



COUNTY OF HUMBOLDT

AGENDA ITEM NO.
C-16

For the meeting of: May 5, 2015

Date: April 22, 2015

To: Board of Supervisors

From: Thomas K. Mattson, Public Works Director *[Signature]* for TM

Subject: Technical Assistance Agreement with City of Arcata for McKay Community Forest Trail Planning and Design

RECOMMENDATION(S):

That the Board of Supervisors authorize the Chair to sign the attached Technical Assistance Agreement by and between the City of Arcata and the County of Humboldt for trail planning and design within the McKay Community Forest.

SOURCE OF FUNDING: Forest Resources and Recreation (1710716)

DISCUSSION:

Public Works is preparing plans and designs for recreational trails within the McKay Community Forest, which was acquired in August 2014. Due to the strong public interest in gaining access to the community forest and volunteering with trail construction, Public Works desires to expedite the planning process. In December 2014, Public Works approached the City of Arcata (City) with a request for technical assistance (with compensation) from the two City employees who have specialized knowledge and experience designing and constructing trails in the Arcata Community Forest and also coordinating and directing community volunteers. The requested technical assistance includes inspecting the property and training Public Works staff to evaluate

Prepared by Hank Seemann

CAO Approval *Cheryl Dillingham*

REVIEW:
Auditor _____ County Counsel Sm Human Resources Of Other _____

TYPE OF ITEM:
 Consent
 Departmental
 Public Hearing
 Other _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor Lovelace Seconded by Supervisor Bass
Ayes Sundberg, Lovelace, Fennell, Bohn, Bass
Nays _____
Abstain _____
Absent _____

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Meeting of: _____

Dated: May 5, 2015
By: *[Signature]*
Kathy Hayes, Clerk of the Board

potential trail alignments and designs, prepare estimates of material quantities and costs, develop work plans, and plan for effective utilization of volunteers in trail construction and maintenance.

The City was amenable to Public Works' request, and allowed the two designated City employees to provide technical assistance while a formal agreement was being developed. Between January and April 2015, City employees have provided a total of 15 days assisting County staff with trail planning and design efforts. The attached Technical Assistance Agreement documents the terms and conditions for the proposed arrangement.

The proposed agreement will provide a net cost savings by reducing the amount of County staff time needed for the initial planning efforts and enhancing the County's capabilities for effectively utilizing volunteers. In addition, the assistance will improve the sustainability of the future trails and help Public Works plan trails that provide a high-quality recreational experience while minimizing user conflicts. The training will enhance County staff's capabilities for ongoing trail planning efforts.

FINANCIAL IMPACT:

The proposed agreement covers a term from January 1, 2015, through December 31, 2015, for a maximum amount payable of \$15,000. To date, the cost of City staff time is \$6,085. The estimated actual total payment over the term of the agreement is \$10,000. The existing McKay Community Forest budget contains adequate funds to cover the cost of the proposed agreement.

The recommended action conforms to the Board of Supervisors' core role of providing for and maintaining infrastructure, as identified in the Board of Supervisors' Strategic Framework. It also aligns with the Board's priorities for new initiatives (e.g., investing in County employees and building interjurisdictional and regional cooperation).

OTHER AGENCY INVOLVEMENT:

City of Arcata

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Board discretion

ATTACHMENTS:

Technical Assistance Agreement by and between the City of Arcata and the County of Humboldt

**TECHNICAL ASSISTANCE AGREEMENT
BY AND BETWEEN
THE CITY OF ARCATA
AND
THE COUNTY OF HUMBOLDT**

THIS AGREEMENT entered into this ____ day of _____, 2015, by and between the City of Arcata, a municipal corporation, hereinafter referred to as "City," and the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "County," is made upon the following considerations:

RECITALS

WHEREAS, in August 2014 the County acquired 1,000 acres of real property within the McKay Tract from Green Diamond Resource Company to form the McKay Community Forest; and

WHEREAS, the County is preparing plans and designs for recreational trails within the McKay Community Forest and associated access points; and

WHEREAS, the County desires to expedite the trail planning process for the McKay Community Forest due to the strong public interest in gaining access to the forest and volunteering to construct trails; and

WHEREAS, the City owns and manages the Arcata Community Forest and has staff with specialized knowledge and experience in designing and constructing trails and coordinating and directing community volunteers in trail construction and maintenance; and

WHEREAS, the County and the City jointly seek an arrangement whereby City employees will provide technical assistance to the County in selecting trail alignments and designing access points and trail segments within the McKay Community Forest, including field inspections.

NOW THEREFORE, based on the mutual conditions and covenants recited herein and made a material part hereof, the parties agree as follows.

1. RIGHTS AND OBLIGATIONS OF CITY:

- A. Scope of Services.** The City, as general employer, agrees to provide to the County, as a special employer, the labor and services of designated employees ("Employees") who possess the appropriate education, skills and experience necessary to perform the services as set out in Exhibit A – Scope of Services and Compensation ("Work"), which is attached hereto and incorporated herein by reference. The County agrees to act as a special employer to the Employees and accept the Work of the Employees.

- B. General Employer Responsibilities.** Each Employee shall remain a full-time regular employee of the City, on the City's payroll, subject to the City's general personnel administration, and shall continue to receive compensation and benefits solely from the City. Employees shall remain subject to the City's personnel policies, rules and regulations. The City shall be responsible for payment of all Employee salary and related benefits, pension, insurance, taxes and withholdings required under the City's personnel rules, policies and contracts and applicable federal and state law. The City shall be responsible for keeping and maintaining the personnel file and payroll and other records of the Employees.

2. **RIGHTS AND OBLIGATIONS OF COUNTY:**

- A. **Supervision and Direction.** When performing the Work, Employees shall be under the supervision and direction of the County and its management and supervisory employees. The County shall determine the precise tasks, services and assignments that Employees will perform pursuant to this Agreement. The County shall be responsible for providing Employees with office space, support services, materials, supplies, tools and equipment appropriate to perform the Work. All correspondence, other documents, e-mail and other communications made by Employees in connection with the Work shall be the property of the County and subject to its document retention, management and other applicable policies and regulations.
- B. **Work-Related Expenses.** If Employees undertake any business-related travel or incur other business-related expenses in connection with the Work, the County shall be responsible for payment or reimbursement of Employees' business-related expenses in accordance with the County's expense reimbursement policy and procedures.
- C. **Expense Reports.** The County shall keep and maintain a daily time report showing the hours worked by each Employee pursuant to this Agreement and shall submit these reports to the City on a monthly basis no later than ten (10) days after the last working day of the month. Such reports shall be delivered to the City at the address identified in Section 9.

3. **PAYMENT:**

- A. **Compensation.** As consideration for the Employee Work, the County shall pay to the City the fully weighted hourly fee set out in Exhibit A – Scope of Services and Compensation. Payment shall be based on the number of hours actually worked by Employees for the County pursuant to this Agreement beginning on the first date Work is performed.
- B. **Maximum Amount Payable.** In no event shall the maximum amount paid under this Agreement exceed Fifteen Thousand Dollars (\$15,000.00).
- C. **Payment Schedule.** The City shall invoice the County for the Work, including progress billings, on a monthly basis. Invoices shall be in a format approved by, and shall include backup documentation as specified by, the Humboldt County Auditor-Controller. City shall submit a final invoice for payment no more than thirty (30) days following the expiration or termination date of this Agreement. Payments on balances due will be made within thirty (30) days after the receipt of approved invoices. Invoices shall be delivered to the County at the address identified in Section 9.

4. **TERM:**

This Agreement shall begin on January 1, 2015 and shall remain in full force and effect until December 31, 2015, unless earlier terminated as provided herein.

5. **TERMINATION:**

This Agreement may be terminated at any time by either party upon thirty (30) days advance written notice to the other party. In the event of such termination, the City shall be compensated for all hours of Work performed by the Employees up to the termination of this Agreement. However, this

provision shall not limit or reduce any damages owed to the County as a result of a breach of this Agreement by the City.

6. **AMENDMENTS:**

The terms of this Agreement may not be waived, altered, supplemented, or amended except by written amendment to this Agreement signed by an authorized agent of each party.

7. **INSURANCE:**

A. **Workers' Compensation Insurance.** The City, at its sole cost and expense, shall procure and maintain for the duration of this Agreement workers' compensation insurance or self-insurance covering each Employee, in accordance with the requirements of California law. The parties intend this obligation to constitute a valid and enforceable agreement by which the City agrees to obtain, and shall obtain, workers' compensation coverage for the Employees provided to the County under this Agreement, as authorized pursuant to Labor Code section 3602(d). Since Employees remain on the City's payroll, the City acknowledges that its workers' compensation insurer or self-insurer will be liable for the entire cost of workers' compensation benefits payable on account of an illness or injury occurring in the course of and arising out of the general and special employment of Employee under this Agreement, if any, pursuant to Insurance Code section 11663.

B. **Other Insurance.** The County and the City shall each secure and maintain in full force and effect during the full term of this agreement commercial general liability insurance or participation in a self-insurance program, including coverage for owned and non-owned automobiles and other insurance necessary to protect the public, with limits of liability of not less than One Million Dollars (\$1,000,000.00) combined single limit bodily injury and property damage, and Employers Liability Insurance with limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Policies shall be written by carriers reasonably satisfactory to each party. On request, a certificate evidencing the insurance requirements of this paragraph shall be provided.

8. **INDEMNIFICATION:**

A. **Breach of Contract.** Each party (the "Indemnifying Party") shall indemnify, defend, protect and hold harmless the other party (the "Indemnified Party"), and its officers, employees, volunteers and agents, from and against any and all liability, losses, claims, damages, expenses, demands, and costs (including, but not limited to, attorney, expert witness and consultant fees, and litigation costs) of every nature arising out of a breach of the Indemnifying party's obligations under this Agreement, except where caused by the sole negligence or willful misconduct of the Indemnified Party or as otherwise provided or limited by law.

B. **Trail Design Defects.** Notwithstanding the above, the County shall additionally indemnify, defend, protect and hold harmless the City, the Employees, and the City's officers, employees, volunteers and agents, from and against any and all liability, losses, claims, damages, expenses, demands, and costs (including, but not limited to, attorney, expert witness and consultant fees, and litigation costs) of every nature arising out of any alleged trail design defect developed in whole or part by any Employee.

9. **NOTICES:**

Any and all notices required to be given pursuant to the terms of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

To the County:
Humboldt County
Department of Public Works
1106 Second Street
Eureka, CA 95501

To the City:
City of Arcata
Department of Environmental Services
736 F Street
Arcata, CA 95521

10. **RECORD RETENTION AND INSPECTION:**

A. **Maintenance and Preservation of Records.** Each party agrees to timely prepare accurate and complete financial, performance and payroll records relating to the services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this Agreement, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom.

B. **Inspection of Records.** In accordance with Government Code section 8546.7, all records, documents, conditions and activities related to the services provided hereunder, shall be subject to examination and audit by the State Auditor General and other duly authorized agents of the State of California for three (3) years following final payment under this Agreement. Each party hereby agrees to make such records available during normal business hours to inspection, audit and reproduction by any duly authorized agents of the State of California and/or the federal government. Each party further agrees to allow interviews of any of its employees who might reasonably have information related to such records by the State of California and/or the federal government. All examinations and audits conducted under this section shall be strictly confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement.

11. **CONFIDENTIAL INFORMATION:**

In the performance of this Agreement, each party may receive information that is confidential under local, state or federal law. Each party hereby agrees to protect all confidential information in conformance with any and all applicable local, state and federal laws and regulations.

12. **NON-DISCRIMINATION COMPLIANCE:**

A. **Professional Services and Employment.** In connection with the execution of this Agreement, neither party shall discriminate in the provision of professional services or against any employee or applicant for employment because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service or any other classifications protected by

local, state and federal laws and regulations. Nothing herein shall be construed to require employment of unqualified persons.

- B. Compliance with Anti-Discrimination Laws.** Each party further assures that it will abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, California Welfare and Institutions Code Section 10000, CDSS MPP Division 21, United States Executive Order 11246, as amended, and any other applicable local, state and federal laws and regulations. Practices in hiring, compensation, benefits and firing are among the employment practices subject to this requirement.

13. SUCCESSORS AND ASSIGNMENT:

This Agreement shall bind and inure to the benefit of the successors and assigns of the parties; however, the City shall not change the Employees performing the Work under this Agreement without the prior written consent of the County.

14. NO WAIVER OF RIGHTS:

Any waiver at any time by either party of its rights as to a breach or default of this Agreement shall not be deemed to be a waiver as to any other breach or default. No payment by the County to the City shall be considered or construed to be a waiver of any breach or default.

15. SEVERABILITY:

If any part of this Agreement is held to be void, invalid, illegal or unenforceable, then the remaining parts will continue in full force and effect and be fully binding, provided that each party still receives the benefits of this Agreement.

16. NO THIRD PARTY BENEFICIARIES:

This Agreement shall not be construed to create any third party beneficiaries. This Agreement is for the sole benefit of the parties and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any of its terms.

17. NUCLEAR FREE CERTIFICATION:

The City certifies by its signature below that it is not a Nuclear Weapons Contractor, in that it is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. The City agrees to notify the County immediately if it becomes a Nuclear Weapons Contractor as defined above. The County may immediately terminate this Agreement if it determines that the foregoing certification is false or if the City becomes a Nuclear Weapons Contractor.

18. TITLE TO INFORMATION AND DOCUMENTS:

It is understood that any and all documents, information, and reports concerning the subject matter of this Agreement shall become the property of County. In the event of termination of this Agreement, for any reason whatsoever, City shall promptly turn over all information, writings and documents to County without exception or reservation.

19. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

20. INTERPRETATION:

This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

21. INDEPENDENT CONSTRUCTION:

The titles of the sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

22. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

23. ENTIRE AGREEMENT:

This Agreement represents the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract between the parties concerning Employees' Work for the County, and supersedes all prior oral and/or written negotiations, representations or contracts. This Agreement may be amended only by a subsequent written amendment approved and executed by both parties.

24. AUTHORITY TO EXECUTE:

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

(Signatures on following page)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first hereinabove written.

THE COUNTY OF HUMBOLDT

Estelle Fennell

Estelle Fennell
Chair, Board of Supervisors

Date: 6/15/2015

Attest:

An Marshall, Deputy
Clerk of the Board

Approved as to form:

Scott A. Miles

Insurance Certificates approved:

Risk Analyst

THE CITY OF ARCATA

Karen T. Diemer,
City Manager

Date: _____

Attest:

Clerk, City of Arcata

Insurance approved:

Harold Miller,
Contracts and Procurement Specialist

EXHIBIT A
SCOPE OF SERVICES AND COMPENSATION

1. WORK SERVICES:

The City will provide the employees listed below to perform technical assistance to the County in the County's establishment of trails in the McKay Community Forest. The services to be provided will include assistance and guidance in selecting trail alignments, designing access points and trail segments, and performing field inspections ("Work"). The City's employees who will perform these services are: Dennis Houghton and Darius Damonte (each an "Employee," collectively, "Employees").

2. WORK HOURS:

Employees shall perform the Work pursuant to a schedule that is mutually agreed upon by the parties. The City reserves the right to alter the Work schedule and availability of Employees in the event of an emergency that requires the Employees, due to their special skills and qualifications, to provide labor or work services for the City of Arcata.

3. COMPENSATION:

The County shall compensate the City for labor hours on a time-expended basis at the City's fully weighted hourly rate for the respective Employees in place at the time the Work is performed. The City will provide thirty (30) days advance written notice to the County for any changes in the fully weighted hourly rate for the respective Employees. The fully weighted hourly rates as of the date this Agreement was entered into are as follows:

Hourly Rate:

Darius Damonte	\$47.30/Hour
Dennis Houghton	\$54.60/Hour