

Council Business Meeting

March 16, 2021

Agenda Item	Intergovernmental Agreement with Medford Water Commission for Water Efficiency Services	
From	Scott Fleury PE	Public Works Director
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SUMMARY

In December 2020, the City's Water Conservation Analyst accepted a similar position with the Medford Water Commission (MWC). Julie Smitherman had been employed with the City of Ashland for eight years and was the direct responsible charge for managing and expanding the water conservation program. With the loss of a critical employee, Public Works is recommending entering into an Intergovernmental Agreement (IGA) with MWC for water efficiency program support services to be provided by MWC until such time as the City Manager and Public Works Director determine the appropriate timing to fill the position with a full-time City staff position.

POLICIES, PLANS & GOALS SUPPORTED

City Council Goals:

Essential Service-Drinking Water System
Emergency Preparedness
Address Climate Change

CEAP Goals:

Natural Systems: Air, water, and ecosystem health, including opportunities to reduce emissions and prepare for climate change through improved resource conservation and ecosystem management.

Strategy NS-2: Manage and conserve community water resources

Strategy NS-3: Conserve water use within City operations

Continue to leverage resources to develop and/or enhance Value Services

Department Goals:

- Maintain existing infrastructure to meet regulatory requirements and minimize life-cycle costs
- Deliver timely life cycle capital improvement projects
- Maintain and improve infrastructure that enhances the economic vitality of the community
- Evaluate all city infrastructure regarding planning management and financial resources

PREVIOUS COUNCIL ACTION

The Council has entered into numerous IGAs over the years and with similar intent. The Council previously approved entering into the Southern Oregon COOP IGA ([Staff Report](#)) and a flexible services IGA with the Oregon Department of Transportation ([Staff Report](#)).

BACKGROUND AND ADDITIONAL INFORMATION

The City has had a long history of promoting water conservation and efficiency improvements community wide through the Public Works Department. Community support for efficiency related programs remains high and to continue to support the programmatic need, staffing is essential. In order to keep the conservation program accessible to the community in this transitional time, City staff have coordinated with the MWC on development of an IGA for conservation and efficiency services until such time as new City staff can be hired and trained.

Critical components of the IGA include providing the expertise necessary for indoor and outdoor water efficiency audits, leak detection, informational presentations, and the review of rebate program requests, specifically the lawn replacement program. The IGA also defines parameters associated with city staffing assistance and sharing of resources.

Numerous tasks previously handled through the Water Conservation Analyst position will be handled by existing staff until such time as a potential new employee is hired and trained effectively. There is also an expectation that a new employee would also be provided beneficial training through this IGA in order to effectively take over the water efficiency program.

FISCAL IMPACTS

Fiscal impacts associated with this IGA would be the direct cost for services provided as part of the efficiency program and paid out of the water fund “conservation division” with already appropriated funds. No additional appropriation requests are anticipated. Additional soft costs are associated with existing City staff coordinating with MWC staff on conservation program.

STAFF RECOMMENDATION

Staff recommends approval of an Intergovernmental Agreement to provide water efficiency services.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

- 1) I move to approve an Intergovernmental Agreement with the Medford Water Commission to provide water efficiency services.
- 2) I move to amend an Intergovernmental Agreement with the Medford Water Commission [insert amendment]

REFERENCES & ATTACHMENTS

Attachment 1: Intergovernmental Agreement-Water Conservation and Efficiency Services

**INTERGOVERNMENTAL AGREEMENT
FOR
WATER CONSERVATION AND EFFICIENCY SERVICES
BETWEEN THE CITY OF ASHLAND AND THE MEDFORD WATER COMMISSION**

This Intergovernmental Agreement (hereinafter “Agreement”) is entered into by and between the City of Ashland, an Oregon municipal corporation (hereinafter “Ashland”), and the City of Medford, an Oregon municipal corporation, by and through the Medford Water Commission (hereinafter “MWC”), collectively referred to hereinafter as the “PARTNERS.”

RECITALS

- A. The PARTNERS each own and operate separate water systems that supply water to their respective customers; and
- B. The PARTNERS recognize the vital importance of providing a reliable source of water to all of their respective customers for public health, safety, and welfare and for sustaining economic development; and
- C. The PARTNERS value the important role each utility plays in meeting the water needs of their respective communities; and
- D. The PARTNERS agree that sharing equipment, materials and services promotes the cost effective and efficient use of public resources; and
- E. The PARTNERS desire to enter into an agreement to establish the procedures for sharing equipment, materials, and services and to define their legal relationships and responsibilities; and
- F. The PARTNERS enter this Agreement in a spirit of good will and mutual cooperation, with the understanding that shared resources will improve the current and long-term reliability of individual and collective water systems and is in the highest public interest; and
- G. This Agreement is authorized under ORS 190.010 *et seq.*

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the PARTNERS hereby agree as follows:

- A. **RECITALS/PURPOSE:** The above recitals are true and correct and are specifically adopted and incorporated herein as the purpose of this Agreement.
- B. **DEFINITIONS:** As used herein, Water Conservation & Efficiency Services means the policies, strategies and activities to sustainably manage the natural resource of water.

C. TERM, TERMINATION, AND AMENDMENTS:

1. This Agreement shall be effective from the date of execution by all PARTNERS as set forth below (the “Effective Date”). If the PARTNERS sign on separate dates, the latter date shall be the Effective Date. This Agreement shall terminate on June 30, 2023, unless sooner terminated as provided in Subsection C.2.
2. This Agreement may be terminated at any time upon the mutual written consent of the PARTNERS. This Agreement may be terminated by either party, upon not less than ninety (90) calendar days written notice to the other party.
3. This Agreement may be amended only by written instrument executed with the same formalities as this Agreement.

D. SCOPE OF SERVICES

1. MWC will provide water conservation and efficiency services to Ashland including, but not limited to:
 - I. Efficiency Rebate Program review and approval for:
 - i. Toilets, washers.
 - a. MWC will assist with training on processing toilet and washing machine rebates.
 - b. MWC will also assist with training on how to track the number of rebates and estimated savings for each rebate.
 - c. After initial training is complete, Ashland staff will process incoming rebate requests on their own.
 - d. MWC will assist with technical questions via electronic communication.
 - ii. Smart controllers, lawn replacement.
 - a. These two rebates are more intensive and typically require onsite visits and irrigation evaluations in order for the customer to be eligible for a rebate.
 - b. Rebates are issued based on customers’ ability to achieve water savings.
 - c. MWC will also assist with training on how to track the number of rebates and estimated savings for each rebate.
 - d. MWC staff will assist in training Ashland staff in the processing of these rebates. Once training is complete, Ashland staff will process these rebates on their own with technical assistance as needed from MWC.

II. Indoor water audits:

- i. MWC will assist with training Ashland staff on how to conduct indoor water audits.
 - a. Such audits include checking toilets, washing machines, water heaters, and dishwashers and assisting the customer with changing out showerheads and faucet aerators.
 - b. Audits will always include assistance with ordering giveaways, such as showerheads and faucet aerators.
 - c. MWC will also assist with training Ashland staff on how to track estimated savings as a result of the installation of new showerheads, faucet aerators, etc.

III. Irrigation audits:

- i. MWC will provide training to Ashland staff on how to conduct an irrigation audit and write an associated follow-up report.
 - a. Such audit training will include assistance on filling out data worksheets in the field, education on the operation of sprinkler systems and their components (drip, spray, rotors and their application rates), programming controllers, determining evapotranspiration (ET) to assist in developing a watering schedule, conducting a catch can test, and determining plant water needs.
 - b. Ashland will be the main point of contact for customers and will schedule appointments on a selected day or days (e.g., Tuesday and Thursdays) when MWC staff are available to assist. Appointments will likely be scheduled two to three weeks in advance.
 - c. Customers requiring immediate assistance, or an alternate day will need to be helped by Ashland staff. MWC staff could assist by phone or via Zoom if available.
 - d. MWC will also assist with training on how to track the number of rebates and estimated savings for each rebate.

IV. Program education and outreach:

- i. Newsletters, brochures, and handouts are available to Ashland staff. (There are several examples of articles that have been written in the past for the City Source Newsletter.)
- ii. MWC will help Ashland develop new outreach and education materials, as necessary.

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- iii. MWC will help with newsletter articles on a quarterly basis.
 - iv. MWC will train ASHLAND staff on creating booth displays and will provide other guidance as necessary.
- V. Private Development landscape plan review:
- i. MWC will review landscape and irrigation plans as necessary to assist the Ashland Planning Department.
 - ii. MWC will assist in training new Ashland employees in reviewing landscape and irrigation plans.
 - iii. MWC requests two weeks to review new landscape and irrigation plans.
- VI. Waterwise landscape website management:
- i. MWC will train Ashland staff to manage websites related to water conservation and efficiency and to add new information as needed. MWC will assist with technical questions related to websites as needed.
- VII. City of Ashland newsletter utility billing insert conservation and efficiency articles:
- i. MWV will assist Ashland staff on conservation and efficiency articles as set forth in Subsection D.1.IV., Program education and outreach.
- VIII. Community Presentations:
- i. Community presentation will be scheduled as necessary by Ashland staff.
 - ii. MWC will provide direction on presentations based upon the intended audience and/or topic.
- IX. Training of Ashland staff on water conservation and efficiency program details:
- i. MWC will provide an initial training on running a water conservation and efficiency program to the City's: Water Resources Technician, Administrative Analyst and Permit Technician.
 - ii. MWC requests that each program component be assigned to one person. For example, one person shall be responsible for coordinating irrigation audits. One person shall be responsible for

sending any newsletter articles to the appropriate contact for the City Source newsletter. Individual assignments help keep programs running smoothly by having one point of contact for each component of the program in the short-term.

- iii. MWC will provide long-term training for any newly hired Ashland employee assigned to be the main point of contact for any water conservation and efficiency programs and customer interactions.
- iv. MWC will assist Ashland by being part of any interview panel responsible for selecting a long-term conservation employee for Ashland.

- 2. Ashland will provide MWC with relevant data as requested to support water conservation and efficiency services for the Ashland's benefit. Ashland will provide network access as required for education, outreach and website improvements that best serve the community and program.
- 3. Ashland will provide office and meeting space as requested by MWC to support the water conservation and efficiency program. Requests for space will be made a minimum 72 hours prior to the actual need in order to ensure availability.
- 4. MWC will provide a vehicle for its staff when working in Ashland. A City of Ashland magnet decal will be provided by Ashland to be used to mark the MWC vehicle when conducting work in Ashland pursuant to this Agreement.
- 5. MWC staff will wear Ashland branding when working in Ashland pursuant to this Agreement.
- 6. MWC shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work under this Agreement.

E. REIMBURSEMENT TO MEDFORD WATER COMMISSION: MWC shall submit invoices to Ashland monthly for actual costs incurred for work performed under this Agreement. Ashland shall reimburse MWC for equipment and services based on MWC rates for its internal financial management of personnel and equipment adopted and in existence at the time of the work being performed. Payments shall be made within forty-five (45) calendar days from receipt by Ashland of the invoice. Invoices shall be submitted to: Scott Fleury, Public Works Director, 20 East Main Street, Ashland, Oregon 97520, 541-552-2412, scott.fleury@ashland.or.us.

F. EXPENDITURE AUTHORIZATION: Ashland certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance the costs of this Agreement within Ashland's current appropriation or limitation of the current biennial budget.

G. **INDEPENDENT CONTRACTORS:** For the purposes of this Agreement, each PARTNER and is an independent contractor. Nothing herein shall alter the employment status of any worker or employee providing services under this Agreement. Such workers shall at all times continue to be subject to all standards of performance, disciplinary rules, and other terms and conditions of their employer.

H. **INDEMNIFICATION:**

1. **INDEMNIFICATION.** To the extent allowed by the Oregon Constitution and the Oregon Tort Claims Act, each party agrees to indemnify, save, hold harmless, and defend the other party from and against any claims, liabilities, damages, and costs, including reasonable attorney fees, arising out of or related to any error, omission or negligent act on the part of the indemnifying party, or its officers, agents, and employees in the performance of this Agreement.

2. **STATUS.** In providing the services specified in this Agreement, the PARTNERS are public bodies and shall maintain their public body status as specified in ORS 30.260. The PARTNERS understand and acknowledge that each retains all immunities and privileges granted to them by the Oregon Tort Claims Act and all other statutory rights granted as a result of their status as local public bodies.

I. **INSURANCE:** Each party shall be insured or self-insured and be independently responsible for the risk of its own liability for claims or actions within the scope of the Oregon Tort Claims Act (ORS 30.260 through ORS 30.300).

J. **NONDISCRIMINATION:** The parties agree to comply with all applicable requirements of federal, state, and local civil rights and rehabilitation laws, rules, and regulations in the performance of this Agreement.

K. **GOVERNING LAW:** This Agreement shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in the Circuit Court of the State of Oregon for Jackson County unless exclusive jurisdiction is in federal court, in which case exclusive venue shall be in the federal district court for the district of Oregon. Each party expressly waives any and all rights to maintain an action under this Agreement in any other venue, and expressly consents that, upon motion of the other party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate this choice of venue.

L. **MERGER:** This Agreement embodies the full and complete understanding of the parties respecting the subject matter hereof. It supersedes all prior agreements, negotiations, and representations between the parties, whether written or oral.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their proper officers as of the dates set forth below.

THE CITY OF ASHLAND:

MEDFORD WATER COMMISSION:

By: _____
Adam Hanks
City Manager Pro Tem

By: _____
Brad Taylor
General Manager

Dated

Dated