

**AGREEMENT BETWEEN
PIERCE COUNTY AND CITY OF FIRCREST
FOR DISTRICT COURT PROBATION WORK CREW SERVICES**

THIS AGREEMENT is entered into this day by and between **PIERCE COUNTY**, a political subdivision of the State of Washington (herein referred to as "COUNTY") and **CITY OF FIRCREST**, (herein referred to as "FIRCREST").

WHEREAS, Fircrest has a need and desire to use the services of a Pierce County District Court Probation Work Crew, herein referred to as "Work Crew;"

WHEREAS, the County has capacity to supply a Work Crew;

NOW, THEREFORE, in consideration of the mutual benefits and advantages to be derived by each of the parties,

IT IS HEREBY AGREED as follows:

I. General

A. Purposes: Purpose of this agreement is to memorialize the agreement between the parties for the Work Crew to provide services to Fircrest based on Fircrest's expressed need for manual labor in the maintenance of their facilities.

B. Services: The services of the Work Crew will include landscape maintenance of Fircrest facilities. The Pierce County Work Crew Supervisor will determine the number of people needed to accomplish the task not to exceed (10) people per day. Work Crew services will be provided only when specifically requested by Fircrest. A Pierce County Work Crew Chief will supervise and direct the crew at all times.

C. Financial Provisions: In consideration for the County providing Work Crew services as described above, Fircrest agrees to pay the sum of \$672.00 per day, due quarterly at the end of March, June, September and December 2014. The County will mail a quarterly invoice reflecting the actual number of days completed each month. Payments that are not paid within 30 days of the due date shall be considered delinquent. Delinquent charges shall accrue on the unpaid balance, from date of delinquency until paid, at an interest rate of one half of one percent (0.5) per month.

D. Agreement Administration, Notice and Dispute Resolution. The County shall designate an employee representative for the Probation Department to act as a liaison with Fircrest to handle administration of this agreement. Fircrest shall also designate a liaison for the services described herein. County liaison shall meet with Fircrest liaison on an as needed basis. Any formal notice or communication to be given by one Party to the other Party under this Agreement shall be given to the designated representatives. Such notice deemed properly given, if delivered, or if mailed postage prepaid and addressed to the following representatives:

County Representative: Lisa Maze, Pierce County District Court Probation, 901 Tacoma Ave S #200, Tacoma WA 98402

Fircrest Representative: Gary Mims, Facilities, City of Fircrest, 115 Ramsdell St., Fircrest WA 98466

The name and address of the designated representatives may be changed at any time, and from time to time, by either Fircrest or the County giving notice thereof to the other as herein provided.

Any controversy or claim arising out of or relating to this agreement or the alleged breach thereof that cannot be resolved, shall be submitted to binding arbitration in accordance with the rules and procedures set forth in Chapter 7.04, RCW and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

II. Indemnification and Defense

The County shall defend, indemnify and save harmless Fircrest, its officers, employees and agents from any and all costs, claims, judgments, awards of damages, resulting from the acts or omissions of the County, its officers, employees, or agents associated with this agreement. In executing this agreement, the County does not assume liability or responsibility for or release Fircrest from any liability or responsibility to the extent that such liability or responsibility arises from the existence or effect of Fircrest ordinances, rules, regulations, resolutions, customs, policies or practices. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such Fircrest ordinance, rule, regulation, resolution, custom, policy or practice is at issue, Fircrest shall defend the same at its sole expense and if judgment is entered or damages awarded against Fircrest, the County or both, Fircrest shall satisfy the same, including all chargeable costs and attorney's fees.

Fircrest shall defend, indemnify and save harmless the County, its officers, employees and agents from any and all costs, claims, judgments, awards of damages, resulting from the acts or omissions of Fircrest, its officers, employees, or agents associated with this agreement. In executing this agreement, Fircrest does not assume liability or responsibility for or release the County from any liability or responsibility to the extent that such liability or responsibility arises from the existence or effect of County ordinance, rules, regulations, resolutions, customs, policies or practices. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such County ordinance, rule, regulation, resolution, custom, policy or practice is at issue, the County shall defend the same at its sole expense and if judgment is entered or damages awarded against the County, Fircrest or both, the County shall satisfy the same, including all chargeable costs and attorney's fees.

A. Right to Control Litigation by Defending Party

In the event that one party defends the other, the defending party shall have the sole right to select legal counsel to defend against the claim, demand, or cause of action. In the event that either party agrees to defend, protect, and save the other harmless, the defending party shall be empowered to settle or compromise the claim, demand, or cause of action, and the defended party shall not interfere therewith, provided that if the defending party settles a claim, demand, or cause of action against the other party without that other party's consent, the non-consenting party shall not be liable for any settlement or fees.

B. Cooperation Clause

It is understood that in the event that the County is named or defends any suit or claim arising in connection with this agreement or services thereunder, Fircrest will use its best efforts to assist in defending against said suit or claim. In the event that Fircrest fails or refuses to cooperate, the County shall have no duty to defend, pay or reimburse for any costs incurred in the defense or pay or reimburse for any damages for which the Fircrest becomes legally obligated. It is further understood that if Fircrest is named in or defends any suit or claim arising in connection with this agreement or services thereunder, the County will use its best efforts to assist in defending against said claim or suit. In the event the County fails or refuses to cooperate, Fircrest shall have no duty to defend, pay, or reimburse for any costs incurred in the defense or pay or reimburse for any damages for which the County becomes legally obligated to pay.

III. Miscellaneous

A. Non-Discrimination: The County and Fircrest certify that they are Equal Opportunity Employers.

B. Debarment and Suspension Certification: Both the County and Fircrest certify to the best of their respective knowledge and belief, that they and their principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(2) Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (B)(2) of this certification; and

(4) Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the County and/or Fircrest are unable to certify to any of the statements in this certification, they shall attach an explanation to this agreement.

C. Assignment: Neither the County nor Fircrest shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

D. No Third Party Beneficiary: The County does not by this agreement assume any contractual obligations to anyone other than Fircrest and Fircrest does not assume any contractual obligations to anyone other than the County. The County and Fircrest expressly eliminate any third-party beneficiary to this agreement.

E. County As Independent Contractor: The County is, and shall at all times be deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between Fircrest and County or any of the County's agents or employees. The County shall retain all authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services by County pursuant to this Agreement.

Nothing in this Agreement shall make any employee of Fircrest a County employee or any employee of the County a Fircrest employee for any purpose, including, but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded County or Fircrest employees by virtue of their

employment.

F. Insurance Coverage: Fircrest shall maintain at all times during the course of this Agreement a general liability insurance policy or other comparable coverage with a self-insured retention of no more than \$2,000,000.00 and a policy limit of no less than \$5,000,000.00 dollars.

G. Waiver: No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Agreement.

H. Entire Agreement: This Agreement contains all of the Agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

I. Amendment: Provisions within this Agreement may be amended with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing, formally approved, and executed by duly authorized agents of both parties.

J. No Real Property Acquisition or Joint Financing: This Agreement does not provide for the acquisition, holding or disposal of real property. Nor does this Agreement contemplate the financing of any joint or cooperative undertaking. There shall be no budget maintained for any joint or cooperative undertaking pursuant to this Agreement.

K. Severability: If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

IV. Termination Provisions

A. Term of Agreement. The term of this agreement shall commence on May 1, 2014 and terminate according to the terms herein. Nothing in this section precludes the parties from jointly renegotiating and amending the terms and conditions of the agreement, excluding duration and compensation, prior to the termination.

B. Process for Termination. Neither party may terminate the agreement before December 31, 2014. If either party desires to terminate the agreement on December 31, 2014, they shall provide written notice to the other no later than September 30, 2014. If no such notification is given by either party, this agreement shall automatically extend beyond December 31, 2014. If the agreement extends beyond 2014 and a party wishes to terminate the

agreement in a subsequent year, then notice must be given by the terminating party no less than ninety days prior to the desired termination date. The parties acknowledge that an extension of this agreement into 2015 and beyond may include a price increase, and if so, the County shall notify Fircrest 90 days prior to the implementation date of and such price increase.

- C. Future Non-Allocation of Funds. Notwithstanding any other terms of this Agreement, if sufficient funds are not appropriated or allocated for provision of a Work Crew for any future fiscal period, the County will not be obligated to provide Work Crew services after the end of the fiscal period through which funds have been appropriated and allocated, unless authorized by county ordinance. No penalty or expense shall accrue to the County in the event this provision applies.

IN WITNESS WHERE OF, the parties have caused this Agreement to be executed on this 13th day of May, 2014.

PIERCE COUNTY

FIRCREST PUBLIC WORKS

Dennis Ince 4/10/14
DEP. PROSECUTING ATTY Date

Rick Rosenbrot
CITY MANAGER Date

(as to form only)

Gary Robinson 4/18/14
BUDGET AND FINANCE Date

[Signature]
RISK MANAGEMENT Date

[Signature] 4/2/14
DISTRICT COURT ADMINISTRATOR Date