work performed in accordance with the IGA prior to the termination date.
10. No Third-Party Beneficiary. Except as set forth herein, this IGA is between the Parties and creates no third-party beneficiaries. Nothing in this IGA gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third-parties.
11. Conflict 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 IGA or the proceeds thereof. No City officer or employees who participated in the award of this IGA shall be employed by the County on this project during the period of the IGA.
12. Non-assignment. This IGA shall not be assigned or transferred to another party without the express written consent of City's Project Manager.
13. Funds Available and Authorized. City certifies that at the time the IGA is written that sufficient funds are available and authorized for expenditure to finance costs of this IGA within City's current appropriation and limitation. Both Parties understand and agree that payment of amounts under this IGA attributable to work performed after the last date of the current budget period is contingent on City receiving appropriations, limitations, or other expenditure authority.
14. Captions. The captions or headings in this IGA are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this IGA.
15. Choice of Venue. Oregon law, without reference to any of its conflict of law provisions, shall govern this IGA and all rights, obligations and disputes arising out of the IGA. Venue for all disputes and litigation shall be in Multnomah County, Oregon.

16. 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.
17. Ownership of Work Product.
 - A. Ownership of any and all documents and data, including signature sheets, produced in connection with this IGA (the "Work Product") will be handled as described below. Ownership of the Work Product includes all rights, title and interest, including but not limited to copyright rights of specified Work Products.
 1. Except as described in subsection (B), City shall own all Work Product.
 2. Regardless of ownership of the Work Product, both parties shall have reasonable access to the Work Product.
 - B. Notwithstanding any other term of this IGA, City's and the County's obligations under this IGA are subject to the limitations and conditions of the Oregon Public Records Law ORS 192.410-192.505.
18. Access to Records. Both parties and their duly authorized representatives shall have access to the books, documents, papers, and records which are directly pertinent to the specific IGA for the purpose of making audit, examination, excerpts, and transcript and determining payment, unless otherwise limited by law.
19. Compliance with Applicable Law. Both parties shall comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances related to work performed or actions under this IGA.
20. 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 The County or City with respect to which the 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. Each 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 a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the Parties are jointly liable (or would be if joined in the Third Party Claim), each party 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 in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of City 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 the County on the one hand and of 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. The Parties' contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if the County had sole liability in the proceeding.

21. Indemnification.

A. Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution:

1. The County agrees to indemnify, hold harmless, and defend the City, its officers, employees, and agents, from any and all damages, losses, costs, expenses (including attorney fees), claims, and liabilities to the extent caused, or alleged to be caused, by the negligent or willful acts or omissions of the County or any of the officers, agents, employees, or contractors of the County.
2. The City agrees to indemnify, hold harmless, and defend the County and its officers, employees, and agents, from any and all damages, losses, costs, expenses (including attorney fees), claims, and liabilities relating to or pertaining to the Work performed by the City or its agents, division, employees, or subcontractors under this IGA.

B. The obligations assumed in this Section shall survive the termination or expiration of this IGA.

22. Insurance. Each party shall be responsible for providing worker's compensation insurance as required by law. Neither party shall be required to provide or show proof of any other insurance coverage.

23. Default. Time is of the essence in the performance of the IGA. Either party shall be deemed to be in default if it fails to comply with any provisions of this IGA. The non-defaulting party shall provide the other party with written notice of default and allow thirty (30) days within which to cure the defect.

24. Merger Clause. This IGA constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this IGA shall bind either party unless in writing and signed by both parties, except as otherwise permitted herein. 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 IGA.

25. ORS 190. This IGA constitutes an authorization by a public body under ORS 190.010 for a Party to perform one or more inherent governmental responsibilities of or for the other Party.

City of Portland

Contractor/Grantee

By: _____

Name: Mary Hull Caballero

Title: Auditor

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Title: City Attorney

Date: _____

Title: _____

Date: _____

Attachment A Statement of Work

In accordance with all applicable legal requirements, the Multnomah County Elections Division shall assist City in City's review of petitions PDX03 and PDX04 to determine whether the petitions contain at least 100 percent of the required number of signatures. The City anticipates that the petitions will be delivered to City on or before July 6, 2018, and are intended for the November 6, 2018 ballot.

Multnomah County's assistance, under the general supervision of City's Project Manager, shall include, without limitation, all of the following steps, for both petitions:

- a. Provide an appropriate location, space, equipment and workers to conduct the review and processing of the petitions to determine whether the petitions contain at least 100 percent of the required number of signatures as described in Portland City Code, Title 2, Section 2.04.090(B) and (C). The location and equipment will allow the public to access and observe the review to the extent possible based on existing technology and legal restrictions;
- b. Document, specific to each of the two petitions, all handling procedures for workers, including City or County staff and temporary or part-time workers, in accordance with the documentation requirements and handling procedures identified in Attachment B;
- c. Organize and count petition signatures and signature sheets to determine whether the petitions contain at least 100 percent of the required number of signatures as described in Portland City Code, Title 2, Section 2.04.090(B) and (C);
- d. Review petition circulator certifications, approved cover and signature sheets, and optional information to assess compliance with the standards set forth in OAR 165-014-0275, 165-014-0270 and 165-014-0110;
- e. Under direction provided by City and in accordance with Attachment B, use appropriate documentation to reject any signatures;
- f. Track and total all rejected signatures and related data, and provide data management of signatures and signature sheets; and
- g. Provide status updates to City's Project Manager weekly and upon request.

ATTACHMENT B

CITY OF PORTLAND INITIATIVE PETITION PRE-PROCESSING PROCEDURES (2018)

This document provides a general description of the procedures to be followed to carry out the filing officer requirements listed in ORS 250.315, OAR 165-014-0110, OAR 165-014-0005, OAR 165-0275, and OAR 165-014-0270. Circumstances may require changes to the order or manner of the work in order to comply with all applicable laws and rules.

Issued by: Office of the City Auditor, City of Portland Elections Officer

Dated: June 25, 2018

Name: Deborah Scroggin

1 Purpose and application

These procedures will be used to conduct the pre-processing of City initiative petitions for compliance with Oregon law and administrative rules when accepted by the City Elections Officer. Pre-processing occurs prior to statistical sampling to determine the overall total number of valid City of Portland registered voters in the petition, as described in OAR 165-014-0110.

Procedures are implementations of filing officer requirements listed in ORS 250.315, OAR 165-014-0110, OAR 165-014-0005, OAR 165-0275, and OAR 165-014-0270.

- (1) These procedures apply to:
 - (a) City initiative petitions PDX 03 and PDX 04, expected to be filed for submission on or before July 6, 2018.
- (2) Procedures will be carried out under the general supervision of the City Elections officer by City staff, County staff, and temporary County employees, as necessary.
- (3) City Elections Officer shall conduct training to all workers prior to carrying out procedures described in this document.

2 Petition handling; petition labelling and storage

- (1) Signs on rooms or work areas will designate which petition is being reviewed.
- (2) Members of the public will be able to observe the petition pre-processing review.
- (3) Check in/out sheets are required for each individual involved in or assisting with petition pre-processing review. The check-in sheet will be provided by the City and list workers full names, dates, times logging in and out and the petition ID.
- (4) Petitions boxes must be labelled (i.e. "PDX03 2018 box 1/10") and all signature sheets, when not being reviewed, are stored in their original boxes.

- (5) Work stations for different petitions must be clearly separated and labelled for pre-processing.

3 Petition organization and sequential numbering (OAR 165-014-0005)

- (1) Reviewers will verify that petition sheets are numbered sequentially in the lower right-hand corner of the signature sheet (SEL 371).
- (2) If it is determined that the petition has more than 50 signature sheets which are not numbered or are not sequentially numbered, chief petitioners will be promptly notified and allowed to correct the sequential numbering. The renumbering of petition sheets will only occur in the place designated by the City Elections Officer or designated staff.
- (3) The City may invoice chief petitioners for the cost of any workers' staff time necessary to renumber sheets, per OAR 165-014-0005.
- (4) Petition sheets will be bundled into 200-page stacks to prepare for pre-processing review.

4 Signature and cover sheet matching (OAR 165-014-0110)

- (1) Reviewers will examine cover and signature sheets (SEL 369, SEL 371) individually to determine if the cover and signature sheet was a version approved in writing by the City Elections Officer. Approved sheets, including E-sheets, will be available to workers to compare versions.
- (2) Signatures collected on sheets not approved by the City Elections Officer will be flagged for rejection and removed from the petition using signature rejection procedures described in Section 7 of this document.

5 Optional information on petition sheets

- (1) Reviewers will examine optional information provided in accordance with the instructions and exceptions listed in OAR 165-014-0275 and flag for rejection, using the procedures in section 7, any signature or signature sheet (SEL 371) if:
 - (a) The same handwriting appears to have completed the optional information on all lines of the petition sheet;
 - (b) Optional information on all lines has been entered, altered, corrected, clarified or obscured by typewriting or other mechanical means or if;
 - (c) Any other reason workers determine from the face of the signature sheet that a person or persons other than the petition signers entered, altered, corrected, clarified or obscured any information about the person who signed the signature sheet, including the optional fields of printed name, residence address and date signed;

6 Circulator certification review (OAR 165-014-0270)

- (1) Reviewers will examine circulator certification to determine if a complete certification exists for each signature sheet (SEL 371) of each petition.

- (2) An alternative exemplar will be used in cases where a circulator signature's legal signature must to be verified, such as with the use of initials, signature stamps, illegible, or printed script.
- (3) Circulator certifications will be considered complete if they match the requirements listed in the Secretary of State's 2018 County, City, and District Initiative and Referendum Manual, and per OAR 165-014-0270) as determined by the City Elections Officer and staff.
- (4) Any circulator certification and impacted signatures determined to not meet circulator certification requirements will be flagged for rejection and removed from the petition using signature rejection procedures described in Section 7 of this document.

7 Procedure for rejecting signatures

- (1) Any signature sheet or signature flagged for rejection in the pre-processing review shall be checked by two different workers before being submitted for rejection.
- (2) Signatures submitted for rejection must be:
 - (a) Documented electronically using two workers initials, the reason for rejection, signature sheet number, and signature line.
 - (b) Documented using the designated paper form describing the reason for rejection, signature sheet number, and signature line.

8 Daily signature tallying and review by City Elections Officer

- (1) Each elections worker shall keep an organized tally of signatures being reviewed during pre-processing using an acceptable software application (such as Microsoft Excel) using a template provided by the City.
- (2) Daily tallies shall include relevant notes on petition number, page, and signature line.
- (3) The City Elections Officer shall do a review of each petitions rejected signatures as well as the final review and total tally of all signatures and signature sheets to be included in the petition for statistical sampling according to OAR 165-014-0110.