

# Council Business Meeting

Date: October 5<sup>th</sup>, 2021

<b>Agenda Item</b>	Special Procurement Request for Approval for Contract to Grayback Forestry, Inc.	
<b>From</b>	Chris Chambers	Wildfire Division Chief
<b>Contact</b>	<a href="mailto:Chris.chambers@ashland.or.us">Chris.chambers@ashland.or.us</a> (541) 552-2066	

## **SUMMARY**

The Fire Department is seeking approval of a Special Procurement to Grayback Forestry Inc implement wildfire safety and forestry work under the umbrella of the Ashland Forest All-lands Restoration Project (AFAR) and using City water bill fees earmarked by the City Council by directly awarding a contract. Grayback Forestry Inc. has unique experience and qualifications developed over 10 years of working in tandem with the AFR Partnership that create benefit to the city's goals and investment. In addition to AFAR work, Grayback has also contracted directly with the City since 2012 for prescribed burning on City forestlands, following their selection in both of two competitive bid processes where they were the only qualified bidder each time. This contract combines needs in AFAR federal and private lands with City forestlands management previously provided by long-time contractor Small Woodland Services, Inc that no longer hosts a workforce. Directly contracting saves money by not incurring pass through costs as was the case in the past and preserves accumulated experience and knowledge to accomplish complicated and high-risk work critical to the City's fire safety goals in a cost-effective manner.

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

**City Council Goal:** Address Climate Change

**City Council Goal:** Reduce Wildfire and Smoke Risk

**City Plans:** Ashland Natural Hazard Mitigation Plan, Community Wildfire Protection Plan, 2016 Ashland Forest Plan

## **PREVIOUS COUNCIL ACTION**

Council approved Special Procurements for past contracts using City funds to support the AFR project, including in BN19-21 with Grayback Forestry, Inc.

Council created the AFR project water fee funding source with associated Resolution during the 2013-15 Biennium. The fee was increased with an updated Resolution for the 2019-2021 Biennium.

## **BACKGROUND AND ADDITIONAL INFORMATION**

Beginning in the 2013-2015 biennium, the City Council elected to contribute funding to the AFR Project from an assessment placed on water use throughout Ashland. This remains in place. To date, funds have been allocated through Lomakatsi Restoration Project, an AFR partner, to both accomplish primary fuels reduction treatments in the Ashland Creek Watershed and to maintain already completed treatments using prescribed burning or mechanical cutting. During the 2019 budget process, the City Council expanded the application of water fee dollars to include all lands (only federal in the past) strategic to the City's interest in wildfire safety. Lomakatsi selected Grayback as a result of multiple competitive bidding processes to perform thinning, piling, and burning tasks using City funds on the AFR project federal lands since 2013.

Concurrent with the water fee funding for AFR, the City has been implementing prescribed burning on City-owned forestlands (funded separately through a transfer from the Water Fund) to increase wildfire safety and forest health. Since 2012, and as a result of two competitive bidding processes, Grayback Forestry has been the sole contractor selected for this burning work on the City's forestlands.

Given their unanimous selection in multiple requests for bids, and the longstanding relationships and intimacy developed over years implementing a high-risk activity in and around the Ashland Watershed, Grayback Forestry has developed a unique and desired set of qualifications. By contracting directly with Grayback, the City will save administrative costs incurred by passing funds through another AFR partner to Grayback.

**FISCAL IMPACTS**

Funding for this contract was included in the current Biennium budget in the Wildfire Division. By authorizing up to \$500,000 in this Special Procurement we allow for potential contract amendments up to 25% without coming back to Council for another Special Procurement authorization.

**STAFF RECOMMENDATION**

Staff recommends approval of the Special Procurement to Grayback Forestry, Inc. for forestry services funded by the City's water fee and following the associated 2019 Council Resolution.

**ACTIONS, OPTIONS & POTENTIAL MOTIONS**

"I move that the City Council, acting as local contract review board, approve this special procurement contract to Grayback Forestry, Inc not to exceed \$500,000 through June 30, 2023 to implement funding generated by the utility surcharge for watershed and community wildfire protection."

**REFERENCES & ATTACHMENTS**

Contract for Good and Services  
Form for Special Procurement, Request for Approval  
Determination of Feasibility Memo from Staff

## GOODS & SERVICES AGREEMENT (GREATER THEN \$25,000)

<p style="text-align: center;"><b>CITY OF ASHLAND</b> 20 East Main Street Ashland, Oregon 97520 Telephone: 541/488-5587 Fax: 541/488-6006</p>	<p>PROVIDER: Grayback Forestry, Inc. PROVIDER'S CONTACT: Bryan Wheelock ADDRESS: P.O. Box 2458 White City, OR 97503 PHONE: (541) 830-4216</p>
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This Goods and Services Agreement (hereinafter "Agreement") is entered into by and between the City of Ashland, an Oregon municipal corporation (hereinafter "City") and Grayback Forestry, Inc., a domestic business corporation ("hereinafter "Provider"), for wildfire fuels reduction and forestry services.

### 1. PROVIDER'S OBLIGATIONS

- 1.1 Provide resources as ordered by the City to accomplish objectives set forth by the City and the Ashland Forest Resiliency Partnership to accomplish prescribed burning, forest thinning, piling, and other forestry related activities as set forth in the "SUPPORTING DOCUMENTS" attached hereto and, by this reference, incorporated herein. Provider expressly acknowledges that time is of the essence of any completion date set forth in the SUPPORTING DOCUMENTS, and that no waiver or extension of such deadline may be authorized except in the same manner as herein provided for authority to exceed the maximum compensation. The goods and services defined and described in the "SUPPORTING DOCUMENTS" shall hereinafter be collectively referred to as "Work."
- 1.2 Provider shall obtain and maintain during the term of this Agreement and until City's final acceptance of all Work received hereunder, 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) per occurrence for Bodily Injury and Property Damage.
  - 1.2.1 The insurance required in this Article shall include the following coverages:
    - Comprehensive General or Commercial General Liability, including personal injury, contractual liability, and products/completed operations coverage; and
    - Automobile Liability.
  - 1.2.2 Each policy of such insurance shall be on an "occurrence" and not a "claims made" form, and shall:
    - Name as additional insured "the City of Ashland, Oregon, its officers, agents and employees" with respect to claims arising out of the provision of Work under this Agreement;
    - Apply to each named and additional named insured as though a separate policy had been issued to each, provided that the policy limits shall not be increased thereby;
    - Apply as primary coverage for each additional named insured except to the extent that two or more such policies are intended to "layer" coverage and, taken together, they provide total coverage from the first dollar of liability;
    - Provider shall immediately notify the City of any change in insurance coverage
    - Provider shall supply an endorsement naming the City, its officers, employees and agents as additional insureds by the Effective Date of this Agreement; and

- Be evidenced by a certificate or certificates of such insurance approved by the City.
- 1.3 All subject employers working under this Agreement are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. As evidence of the insurance required by this Agreement, the Provider shall furnish an acceptable insurance certificate prior to commencing any Work under this Agreement.
  - 1.4 Provider agrees that no person shall, on the grounds of race, color, religion, creed, sex, marital status, familial status or domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, suffer discrimination in the performance of this Agreement when employed by Provider. Provider agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Further, Provider agrees not to discriminate against a disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise certified under ORS 200.055, in awarding subcontracts as required by ORS 279A.110.
  - 1.5 In all solicitations either by competitive bidding or negotiation made by Provider for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Providers of the Provider's obligations under this Agreement and Title VI of the Civil Rights Act of 1964 and other federal nondiscrimination laws.
  - 1.6 **Living Wage Requirements:** If the amount of this Agreement is \$21,507.75 or more, Provider is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying a living wage, as defined in that chapter, to all employees performing Work under this Agreement and to any Subcontractor who performs 50% or more of the Work under this Agreement. Provider is also required to post the notice attached hereto as "Exhibit A" predominantly in areas where it will be seen by all employees.

## 2. CITY'S OBLIGATIONS

- 2.1 City shall pay Provider the sum of \$400,000 as provided herein as full compensation for the Work as specified in the SUPPORTING DOCUMENTS.
- 2.2 In no event shall Provider's total of all compensation and reimbursement under this Agreement exceed the sum of \$400,000 without express, written approval from the City official whose signature appears below, or such official's successor in office. Provider expressly acknowledges that no other person has authority to order or authorize additional Work which would cause this maximum sum to be exceeded and that any authorization from the responsible official must be in writing. Provider further acknowledges that any Work delivered or expenses incurred without authorization as provided herein is done at Provider's own risk and as a volunteer without expectation of compensation or reimbursement.

## 3. GENERAL PROVISIONS

- 3.1 This is a non-exclusive Agreement. City is not obligated to procure any specific amount of Work from Provider and is free to procure similar types of goods and services from other providers in its sole discretion.
- 3.2 Provider is an independent contractor and not an employee or agent of the City for any purpose.
- 3.3 Provider is not entitled to, and expressly waives all claims to City benefits such as health and disability insurance, paid leave, and retirement.

- 3.4 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.
- 3.5 This Agreement may be amended only by written instrument executed with the same formalities as this Agreement.
- 3.6 The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230 and 279B.235.
- 3.7 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.
- 3.8 Provider shall defend, save, hold harmless and indemnify the City and its officers, employees and agents from and against any and all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature resulting from, arising out of, or relating to the activities of Provider or its officers, employees, contractors, or agents under this Agreement.
- 3.9 Neither party to this Agreement shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's officers, employees or agents.
- 3.10 If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Provider and the City set forth in this Agreement.
- 3.11 Deliveries will be F.O.B destination. Provider shall pay all transportation and handling charges for the Goods. Provider is responsible and liable for loss or damage until final inspection and acceptance of the Goods by the City. Provider remains liable for latent defects, fraud, and warranties.
- 3.12 The City may inspect and test the Goods. The City may reject non-conforming Goods and require Provider to correct them without charge or deliver them at a reduced price, as negotiated. If Provider does not cure any defects within a reasonable time, the City may reject the Goods and cancel this Agreement in whole or in part. This paragraph does not affect or limit the City's rights, including its rights under the Uniform Commercial Code, ORS Chapter 72 (UCC).
- 3.13 Provider represents and warrants that the Goods are new, current, and fully warranted by the manufacturer. Delivered Goods will comply with SUPPORTING DOCUMENTS and be free from defects in labor, material and manufacture. Provider shall transfer all warranties to the City.

#### **4. SUPPORTING DOCUMENTS**

The following documents are, by this reference, expressly incorporated in this Agreement, and are collectively referred to in this Agreement as the "SUPPORTING DOCUMENTS:"

- The Provider's "AFR Project Work Proposal and Pricing"
- The Provider's "City of Ashland Prescribed Fire Modules and Pricing"

## 5. REMEDIES

- 5.1 In the event Provider is in default of this Agreement, City may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:
- 5.1.1 Termination of this Agreement;
  - 5.1.2 Withholding all monies due for the Work that Provider has failed to deliver within any scheduled completion dates or any Work that have been delivered inadequately or defectively;
  - 5.1.3 Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
  - 5.1.4 These remedies are cumulative to the extent the remedies are not inconsistent, and City may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- 5.2 In no event shall City be liable to Provider for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Provider exceed the amount due, Provider shall pay immediately any excess to City upon written demand provided.

## 6. TERM AND TERMINATION

### 6.1 Term

This Agreement shall be effective from the date of execution on behalf of the City as set forth below (the "Effective Date"), and shall continue in full force and effect until June 30th, 2023 unless sooner terminated as provided in Subsection 6.2.

### 6.2 Termination

- 6.2.1 The City and Provider may terminate this Agreement by mutual agreement at any time.
- 6.2.2 The City may, upon not less than thirty (30) days' prior written notice, terminate this Agreement for any reason deemed appropriate in its sole discretion.
- 6.2.3 Either party may terminate this Agreement, with cause, by not less than fourteen (14) days' prior written notice if the cause is not cured within that fourteen (14) day period after written notice. Such termination is in addition to and not in lieu of any other remedy at law or equity.

## 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 set forth below:

### **If to the City:**

City of Ashland – Fire Department  
 Attn: Chris Chambers, Wildfire Division Chief  
 455 Siskiyou Boulevard  
 Ashland, Oregon 97520  
 Phone: (541) 482-2770

### **With a copy to:**

City of Ashland – Legal Department  
 20 E. Main Street  
 Ashland, OR 97520  
 Phone: (541) 488-5350

**If to Provider:**

Grayback Forestry Inc.

Attn: Bryan Wheelock

(541) 830-3100

**8. WAIVER OF BREACH**

One or more waivers or failures to object by either party to the other's breach of any provision, term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any subsequent breach, whether or not of the same nature.

**9. PROVIDER'S COMPLIANCE WITH TAX LAWS**

9.1 Provider represents and warrants to the City that:

9.1.1 Provider 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 Provider, 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 Provider'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. Further, any violation of Provider's warranty, as set forth in this Article 9, shall constitute a material breach of this Agreement. Any material breach of this Agreement shall entitle the City to terminate this Agreement and to seek damages and any other relief available under this Agreement, at law, or in equity.

**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:**

By: \_\_\_\_\_  
City Administrator

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

\_\_\_\_\_  
Date

**Grayback Forestry, Inc. (PROVIDER):**

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Purchase Order No. \_\_\_\_\_

**(W-9 is to be submitted with this signed Agreement)**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Date

**SPECIAL PROCUREMENT  
REQUEST FOR APPROVAL**

**To:** City Council, Local Contract Review Board  
**From:** Chris Chambers, Fire Department  
**Date:** September 23, 2021  
**Subject:** REQUEST FOR APPROVAL OF A SPECIAL PROCUREMENT

In accordance with ORS279B.085, this request for approval of a Special Procurement is being presented to the City Council for approval. This written request for approval describes the proposed contracting procedure and the goods or services or the class of goods or services to be acquired through the special procurement and the circumstances that justify the use of a special procurement under the standards set forth ORS 279B.085(4).

- 1. **Requesting Department Name:** Ashland Fire & Rescue
- 2. **Department Contact Name:** Chris Chambers, Wildfire Division Chief
- 3. **Type of Request:**  Class Special Procurement  Contract-specific Special Procurement
- 4. **Time Period Requested:** From: 10/6/21 To: 6/30/2023
- 5. **Total Estimated Cost:** Not to exceed \$500,000
- 6. **Short title of the Procurement:** Ashland Forest Resiliency Water Surcharge Special Procurement

**Supplies and/or Services or class of Supplies and/or Services to be acquired:**  
Grayback Forestry, Inc will provide forestry services under the Ashland Forest All-lands Restoration Project, which includes federal, private, and City of Ashland lands. Grayback Forestry, Inc services include prescribed burning, tree and brush thinning and piling, weed removal, and associated planning, preparation, and layout to accomplish work items on specific properties designated by the City within the Ashland Forest All-lands Restoration area map. Specifically, Grayback Forestry will provide the qualified and trained workforce and equipment necessary to implement said forestry operations under the direction of the City in consultation with the Ashland Forest Resiliency partnership and private landowners.

**7. Background and Proposed Contracting Procedure:**

**Background:** Beginning in the 2013-2015 biennium, the City Council elected to contribute funding toward watershed fire mitigation from an assessment placed on water use throughout Ashland. This remains in place and was increased in BN 19-21. Grayback Forestry was contracted by the City for the 2019-21 BN for these services and performed up to expectations. During the 2019 budget process, the City Council expanded the application of water fee dollars to include all lands (not just federal) strategic to the City’s interest in wildfire safety. Concurrent with the water fee funding, the City has

been implementing prescribed burning on City-owned forestlands to further increase wildfire safety and forest health using Water Fund dollars that have been earmarked for City forestlands management since the mid 1990's. Since 2012, including two competitive bidding processes, Grayback Forestry has been the sole contractor selected for burning on the City's lands. Grayback has also been the sole subcontractor selected by Lomakatsi Restoration (an AFR project partner) to implement prescribed burning on federal lands in the Ashland Watershed, also through competitive bidding. Given their unanimous selection in multiple requests for bids, and the longstanding relationships and intimacy with the landscape of the Ashland Watershed, Grayback Forestry has developed a unique and desired set of qualifications to carry out the City's goals. By contracting directly with Grayback, the City will save administrative costs incurred by passing funds through to another AFR project entity, resulting in more acres of work accomplished each year.

**Proposed Contracting Procedure:** Due to the well-established relationship and unique qualifications of Grayback Forestry Inc. that allows financial savings while preserving accumulated knowledge and experience in the technical application of prescribed burning and related forestry activities, we propose the City directly enter into a contract outside the competitive bidding process using Special Procurement authority.

**8. Justification for use of Special Procurement:** Describe the circumstances that justify the use of a Special Procurement. Attach relevant documentation.

The complex ecological and social setting of the Ashland Watershed and surrounding areas is a difficult setting in which to accomplish highly skilled and nuanced work critical to protection of the community and our municipal water supply. For 10 years, Grayback has successfully worked with AFR Project partners as a sub-contractor on federal lands, primarily implementing prescribed burning, which is a difficult and highly skilled task. During this period, the City selected Grayback in two separate competitive bidding processes where Grayback had the only qualified and experienced workforce to carry out the City's goals for prescribed burning. Under City contract, Grayback carried out prescribed burn planning and implementation to City specifications in challenging terrain with intense public recreation use. Given Grayback's cumulative experience, trust, and familiarity with Ashland's forests, Grayback has unique and highly desirable qualifications that benefit the City's goals for wildfire safety and forest health. By combining the need for wildfire safety work on federal, private, and City lands, a direct contract with Grayback Forestry creates efficient and cost-effective use of City funds.

The City lacks the internal capacity to field a workforce that would accomplish the project outcomes desired by the AFR partners and as spelled out in the City Council's goals for watershed and community safety.

**9. Findings to Satisfy the Required Standards:** This proposed special procurement:

  X   (a) will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts because:

Through at least four competitive bidding processes executed by the City and AFR project partners since 2012, Grayback was uniquely qualified among all bidders during each distinct request for proposals. In each process conducted by the City, Grayback was the only bidder that met minimum qualifications for the complexity of work proposed. As the successful bidder and ongoing contractor on City, private, and federal lands, Grayback has accumulated desirable experience to implement highly technical and high-risk work in an efficient and effective manner.

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(Please provide specific information that demonstrates how the proposed Special Procurement meets this requirement.); **and**

  X   (b)(i) will result in substantial cost savings to the contracting agency or to the public because:

By contracting directly to Grayback, the City avoids administrative costs for passing funds through the AFR partnership, a savings of at least 16%. This was necessary in the past, but is no longer needed in the current work environment. This amounts to at least \$65,000 in direct savings. Grayback also has other contacts with AFR partners under separate though complimentary funding, which means they will already be working in the area, cutting down mobilization costs.

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(Please provide the total estimate cost savings to be gained and the rationale for determining the cost savings); **or**

  X   (b)(ii) will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the requirements of ORS 279B.055, 279B.060, 279B.065, or 279B.070, or any rules adopted there under because:

Grayback Forestry's years of experience in the Ashland Watershed has allowed them to accumulate site-specific knowledge of local ecology, fire behavior, expectations of the AFR partnership and public, and tested methods of implementation that have yielded acceptable outcomes across thousands of acres. The combination of experience and personal relationships built with AFR project partners makes Grayback Forestry's situation unique and of benefit to the City and community.

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(Please provide specific information that demonstrates how the proposed Special Procurement meets this requirement.)

### **Public Notice:**

Pursuant to ORS 279B.085(5) and OAR 137-047-0285(2), a Contracting Agency shall give public notice of the Contract Review Authority's approval of a Special Procurement in the same manner as a public notice of competitive sealed Bids under ORS 279B.055(4) and OAR 137-047-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement and shall give such public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract.

After the Special Procurement has been approved by the City Council, the following public notice will be posted on the City's website to allow for the seven (7) day protest period.

Date Public Notice first appeared on [www.ashland.or.us](http://www.ashland.or.us) –*October 6<sup>th</sup>, 2021.*

**PUBLIC NOTICE**  
**Approval of a Special Procurement**

**First date of publication: October 6<sup>th</sup>, 2021**

A request for approval of a Special Procurement was presented to and approved by the City Council, acting as the Local Contract Review Board, on *October 5<sup>th</sup>, 2021*

*This Special Procurement is a “Contract- specific Special Procurement”. The proposed contracting procedure is direct award to Grayback Forestry Inc. for site-specific forestry work as part of the Ashland Forest Resiliency All-lands Restoration project. Grayback has unique experience and qualifications shown by their unanimous selection during each of several City and AFR partner supported competitive bidding processes since 2012. Their experience and safety record working with the City and AFR project partners is unique and highly beneficial to the City’s goals and interests.*

It has been determined based on written findings that the Special Procurement will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts, and result in substantial cost savings or substantially promote the public interest in a manner that could not be realized by complying with the requirements that are applicable in ORS 279B.055, 279B.060, 279B.065, or 279B.070.

An affected person may protest the request for approval of a Special Procurement in accordance with ORS 279B.400 and OAR 137-047-0300. A written protest shall be delivered to the following address: City of Ashland, Chris Chambers, Forest Division Chief, 455 Siskiyou Blvd, Ashland, OR 97520. The seven (7) day protest period will expire at 5:00 p.m. on **October 13<sup>th</sup>, 2021**.

This public notice is being published on the City’s Internet World Wide Web site at least seven days prior to the award of a public contract resulting from this request for approval of a Special Procurement.

# Memo

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DATE: September 22, 2021

TO: City Council

FROM: Chris Chambers, Wildfire Division Chief/Ashland Fire & Rescue

RE: Ashland Forest Resiliency and All-lands Special Procurement to Grayback Forestry, Inc.

The Ashland Municipal Code requires additional justification for any Special Procurement over \$350,000. Per ORS 279B.036, *Determination of feasibility of procurement*, which in first part states that “a contracting agency may proceed with a procurement if the contracting agency reasonably determines in writing that using the contracting agency’s own personnel or resources to perform the services that the contracting agency intends to procure is not feasible.”

A cost analysis is unnecessary if the contracting agency finds it “lacks the specialized capabilities, experience or technical or other expertise necessary to perform the services.” ORS 279B.036 (1)(a). Ashland Fire & Rescue (AF&R) must still “compare [AF&R’s] capability, experience or expertise in the field most closely involved in performing the services with a potential contractor’s capability, experience or expertise in the same or a similar field.” *Id.*

*Staff analysis: Ashland Fire & Rescue’s internal expertise and workforce capacity does not fit the need for the identified work either by skills possessed or capability to perform the identified tasks. The vast majority of AF&R’s workforce are firefighter/paramedics who have little technical forestry expertise or training that would lend to accomplishment of the pertinent outcomes in Ashland’s forestlands and watershed. Though certain staff have experience with prescribed burning, there are currently no completed certificates like those required by the National Wildfire Coordinating Group for positions required during burn operations like Holding Boss, Ignition Boss, or Burn Boss. In addition, the AF&R workforce is necessarily tied to emergency response duties and cannot be out of the City where response time would be reduced, which would endanger public safety. Due to these factors, using our own personnel is not feasible.*

