

Deschutes County Board of Commissioners
1300 NW Wall Street, Suite 200, Bend OR 97701-1960
541.388.6570 – Fax 541.385.3202 – www.deschutes.org

AGENDA REQUEST AND STAFF REPORT

For Board Business Meeting of: May 25, 2016

DATE: May 16, 2016

FROM: Chris Doty Road Department Phone: 541.322.7105

TITLE OF AGENDA ITEM:

Board signature and approval of Agreement # 2016-301; a supplement to the 2010 Flexible Maintenance Services IGA with the City of Bend.

PUBLIC HEARING ON THIS DATE? No

BACKGROUND AND POLICY IMPLICATIONS:

The City of Bend and Deschutes County have an existing Intergovernmental Agreement in place to share equipment and services. The most recent IGA was adopted in 2010. This IGA is utilized to enable Deschutes County to perform chip seal services for the City on an annual basis in amounts typically exceeding \$500,000. The existing IGA is structured such that each agency maintains sole responsibility for their individual personnel and actions. As such, the County incurs liability on behalf of the City when performing chip seal operations. The quantity of work, coupled with the extended liability exposure of the work, transfers a disproportionate amount of risk to Deschutes County versus typical sharing operations. Deschutes County, a self-insured agency, provides chip seal services at-cost to the City.

Agreement 2016-301 will amend the existing IGA with the City by defining Deschutes County as an agent of the City and will require the City to indemnify the County against claims related to chip seal (excluding gross negligence) while performing chip seal work for the City.

FISCAL IMPLICATIONS:

There will be no fiscal impact to Deschutes County. The City will obtain separate insurance coverage, at minimal cost, to indemnify the County.

RECOMMENDATION AND ACTION REQUESTED:

Move signature and approval of Agreement 2016-301 – a supplement to the 2010 Flexible Maintenance Services IGA with the City of Bend.

ATTENDANCE: Chris Doty

DISTRIBUTION OF DOCUMENTS:

Return one set of signed documents to:
Gary Firestone, Assistant City Attorney (PO Box 431, Bend OR 97709)

DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections above the Official Review line.

Date:

Department:

Contractor/Supplier/Consultant Name:

Contractor Contact:

Contractor Phone #:

Type of Document: Intergovernmental Agreement #2016-301

Goods and/or Services: Supplements 2010 IGA with City of Bend regarding Flexible Maintenance Services.

Background & History: Per agenda request

Agreement Starting Date:

Ending Date:

Annual Value or Total Payment:

Insurance Certificate Received (check box)
Insurance Expiration Date:

Check all that apply:

- RFP, Solicitation or Bid Process
- Informal quotes (<\$150K)
- Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

Funding Source: (Included in current budget? Yes No

If **No**, has budget amendment been submitted? Yes No

Is this a Grant Agreement providing revenue to the County? Yes No

Special conditions attached to this grant:

Deadlines for reporting to the grantor:

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: Yes No

Contact information for the person responsible for grant compliance: Name:

Chris Doty
Phone #: 541.322.7105

Departmental Contact and Title: Chris Doty, Director
541.322.7105

Phone #:

Department Director Approval: _____
Signature Date

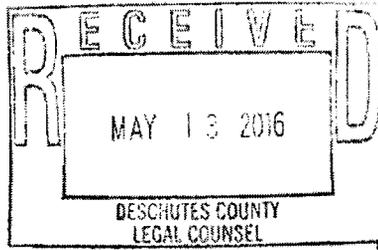
Distribution of Document: Board Secretary

Official Review:

County Signature Required (check one): BOCC Department Director (if <\$25K)
 Administrator (if >\$25K but <\$150K; if >\$150K, BOCC Order No. _____)

Legal Review  Date 5/18/16

Document Number DC 2016-301



CITY OF BEND

May 13, 2016

Via hand delivery

710 NW WALL STREET
PO Box 431
BEND, OR 97709
541-693-2124 Tel
541-385-6676 Fax
bendoregon.gov

David Doyle
Deschutes County Counsel
1300 NW Wall Street
Bend, OR 97703

MAYOR
Jim Clinton

Re: IGA for Chip Seal Services

MAYOR PRO TEM
Sally Russell

Dear David,

CITY COUNCILOR
Nathan Boddie
Barb Campbell
Victor Chudowsky
Doug Knight
Casey Roats

Enclosed are two duplicate IGAs signed by Eric King and myself. Upon execution by you and the County Commissioners, please return one original to me for our records.

CITY MANAGER
Eric King

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gary Firestone".

Gary Firestone
Assistant City Attorney
gfirestone@bendoregon.gov

CITY ATTORNEY
Mary A. Winters

Enclosures

Copy: David Abbas



INTERGOVERNMENTAL AGREEMENT FOR THE PERFORMANCE OF CHIP SEAL SERVICES

(A SUPPLEMENT TO THE 2010 FLEXIBLE MAINTENANCE SERVICES IGA)

This agreement is between Deschutes County, a political subdivision of the State of Oregon ("County") and the City of Bend, an Oregon municipal corporation ("City").

RECITALS:

1. County and City have entered into an intergovernmental agreement for Flexible Maintenance Service (2010 IGA) as authorized by ORS Chapter 190.
2. General Provisions, Section 9 of the 2010 IGA provides that each Party is responsible for and indemnifies the other Party for acts and omissions of its officers, employees, or agents.
3. County has provided chip seal services for City under the 2010 IGA, utilizing a combination of County and City employees to perform the work which includes: staging and delivery of materials, application of materials, and project close-out/cleanup.
4. Chip seal services performed by the County at the request of the City have led to several instances in which the County has incurred operational liabilities due to unfamiliarity of the City's system and/or instances in which decisions of the City have resulted in increased liability exposure to the County.
5. County is willing to continue to provide chip seal services provided the City assumes full and exclusive liability for any claims related to chip seal operations.

TERMS OF AGREEMENT:

1. The County will provide Chip Seal Services to the City in accordance with the provisions of the 2010 IGA, except that, for Chip Seal Services only, General Provision #9 of the 2010 IGA shall not apply and the following provision shall apply:

To the extent permitted by the Oregon Constitution, and subject to the limitations of the Oregon Tort Claims Act, the City shall be solely responsible for any and all loss, damage, injury or death caused to any and all property or persons arising from the acts or omissions of both County and City officers, employees, or agents in the performance of this agreement. In this context, City shall indemnify and save harmless County from and against any and all claims, demands, actions, causes of actions and/or torts, as the term "tort" is defined in ORS 30.260(8) of City and/or County officers, employees, and/or agents arising out of or in any way related to the provisions of chip seal services under this agreement, except to the extent the claims, demands, actions, causes of actions and/or torts relate to gross negligence or intentional misconduct by the County, its officers, employees or agents.

2. Chip seal services include all elements associated with installation of chip seal, including, but not limited to stockpiling and delivery of materials, public relations and communication, traffic control and signage, installation, sweeping, project cleanup, and restoration of traffic.

3. All other provisions of the 2010 IGA shall remain in effect for chip seal services and the original version of General Provision #9 shall continue to apply to all work other than chip seal services.

4. Deschutes County shall perform the chip seal services for the City under the 2010 IGA and this Supplement as an agent of the City.

REVIEWED FOR CITY OF BEND

By: Gay Fiverson
City Attorney

Date:

5/12/16

CITY OF BEND, a political subdivision of the State of Oregon

By: Eric King
Eric King, City Manager

Date:

5-12-16

REVIEWED FOR DESCHUTES COUNTY

By: nam
County Counsel

Date:

5/18/16

DESCHUTES COUNTY, a political subdivision of the State of Oregon

By: Alan Unger
Alan Unger, Chair

By: Tammy Baney
Tammy Baney, Commissioner

By: Anthony DeBone
Anthony DeBone, Commissioner