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AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Jason Mitchell
Director, Public Works

SUBJECT: Sheriff Work Alternative Program

DATE: August 10, 2018

City Administrator Approval

Date:

9/11/18

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator Or Her Designee To: 1) Execute An Agreement With Alameda County For the City's Participation in the Sheriff's Office Work Alternative Program (SWAP) Through The Oakland Public Works Department (OPW) For A Term of Five (5) Years, With Three (3) Two (2) Year Options to Extend, Without Returning To Council, And; 2) Add Individuals Participating In The SWAP To The City's Self-Administered And Excess Workers' Compensation Programs.

EXECUTIVE SUMMARY

Illegal dumping removal and vegetation management are key services provided by OPW's Keep Oakland Clean and Beautiful Division (KOCB) to maintain the City's hardscaped medians, pedestrian pathways and the public right-of-way free of overgrown vegetation. These efforts improve the quality of life and create sustainable neighborhoods. For many years, the City has developed partnerships and agreements with various non-profit organizations and agencies to assist with cleaning and beautification of the City. Staff is recommending that the City resume its partnership with the Alameda County Sheriff's Office (ACSO) to provide the Sheriff's Work Alternative Program (SWAP) that began in 1983. This program will help to enhance the appearance of the City while providing an avenue for SWAP participants to fulfill their financial obligations.

BACKGROUND / LEGISLATIVE HISTORY

The Alameda County Sheriff offers a work alternative program for court assignees who perform community service in lieu of paying misdemeanor fines. To qualify for the program, participants must have no known record of violent assaults, hallucinogenic drugs, or sex offenses. ACSO determines the number of individuals placed in the program and the duration of their placement.

In 1983 the City entered into an agreement with the ACSO to receive court assignees to perform manual labor. The assignees were selected by the ACSO and worked with KOCB staff

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to rake grass, pull weeds, empty trash cans, sweep, pick up litter and clear debris. All individuals placed with the City were under the direct supervision, care, custody, and control of City staff during the course of their placement. The assignees did not use or handle machinery, vehicles or power tools and did not replace any City employee that would normally perform these job tasks.

ANALYSIS AND POLICY ALTERNATIVES

In 2009 the County Sheriff's Office conducted a file review of their workplace provider agreements. The review revealed that the agreements had no expiration date and that the wording in the agreements was outdated. During this review period, the County and City were unable to agree to the terms and language of the contract, and consequently the contract was not renewed and the program with the City was discontinued.

Among the contested language were provisions concerning workers' compensation and liability coverage. Generally, the County Sheriff's Office offers terms which require the City of Oakland to fully cover SWAP workers under the City's Workers' Compensation Program and to broadly cover liability.

Adding SWAP workers to the City's Workers' Compensation Program can be accomplished by a resolution from Council. Such addition will increase overall risk of the Workers' Compensation Program, but probably not to a significant degree. Similarly, execution of a SWAP agreement will increase the overall liability risk for the City due to the County of Alameda contract requirement that the City indemnify, defend and hold harmless the County and assume liability for Oakland SWAP participants. However, staff will minimize this risk through prudent and appropriate contract management. During the assignment, participants will remain under direct City supervision. Supervisors will receive additional safety training and direct the SWAP individuals in the performance of their work duties. Moreover, for both Workers' Compensation and Liability, staff will monitor associated losses and adjust the SWAP Program as necessary. The revised SWAP contract agreement is included as **Attachment A**.

In February 2018, OPW revisited the program and made efforts to reinstitute the program to help combat the growing problem of trash, litter, and debris on City streets, and the influx of weed growth that occurs after the rainy season. Implementation of the program will help the City move towards a proactive approach to address blight such as litter, debris and weed removal, which will improve the appearance of neighborhoods and the quality of life for residents. OPW anticipates that participants in the SWAP will contribute over 20,000 hours of services through relatively low-risk work activities such as raking, weeding, and collecting debris. During the decade in which the City previously participated in the SWAP with ASCO, only one minor injury occurred. In the absence of the SWAP, the cost to the City to provide these services would be over \$2M, illustrating that the return on this investment outweighs the potential liability risk of the program.

Court assignees who participate in the SWAP would not be covered by the City's Workers' Compensation Program, therefore staff requests that the Council authorize the City

Administrator or designee to add these individuals to the City's Self-Administered and Excess Workers' Compensation Programs.

FISCAL IMPACT

Adding SWAP workers to the City's Self-Administered and Excess Workers' Compensation Program will increase the overall risk of the Workers' Compensation Program. Although the cost of adding these individuals to the City's Workers' Compensation Program is negligible, a more significant cost would arise if an individual is injured while performing work for the City. The Self-Insurance Liability Fund (1100), to which OPW contributes, will cover any costs associated with the SWAP Program.

PUBLIC OUTREACH/INTEREST

This item did not require any additional public outreach other than the required posting on the City's website.

COORDINATION

This report was prepared in coordination with the Human Resource Management Department the Budget Bureau, and the Office of the City Attorney.

SUSTAINABLE OPPORTUNITIES

Economic: The continued efforts of staff to remove illegal dumping and graffiti will assist in improving the physical appearance of the City of Oakland, which translates directly into attracting and retaining business and promoting civic pride.

Environmental: A decrease in the amount of trash, debris and litter will lessen the amount of debris that enters the storm-drain systems, polluting our creeks and waterways.

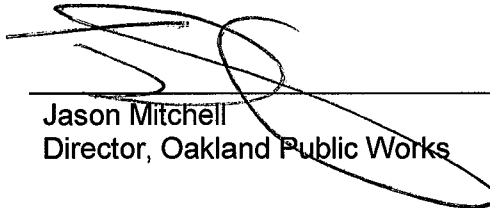
Social Equity: The enhanced efforts of collaboration and partnering between the Public Works Department, our residents and business community will improve the quality of life and public safety.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution authorizing the City Administrator or her designee to: 1) execute an agreement with Alameda County for the City's participation in the Sheriff's Office Work Alternative Program (SWAP) through the Oakland Public Works Department for a term of five (5) years, with three (3) two (2) year options to extend, without returning to Council, and 2) add individuals participating in the SWAP to the City's Self-Administered and Excess Workers' Compensation Programs.

For questions regarding this report, please contact David Ferguson, Interim Assistant Director, at (510) 615-5451.

Respectfully submitted,



Jason Mitchell
Director, Oakland Public Works

Prepared by:
David Ferguson, Interim Assistant Director

Attachments (1):

A: Agreement for Participation in Sheriff's Work Alternative Program (SWAP)

**AGREEMENT FOR PARTICIPATION IN
SHERIFF'S WORK ALTERNATIVE PROGRAM (S.W.A.P.)**

THIS AGREEMENT is made and entered into this _____ day of _____, by and between the County of Alameda, a political subdivision of the State of California ("County"), through the Alameda County Sheriff's Office ("ACSO") and [CONTRACTOR] (collectively, the "Parties").

RECITALS

WHEREAS, Penal Code sections 4024.2 and 4024.3 provide that the Board of Supervisors may authorize ACSO to offer a voluntary "work release program" (the Sheriff's Work Alternative Program or "SWAP") to eligible persons in lieu of confinement or fine; and

WHEREAS, the Alameda County Board of Supervisors has authorized such a program; and

WHEREAS, ACSO administers SWAP and the eligible individuals who have been referred to the program; and

WHEREAS, [CONTRACTOR] wishes to participate in the program by receiving, directing, and supervising SWAP placements;

NOW, THEREFORE, based on the foregoing recitals, the Parties agree as follows:

1. **Eligibility.** ACSO will determine which individuals are eligible to participate in SWAP. Eligible individuals will have no known record of violent assaults or sex offenses. ACSO may place SWAP-eligible individuals with [CONTRACTOR].
2. **Number of Placements.** The number of individuals placed with [CONTRACTOR] will be determined by ACSO. This Agreement does not obligate ACSO to place any minimum number of individuals or to guarantee the duration of any particular placement.
3. **Supervision.** All individuals placed with [CONTRACTOR] will be under the direct supervision, care, custody, and control of [CONTRACTOR] during the course of their placement. ACSO will not provide any security or supervision of individuals referred through SWAP to [CONTRACTOR]. The [CONTRACTOR] will not physically restrain SWAP individuals that seek to leave the work area, but will immediately notify ACSO via email or telephone. Such notification must occur no later than twenty-four (24) hours following the incident.

[CONTRACTOR'S] employees will provide safety instructions, explain work to be done and direct the SWAP individuals in the performance of their work duties.

[CONTRACTOR] shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local

governing bodies having jurisdiction over the scope of services or any part thereof, including all provisions of the California Occupational Safety and Health Act of 1973 and all amendments thereto, and all applicable federal, state, municipal, and local safety regulations. All services performed by [CONTRACTOR] must be in accordance with these laws, ordinances, codes and regulations. [CONTRACTOR] shall indemnify and hold ACSO and the County of Alameda harmless from any and all liability, fines, penalties and consequences from any noncompliance or violations of such laws, ordinances, codes and regulations. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this contract, [CONTRACTOR] shall immediately notify ACSO and shall submit a written report, in such form as may be required by the County of Alameda, of all accidents which occur in connection with this contract within six (6) hours. This report must include the following information: (1) name and address of the injured or deceased person (s); (2) name and address of [CONTRACTOR'S] liability insurance carrier; and (3) a detailed description of accident and whether any of County's equipment, tools, material, or staff was involved.

4. **Work Limitations.** The work to be performed pursuant to this Agreement shall be limited and defined by Penal Code section 4024.2(b)(1). SWAP individuals may:
- a. Improve or maintain levees or public facilities, including, but not limited to, streets, parks, and schools.
 - b. Perform manual labor in support of nonprofit organizations;
 - c. Conduct graffiti cleanup for local governmental entities, including participation in a graffiti abatement program;
 - d. Abate weed and rubbish on public and private property; and
 - e. Perform house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations

Any manual labor must not involve the SWAP individual's use of, or handling of, machinery, vehicles or power tools. Manual labor may include using simple hand tools, raking grass, weed pulling, cleaning animal pens, feeding animals, emptying trash cans, general sweeping and litter clean-up, and may require lifting up to forty (40) pounds. Equipment operation will be performed only by qualified [CONTRACTOR] employees. Where appropriate, [CONTRACTOR] will provide SWAP individuals with well-maintained safety equipment including, but not limited to, signs, hard hats and safety vests.

5. **SWAP Guidelines.** [CONTRACTOR] agrees to comply in full with the "Sheriff's Work Alternative Program Guidelines for Supervision of Inmate Workers," which Guidelines are attached hereto as Exhibit A and incorporated in full into this Agreement by this reference.
6. **Injuries.** In the event that a claim for industrial injury is filed by an individual referred under this Agreement, [CONTRACTOR] shall be responsible for the administration and payment of the claim. [CONTRACTOR] shall indemnify and hold the County of

Alameda and ACSO harmless for all costs related to or incurred in the administration of such claims including any settlement costs, attorneys' fees, and/or penalties to the fullest extent permitted under California law.

7. **Insurance.** [CONTRACTOR] shall at all times during the terms of this Agreement maintain in force those insurance policies and bond as attached hereto as Exhibit B and shall comply with all those requirements as stated therein.
8. **Indemnity.** To the fullest extent permitted by law, [CONTRACTOR] shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the any act or omission by [CONTRACTOR] in connection with or to relation to this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving [CONTRACTOR] of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits.
9. **Notices.** All notices required or permitted hereunder shall be deemed sufficiently given if delivered by hand or mailed, by United States mail, postage prepaid, certified or registered mail, addressed to the Parties at the addresses set forth below or to such other address as may be, from time to time, designated in writing. Courtesy copies may also be sent via email.

[ADD ADDRESSES / CONTACTS FOR NOTICE FOR BOTH PARTIES]

10. **Term.** The term of this contract is from the effective date until _____, unless sooner terminated in accordance with the provisions herein.
11. **Termination without Cause.** This Agreement may be terminated upon 30 days written notice by either party, without cause. Should [CONTRACTOR] elect to serve notice of termination without cause, those individuals who had commenced working at the [CONTRACTOR'S] facilities prior to the date of said notice shall be permitted, at ACSO's discretion, to complete their commitments even if it extends the work in progress beyond the date the termination takes effect. ACSO may, in its sole discretion, assign additional individuals to perform labor after it has received a termination notice. Those individuals assigned after receipt of a notice of termination may perform labor until the date the termination takes effect.
12. **Termination with Cause.** If ACSO determines that [CONTRACTOR] may have violated the terms of this Agreement, ACSO shall have the right to immediately suspend

the operation of this Agreement pending investigation of the possible violation and shall give prompt notice of the suspension to [CONTRACTOR]. In the event that an individual reports to perform labor after the suspension is communicated, [CONTRACTOR] shall advise ACSO and instruct the individual as directed by ACSO.

13. **Conflicts of Interest.** No officer, member, or employee of the County of Alameda or ACSO and no member of their governing bodies shall have any pecuniary interest, direct or indirect, in this Agreement or any proceeds thereof. No person employed by [CONTRACTOR] nor any member of such employee's family shall serve on a County of Alameda board, committee or hold any such position which either by rule, practice or action nominates, recommends, supervises [CONTRACTOR'S] operations, or authorizes funding to [CONTRACTOR].
14. **Relationship of the parties.** Nothing herein shall be construed to create the relationship of employer and employee, partners, principal and agent, or joint-venture partners between the Parties; it being understood and agreed that [CONTRACTOR] is an independent contractor. [CONTRACTOR] is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by [CONTRACTOR] nor for any obligations or liabilities incurred by [CONTRACTOR].
15. **Drug-Free Workplace.** [CONTRACTOR] and its employees shall comply with the County's policy of maintaining a drug-free workplace. Neither [CONTRACTOR] nor its employees shall unlawfully manufacture, distribute, dispense possess or use controlled substances, included but not limited to heroin, cocaine, and amphetamines, at any County Facility or work site. If [CONTRACTOR] or any employee of [CONTRACTOR] is convicted of or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, [CONTRACTOR] shall notify ACSO within five days. Violation of this provision shall constitute a material breach of this agreement.
16. **Non-Discrimination.** [CONTRACTOR] assures that it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color disability, sex, sexual orientation or national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factors be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
17. **Entire Agreement.** This contract contains the entire agreement between the Parties and neither is relying on representations not contained herein.
18. **Survival of Indemnity.** The indemnity provisions and repayment provisions of this Agreement shall survive termination or expiration.
19. **Amendment.** This Agreement may be supplemented, amended or modified only by a writing signed by both parties.

20. **Assignment.** Nothing contained in this agreement shall be construed to permit assignment or transfer of any rights or delegation of duties by [CONTRACTOR] under this agreement, and such assignment, transfer, or delegation is expressly prohibited and void.

21. **Additional Notice Requirements.** The following situations will require notification to Sheriffs Work Alternative Program and may require immediate notification of the local police: 1) use or possession of alcohol beverages on work site; 2) acts of violence; 3) disruptive or uncooperative participants; 4) any other hazardous situation.

22. **No Third-Party Beneficiary Rights.** [CONTRACTOR] and ACSO agree that this Agreement is only for the benefit of the Parties hereto and is not intended to confer any rights or benefits on any third party. There are no third party beneficiaries of this Agreement or any part of any specific provision of this Agreement, and no third party shall have any right to enforce this Agreement or any provision hereof.

23. **Signatory.** By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

[CONTRACTOR]

ALAMEDA COUNTY SHERIFF'S OFFICE

By: _____
 [Insert Name and Title]

By: _____
 Gregory J. Ahern, Sheriff

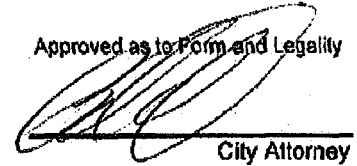
Date: _____

Date: _____

Approved as to Form:
 Donna R. Ziegler, County Counsel

By: _____
 Eva K. Schueller Deputy County Counsel

2010 SEP 12 PM 4:17



City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR HER DESIGNEE TO: 1) EXECUTE AN AGREEMENT WITH ALAMEDA COUNTY FOR THE CITY'S PARTICIPATION IN THE SHERIFF'S OFFICE WORK ALTERNATIVE PROGRAM (SWAP) THROUGH THE OAKLAND PUBLIC WORKS DEPARTMENT (OPW) FOR A TERM OF FIVE (5) YEARS, WITH THREE (3) TWO (2) YEAR OPTIONS TO EXTEND WITHOUT RETURNING TO COUNCIL, AND 2) ADD INDIVIDUALS PARTICIPATING IN THE SWAP TO THE CITY'S SELF-ADMINISTERED AND EXCESS WORKERS' COMPENSATION PROGRAMS

WHEREAS, Penal Code sections 4024.2 and 4024.3 provide that the Alameda County Board of Supervisors may authorize Alameda County Sheriff's Office (ACSO) to offer a voluntary work release program to eligible persons in lieu of confinement or fine; and

WHEREAS, the Alameda County Board of Supervisors has authorized such a program; and

WHEREAS, ACSO administers SWAP and the eligible individuals who have been referred to the program; and

WHEREAS, the City of Oakland wishes to participate in the program by receiving, directing, and supervising SWAP participants who will assist the City in trash and litter pickup, debris and weed removal and with illegal dumping cleanup; and

WHEREAS, ACSO requires that partner agencies indemnify, defend, and hold the County of Alameda harmless and assume liability for Oakland SWAP participants and cover and enroll SWAP participants in that agency's workers' compensation program; therefore, be it

RESOLVED: That the City Administrator or designee is authorized to execute an agreement for a term of five (5) years with the County of Alameda for the City 's participation in the ASCO's SWAP through the Oakland Public Works Department, with three (3) two (2) year options to extend the term of the Agreement, without returning to Council; and be it

FURTHER RESOLVED: That the City Administrator or designee is authorized to enroll SWAP participants performing work for the City, who are not normally covered by the City's workers' compensation program, in the City's self-administered and excess workers' compensation programs.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California