

## INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT is made and entered into pursuant to the authority found in ORS 190.010, et seq. and ORS 206.345 between MULTNOMAH COUNTY by and through the Multnomah County Sheriffs Office (COUNTY) and METRO.

### RECITALS

WHEREAS, Multnomah County is a political subdivision of the State of Oregon and is a unit of local government authorized to enter into intergovernmental agreements pursuant to ORS 190.010, et seq; and

WHEREAS, the Multnomah County Sheriff is authorized to enter into intergovernmental agreements jointly with and on behalf of the County, pursuant to ORS 206.345; and

WHEREAS, METRO is a municipal corporation formed and operating under state law and the Metro Charter, and is a unit of local government authorized to enter into intergovernmental agreements pursuant to ORS 190.010, et seq; and

WHEREAS, METRO desires to contract with the COUNTY for the performance of certain law enforcement functions, related to METRO's purpose and authority, to be performed by the COUNTY through the Multnomah County Sheriffs Office (hereinafter "MCSO"); and

WHEREAS, the COUNTY through the MCSO is able and prepared to provide the services required by METRO under the terms and conditions set forth in this Agreement; therefore,

IN CONSIDERATION of those mutual promises and the terms and conditions set forth hereafter, and pursuant to the provisions of ORS chapter 190, the parties agree to be bound as follows:

### INVESTIGATION

1. The COUNTY agrees to provide general investigative police service to METRO. Such police service shall include:
  - (a) Enforcement of all duly enacted ordinances of METRO, including those related to flow control investigation and solid waste management;
  - (b) Random and directed surveillance of persons collecting, transporting, storing, treating and disposing of solid and liquid waste to ensure such persons are complying with applicable laws relating to waste management;
  - (c) Background investigations of prospective vendors, contractors who enter into agreements with METRO to provide solid and liquid waste management services or are subject to METRO regulation by law or agreement. Such background investigations shall be subject to the restrictions and limitations imposed by law regarding the use of computerized criminal history information;
  - (d) At METRO's request, investigation, case preparation, and prosecution assistance in cases involving offenses (including, but not limited to fraud,

- racketeering, and material breach of contract) allegedly committed by vendors, contractors, or subcontractors doing business with METRO or by facilities, firms or individuals subject to METRO or by law or agreement;
- (e) Criminal intelligence briefings on the waste management industry nationwide, statewide, and locally; specifically focusing upon any connection or relationship between industry participants and known elements of organized crime or other criminal activities;
  - (f) Investigations of suspected violations of environmental laws, rules, and ordinances; and
  - (g) Other general investigative work as requested by Metro.
2. In accordance with ORS 206.345(2), the COUNTY and METRO agree that during the existence of this Agreement, the sheriff and the deputies of the sheriff shall exercise such authority as may be vested in them by law or by terms of this Agreement, including full power and authority to cite violators, arrest for violations of applicable criminal laws, and take other enforcement action for violations of all duly enacted ordinances of METRO relating to flow control and waste management.

#### **ILLEGAL DUMPSITE CLEANUP - INMATE WORKCREWS**

3. The COUNTY agrees to provide 1.45 FTE supervised inmate work crews to clean up illegal dumpsites within the jurisdictional boundaries of METRO. Sites will only be cleaned up as requested by METRO. The COUNTY further agrees that:
- (a) Each crew will be supervised by one or more corrections officers trained and experienced in managing inmate work crews;
  - (b) Each work crew will be comprised of sentenced, local inmates eligible for outside public works and who pose a minimal threat to the public;
  - (c) Each work crew vehicle will be radio-equipped, self-contained, and furnished with hand and power tools appropriate for each job; and
  - (d) Each work crew supervisor shall be directed to identify and retain through procedures designed to maintain a defensible chain of custody, any evidence that may lead to a successful prosecution of persons dumping waste illegally.
4. The COUNTY and METRO agree, however, that the clean-up of dump sites containing known or suspected hazardous materials is beyond the scope, skill, training, and experience of inmate work crews and that an inmate work crew, including inmates and ASSIGNED PERSONNEL, shall not be required to clean-up any dump site where known or suspected hazardous materials are present. In the event the inmate work crew discovers known or suspected hazardous materials at a dumpsite, the work crew supervisor shall immediately cease the cleanup activity until such time as the site is inspected and declared or made safe by the appropriate hazardous materials authority.

#### **PERSONNEL MATTERS**

5. The COUNTY agrees to provide for the performance of the duties hereunder two (2) FTE deputy sheriffs, and one and forty-five hundredths (1.45) FTE corrections officers. The COUNTY will provide one (1) FTE sergeant in place of one (1) FTE

deputy sheriff, should the nature of the work performed under this contract require the skills, expertise, experience, and supervisory authority of a sergeant. The COUNTY will notify METRO in advance of assigning a sergeant to perform duties under this contract, and such assignment will be subject to METRO's prior approval. These persons are hereinafter referred to as "ASSIGNED PERSONNEL." For the purpose of this Agreement, one (1.0) FTE position means an employee who is regularly scheduled to work at least 40 hours per week.

6. The COUNTY and METRO agree that one or more of the deputy sheriffs provided hereunder may be provided by a law enforcement agency other than MCSO. In such event, the other law enforcement agency hereinafter shall be referred to as a "PARTICIPATING AGENCY."
7. The COUNTY agrees that the sergeant, deputy sheriffs, and corrections officers provided as ASSIGNED PERSONNEL shall be certified in their respective disciplines by the State's Board of Public Safety Standards and Training.
8. The COUNTY and METRO agree that the ASSIGNED PERSONNEL provided hereunder by MCSO or a PARTICIPATING AGENCY shall be and remain employees of the COUNTY or PARTICIPATING AGENCY. The ASSIGNED PERSONNEL shall be supervised by MCSO and shall perform their duties in accordance with the administrative and operational procedures of MCSO. Metro shall nevertheless retain the right, upon request and for cause stated, to have ASSIGNED PERSONNEL removed from assignment under this Agreement and replaced by other ASSIGNED PERSONNEL meeting the requirements of this Agreement.
9. METRO does not assume any liability for the direct payment of any wages, salaries, or other compensation to ASSIGNED PERSONNEL performing services pursuant to the terms of this Agreement or for any other liability not provided for in this Agreement.
10. The COUNTY shall maintain Workers' Compensation insurance coverage for ASSIGNED PERSONNEL, either as a carrier insured employer or a self-insured employer as provided in ORS Chapter 656.
11. The COUNTY and METRO agree that matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment regarding ASSIGNED PERSONNEL under this Agreement shall be governed by the provisions of existing collective bargaining agreements between the ASSIGNED PERSONNEL's bargaining unit and their public employer.
12. The COUNTY and METRO agree that all labor disputes arising out of this Agreement shall be governed by the provisions of applicable collective bargaining agreements in effect during this Agreement, and the personnel rules of the COUNTY or PARTICIPATING AGENCY.
13. The COUNTY and METRO acknowledge that the ASSIGNED PERSONNEL will be absent from duty for various reasons, including but not limited to vacation, holiday, illness, injury, training, leave of absence, and administrative leave. The COUNTY and METRO also acknowledge that some employee absences are the result of paid leave that the ASSIGNED PERSONNEL earn and are entitled to take. The COUNTY

and METRO also acknowledge that some employee absences are the result of actions taken by the employer, with or without the employee's consent. In accordance with the foregoing acknowledgments, the COUNTY and METRO agree:

- (a) Except as provided in subsection (b) below, the COUNTY will not be responsible or otherwise obligated to replace any ASSIGNED PERSONNEL who is absent due to paid accrued leave, including but not limited to: vacation, holiday, sick leave or who is absent while participating in training directly related to the services-required by METRO. However, the COUNTY will make a good faith effort to schedule known, projected absences so as to minimize the impact on the COUNTY's ability to perform under this Agreement.
  - (b) The COUNTY or PARTICIPATING AGENCY will replace any ASSIGNED PERSONNEL who is absent more than 10 consecutive days during a year due to: 1) vacation; 2) employer action; including but not limited to training not directly related to or provided by this Agreement; 3) leave of absence granted at employer's discretion; 4) administrative leave; 5) sick leave; 6) maternity/paternity leave; or 7) absence due to a job related injury covered by worker's compensation.
  - (c) This subsection provides when the COUNTY may invoice METRO, and when METRO shall pay, the personnel costs of an ASSIGNED PERSON in the event the COUNTY or PARTICIPATING AGENCY does not replace such ASSIGNED PERSON when the ASSIGNED PERSON is absent from work. For ASSIGNED PERSONNEL that have been assigned to METRO for six months or longer, METRO shall pay one-half of such personnel costs for absences due to vacation leave, up to an annual maximum of 120 hours, and one-half of such personnel costs for absences due to sick leave, up to an annual maximum of 104 hours (i.e., each year METRO shall pay for no more than the personnel costs of 60 hours of vacation leave and 52 hours of sick leave). For ASSIGNED PERSONNEL that have been assigned to METRO for less than six months, the COUNTY will not invoice METRO for such personnel costs and METRO shall not pay for such personnel costs. In no event shall the COUNTY invoice METRO, and METRO shall not pay, for such personnel costs due to any kind of absence other than for vacation and sick leave, as provided in this subsection.
14. The COUNTY shall rotate the primary corrections officers assigned to METRO at staggered intervals such that the METRO program does not have both of its primary corrections officers rotated out of the program within less than six months of each other.
15. The COUNTY shall rotate the deputy sheriffs assigned to METRO at staggered intervals such that the METRO program does not have both of its deputy sheriffs rotated out of the program within less than one year of each other.

#### **OFFICE SPACE**

16. METRO agrees to provide the ASSIGNED PERSONNEL with sufficient office space, to include payment of costs for utilities, including telephone service, at METRO's premises or at a site mutually agreed upon by the COUNTY and METRO.

**EQUIPMENT PURCHASE, USE AND DISPOSITION**

17. Materials and supplies will be purchased for the use of ASSIGNED PERSONNEL as provided hereunder. For the purpose of this Agreement, "materials" includes capital equipment with a unit cost of \$1,000 or more. "Supplies" includes any item with a unit cost of less than \$1,000.
18. METRO agrees to purchase all materials and supplies necessary for the performance of this Agreement.
19. The COUNTY and METRO agree that all vehicles and equipment purchased by METRO for use in fulfilling this agreement, including capital equipment, shall be owned by METRO but under the control of the COUNTY for the COUNTY's use in performing its duties under this Agreement. Such vehicles and equipment shall not be used for any other purpose unless specifically authorized by Metro. The COUNTY and METRO further agree that upon termination of this Agreement, control of all remaining materials and supplies purchased hereunder, including capital equipment, shall revert to METRO.
20. Notwithstanding the provisions of section 17, METRO may grant to the COUNTY an option to purchase from METRO any or all remaining materials and supplies at a price mutually agreed upon by the parties, not to exceed the fair market value of the items at the times of purchase. The COUNTY agrees to give METRO notice of the COUNTY's intent to exercise any option that may be granted under this section within 60 days following termination of this Agreement.

**CONTRACT COSTS**

21. METRO shall pay COUNTY for all costs, services performed, and materials delivered for the term of this Agreement. By February 1 of each year, the MCSO shall provide METRO with a good faith estimate of the cost of this agreement for the following fiscal year. The actual amount to be paid by METRO will be determined through mutual agreement of the parties prior to each anniversary date of the execution of this Agreement. The amount to be paid by METRO for the term of the Agreement will not exceed THREE HUNDRED THIRTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$335,000.00). This maximum sum includes all fees, costs, and expenses of whatever nature to which COUNTY may become entitled for the term of this Agreement. All costs listed on Exhibit A, which is The Budget for the Agreement prepared by COUNTY, are on a "not to exceed" basis, and shall be billed quarterly for costs incurred, services performed, and materials delivered during the previous quarter. COUNTY shall submit itemized billings to METRO within 15 days of the end of each quarter of the contract year, and METRO shall make payment to COUNTY within 30 days of receipt of approved billings.

**INDEMNIFICATION AND LIABILITY**

22. The COUNTY shall indemnify, defend, and hold harmless METRO, its officers, employees, and agents from all claims, suits, actions, or expenses of any nature resulting from or arising out of the acts, errors, or omissions of the ASSIGNED PERSONNEL acting pursuant to the terms of this Agreement, within the limits of the Oregon Tort Claims Act and the Oregon Constitution.

23. METRO shall indemnify, defend, and hold harmless the COUNTY, 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 METRO or its assignees, within the limits of the Oregon Tort Claims Act and the Oregon Constitution.

#### **DISPUTE RESOLUTION**

24. While the parties have attempted to make an Agreement anticipating and addressing their concerns, METRO and the COUNTY acknowledge the possibility that a claim, controversy, or dispute may arise out of this Agreement. METRO and the COUNTY agree that each party has an obligation and affirmative duty to make a good faith effort to resolve any claim, controversy, or dispute, including the giving of timely, written notification thereof to the other party.
25. METRO and the COUNTY agree that all claims, controversies or disputes which arise out of this Agreement, and which have not been resolved through good faith efforts of the parties, shall be resolved by arbitration in accordance with the then effective arbitration rules of the Arbitration Service of Portland or the American Arbitration Association, whichever organization is selected by the party who first initiates arbitration by filing a claim in accordance with the rules of the organization selected, and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

#### **CONTRACT ADMINISTRATION**

26. The Multnomah County Sheriff or his designated representative will represent the COUNTY in all matters pertaining to administration of this Agreement.
27. METRO designates its Solid Waste & Recycling Department Director or his designee to represent METRO in all matters pertaining to administration of this Agreement.
28. Any notice or notices provided for by this Agreement or by law to be given or served upon either party shall be given or served by certified letter, deposited in the U.S. mail, postage prepaid, and addressed to:

Multnomah County Sheriff  
501 SE Hawthorne Blvd., Ste 350  
Portland, Oregon 97214

Solid Waste & Recycling Department Director  
METRO  
600 NE Grand Avenue  
Portland, Oregon 97232

#### **CONTRACT TERM, MODIFICATION, AND TERMINATION**

29. This Agreement shall be effective from the 1st day of July, 2004, and shall run through the 30th day of June 2005, unless extended.
30. METRO and the COUNTY agree that either party to this Agreement may terminate said Agreement by giving the other party not less than 90 days written notice.
31. METRO and the COUNTY agree that this Agreement may be modified or amended by agreement of the parties. Any modification to this Agreement shall be effective

only when incorporated herein by written amendments and signed by both METRO and the COUNTY.

32. This Agreement is not intended to benefit any individual, employee, group of employees, corporation, or other legal entity other than the parties to this Agreement. This Agreement shall not be deemed to vest in any third party any rights, nor shall it be deemed to be enforceable by any third party in any legal, equitable, or administrative proceeding whatsoever.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on the date written below.

**MULTNOMAH COUNTY**

**METRO**

By: Bernie Giusto by LAG  
Bernie Giusto, Sheriff

By: \_\_\_\_\_  
Michael Jordan,  
Chief Operating Officer

Date: 6-7-04

Date: \_\_\_\_\_

By: \_\_\_\_\_  
County Chair or Designee

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
Multnomah County Attorney

APPROVED AS TO FORM:  
Metro Attorney

By: \_\_\_\_\_  
Assistant County Attorney

By: \_\_\_\_\_  
Marvin D. Fjordbeck,  
Senior Assistant Counsel

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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