

W. G. B.

AGENDA COVER MEMO

AGENDA DATE: June 28, 2006
Memorandum Date: June 23, 2006

TO: LANE COUNTY BOARD OF COMMISSIONERS
DEPARTMENT: LANE COUNTY OFFICE OF LEGAL COUNSEL
PRESENTED BY: Teresa J. Wilson, County Counsel



AGENDA ITEM TITLE: In the Matter of Delegating Authority to the County Administrator to Execute an Agreement with Lane Workforce Partnership on the Provision of Administrative Services.

I. **MOTION** I MOVE TO APPROVE THE ORDER DELEGATING AUTHORITY TO THE COUNTY ADMINISTRATOR TO SIGN AN AGREEMENT WITH LANE WORKFORCE PARTNERSHIP FOR ADMINISTRATIVE SERVICES.

II. **AGENDA ITEM SUMMARY**

The Board is being asked to approve an administrative services agreement with Lane Workforce Partnership (LWP) whereby the County continues to provide employees to the LWP for the implementation of the LWP's work.

III. **BACKGROUND/IMPLICATIONS OF ACTION**

A. **Board Action and Other History**

Lane Workforce Partnership and its predecessors have been providing workforce development services for employers and job seekers since 1984 through the use of County employees. Administrative agreements described this relationship between the County and LWP through 1997. Although the last agreement ended by virtue of its language, the parties have maintained their working relationship since then. Since at least 2003, auditors for both the County and LWP have noted in their audits the lack of a written agreement defining this relationship.

LWP met on June 22 and approved the proposed agreement.

B. **Policy Issues**

The policy issue involved here is whether the County wants to continue providing employees to LWP, under the terms and conditions outlined in the agreement.

C. **Board Goals**

This agreement addresses the overall County principle of providing accountability, and furthers the efficient and effective financial and administrative support to the direct services provided by LWP.

D. Financial and/or Resource Considerations

The agreement basically provides that LWP will pay for whatever services the County provides – whether they are the ongoing employment-related costs for the County employees or any other services requested by LWP. The County will cooperate with LWP in documenting or establishing the grant eligibility of the costs, but it is not required to ensure that all costs billed are grant eligible. The agreement also provides that the parties are to develop a work plan to have an actuarial determination made of the unfunded liabilities of PERS, time management, retiree medical liability and workers compensation benefits for the employees assigned to the Workforce Partnership Department, as well as an evaluation of prudent reserving practices for those costs and a process for payment in the event the relationship between LWP and the County is terminated.

E. Analysis

Staff has been working for well over a year to develop an agreement that defines the current working relationship and conditions. The old agreement was quite out-of-date as to how it addressed financial and technology matters; these areas have been modernized in the proposed agreement. The old agreement also did not adequately address the County's need for accountability with respect to the relationship of the Executive Director, the County employees working in the Workforce Partnership Department, and the Board of County Commissioners. This latter issue is resolved in the proposed agreement by reflecting the unique position of the Executive Director being a joint employee of both Lane County and the LWP. The path to this resolution included a meeting last fall by the then-Chair and Vice Chair with the LWP Executive Committee.

Under the County Charter, County department directors are in the unclassified service; all other employees are in the classified service and subject to the protections and provisions of the County personnel system. It is important to the County that its employees be supervised by department directors who are accountable to Lane County. The agreement provides that the Executive Director of LWP is a joint employee of the County and LWP. It also provides that LWP has the power to hire and fire the Executive Director, but only with the advice and consent of the County. In addition to this, it is proposed, if the Board of Commissioners is comfortable with it, that the County Administrator or his or her designee participate on the LWP Board of Directors, to further afford this accountability of the Executive Director. This was discussed with the LWP Executive Committee last fall, and as a result, LWP is in the process of changing its bylaws to accommodate this role for the County Administrator.

The agreement makes clear that LWP is responsible for providing to the Executive Director appropriate policies, direction and supervision with respect to its business functions, while the County is responsible for providing to him the appropriate policies, direction and supervision with respect to the employment relationship with the County employees. The County employees who provide the services for LWP will have all the same rights and benefits of other County employees.

F. Alternatives/Options

The agreement as proposed reflects the ongoing working administrative relationship. Any of the components of it are a matter of choice, so if there are areas where the Board would

like to see a different relationship, it needs only to give direction to the County Administrator and its representative on LWP to work towards that end.

With respect to the accountability component, the Board can either continue to have its Commissioner representative attend the LWP Executive Committee meetings, or it can ask the County Administrator to begin attending, and then revisit his role in January at the time of appointment of Commissioner representatives to the various committees.

IV. TIMING/IMPLEMENTATION

The agreement provides an effective date as of the beginning of the current fiscal year.

V. RECOMMENDATION

It is recommended that the Board approve the agreement, and, make a choice with respect to when (or if) it wants the County Administrator to attend the LWP meetings.

VI. ATTACHMENTS

Board Order with attached Administrative Agreement.

IN THE BOARD OF COUNTY COMMISSIONERS
OF LANE COUNTY, OREGON

ORDER NO. 06-6-28-2) IN THE MATTER OF DELEGATING AUTHORITY
) TO THE COUNTY ADMINISTRATOR TO
) EXECUTE AN AGREEMENT WITH LANE
) WORKFORCE PARTNERSHIP ON THE
) PROVISION OF ADMINISTRATIVE SERVICES

WHEREAS, Lane County has been providing employees and administrative services to the Lane Workforce Partnership (or its predecessors) since 1985 in furtherance of the mission of workforce development services for County employers and job seekers, and

WHEREAS, this arrangement has continued beyond the term of the past written agreement, and

WHEREAS, the lack of a current written agreement has resulted in audit citations for both Lane County and the Lane Workforce Partnership, and

WHEREAS, both parties wish to continue the arrangement, and further, with to cease having audit citations for the lack of written definition of their arrangement,

NOW, THEREFORE IT IS HEREBY ORDERED that the Board approves an administrative agreement with Lane Workforce Partnership in a form substantially similar to that attached as Exhibit A and incorporated by this reference, and it is further

ORDERED that the County Administrator is delegated authority to execute such an agreement.

DATED this 28th day of June, 2006.

Chair, Lane County Board of
Commissioners

APPROVED AS TO FORM
Date 6/23/06 Lane County
Jessie White
OFFICE OF LEGAL COUNSEL

ADMINISTRATIVE AGREEMENT
between
LANE COUNTY
and the
LANE WORKFORCE PARTNERSHIP

THIS AGREEMENT is entered into by and between LANE COUNTY, a political subdivision of the State of Oregon, hereinafter referred to as "County," and the LANE WORKFORCE PARTNERSHIP, hereinafter referred to as "LWP".

WHEREAS, LWP is a workforce development organization, dedicated to meeting the workforce needs of employers and job seekers throughout Lane County, and

WHEREAS, LWP's Board of Directors has been designated by Lane County and the Cities of Eugene and Springfield as the local workforce investment board under the federal Workforce Investment Act of 1998, and charged with establishing an employer driven system of service delivery for state and federally funded workforce development programs operating in the Lane County, Oregon, and

WHEREAS, in recent audits received by both the County and LWP, the auditors have recommended that the parties clarify their relationship through written agreement, and

WHEREAS, the parties desire to continue to have the County provide the employees to perform the work directed by LWP, but to also retain LWP's independence in its business practices and functions, and

WHEREAS, it is in the parties' interests to strengthen their relationship, improve communication, fully comply with the law, provide appropriate accountability, provide for appropriate allocation of and payment of all costs, develop reasonable plans for outstanding liabilities, minimize duplication, and respect the role and authority of each party in fulfilling their functions, and

NOW THEREFORE, the parties agree as follows:

A. Grant Recipient, Budget, and Accounting. LWP shall receive State and Federal grants in its own name, and be responsible for the development of the grant programs, expenditure, and accounting for the funds, and delivery or procurement of services pursuant to the grants. In furtherance of these duties, it is specifically agreed as follows:

1. LWP Budget. The LWP shall be responsible for its own budget and accounting for all grant funds it receives, and for full compliance with all applicable laws.

2. County Budget for Workforce Partnership Department. The LWP shall cooperate with the County in the preparation and development of the County budget for the personnel-related costs for the Workforce Partnership Department.

3. Accounting for Revenue and Expenditures. The LWP shall be responsible for accounting for, receipt and payment of, all revenues and expenditures of the LWP in its own books. Any actions by County employees to record, receive or pay those revenue and expenditures shall be at the direction of LWP. All such revenues and expenditures shall be separate from County funds.

4. Federal Identification Number. The LWP shall maintain and utilize its own federal identification number for all its financial transactions.

5. Bank Accounts; Investment of Funds. The LWP shall maintain its own bank accounts, and be responsible for investing its own funds, at the direction of LWP.

6. Audit. The LWP shall procure its own audit as it deems necessary, in accordance with State and Federal law.

7. Fidelity Bond/Audit Insurance. The LWP shall procure such fidelity bond or audit insurance as it deems prudent with respect to its Business Functions.

8. Non-Competition. It is understood the County may apply for grant funds for training for its employees to the extent that such grants are not inconsistent with the LWP mission or purposes.

B. Policies and Directives. LWP shall be responsible for establishing all necessary policies, practices, and directives relating to LWP's Business Functions in workforce and job training programs.

(1) LWP shall communicate those policies, practices and directives to the County employees performing its work through the Executive Director.

(2) All actions of the County employees relating to the Business Functions of LWP shall be deemed to be guided by LWP's policies, practices and directives.

(3) For the purposes of this agreement, the Term "Business Functions" shall include LWP's internal budgeting, workforce development, contracting (except as provided for in Section (C)), job training, program management, and financial management functions.

(4) In the event of a conflict between a County policy or procedure and a LWP policy or procedure, State and Federal law shall be controlling. In the event that a matter is not controlled by State or Federal law, the guiding principle shall be that those matters which relate to the Business Functions of LWP shall be governed by LWP policy,

and those matters which relate to the employment practices of the County shall be governed by the County policy.

C. Employment

1. Executive Director.

(a) **Joint employee.** The Executive Director of LWP shall be a joint employee of the County and LWP. LWP shall have the power and duty to hire and fire the Executive Director. LWP agrees to do so with the advice and consent of the County. In the event of a dispute regarding the hiring or firing, the matter shall be referred to a group of two representatives of the County (other than the County's representative on LWP) and two representatives of the LWP to meet and seek resolution.

(b) **Compensation.** The Executive Director's compensation shall be determined and paid by LWP.

(c) **Supervision.** The Executive Director shall be supervised and directed by the LWP with respect to all Business Functions of the LWP.

(d) **Policies and Procedures.** The Executive Director shall receive and follow all employment policies, practices, and procedures related to the County employees from the County. The Executive Director will be an administrative Lane County department director, pursuant to LC 3.020, except as modified by paragraph (C)(1)(a) above, in regards to all functions relating to County employment practices, including being recognized as an appointing authority.

(e) **Management Team.** The Executive Director shall be a member of the County Management Team.

2. Workforce Partnership Department Employees. Except as detailed above regarding the Executive Director, the employees who shall provide services as directed by LWP shall be County employees.

(a) The employment relationship with the County employees assigned to the WPD, including but not limited to hiring, firing, supervising, layoff, recall, compensation and benefits, shall be governed by County Home Rule Charter, ordinances, orders and administrative procedures, and by any applicable negotiated collective bargaining agreement in the same manner as for other County employees. The Executive Director shall be responsible for conveying any concerns or recommendations for change regarding these policies, practices and agreements to the County Human Resources Manager or Director.

(b) LWP shall determine the number of employees needed to provide the services, taking into consideration its budgetary limits and applicable personnel costs for County employees in the classifications identified as needed by LWP. LWP shall

advise the County of any significant change in the numbers of employees needed as soon as it becomes aware of a reasonable likelihood of a significant change, in order to cooperate with the County in accommodating such a change.

3. Executive Director and Employees.

(a) Separate County Department. The County employees who perform LWP services shall be in a separate County department, with the Executive Director as the Department Director. The name of the Department shall be the Workforce Partnership Department. The Department shall be described in the Lane Manual.

(b) Employment-related budget/costs. Subject to the requirements of State and Federal law, LWP shall pay County for all employment-related costs of the employees in the Workforce Partnership Department, including all salary and benefits, and for all attendant costs for the County processing of employment-related matters in order to maintain a workforce to provide services for LWP.

(i) LWP shall pay County for direct employment costs of payroll, on an as-earned, bi-weekly basis in the manner most cost-efficient for both parties.

(ii) LWP and County shall cooperate in establishing the budget for personnel costs for the Workforce Partnership Department as a part of the annual County budget.

(c) Indirect costs. LWP agrees to pay for the County indirect costs related to the Workforce Partnership Department based on OMB Circular A-87 (as amended, revised, or renumbered from time to time), which shall be calculated by the County each year. LWP will be billed and shall pay for those costs on a monthly or quarterly basis, as agreed to by the respective finance managers of the two entities. The County shall reconcile: (1) the costs consistent with OMB Circular A-87 for the fiscal year; (2) and amounts received during the fiscal year, within 60 days after the end of the fiscal year. Any shortage or overage shall be corrected within 45 days after this reconciliation is complete.

(d) Non-recurring employee-related services. Actual costs for any nonrecurring services that may arise relating to the County employees assigned to the Workforce Partnership Department, such as investigations, legal services, separation agreements, settlements, judgments, or costs attendant to grievances shall be billed directly to LWP. LWP shall pay such costs within 45 days of receiving an invoice.

(e) Employee Training. Employee training is recognized by both County and LWP as vital to the delivery of their respective services, and each has training components that are helpful to the other.

(i) **County training.** County training opportunities shall be available to the employees in the Workforce Partnership Department, and shall be paid for by LWP within 45 days of receiving an invoice, at the same rate as charged for other County departments.

(ii) **LWP training.** LWP shall make its training opportunities available to the County on a preferred customer basis. LWP shall also make its skill testing program available to County departments. County shall pay for any such training or skill testing within 45 days of receiving an invoice.

(f) **Unfunded future benefits costs.** The PERS, time management, retiree medical liability, and workers compensation benefits for County employees all involve both present costs and liability for future costs. The County and LWP agree to develop a work plan to have actuarial determination made of these unfunded liabilities, and will develop options for addressing them, including an evaluation of a prudent reserving practice and a process for payment in the event of termination. The County acknowledges and accepts that any such plan must be in compliance with State and Federal Law.

(g) **Housing.** LWP shall be responsible for providing appropriate and reasonable accommodations for the County employees who are subject to its direction and control, in a manner consistent with all applicable laws and regulations.

(h) **Furniture, Materials, and Services.** LWP shall be responsible for providing and paying for appropriate and reasonable furniture, materials and services to enable the County employees to perform the work directed by LWP.

(i) **County Employment Information System.** LWP agrees to continue the use of County information systems for County employee employment-related functions, so long as LWP utilizes County employees to perform its Business Functions.

(j) **Liability.** Section IV, Liabilities, of the Amended PIC/LEO agreement, sets forth the parties' agreement regarding allocation of liability, terms of indemnification, and insurance coverage. In furtherance thereof, the parties agree as follows:

(i) LWP shall indemnify and hold County harmless from any and all claims, losses, damages, and assessments arising out of LWP's Business Functions and LWP's giving (or failure to give) direction in the implementation of those Business Functions.

(ii) Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, County shall indemnify and hold LWP harmless from any and all claims, losses, damages, and assessments arising out of County's employment

decisions, policies, or practices and County's giving (or failure to give) direction in the implementation of those employment decisions, policies, or practices.

(iii) If liability accrues due to the combined actions of both parties, they shall share in the payment of claims, losses, damages, costs and assessments in the same proportion to which their respective actions gave rise to the liability. Such a prorating of liability may be established by negotiated agreement. If negotiation fails to produce a pro-ratio agreement, the parties shall agree on a process for mediation, and, if that fails, binding arbitration. Each party shall bear its own legal fees for such dispute resolution.

(iv) The County may provide self-insurance coverage for the County's liabilities incurred hereunder through the County's Self-Insurance Fund (Lane Code 2.400-2.415). Such coverage shall not extend to acts done at the direction of the LWP in pursuit of LWP's Business Functions, for which LWP shall be solely responsible.

(v) LWP agrees to pay for the self-insurance coverage provided by the County within 45 days of receiving an invoice.

D. Other Services. Either party may purchase services from the other beyond the items specifically set forth herein, subject to the capacity of one party to provide the service and the other party paying for the full cost thereof. Any such service provided shall be billed and payment shall be made within 45 days of receiving the invoice. Specifically:

(1) **Mail Room.** LWP may utilize the services of the Lane County courier, at its choice.

(2) **Purchasing.** LWP may utilize the services of Lane County Purchasing for the procurement of goods or for the management or advertising of requests for proposals or bids. Any procurement done through Lane County Purchasing shall fully comply with the Lane County regulations regarding public contracts and purchasing.

(3) **Costs.** LWP shall be responsible for all costs incurred by County at LWP's direction. County shall cooperate with LWP in documenting or establishing the grant eligibility of any costs questioned.

E. Term and Termination. This agreement shall be effective July 1, 2005, and shall continue until June 30, 2008, unless terminated by written notice in the manner set forth below.

(1) **Date.** This agreement may be terminated by timely written notice, by either party, effective on June 30 of any calendar year.

(2) **Notice.** The terminating party shall provide written notice of its intent to terminate to the other party at least one hundred eighty (180) days prior to the termination date.

(3) **After June 30, 2008.** If after June 30, 2008, neither party has terminated this agreement, it shall continue so long as the County maintains a Workforce Partnership Department and LWP provides ongoing direction to the County employees in that Department as to LWP's Business Functions, until the parties execute a written amendment.

(4) **Close-out.** Upon the receipt of notice of termination, the parties shall in good faith negotiate a close-out plan in conformance with the requirements of State and Federal law.

F. Miscellaneous.

(1) **Existing Assets.** Subject to the requirements of State and Federal law, the existing furniture, materials, records, property and assets of LWP belong to LWP and are not County assets.

(2) **Applicable Laws.** This agreement shall be interpreted under the terms of the Federal Workforce Investment Act (and the regulations thereunder), the laws of the State of Oregon, and the Lane County Home Rule Charter. The applicable provisions of the Lane Manual setting forth standard provisions for public contracts (LM 21.130) are incorporated by this reference as if fully set forth. The parties are obligated to comply with these, and all other applicable laws and regulations in their performance of this agreement.

(3) **Amendment.** No amendment to this agreement shall be effective unless made in writing and signed by both parties.

LANE WORKFORCE PARTNERSHIP

LANE COUNTY

President

William Van Vactor
County Administrator

DATE: _____
FEIN: 93-0886373

DATE: _____
FEIN: 93-6002303

