

# Council Business Meeting

June 15, 2021

<b>Agenda Item</b>	Approval of a Memorandum of Understanding with Addictions Recovery Center	
<b>From</b>	Tighe O'Meara	Police Chief
<b>Contact</b>	<a href="mailto:Tighe.omeara@ashland.or.us">Tighe.omeara@ashland.or.us</a> ; (541) 552-2142	

## **SUMMARY**

Staff is seeking approval of a memorandum of understanding (MOU) between the Ashland Police Department (APD) and Addiction Recovery Center (ARC) to provide sobering services.

## **POLICIES, PLANS & GOALS SUPPORTED**

2019-2021 City Council Goals

- A. Prioritize the "Essential Services"
  - i. Police

## **PREVIOUS COUNCIL ACTION**

This relationship is long standing and represents the best option for caring for community members in need of sobering services.

## **BACKGROUND AND ADDITIONAL INFORMATION**

For several years, the APD has contracted with ARC to provide sobering services for members of the Ashland community. Sobering services refer to providing a safe, non-criminal facility at which a person can overcome the effects of intoxication. Oregon Revised Statutes 430.399 provide police officers with the authority to take someone into protective custody and lodge them at such a facility if they are found to be too intoxicated to care for themselves.

## **FISCAL IMPACTS**

Having this service available for members of the community will cost \$33,000 for Fiscal Year (FY) 2022 and \$33,000 for FY 2023. This has been budgeted for in the Police Department's budget.

## **STAFF RECOMMENDATION**

Staff recommends that Council approve this MOU.

## **ACTIONS, OPTIONS & POTENTIAL MOTIONS**

I move that Council approve of the memorandum of understanding between the City and Addictions Recovery Center.

## **REFERENCES & ATTACHMENTS**

Attachment 1: MOU between the City and ARC

**OPERATIONS AGREEMENT  
BETWEEN  
ADDICTIONS RECOVER CENTER, INC. AND THE CITY OF ASHLAND**

This agreement for the operation of a sobering facility (hereinafter the “Agreement”) is entered into by and between the City of Ashland, Oregon, a municipal corporation (hereinafter “Ashland”) and the Addictions Recovery Center, Inc., a domestic nonprofit corporation (hereinafter “ARC”).

**A. STATUTORY AUTHORITY**

1. In accordance with and pursuant to the provisions of the Oregon Revised Statutes, ARC is authorized to enter into a written agreement with any unit of local government for the performance of functions described under the Oregon Revised Statutes (ORS) related to operating a sobering facility.
2. As a result of this Agreement, any unit of local government, consolidated department, intergovernmental entity, or administrative officer designated herein to perform specified functions or activities is vested with all powers, rights, and duties relating to those functions and activities that are vested by law in each separate party to this Agreement, and each party’s officers and employees.
3. ARC maintains a registered sobering facility as defined in ORS 430.306(8)(2019) under a contract with Jackson County, Oregon, and is eligible to receive persons taken into protective custody by members of the Ashland Police Department (hereinafter “APD”) pursuant to ORS 430.399(2019).

**B. BACKGROUND**

ARC maintains a sobering facility at 338 N. Front Street, Medford, Oregon, under a contract with Jackson County. Ashland has requested to use said sobering facility services. ARC is willing to offer use of the services on the terms set forth herein.

**C. TERM**

This Agreement shall be effective as of July 1, 2021 (the “Effective Date”) and shall continue in full force and effect until and including June 30, 2023.

**D. COOPERATION AND SERVICES TO BE PERFORMED**

1. ARC will operate the sobering facility at the site indicated above twenty-four (24) hours a day, seven (7) days a week for the period July 1, 2021, through June 30, 2023.

2. Ashland shall pay ARC the sum of sixty-six thousand dollars (\$66,000.00) during the term of this Agreement to use ARC's sobering facility services. Payments are lump sum amounts; they are not a per capita rate. They are payable in two (2) annual installments. The first payment shall be due and payable no later than September 30, 2021, and the second payment shall be due and payable no later than September 30, 2022. Upon Ashland's request, ARC shall submit an invoice to tender payment in the amount requested.

3. Ashland, through its police department, shall transport eligible individuals in its custody to the sobering facility site. ARC will hold such individuals and release them according to ARC's standard protocols.

4. Subject to ORS 192.311 to ORS 192.478, Oregon Public Records Law, Ashland shall comply with all applicable confidentiality laws including, but not limited to, ORS 179.505, the Health Insurance Portability and Accounting Act (HIPAA), and 42 USC 290dd-2.

5. ARC shall provide APD with a written quarterly report detailing APD's use of the sobering facility as it relates to the overall usage of the facility.

#### **E. GENERAL TERMS**

1. **INDEPENDENT CONTRACTOR STATUS.** ARC is an independent contractor and not an employee of the City of Ashland. ARC shall have complete responsibility for the performance of its part of this Agreement. ARC shall provide workers' compensation coverage as required in ORS Chapter 656 for all persons employed to perform work pursuant to this Agreement. ARC is a subject employer that will comply with ORS 656.017.

2. **INDEMNIFICATION.** Subject to the limitations contained in ORS 30.260 to 30.300 (the Oregon Tort Claims Act) and the Oregon Constitution, both ARC and Ashland agree to defend, save, hold harmless, and indemnify the other and the other's officers, employees, and agents from and against any and all claims, suits, actions, liabilities, damages, losses and costs of any nature whatsoever resulting from, arising out of, or relating to the negligence, intentional misconduct, unlawful acts, or omissions of the wrongful party in the performance of this Agreement. If the loss or claim is caused by the joint concurrent negligence or other fault of both ARC and Ashland, the loss or claim shall be borne by each in proportion to the degree of negligence or other fault attributable to each party. ARC's and Ashland's obligations under this Subsection E.2. shall survive the termination or expiration of this Agreement.

3. **TRANSFER OF RESPONSIBILITIES.** ARC shall not assign this Agreement nor subcontract any portion of the services to be performed pursuant to this Agreement without the written consent of Ashland. Any attempted assignment or subcontract without the written consent of Ashland shall be null and void. ARC shall be fully responsible for the acts or omissions of any assigns or subcontractors and of all persons employed by such assigns or subcontractors, and the approval by Ashland of any assignment or subcontract shall not create any contractual relation between the assignee or subcontractor and Ashland.

4. TERMINATION

4.1. Mutual Consent. This Agreement may be terminated at any time by the mutual consent of both parties.

4.2 Jackson County. This Agreement is contingent upon the contract between ARC and Jackson County to operate the sobering facility being in full force and effect for the period of July 1, 2021, through and including June 30, 2023. Should the contract between ARC and Jackson County be terminated for any reason, this Agreement shall also be terminated.

4.3 For Cause. ARC may terminate or modify this Agreement in whole or in part, effective upon delivery of written notice to Ashland or at such later date as may be established by ARC in such written notice, if ARC's funding from federal, state, or other sources is not obtained or continued at levels necessary to maintain the services of its sobering facility.

4.4. For Default of Breach. Either ARC or Ashland may terminate this Agreement in the event of a breach of the Agreement by the other party. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) calendar days of the date of the notice, or within such other period as the party giving the notice may authorize or require, then this Agreement may be terminated at any time thereafter by a written notice of termination by the party giving notice.

5. STATUTORY REQUIREMENTS: ORS 279B.220, 279B.225, 279B.230, 279B.235, ORS Chapter 244, and ORS 670.600 are incorporated by reference into this Agreement.

6. INSURANCE. ARC shall obtain and maintain during the entire term of this Agreement a policy or policies of liability insurance including commercial general liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) for each occurrence for Bodily Injury, Death, and Property Damage. The insurance required in this Subsection E.6. shall include Comprehensive General or Commercial General Liability, including personal injury, contractual liability, and products/completed operations coverage. Each policy of such insurance shall be on an "occurrence" and not a "claims made" form.

7. NOTICE. Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery; by sending via a reputable commercial overnight courier; or by mailing using registered or certified United States mail, return receipt requested, postage prepaid, to the address(es) set forth below:

If to Ashland:  
City of Ashland Police Department  
Attn: Chief Tighe O'Meara  
1155 East Main Street  
Ashland, Oregon 97520

With a copy to:  
City of Ashland Legal Department  
20 E. Main Street  
Ashland, Oregon 97520

If to ARC:  
Addictions Recovery Center, Inc.  
Attn: Robert Haas  
1003 E. Main St, Suite 104  
Medford, Oregon 97504

8. AMENDMENTS. This Agreement may not be amended, changed, or modified in any way, except by the written agreement signed by all parties. This Agreement constitutes the entire understanding between the parties and supersedes any and all prior oral or written agreements, express and/or implied statements, negotiations, or memoranda of understanding.

9. ARC'S COMPLIANCE WITH TAX LAWS.

9.1 ARC represents and warrants to Ashland that:

9.1.1 ARC shall, throughout the term of this Agreement, including any extensions hereof, comply with:

(i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

(ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Provider; and

(iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

9.1.2 ARC, for a period of no fewer than six (6) calendar years preceding the Effective Date of this Agreement, has faithfully complied with:

(i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

(ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Provider; and

(iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

9.2 ARC's failure to comply with the tax laws of the State of Oregon and all applicable tax laws of any political subdivision of the State of Oregon shall constitute a material breach of this Agreement. Any material breach of this Agreement shall entitle Ashland to terminate this Agreement and to seek damages and any other relief available under this Agreement, at law, or in equity.

10. 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.

11. Each person signing this Agreement represents and warrants she or he has the authority to execute it.

**IN WITNESS WHEREOF** the parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

**CITY OF ASHLAND:**

**ADDICTIONS RECOVERY CENTER**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Adam Hanks

Printed Name: \_\_\_\_\_

Title: City Manager Pro Tem

Title: \_\_\_\_\_

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

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

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney for Ashland

\_\_\_\_\_  
ARC Counsel