



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

1:00 PM, WEDNESDAY, JULY 5, 2023

Barnes Sawyer Rooms - Deschutes Services Bldg - 1300 NW Wall St – Bend

(541) 388-6570 | www.deschutes.org

AGENDA

MEETING FORMAT: In accordance with Oregon state law, this meeting is open to the public and can be accessed and attended in person or remotely, with the exception of any executive session.

Members of the public may view the meeting in real time via YouTube using this link: <http://bit.ly/3mmlnzy>. To view the meeting via Zoom, see below.

Citizen Input: The public may comment on any topic that is not on the current agenda. Alternatively, comments may be submitted on any topic at any time by emailing citizeninput@deschutes.org or leaving a voice message at 541-385-1734.

When in-person comment from the public is allowed at the meeting, public comment will also be allowed via computer, phone or other virtual means.

Zoom Meeting Information: This meeting may be accessed via Zoom using a phone or computer.

- To join the meeting from a computer, copy and paste this link: bit.ly/3h3oqD.
- To join by phone, call 253-215-8782 and enter webinar ID # 899 4635 9970 followed by the passcode 013510.
- If joining by a browser, use the raise hand icon to indicate you would like to provide public comment, if and when allowed. If using a phone, press *6 to indicate you would like to speak and *9 to unmute yourself when you are called on.



Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, call (541) 388-6572 or email brenda.fritsvold@deschutes.org.

Time estimates: The times listed on agenda items are estimates only. Generally, items will be heard in sequential order and items, including public hearings, may be heard before or after their listed times.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

CITIZEN INPUT: Citizen Input may be provided as comment on any topic that is not on the agenda.

Note: In addition to the option of providing in-person comments at the meeting, citizen input comments may be emailed to citizeninput@deschutes.org or you may leave a brief voicemail at 541.385.1734.

CONSENT AGENDA

1. Approval of Board Order No. 2023-028 authorizing the Deschutes County Sheriff's Office to donate a vehicle to a nonprofit corporation
2. Approval of a contract with Helion Software for assessment and taxation software
3. Approval of Amendment No. 1 to the Intergovernmental Agreement with the Oregon Judicial Department for Parental Custody Mediation Funds
4. Consideration of Board Signature on letter reappointing David Roth for service on the Deschutes County Bicycle and Pedestrian Advisory Committee
5. Approval of minutes of the June 23, 2023 BOCC Legislative Update meeting
6. Approval of minutes of the May 4, 2023 Budget Committee meeting
7. Approval of minutes of the BOCC May 15, 2023 meeting

ACTION ITEMS

8. **1:10 PM** Public Hearing and Board Order considering the Atias annexation to the Bend Park & Recreation District
9. **1:25 PM** Document No. 2023-668, a Collective Bargaining Agreement between Deschutes County and the Federation of Oregon Parole and Probation Officers
10. **1:35 PM** Notice of Intent to Award a contract for the paving of Butler Market Rd: Hamehook Rd to Powell Butte Hwy Project

- [11.](#) **1:45 PM** Intergovernmental Agreement with the Oregon Department of Transportation and Central Oregon Irrigation District for the US97: Lower Bridge Way-NW 10th St (Terrebonne) Project
- [12.](#) **1:55 PM** Submittal of Safe Streets For All grant application for the Deschutes County Transportation Safety Action Plan Update
- [13.](#) **2:05 PM** Agreement with the Central Oregon Intergovernmental Council to distribute State Transportation Improvement Funds
- [14.](#) **2:20 PM** Community Development Department elimination of six unfilled full-time equivalents (FTE)
- [15.](#) **2:30 PM** Planning Division Work Plan Update / Long Range Planning / FY 2023-24
- [16.](#) **3:00 PM** Presentation of Countywide Long-term Financial Forecast with Courthouse Debt Service

OTHER ITEMS

These can be any items not included on the agenda that the Commissioners wish to discuss as part of the meeting, pursuant to ORS 192.640.

EXECUTIVE SESSION

At any time during the meeting, an executive session could be called to address issues relating to ORS 192.660(2)(e), real property negotiations; ORS 192.660(2)(h), litigation; ORS 192.660(2)(d), labor negotiations; ORS 192.660(2)(b), personnel issues; or other executive session categories.

Executive sessions are closed to the public; however, with few exceptions and under specific guidelines, are open to the media.

17. Executive Session under ORS 192.660 (2) (d) Labor Negotiations

ADJOURN



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 5, 2023

SUBJECT: Approval of Board Order No. 2023-028 authorizing the Deschutes County Sheriff's Office to donate a vehicle to a nonprofit corporation

RECOMMENDED MOTION:

Move approval of Board Order No. 2023-028 authorizing the Deschutes County Sheriff's Office to donate a vehicle that is no longer needed to Think Wild of Central Oregon.

BACKGROUND AND POLICY IMPLICATIONS:

DCSO would like to donate a 2006 Chevrolet 1500k pickup truck to the 501(c)(3) non-profit organization Think Wild of Central Oregon. Think Wild of Central Oregon offers a wildlife education, conservation, rescue and rehabilitation program in Deschutes County. The vehicle is at the end of its useful life for the Sheriff's Office.

BUDGET IMPACTS:

This vehicle is surplus to the needs of the DCSO. Its Kelley Blue Book trade-in value is \$1,783.00.

ATTENDANCE:

- Joe Brundage, Business Manager
- William Bailey, Patrol Captain
- Pete Martin, Automotive Supervisor

REVIEWED

Legal Counsel



DONATION OF USED DCSO VEHICLES
Deschutes County Sheriff's Office
Think Wild of Central Oregon

The Deschutes County Sheriff's Office agrees to donate, and Think Wild of Central Oregon, a 501 (c)(3) nonprofit organization, agrees to accept the following used vehicle:

Year	Make/Model	VIN	Mileage
2006	Chevy K1500 Truck	1GCEK14V96Z277696	155,825

Vehicles are sold "as is" and "with all faults, if any." The Deschutes County Sheriff's Office disclaims all warranties or guarantees, expressed or implied, as to the conditions, quality, completeness, or fitness for any particular or general purpose or compliance to safety regulations of the vehicles being sold.

The Deschutes County Sheriff's Office offers no guarantees or warranties. Determination of conditions, function and perceived or assumed value is the sole responsibility of Think Wild of Central Oregon.

Think Wild of Central Oregon agrees to indemnify and hold harmless the Deschutes County Sheriff's Office and Deschutes County for any and all damages, claims or liability of any nature, lawsuits, judgments, including attorney's fees and costs, from the sale and use of the vehicles. Think Wild of Central Oregon, its predecessors, successors and assignees hereby release, relinquish and discharge the Deschutes County Sheriff's Office, its former, present and future agents, employees, officers, officials and legal representative from any liability arising out of the transfer and use of the vehicles and/or concurrent negligence of Deschutes County for any injury, including death or damage to persons or property, or other claims of damage where such damage is sustained in connection with, or arising out of, the sale of the vehicle or the use of the vehicle.

DESCHUTES COUNTY:

THINK WILD OF CENTRAL OREGON:

L. Shane Nelson, Sheriff Date
Deschutes County

Date

REVIEWED
LEGAL COUNSEL

07/05/2023 Item #1.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Declaring Certain Deschutes
County Personal Property Surplus and
Authorizing Donation. *
*
*

ORDER NO. 2023-028

WHEREAS, certain personal property described in Exhibit A, attached hereto by this reference incorporated herein, is no longer needed for public use by the County; and

WHEREAS, it is necessary to dispose of this surplus personal property; and

WHEREAS, it is appropriate to dispose of such property by donation; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON,
HEREBY ORDERS as follows:

Section 1. The Deschutes County Sheriff, or his designee, is hereby authorized and directed to dispose of the personal property described in Exhibit A to this order.

Section 2. The Chair is authorized on behalf of the County to execute any and all documents necessary to complete the transfer of any personal property in accordance with this order.

APPROVED this _____ day of _____ 2023

Anthony DeBone, Chair

ATTEST:

Patti Adair, Vice Chair

Recording Secretary

Phil Chang, Commissioner

EXHIBIT A

Sheriff's Office Surplus Property

Sheriff's Office Surplus Property

Vehicle #	VIN	Description	Reason
06-12	1GCEK14V96Z277696	2006 Chevy K1500 Truck	End of useful life for the Sheriff's Office



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 5, 2023

SUBJECT: Approval of a contract with Helion Software for assessment and taxation software

RECOMMENDED MOTION:

Move approval of Document No. 2023-648, a contract with Helion Software for assessment and taxation software.

BACKGROUND AND POLICY IMPLICATIONS:

This contract is the annual renewal with Helion Software for assessment and taxation software.

BUDGET IMPACTS:

The total amount of the contract is not to exceed \$232,210, with 80% paid by the County Assessor’s Office and 20% paid by the County Tax Office.

ATTENDANCE:

Scot Langton, County Assessor

REVIEWED

LEGAL COUNSEL

07/05/2023 Item #2.

For Recording Stamp Only

DESCHUTES COUNTY SERVICES CONTRACT

CONTRACT NO. 2023-648

This Contract is between DESCHUTES COUNTY, a political subdivision, acting by and through the Assessment and Taxation Department (County) and HELION SOFTWARE, INC (Contractor). The parties agree as follows:

Effective Date and Termination Date. The effective date of this Contract shall be July 1, 2023 or the date, on which each party has signed this Contract, whichever is later. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate when County accepts Contractor's completed performance or on June 30, 2024, whichever date occurs last. Contract termination shall not extinguish or prejudice County's right to enforce this Contract with respect to any default by Contractor that has not been cured.

Statement of Work. Contractor shall perform the work described in Exhibit 1.

Payment for Work. County agrees to pay Contractor in accordance with Exhibit 1.

Contract Documents. This Contract includes Page 1-9 and Exhibits 1, 2, 3, 4, 5 and 6.

CONTRACTOR DATA AND SIGNATURE

Contractor Address:

Federal Tax ID# or Social Security #: 93-1298376

Is Contractor a nonresident alien? Yes No

Business Designation (check one): Sole Proprietorship Partnership
 Corporation-for profit Corporation-non-profit Other, describe

A Federal tax ID number or Social Security number is required to be provided by the Contractor and shall be used for the administration of state, federal and local tax laws. Payment information shall be reported to the Internal Revenue Service under the name and Federal tax ID number or, if none, the Social Security number provided above.

I have read this Contract including the attached Exhibits. I understand this Contract and agree to be bound by its terms. NOTE: Contractor shall also sign Exhibits 3 and 4 and, if applicable, Exhibit 6.

Murray Giesbrecht
Signature
Murray Giesbrecht
Name (please print)

CEO
Title
May 19, 2023
Date

DESCHUTES COUNTY SIGNATURE

Contracts with a maximum consideration of not greater than \$25,000 are not valid and not binding on the County until signed by the appropriate Deschutes County Department Head. Additionally, Contracts with a maximum consideration greater than \$25,000 but less than \$150,000 are not valid and not binding on the County until signed by the County Administrator or the Board of County Commissioners.

Dated this _____ of _____, 20__

ANTHONY (TONY) DeBONE, Chair

PATTI ADAIR, Vice Chair

PHIL CHANG, County Commissioner

STANDARD TERMS AND CONDITIONS

- 1. **Time is of the Essence.** Contractor agrees that time is of the essence in the performance of this Contract.
- 2. **Compensation.** Payment for all work performed under this Contract shall be made in the amounts and manner set forth in Exhibit 1.
 - a. Payments shall be made to Contractor following County's review and approval of billings and deliverables submitted by Contractor.
 - b. All Contractor billings are subject to the maximum compensation amount of this contract.
 - c. Contractor shall not submit billings for, and County shall not pay, any amount in excess of the maximum compensation amount of this Contract, including any reimbursable expenses, (See Exhibit 5).
 - 1) If the maximum compensation amount is increased by amendment to this Contract, the amendment shall be signed by both parties and fully executed before Contractor performs work subject to the amendment.
 - 2) No payment shall be made for any services performed before the beginning date or after the expiration date of this contract.
 - d. This Contract shall not be amended after the expiration date.
 - e. Unless otherwise specifically provided in Exhibit 5, Contractor shall submit monthly invoices for work performed. The invoices shall describe all work performed with particularity and by whom it was performed and shall itemize and explain all expenses for which reimbursement is claimed.
 - f. The invoices also shall include the total amount invoiced to date by Contractor prior to the current invoice.
 - g. Prior to approval or payment of any billing, County may require and Contractor shall provide any information which County deems necessary to verify work has been properly performed in accordance with the Contract.
- 3. **Delegation, Subcontracts and Assignment.** Contractor shall not delegate or subcontract any of the work required by this Contract or assign or transfer any of its interest in this Contract, without the prior written consent of County.
 - a. Any delegation, subcontract, assignment, or transfer without prior written consent of County shall constitute a material breach of this contract.
 - b. Any such assignment or transfer, if approved, is subject to such conditions and provisions as the County may deem necessary.
 - c. No approval by the County of any assignment or transfer of interest shall be deemed to create any obligation of the County to increase rates of payment or maximum Contract consideration.
 - d. Prior written approval shall not be required for the purchase by the Contractor of articles, supplies and services which are incidental to the provision of services under this Contract that are necessary for the performance of the work.
 - e. Any subcontracts that the County may authorize shall contain all requirements of this contract, and unless otherwise specified by the County the Contractor shall be responsible for the performance of the subcontractor.
- 4. **No Third Party Beneficiaries.**
 - a. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms.
 - b. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.
- 5. **Successors in Interest.** The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.
- 6. **Early Termination.** This Contract may be terminated as follows:
 - a. Mutual Consent. County and Contractor, by mutual written agreement, may terminate this Contract at any time.
 - b. Party's Convenience. County or Contractor may terminate this Contract for any reason upon 30 calendar days written notice to the other party.
 - c. For Cause. County may also terminate this Contract effective upon delivery of written notice to the Contractor, or at such later date as may be established by the County, under any of the following conditions:

- 1) If funding from state or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services as required in this Contract.
- 2) This Contract may be modified to accommodate the change in available funds.
- 3) If state laws, regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
- 4) In the event sufficient funds shall not be appropriated for the payment of consideration required to be paid under this Contract, and if County has no funds legally available for consideration from other sources.
- 5) If any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, suspended, not renewed or changed in such a way that the Contractor no longer meets requirements for such license or certificate.
- d. Contractor Default or Breach. The County, by written notice to the Contractor, may immediately terminate the whole or any part of this Contract under any of the following conditions:
 - 1) If the Contractor fails to provide services called for by this Contract within the time specified or any extension thereof.
 - 2) If the Contractor fails to perform any of the other requirements of this Contract or so fails to pursue the work so as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from the County specifying such failure, the Contractor fails to correct such failure within 10 calendar days or such other period as the County may authorize.
 - 3) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis.
- e. County Default or Breach.
 - 1) Contractor may terminate this Contract in the event of a breach of this Contract by the County. Prior to such termination, the Contractor shall give to the County written notice of the breach and intent to terminate.
 - 2) If the County has not entirely cured the breach within 10 calendar days of the date of the notice, then the Contractor may terminate this Contract at any time thereafter by giving notice of termination.

7. Payment on Early Termination. Upon termination pursuant to paragraph 6, payment shall be made as follows:

- a. If terminated under subparagraphs 6 a. through c. of this Contract, the County shall pay Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract. Provided however, County shall not pay Contractor for any obligations or liabilities incurred by Contractor after Contractor receives written notice of termination.
- b. If this Contract is terminated under subparagraph 6 d. of this Contract, County obligations shall be limited to payment for services provided in accordance with this Contract prior to the date of termination, less any damages suffered by the County.
- c. If terminated under subparagraph 6 e of this Contract by the Contractor due to a breach by the County, then the County shall pay the Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract:
 - 1) with respect to services compensable on an hourly basis, for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses incurred if payable according to this Contract and interest within the limits set forth under ORS 293.462, and
 - 2) with respect to deliverable-based Work, the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by County, less previous amounts paid and any claim(s) that County has against Contractor.
 - 3) Subject to the limitations under paragraph 8 of this Contract.

8. Remedies. In the event of breach of this Contract the parties shall have the following remedies:

- a. Termination under subparagraphs 6 a. through c. of this Contract shall be without prejudice to any obligations or liabilities of either party already reasonably incurred prior to such termination.
 - 1) Contractor may not incur obligations or liabilities after Contractor receives written notice of termination.
 - 2) Additionally, neither party shall be liable for any indirect, incidental, consequential or special damages under this Contract or for any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

- b. If terminated under subparagraph 6 d. of this Contract by the County due to a breach by the Contractor, County may pursue any remedies available at law or in equity.
 - 1) Such remedies may include, but are not limited to, termination of this contract, return of all or a portion of this Contract amount, payment of interest earned on this Contract amount, and declaration of ineligibility for the receipt of future contract awards.
 - 2) Additionally, County may complete the work either by itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall be liable to the County for the amount of the reasonable excess.
- c. If amounts previously paid to Contractor exceed the amount due to Contractor under this Contract, Contractor shall repay any excess to County upon demand.
- d. Neither County nor Contractor shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, riot, acts of God, or war where such cause was beyond reasonable control of County or Contractor, respectively; however, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. For any delay in performance as a result of the events described in this subparagraph, Contractor shall be entitled to additional reasonable time for performance that shall be set forth in an amendment to this Contract.
- e. The passage of this Contract expiration date shall not extinguish or prejudice the County's or Contractor's right to enforce this Contract with respect to any default or defect in performance that has not been cured.
- f. County's remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

9. Contractor's Tender upon Termination. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract unless County expressly directs otherwise in such notice of termination.

- a. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had this Contract been completed.
- b. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the work.

10. Work Standard.

- a. Contractor shall be solely responsible for and shall have control over the means, methods, techniques, sequences and procedures of performing the work, subject to the plans and specifications under this Contract and shall be solely responsible for the errors and omissions of its employees, subcontractors and agents.
- b. For goods and services to be provided under this contract, Contractor agrees to:
 - 1) perform the work in a good, workmanlike, and timely manner using the schedule, materials, plans and specifications approved by County;
 - 2) comply with all applicable legal requirements;
 - 3) comply with all programs, directives, and instructions of County relating to safety, storage of equipment or materials;
 - 4) take all precautions necessary to protect the safety of all persons at or near County or Contractor's facilities, including employees of Contractor, County and any other contractors or subcontractors and to protect the work and all other property against damage.

11. Drugs and Alcohol. Contractor shall adhere to and enforce a zero tolerance policy for the use of alcohol and the unlawful selling, possession or use of controlled substances while performing work under this Contract.

12. Insurance. Contractor shall provide insurance in accordance with Exhibit 2 attached hereto and incorporated by reference herein.

13. Expense Reimbursement. If the consideration under this Contract provides for the reimbursement of Contractor for expenses, in addition to Exhibit 5, Exhibit 1 shall state that Contractor is or is not entitled to reimbursement for such expenses.

- a. County shall only reimburse Contractor for expenses reasonably and necessarily incurred in the performance of this contract.
- b. Expenses reimbursed shall be at the actual cost incurred; including any taxes paid, and shall not include any mark-up unless the mark-up on expenses is specifically agreed to in this Contract.

- c. The cost of any subcontracted work approved in this Contract shall not be marked up.
- d. Contractor shall not bill County for any time expended to complete the documents necessary for reimbursement of expenses or for payment under this contract.
- e. The limitations applicable to reimbursable expenses are set forth in Exhibit "5," attached hereto and by reference incorporated herein.

14. Criminal Background Investigations. Contractor understands that Contractor and Contractor's employees and agents are subject to periodic criminal background investigations by County and, if such investigations disclose criminal activity not disclosed by Contractor, such non-disclosure shall constitute a material breach of this Contract and County may terminate this Contract effective upon delivery of written notice to the Contractor, or at such later date as may be established by the County.

15. Confidentiality. Contractor shall maintain confidentiality of information obtained pursuant to this Contract as follows:

- a. Contractor shall not use, release or disclose any information concerning any employee, client, applicant or person doing business with the County for any purpose not directly connected with the administration of County's or the Contractor's responsibilities under this Contract except upon written consent of the County, and if applicable, the employee, client, applicant or person.
- b. The Contractor shall ensure that its agents, employees, officers and subcontractors with access to County and Contractor records understand and comply with this confidentiality provision.
- c. Contractor shall treat all information as to personal facts and circumstances obtained on Medicaid eligible individuals as privileged communication, shall hold such information confidential, and shall not disclose such information without the written consent of the individual, his or her attorney, the responsible parent of a minor child, or the child's guardian, except as required by other terms of this Contract.
- d. Nothing prohibits the disclosure of information in summaries, statistical information, or other form that does not identify particular individuals.
- e. Personally identifiable health information about applicants and Medicaid recipients will be subject to the transaction, security and privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA").
- f. Contractor shall cooperate with County in the adoption of policies and procedures for maintaining the privacy and security of records and for conducting transactions pursuant to HIPAA requirements.
- g. This Contract may be amended in writing in the future to incorporate additional requirements related to compliance with HIPAA.
- h. If Contractor receives or transmits protected health information, Contractor shall enter into a Business Associate Agreement with County, which, if attached hereto, shall become a part of this Contract.

16. Reports. Contractor shall provide County with periodic reports at the frequency and with the information prescribed by County. Further, at any time, County has the right to demand adequate assurances that the services provided by Contractor shall be in accordance with the Contract. Such assurances provided by Contractor shall be supported by documentation in Contractor's possession from third parties.

17. Access to Records. Contractor shall maintain fiscal records and all other records pertinent to this Contract.

- a. All fiscal records shall be maintained pursuant to generally accepted accounting standards, and other records shall be maintained to the extent necessary to clearly reflect actions taken.
 - 1) All records shall be retained and kept accessible for at least three years following the final payment made under this Contract or all pending matters are closed, whichever is later.
 - 2) If an audit, litigation or other action involving this Contract is started before the end of the three year period, the records shall be retained until all issues arising out of the action are resolved or until the end of the three year period, whichever is later.
- b. County and its authorized representatives shall have the right to direct access to all of Contractor's books, documents, papers and records related to this Contract for the purpose of conducting audits and examinations and making copies, excerpts and transcripts.
 - 1) These records also include licensed software and any records in electronic form, including but not limited to computer hard drives, tape backups and other such storage devices. County shall reimburse Contractor for Contractor's cost of preparing copies.
 - 2) At Contractor's expense, the County, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives, shall have license to enter upon Contractor's premises to access and inspect the books, documents, papers, computer software, electronic files and any other records of the Contractor which are directly pertinent to this Contract.

3) If Contractor's dwelling is Contractor's place of business, Contractor may, at Contractor's expense, make the above records available at a location acceptable to the County.

18. Ownership of Work. All work of Contractor that results from this Contract (the "Work Product") is covered under the ORCATS Consortium contract.

19. County Code Provisions. Except as otherwise specifically provided, the provisions of Deschutes County Code, Section 2.37.150 are incorporated herein by reference. Such code section may be found at the following URL address: <http://www.deschutes.org/County-Code.aspx?F=chapter+2.37.pdf>.

20. Partnership. County is not, by virtue of this contract, a partner or joint venturer with Contractor in connection with activities carried out under this contract, and shall have no obligation with respect to Contractor's debts or any other liabilities of each and every nature.

21. Indemnity and Hold Harmless.

- a. To the fullest extent authorized by law Contractor shall defend, save, hold harmless and indemnify the County and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of Contractor or its officers, employees, contractors, or agents under this Contract, including without limitation any claims that the work, the work product or any other tangible or intangible items delivered to County by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or the County's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work utility design or other proprietary right of any third party.
- b. Contractor shall have control of the defense and settlement of any claim that is subject to subparagraph a of this paragraph; however neither contractor nor any attorney engaged by Contractor shall defend the claim in the name of Deschutes County or any department or agency thereof, nor purport to act as legal representative of the County or any of its departments or agencies without first receiving from the County's legal counsel, in a form and manner determined appropriate by the County's legal counsel, authority to act as legal counsel for the County, nor shall Contractor settle any claim on behalf of the Count without the approval of the County's legal counsel.
- c. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall defend, save, hold harmless and indemnify Contractor and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of County or its officers, employees, contractors, or agents under this Contract.

22. Waiver.

- a. County's delay in exercising, or failure to exercise any right, power, or privilege under this Contract shall not operate as a waiver thereof, nor shall any single or partial exercise or any right, power, or privilege under this Contract preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- b. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

23. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

- a. Any claim, action, suit or proceeding (collectively, "Claim") between County and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim shall be brought in federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
- b. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. The parties agree that the UN Convention on International Sales of Goods shall not apply.

24. Severability. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular term or provision held invalid.

25. Counterparts. This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute on original.

26. Notice. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing, to Contractor or County at the address or number set forth below or to such other addresses or numbers as either party may hereafter indicate in writing. Delivery may be by personal delivery, facsimile, or mailing the same, postage prepaid.

- a. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- b. Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective against County, such facsimile transmission shall be confirmed by telephone notice to the County Administrator.
- c. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Contract shall be mailed by first class postage or delivered as follows:

To Contractor:

Murray Giesbrecht, CEO
Helion Software, Inc.
PO Box 3506
Salem, OR 97302
Fax No. 503-362-9394

To County:

Tom Anderson
County Administrator
1300 NW Wall Street, Suite 200
Bend, Oregon 97701
Fax No. 541-385-3202

27. Merger Clause. This Contract and the attached exhibits constitute the entire agreement between the parties.

- a. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract.
- b. No waiver, consent, modification or change in the terms of this Contract shall bind either party unless in writing signed by both parties.
- c. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

28. Identity Theft Protection. Contractor and subcontractors shall comply with the Oregon Consumer Identity Theft Protection Act (ORS 646A.600 et seq.).

29. Survival. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections 4, 5, 8, 9, 15, 17, 18, 20-27, 28 and 30.

30. Representations and Warranties.

- a. **Contractor's Representations and Warranties.** Contractor represents and warrants to County that:
 - 1) Contractor has the power and authority to enter into and perform this Contract;
 - 2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
 - 3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession;
 - 4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work;
 - 5) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty; and
 - 6) Contractor's making and performance of this Contract do not and will not violate any provision of any applicable law, rule or regulation or order of any court, regulatory commission, board or other administrative agency.
- b. **Warranties Cumulative.** The warranties set forth in this paragraph are in addition to, and not in lieu of, any other warranties provided

**EXHIBIT 1
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 20__ -
STATEMENT OF WORK, COMPENSATION
PAYMENT TERMS and SCHEDULE**

Section 1. Contractor's Services

Contractor's services are divided into TWO parts:

Part 1 – ORCATS Base and Support is for staff support per the agreement with the ORCATS consortium. Helion will work on and complete property assessment and tax projects and Support as described below in Section 2. Service Level Agreement. The total amount for Part 1 is \$199,875.

Part 2 – Discretionary Support Hours for a maximum of 223 hours (at \$145.00/hour) of offsite/onsite staff for ORCATS support and program development for Deschutes. The total for Part 2 is \$32,335.

Estimates or Fix Bid Quotes will be provided upon County request for work performed under Part 2.

Work will be billed monthly. The Total for Parts 1, and 2 is \$232,210.

For those projects that require less than 20 hours to complete Helion will notify Deschutes County and after authorization will work on them. These will be "not to exceed" projects and Deschutes County will not be responsible for any hours over 20.

For development projects that will require more than 20 hours to complete (or if Deschutes County requests), Helion and Deschutes County (and other consortium members) will work together to create a set of project requirements. Helion will then develop a fixed quote for the number of hours to complete the project. Helion will begin work on the project after Deschutes County (and, if applicable, other consortium members) approve the quote. Project requirements should be sufficiently detailed to identify the deliverables, the cost in hours, and the timeframe for completion. The time required to develop the requirements will be charged directly against the Part 2 - Programming hours. The project requirements will include a project timeline indicating which tasks are the responsibility of Helion and which tasks are the responsibilities of the County(s).

Upon using the software in production, programming bugs (any programming functionality that does not perform to specification) as identified by Deschutes County (or other consortium members) within 45 days or within a specified project timeline as established by mutual agreement between the Contractor and the County will be considered part of the original quote. Identification of a bug does not extend the acceptance period.

Any changes to requirements as agreed between Helion and County may cause an adjustment to the original quote. All Helion staff will be under the direct management of Helion and would be required to follow all of Helion's procedures and policies. Helion is in the process of developing these policies and procedures and will provide County a copy of those that are relevant to the work described in this contract as they become available or change. Helion will work on whatever County requested as long as it is within those policies and procedures. Typical uses would be programming projects unique to County (or groups of consortium members) and additional programming on projects of special interest to County (or groups of consortium members).

Additional 150 hour blocks of time may be purchased throughout the year, given 60 days notice. Helion will give a good faith effort to provide the additional requested hours in as few a days as possible.

Contractor shall provide the County with monthly reports on hours of service by project and by description. Should multiple counties be paying for the program development, the service hour reports should include all hours assessed to the project for all of the involved counties.

Section 2. Service Level Agreement

1. Supported Software and Maintenance

1.01 Supported Software: Unless stated otherwise, Helion will provide support for all software listed below:

- Helion Start Menu Deployer
- Account Manager
- Real Value Voucher
- Ratio Study
- Real Land Schedules
- Real Sales
- Trend Finder
- Real Librarian
- Real Value Indexes
- Real Value Recalc
- MS Ledger Voucher
- Personal Vouchers
- Utility Ledger Voucher
- Utility Values
- Utility Input
- Address Parser
- Appraisal Maintenance
- Appraisal Reports
- Assessor Reports
- Name Parser
- Lookup Table Maintenance
- Name Parser
- Property Query
- Web Property Query
- Custom Query
- Image Processing
- ORCATS Integration Services
- File Service
- Data Exchange
- Interested Party
- Lender Code Maintenance
- Tax Notation Maintenance
- Tax Receipts
- Tax Reports
- Tax Voucher
- Turnover Distribution
- Tax Receipt Image Loader
- Tax Balance Service
- Prepaid Tax Processing
- Tax Rate Calculation
- Tax Amount Calculation
- Tax District Adjustments
- Tax Statements
- Assessment and Tax Database Views

1.02 Maintenance shall include providing County with new releases, updates, and corrections to the Software, including the Software documentation. Maintenance shall also include necessary assistance and consultation to assist County in resolving problems with the use of the Software including the verification, diagnosis and correction of errors and defects in the Software. Maintenance shall include third party software bundled with the ORCATS system, as well as updates to documentation.

1.03 Helion shall correct any defect or error or non-conformity comprising a problem by, among other things, supplying to County and installing such corrective codes and making such additions, modifications or adjustments to the Software as may be necessary to keep the Software in operating order and in

conformity with the warranties contained in this Agreement.

The corrective services provided by Helion may include:

- Providing a resolution to the problem immediately; or
- Providing documented clear steps that county staff can reasonably take to correct the problem; or
- Following analysis, providing documented clear steps toward problem resolution; or
- Performing configuration changes to the Helion software; or
- Modifying corrupt data caused by a defect in the software.

1.04 Helion will provide support for modifications or specialized features made at the request of the County and performed by Helion.

1.05 All modifications or specialized features made at the request of the County and performed by Helion will be ported to and supported in all future versions and releases of the Software unless authorized in writing from the County.

1.06 Any changes to comply with legal requirements will be performed under Section 1, Part 1.

1.07 Helion will assist County with the following Data Manipulation either directly or by providing an application so the County can perform the tasks themselves:

- Changing a value from Entered to Calculated or Calculated to Entered at the following levels:
 - Improvement
 - Accessories
 - Floor
 - Inventory
 - Land Fragment
 - OSD
- Changing a Neighborhood Code
- Changing an Improvement, Land Fragment or OSD from Trendable to Non-Trendable or Non-Trendable to Trendable
- Change one RMV class to another
- Bulk load LCM Schedules

Selection will be by either a County selected set of Neighborhood Codes or by a County selected set of Property Account Id's. The Property Account Id's must be in a CR/LF delimited text file. (Map and Taxlots are not considered Property Account Id's.)

2.00 Database Maintenance

2.01 Helion will provide on-going consulting on procedures for the backup and restoration of all databases required to run the ORCATS software.

2.02 Helion will consult with the County technical staff as needed on the status of all databases required to run the ORCATS software and ensure that all database indexes and database features are configured

appropriately to ensure the proper functioning of all Helion supported software.

- 2.03 If requested, Helion will ensure that database backups are performed prior to any modification to the database structure and/or schema as part the implementation of new ORCATS software through new version release or problem resolution.
- 2.04 Helion will perform all database repair and recovery due to database corruption, malfunction, or inconsistency brought about by implementation of new ORCATS software through new version release or problem resolution, by defects in or improper functioning of the client software, or by third party software used within any Helion supported software.
- 2.05 The obligations described in Sections 1.00 through 2.05 are hereafter referred to as "Maintenance."

3.00 Response Times and System Access

- 3.01 Unless visit was requested by the County, Helion will provide the County IT Division with 2 days notice prior to performing a site visit to perform software upgrades or modifications to the database or the client software.
- 3.02 County shall notify Helion, either by telephone or in writing or email, of any deficiency and shall provide any other information that Helion may reasonably request in determining the nature of the deficiency. Helion shall commence correction of such deficiency in accordance with this section. Helion will provide problem resolution through telephone, electronic, remote and onsite assistance to the County designated representatives. Resolving the problem may include the initial contact and any subsequent contact and actions necessary to address the initial issue for the County. Helion will provide the County with a local telephone or toll-free telephone number, an email address, and a designated point of contact to receive calls or e-mails for trouble reports. The County shall designate authorized callers (who may change from time to time) for access to the telephone support.
- 3.03 The County agrees to provide Helion with VPN access or through other secure electronic access technology and services at the County's expense for purposes of Helion's fulfillment of its maintenance obligations. Such access shall not result in the unnecessary or unreasonable disruption of the County's business operations.
- 3.04 Helion will respond to system problems that do not prevent normal daily operation of the system (Non-Emergency Response) within 16 business hours of the receipt of the trouble call.
- 3.05 On-Site Support. In an emergency or if all other support options fail, Helion shall have a technician on-site within one (1) business day of a request from the County. This does not apply to Down System events, as described in Section 3.06.
- 3.06 Down-System Response: The system is considered "down" when any part of the system prevents daily operation ("Down System"). Helion shall respond within two business hours of telephone notification. Response may be by telephone.
- 3.07 Normal Support Hours: At all times from 8:00 a.m. to 5:00 pm Pacific Standard Time (PST) (note: Pacific Daylight Saving Time (PDST) when in effect) weekdays. The hours of Support shall not include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Veterans Day and Christmas Day.
- 3.08 Helion will provide Tax Season assistance to ensure the timely completion of tax amount calculation, statement printing and state reporting.
- 3.09 Helion will provide support for and is solely responsible for the proper functioning, licensing and distribution of additional or third party software used within their products or distributed with their products as a component of their software. Helion guarantees the functioning of this third party software as a component of their software.
- 3.10 Helion is not liable for any failure or delay in performance due to any cause beyond its control.
- 3.11 The obligations described in Sections 3.00 through 3.11 are hereafter referred to as "Support."

4.00 County's Responsibilities

- 4.01 To receive Maintenance and Support, the County is responsible for complying with the following:
 - The situation giving rise to the question is reproducible or a documented history of the same event has been provided;
 - The hardware and client workstation operating systems meet minimum Helion requirements (See Exhibit 6, attached and incorporated by reference herein);
 - County designated representatives will submit all questions to Helion;
 - County designated representatives must have knowledge regarding the facts and circumstances surrounding the incident;
 - The full system, including software and hardware, is available to the County representative and accessible by him or her without limit during any telephone discussions with Helion support personnel;
 - The County representative will follow the instructions and suggestions of Helion's support personnel, using the full system.
- 4.02 County will provide remote electronic access using VPN access through Internet connection (this is the preferred method) or will provide remote electronic access using other technologies and services that meet County's security requirements.
- 4.03 Helion must have received payment per this Agreement, Section 3, Paragraph 2.
- 4.04 If the resolution of a problem requires the installation of a newer version of the product, the County agrees that Helion may install the new version as part of the resolution process, depending upon the urgency of the problem resolution.

5.00 Services NOT Covered by Helion Under Part 1

- 5.01 Helion is not responsible for support in instances in which the County has made significant changes to the computing environment without consultation with Helion or in which the County has made significant client workstation configuration changes, such as Operating System version updates or Microsoft Office version updates, without consultation with Helion.
- 5.02 Helion is not responsible for remote or on-site training assistance unless specifically arranged through a separate services contract with Helion.
- 5.03 Helion is not responsible for software support on any products that are not part of the ORCATS system. Examples include Deschutes Download, County's web sites, Microsoft Office, etc.
- 5.04 The following services are excluded from coverage under Part 1:
 - Creation of new Custom Queries
 - Importing data or images
 - Manipulation of data unless covered under section 1.03 or 1.07 above
 - Display changes to forms, reports, letters or export
 - Onsite Installation
 - A&T View Access Database
- 5.05 Helion is not responsible to maintain compatibility with any application not listed as part of the ORCATS system. Helion will make a good faith effort to notify the County of any incompatibility between ORCATS and

third party software.

Section 3 Schedule and Payment Terms

1. Effective Date and Duration: Contractor's services will begin on July 1, 2023. Unless earlier terminated or extended, this contract shall expire on June 30, 2024, or when Contractor's completed performance has been accepted by County. However, such expiration shall not extinguish or prejudice County's right to enforce this contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor's performance that has not been cured.

2. Compensation by the County: Payment for all work performed under this contract shall be made as set forth below from available and authorized County funds, and shall not exceed the maximum sum of \$199,875 for Part 1, \$32,335 for Part 2{\$232,210}. Travel and other expenses of the Contractor shall not be reimbursed by County unless specifically provided herein as a supplementary condition.

1. Interim payments shall be made to Contractor following County's review and approval of billings submitted by Contractor. Contractor will also submit copies of other billings for work performed under the contract when such bills are to be paid by other parties. These other billings are not subject to the maximum compensation amount of this contract.

2. Contractor shall not submit billings for, and County will not pay, any amount in excess of the maximum compensation amount of this contract, including any travel and other expense when noted below. If the maximum compensation amount is increased by amendment of this contract, the amendment must be fully effective before Contractor performs work subject to the amendment. Contractor shall notify County's supervising representative in writing 30 calendar days before this contract expires of the upcoming expiration of the contract. No payment will be made for any services performed before the beginning date or after the expiration date of this contract. This contract will not be amended after the expiration date.

3. Contractor shall submit an annual billing for Part 1. Billing for Part 1 shall not exceed the contract total for Part 1. Billing for Part 2 will be based upon projects identified. Projects done as "not to exceed" quotes and requirement development will be billed quarterly as they occur. Contractor will bill quarterly for other Part 2 hours as they occur. Payment structure may be adjusted with advance consent of County and Contractor. Billings shall be sent to the supervising representative.

EXHIBIT 2
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 20__ -
INSURANCE REQUIREMENTS

Contractor shall at all times maintain in force at Contractor's expense, each insurance noted below. Insurance coverage must apply on a primary or non-contributory basis. All insurance policies, except Professional Liability, shall be written on an occurrence basis and be in effect for the term of this contract. Policies written on a "claims made" basis must be approved and authorized by Deschutes County.

Contractor Name HELION SOFTWARE, INC.

Workers Compensation insurance in compliance with ORS 656.017, requiring Contractor and all subcontractors to provide workers' compensation coverage for all subject workers, or provide certification of exempt status. Worker's Compensation Insurance to cover claims made under Worker's Compensation, disability benefit or any other employee benefit laws, including statutory limits in any state of operation with Coverage B Employer's Liability coverage all at the statutory limits. In the absence of statutory limits the limits of said Employers liability coverage shall be not less than \$1,000,000 each accident, disease and each employee. This insurance must be endorsed with a waiver of subrogation endorsement, waiving the insured's right of subrogation against County.

Professional Liability insurance with an occurrence combined single limit of not less than:

Per Occurrence limit	Annual Aggregate limit
<input checked="" type="checkbox"/> \$1,000,000	<input checked="" type="checkbox"/> \$2,000,000
<input type="checkbox"/> \$2,000,000	<input type="checkbox"/> \$3,000,000
<input type="checkbox"/> \$3,000,000	<input type="checkbox"/> \$5,000,000

Professional Liability insurance covers damages caused by error, omission, or negligent acts related to professional services provided under this Contract. The policy must provide extended reporting period coverage, sometimes referred to as "tail coverage" for claims made within two years after the contract work is completed.

Required by County Not required by County (one box must be checked)

Commercial General Liability insurance with a combined single limit of not less than:

<u>Per Single Claimant and Incident</u>	<u>All Claimants Arising from Single Incident</u>
<input checked="" type="checkbox"/> \$1,000,000	<input checked="" type="checkbox"/> \$2,000,000
<input type="checkbox"/> \$2,000,000	<input type="checkbox"/> \$3,000,000
<input type="checkbox"/> \$3,000,000	<input type="checkbox"/> \$5,000,000

Commercial General Liability insurance includes coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products, completed operations and contractual liability. The insurance coverages provided for herein must be endorsed as primary and non-contributory to any insurance of County, its officers, employees or agents. Each such policy obtained by Contractor shall provide that the insurer shall defend any suit against the named insured and the additional insureds, their officers, agents, or employees, even if such suit is frivolous or fraudulent. Such insurance shall provide County with the right, but not the obligation, to engage its own attorney for the purpose of defending any legal action against County, its officers, agents, or employees, and that Contractor shall indemnify County for costs and expenses, including reasonable attorneys' fees, incurred or arising out of the defense of such action.

The policy shall be endorsed to name **Deschutes County, its officers, agents, employees and volunteers as an additional insured**. The additional insured endorsement shall not include declarations that reduce any per occurrence or aggregate insurance limit. The contractor shall provide additional coverage based on any outstanding claim(s) made against policy limits to ensure that minimum insurance limits required by the County are maintained. Construction contracts may include aggregate limits that apply on a "per location" or "per project" basis. The additional insurance protection shall extend equal protection to County as to Contractor or subcontractors and shall not be limited to vicarious liability only or any similar limitation. To the extent any aspect of this Paragraph

shall be deemed unenforceable, then the additional insurance protection to County shall be narrowed to the maximum amount of protection allowed by law.

Required by County Not required by County (One box must be checked)

Automobile Liability insurance with a combined single limit of not less than:

Per Occurrence

- ~~* \$500,000~~
- \$1,000,000 *AK*
- \$2,000,000

Automobile Liability insurance includes coverage for bodily injury and property damage resulting from operation of a motor vehicle. Commercial Automobile Liability Insurance shall provide coverage for *any* motor vehicle (symbol 1 on some insurance certificates) driven by or on behalf of Contractor during the course of providing services under this contract. Commercial Automobile Liability is required for contractors that own business vehicles registered to the business. Examples include: plumbers, electricians or construction contractors. An Example of an acceptable personal automobile policy is a contractor who is a sole proprietor that does not own vehicles registered to the business.

Required by County Not required by County (one box must be checked)

Additional Requirements. Contractor shall pay all deductibles and self-insured retentions. A cross-liability clause or separation of insured's condition must be included in all commercial general liability policies required by this Contract. Contractor's coverage will be primary in the event of loss.

Certificate of Insurance Required. Contractor shall furnish a current Certificate of Insurance to the County with the signed Contract. Contractor shall notify the County in writing at least 30 days in advance of any cancellation, termination, material change, or reduction of limits of the insurance coverage. The Certificate shall also state the deductible or, if applicable, the self-insured retention level. Contractor shall be responsible for any deductible or self-insured retention. If requested, complete copies of insurance policies shall be provided to the County.

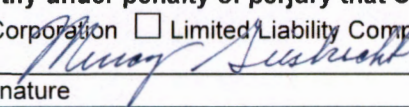
Risk Management review
[Signature]

Date
6/22/23

EXHIBIT 3
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 20__ -
CERTIFICATION STATEMENT FOR CORPORATION
OR INDEPENDENT CONTRACTOR

NOTE: Contractor Shall Complete A or B in addition to C below:

A. CONTRACTOR IS A CORPORATION, LIMITED LIABILITY COMPANY OR A PARTNERSHIP.

I certify under penalty of perjury that Contractor is a [check one]:		
<input checked="" type="checkbox"/> Corporation	<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Partnership
authorized to do business in the State of Oregon.		
	CEO	May 19, 2023
Signature	Title	Date

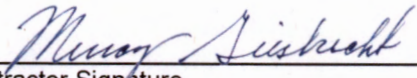
B. CONTRACTOR IS A SOLE PROPRIETOR WORKING AS AN INDEPENDENT CONTRACTOR.

Contractor certifies under penalty of perjury that the following statements are true:	
1. If Contractor performed labor or services as an independent Contractor last year, Contractor filed federal and state income tax returns last year in the name of the business (or filed a Schedule C in the name of the business as part of a personal income tax return), <u>and</u>	
2. Contractor represents to the public that the labor or services Contractor provides are provided by an independently established business registered with the State of Oregon, <u>and</u>	
3. All of the statements checked below are true.	
NOTE: Check all that apply. <u>You shall check at least three (3)</u> - to establish that you are an Independent Contractor.	
<input type="checkbox"/> A.	The labor or services I perform are primarily carried out at a location that is separate from my residence or primarily carried out in a specific portion of my residence that is set aside as the location of the business.
<input type="checkbox"/> B.	I bear the risk of loss related to the business or provision of services as shown by factors such as: (a) fixed-price agreements; (b) correcting defective work; (c) warranties over the services or (d) indemnification agreements, liability insurance, performance bonds or professional liability insurance.
<input type="checkbox"/> C.	I have made significant investment in the business through means such as: (a) purchasing necessary tools or equipment; (b) paying for the premises or facilities where services are provided; or (c) paying for licenses, certificates or specialized training.
<input type="checkbox"/> D.	I have the authority to hire other persons to provide or to assist in providing the services and if necessary to fire such persons.
<input type="checkbox"/> E.	Each year I perform labor or services for at least two different persons or entities or I routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
_____	_____
Contractor Signature	Date

C. Representation and Warranties.

Contractor certifies under penalty of perjury that the following statements are true to the best of Contractor's knowledge:

1. Contractor has the power and authority to enter into and perform this contract;
2. This contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
3. The services under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and
4. Contractor shall, at all times during the term of this contract, be qualified, professionally competent, and duly licensed to perform the services.
5. To the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4),
6. Contractor understands that Contractor is responsible for any federal or state taxes applicable to any consideration and payments paid to Contractor under this contract; and
7. Contractor has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.



Contractor Signature

May 19, 2023

Date

EXHIBIT 4
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 20__ -
Workers' Compensation Exemption Certificate

(To be used only when Contractor claims to be exempt from Workers' Compensation coverage requirements)

Contractor is exempt from the requirement to obtain workers' compensation insurance under ORS Chapter 656 for the following reason (check the appropriate box):

SOLE PROPRIETOR

- Contractor is a sole proprietor, and
- Contractor has no employees, and
- Contractor shall not hire employees to perform this contract.

CORPORATION - FOR PROFIT

- Contractor's business is incorporated, and
- All employees of the corporation are officers and directors and have a substantial ownership interest* in the corporation, and
- The officers and directors shall perform all work. Contractor shall not hire other employees to perform this contract.

CORPORATION - NONPROFIT

- Contractor's business is incorporated as a nonprofit corporation, and
- Contractor has no employees; all work is performed by volunteers, and
- Contractor shall not hire employees to perform this contract.

PARTNERSHIP

- Contractor is a partnership, and
- Contractor has no employees, and
- All work shall be performed by the partners; Contractor shall not hire employees to perform this contract, and
- Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.

LIMITED LIABILITY COMPANY

- Contractor is a limited liability company, and
- Contractor has no employees, and
- All work shall be performed by the members; Contractor shall not hire employees to perform this contract, and
- If Contractor has more than one member, Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.

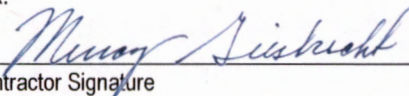
*NOTE: Under OAR 436-050-050 a shareholder has a "substantial ownership" interest if the shareholder owns 10% of the corporation or, if less than 10% is owned, the shareholder has ownership that is at least equal to or greater than the average percentage of ownership of all shareholders.

**NOTE: Under certain circumstances partnerships and limited liability companies can claim an exemption even when performing construction work. The requirements for this exemption are complicated. Consult with County Counsel before an exemption request is accepted from a contractor who shall perform construction work.

Murray Giesbrecht

Contractor Printed Name
CEO

Contractor Title



Contractor Signature
May 19, 2023

Date

EXHIBIT 5
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 20__ - ____
Expense Reimbursement

- 1. Travel and Other Expenses.** (When travel and other expenses are reimbursed.)
 - a. It is the policy of the County that all travel shall be allowed only when the travel is essential to the normal discharge of the County responsibilities.
 - 1) All travel shall be conducted in the most efficient and cost effective manner resulting in the best value to the County.
 - 2) Travel expenses shall be reimbursed for official County business only.
 - 3) County shall not reimburse Contractor for any item that is not otherwise available for reimbursement to an employee of Deschutes County per Deschutes County Finance Policy F-1, "REIMBURSEMENT FOR MISCELLANEOUS EXPENSES AND EXPENSES INCURRED WHILE TRAVELING ON COUNTY BUSINESS," dated 11/8/06.
 - 4) County may approve a form other than the County Employee Reimbursement Form for Contractor to submit an itemized description of travel expenses for payment.
 - 5) Personal expenses shall not be authorized at any time.
 - 6) All expenses are included in the total maximum contract amount.
 - b. Travel expenses shall be reimbursed only in accordance with rates approved by the County and only when the reimbursement of expenses is specifically provided for in Exhibit 1, paragraph 3 of this contract.
 - c. The current approved rates for reimbursement of travel expenses are set forth in the above described policy.
 - d. County shall not reimburse for any expenses related to alcohol consumption or entertainment.
 - e. Except where noted, detailed receipts for all expenses shall be provided.
 - f. Charge slips for gross amounts are not acceptable.
 - g. County shall not reimburse Contractor for any item that is not otherwise available for reimbursement to an employee of Deschutes County.

2. Approved reimbursements:

- a. Mileage. Contractor shall be entitled to mileage for travel in a private automobile while Contractor is acting within the course and scope of Contractor's duties under this Contract and driving over the most direct and usually traveled route to and from Bend, Oregon.
 - 1) Reimbursement for mileage shall be equal to but not exceed those set by the United States General Services Administration ("GSA") and are subject to change accordingly.
 - 2) To qualify for mileage reimbursement, Contractor shall hold a valid, current driver's license for the class of vehicle to be driven and carry personal automobile liability insurance in amounts not less than those required by this contract.
 - 3) No mileage reimbursement shall be paid for the use of motorcycles or mopeds.
- b. Meals.
 - 1) Any reimbursement for meals shall be for actual cost of meals incurred by Contractor while acting within the course and scope of Contractor's duties under this contract.
 - 2) For purposes of calculating individual meals where the Contractor is entitled only to a partial day reimbursement, the following maximum allocation of the meal expenses applies:
 - a) Breakfast, \$10;
 - b) Lunch, \$12;
 - c) Dinner, \$22.
 - 3) Except in the event of necessary overnight travel as provided below, partial day meal expenses shall be reimbursed as follows and only while Contractor is acting within the course and scope of Contractor's duties under this contract:
 - a) Breakfast expenses are reimbursable if Contractor is required to travel more than two (2) hours: before the start Contractor's regular workday (i.e. 8:00 a.m.).
 - b) Lunch expenses are reimbursable only if Contractor is required to travel overnight and begins the journey before 11:00 am or ends the journey after 11:00 a.m.
 - c) Dinner expenses are reimbursable only if Contractor is required to travel more than two (2) hours after Contractor's regular workday (i.e. 5:00 p.m.).

- 4) Breakfast and dinner expenses are reimbursable during Contractor's necessary overnight travel while acting within the course and scope of Contractor's duties under this contract and shall not exceed those set by the GSA, and are subject to change accordingly.
 - c. Lodging.
 - 1) County shall reimburse Contractor for Contractor's actual cost of lodging necessary to provide service to the County and shall not exceed the maximum lodge set by the GSA for Bend, Oregon.
 - 2) Reimbursement rates for lodging are not considered "per diem" and receipts are required for reimbursement.
 - d County shall not reimburse Contractor in excess of the lowest fair for any airline ticket or vehicle rental charges.
3. **Exceptions.** Contractor shall obtain separate written approval of the County Administrator for any exceptions to the expense items listed above prior to incurring any expense for which reimbursement shall be sought.

**Exhibit 6
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 20__ -**

**Compliance with provisions, requirements of funding source and
Federal and State laws, statutes, rules, regulations, executive orders and policies.**

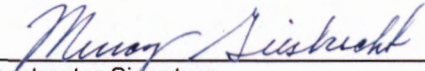
Conflicts of Interest

Contractor certifies under penalty of perjury that the following statements are true to the best of Contractor's knowledge:

1. If Contractor is currently performing work for the County, State of Oregon or federal government, Contractor, by signature to this Contract, declares and certifies that Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no rules or regulations of Contractor's employee agency (County State or Federal) would prohibit Contractor's Work under this Contract. Contractor is not an "officer," "employee," or "agent" of the County, as those terms are used in ORS 30.265.

2. No federally appropriated funds have been paid or shall be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - a. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Contractor agrees to complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - 1) Standard Form-LLL and instructions are located in 45 CFR Part 93 Appendix B.
 - 2) If instructions require filing the form with the applicable federal entity, Contractor shall then as a material condition of this Contract also file a copy of the Standard Form-LLL with the Department.
 - 3) This filing shall occur at the same time as the filing in accordance with the instructions.
 - b. Contractor understands this certification is a material representation of fact upon which the County and the Department has relied in entering into this Contract. Contractor further understands that submission of this certification is a prerequisite, imposed by 31 USC 1352 for entering into this Contract.
 - c. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - d. Contractor shall include the language of this certification in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
 - e. Contractor is solely responsible for all liability arising from a failure by Contractor to comply with the terms of this certification.
 - f. Contractor promises to indemnify County for any damages suffered by County as a result of Contractor's failure to comply with the terms of this certification.

3. Contractor understands that, if this Contract involves federally appropriated funds, this certification is a material representation of facts upon which reliance was placed when this Contract was made or entered into, submission of this certification is a prerequisite for make or entering into this Contract imposed by Section 1352, Title 311, U.S. Code and that any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.



Contractor Signature

May 19, 2023
Date



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/13/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Huggins Insurance Services, Inc. P.O. Box 270 Salem OR 97308	CONTACT NAME: Janet O'Meara PHONE (A/C, No, Ext): (503) 585-2211 E-MAIL ADDRESS: jano@huggins.com	FAX (A/C, No): (503) 399-4658
	INSURER(S) AFFORDING COVERAGE	
INSURED Helion Software, Inc. Po Box 3506 Salem OR 97302	INSURER A: Hartford Casualty Ins Co	NAIC # 29424
	INSURER B: Hartford Underwriters	30104
	INSURER C: Hartford Fire	19682
	INSURER D: Underwriters at Lloyds	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 23-24 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

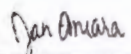
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		Y	52SBAUL9504	04/11/2023	04/11/2024	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY			52UECTR8461	04/11/2023	04/11/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Uninsured motorist \$ 500,000
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						COMBINED SINGLE LIMIT EACH OCCURRENCE \$ AGGREGATE \$ \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N Y	52WECRL9648	04/11/2023	04/11/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Errors & Omissions/Professional and Cyber Liability			ESL0839501140	04/11/2023	04/11/2024	Aggregate Limit \$2,000,000 Retention \$5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate Holder is added as an Additional Insured as respects General Liability and shall include it's officers, agents, employees, and volunteers per form SS 00 08 04 05 attached Section C. Paragraph 6.

CERTIFICATE HOLDER

CANCELLATION

Deschutes County Assessors Office 1300 NW Wall Street, Suite 200 Bend OR 97701	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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ADDITIONAL COVERAGES

Ref #	Description	Coverage Code	Form No.	Edition Date
	Employee Benefits	EBLIA		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
2,000,000	4,000,000			Premium
	Employment Practices Liab Ins	EPLI		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
5,000	5,000			Premium
	Expense constant	EXCNT		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium \$160.00
	Additional Prem to Equal Inc Limits	AILMP		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium \$114.00
	Merit Surcharge	MERIT		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium -\$191.00
	Waiver of Subrogation	WVSUB		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium \$250.00
	Increased employer's liability	INEL		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium \$6.00
	Assessment Fund	ASMNT		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium \$226.00
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
				Premium

BUSINESS LIABILITY COVERAGE FORM

**QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY**

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Coverage Extension - Supplementary Payments	2
B. EXCLUSIONS	3
C. WHO IS AN INSURED	10
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BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section C. - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section D. - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

(a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(b) The "bodily injury" or "property damage" occurs during the policy period; and

(c) Prior to the policy period, no insured listed under Paragraph 1. of Section C. - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

(2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section C. - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

BUSINESS LIABILITY COVERAGE FORM

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES

Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
 provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:

- (1) All expenses we incur.
- (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
- (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
- (5) All costs taxed against the insured in the "suit".
- (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

BUSINESS LIABILITY COVERAGE FORM

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 1.b.(b) of Section B. – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

BUSINESS LIABILITY COVERAGE FORM

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

BUSINESS LIABILITY COVERAGE FORM

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or

released as part of the operations being performed by such insured, contractor or subcontractor;

- (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or

- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

BUSINESS LIABILITY COVERAGE FORM**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

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- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

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o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
 - (2) "Your work"; or
 - (3) "Impaired property";
- if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

- (c) Title of any literary or artistic work;
- (8) Arising out of an offense committed by an insured whose business is:
 - (a) Advertising, broadcasting, publishing or telecasting;
 - (b) Designing or determining content of web sites for others; or
 - (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. under the definition of "personal and advertising injury" in Section G. – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

- (12) Arising out of:
 - (a) An "advertisement" for others on your web site;
 - (b) Placing a link to a web site of others on your web site;
 - (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
 - (d) Computer code, software or programming used to enable:
 - (i) Your web site; or
 - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

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- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You - Exception For Damage By Fire, Lightning or Explosion

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section D. - Liability And Medical Expenses Limits Of Insurance.

BUSINESS LIABILITY COVERAGE FORM**2. Applicable To Medical Expenses Coverage**

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

(a) Owned, occupied or used by,

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(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

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contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or
- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

(1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

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- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In connection with your premises; or
 - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
 This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
 - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In the performance of your ongoing operations;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section **D. – Limits Of Insurance.**

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E. – Liability And Medical Expenses General Conditions.**

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to **2.a.** or **2.b** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

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If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

BUSINESS LIABILITY COVERAGE FORM

This Paragraph **f.** applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations**a. When You Accept This Policy**

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **A.** – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion **k.** of Section **A.** – Coverages.

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(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

BUSINESS LIABILITY COVERAGE FORM

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision - Permits

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

BUSINESS LIABILITY COVERAGE FORM

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- b. The insurance afforded to the vendor is subject to the following additional exclusions:

- (1) This insurance does not apply to:
 - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (b) Any express warranty unauthorized by you;
 - (c) Any physical or chemical change in the product made intentionally by the vendor;
 - (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or
- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

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This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations for the additional insured(s); or
- (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

- a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
- b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

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- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

- 7. "Electronic data" means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. – Liability and Medical Expenses Limits of Insurance.
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph f. does not include that part of any contract or agreement:

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- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
- 13.** "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- 14.** "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
- 15.** "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:

- (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
- 16.** "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 17.** "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;

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- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
18. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
19. "Products-completed operations hazard";
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
20. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
23. "Volunteer worker" means a person who:
- a. Is not your "employee";

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- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

- a. Means:
 - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
 - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- b. Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

- a. Means:
 - (1) Work or operations performed by you or on your behalf; and
 - (2) Materials, parts or equipment furnished in connection with such work or operations.
- b. Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
 - (2) The providing of or failure to provide warnings or instructions.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 5, 2023

SUBJECT: Approval of Amendment No. 1 to the Intergovernmental Agreement with the Oregon Judicial Department for Parental Custody Mediation Funds

RECOMMENDED MOTION:

Move approval of County Administrator signature of Document 2023-669, Amendment No. 1 to the IGA with the Oregon Judicial Department for Parental Custody Mediation Funds.

BACKGROUND AND POLICY IMPLICATIONS:

Each biennium, the Oregon Judicial Department (OJD) distributes funds to counties for mediation/conciliation services. These funds come from court filing fees. The Deschutes County Circuit Court (OJD) is responsible for providing parental custody mediation services to help parents work out cooperative agreements for child custody and parenting time.

Previously, a Behavioral Health Specialist position in the Health Services Department provided these services on behalf of the Circuit Court. Under this arrangement, the mediation/conciliation funds for Deschutes County funded this position in the Health Services Department.

The Circuit Court has decided to use a different model to provide parental custody mediation services. The Circuit Court plans to issue an RFP for individuals and organizations interested in offering court-connected mediation in the community.

In November 2022, the Board approved an Intergovernmental Agreement (IGA), County Document 2022-854, between Deschutes County and the Oregon Judicial Department. The IGA specifies that in FY 22-23, Deschutes County will allocate \$150,122.50 to OJD for the Circuit Court to pay for parental custody mediation services.

However, in April 2023 the Circuit Court sent Deschutes County a letter requesting to postpone the \$150,122.50 payment because the new process for providing parental custody mediation services would not be in place by June 30, 2023 (see attached letter from the Deschutes County Trial Court Administrator). The Circuit Court does not have a mechanism to retain the funds past the end of the current biennium, which ends on June

30, 2023.

For consideration by the Board, staff recommends approval of Document 2023-669, Amendment No. 1 to original IGA with the Oregon Judicial Department (OJD). Amendment No. 1 specifies that Deschutes County will allocate to OJD/Deschutes Circuit Court 62.5% of the total Mediation/Conciliation Distribution for parental custody mediation services for FY 23-25. The Medication/Conciliation fund distribution for the 2023-25 biennium has not yet been determined.

In recognition that parental custody mediation services funds were not distributed in FY 22-23, the Amendment provides that additional funds from the Mediation/Conciliation Distribution and/or Law Library Distribution may be transferred to OJD/Deschutes Circuit Court for parental custody mediation services.

BUDGET IMPACTS:

The transfer of the funds to the Oregon Judicial Department were included in the FY 23-24 County budget.

ATTENDANCE:

Erik Kropp, Deputy County Administrator
Angie Curtis, Trial Court Administrator, Deschutes County Circuit Court

REVIEWED
mm
LEGAL COUNSEL



**INTERGOVERNMENTAL AGREEMENT (IGA)
BETWEEN DESCHUTES COUNTY AND
THE OREGON JUDICIAL DEPARTMENT**

PARENTAL CUSTODY MEDIATION FUNDS

**OJD CONTRACT NO. 230034
DESCHUTES COUNTY Document # 2022-854**

This Intergovernmental Agreement (IGA or Agreement) is entered into between Deschutes County (County), a political subdivision of the State of Oregon, and the Oregon Judicial Department (OJD).

RECITALS:

- A.** Each biennium, OJD distributes to County legislatively determined funds for certain county-provided programs, including the County Law Library, County Mediation/Conciliation, and Local Court Security programs.
- B.** The Mediation/Conciliation fund distribution (Mediation/Conciliation Distribution) is based on the 2021 HB 5012, Section 6. For the 2021-23 biennium (July 1, 2021 – June 30, 2023), County received \$442,659 (\$221,329.50 per fiscal year) for the Mediation/Conciliation Distribution. For FY 20-21, County allocated the \$221,329.50 as follows: 37.5% or \$82,999 to Saving Grace and 62.5% or \$138,330.50 was transferred to the Deschutes County Health Services Department to provide Parental Custody Mediation Services on behalf of the Deschutes County Circuit Court (Parental Custody Mediation Service Funds).

IT IS, THEREFORE AGREED:

TERMS OF AGREEMENT

1. Effective Date/Duration.

This agreement will be effective as of signature of both parties to the IGA. This IGA will remain in place until June 30, 2023.

2. Oregon Judicial Department Obligations.

- a. The OJD is responsible for providing Parental Custody Mediation Services, either directly or via a contractor. Through County, OJD had been using the Deschutes County Health Services Department to provide Parental Custody Mediation Services for the Deschutes County Circuit Court. OJD now desires to use a contractor to provide these services. OJD has and continues to maintain the right to determine how Parental Custody Mediation Services are provided.

3. County Obligations.

- a. For FY 22-23, County will allocate a total of \$150,122.50 (\$138,330.50 from the Mediation/Conciliation Distribution and \$11,792.00 from the Law Library Distribution) to OJD for OJD to contract for Parental Custody Mediation Services for the Deschutes County Circuit Court.

4. General Terms.

- a. This Agreement, and each party's rights and responsibilities may not be assigned by either party without the prior written consent of the other party.
- b. This Agreement sets forth the entire agreement of the parties with respect to the subject matter of the Agreement and supersedes any and all prior negotiations, discussions, agreements and understandings of the parties.

- c. The Recitals are incorporated into and made part of this Agreement.
- d. The parties shall attempt to resolve any disputes related to this Agreement by first holding a meeting between the Deschutes Circuit Court Trial Court Administrator and County Administrator within 14 calendar days after one party gives notice to the other party of such dispute. In the event dispute resolution is unsuccessful, this Agreement will be construed, applied and enforced in accordance with the laws of the State of Oregon. Any action or proceedings arising out of this Agreement will be initiated within the circuit court of Marion County for the State of Oregon.
- e. If any provision of this Agreement is held illegal or unenforceable in any respect, the remaining provisions remain in full force and effect to the greatest extent possible.
- f. Either party may end this agreement with written notification to the other party with 90 days' notice.

OJD

By 
 State Court Administrator

Date November 28, 2022

Deschutes County

By 
 Nick Lelack, County Administrator

for

Date November 16, 2022

ANGELA R. CURTIS
Administrator



TRIAL COURT ADMINISTRATOR

Deschutes County Courthouse
1100 NW Bond Street
Bend, Oregon 97703
(541) 388-5300

April 11, 2023

Erik Kropp, Deputy County Administrator
1300 NW Wall St
Bend, OR 97703

Dear Mr. Kropp:

I am writing with a request to postpone the payment for Oregon Judicial Department (OJD) Contract No.230034/Deschutes County Document # 2022-854 regarding the parental custody mediation funds. The intergovernmental agreement provides that Deschutes County will allocate a total of \$150,122.50 to OJD for the purpose of funding parental custody mediation sessions for a period that ends on June 30, 2023.

The Oregon Judicial Department is required to issue a request for proposals (RFP) to select qualified contractors to become court-connected mediators in domestic relations cases. That process will not be complete until at least July 1, 2023. Additionally, Deschutes County Circuit Court/OJD does not have a mechanism to retain these funds past the end of the current biennium, which ends on June 30, 2023.

The request to postpone payment may need to accompany a consideration of renewing the existing intergovernmental agreement for the 2023-2025 biennium.

Please let me know if you have any questions or if you need any additional information at this time.

Thank you,


Angie Curtis

REVIEWED
RAM
LEGAL COUNSEL

**AMENDMENT No. 1 TO
OREGON JUDICIAL DEPARTMENT
INTERGOVERNMENTAL AGREEMENT
OJD Contract No. 230034
Deschutes County Document #2022-854**

This Amendment No. 1 to the Oregon Judicial Department Personal and Professional Services Contract, OJD Contract No. 230034 ("Amendment 1"), is entered into by and between the Oregon Judicial Department on behalf of its Deschutes County Circuit Court ("OJD") and Deschutes County. ("County"). OJD and County are each a "Party" and collectively "Parties."

RECITALS

- A. On November 28, 2022 the Parties entered into Intergovernmental Agreement, OJD Contract No. 230034, Deschutes County Document #2022-854 ("Original Agreement").
- B. At this time, the Parties desire to amend the terms of the Original Agreement to extend its term as more particularly set forth in this Amendment 1.

AGREEMENT

In consideration of the above Recitals which are incorporated in this Amendment and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

- 1. The Parties agree that upon full execution of this Amendment 1, this Amendment 1 shall be effective as of July 1, 2023 ("Effective Date"). The Parties acknowledge that this Amendment 1 may not be fully executed prior to the expiration date of the Original Agreement. In the event the Original Agreement has expired before this Amendment 1 is fully executed, the Parties agree that upon its Effective Date, the Original Agreement shall be revived and declared to be in full force and effect except as amended and modified below.
- 2. Section B is deleted in its entirety and replaced with the following:
 - "B. The Mediation/Conciliation fund distribution ("Mediation/Conciliation Distribution") is based on the 2021 HB 5021, Section 6. Each biennium OJD distributes to County moneys appropriated for the purpose of providing conciliation and mediation services in circuit courts. For the 2021-23 biennium (July 1, 2021 – June 30, 2023), County received \$442,659 (\$221,329.50 per fiscal year) for the Mediation/Conciliation Distribution. For FY 20-21, County allocated the \$221,218.50 as follows: 37.5% or \$82,999 to Saving Grace and 62.5% or \$138,330.50 was transferred to the Deschutes County Health Services Department to provide Parental Custody Mediation Services on behalf of the Deschutes County Circuit Court ("Parental Custody Mediation Service Funds"). The amounts for the 2023-25 biennium are not yet determined."

3. Section 1. Effective Date/Duration is deleted in its entirety and replaced with the following:

“1. Effective Date/Duration.

This Agreement is effective as of November 28, 2022. This Agreement will remain in place until June 30, 2025.”

4. The following is added to Section 3. County Obligations:

“b. For FY 23-25, County will allocate to OJD 62.5% of the total Mediation/Conciliation Distribution and may provide an additional amount from the Mediation/Conciliation Distribution and/or Law Library Distribution, for OJD to contract for Parental Custody Mediation Services for the Deschutes County Circuit Court.”

5. All the representations and warranties of each Party in the Agreement are confirmed by such Party to be true and correct as of the date of signature below.

6. Except as provided in this Amendment 1, all other terms and conditions of the Agreement shall remain in full force and effect.

7. This Amendment 1 may be executed via electronic signature and in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.

Oregon Judicial Department

Deschutes County

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date _____

Date _____

Legal Approval – OJD Office of General Counsel

Name: _____

Date: _____



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 5, 2023

SUBJECT: Public Hearing and Board Order considering the Atias annexation to the Bend Park & Recreation District

RECOMMENDED MOTION:

First, hold a public hearing; thereafter, consider approval of Board Order No. 2023-024 annexing 4.77 acres on Cabin Lane into the Bend Park & Recreation District.

BACKGROUND AND POLICY IMPLICATIONS:

Natascha Atias filed a petition to annex property into Bend Park & Recreation District. The District approved the petition. The Assessor's Office and/or County Clerk certified the petition and Community Development reviewed it for land use compatibility.

BUDGET IMPACTS:

None

ATTENDANCE:

David Doyle, Legal

REVIEWED
nm
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

Order Approving Natascha G. Atias *
annexation into Bend Park & Recreation * ORDER NO. 2023-024
District *

WHEREAS, Natascha G. Atias (“Petitioner”) submitted a petition requesting annexation of the property, identified in Exhibit A in the petition attached to this Order, into Bend Park & Recreation District (“District”); and

WHEREAS, either the Deschutes County Clerk’s Office and/or Assessor’s Office verified that the petition was signed by a registered voter or a landowner, respectively, for the property as indicated in Exhibit B in the petition attached to this Order; and

WHEREAS, pursuant to ORS 198.857(4), the Deschutes County Community Development Department coordinated with the city of Bend as the property in located within the Bend urban growth boundary, regarding the land use compatibility statement in Exhibit C in the petition attached to this Order; and

WHEREAS, Oregon Department of Revenue reviewed the petition and granted preliminary approval, as indicated in Exhibit D in the petition attached to this Order; and

WHEREAS, the Board held a duly noticed public hearing on July 5, 2023, to determine whether, in accordance with the County Comprehensive Plan, any applicable service agreement between a local government and the affected district, and the criteria prescribed by ORS 197.175, the affected area would benefit by annexation of said territory into the District; now, therefore

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY ORDAINS as follows:

Section 1. The petition for annexation and all exhibits attached to this Order are hereby incorporated by reference.

Section 2. The petition for annexation is hereby approved, and the property identified in Exhibit A is declared annexed and included in the District.

Section 3. A copy of the signed Order will be forwarded to the Oregon Department of Revenue, Oregon Secretary of State Archives Division, Deschutes County Assessor’s Office and County Clerk’s Office, and the District.

Section 3. The purpose of this District is to provide park & recreation services.

Dated this ___ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DeBONE, CHAIR

PATTI ADAIR, VICE CHAIR

ATTEST:

Recording Secretary

PHIL CHANG, COMMISSIONER

PETITION TO ANNEX PROPERTY INTO

Bend Parks and Recreation District

MPR (Name of District)

To: The Board of County Commissioners, Deschutes County, Oregon

The undersigned, in support of this Petition, state as follows:

- 1. This Petition for Annexation is filed pursuant to ORS 198.850 to 198.859 on 5/2/2023 (date) and Petitioners request the Board commence proceedings to annex the territory described herein into Bend Parks and Recreation District (name of district), Deschutes County, Oregon.
- 2. This Petition for Annexation affects only Deschutes County and is not in any incorporated city limits.
- 3. The Board of Bend Parks and Recreation District (name of district) approved the petition pursuant to ORS 198.850 on 5/2/2023 (insert date).
- 4. The principal act for Bend Parks and Recreation District (name of district) is ORS

(Proper statutory reference required, see ORS 198.010 for listing of appropriate principal act)

- 5. The territory subject to this Petition for Annexation is primarily inhabited / uninhabited (circle one). This petition is signed by land owners and/or registered voters in the area proposed to be annexed as indicated opposite their respective signature, and all signatures were obtained on or after the 2nd day of, 2023.
- 6. The property street address(es) of land for annexation (if known) is/are 61141 Cabin Lane and the total acreage is 4.77 acres. A description of the boundaries of the territory to be annexed is attached hereto as **Exhibit "A"** and depicted on the map attached as **Exhibit "B"**.
- 7. This Petition has been signed by at least 15 percent of the electors, or 100 electors whichever number is lesser, registered in the area proposed to be annexed; or at least 15 owners or owners of 10 percent of the land, (whichever is greater) within the area proposed to be annexed.
- 8. A security deposit form and payment is attached to this petition.

Signed this 19 day of May, 2023 by Natascha G Arias Chief Petitioner(s).

Signature [Handwritten Signature]

534 SW 4th St Madras OR 97741
Address, City, State, ZIP

DATED this 19 day of May, 2023

DATED this ___ day of _____, 20__

Approved by the Board of Bend Park + Recreation District

(if applicable) Approved by City of _____

Name of District Michelle Dwyer

City Signature _____

District Signature By: Michelle Healy

By: _____ (Print Name)

Title: Acting Executive Director

Title: _____

NAME OF DISTRICT: Bend Parks and Recreation District

Withdrawal Annexation

PRINT NAME		DATE SIGNED	PROPERTY ADDRESS/ RESIDENCE ADDRESS (If Different)	LANDOWNER IN THE PROPOSED TERRITORY/ REGISTERED VOTER IN THE PROPOSED TERRITORY
1	<u>Natascha Atias</u> Print Name <u>[Signature]</u> Signature	 Date	<u>61141 Cabin Lane</u> PROPERTY ADDRESS <u>279 Bluegrass Drive Culver, OR 97734</u> RESIDENCE ADDRESS (If Different)	Landowner Yes <input checked="" type="checkbox"/> No _____ Acreage <u>4.77</u> Registered Voter Yes <input checked="" type="checkbox"/> No _____ Pre _____
2	 Print Name Signature	 Date	 PROPERTY ADDRESS RESIDENCE ADDRESS (If Different)	Landowner Yes _____ No _____ Acreage _____ Registered Voter Yes _____ No _____ Pre _____
3	 Print Name Signature	 Date	 PROPERTY ADDRESS RESIDENCE ADDRESS (If Different)	Landowner Yes _____ No _____ Acreage _____ Registered Voter Yes _____ No _____ Pre _____
4	 Print Name Signature	 Date	 PROPERTY ADDRESS RESIDENCE ADDRESS (If Different)	Landowner Yes _____ No _____ Acreage _____ Registered Voter Yes _____ No _____ Pre _____
5	 Print Name Signature	 Date	 PROPERTY ADDRESS RESIDENCE ADDRESS (If Different)	Landowner Yes _____ No _____ Acreage _____ Registered Voter Yes _____ No _____ Pre _____

I, Natascha Atias, certify that I circulated this petition, and every person who signed this petition did so in my presence. Signature: [Signature]

County of Deschutes State of Oregon
 SUBSCRIBED AND SWORN before me this 19th day of May, 2023
 Notary Public for Oregon, Jennifer Ochoa My Commission Expires: 01/02/2024



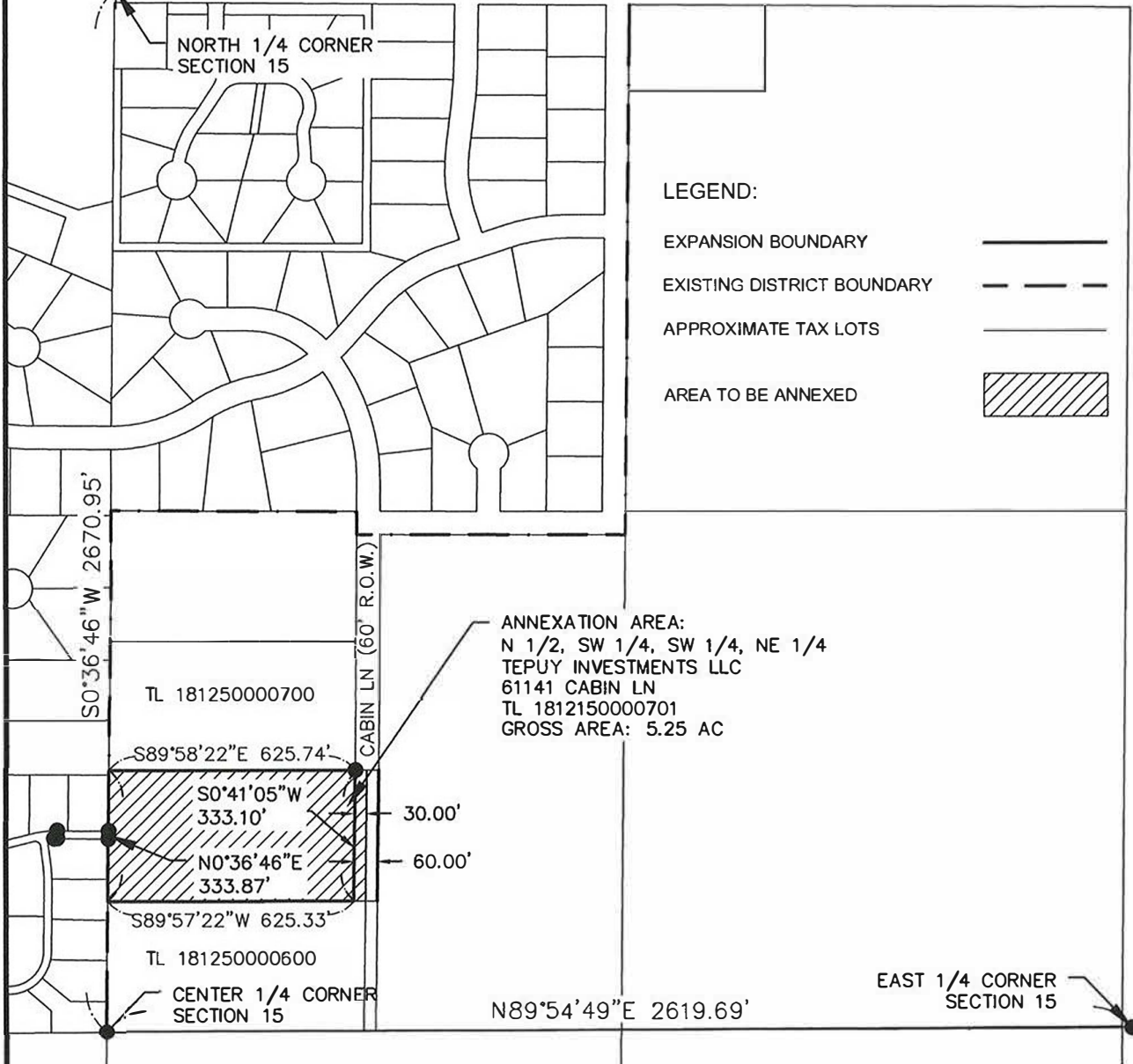
Signature [Signature]

Exhibit "A"

The North Half of the Southwest Quarter of the Southwest Quarter of the Northeast Quarter (N1/2 SW1/4 SW1/4 NE1/4) of Section Fifteen (15), Township Eighteen (18) South, Range Twelve (12) East of the Willamette Meridian, Deschutes County, Oregon.

EXHIBIT "B"

LOCATED IN THE SW 1/4 OF THE NE 1/4 OF SECTION 15, TOWNSHIP 18 SOUTH, RANGE 12 EAST, W.M. CITY OF BEND, DESCHUTES COUNTY, OREGON



549 SW MILL VIEW WAY
SUITE 100
BEND, OREGON 97702
(541) 633-3140
www.beconeng.com

FOR: ATIAS GROUP

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
DEC. 16, 2009
ERIK J. HUFFMAN
70814

DATE: 05/04/2023

SCALE: 1" = 400'

DRAWN BY: AAC

PROJ: 22037

RENEWS: JUN. 30, 2023

Security Deposit

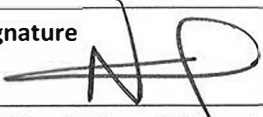
Special District Formation or Reorganization

07/05/2023 Item #8.

rev 01/18
ORS 198.775

Formation
 Annexation
 Withdrawal
 Dissolution

District and Precinct Information		
Name of District Bend Parks and Recreation District		
Number of Precincts in District	Amount of Deposit per Precinct	Total Deposit (max of \$10,000)

Chief Petitioners					
I/We hereby declare if the costs of the attempted formation annexation, withdrawal or dissolution of Bend Parks and Recreation _____ district exceeds the deposit, I/we will pay to the county treasurer the amount of the excess cost (ORS 198.775)					
Name print Natascha Atias			Signature 		
Residence 279 Bluegrass Drive			Mailing Address if different 534 sw 4th St, Madras OR 97741		
City Culver	State OR	Zip Code 97734	City Madras	State OR	Zip Code 97741
Amount of Contribution/Value of Secured Deposit \$100			Kind of Contribution* <input checked="" type="checkbox"/> Cash <input type="checkbox"/> Bond <input type="checkbox"/> Other Security Deposit		

Name print			Signature		
Residence			Mailing Address if different		
City	State	Zip Code	City	State	Zip Code
Amount of Contribution/Value of Secured Deposit			Kind of Contribution* <input type="checkbox"/> Cash <input type="checkbox"/> Bond <input type="checkbox"/> Other Security Deposit		

Name print			Signature		
Residence			Mailing Address if different		
City	State	Zip Code	City	State	Zip Code
Amount of Contribution/Value of Secured Deposit			Kind of Contribution* <input type="checkbox"/> Cash <input type="checkbox"/> Bond <input type="checkbox"/> Other Security Deposit		

Continued on the reverse side of this form

EXHIBIT A - 5

Person/Organizations Providing Any Part of Cash/Security Deposit

Name print			Signature		
Residence			Mailing Address if different		
City	State	Zip Code	City	State	Zip Code
Amount of Contribution/Value of Secured Deposit			Kind of Contribution*		
			<input type="checkbox"/> Cash	<input type="checkbox"/> Bond	<input type="checkbox"/> Other Security Deposit

Name print			Signature		
Residence			Mailing Address if different		
City	State	Zip Code	City	State	Zip Code
Amount of Contribution/Value of Secured Deposit			Kind of Contribution*		
			<input type="checkbox"/> Cash	<input type="checkbox"/> Bond	<input type="checkbox"/> Other Security Deposit

Name print			Signature		
Residence			Mailing Address if different		
City	State	Zip Code	City	State	Zip Code
Amount of Contribution/Value of Secured Deposit			Kind of Contribution*		
			<input type="checkbox"/> Cash	<input type="checkbox"/> Bond	<input type="checkbox"/> Other Security Deposit

Additional Description

*Provide additional description of security deposit below, on the back of this form or on separate sheets. Additional contributors may be listed on separate sheets and attached.



**Petition for Annexation to
Bend Park and Recreation District
(61141 Cabin Ln, Bend,
Taxlot 1812150000701)**

Clerk's Certification

I, Steve Dennison, Deschutes County Clerk, do hereby certify that the signature on the attached petition sheet is not a voter within the proposed area to be annexed. There is one (1) voter within the proposed area to be annexed. There are zero (0) valid signatures on the attached petition within the area proposed for annexation.

Dated this 31st day of May, 2023.

Steve Dennison
Deschutes County Clerk



DESCHUTES COUNTY ASSESSOR'S OFFICE

CARTOGRAPHY DEPARTMENT

1300 NW Wall Street, Suite 204 | Bend, Oregon 97703

Office: (541) 388-6508 | **Fax:** (541) 382-1692

Website: <https://www.deschutes.org/assessor>

Property Info: <https://dial.deschutes.org/>

May 31, 2023

Steve Dennison

Deschutes County Clerk

Re: **Petition for Bend Park & Recreation District** (TEPUY INVESTMENTS LLC)

Please be advised the attached petition meets the requirements of ORS 198.

Sincerely,

Gregg Rossi



Gregg Rossi | Chief Cartographer

Deschutes County Assessor's Office, Cartography Dept.

1300 NW Wall St. Suite 204 | Bend, Oregon 97703 PO Box 6005 | Bend, Oregon 97708

Tel: (541) 617-4703 | Fax: (541) 382-1692



COMMUNITY DEVELOPMENT

TO: Deschutes County Board of Commissioners

FROM: Will Groves, Planning Manager

DATE: May 24, 2023

SUBJECT: Land Use Compatibility, 61141 Cabin Lane, Bend - Bend Park & Recreation District

The materials contained in the petition propose to annex lands to the Bend Park & Recreation District. I have coordinated with the City of Bend and confirmed that there are no planning or zoning obstacles to the proposed annexation in County or City regulations. The City of Bend commented regarding this property:

The property at 61141 Cabin Lane is located within the Bend urban growth boundary, but outside of the Bend city limits. The property's current zoning is UA, Urbanizable Area, and the Comprehensive Plan designation for the property is RS, Urban Standard Residential. The zoning will be changed to conform with the Comprehensive Plan designation upon annexation. The property owners and their representatives have been working with the Community and Economic Development Department on a subdivision application accompanied by an annexation application. For your reference, the file numbers are:

- PLLD20230259, Subdivision
- PLANX20230258, Annexation

Boundary Change Preliminary Review

DOR 9-P118-07/05/2023 Item #8.



Cadastral Information Systems Unit
PO Box 14380
Salem, OR 97309-5075
fax 503-945-8737
boundary.changes@dor.oregon.gov

Deschutes County
Budget Officer
1130 NW Harriman
Bend OR 97701

May 16, 2023

Documents received: 5/1/2023, 5/4/2023, 5/10/2023
From: April Pust

This letter is to inform you that the Description and Map for your planned BRPD Annexation (Legore Subdivision) in Deschutes County have been reviewed per your request. They MEET the requirements of ORS 308.225 for use with an Order, Ordinance, or Resolution which must be submitted to the Deschutes County Assessor and the Department of Revenue in final approved form before March 31 of the year in which the change will become effective.

Preliminary Review

If you have any questions please contact Robert Ayers, 503-983-3032



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 5, 2023

SUBJECT: Document No. 2023-668, a Collective Bargaining Agreement between Deschutes County and the Federation of Oregon Parole and Probation Officers

RECOMMENDED MOTION:

Move Board signature of Document No. 2023-668, the Federation of Oregon Parole and Probation Officers' Labor Agreement for 2023-2026.

BACKGROUND AND POLICY IMPLICATIONS:

The Federation of Oregon Parole and Probation Officers (FOPPO) is the labor union representing Deschutes County Parole and Probation Officers in the Community Justice Department - Adult Parole and Probation Division. The current collective bargaining agreement between FOPPO and the County expired on June 30, 2023.

The new collective bargaining agreement is a three year contract, effective from July 1, 2023 to June 30, 2026. The agreement includes a 4% cost of living adjustment in FY 2024 and a 1 - 4 % cost of living adjustment in FY 2025 and 2026, based on the consumer price index. The agreement also includes an increase in certification pay and instructor pay.

FOPPO's bargaining team included Rachel Strickland, Catherine Lowery, Paula Fata and attorney Seth Davis.

The County's bargaining team included Christopher Bell, Deevy Holcomb, Tanner Wark, Jason Bavuso, Dan Emerson, and Whitney Hale.

The County's bargaining team tentatively agreed to the collective bargaining agreement and recommends its approval.

Employees represented by FOPPO voted to ratify the labor agreement.

ATTENDANCE:

- Chris Bell, Senior Assistant County Counsel
Dan Emerson, Budget and Financial Planning Manager
Deevy Holcomb, Community Justice Director

Jason Bavuso, Human Resources Manager
Whitney Hale, Deputy County Administrator
FOPPO executive board members

AGREEMENT
BETWEEN
DESCHUTES COUNTY
AND
THE FEDERATION OF OREGON
PAROLE & PROBATION
OFFICERS



July 1, 2023 – June 30, 2026

AGREEMENT BETWEEN DESCHUTES COUNTY and THE FEDERATION OF OREGON PAROLE AND PROBATION OFFICERS

July 1, 2023 – June 30, 2026

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PREAMBLE

This Agreement is made and entered into by and between Deschutes County (hereinafter the County) and the Federation of Oregon Parole and Probation Officers, (hereinafter the Federation) for the purpose of fixing wages, hours, benefits, and mandatory conditions of employment and other matters affecting members of the bargaining unit as certified by the Employment Relations Board.

It is also the purpose of this Agreement to promote the mutual interests of County and its employees and to provide for the operation of the County’s business under methods which will further, to the fullest extent possible, the safety of the employees, economy and efficiency of operation, elimination of waste, realization of maximum quantity and quality of output, cleanliness, protection of property and avoidance of interruptions to production. The parties will cooperate fully to secure the advancement and achievement of these purposes.

ARTICLE 1 – RECOGNITION

Section 1

The Employer recognizes the Federation as the sole and exclusive bargaining agent for all adult parole and probation officers as defined in ORS 181.610, employed by the County, excluding supervisory and confidential employees, adult parole and probation officers employed for less than one-half (1/2) of the regular full-time work schedule in a regular position and adult parole and probation officers holding temporary appointments of twelve (12) months or less.

ARTICLE 2 – FEDERATION SECURITY

Section 1 – Federation Representative

The Federation shall notify the County in writing of its representative of the Federation. Upon proper introduction and notice, the representative shall have reasonable access to the premises of the County during all working hours to conduct Federation business. This representative shall observe any security regulations of the County. Such visits are not to interfere with the normal flow of work.

Section 2 – Conducting Federation Business

Unless otherwise provided in the Agreement, the internal business of the Federation shall be conducted by the employees during non-duty time.

Section 3 – Notice to County of Officers and Stewards

The Federation shall notify the County of the selection of Officers and Stewards and their alternates.

Section 4 – Federation Postings

The County agrees to allow the Federation the use of conveniently located bulletin board space in each work location. The Federation agrees that it will not post material that is profane, obscene or defamatory of the County.

Section 5 – Federation Meetings

Meetings between the County and Federation to process grievances, discuss and present disciplinary actions, and generally administer the Agreement may be held, if practicable, during regular working hours, on the premises of the County and without loss of pay to authorized participating employees.

Section 6 – Negotiations Between the Parties

Negotiations between the parties shall be conducted during normal working hours on the premises of the County unless otherwise mutually agreed. The Federation’s bargaining committee shall be limited to three (3) members of the Federation, the payment of which will be the subject of future ground rules.

Section 7 - Payroll Deduction of Federation Dues

- A. The County agrees to deduct the regular Federation membership dues from the pay of those individuals who request deductions in writing. The amount to be deducted shall be certified to the County by the Federation’s Treasurer, and the aggregate deduction shall be remitted monthly together with an itemized statement to the Federation no later than the tenth day of the month following the month for which the deductions were made. This section shall not apply where circumstances exist beyond the control of the County, which cause a delay in meeting the above dates.
- B. The written request for dues deduction is not terminated when an employee is placed on any type leave, disciplinary suspension, or placed on layoff status. The County shall deduct Federation dues commencing with the first paycheck following the employee’s return to paid status.
- C. The County will not withhold from the wages of an employee who is not a Federation member any fee or other payment on behalf of, or for the benefit of, the Federation, unless the employee first clearly and affirmatively consents to such withholding in writing.
- D. The Federation shall indemnify and save the County harmless against any and all claims, damages, suits, or other forms of liability, which may arise out of any actions taken or not taken by the County for the purpose of complying with the provisions of this article.

Section 8 – List of Changes to Bargaining Unit

The County shall furnish to the Federation monthly a list of the names and home addresses of employees new to the bargaining unit, as well as a list of employees who left the bargaining unit during the previous month.

Section 9 – Federation Use of County Facilities

The Federation or committees of the Federation shall be allowed the use of County facilities and e-mail pursuant to County Policy, when the facilities are available and the meetings or messages would not conflict with the business of the County.

Section 10 – County to Inform New Employees of Federation Status

The County agrees to inform all new bargaining unit employees of the Federation’s exclusive representation status and shall provide all employees with a copy of the Agreement.

ARTICLE 3 – MANAGEMENT RIGHTS

Except as specifically modified by this Agreement, in order to operate its business, the County, in its sole discretion, retains and shall have the following exclusive rights: to determine the number, location and type of facilities; to determine the type and/or quality of services rendered; to determine the methods, techniques and equipment utilized; to hire, supervise, evaluate, discipline, discharge, promote, demote, layoff, transfer and recall the work force; to assign work and change, combine, create or abolish job classifications and job content; to establish and make known reasonable work rules and safety rules for all employees, to contract; and to determine the number of employees, including the number of employees assigned to any particular operation or shift.

Any of the rights, powers, authority and functions the County had prior to the negotiation of this Agreement are

retained by the County and the expressed provisions of this Agreement constitute the only limitations on the County’s right to manage its business. The County not exercising rights, powers, authority and functions reserved to it, or its exercising them in a particular way, shall not be deemed a waiver of said rights, powers, authority and functions or of its right to exercise them in some other way not in conflict with a specific provision of this Agreement.

All other traditional rights of management are also expressly reserved to the County and the express provisions of this Agreement constitute the only limitations upon the County’s right to manage its business.

ARTICLE 4 – NON-DISCRIMINATION

Section 1 – Non-Discrimination Agreement

The County and the Federation agree not to discriminate against any employee because of race, color, sex, gender identity, age, national origin, marital status, same-sex domestic partnership status, sexual orientation, religion, political affiliation, physical or mental disability, Federation membership or non-membership or any other classification protected by Oregon or Federal law.

Section 2 – Equal Application

The terms of this Agreement shall be applied equally to all members of the bargaining unit.

ARTICLE 5 – PROBATIONARY EMPLOYEES

Section 1 – Probationary Period

Each new employee who, as of date of hire, does not have Parole and Probation certification from the Department of Public Safety Standards and Training (DPSST) shall serve a probationary period of eighteen (18) months, unless extended by mutual written agreement. All new employees in possession of a valid Parole and Probation certification from DPSST as of their date of hire shall serve a probationary period of twelve (12) months unless extended by mutual written agreement.

Section 2 – Probationary Evaluations

(12) Each new employee shall be evaluated at least twice during their probationary period, at six (6) months and twelve (12) months. New employees serving an eighteen (18) month probation shall also be evaluated at eighteen (18) months, unless modified by mutual agreement between the employee and their Department Head. If an employees’ performance is not satisfactory, they shall be given notice of the areas of their deficiencies.

Regardless of the duration of a new employee’s probation under Section 1, they shall advance to the next step of their pay range upon satisfactory completion of twelve (12) months of probation and upon receipt of an overall “effective, meets standards” rating or better on their 12-month performance evaluation. However, new employees serving a period of probation longer than 12 months shall remain “probationary employees” and shall be considered as such for all purposes (including, without limitation, discipline and termination) until they have successfully completed their full probationary period.

Section 3 –Termination

Any employee who is terminated during their probationary period shall be given written notice of the reason or reasons for the termination.

Section 4 – Discipline Not Subject to Grievance Procedure

Disciplinary action for probationary employees, including termination of employment, is not subject to the grievance procedure.

Section 5 – Duty Weapon

All employees, regardless of probationary status, shall be permitted to carry a duty weapon on the condition that statutory requirements are met.

ARTICLE 6 – DISCIPLINE AND DISCHARGE

Section 1 – Provisions of Just Cause

The principles of progressive discipline shall be used except when the nature of the problem requires more serious action. Non-probationary employees shall not be disciplined or discharged without just cause.

Section 2 -- Discipline

Discipline shall consist of one of the following:

- 1. Written reprimand
- 2. Suspension without pay
- 3. Demotion
- 4. Discharge

Section 3 – Administering Discipline

Discipline shall be administered in accordance with ORS 236.350 to 236.370 and in a manner which will not unduly embarrass the employee, consistent with the circumstances involved.

Section 4 – Employee Right to Representation

A Federation representative shall be allowed to be present, at an employee’s request, at any meeting between the employee and any investigating officer, or superior officer, in which the employee reasonably believes that discipline may result from the meeting and/or investigation.

Section 5 – Administrative Leave

At the discretion of the County, an employee may be placed on administrative leave with pay pending the investigation of a complaint or possible disciplinary action.

ARTICLE 7 - GRIEVANCE PROCEDURE

- A. A grievance is defined as an allegation that a specific provision of this Agreement has been violated.
- B. In an effort to provide for resolution of disputes, the parties agree to the following procedures:

Step I: Any employee claiming a breach of any specific provision of this Agreement may refer the matter, in writing, to their immediate supervisor outside the bargaining unit within fourteen (14) calendar days from the occurrence thereof, or the employee’s knowledge of the facts thereof. The grievance shall, at minimum, specify the article and section of the contract alleged to have

been violated and the requested remedy. The employee shall provide a copy of the written grievance to the Federation. The supervisor shall respond to the grievance in writing as quickly as possible, but no later than fourteen (14) calendar days after the grievance is filed.

Step II: If after proceeding through Step I above, the grievance remains unresolved, the grievance may be submitted to the Department Head no later than fourteen (14) calendar days from the date of the Step I response, along with a written statement as to why the supervisor’s Step I response does not adequately resolve the grievance. The Department Head shall meet with the aggrieved party, who may request a Federation representative at the meeting. The meeting between the Department Head and the aggrieved party shall be within fourteen (14) calendar days of the Department Head’s receipt of the written grievance. The Department Head shall respond to the grievance in writing within fourteen (14) calendar days of such meeting.

Step III: If, after the Department Head issues their Step II written response, the grievance remains unresolved, the grievance may be submitted in writing to the County Administrator no later than fourteen (14) calendar days from the date of the Step II response. The County Administrator shall respond to the grievance in writing within fourteen (14) calendar days from the date the grievance is submitted to the County Administrator.

Step IV: If, after the County Administrator issues their Step III written response, the grievance still remains unresolved, the Federation will have fourteen (14) calendar days from the County’s Step III response to serve notice, in writing, to the County Administrator of its intent to submit the grievance to final and binding arbitration. The arbitrator shall be selected by mutual agreement of the parties. If the parties cannot agree on an arbitrator within fourteen (14) calendar days of submitting the grievance to arbitration, the arbitrator shall be chosen in the following manner:

- a. Either party may request a list of five (5) names of arbitrators whose principal business address is in the state of Oregon from the Oregon State Conciliating Service. Within five (5) calendar days of the receipt of the list, the parties shall alternately strike names from the list until one name remains, and the remaining person on the list after the strikes have been completed shall serve as the arbitrator. The party striking the first name shall be determined by a coin flip.
- b. The arbitrator shall hold a hearing promptly and shall issue a decision within thirty calendar (30) days of the hearing. The arbitrator’s decision shall be in writing and shall set forth findings of fact, reasoning, and conclusions of the issues submitted. The powers of the arbitrator shall be limited to determining if the Agreement has been violated; they shall have no authority to alter, modify, vacate or amend any of the terms of the Agreement.
- c. The cost of the arbitrator and court reporter (if the court reporter is requested by both parties) shall be borne by the losing party. Each party shall be responsible for costs of presenting its own case to arbitration.
- d. Each party shall be responsible for compensating its own representative and witnesses at any step of this procedure.
- e. A grievant exercising their rights to pursue a grievance through this procedure may do so

without discrimination and without loss of pay if meetings or conferences as called for herein occur during the employee’s regularly assigned duty time.

- f. To the extent allowable by law, all information relative to a grievance and resolution accomplished via the grievance procedure shall be considered exempt from public disclosure in an effort to assure confidentiality to the employee.
- g. If the parties agree in writing, Steps I and II may be waived. Any time limits specified in the grievance procedure may be waived by mutual consent of the parties. Failure to submit the grievance in accordance with these time limits without such a waiver shall constitute abandonment of the grievance. Failure by the County to submit a reply after knowledge of the grievance by the party responsible for the reply within the specified time will move the grievance to the next step in the grievance procedure. A grievance may be terminated at any time upon receipt of a signed statement from the Federation.

C. If the last day of any period calculated pursuant to this Article falls on a weekend or holiday observed by the County, the last day of such period shall be extended to the next business day.

ARTICLE 8 – SALARY ADMINISTRATION

Section 1 – Pay Period and Pay Day

- A. Deschutes County has historically defined its pay period as the first day of the month through the last day of the same month, with payment for that period made on the last business day of the month. As a result, there is no lag time to process payroll and employees are required to project future hours for time-keeping purposes.
- B. Effective April 1, 2023, the pay period will run from the twenty-second day of the month through the twenty-first day of the following month, with payment of wages for each pay period to be made to employees on the last workday of each month.. If the last day of the month falls on a holiday or a weekend, payday for that pay period will be the last work day preceding the holiday or weekend.

The County shall have the option to make additional changes at its discretion, subject to the notification period and transition plan outlined in paragraph E herein.

- C. Deschutes County has historically paid non-exempt employees a monthly salary. Deschutes County shall have the option to change this practice and pay non-exempt employees for actual hours worked.
- D. To change the pay period and to pay for actual hours worked, County may need to implement changes to Deschutes County policies and/or personnel rules. If a change to policy or personnel rules is reasonably necessary in order for the County to change the pay period and/or to allow County to pay non-exempt for actual hours worked, the Federation agrees not to demand to bargain these changes.
- E. Deschutes County will provide employees with at least 90-days’ notice before changing the pay period or changing pay to actual hours worked. County will also develop a transition plan to assist employees with transitioning to a new pay period. The transition plan will include, at a minimum:

providing budgeting classes to employees and allowing employees to sell back additional TML as necessary to make up for a shortened pay period during the transition.

Section 2 – Performance Appraisals and Merit Increases

- A. Employees shall be eligible for annual merit increases on their eligibility date provided that the employee is not at the top step of the salary range of their classification.
- B. Every employee shall receive a performance appraisal at least annually by the employee’s eligibility date. The eligibility date is based on hire date as follows: If hired on the first of the month through the 15th of the month – the performance appraisal will be completed within the month of hire and will be retroactive to the 1st of the month. If hired on the 16th of the month through the end of the month – the performance appraisal will be completed by the end of the following month and will be effective retroactive to the first of the month. In order to receive an annual merit increase an employee must receive an overall “effective, meets standards” rating or better on their annual performance appraisal. If the employee’s regularly scheduled annual performance appraisal is not completed by their eligibility date, they will receive their merit step increase.

Section 3 – Longevity Pay

Full-time employees who have worked continuously for the County shall receive additional pay per month for each five (5) years of continuous service worked as outlined below. Longevity pay will be pro-rated for part-time employees based on their percentage of full-time employment. Layoffs of less than eighteen (18) months shall not jeopardize longevity.

\$92.50	FY 23/24
\$95.00	FY 24/25
\$97.50	FY 25/26

Section 4 – Translator Pay

The County, at the County’s sole discretion, may designate specific employees who can communicate in English and a second language or in sign language to be translators – additional compensation shall be granted to designated employees for translation services as follows:

- 1. Regular FTE, \$100 per month
- 2. Regular ½ to ¾ time, \$75 per month
- 3. Undesignated employees who have the ability to communicate in a second language or in sign language and who are directed by a supervisor to serve as a translator shall receive additional compensation in the amount of \$10 per day on any day they are utilized for translation services.

Such persons shall be proficient in the needed second language or in sign language. It shall be at the sole discretion of the County to select persons for bilingual compensation and to decrease or eliminate the compensation should the County determine the need for translation no longer exists. Nothing in this Agreement shall preclude the County from using persons other than those designated for second language communication.

The County retains the right and total discretion to choose the positions to which the additional compensation is granted, and to determine such test or other certification process that must be successfully completed for an

employee to qualify as bilingual for purposes of this section.

Section 5 – Professional Certification

The County agrees to pay monthly, the following for DPSST Intermediate and Advanced certifications:

Intermediate	\$300.00
Advanced	\$450.00

In order to qualify for certification pay pursuant to this Section 5, the employee must obtain the DPSST Certification and have received an overall “effective, meets standards” rating or better on the most recent annual performance appraisal. Employees must remain current on their department and DPSST training requirements in order to receive certification pay pursuant to this Section. Newly hired probationary employees who are DPSST-Certified when hired will begin to receive certification pay pursuant to this Section upon commencing employment with the County. An employee who qualifies for certification pay under this Section shall be entitled to payment under only one certification level. Certification pays are not cumulative.

Section 6 – Instructor Pay

Employees assigned as Defensive Tactics, Firearms, Core Correctional Practices, or CPR instructor shall be compensated \$125.00 per month. It is understood these assignments are discretionary appointments by the Department Head. Employees assigned as CPR instructors as referenced in this Section 6 shall receive instructor pay only for the months during which they provide such instruction.

Section 7 – Field Training Officer

Employees assigned as Field Training Officers (FTO’s) shall receive compensation of \$500.00 monthly during the time they are actually performing the duties. While performing such duties, the employee assigned as an FTO shall be responsible for the caseload of the trainee whom the FTO is training, including coverage of the trainee’s caseload when the trainee is attending the DPSST Academy. Such FTO duties shall be in addition to the caseload and other duties regularly performed by the employee assigned as an FTO. If the employee assigned as an FTO only performs FTO duties for a portion of a given calendar month, the amount received shall be pro-rated on a weekly basis, with the employee receiving compensation for each week in which they perform a minimum of 5 hours of FTO duties. Management may, in its sole discretion, waive the 5-hour requirement for any week. For purposes of this section, a week starts on Sunday and ends on Saturday, and the pro-rated weekly compensation shall be \$125.

Section 8 – Hearings Officer

All employees who perform *Morrissey* hearings shall receive \$200.00 per month for any month they preside over these hearings.

ARTICLE 9 – CALL BACK TIME AND AETER HOURS CALLS

Section 1 - Call Back

Call back is defined for the purpose of this Agreement as that time an employee spends beyond their normal work schedule and delivered on-site as a result of being called back due to an emergency and/or special circumstance.

When called back, employees will receive compensation in accordance with the Fair Labor Standards Act (“FLSA”). In no case will an employee receive less than three (3) hours compensation for being called back to work.

Section 2 - Compensation for After-hours Calls

The County and the Federation acknowledge that it is sometimes necessary for adult parole and probation officers to respond to calls from law enforcement and partner agencies concerning probationers or parolees who are under their supervision that are taken while they are away from County offices or facilities and during times when they are not otherwise scheduled to work (e.g., non-work days, those hours occurring after an officer's shift ends or before an officer's shift begins). The County and the Federation each further acknowledge that taking and responding to such calls is an essential duty of adult parole and probation officers employed with the County. In recognition of the importance of taking and responding to after-hours calls, adult parole and probation officers will be compensated for such work either by receiving payment ("after-hours call pay") or by accruing leave ("after-hours call leave") as described herein. Whenever officers take and respond to after-hours calls, they may elect to be compensated for such work in either manner.

- A. Calculation of Compensation for After-Hours Calls. Adult parole and probation officers who take and respond to after-hours calls will be compensated as follows:
1. For a compensable event lasting thirty (30) minutes or less, the officer will be compensated for forty-five (45) minutes of straight time (as either pay or time off).
 2. For a compensable event lasting more than thirty (30) minutes, the officer will be compensated for the actual minutes worked, at time-and-a-half (as either pay or time off).

For purposes of calculating compensable time for after-hours calls, an after-hours call or a series of after-hours calls taken without at least a thirty (30) minute interval between calls, will constitute one compensable event. This is the case regardless of whether the calls come from separate individuals or agencies, and whether the calls relate to the same or separate matters. Once a thirty (30) minute interval has passed without a call, the next call thereafter shall commence a separate compensable event.

All after-hours call compensation will be calculated based upon the officer's current pay step. The officer will have the option of taking compensation as pay or as after-hours call leave.

- B. When adult parole and probations officers are not working a scheduled shift and are away from County offices or facilities, they will normally make themselves available to receive after hours calls when practicable. Employees must take and respond to after-hours calls in order to receive compensation pursuant to this Section. Compensation will not be granted merely for listening to messages or reviewing text or e-mail messages from law enforcement or partner agencies, although it will be granted for activities undertaken in response to such messages when such activities cannot wait until the employee's next scheduled shift or by another employee on the next business day.
- C. Adult parole and probation officers are not entitled to receive compensation under this Section for calls received at any time during scheduled work shifts.
- D. Compensation granted pursuant to this Section is the sole form of compensation available to adult parole and probation officers for taking and responding to after-hours calls. Employees are not entitled to overtime pay or compensatory time-off in lieu of overtime, as otherwise available pursuant to Article 11, for taking and/or responding to after-hours calls.

ARTICLE 10 – HOURS OF WORK

Section 1 – Work Week

The work week is defined as seven (7) days within a calendar week. The standard work week for the County is Sunday through Saturday. The County may establish an alternate work week to address flexible work schedules as referenced in Section 2(C). An alternate work week must be established in writing and submitted to the Deschutes County Human Resources Department and the Deschutes County Finance Department for approval.

Section 2 – Work Schedules

- A. A regular work schedule is a work schedule with the same starting and stopping time on five (5) consecutive eight (8) hour shifts, with two (2) consecutive days off.
- B. An alternate work schedule, normally, is a work schedule with the same starting and stopping times on four (4) consecutive ten (10) hour shifts, and three (3) consecutive days off.
- C. A flexible work schedule is a work schedule which varies the number of hours worked on a daily basis, but not necessarily each day, and may vary the number of days worked on a weekly basis, but not necessarily each week, but which in no way conflicts with the FLSA.
- D. Work schedules shall be determined by the Department Head, subject to approval by the County Administrator.

Section 3—Changes in Work Schedule

Established regular work schedules will not be changed with less than ten (10) working days advance notice, unless the operating needs of the County require it or an employee voluntarily agrees to the change and an earlier implementation date.

Section 4 -- Rest Breaks

Each employee shall be granted an uninterrupted rest break of fifteen (15) minutes for each one-half (1/2) shift. The rest breaks shall be scheduled as near the midpoint of each one-half (1/2) shift as possible.

Section 5 – Meal Periods

All full-time employees shall be permitted a non-duty meal period during their work shifts. Non-duty meal periods shall be no less than thirty (30) minutes and shall be scheduled in the middle of the work shift as possible.

Section 6 – No Guarantee of Hours

Nothing in this Article shall be construed as a guarantee of hours.

ARTICLE 11 – OVERTIME AND COMPENSATORY TIME

Section 1 – Overtime Pay

All non-exempt employees shall be compensated at the rate of one and one-half (1 ½) times their regular rate of pay for all hours worked in excess of forty (40) hours during the regularly scheduled workweek. Hours worked shall include holidays, vacation, and compensatory hours which are authorized and scheduled in advance in

accordance with Departmental policy. The specific application of this section shall be governed by Deschutes County Administrative Policy No. HR-4 Overtime Compensation and Compensatory Time or subsequent adopted policy.

Section 2 – Compensatory Time

In lieu of overtime pay, by mutual agreement between the employee and County, a non-exempt employee may receive compensatory time off at the rate of one and one-half (1-1/2) hours for each overtime hour worked. Compensatory time-off accrued in lieu of overtime pay pursuant to this Article 11 is distinct from after-hours call leave accrued for taking and responding to after-hours calls pursuant to Article 9, Section 2. Compensatory time-off is compensation for working overtime hours, while after-hours call leave accrued pursuant to Article 9, Section 2 is a form of additional compensation agreed to between the Federation and the County. Compensatory time-off accrued pursuant to this Article 11 and after-hours call leave accrued pursuant to Article 9, Section 2 may not together exceed eighty (80) hours. Once any adult parole and probation officer reaches this aggregate eighty-hour (80-hour) limit, they may thereafter only receive overtime pay as otherwise provided in this Article 11.

Section 3 – Authorization for Overtime

Overtime shall be approved in advance by an employee’s supervisor. Exceptions for documented emergencies will be made.

Section 4 – Equal Overtime Opportunities

Subject to operational needs, the County shall attempt to offer overtime opportunities as equally as possible among qualified employees in the department where overtime work is needed.

Section 5 – Employee’s Choice of Overtime Compensation Method

When possible and within budget constraints, the Department Head will honor the non-exempt employee’s request regarding the method of compensation, either compensatory time off, or overtime pay.

Section 6 - Maximum Accumulation

Compensatory time accumulated pursuant to the terms of Article 11, Section 2, and after-hours call leave accumulated pursuant to Article 9, Section 2, Paragraph C, when added together, will not exceed an aggregate total of eighty (80) hours, regardless of source. Once this eighty-hour (80-hour) aggregate limit is reached, all hours worked by an employee pursuant to Article 11 or Article 9, Section 2 shall be paid solely in accordance with Article 11, Section 1 (overtime pay) or Article 9, Section 2, Paragraph B (after-hours call pay), respectively.

ARTICLE 12 – WORKING-OUT-OF-CLASS AND LEAD PAY

Section 1 – Work Out of Classification Pay

The County agrees to compensate an employee assigned in writing to assume the major distinguishing duties of a position in a higher classification, where such an assignment is for ten (10) consecutive work days or more at a compensation rate of 5%, 7.5%, or 10% differential, or at any step of the higher salary range which provides at least a 5% pay increase to be determined by the Department Head based upon the assigned duties. The additional compensation shall be retroactive to the first day of the assignment.

Section 2 – Lead Pay

When an employee is directed and authorized in writing by the Department Head/supervisor to perform lead work functions defined as follows:

A lead worker is an employee delegated limited supervisory and/or coordination of duties by their Department Head. Limited duties include distribution of work assignments, maintaining a balanced workload among a group of employees, reviewing completed work and maintenance of records of work.

The Employee will receive a 2.5%, 5%, 7.5%, or 10% differential, to be determined by the Department Head for all hours worked while performing those duties.

Section 3 – Reclassification

If an employee believes that they are working significantly outside their classification, they may request that their job be reviewed for a reclassification. Requests for reclassification review must be made through the employee’s Department Head. In the event a reclassification is approved by the County Administrator, it will be retroactive to the 1st of the month following the day the reclassification request was presented by the Department Head to Human Resources.

ARTICLE 13 – VACANCIES

Section 1 – Process For Filling Vacancies

When there is a Federation-represented caseload vacancy, creation of a new FTE position, retirement, termination, resignation, layoff or any other triggering event as determined by the County, which leaves a body of offenders unsupervised by a specific adult parole and probation officer in a specific location, and the County decides to fill the vacancy, the County will adhere to the following process:

- A. The County will notify, via email, all Federation employees of the specific opening and location;
- B. The County will invite all employees to provide a letter of interest for the specific opening and/or any opening which may occur as a result of the triggering event;
- C. The County will allow for the receipt of the employees’ letters of interest for seven (7) calendar days after issuance of the notice;
- D. Prior to filling the vacancy, the County will consider the employees’ letters of interest as well as the employees’ skills, abilities, experience and knowledge;
- E. Prior to filling vacancies created as a result of the triggering event in B, the County will notify an employee if their general letter of interest will result in a caseload or location move, at which time, they may withdraw their letter of interest;
- F. Any employee not selected shall be given the reason for their non-selection should they request a reason.

Section 2 – Non-Selection Not Grievable

The basis for the non-selection and the County’s decision itself cannot be grieved.

Section 3 – Applicability of Procedure

The procedure outlined in this Article pertains to each discrete triggering event and the subsequent vacancies

caused by the event. The procedure must be followed for all triggering events.

ARTICLE 14 – PERFORMANCE EVALUATIONS

Section 1 -- Process

Each employee shall receive a performance appraisal prepared by their immediate supervisor or Department Head at least annually. The rater shall discuss the performance appraisal with the employee. The employee shall have the opportunity to provide their comments to be attached to the performance appraisal. The employee shall sign the performance appraisal and that signature shall only indicate that the employee has read the performance appraisal. A copy shall be provided to the employee at the time.

Section 2 – Proposed Changes in the Duties and Responsibilities or Classification of Positions

The County shall notify the Federation in writing of any proposed changes in an existing position classification description, or creation of any new proposed classification description within Deschutes County Adult Parole and Probation affecting adult parole and probation officers and consult with the Federation about such proposals prior to the position’s implementation.

Section 3 – Work Plan

If the County decides to put an employee on a work plan, it shall be put in writing and delineate the job requirements and standards of performance desired. The work plan shall be reviewed between the supervisor and employee at least every thirty (30) days. When the desired performance is achieved the employee will be given written notice by the supervisor that the work plan is no longer in effect.

ARTICLE 15 – PERSONNEL FILE

All of an employee’s personnel files will be available for the employee’s inspection during normal working hours. Should an employee desire a copy of any items in the files, such a copy shall be provided to the employee provided the employee signs a receipt for the copy. The employee has the right to respond in writing to any item placed in their files. No derogatory material may be placed in an employee’s personnel file without the knowledge of the employee. The County will maintain the confidentiality of the files as per State law, and will not release any information in the files to other than those authorized within the County without the consent of the affected employee except where such release is compelled by either an order of a court or by State law.

At the end of eighteen (18) months, and upon an employee’s request, any record of non-economic disciplinary action appearing in the employee’s personnel file shall be removed provided that there was no subsequent disciplinary action taken against the employee during the intervening period of time. At the end of thirty-six (36) months, and upon an employee’s request, any record of disciplinary action appearing in the employee’s personnel file shall be removed provided that there was no subsequent disciplinary action taken against the employee during the intervening period of time. Employees who are the subject of a pending disciplinary investigation may not request to have records of disciplinary action purged pursuant to this Article until the investigation is concluded. Purged disciplinary records will be maintained in a separate, sealed file in accordance with public records retention laws.

ARTICLE 16 – LONGEVITY AND LENGTH OF SERVICE

Section 1 – Determining Length of Service

Length of service is determined by the length of an employee’s continuous full-time or part-time service with Deschutes County Adult Parole and Probation.

Section 2 – Determining Longevity

Longevity is determined by an employee’s continuous full-time or part time service as a County employee.

Section 3 – Determining Seniority

Seniority is determined by an employee’s continuous full-time service as a Deschutes County Adult Parole and Probation Officer.

Section 4 – Pro-ration

For employees working less than half-time, longevity shall be pro-rated by the number of hours for which the employee was hired to work.

Section 5 – Termination of Length of Service/Longevity

Length of service and/or longevity shall terminate in the event of the following:

1. Voluntary termination for greater than three (3) months.
2. Discharge for cause.
3. A lay-off period for greater than eighteen (18) months.
4. Failure to report to work at the termination of an extended leave of absence.
5. Acceptance of employment without permission while on leave of absence.
6. Retirement.

Section 6 – Time Off

Time off during layoff period shall not count toward longevity accrual.

ARTICLE 17 – SENIORITY AND LAYOFF

Section 1 – Determining Seniority

Seniority, as used in this Agreement, is determined by the length of an employee’s continuous full-time service as a Deschutes County Adult Parole and Probation Officer. Part-time employees will accrue seniority on a pro-rata basis. Any employee on leave which is not paid leave, or leave mandated by law, may accrue up to ninety (90) days seniority.

Section 2 – Seniority List

The County will provide the Federation with a copy of the seniority list upon request from the Federation, which will then be posted on the bulletin board provided for in Article 2, Section 4.

Section 3 – Loss of Seniority

An employee shall lose all seniority in the event of voluntary resignation for greater than three (3) months, discharge for cause, is laid off and fails to respond to written notice as provided in Section 6 of this Article, is laid off work for a period of time greater than eighteen (18) months, fails to report to work at the termination of an extended leave of absence, or while on a leave of absence accepts employment without permission, or is retired.

Section 4 – Layoffs

Layoffs shall be in the inverse order of seniority as defined in Section 1. An exception to layoff in the inverse order of seniority may be made and a senior employee may be laid off before a junior employee when the junior employee has substantially superior qualifications to perform the duties of the remaining position.

Section 5 – Recalling Laid Off Employees

Employees shall be recalled in the inverse order of layoff if positions become available in the job classification from which the employee was laid off. An employee’s failure to respond to a recall notice as specified by Section 6 of this Agreement shall constitute a waiver of the employee’s recall rights.

Section 6 – Recall Procedures

For the purpose of recalling employees from layoff, the following procedures will be followed:

1. For layoffs of less than five (5) days, a personal visit by the County representative or a phone call from the County will suffice.
2. For layoffs of five (5) days to one month in duration, employees will have seven (7) days from the date that a certified notice is mailed to report to work unless a longer period is mutually agreed upon in writing.
3. For layoffs longer than one month employees will have fourteen (14) days from the date that certified notice is mailed to report to work unless a longer period is mutually agreed upon in writing.
4. Laid off employees will be responsible for notifying the County of any address change.

ARTICLE 18 – HOLIDAYS

Section 1 – Paid Holidays

The following shall be recognized as paid holidays:

- | | |
|--------------------------|---------------------------|
| New Year’s Day | Labor Day |
| President’s Day | Veteran’s Day |
| Martin Luther King’s Day | Thanksgiving Day |
| Memorial Day | Christmas Day |
| Juneteenth Day | Two (2) Floating Holidays |
| Independence Day | |

Whenever a holiday falls on Sunday, the following Monday shall be considered a holiday. If a holiday falls on Saturday, the preceding Friday shall be a holiday. If an employee works on the actual holiday that falls on a Saturday or Sunday, that day would be the employee’s holiday and they will be paid in accordance with Article 18, Section 4 for that day only. In no event shall an employee receive holiday pay for both the observed and actual holiday. Holidays that occur during paid vacation or sick leave shall not be charged against vacation or sick leave. In order to qualify for holiday pay, employees must work their normal workdays before and after the holiday or be on authorized leave of absence with pay.

Section 2 – Compensation for Holidays

Full-time employees shall be compensated at the straight time rate of eight (8) hours for each recognized holiday. Employees working an alternative schedule of nine or ten (9 or 10) hours have the choice to: (a) revert to a 5/8 schedule during the week in which the holiday occurs, or; (b) use accrued time management leave, comp time, or other accrued paid time off to equal forty (40) hours for the week. The choice of reverting to a 5/8 schedule or using accrued leave shall be approved in advance by the supervisor and/or Department Head.

All part-time employees (half time or more) shall be compensated at the straight time rate on a pro-rated basis (based on an 8-hour day) for each recognized holiday.

Section 3 – Holiday Work as Overtime

Work performed by non-exempt employees on holidays which fall within the regular work schedule shall be considered as overtime work, and the employees who work on such holidays will be granted time off or compensation pay on the basis of time-and-one-half for the hours worked in addition to their regular holiday pay.

Section 4 – Time Off Credit for Holidays

Full and part time employees who have recognized holidays falling on their days off will be credited with straight time off for these holidays, or have the holiday paid as additional hours if mutually agreed on between the employee and Department Head.

Section 5 – Floating Holidays

The floating holidays can be used any time during the calendar year by mutual consent between the employee and the Department Head. New employees shall be employed six (6) months before they are eligible for the floating holiday. Floating holidays cannot be carried over from year to year. Employees will not receive pay at the time of termination of employment for any unused floating holiday.

ARTICLE 19 – TIME MANAGEMENT

The specific application of this section will be governed by the Time Management Program. (Appendix A of this Agreement). Time Management Leave offered to full and part-time regular employees as articulated in this article and Appendix A (“Time Management – Federation”) represent substantially equivalent paid sick time benefits in compliance with the Oregon Paid Sick Time Law (OPST) as defined by ORS 653.601 through 653.661. Rules for employee accrual and use of paid time under OPST will be consistent with applicable current and future County policies.

Section 1 – Eligibility

Regular full-time and regular part-time employees can use their accrued leave as soon as it is accrued after receiving authorization from their Department Head. Leave accrual for regular part-time personnel is computed on the basis of the percentage of hours worked each month.

Section 2 – Leave Accrual

Leave accrues while an employee is on leave with pay, but not while on leave without pay. No employee can be granted leave without pay until after leave that has accrued to their credit is exhausted.

Section 3 – Employee Transfers

When an employee is transferred or appointed to another department, all of their leave will be assumed by the new department.

Section 4 – Payment Upon Separation

An employee who terminates their employment is entitled to cash compensation in lieu of leave. In case of death, compensation for accrued leave will be paid to the employee’s estate.

Section 5 – Leave Scheduling

Department Heads shall establish staffing schedules to provide for requested leave for employees annually, and employees are to take leave at the time scheduled. A record of time taken shall be kept on file in the department. Such schedules may be amended to meet work emergencies. In establishing regular schedules, Department Heads shall give due consideration to the desires of individual employees while weighing the work requirements of the department. Whenever possible, longevity shall prevail where there is a conflict between two or more employees wanting the same time off for vacation purposes.

Section 6 – Mandatory Leave

At least once each year, all regular employees must be allowed to take five (5) consecutive days off, if accrued.

ARTICLE 20 – RELIEF COVERAGE

Section 1 – Arranging for Coverage

Employees shall be responsible for arranging relief coverage for vacation leave. If the employee feels uncomfortable in finding such coverage, or is unable to secure coverage, the employee shall notify their supervisor.

Section 2 – Extended Absences

In the event an employee will be absent in excess of one month, the County shall provide the Federation with its plan for caseload coverage in their absence.

ARTICLE 21 – SICK LEAVE

Section 1 – Notification

When an employee is physically unable to perform duties because of illness or injury, the employee shall notify their immediate supervisor as soon as possible prior to the beginning of their shift. If an employee takes more than three consecutive scheduled workdays of sick time, the employee’s immediate supervisor or other superior may require the employee to provide verification from an attending physician of the need for such leave.. Should the employee be required to obtain such verification after returning to work from a period of illness or injury, the employee shall schedule an appointment for that purpose as promptly as possible and will make reasonable efforts in good faith to schedule such an appointment outside of their typical work hours. The County shall be responsible for reasonable expenses associated with obtaining physician verification, including lost wages that are not otherwise covered under the employee’s health benefits plan.

Section 2 – Usage

Sick leave shall be used only for the following:

1. Medical or dental care.
2. Exposure to contagious disease under circumstances by which the health of fellow employees or the public would be endangered.
3. Leave for family member illness in accordance with state and federal Family Medical Leave laws.
4. Leave for childbearing is treated as a medical condition and is covered by sick leave with pay.
5. Maternity and paternity leave to be granted in accordance with state and federal law.

Section 3 – Employee Transfer See Article 19, Section 3.

Section 4 – Leave Without Pay

Upon written application from an Employee, leave without pay may be granted by the Department Head subject to final authorization by the County Administrator for a reasonable period of disability after earned leave has been exhausted. Such leave without pay shall not exceed six (6) months unless otherwise required by state or federal law.

Section 5 – Bereavement Leave

Employees will be granted up to two (3) full-day shifts of bereavement leave at their base rate of pay in the event of the death of an immediate family member of the employee if the deceased person resided within the State of Oregon. An employee shall be granted up to three (5) full-day shifts of bereavement leave at their base rate of pay in the event of death in the immediate family of the employee if the deceased person resided outside of the State of Oregon. The above leave shall be credited against OFLA approved protected bereavement leave, which allows for up to two (2) weeks of protected leave to attend the funeral of an immediate family member and make arrangements necessitated by the death of an immediate family member as defined in the statute. In the event the death of an immediate family member causes the employee to need additional time away from work, the employee may use accrued time management leave.

For the purposes of this Section 5, “bereavement leave” is defined as leave utilized by employees in order to attend the funeral of an immediate family member and make arrangements necessitated by the death of an immediate family member, and "immediate family" is defined as spouse, same-sex domestic partner (as defined by Oregon law), parent, child, brother, sister, mother-in-law, father-in-law, grandparent, grandchild, and any member of the employee's immediate household.

Section 6

The County will allow sick bank rollover in accordance with the rules established by the State of Oregon Public Retirement System (PERS).

ARTICLE 22 – LEAVES OF ABSENCE

Section 1 – Jury Service

Full-time and part-time employees shall be granted leave with full pay, computed on the basis of their normal number of working hours per day, at the employee’s regular straight-time hourly rate, any time they are required by summons or subpoenas to report for jury duty or jury service. An eligible employee shall endorse any fee, excluding mileage, to the County as a condition to receipt of jury pay.

Section 2 – Accrual of Leave Pay

Leave credit shall continue to accrue to those employees who are on leave with pay. For the accumulation of leave credit and the granting of leave, computation shall be made in hourly or partial hour units. Deductions shall not be made from leave accumulations for regularly assigned days off, or County holidays occurring during a period of leave with pay if the employee returns to work on the first day thereafter or has been granted additional leave.

Section 3 – Family Medical/Parental Leave

Employees shall be entitled to family medical and parental leave in accordance with federal and Oregon law.

Section 4 – Military Leave

An employee who has served with the County for at least six months and who is a member of the National Guard or the reserve of any branch of the U.S. Military is entitled to military leave not to exceed fifteen (15) working days per County fiscal year. Such leave will be granted without loss of time, pay or other leave and without impairment of merit rating or other rights or benefits. Military leave with pay may be granted to an employee with bona fide military orders and shall not be paid if the employee does not return to their position immediately following the end of the approved duty period. Department Heads are required to report employees on military leave on the payroll time and leave worksheets. Copies of military orders shall be placed in the employee’s personnel file. Military leave without pay will be granted to employees for performance of military service, pursuant to bona fide military orders, in accordance with the provisions of Oregon State law and the provisions of the Uniformed Service Employment and Reemployment Rights Act of 1994, as amended. Employees may, but are not required to, use accrued and unused time management leave for any period of military service which is unpaid by the County.

Section 5 -- Educational Leave

After completing one (1) year of continuous service, a regular full-time employee, upon written request may be granted a leave of absence without pay by the County Administrator (with departmental approval) for the purpose of upgrading their professional ability through enrollment in educational courses at an accredited school. The period of such leave of absence may not exceed one (1) year, but may be renewed or extended upon request of the employee and approved by the County Administrator. After the expiration of such educational leave of absence, the employee shall normally be returned to their same job classification and same salary step.

Section 6 – Leave to Attend Conferences/Trainings

Employees may be granted time off with pay for educational purposes to attend conferences, seminars, briefing sessions, training programs and other programs of a similar nature required or approved by the employee’s Department Head.

Section 7 – Witness Leave

Leave with pay shall be granted for actual work time missed for an appearance on the County’s behalf, connected with their official duties before a court, legislative committee, judicial or quasi-judicial body as a witness if required by the County. Employees shall return to the County any compensation, excluding mileage, received as a result of such duty.

Section 8 – Special Leave

Special leave is a provision created to accommodate natural disasters and life threatening situations. If there is a building emergency, a bomb threat or a natural disaster, special leave may be granted to County employees by County Administrator decree. Such leave does not affect an employee’s earned leave.

Section 9 – Authority to Grant Leave

An employee’s Department Head may grant a leave of absence without pay not to exceed thirty (30) calendar days. Leave of absence without pay for periods in excess of thirty (30) calendar days must be approved by the County Administrator.

Section 10 – Exhaustion of Accrued Leave Required

Leaves of absences without pay may not be granted until all accrued leave has been exhausted.

ARTICLE 23 – HEALTH AND WELFARE

Section 1 – Health Insurance

Health Insurance is to include the following:

- Medical Insurance
- Vision Insurance
- Dental Insurance
- Prescription Drug Insurance
- Orthodontic Insurance

Section 2 – Other Insurance

Other insurance is to include the following:

- Employee life insurance
- Dependent life insurance
- Long-term disability insurance
- Unemployment insurance
- Retirement health insurance

Section 3 – IRS 125 Plan

In addition to health insurance and other insurance, the County will make available to Federation represented employees a qualified IRS 125 plan.

Section 4 – Extension of Insurance Benefits to Retired Employees

The County will provide insurance benefits at the same level and under the same conditions as a regular full-time employee, to retired County employees collecting PERS who have worked for Deschutes County for thirty continuous years or more on a full-time basis. This benefit will be provided until the employee reaches the age of sixty-five (65) or until eligible for Medicare.

Employees who retire from the County with more than fifteen (15) years and less than thirty (30) years of full-time service are eligible to receive a County contribution towards their monthly insurance premiums until age sixty-five (65) or until eligible for Medicare, in accordance with a schedule recommended by the Deschutes County Employee Benefits Advisory Committee (EBAC) and approved by the Board of County Commissioners. The schedule of retiree premiums and County contributions shall be posted on the Human Resources Department Intranet site.

Section 5 – Eligibility for Benefits

Full-time and part-time (half-time or more) employees will be eligible for benefits in accordance with this Agreement. Regular, part-time employees (half-time or more) will be required to pay pro-rated premium contributions based on their percentage of hours worked if they elect the Standard plan. If a part-time employee elects the High-Deductible plan, the premium contribution will be the same as a full-time employee on the Standard plan.

Section 6 – Worker’s Compensation Subsidy

If an employee suffers an injury that is compensable by Worker’s Compensation, the County shall make up the difference between the employee’s regular pay and the amount of the employee’s worker’s compensation benefits, subject to the following conditions:

1. The injury must be the direct result of an offender’s attempt to flee, the employee’s involvement in an actual or threatened use of force event, or the employee’s active participation in a use-of-force training exercise.
2. As result of the injury, the employee must be unable to return to work to perform any available task, including any light duty assignment.
3. County’s obligations under this section do not commence until three days after the first day the employee misses work because of the injury.
4. County’s obligations under this section terminate after the ninetieth (90th) day of work missed.
5. For purposes of calculating any period herein, a partially missed day of work shall constitute a missed work day.
6. County’s obligations under this section shall be conditioned upon County’s receipt of documentation from the employee’s treating physician setting forth (a) the specific physical limitation(s) resulting from the injury, and (b) the anticipated duration of any such restriction(s).
7. County reserves the right to request additional documentation from the employer’s treating physician from time to time, as reasonably necessary to confirm the employee’s physical restrictions and anticipated duration of such restrictions.

Section 7 -- Employee Benefits Advisory Committee (EBAC)

EBAC shall include at least one Federation representative. EBAC shall meet as outlined in Deschutes County Administrative Policy No. GA-6 (see Appendix B) for the purpose of reviewing program performance and advising the Board of Commissioners on desired changes in insurance benefits. EBAC shall review any proposed changes to the County’s Insurance Benefits Plan before a change is implemented.

Health benefits and other insurance will be provided to Federation represented employees under the same conditions and restrictions as provided to all other County employees. Coverage may be adjusted or modified by the County upon the recommendation of EBAC.

Section 8 – Cost of Health Benefits A health benefits plan document shall be adopted annually by the County following a review by the Employee Benefits Advisory Committee. The per FTE cost of providing the health benefits called for in this plan shall be determined by an actuarial valuation for both a composite rate and a tiered system. The County shall annually, as part of the budget adoption process, establish an employee premium contribution. Monthly employee health insurance premium contributions shall be no greater than nine point five percent (9.5%) of the per FTE cost as calculated by the composite rate. The County reserves the right to establish a tiered system for premium contributions under which different contribution rates may be established for a single employee, employee and spouse/same sex domestic partner, employee and child(ren), or full family benefits. If the County establishes a tiered system for premium contributions, the monthly employee health insurance premium contributions shall be no greater than nine point five percent (9.5%) of the respective tier cost for the relevant enrollment tier.

The employee health insurance monthly premium contribution shall not exceed \$170.00 per month during the first year of this Agreement. Effective July 1, 2019 and for all subsequent years of this Agreement, the employee health insurance monthly premium contribution shall not exceed \$190.00 per month.

ARTICLE 24 – RETIREMENT

The County shall be a participant in the Public Employees Retirement System (PERS)/Oregon Public Service

Retirement Plan (OPSRP) or its equivalent.

After the employee has completed their six full months’ employment period and holds a position requiring that the employee work in excess of six hundred (600) hours per year, the County shall make contributions to PERS/OPSRP in accordance with levels established for the employee’s position. The employees will contribute to PERS/OPSRP in accordance with the state law.

In the event that state law provides for other alternatives, members of the Federation will be afforded the same options available to non-represented employees.

The County will take appropriate action to have the employee contribution defined as pre-tax in accordance with tax code regulations.

The County will continue to provide a Deferred Compensation plan in compliance with IRC 457. The plan will be available to all Federation bargaining unit employees.

The County shall continue to provide Police and Firefighter’s PERS for all eligible employees.

ARTICLE 25 – TRAVEL EXPENSES

Reasonable and necessary travel, meal and miscellaneous expense reimbursement will be approved for payment when an employee incurs expenses while acting within the scope of employment with the County in accordance with Deschutes County General Policy No. F-1 and F-2 or subsequently adopted travel and expense policies.

ARTICLE 26 -SAFETY

Section 1 – Cooperation of Parties

The County and the Federation agree to cooperate in the continuing objective to eliminate accidents and health hazards.

Section 2 – Employee Reporting of Safety Concerns

All employees are encouraged and expected to inform their supervisor of safety concerns in the workplace including health and safety issues. It is clearly understood that the County shall take no reprisals against employees for reporting issues to their supervisor or the Deschutes County Risk Management Department.

Section 3 – County Risk Management Program

The County will continue a comprehensive risk management program including approved OSHA safety committees and will review issues reported in section 2 above. The Federation shall be entitled to have a representative on each committee. Minutes from safety committee meetings shall be posted in affected areas.

Section 4 – County-Provided Equipment

In order for employees to safely perform their jobs, the County agrees to, at a minimum, provide the following equipment:

- Ballistic and tactical vest
- Side arm with holster, extra magazine holder and belt
- Handcuffs
- Pepper spray
- Baton
- Gun locker
- Two-way radios
- Cell phone
- Duty ammunition

Upon retirement in good standing (with a minimum of ten (10) years of continuous full-time County service), an employee shall have the right to purchase their sidearm at a cost that is agreed upon by the employee and the County.

Section 5 – Annual Equipment Allowance

Employees shall receive an annual allowance of \$150 to purchase County-approved clothing and/or equipment in addition to those items specified in Section 4 above. This allowance is intended only for clothing and/or equipment to be used by employees in the performance of their official duties. The allowance will be issued to employees at the beginning of each fiscal year. New employees hired after the allowance is issued to existing employees will not be entitled to receive the allowance until it is issued at the beginning of following fiscal year.

Section 6 – Tactical Vests

Tactical vests may be worn outside of the employee’s uniform or assigned clothing and may be visible to the public during the performance of their official duties.

Section 7 – Side Arms

Employees may carry their side arms unconcealed and visible to the public during the performance of their official duties.

ARTICLE 27 - PROFESSIONAL DEVELOPMENT

Section 1 -- Training

The County shall pay for sufficient training so that the employees can maintain their required DPSST certification.

Section 2 – Tuition Reimbursement

Employees are encouraged to participate in job related education and shall be eligible for tuition reimbursement pursuant to current Deschutes County Administrative Policy.

ARTICLE 28 – DEPARTMENTAL RULES, POLICIES AND PROCEDURES

The department shall provide the Federation with a copy of any new or revised written policy or procedure prior to implementation. If the County adopts an emergency change to a policy that impacts a mandatory subject of bargaining, the Federation shall be notified as soon as possible. The Federation may pursue its right to bargain any proposed policy which impacts a mandatory subject of bargaining not covered in the collective bargaining

agreement.

ARTICLE 29 – RIGHT TO CONTRACT

The County expressly reserves the right to contract any and all County work and services to non-County employees. The County agrees to fulfill its obligations under the Public Employee Collective Bargaining Act (PECBA) before contracting out any work. The County agrees that it will not contract out services with the purpose to end the Federation representation status.

ARTICLE 30 - SEPARABILITY

In the event that any provision of this Agreement shall at any time be declared invalid by any court of competent jurisdiction or through government regulations or decree, such decision shall not invalidate the entire Agreement, it being the express intention of the parties hereto that all other provisions not declared invalid shall remain in full force and effect.

ARTICLE 31 - SCOPE OF AGREEMENT

Section 1 – Entire Agreement

The Agreement expressed herein in writing constitutes the entire Agreement between the parties. This Agreement shall supersede all previous oral and written Agreements between the County and the employees. It is agreed that the relations between the parties shall be governed by the terms of this Agreement only, no prior agreements, understandings, past practices, existing conditions, prior benefits, oral or written, shall be controlling or in any way affect the relations between the parties, or the wages, hours and working conditions unless and until such agreement, understandings, past practices, existing conditions an prior agreements shall be reduced to writing and duly executed by both parties.

Section 2 – Unilateral Changes

In the event the County intends to make a unilateral change in a mandatory subject of bargaining as determined by the Employment Relations Board, the County agrees to notify the Federation and subsequently fulfill its obligation under PECBA prior to making said change.

ARTICLE 32 - TERM OF THE AGREEMENT

This Agreement shall be effective through June 30, 2026.

ARTICLE 33 - WAGES

Section 1 - Wages

The wage scale for members of the bargaining unit shall be increased by two (2) percent. The wage provisions of Article 33 shall be retroactive to the beginning of the July 2023 pay period.

Section 2 – Cost of Living Allowances

For the contract period of July 1, 2023 through June 30, 2024 the wage schedule shall be amended to reflect a COLA equal to the “average 12-month CPI percentage” from the twelve months of the Consumer Price Index for All Urban Consumers (CPI-U), West Region, Size Class B/C cities using each month’s CPI 12-month percentage change from February 2022 to January 2023. The CPI% used for each month is the “12-month percent change” - meaning the month is compared (for the CPI index) to the same month from the previous year. The COLA shall have a minimum increase of not less than one percent (1.0%) and a maximum increase of not more than four percent (4.0%). Appendix C shows the calculation methodology for an example period.

For the contract period of July 1, 2024 through June 30, 2025 the wage schedule shall be amended to reflect a COLA equal to the “average 12-month CPI percentage” from the twelve months of the CPI-U, West Region, Size Class B/C cities using each month’s CPI 12-month percentage change from February 2023 to January 2024. The CPI% used for each month is the “12-month percent change” - meaning the month is compared (for the CPI index) to the same month from the previous year. The COLA shall have a minimum increase of not less than one percent (1.0%) and a maximum increase of not more than four percent (4.0%). Appendix C shows the calculation methodology for an example period.

For the contract period of July 1, 2025 through June 30, 2026 the wage schedule shall be amended to reflect a COLA equal to the “average 12-month CPI percentage” from the twelve months of the CPI-U, West Region, Size Class B/C cities using each month’s CPI 12-month percentage change from February 2024 to January 2025. The CPI% used for each month is the “12-month percent change” - meaning the month is compared (for the CPI index) to the same month from the previous year. The COLA shall have a minimum increase of not less than one percent (1.0%) and a maximum increase of not more than four percent (4.0%). Appendix C shows the calculation methodology for an example period.

FOR THE COUNTY

FOR THE ASSOCIATION

DATED this ____ day of _____, 20__ for
the Deschutes County Board of Commissioners.

RACHEL STRICKLAND, Interim President

ANTHONY DEBONE, Chair

CATHERINE LOWERY, Secretary

PATTI ADAIR, Vice Chair

PAULA FATA, Shop Steward

PHIL CHANG, Commissioner

BRANDON WYLLIE, Shop Steward

NICK LELACK, Deschutes County Administrator

DEEVY HOLCOMB, Community Justice Director

ATTEST:

Recording Secretary

APPENDIX “A”

SUBJECT: TIME MANAGEMENT – Federation

I. PURPOSE

It is the purpose of the Deschutes County Time Management Program to provide employees with a leave-with-pay program that is easily understood, responsive to individual needs, and easy to administer. This program is also intended to eliminate any abuse of sick leave while rewarding employees for faithful attendance and productivity.

II. SCOPE

This program covers all Federation represented employees. Those employees covered by the provisions of this program shall not be eligible for separate leave benefits covering the following:

- Sick leave (non-occupational illness or injury leave)
- Vacation leave
- Paid sick time as defined by the Oregon Paid Sick Time Law (“OPST”) (Time Management Leave offered to full and part-time regular employees as articulated in Article 18 Time Management and this appendix represent substantially equivalent paid sick time benefits in compliance with OPST as defined by ORS 653.601 through 653.661. Rules for employee accrual and use of paid time under OPST will be consistent with applicable current and future County policies.

Nonexempt employees who are eligible for 1.5 compensatory time or overtime will still receive such under this program in accordance with the Fair Labor Standards Act. Exempt employees are eligible for flex time under the same terms and conditions applied to non-represented employees in accordance with County policy HR-7, subject to Supervisor or Department Head approval.

III. LEAVE-WITH-PAY PROVISIONS

- A. All employees transferring into the Time Management Program will be credited with their existing vacation time balance.

Non-exempt employees will earn leave, based on full-time service, in accordance with the following schedule:

Months of Service	Hours of Leave	Earned Leave Accumulation
0 – 48 months	168 hours	14 hrs/month
49 – 108 months	192 hours	16 hrs/month
109 – 168 months	216 hours	18 hrs/month
169 – 228 months	240 hours	20 hrs/month

229 – 288 months	264 hours	22 hrs/month
289+ months	288 hours	24 hrs/month

- B. For regular part-time employees, all reference to time accrual or usage in the Time Management Program shall be prorated according to the percentage of full-time equivalency authorized for the position.
- C. During the course of the year, absence from work for any reason other than on-the-job illness or injury covered by Workers’ Compensation or paid holiday shall be charged against “earned leave” except as provided in Section IV.B. of this policy. Earned leave shall accrue whenever an employee is on paid status with the County. Employees do not accrue earned leave when on leave without pay.
- D. An employee may accumulate earned leave, including the previous vacation balance, if any, to a maximum of twice the annual time management accumulation. On May 1 of each year, any employee credited with time management leave greater than twice the annual accumulation shall forfeit the amount above the maximum accumulation. An employee who has acquired the maximum allowable accumulation of time management leave may continue to accumulate earned leave for the balance of the year in which the maximum accrual was reached, provided that the employee take sufficient leave to reduce the accumulation to the maximum allowable prior to the following April 30 or forfeit the excess.
- E. Upon an employee’s termination, all of the employee’s earned time management leave (including vacation rollover, if any) shall be paid to the employee at the current rate of pay.
- F. In the event of an employee’s death, all earned time management leave shall be paid to the employee’s designated beneficiary at the current rate of pay.
- G. During the first five years of employment, employees shall be required to take a minimum of one (1) week of earned time management leave per year. Thereafter, employees shall be required to take a minimum of two (2) weeks of earned time management leave per year.
- H. Employees shall, whenever possible, request time off in advance. Use of such time management leave must be scheduled between the employee and their supervisor or designee. When an employee is sick or an emergency requires their presence elsewhere, the employee must notify the supervisor as soon as possible.
- I. After one (1) year of continuous employment, employees may request to convert up to forty (40) hours of accrued time management leave to cash on an annual basis. To be eligible, an employee must maintain a minimum balance of one (1) years’ time management accrual and must have used the minimum time management leave specified in Section G. A request for conversion of annual time management leave to cash must be approved by the Department Head subject to budget restrictions and is allowed once each fiscal year. The request must be made prior to April 15th and will be included in the employee’s April paycheck. The Human Resources Department will distribute request forms no later than the first week of April.

- J. During the last three (3) years prior to retirement, employees may sell up to eighty (80) hours each calendar year of their time management leave accrual at the current rate of pay. Extensions of an employee’s scheduled retirement date notwithstanding, no employee will be entitled to this option in more than three (3) years. This paragraph is not subject to any of the limitations expressed in Section I of this policy.

IV. SICK LEAVE ACCRUALS

Sick leave accruals will be treated in the following manner:

- A. No compensation for accrued sick leave shall be provided for any employee for any reason, except that one-half of the employee’s accrued sick leave bank shall be paid to the employee or their beneficiary upon death or permanent total disability.

- B. Existing sick leave (banked sick leave) may be used by employees only after the employee has been absent from work for at least the equivalent of three (3) entire work days due to the same illness or injury for qualifying sick leave utilization per the Personnel Rules. The equivalent of the first three (3) days will be either deducted from accrued and unused time management or, if the employee does not have sufficient time management leave, will be deducted from accrued compensatory time or any other paid leave time, or be identified as leave without pay.

APPENDIX “B”

Deschutes County Administrative Policy No. GA-6

Effective Date: April 28, 2008

**DUTIES AND RESPONSIBILITIES OF EMPLOYEE
BENEFITS ADVISORY POLICY**

STATEMENT OF POLICY

It is the policy of the Board of County Commissioners to provide a quality health and welfare insurance benefit program on a consistent basis to all regular county employees and to involve employees in making recommendations regarding such a benefit program by appointing an Employee Benefits Advisory Committee (EBAC).

APPLICABILITY

This policy applies to all regular county employees.

POLICY AND PROCEDURES

The primary responsibility of the EBAC will be to meet with Human Resources staff, the agent of record, and insurance representatives, in order to review/evaluate all possible options with regard to employee benefits. The EBAC will make recommendations to the Board of County Commissioners regarding Health and Welfare benefits.

The EBAC will also be a source of advice for the Human Resources Department concerning benefit administration.

EBAC MEMBERSHIP

The EBAC will be comprised of the following voting membership:

- 4 Representatives from AFSCME
- 2 Representatives from DCSA
- 1 Representative from 701
- 1 Representative from 9-1-1
- 1 Representative from FOPPO
- 1 Human Resources Director
- 1 Risk Manager
- 5 Department Heads, Managers, and/or Elected Officials
- 1 Representative from COIC (Central Oregon Intergovernmental Council)
- 1 Retiree who is a plan participant

The County Administrator will be a non-voting member of the committee. Additional non-voting members may be appointed at the discretion of the committee.

A Chair and Vice Chair will be selected annually by the committee, with one position to be filled by a manager or elected official, and the other will be a non-management representative.

Each represented group will be responsible for filling their respective vacant positions on the committee.

When a vacancy in the non-represented membership of the committee occurs, a call for potential replacements will be issued to all County Department Directors. Interested parties will submit to EBAC a brief summary describing why they wish to fill the position. EBAC will then select a replacement from the pool of eligible candidates and forward the selection to the Board of County Commissioners for ratification. The Human Resources Department will provide staff support to the committee.

MINIMUM MEETING REQUIREMENTS

At a minimum, the EBAC will meet at least eight (8) times per year. Additional meetings may be scheduled at the discretion of the committee. Subcommittees may also be established at the discretion of the committee.

The EBAC may request the removal or replacement of a voting member who is not able to attend two (2) or more consecutive EBAC meetings, or four (4) or more meetings in any twelve-month period.

No vote shall be taken on any recommendation to the Board of Commissioners in an EBAC meeting without a quorum present. A quorum is defined as a majority of the voting members, not including vacant positions.

The meetings will be open to all interested employees. Minutes of each meeting will be kept and in turn distributed to each committee member, the Board of Commissioners, and Department Officials, and will be posted on department bulletin boards and on the County's intranet site. All employees with an e-mail address will receive notice of planned meetings and an electronic copy of the minutes of each meeting.

APPENDIX “C”

SUBJECT: CPI Methodology - All Urban Consumers (CPI-U), West Region, Size Class B/C cities.

To illustrate the change in CPI methodology starting in FY 23-24, the following table shows the application of the rolling 12-month average look back for 2016-17, 2017-18, 2018-19, 2019-20, and 2020-21 data. The 12-months rolling average starts with January and over the prior 11 months. The CPI% used for each month is the “12-month percent change” - meaning the month is compared (for the CPI index) to the same month from the previous year.

Note: Consistent with prior years, the level of precision of percentage change will be rounded to the tenth of a percentage (i.e. 1.6% not 1.64 % or 1.7% not 1.65%)

FY Data (Budget year)	CPI-12 month rolling average
2016-17 (17/18)	1.0%
2017-18 (18/19)	2.4%
2018-19 (19/20)	2.9%
2019-20 (20/21)	2.6%
2020-21 (21/22)	1.7%

The following calculation illustrates the rolling average calculation for FY 20-21 data (21/22 Budget year) as of January 2021 (the cutoff date used for budgeting). CPI% for 12 months is determined by change in CPI index over 12 months (i.e., Feb 2020 index compared to February 2019 index)

Year	Month	CPI % “12-month percent change”
2020	<u>Feb</u>	2.9%
2020	<u>March</u>	2.5%
2020	<u>April</u>	1.5%
2020	<u>May</u>	0.5%
2020	<u>June</u>	0.8%
2020	<u>July</u>	1.5%
2020	<u>Aug</u>	1.8%
2020	<u>Sept</u>	2.0%
2020	<u>Oct</u>	1.6%
2020	<u>Nov</u>	1.6%
2020	<u>Dec</u>	1.5%
2021	<u>Jan</u>	1.6%
	<u>Total of CPI% over 12 months</u>	19.8%
	<u>Average 12 month CPI percentage (i.e. rolling average)</u>	
	<u>Total divided by 12</u>	1.7%



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 5, 2023

SUBJECT: Notice of Intent to Award a contract for the paving of Butler Market Rd: Hamhook Rd to Powell Butte Hwy Project

RECOMMENDED MOTION:

Move approval of Chair signature of Document No. 2023-413.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County Road Department prepared bid solicitation documents for the Paving of Butler Market Rd: Hamhook Rd to Powell Butte Hwy project. The project scope of work includes asphalt pavement rehabilitation via overlay/inlay on Butler Market Rd and Dickey Rd. The project was advertised in the Daily Journal of Commerce and The Bulletin on June 7, 2023. The Department opened bids at 2:00 P.M. on June 21, 2023.

Two bids were received for this project. The bid results are as follows:

<u>BIDDER</u>	<u>TOTAL BID AMOUNT</u>
HIGH DESERT AGGREGATE AND PAVING, INC.	\$ 1,494,879.00
KNIFE RIVER CORPORATION - NORTHWEST	\$ 1,605,779.00
ENGINEER'S ESTIMATE	\$ 1,559,545.73

This action issues a Notice of Intent to Award the contract to the apparent low bidder, HIGH DESERT AGGREGATE & PAVING, INC., and allows seven days for concerned parties to protest the award. If there is no protest within the seven-day period, the contract will be awarded to the apparent low bidder. The bid tabulation, including the Engineer's estimate, is attached.

BUDGET IMPACTS:

A portion of the project cost is budgeted in the Road Capital Improvement Plan (CIP)

budget for Fiscal Year 2023. The remaining project cost will be included in the proposed Road CIP budget for Fiscal Year 2023.

ATTENDANCE:

Cody Smith, County Engineer/Assistant Road Department Director



BOARD OF COUNTY COMMISSIONERS

July 5, 2023

Posted on the Deschutes County, Oregon Bids and RFPs website at <http://www.deschutescounty.gov/rfps> prior to 5:00 PM on the date of this Notice.

Subject: **Notice of Intent to Award Contract**
 Contract for Paving of Butler Market Rd: Hamhook Rd to Powell Butte Hwy

To Whom It May Concern:

On July 5, 2023, the Board of County Commissioners of Deschutes County, Oregon considered proposals for the above-referenced project. The Board of County Commissioners determined that the successful bidder for the project was High Desert Aggregate & Paving, Inc., with a bid of One Million Four Hundred Ninety Four Thousand Eight Hundred Seventy Nine Dollars (\$1,494,879.00).

This Notice of Intent to Award Contract is issued pursuant to Oregon Revised Statute (ORS) 279C.375. Any entity which believes that they are adversely affected or aggrieved by the intended award of contract set forth in this Notice may submit a written protest within seven (7) calendar days after the issuance of this Notice of Intent to Award Contract to the Board of County Commissioners of Deschutes County, Oregon, at Deschutes Services Building, 1300 NW Wall Street, Bend, Oregon 97703. **The seven (7) calendar day protest period will end at 5:00 PM on July 12, 2023.**

Any protest must be in writing and specify any grounds upon which the protest is based. Please refer to Oregon Administrative Rules (OAR) 137-047-0740. If a protest is filed within the protest period, a hearing will be held at a regularly-scheduled business meeting of the Board of County Commissioners of Deschutes County Oregon, acting as the Contract Review Board, in the Deschutes Services Building, 1300 NW Wall Street, Bend, Oregon 97703 within two (2) weeks of the end of the protest period.

If no protest is filed within the protest period, this Notice of Intent to Award Contract becomes an Award of Contract without further action by the County unless the Board of County Commissioners, for good cause, rescinds this Notice before the expiration of the protest period.

If you have any questions regarding this Notice of Intent to Award Contract or the procedures under which the County is proceeding, please contact Deschutes County Legal Counsel: telephone (541) 388-6625; FAX (541) 383-0496; or e-mail to david.doyle@deschutescounty.gov.

Be advised that if no protest is received within the stated time period, the County is authorized to process the contract administratively.

Sincerely,

Anthony DeBone, Chair

PAVING OF BUTLER MARKET RD:
HAMEHOOK RD TO POWELL BUTTE HWY
DESCHUTES COUNTY, OREGON
PROJECT # W66138

BID RESULTS

BID OPENING : 2:00 PM 6/21/2023

				ENGINEER'S ESTIMATE		HIGH DESERT AGGREGATE & PAVING, INC. PO BOX 1929 REDMOND, OR 97756		KNIFE RIVER CORPORATION - NORTHWEST 64500 O.B. RILEY RD BEND, OR 97703	
ITEM	UNIT	QTY	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	
1	Mobilization	LS	1	\$112,842.83	\$112,842.83	\$145,000.00	\$145,000.00	\$236,700.50	\$236,700.50
2	Temporary Protection And Direction Of Traffic	LS	1	\$19,974.20	\$19,974.20	\$59,000.00	\$59,000.00	\$120,000.00	\$120,000.00
3	Temporary Signs	SQFT	560	\$28.52	\$15,971.20	\$32.00	\$17,920.00	\$32.00	\$17,920.00
4	Portable Changeable Message Signs	EACH	4	\$3,500.00	\$14,000.00	\$2,500.00	\$10,000.00	\$2,100.00	\$8,400.00
5	Flaggers	HOUR	788	\$75.00	\$59,100.00	\$71.00	\$55,948.00	\$69.00	\$54,372.00
6	Pilot Cars	HOUR	240	\$88.00	\$21,120.00	\$91.00	\$21,840.00	\$89.00	\$21,360.00
7	Adjusting Inlets	EACH	1	\$1,000.00	\$1,000.00	\$1,500.00	\$1,500.00	\$1,025.00	\$1,025.00
8	Adjusting Boxes	EACH	5	\$500.00	\$2,500.00	\$500.00	\$2,500.00	\$1,450.00	\$7,250.00
9	Cold Plane Pavement Removal, 3 Inch Depth	SQYD	35,400	\$3.50	\$123,900.00	\$3.00	\$106,200.00	\$3.00	\$106,200.00
10	Cold Plane Pavement Removal, 0-3 Inch Depth	SQYD	1,400	\$7.00	\$9,800.00	\$8.00	\$11,200.00	\$7.80	\$10,920.00
11	Aggregate Shoulders	TON	1,050	\$50.00	\$52,500.00	\$38.00	\$39,900.00	\$38.00	\$39,900.00
12	Level 3, 1/2 Inch ACP Mixture	TON	6,000	\$108.00	\$648,000.00	\$94.50	\$567,000.00	\$83.00	\$498,000.00
13	Level 3, 3/8 Inch ACP Mixture	TON	2,500	\$108.00	\$270,000.00	\$99.00	\$247,500.00	\$115.00	\$287,500.00
14	Asphalt Concrete Shoulder Repair	SQYD	2,033	\$40.00	\$81,320.00	\$50.00	\$101,650.00	\$48.00	\$97,584.00
15	Extra for Asphalt Approaches	EACH	4	\$1,100.00	\$4,400.00	\$750.00	\$3,000.00	\$990.00	\$3,960.00
16	Bi-Directional Yellow Type IAR Markers, Recessed	EACH	250	\$22.00	\$5,500.00	\$23.50	\$5,875.00	\$23.50	\$5,875.00
17	Thermoplastic, Sprayed, Surface, Non-Profiled	FOOT	64,890	\$1.75	\$113,557.50	\$1.40	\$90,846.00	\$1.25	\$81,112.50
18	Pavement Legend, Type B-HS: "STOP"	EACH	4	\$465.00	\$1,860.00	\$1,000.00	\$4,000.00	\$950.00	\$3,800.00
19	Pavement Legend, Type B-HS: "STOP AHEAD"	EACH	2	\$1,100.00	\$2,200.00	\$2,000.00	\$4,000.00	\$1,950.00	\$3,900.00
				TOTAL =	\$1,559,545.73	TOTAL =	\$1,494,879.00	TOTAL =	\$1,605,779.00



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 5, 2023

SUBJECT: Approval of Document No. 2023-588, an Intergovernmental Agreement with the Oregon Department of Transportation and Central Oregon Irrigation District for the US97: Lower Bridge Way-NW 10th St (Terrebonne) Project

RECOMMENDED MOTION:

Move approval of Document No. 2023-588.

BACKGROUND AND POLICY IMPLICATIONS:

The US97: Lower Bridge Way-NW 10th St (Terrebonne) project is currently in the preliminary engineering phase, with construction anticipated to begin in late 2023. The project includes work within a Central Oregon Irrigation District (COID) easement that crosses Smith Rock Way; this work includes modifications to an existing lateral canal crossing pipe to provide for the construction of shoulder bikeways and sidewalks along Smith Rock Way. Additionally, the project includes modifications to COID facilities crossing US97.

Under this agreement, the County and COID are granting the Oregon Department of Transportation (ODOT) access to County right of way and COID easements to construct the improvements to COID's facilities as part of the project. Upon project completion, the County will continue to maintain the lateral canal crossing pipe on Smith Rock Way.

BUDGET IMPACTS:

None. The County's financial contribution to the project was established with a previous agreement (Document No. 2022-084).

ATTENDANCE:

Cody Smith, County Engineer/Assistant Director, Road Department

INTERGOVERNMENTAL AGREEMENT
US97: Lower Bridge Way - NW 10th St (Terrebonne)
Deschutes County
Central Oregon Irrigation District

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" DESCHUTES COUNTY, acting by and through its elected officials, hereinafter referred to as "County." State and County are herein referred to collectively as "Parties." CENTRAL OREGON IRRIGATION DISTRICT, acting by and through its appointed officials, hereinafter referred to as "COID," is also a signatory to this Agreement, but only for limited purposes and agreeing to only limited provisions as identified below.

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. State's US97: Lower Bridge Way - NW 10th St (Terrebonne) project (Key No. 21162) consists of evaluating, designing, and constructing safety improvements on US97 through Terrebonne. Improvements will include an interchange at US97 and Lower Bridge Way intersection, speed lowering interventions, and pedestrian safety improvements to reduce crashes and increase driver awareness. Smith Rock Way will be improved between 11th Avenue and to a point just west of the Burlington Northern Santa Fe (BNSF) railroad right-of-way. Improvement will include full depth reconstruction and widening to include standard width lanes and shoulder, drainage improvements, and sidewalks on each side of the roadway. On Smith Rock Way, at the crossing of the Central Oregon Irrigation District (COID) canal, the existing culvert will be extended both north and south of Smith Rock Way to accommodate the full roadway and sidewalk width. The headwalls of the culverts will be reconstructed and will include a parapet wall and pedestrian railing to improve safety for the crossing. On US97 just south of 11th Street at R/W Centerline Stationing "97" b 1095+79.28 the existing culvert will be replaced up to current standards.
3. State will require access to County's property and COID's easement in order to construct improvements to the COID canal culvert in the vicinity of Smith Rock Way and the COID canal crossing in conjunction with State's US97: Lower Bridge Way - NW 10th St (Terrebonne) project.
4. COID was established in 1918 as Municipal Corporation of the State of Oregon. Under ORS 545, COID has acquired and reserved the rights to and has the authority to assess costs of improvements of land and infrastructure within its' jurisdiction and control.

Deschutes County/COID/ODOT
Agreement No. 73000-00012899

5. The existing culvert serves the COID Lateral H which was established in accordance with the Carey Act of 1894.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

- 1. Under such authority, Parties agree to the following:
 - a. County granting State access to County property to construct improvements to the COID culvert that include extending the culvert both north and south of Smith Rock Way, reconstructing the culvert headwalls and installing parapet walls in the vicinity of Smith Rock Way and the existing COID canal, and;
 - b. State replacing the existing culvert at R/W centerline stationing "97" b 1095+79.28 by installing two syphon boxes on either side of the highway and connecting with a new culvert within the project limits of State's US97: Lower Bridge Way - NW 10th St (Terrebonne) Project:

all hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.

- 2. Parties agree upon completion of State's US97: Lower Bridge Way - NW 10th St (Terrebonne) Project, County shall retain responsibility for the maintenance of the improvements constructed by State and within County property and jurisdiction.
- 3. Parties agree upon completion of State's US97: Lower Bridge Way - NW 10th St (Terrebonne) Project, State shall retain responsibility for the maintenance of the improvements constructed by State and within State property and jurisdiction.
- 4. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance (and power if applicable) responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement by both Parties.

COUNTY OBLIGATIONS

- 1. County grants State access to County property for the purpose of constructing the improvements described to the COID culvert on Smith Rock Way in Terms of Agreement, Paragraph 1 above.
- 2. County shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without

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limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, County expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

3. County acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the county.
4. County certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of County, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind County.
5. County's Project Manager for this Project is Cody Smith – County Engineer, 61150 SE 27th Street, Bend, OR 97702, (541) 322-7113, Cody.smith@deschutes.org, or assigned designee upon individual's absence. County shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State shall perform the work as described in Terms of Agreement, Paragraph No. 1 above.
2. State shall be responsible for all costs associated with the construction of the work described in Terms of Agreement, No. 1 above.
3. State agrees to provide County and COID the opportunity to review the final design and plan sets prior to State proceeding with the work as described in Terms of Agreement, Paragraph No. 1 above.
4. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
5. State's Project Manager for this Project is Cari Charlton – Resident Engineer - Consultant Project Manager, 63055 N. Highway 97, Bldg M, Bend OR, 97703-5765, (541) 815-6831, Cari.charlton@odot.oregon.gov, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

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COID OBLIGATIONS

1. COID affirms that the planned improvements will not have a detrimental effect on their ability to perform their functions under ORS 545.
2. COID's Project Manager for this Project is Craig Horrell – Managing Director, 1055 SW Lake Ct., Redmond, OR 97756, (541) 548-6047, chorrell@coid.org, or assigned designee upon individual's absence. COID shall notify the other Party in writing of any contact information changes during the term of this Agreement.
3. COID makes no other representations, consents to, or otherwise affirms any other terms or conditions of this Agreement except as set forth in paragraphs 1 and 2 above.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of State, County, and COID.
2. State may terminate this Agreement effective upon delivery of written notice to County and COID, or at such later date as may be established by State, under any of the following conditions:
 - a. If County fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If County fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against the Parties with respect to which the County may have liability, the notified Party must

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promptly notify the other Parties in writing of the Third Party Claim and deliver to the other Parties a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

5. With respect to a Third Party Claim for which State is jointly liable with County (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of State on the one hand and of the County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of the County on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
6. With respect to a Third Party Claim for which the County is jointly liable with State (or would be if joined in the Third Party Claim), County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of County on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

Deschutes County/COID/ODOT
Agreement No. 73000-00012899

9. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind any Party unless in writing and signed by all Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

10. Electronic Signatures. The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement and amendments, submitted or exchanged via email are “Electronic Signatures” under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

SIGNATURE PAGE FOLLOWS

Deschutes County/COID/ODOT
Agreement No. 73000-00012899

DESCHUTES COUNTY, by and through
its elected officials

By _____
Commission Chair

Date _____

By _____
Commissioner

Date _____

By _____
Commissioner

Date _____

**LEGAL REVIEW APPROVAL (If required
in County's process)**

By _____
County's Counsel

Date _____

**Central Oregon Irrigation District's
signature shall only apply to Central
Oregon Irrigation District's Obligations,
Paragraphs 1, 2 and 3, page 3.**

**CENTRAL OREGON IRRIGATION
DISTRICT**, by and through its appointed
officials

By _____
Managing Director

Date _____

**LEGAL REVIEW APPROVAL (If required
in COID's process)**

By _____

STATE OF OREGON, by and through
its Department of Transportation

By _____
Central Oregon Area Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 4 Right of Way Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____ Exempt _____
Assistant Attorney General

Date _____

Deschutes County/COID/ODOT
Agreement No. 73000-00012899

COID's Counsel

Date _____

County Contact:

Cody Smith – County Engineer
61150 SE 27th Street
Bend, OR 97702
(541) 322-7113
Cody.smith@deschutes.org

COID Contact:

Craig Horrell – Managing Director
1055 SW Lake Ct
Redmond, OR 97756
(541) 548-6047
chorrell@coid.org

State Contact:

Cari Charlton – Resident Engineer -
Consultant Project Manager
63055 N. Highway 97, Bldg M
Bend OR, 97703-5765
(541) 815-6831
Cari.charlton@odot.oregon.gov

EXHIBIT A
Page 1

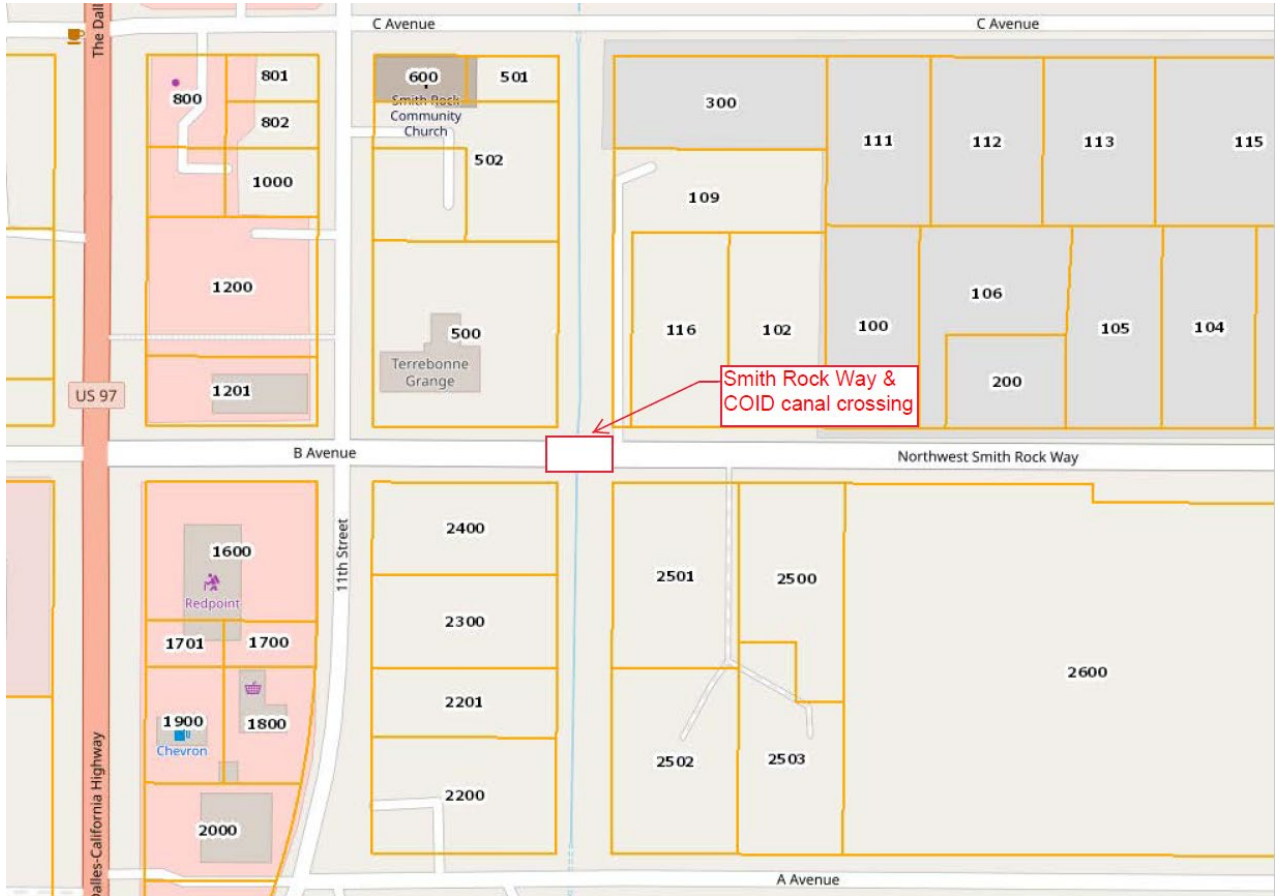
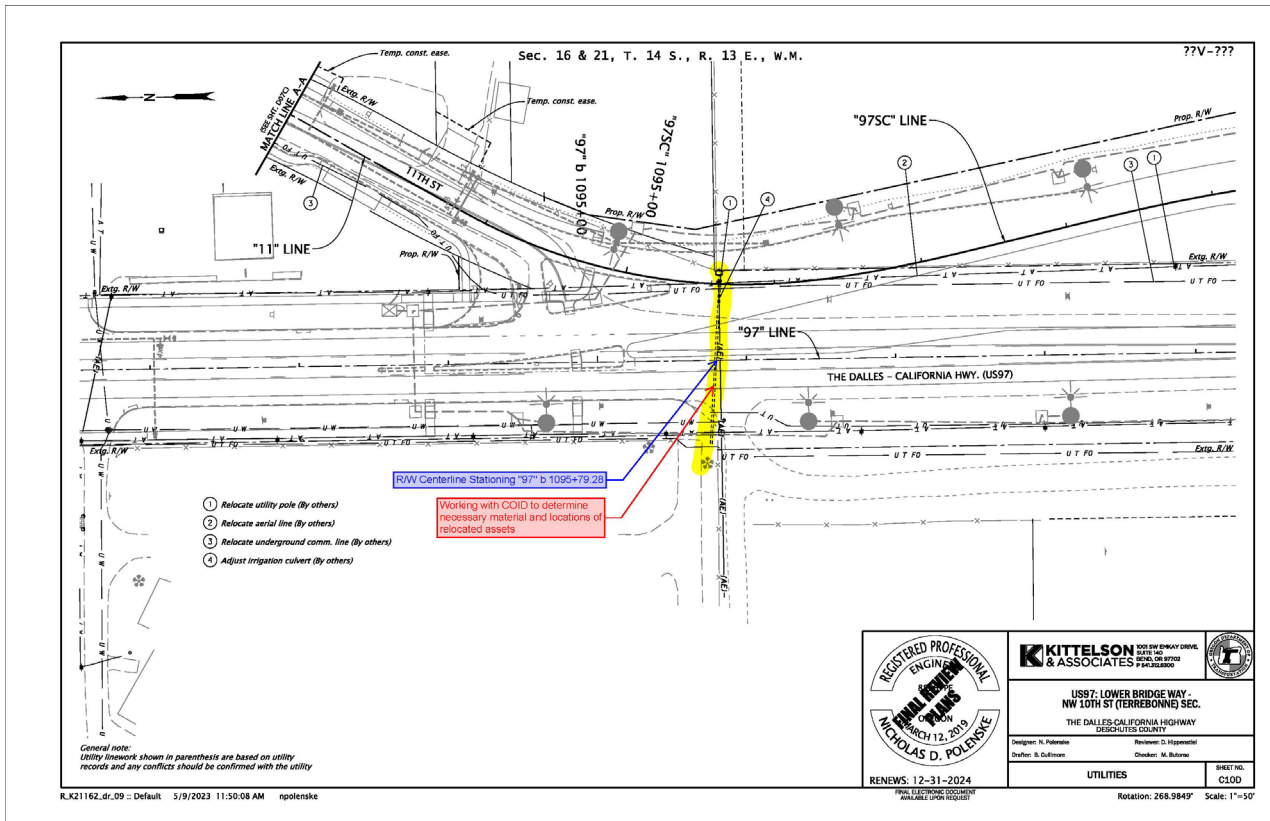


EXHIBIT A
Page 2



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For purposes of Exhibits B and C, references to Department shall mean State, references to Contractor shall mean County and references to Contract shall mean Agreement.

**EXHIBIT B
CONTRACTOR CERTIFICATION**

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

DEPARTMENT OFFICIAL CERTIFICATION

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

EXHIBIT C

Federal Provisions
Oregon Department of Transportation

CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it and its principals:

Agency/State Agreement No.

- 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
- 2. Have not within a three-year period preceding this Contract 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 (1)(b) of this certification; and
- 4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS- PRIMARY COVERED TRANSACTIONS

- 1. By signing this Contract, the Contractor is providing the certification set out below.
- 2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
- 3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
- 4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-2710) to which this proposal is being submitted

for assistance in obtaining a copy of those regulations.

- 6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
- 7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
- 9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction

knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

- 1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.
- 2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- 3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered

transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.

- 5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- 6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
- 8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a

prudent person in the ordinary course of business dealings.

- 9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

IV. EMPLOYMENT

- 1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without

liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

- 2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
- 3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

During the performance of this Contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

- 1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of

subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.

- 2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
- 3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
 5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
 6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor

may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

DBE POLICY STATEMENT

DBE Policy. It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

Required Statement For USDOT Financial Assistance Agreement. If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

DBE Obligations. The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the Contractor to carry out these

requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Department deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Contract.

Records and Reports. Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

DBE Definition. Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL 0 %

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

**FOR INQUIRY CONCERNING
DEPARTMENT'S DBE**

PROGRAM REQUIREMENT
CONTACT OFFICE OF CIVIL
RIGHTS AT (503)986-4354.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 5, 2023

SUBJECT: Consideration of Approval for Road Department Submittal of Safe Streets For All (SS4A) Grant Application for the Deschutes County Transportation Safety Action Plan Update

RECOMMENDED MOTION:

Move to authorize the Road Department to submit a Safe Streets for All grant application.

BACKGROUND AND POLICY IMPLICATIONS:

The Safe Streets for All (SS4A) program is a federal funding opportunity established with the Bipartisan Infrastructure Law (BIL) that provides funding for communities to prepare Transportation Safety Action Plans (TSAP) and to implement safety projects identified in their existing TSAPs.

Deschutes County Road Department prepared the initial Deschutes County TSAP in 2019. The TSAP evaluated transportation system crash trends for the study period of 2011-2016 and identified a broad range of recommended treatments, including projects, policies, and programs, to reduce and eliminate crashes. Most of the top crash sites identified and evaluated in the 2019 TSAP have either been mitigated with completed projects or are being mitigated with planned projects in the current 5-year Capital Improvement Plan.

Road Department staff are seeking Board approval to submit a grant application, which is still being prepared, for the current round of SS4A funding to update the Deschutes County TSAP. Goals for the proposed TSAP update include:

- Document actions taken since the initial TSAP was published;
- Update County crash data summary and location specific mitigation measures;
- Review of systemic solutions, speed management tool box, and non-infrastructure measures and update these items as appropriate;
- Evaluation of effectiveness and performance measures;
- Safety audits of rural school zones; and
- Equity analysis regarding transportation safety in rural communities.

Applications are due on Monday, July 10, 2023.

BUDGET IMPACTS:

The total estimated project cost is \$180,000. If the grant application were successful, the SS4A grant would provide \$144,000 (80%) of the total project cost. The County project share would be \$36,000 (20%), which would be budgeted in the Road fund for FY 2024-2025.

ATTENDANCE:

Cody Smith, County Engineer/Assistant Director



BOARD OF COMMISSIONERS

AGENDA REQUEST AND STAFF REPORT

MEETING DATE: July 5, 2023

SUBJECT: Agreement with the Central Oregon Intergovernmental Council to distribute State Transportation Improvement Funds

RECOMMENDED MOTION:

Move approval of Document No. 2023-654, an agreement with the Central Oregon Intergovernmental Council for distribution of STIF formula funds through June 30, 2025.

BACKGROUND AND POLICY IMPLICATIONS:

The Statewide Transportation Improvement Fund (STIF) program provides a dedicated source of funding for improving, maintaining, and expanding public transportation. Every two years, public transportation funding is made available to improve mobility, relieve congestion, support access to jobs, and reduce greenhouse gas emissions in Oregon.

Because Deschutes County lacks a transit district, the County itself is the Qualified Entity to receive and distribute STIF funding. Deschutes County contracts with the Central Oregon Intergovernmental Council to administer the County's STIF requirements.

This agreement is for the 2023-2025 STIF funding cycle which delivers upon the 2023-2025 STIF plan and associated programs and projects totaling \$22,013,163 (as approved by the Board on December 14, 2022, with updated balance forward from the 2021-2023 biennium).

BUDGET IMPACTS:

This proposal fulfills the County's obligation to distribute available state/federal funding via the prescribed process required of a Qualified Entity and subrecipient.

ATTENDANCE:

COIC/CET staff:

Derek Hofbauer, COIC Outreach and Engagement Administrator

Andrea Breault, CET Transportation Director

Chris Doty, Road Department (liaison for agenda item)

For Recording Stamp Only

**DESCHUTES COUNTY SERVICES CONTRACT
CONTRACT NO. 2023-654**

This Contract is between DESCHUTES COUNTY, a political subdivision, acting by and through the Board of County Commissioners (County) and Central Oregon Intergovernmental Council (COIC) (Subrecipient). The parties agree as follows:

Effective Date and Termination Date. The effective date of this Contract shall be July 1, 2023. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate on June 30, 2025. Contract termination shall not extinguish or prejudice County's right to enforce this Contract with respect to any default by Subrecipient that has not been cured.

Statement of Work. Subrecipient shall perform the work described in Exhibit 1.

Payment for Work. County agrees to pay Subrecipient in accordance with Exhibit 1.

Contract Documents. This Contract includes Page 1 - 21, which includes Addendum A and Exhibits 1, 2, 3, 4, 5, 6 and 7.

SUBRECIPIENT DATA AND SIGNATURE

Subrecipient Address: 334 NE Hawthorne Avenue, Bend, OR 97701

Federal Tax ID# or Social Security #: 93-0620261

Is Subrecipient a nonresident alien? Yes No

Business Designation (check one): Sole Proprietorship Partnership
 Corporation-for profit Corporation-non-profit Council of Governments

A Federal tax ID number or Social Security number is required to be provided by the Subrecipient and shall be used for the administration of state, federal and local tax laws. Payment information shall be reported to the Internal Revenue Service under the name and Federal tax ID number or, if none, the Social Security number provided above.

I have read this Contract including the attached Exhibits. I understand this Contract and agree to be bound by its terms. NOTE: Subrecipient shall also sign Exhibits 3 and 4.

Signature

Title

Name (please print)

Date

DESCHUTES COUNTY SIGNATURE

Contracts with a maximum consideration of not greater than \$25,000 are not valid and not binding on the County until signed by the appropriate Deschutes County Department Head. Additionally, Contracts with a maximum consideration greater than \$25,000 but less than \$150,000 are not valid and not binding on the County until signed by the County Administrator or the Board of County Commissioners.

Dated this _____ of _____, 20__

Dated this _____ of _____, 20__

DESCHUTES COUNTY Administrator Nick Lelack

ANTHONY DeBONE, Chair, County Commissioner

PATTI ADAIR, Vice Chair, County Commissioner

PHIL CHANG, County Commissioner

RECITALS

1. ORS 184.751 establishes the Statewide Transportation Improvement Fund, which appropriates funds to the Oregon Department of Transportation to finance investments and improvements in public transportation services.
2. The STIF Formula Fund is intended to improve Public Transportation Services for current and potential future Oregon transit users by distributing moneys to Qualified Entities.
3. The Deschutes County Board of Commissioners has approved Deschutes County's Plan for use of STIF Formula Funds through the end of Fiscal Year 2024. Deschutes County is a recipient of STIF Formula Funds as it is authorized to receive STIF Formula Funds directly from the Oregon Department of Transportation. Deschutes County's STIF Plan consists of numerous Projects to provide Public Transportation Services in Deschutes County's area of responsibility based on anticipated STIF Formula Funds.
4. Subrecipient (COIC) is authorized to receive STIF Formula Funds and provide Public Transportation Services in Deschutes County. Subrecipient provides Public Transportation Services in Deschutes County's Area of Responsibility.
5. Deschutes County's STIF Plan anticipates sufficient STIF Formula Funds for Subrecipient for projects that provide Public Transportation Services as specified in this Agreement.
6. Deschutes County and Subrecipient enter into this agreement for the sole purpose of disbursing the approved STIF Formula Funds to Subrecipient in order for Subrecipient to complete tasks specified in the STIF Plan. Funds shall be used solely for the Project and shall not be used for any other purpose.

STANDARD TERMS AND CONDITIONS

1. **Time is of the Essence.** Subrecipient agrees that time is of the essence in the performance of this Contract.
2. **Funding.** Payment for all work performed under this Contract shall be made in the amounts and manner set forth in Exhibit 1.
 - a. Payments shall be made to Subrecipient following County's review and approval of billings and deliverables submitted by Subrecipient.
 - b. All Subrecipient billings are subject to the maximum funding amount of this contract.
 - c. Subrecipient shall not submit billings for, and County shall not pay, any amount in excess of the maximum funding amount of this Contract, including any reimbursable expenses, (See Exhibit 5).
 - 1) If the maximum funding amount is increased by amendment to this Contract, the amendment shall be signed by both parties and fully executed before Subrecipient performs work subject to the amendment.
 - 2) No payment shall be made for any services performed before the effective date or after the expiration date of this contract.
 - d. This Contract shall not be amended after the expiration date.
 - e. Unless otherwise specifically provided in Exhibit 5, Subrecipient shall submit quarterly invoices for work performed. The invoices shall describe all work performed with particularity and by whom it was performed and shall itemize and explain all expenses for which reimbursement is claimed. If backup documentation is attached to invoices, Subrecipient will provide a narrative explaining how backup documentation is related to specific project costs and invoice totals.
 - f. The invoices also shall include the total amount invoiced to date by Subrecipient prior to the current invoice.

- g. Prior to approval or payment of any billing, County may require and Subrecipient shall provide any information which County deems necessary to verify work has been properly performed in accordance with the Contract.
- 3. Delegation, Subcontracts and Assignment.** Subrecipient shall not delegate any of the work required by this Contract or assign or transfer any of its interest in this Contract, without the prior written consent of County. This provision does not prohibit subcontracting transportation services.
- 4. No Third Party Beneficiaries.**
- a. County and Subrecipient are the only parties to this Contract and are the only parties entitled to enforce its terms.
 - b. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.
- 5. Successors in Interest.** The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.
- 6. Early Termination.** This Contract may be terminated as follows:
- a. Mutual Consent. County and Subrecipient, by mutual written agreement, may terminate this Contract at any time.
 - b. Party's Convenience. County or Subrecipient may terminate this Contract for any reason upon 30 calendar days written notice to the other party.
 - c. For Cause. County may also terminate this Contract effective upon delivery of written notice to the Subrecipient, or at such later date as may be established by the County, under any of the following conditions:
 - 1) If funding from state or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services as required in this Contract.
 - 2) This Contract may be modified to accommodate the change in available funds.
 - 3) If state laws, regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
 - 4) In the event sufficient funds shall not be appropriated for the payment of consideration required to be paid under this Contract, and if County has no funds legally available for consideration from other sources.
 - 5) If any license or certificate required by law or regulation to be held by the Subrecipient to provide the services required by this Contract is for any reason denied, revoked, suspended, not renewed or changed in such a way that the Subrecipient no longer meets requirements for such license or certificate.
 - d. Subrecipient Default or Breach. The County, by written notice to the Subrecipient, may immediately terminate the whole or any part of this Contract under any of the following conditions:
 - 1) If the Subrecipient fails to provide services called for by this Contract within the time specified or any extension thereof.
 - 2) If the Subrecipient fails to perform any of the other requirements of this Contract or so fails to pursue the work so as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from the County specifying such failure, the Subrecipient fails to correct such failure within 10 calendar days or such other period as the County may authorize.
 - 3) Subrecipient institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis.
 - e. County Default or Breach.
 - 1) Subrecipient may terminate this Contract in the event of a breach of this Contract by the County. Prior to such termination, the Subrecipient shall give to the County written notice of the breach and intent to terminate.

- 2) If the County has not entirely cured the breach within 10 calendar days of the date of the notice, then the Subrecipient may terminate this Contract at any time thereafter by giving notice of termination.

7. Payment on Early Termination. Upon termination pursuant to paragraph 6, payment shall be made as follows:

- a. County shall pay Subrecipient for all outstanding capital purchase orders once the equipment has arrived.
- b. If terminated under subparagraphs 6a. through c. of this Contract, the County shall pay Subrecipient for work performed prior to the termination date if such work was performed in accordance with the Contract. Provided however, County shall not pay Subrecipient for any obligations or liabilities incurred by Subrecipient after Subrecipient receives written notice of termination.
- c. If this Contract is terminated under subparagraph 6d. of this Contract, County obligations shall be limited to payment for services provided in accordance with this Contract prior to the date of termination, less any damages suffered by the County.
- d. If terminated under subparagraph 6e. of this Contract by the Subrecipient due to a breach by the County, then the County shall pay the Subrecipient for work performed prior to the terminate date if such work was performed in accordance with the Contract.
 - 1) With respect to services compensable on an hourly basis, for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses Incurred If payable according to this Contract and Interest within the limits set forth under ORS 293.462 and
 - 2) With respect to deliverable-based Work, the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by County, less previous amounts paid and any claim(s) that County has against Subrecipient.
 - 3) Subject to the limitations under paragraph 8 of this Contract.

8. Remedies. In the event of breach of this Contract the parties shall have the following remedies:

- a. Termination under subparagraphs 6a. through c. of this Contract shall be without prejudice to any obligations or liabilities of either party already reasonably incurred prior to such termination.
 - 1) Subrecipient may not incur obligations or liabilities after Subrecipient receives written notice of termination.
 - 2) Additionally, neither party shall be liable for any indirect, incidental, consequential or special damages under this Contract or for any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- b. If terminated under subparagraph 6d. of this Contract by the County due to a breach by the Subrecipient, County may pursue any remedies available at law or in equity.
 - 1) Such remedies may include, but are not limited to, termination of this contract, return of all or a portion of this Contract amount, payment of interest earned on this Contract amount, and declaration of ineligibility for the receipt of future contract awards.
 - 2) Additionally, County may complete the work either by itself, by agreement with another Subrecipient, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total funding provided under this Contract, then the Contractor shall be liable to the County for the amount of the reasonable excess.
- c. If amounts previously paid to Contractor exceed the amount due to Subrecipient under this Contract, Subrecipient shall repay any excess to County upon demand.
- d. Neither County nor Subrecipient shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, riot, acts of God, or war where such cause was beyond reasonable control of County or Subrecipient, respectively; however, Subrecipient shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. For any delay in performance as a result of the events described in this subparagraph, Subrecipient shall be entitled to additional reasonable time for performance that shall be set forth in an amendment to this Contract.
- e. The passage of this Contract expiration date shall not extinguish or prejudice the County's or Subrecipient's right to enforce this Contract with respect to any default or defect in performance

that has not been cured.

- f. County's remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

9. Subrecipient's Tender upon Termination. Upon receiving a notice of termination of this Contract, Subrecipient shall immediately cease all activities under this Contract unless County expressly directs otherwise in such notice of termination.

- a. Upon termination of this Contract, Subrecipient shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had this Contract been completed.
- b. Upon County's request, Subrecipient shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the work.

10. Work Standard.

- a. Subrecipient shall be solely responsible for and shall have control over the means, methods, techniques, sequences and procedures of performing the work, subject to the plans and specifications under this Contract and shall be solely responsible for the errors and omissions of its employees, subcontractors and agents.
- b. For goods and services to be provided under this contract, Subrecipient agrees to:
- 1) Perform the work in a good, workmanlike, and timely manner using the schedule, materials, plans and specifications approved by County;
 - 2) Comply with all applicable legal requirements;
 - 3) Comply with all programs, directives, and instructions of County relating to safety, storage of equipment or materials;
 - 4) Take all precautions necessary to protect the safety of all persons at or near County or Subrecipient's facilities, including employees of Subrecipient, County and any other contractors or subcontractors and to protect the work and all other property against damage.

11. Drugs and Alcohol. Subrecipient shall adhere to and enforce a zero tolerance policy for the use of alcohol and the unlawful selling, possession or use of controlled substances while performing work under this Contract.

12. Insurance. Subrecipient shall provide insurance in accordance with Exhibit 2 attached hereto and incorporated by reference herein.

13. Expense Reimbursement. If the consideration under this Contract provides for the reimbursement of Subrecipient for expenses, in addition to Exhibit 5, Exhibit 1 shall state that Subrecipient is or is not entitled to reimbursement for such expenses.

- a. County shall only reimburse Subrecipient for expenses reasonably and necessarily incurred in the performance of this contract.
- b. Expenses reimbursed shall be at the actual cost incurred; including any taxes paid, and shall not include any mark-up unless the mark-up on expenses is specifically agreed to in this Contract.
- c. The cost of any subcontracted work approved in this Contract shall not be marked up.
- d. Subrecipient shall not bill County for any time expended to complete the documents necessary for reimbursement of expenses or for payment under this contract.
- e. The limitations applicable to reimbursable expenses are set forth in Exhibit "5," attached hereto and by reference incorporated herein.

14. Criminal Background Investigations. Subrecipient understands that Subrecipient and Subrecipient's employees and agents are subject to periodic criminal background investigations by County and, if such investigations disclose criminal activity not disclosed by Subrecipient, such non-disclosure shall constitute a material breach of this Contract and County may terminate this Contract effective upon delivery of written notice to the Subrecipient, or at such later date as may be established by the County.

15. Confidentiality. Subrecipient shall maintain confidentiality of information obtained pursuant to this Contract as follows:

- a. Subrecipient shall not use, release or disclose any information concerning any employee, client, applicant or person doing business with the County for any purpose not directly connected with the administration of County's or the Subrecipient's responsibilities under this Contract except upon written consent of the County, and if applicable, the employee, client, applicant or person.
- b. The Subrecipient shall ensure that its agents, employees, officers and subcontractors with access to County and Subrecipient records understand and comply with this confidentiality provision.
- c. Subrecipient shall treat all information as to personal facts and circumstances obtained on Medicaid eligible individuals as privileged communication, shall hold such information confidential, and shall not disclose such information without the written consent of the individual, his or her attorney, the responsible parent of a minor child, or the child's guardian, except as required by other terms of this Contract.
- d. Nothing prohibits the disclosure of information in summaries, statistical information, or other form that does not identify particular individuals.
- e. Personally identifiable health information about applicants and Medicaid recipients will be subject to the transaction, security and privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA").
- f. Subrecipient shall cooperate with County in the adoption of policies and procedures for maintaining the privacy and security of records and for conducting transactions pursuant to HIPAA requirements.
- g. This Contract may be amended in writing in the future to incorporate additional requirements related to compliance with HIPAA.
- h. If Subrecipient receives or transmits protected health information, Subrecipient shall enter into a Business Associate Agreement with County, which, if attached hereto, shall become a part of this Contract.

16. Reports. Subrecipient shall provide County with periodic reports at the frequency and with the information prescribed by County. Further, at any time, County has the right to demand adequate assurances that the services provided by Subrecipient shall be in accordance with the Contract. Such assurances provided by Subrecipient shall be supported by documentation in Subrecipient's possession from third parties.

17. Access to Records. Subrecipient shall maintain fiscal records and all other records pertinent to this Contract.

- a. All fiscal records shall be maintained pursuant to generally accepted accounting standards, and other records shall be maintained to the extent necessary to clearly reflect actions taken.
 - 1) All records shall be retained and kept accessible for at least three years following the final payment made under this Contract or all pending matters are closed, whichever is later.
 - 2) If an audit, litigation or other action involving this Contract is started before the end of the three year period, the records shall be retained until all issues arising out of the action are resolved or until the end of the three year period, whichever is later.
- b. County and its authorized representatives shall have the right to direct access to all of Subrecipient's books, documents, papers and records related to this Contract for the purpose of conducting audits and examinations and making copies, excerpts and transcripts.
 - 1) These records also include licensed software and any records in electronic form, including but not limited to computer hard drives, tape backups and other such storage devices. County shall reimburse Subrecipient for Subrecipient's cost of preparing copies.
 - 2) At Subrecipient's expense, the County, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives, shall have license to enter upon Subrecipient's premises to access and inspect the books, documents, papers, computer software, electronic files and any other records of the Subrecipient which are directly pertinent to this Contract.
 - 3) If Subrecipient's dwelling is Subrecipient's place of business, Subrecipient may, at Subrecipient's expense, make the above records available at a location acceptable to the County.

18. Ownership of Work. All work of Subrecipient that results from this Contract (the “Work Product”) is the exclusive property of County.

- a. County and Subrecipient intend that such Work Product be deemed “work made for hire” of which County shall be deemed author.
- b. If, for any reason, the Work Product is not deemed “work made for hire,” Subrecipient hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine.
- c. Subrecipient shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County.
- d. Subrecipient forever waives any and all rights relating to Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- e. County shall have no rights in any pre-existing work product of Subrecipient provided to County by Subrecipient in the performance of this Contract except an irrevocable, non-exclusive, perpetual, royalty-free license to copy, use and re-use any such work product for County use only.
- f. If this Contract is terminated prior to completion, and County is not in default, County, in addition to any other rights provided by this Contract, may require Subrecipient to transfer and deliver all partially completed work products, reports or documentation that Subrecipient has specifically developed or specifically acquired for the performance of this Contract.
- g. In the event that Work Product is deemed Subrecipient’s Intellectual Property and not “work made for hire,” Subrecipient hereby grants to County an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Subrecipient Intellectual Property, and to authorize others to do the same on County’s behalf.
- h. In the event that Work Product is Third Party Intellectual Property, Subrecipient shall secure on the County’s behalf and in the name of the County, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on County’s behalf.

19. County Code Provisions. Except as otherwise specifically provided, the provisions of Deschutes County Code, Section 2.37.150 are incorporated herein by reference. Such code section may be found at the following URL address:

<https://weblink.deschutes.org/public/DocView.aspx?id=78735&searchid=818e81ed-6663-4f5b-9782-9b5523b345fc>.

20. Partnership. County is not, by virtue of this contract, a partner or joint venturer with Subrecipient in connection with activities carried out under this contract, and shall have no obligation with respect to Subrecipient’s debts or any other liabilities of each and every nature.

21. Indemnity and Hold Harmless.

- a. To the fullest extent authorized by law Subrecipient shall defend, save, hold harmless and indemnify the County and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of Subrecipient or its officers, employees, Subrecipients, or agents under this Contract, including without limitation any claims that the work, the work product or any other tangible or intangible items delivered to County by Subrecipient that may be the subject of protection under any state or federal intellectual property law or doctrine, or the County’s use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work utility design or other proprietary right of any third party.
- b. Subrecipient shall have control of the defense and settlement of any claim that is subject to subparagraph a of this paragraph; however neither Subrecipient nor any attorney engaged by Subrecipient shall defend the claim in the name of Deschutes County or any department or agency thereof, nor purport to act as legal representative of the County or any of its departments or agencies without first receiving from the County’s legal counsel, in a form and manner determined

appropriate by the County's legal counsel, authority to act as legal counsel for the County, nor shall Subrecipient settle any claim on behalf of the Count without the approval of the County's legal counsel.

- c. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall defend, save, hold harmless and indemnify Subrecipient and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of County or its officers, employees, Subrecipients, or agents under this Contract.

22. Waiver.

- a. County's delay in exercising, or failure to exercise any right, power, or privilege under this Contract shall not operate as a waiver thereof, nor shall any single or partial exercise or any right, power, or privilege under this Contract preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- b. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

23. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

- a. Any claim, action, suit or proceeding (collectively, "Claim") between County and Subrecipient that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim shall be brought in federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
- b. SUBRECIPIENT, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. The parties agree that the UN Convention on International Sales of Goods shall not apply.

24. Severability. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular term or provision held invalid.

25. Counterparts. This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

26. Notice. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing, to Subrecipient or County at the address or number set forth below or to such other addresses or numbers as either party may hereafter indicate in writing. Delivery may be by personal delivery, facsimile, or mailing the same, postage prepaid.

- a. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- b. Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective against County, such facsimile transmission shall be confirmed by telephone notice to the County Administrator.
- c. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Contract shall be mailed by first class postage or delivered as follows:

To Subrecipient:

Tammy Baney
Executive Director
334 NE Hawthorne Avenue
Bend, Oregon 97701
Fax No. 541-923-3416

To County:

Nick Lelack
County Administrator
1300 NW Wall Street, Suite 206
Bend, Oregon 97701
Fax No. 541-385-3202

27. Merger Clause. This Contract and the attached exhibits constitute the entire agreement between the parties.

- a. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract.
- b. No waiver, consent, modification or change in the terms of this Contract shall bind either party unless in writing signed by both parties.
- c. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

28. Identity Theft Protection. Subrecipient and subcontractors shall comply with the Oregon Consumer Identity Theft Protection Act (ORS 646A.600 et seq.).

29. Survival. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections 4, 5, 8, 9, 15, 17, 18, 20-27, 28 and 30.

30. Representations and Warranties.

- a. **Subrecipient's Representations and Warranties.** Subrecipient represents and warrants to County that:
 - 1) Contractor has the power and authority to enter into and perform this Contract;
 - 2) This Contract, when executed and delivered, shall be a valid and binding obligation of Subrecipient enforceable in accordance with its terms;
 - 3) Subrecipient has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Subrecipient will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Subrecipient's industry, trade or profession;
 - 4) Subrecipient shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work;
 - 5) Subrecipient prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty; and
 - 6) Subrecipient's making and performance of this Contract do not and will not violate any provision of any applicable law, rule or regulation or order of any court, regulatory commission, board or other administrative agency.
- b. **Warranties Cumulative.** The warranties set forth in this paragraph are in addition to, and not in lieu of, any other warranties provided.

31. Representation and Covenant.

- a. Subrecipient represents and warrants that Subrecipient has complied with the tax laws of this state, and where applicable, the laws of Deschutes County, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318.
- b. Subrecipient covenants to continue to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, during the term of this contract.
- c. Subrecipient acknowledges that failure by Subrecipient to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, at any time before Subrecipient has executed the contract or during the term of the contract is and will be deemed a default for which Deschutes County may terminate the contract and seek damages and/or other relief available under the terms of the contract or under applicable law.

EXHIBIT 1
DESCHUTES COUNTY SERVICES CONTRACT
CONTRACT NO. 2023-654
STATEMENT OF WORK, FUNDING
PAYMENT TERMS AND SCHEDULE

1. Subrecipient shall perform the following work:

a. Implement the attached Deschutes County Statewide Transportation Improvement Fund (STIF) Plan as adopted by Deschutes County, including administrative costs required to manage the plan and as included in the plan. Subrecipient shall implement priority projects identified by the Board of County Commissioners as referenced in Appendix A. The Subrecipient will also meet and report on the required performance metrics as outlined in the STIF plan. Starting July 1, 2023, The STIF and Special Transportation Fund (STF) programs are consolidated and referenced as "STIF."

1.1. Subrecipient agrees to comply with and use the STIF Formula Funds in accordance with the terms of this Agreement including the terms and conditions of ORS 184.751 through 184.766, the provisions of OAR Chapter 732 Divisions 40 and 42, as may be amended, Deschutes County approved FY 2023-2025 STIF Plan, and any ODOT guidance documents pertaining to the Statewide Transportation Improvement Funds program, all of which are incorporated into and made part of this agreement. This agreement is subject to any agreements made between ODOT and Deschutes County regarding disbursement of the STIF Formula Funds, and shall be amended to incorporate those changes.

1.2. Subrecipient affirms that it has all the necessary policies and procedures in place to ensure compliance with OAR 732 Divisions 40 and 42, and to achieve the goals and outcomes described in the STIF Plan, including but not limited to program and project management; financial management; operations management, procurement, use and maintenance of equipment, records retention, compliance with state and federal civil rights laws, compliance with the Americans with Disabilities Act (ADA), charter and school bus, and safety and asset management.

Subrecipient shall not be relieved of any responsibility for performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient shall require any subcontractor performing services under this Agreement to enter into a written agreement with Subrecipient before the commencement of services, which shall require the subcontractor to comply with ORS 184.751 through 184.766 and the provisions of OAR Chapter 732, Divisions 40 and 42, as may be amended, and any terms of this Agreement where indicated that such terms or provisions should be included in any subcontract or agreement.

b. This Contract includes in part operations and capitalized preventive maintenance, which are defined under 49 USC§ 5310 program, as described in Circular 9070, 1F, Section 111-14-e. Generally accepted accounting principles and the Subrecipient's accounting system determine those costs that are to be accounted for as operating costs. Subrecipient may not count the same costs twice if they have multiple agreements for which these costs may be eligible. Subrecipient may use capital equipment funded under U.S. Department of Transportation or State-source agreements when performing services rendered through this Contract. Depreciation of capital equipment funded from U.S. Department of Transportation or State-source grants is not an eligible expense. As this agreement also includes funding through Statewide Transportation Improvement Fund (STIF), Subrecipient will comply with the guidelines established by Oregon Revised Statutes (ORS) 391.800 and 391.830 and Oregon Administrative Rules (OAR) Chapter 732. Subrecipient will receive and disburse STIF moneys from a separate governmental fund. Any interest accrued from the account must be added to the moneys and reported to the State.

Subrecipient will subtract income from fares, tickets and passes, either pre-paid or post-paid, from the gross operating expenses of the service. All administrative and operating expenses incurred by Subrecipient are reimbursable as operating expenses.

Subrecipient may not use assets acquired under this Contract to compete unfairly with the private sector.

1.3 STIF Procurements

a. Retain the net proceeds from a sale or other disposition of a capital asset to reinvest in a future STIF capital project or return the net proceeds to State. Net proceeds are the asset's original value less disposal proceeds, depreciation, and disposal costs. If non-STIF funds were used in the original purchase, only the proportion representing the STIF contribution to the purchase is subject to this rule.

b. Ensure that vehicles purchased in whole or in part with STIF funds are titled with the Oregon Department of Transportation Driver and Motor Vehicle Service Division pursuant to ORS 803.045 and supporting rules, with ODOT Public Transportation Division listed as the primary security interest holder, subject to the following additional requirements:

- 1) If the vehicle is registered in the name of a Sub-Recipient receiving the vehicle, and the Sub-Recipient is not a Qualified Entity (OAR 732-040-005(26)) or Public Transportation Service Provider (OAR 732-040-005(25)), then the Qualified Entity or Public Transportation Service Provider must be listed on the vehicle title as the secondary security interest holder.
- 2) If the vehicle was purchased with federal funds in addition to STIF funds, and the federal funding source requires the vehicle to be titled otherwise than provided in this rule, then the federal titling requirements prevail.

2. **County Services.** County shall provide Subrecipient, at county's expense, with material and services described as follows: None

3. **Consideration.**

a. COIC shall be entitled to reimbursement for costs under the following restrictions:

County shall reimburse COIC for an amount not to exceed the STIF payments from the State of Oregon as a pass-through to Cascades East Transit for projects identified in the Deschutes County STIF Plan. The total projected for projects included in the FY 2023-2025 STIF Plan is \$22,013,163, of which COIC anticipates an estimated \$4,962,547 in funds to be carried forward from the FY 2021-2023 biennium.

These figures are estimates only, and neither authorize the Subrecipient to seek reimbursement for more STIF funds than the County has received, or restrict the reimbursement funds Subrecipient may receive in a given fiscal year. County staff shall provide Subrecipient a written description of STIF payments from the State of Oregon no later than 20 days after receipt for information and planning. Subrecipient cannot spend more than the amount budgeted for the STIF Plan Period, whether from STIF Formula funds or interest earned on those funds.

b. Subrecipient shall be entitled to reimbursement for expenses as set forth in Exhibit 5
YES NO

4. **Maximum funding available**

a. Based on the STIF Plan submitted and approved by the Oregon Transportation

Commission, the maximum funding available under this contract, including allowable expenses, is an amount not to exceed the STIF payments from the State of Oregon, estimated at \$22,013,163, of which COIC anticipates an estimated \$4,962,547 in funds to be carried forward from the previous biennium, based on the STIF Plan submitted and approved by the Oregon Transportation Commission.

- b. Subrecipient shall not submit invoices for, and County shall not pay for any amount in excess of the maximum funding amount set forth above.
 - 1) If this maximum funding amount is increased by amendment of this contract, the amendment shall be fully effective before Subrecipient performs work subject to the amendment.
 - 2) Subrecipient shall notify County in writing of the impending expiration of this Contract thirty (30) calendar days prior to the expiration date.

5. Schedule of Performance or Delivery.

- a. County's obligation to pay depends upon Subrecipient's delivery or performance in accordance with the following: County will only pay for completed work that conforms to this schedule and only at such time as a complete STIF Periodic Report has been prepared within the Oregon Department of Transportation Public Transit Division's OPTIS system.
- b. County will only pay for completed work that conforms to this schedule.

**Appendix A
List of Authorized 2023-2025
Biennium
Deschutes County STIF Projects**

Project	Title	Cost	Notes
1	Carry Over Program Reserve Funds	\$ 1,000,000	Identify additional cost needs not covered by estimates for Project's #2 - #4.
2	STIF Program Administration	\$ 2,683,382	CET to continue to administer, supervise, plan, support, and market CET, Deschutes County, and Provider STIF programs.
3	Continued Former STF Operations	\$ 4,362,642	Continuing to serve the public transportation needs of the Elderly and Disabled population through CET's La Pine, Bend, Redmond and Sister's Dial-A-Ride services and future expanded Dial-A-Ride boundaries.
4	Routes 30, 24, 29, and 28	\$ 6,149,815	Continued current CET Community Connector Routes 30, 24, 29, 28 service to increase frequency, as well as cover additional costs related to Veteran rides that are not covered by the current grant.
5	CET Sub-Recipient Projects	\$ 2,854,750	Operating and Capital funds for inter-city providers: Central Oregon Breeze and Pacific Crest Bus Lines, as well as transportation options partner, Commute Options.
6	CET Capital Projects	\$ 1,000,000	Ability to complete mobility hubs and/or enhanced bus stops, purchase of real-time signage, purchase of public transit vehicles (replacement and expansion of fleet) and local match for federal funded capital grants and down payment on the land for alternative fuel station.
	Total Estimate	\$ 18,050,589	

*COIC will reimburse Subrecipient Providers Central Oregon Breeze and Pacific Crest Bus Lines, and Commute Options for these services using Deschutes County STIF funds.

**EXHIBIT 2
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2023-654
INSURANCE REQUIREMENTS**

Subrecipient shall at all times maintain in force at Subrecipient's expense, each insurance noted below. Insurance coverage must apply on a primary or non-contributory basis. All insurance policies, except Professional Liability, shall be written on an occurrence basis and be in effect for the term of this contract. Policies written on a "claims made" basis must be approved and authorized by Deschutes County.

Subrecipient Name: Central Oregon Intergovernmental Council

Workers Compensation insurance in compliance with ORS 656.017, requiring Subrecipient and all subcontractors to provide workers' compensation coverage for all subject workers, or provide certification of exempt status. Worker's Compensation Insurance to cover claims made under Worker's Compensation, disability benefit or any other employee benefit laws, including statutory limits in any state of operation with Coverage B Employer's Liability coverage all at the statutory limits. In the absence of statutory limits the limits of said Employers liability coverage shall be not less than \$1,000,000 each accident, disease and each employee. This insurance must be endorsed with a waiver of subrogation endorsement, waiving the insured's right of subrogation against County.

Professional Liability insurance with an occurrence combined single limit of not less than:

Per Occurrence limit	Annual Aggregate limit
<input type="checkbox"/> \$1,000,000	<input type="checkbox"/> \$2,000,000
<input type="checkbox"/> \$2,000,000	<input type="checkbox"/> \$3,000,000
<input type="checkbox"/> \$3,000,000	<input type="checkbox"/> \$5,000,000

Professional Liability insurance covers damages caused by error, omission, or negligent acts related to professional services provided under this Contract. The policy must provide extended reporting period coverage, sometimes referred to as "tail coverage" for claims made within two years after the contract work is completed.

Required by County Not required by County (one box must be checked)

Automobile Liability insurance with a combined single limit of not less than:

Per Occurrence

\$500,000
 \$1,000,000
 \$2,000,000

Automobile Liability insurance includes coverage for bodily injury and property damage resulting from operation of a motor vehicle. Commercial Automobile Liability Insurance shall provide coverage for *any* motor vehicle (symbol 1 on some insurance certificates) driven by or on behalf of Subrecipient during the course of providing services under this contract. Commercial Automobile Liability is required for contractors that own business vehicles registered to the business. Examples include: plumbers, electricians or construction contractors. An Example of an acceptable personal automobile policy is a contractor who is a sole proprietor that does not own vehicles registered to the business.

Required by County Not required by County (one box must be checked)

<u>Per Single Claimant and Incident</u>	<u>All Claimants Arising from Single Incident</u>
<input checked="" type="checkbox"/> \$1,000,000	<input checked="" type="checkbox"/> \$2,000,000
<input type="checkbox"/> \$2,000,000	<input type="checkbox"/> \$3,000,000
<input type="checkbox"/> \$3,000,000	<input type="checkbox"/> \$5,000,000

Commercial General Liability insurance includes coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products, completed operations and contractual liability. The insurance coverages provided for herein must be endorsed as primary and non-contributory to any insurance of County, its officers, employees or agents. Each such policy obtained by Subrecipient shall provide that the insurer shall defend any suit against the named insured and the additional insureds, their officers, agents, or employees, even if such suit is frivolous or fraudulent. Such insurance shall provide County with the right, but not the obligation, to engage its own attorney for the purpose of defending any legal action against County, its officers, agents, or employees, and that Subrecipient shall indemnify County for costs and expenses, including reasonable attorneys' fees, incurred or arising out of the defense of such action.

The policy shall be endorsed to name ***Deschutes County, its officers, agents, employees and volunteers as an additional insured.*** The additional insured endorsement shall not include declarations that reduce any per occurrence or aggregate insurance limit. The Subrecipient shall provide additional coverage based on any outstanding claim(s) made against policy limits to ensure that minimum insurance limits required by the County are maintained. Construction contracts may include aggregate limits that apply on a "per location" or "per project" basis. The additional insurance protection shall extend equal protection to County as to Subrecipient or subcontractors and shall not be limited to vicarious liability only or any similar limitation. To the extent any aspect of this Paragraph shall be deemed unenforceable, then the additional insurance protection to County shall be narrowed to the maximum amount of protection allowed by law.

Required by County Not required by County (One box must be checked)

Additional Requirements. Contractor shall pay all deductibles and self-insured retentions. A cross-liability clause or separation of insured's condition must be included in all commercial general liability policies required by this Contract. Subrecipient's coverage will be primary in the event of loss.

Certificate of Insurance Required. Subrecipient shall furnish a current Certificate of Insurance to the County with the signed Contract. Subrecipient shall notify the County in writing at least 30 days in advance of any cancellation, termination, material change, or reduction of limits of the insurance coverage. The Certificate shall also state the deductible or, if applicable, the self-insured retention level. Subrecipient shall be responsible for any deductible or self-insured retention. If requested, complete copies of insurance policies shall be provided to the County.

Risk Management review

Date

EXHIBIT 3
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2023-654
Workers' Compensation Exemption Certificate

(To be used only when Subrecipient claims to be exempt from Workers' Compensation coverage requirements)

Subrecipient is exempt from the requirement to obtain workers' compensation insurance under ORS Chapter 656 for the following reason (*check the appropriate box*):

SOLE PROPRIETOR

- Subrecipient is a sole proprietor, and
- Subrecipient has no employees, and
- Subrecipient shall not hire employees to perform this contract.

CORPORATION - FOR PROFIT

- Subrecipient's business is incorporated, and
- All employees of the corporation are officers and directors and have a substantial ownership interest* in the corporation, and
- The officers and directors shall perform all work. Subrecipient shall not hire other employees to perform this contract.

CORPORATION - NONPROFIT

- Subrecipient's business is incorporated as a nonprofit corporation, and
- Subrecipient has no employees; all work is performed by volunteers, and
- Subrecipient shall not hire employees to perform this contract.

PARTNERSHIP

- Subrecipient is a partnership, and
- Subrecipient has no employees, and
- All work shall be performed by the partners; Subrecipient shall not hire employees to perform this contract, and
- Subrecipient is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.

LIMITED LIABILITY COMPANY

- Subrecipient is a limited liability company, and
- Subrecipient has no employees, and
- All work shall be performed by the members; Subrecipient shall not hire employees to perform this contract, and
- If Subrecipient has more than one member, Subrecipient is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.

*NOTE: Under OAR 436-050-050 a shareholder has a "substantial ownership" interest if the shareholder owns 10% of the corporation or, if less than 10% is owned, the shareholder has ownership that is at least equal to or greater than the average percentage of ownership of all shareholders.

**NOTE: Under certain circumstances partnerships and limited liability companies can claim an exemption even when performing construction work. The requirements for this exemption are complicated. Consult with County Counsel before an exemption request is accepted from a Subrecipient who shall perform construction work.

Subrecipient Printed Name

Subrecipient Signature

Subrecipient Title

Date

EXHIBIT 4
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2023-654
Compliance with provisions, requirements of funding source and
Federal and State laws, statutes, rules, regulations, executive orders and policies.

Conflicts of Interest

Subrecipient certifies under penalty of perjury that the following statements are true to the best of Subrecipient's knowledge:

1. If Subrecipient is currently performing work for the County, State of Oregon or federal government, Subrecipient, by signature to this Contract, declares and certifies that Subrecipient's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no rules or regulations of Subrecipient's employee agency (County State or Federal) would prohibit Subrecipient's Work under this Contract. Subrecipient is not an "officer," "employee," or "agent" of the County, as those terms are used in ORS 30.265.
2. No federally appropriated funds have been paid or shall be paid, by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - a. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Subrecipient agrees to complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - 1) Standard Form-LLL and instructions are located in 45 CFR Part 93 Appendix B.
 - 2) If instructions require filing the form with the applicable federal entity, Subrecipient shall then as a material condition of this Contract also file a copy of the Standard Form-LLL with the Department.
 - 3) This filing shall occur at the same time as the filing in accordance with the instructions.
 - b. Subrecipient understands this certification is a material representation of fact upon which the County and the Department has relied in entering into this Contract. Subrecipient further understands that submission of this certification is a prerequisite, imposed by 31 USC 1352 for entering into this Contract.
 - c. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - d. Subrecipient shall include the language of this certification in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
 - e. Subrecipient is solely responsible for all liability arising from a failure by Subrecipient to comply with the terms of this certification.
 - f. Subrecipient promises to indemnify County for any damages suffered by County as a result of Subrecipient's failure to comply with the terms of this certification.
3. Subrecipient understands that, if this Contract involves federally appropriated funds, this certification is a material representation of facts upon which reliance was placed when this Contract was made or entered into, submission of this certification is a prerequisite for make or entering into this Contract imposed by Section 1352, Title 311, U.S. Code and that any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

Subrecipient Signature

Date

**EXHIBIT 5
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2023-654**

ADDITIONAL OVERSIGHT FOR STIF SUBRECIPIENTS

Contractor shall comply with all applicable STIF adopted rules (OAR 732-040 and OAR 732-042) as well as the federal regulations listed as follows. ODOT guidance regarding procedures and auditing can be accessed at <https://www.oregon.gov/odot/RPTD/Pages/STIF-Program-Overview.aspx>

Access to Records and Reports

The record keeping and access requirements apply to all Contracts funded in whole or in part with FTA funds. Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers, including Contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

1. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. Access to Records. The Contractor agrees to provide sufficient access to FTA and its Contractors to inspect and audit records and information related to performance of this Contract as reasonably may be required.
4. Access to the Sites of Performance. The Contractor agrees to permit FTA and its Contractors access to the sites of performance under this Contract as reasonably may be required.

Civil Rights and Equal Opportunity

Contractor is an Equal Opportunity Employer. As such, Contractor agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- a) Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b) Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment

advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c) Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- d) Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

ADA Access

The Contract agrees that facilities to be used in public transportation service, or to be designed for use in public transportation service, must comply with 42 U.S.C. Sections 12101 et seq. and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. USDOT incorporated by reference the ATBCB's "Americans with Disabilities Act Accessibility Guidelines" (ADAAG), revised September 2010, which include accessibility guidelines for buildings and facilities, and are Incorporated into Appendix A to 49 CFR Part 37. USDOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

EXHIBIT 6
Statewide Transportation Improvement Fund Agreed-Upon Audit Procedures

Any Qualified Entity or Public Transportation Service Provider (subrecipient), as defined under OAR 732-040-0005, that receives STIF money, is required to be audited on the use of those funds per OAR 732-040-0015. Consistent with guidance provided by the Oregon Secretary of State, the Oregon Department of Transportation (ODOT) developed Agreed-Upon Procedures (AUP) for the program audit of the Statewide Transportation Improvement Fund (STIF).

<https://www.oregon.gov/odot/RPTD/RPTD%20Committee%20Meeting%20Documents/STIF-Agreed-Upon-Audit-Procedures-Form.pdf>

Exhibit 7
DESCHUTES COUNTY SERVICES CONTRACT
Contract No. 2023-654

The adopted Deschutes County Statewide Transportation Improvement Fund Plan 2023-2025 is available on the ODOT website:

https://www.oregon.gov/odot/RPTD/STIFPlanSubmissions/DeschutesCo_STIF_Plan_v2_2023_02_09.pdf



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 5, 2023

SUBJECT: Community Development Department elimination of six unfilled full-time equivalents (FTE)

RECOMMENDED MOTION:

Move approval of Resolution 2023-041 to eliminate six unfilled full-time equivalent positions in the Community Development Department and transfer program appropriations to contingency.

BACKGROUND AND POLICY IMPLICATIONS:

The Community Development Department seeks to reduce its total FTE by eliminating six unfilled positions. This action will result in a revised FTE total of 58 which the department believes is adequate to process current and projected permitting volumes.

BUDGET IMPACTS:

The elimination of six FTE will reduce program expense appropriation and increase contingency.

ATTENDANCE:

Peter Gutowsky, CDD Director
Sherri Pinner, Sr. Mgmt. Analyst
Dan Emerson, Budget & Financial Planning

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON

A Resolution to Transfer Appropriations *
and Decrease FTEs within the * RESOLUTION NO. 2023-041
2023-24 Deschutes County Budget *

WHEREAS, the Deschutes County Community Development Department presented to the Board of County Commissioners on July 5, 2023 regarding the reduction of 6.0 vacant FTE positions, and

WHEREAS, the sum total of \$607,363, representing the amount appropriated in the budget for these positions, will be transferred from program expense to contingency, and

WHEREAS, ORS 294.463 allows the transfer of appropriations within a fund when authorized by resolution of the governing body, now therefore,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, as follows:

Section 1. That the following FTE be eliminated:

Job Class	Position Number	Type	Duration if Limited Duration	FTE
Building Safety Inspector III	2938	Eliminate	N/A	(1.00)
Admin Support Specialist	3118	Eliminate	N/A	(1.00)
Admin Support Technician	2894	Eliminate	N/A	(1.00)
Permit Technician I	1047	Eliminate	N/A	(1.00)
Permit Technician I	1050	Eliminate	N/A	(1.00)
Code Compliance Specialist	2332	Eliminate	N/A	(1.00)
Total FTE				(6.00)

Section 2. That the Human Resources Director make the appropriate entries in the Deschutes County FTE Authorized Positions Roster to reflect the above FTE changes.

Section 3. That the following transfer of appropriations be made:

Community Development

Contingency	\$ 607,363
Program Expense	(\$ 607,363)

Section 4. That the Chief Financial Officer make the appropriate entries in the Deschutes County Financial System to reflect the above appropriations.

DATED this _____ day of July, 2023.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice-Chair

Recording Secretary

PHIL CHANG, Commissioner

Deschutes County
Appropriation Transfer Request

Item	ORG	Object	Category				
Item	(7 digit MUNIS Code)	(6 digit MUNIS Code)	(Pers, M&S, Cap Out, Contingency)	Object Description	Current Appropriation	To (From)	Revised Appropriation
1	2952150	410101	Personnel	Salary	1,276,221	(66,474)	1,209,747
2	2952150	420301	Personnel	FICA	94,636	(4,223)	90,413
3	2952150	420101	Personnel	Health Ins	268,803	(16,352)	252,451
4	2952150	420201	Personnel	PERS	285,478	(10,698)	274,780
5	2952150	420601	Personnel	Life Ins / Dis	4,194	(263)	3,931
7	2952150	420501	Personnel	Unemployment	4,641	(228)	4,413
8	2952150	420401	Personnel	Worker Comp	16,347	(46)	16,301
9	2952150	420801	Personnel	Paid Family Leave	4,998	(262)	4,736
10	2952250	410101	Personnel	Salary	368,250	(16,618)	351,632
11	2952250	420301	Personnel	FICA	25,324	(1,056)	24,268
12	2952250	420101	Personnel	Health Ins	78,711	(4,088)	74,623
13	2952250	420201	Personnel	PERS	75,830	(2,675)	73,155
14	2952250	420601	Personnel	Life Ins / Dis	1,232	(66)	1,166
16	2952250	420501	Personnel	Unemployment	1,366	(57)	1,309
17	2952250	420401	Personnel	Worker Comp	4,790	(12)	4,778
18	2952250	420801	Personnel	Paid Family Leave	1,450	(66)	1,384
19	2950150	410101	Personnel	Salary	1,370,074	(217,960)	1,152,114
20	2950150	420301	Personnel	FICA	100,066	(16,642)	83,424
21	2950150	420101	Personnel	Health Ins	393,062	(81,760)	311,302
22	2950150	420201	Personnel	PERS	318,907	(54,310)	264,597
23	2950150	420601	Personnel	Life Ins / Dis	5,583	(888)	4,695
25	2950150	420501	Personnel	Unemployment	6,178	(1,140)	5,038
26	2950150	420401	Personnel	Worker Comp	22,940	(232)	22,708
27	2950150	420801	Personnel	Paid Family Leave	5,111	(870)	4,241
28	2950350	410101	Personnel	Salary	441,231	(67,251)	373,980
29	2950350	420301	Personnel	FICA	33,766	(5,166)	28,600
30	2950350	420101	Personnel	Health Ins	112,426	(20,440)	91,986
31	2950350	420201	Personnel	PERS	104,508	(16,634)	87,874
32	2950350	420601	Personnel	Life Ins / Dis	1,755	(273)	1,482
34	2950350	420501	Personnel	Unemployment	1,942	(285)	1,657
35	2950350	420401	Personnel	Worker Comp	6,838	(58)	6,780
36	2950350	420801	Personnel	Paid Family Leave	1,733	(270)	1,463
37	2950150	501971	Contingency	Contingency	1,368,367	607,363	1,975,730
38							
39							
TOTAL					6,806,758	-	6,806,758

A transfer of appropriation is required for the following reason and will be used for the following purpose:
 Removal of six unfilled FTE. - Position #2938 BSI III; Position #3118 Admin Supp Specialist; Position #2894 - Admin Supp Tech;
 Position #1047 - Permit Technician; Position #1050 - Permit Technician; Position #2332 - Code Compliance Specialist

Fund:	295
Dept/Division:	36
Requested by:	Sherri Pinner
Date:	7/5/2023



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 5, 2023

SUBJECT: Planning Division Work Plan Update / Long Range Planning / FY 2023-24

RECOMMENDED MOTION:

N/A

BACKGROUND AND POLICY IMPLICATIONS:

The adopted Community Development Department (CDD) FY 2023-24 Work Plan contains several discretionary long range planning projects varying in complexity and anticipated staff effort. This memorandum is intended to update the Board of County Commissioners (Board) on upcoming work plan projects and solicit any comments and revisions. The purpose is to ensure that long-range staff, which has emerging capacity due to the withdrawal of the Mule Deer Wildlife Inventory Project, implements the Board's priorities within its available resources.

BUDGET IMPACTS:

N/A

ATTENDANCE:

Will Groves, Planning Manager



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Will Groves, Planning Manager
Peter Gutowsky, AICP, Director

DATE: June 28, 2023

SUBJECT: Planning Division Work Plan Update / Long Range Planning / FY 2023-24

I. WORK PLAN DIRECTION

The adopted Community Development Department (CDD) FY 2023-24 Work Plan contains several discretionary long range planning projects varying in complexity and anticipated staff effort.¹ This memorandum is intended to update the Board of County Commissioners (Board) on upcoming work plan projects and solicit any comments and revisions. The purpose is to ensure that long-range staff, which has emerging capacity due to the withdrawal of the Mule Deer Wildlife Inventory Project, implements the Board's priorities within its available resources.²

Mule Deer Steering Committee

On June 26, the Board discussed convening a mule deer steering committee as recommended by the Planning Commission. If the Board supports initiating this recommendation, staff offers the following perspectives. The Board would need to define the purpose of the steering committee and its intended outcomes. The Oregon Department of Fish and Wildlife (ODFW) is currently updating its Mule Deer Management Plan and is taking public feedback.³ This is a better process than a county-initiated committee because it will address issues and concerns that will direct future management of mule deer. It is also ODFW's preferred method for further engagement. Lastly, throughout the Mule Deer Wildlife Inventory Project, besides habitat fragmentation, ODFW identified other threats including predation, disease, poaching, automobile collisions, and wildlife crossings. CDD does not regulate or have any oversight of these issues. Given our lack of expertise and the divergent opinions about mule deer,

¹ https://www.deschutes.org/sites/default/files/fileattachments/community_development/page/18781/draft_2023-24_work_plan_annual_report.pdf. Pages 35-38.

² Compared to FY 2022-23, the Long Range Section is down one FTE. The Long Range Planning Section now consists of four FTEs: two Senior Planners, a Senior Transportation Planner (FTE allocated across transportation, current and long range planning duties), and one Associate Planner. An Associate Long Range Planner promoted to fill a Senior Transportation Planner retirement is not being backfilled due to budgetary considerations.

³ https://www.dfw.state.or.us/wildlife/management_plans/mule_deer/index.asp

professional facilitation would be required. CDD does not have this expense listed in our FY 2023-24 budget.

Staff seeks Board support to initiate one of the following projects:

2023 Legislative Session

- HB 3197 / Clear and Objective Standards (Bill language included as attachment to this memo)

The Oregon Legislature recently enacted HB 3197 into law. It requires counties to adopt and apply clear and objective standards, conditions, and procedures regulating housing in unincorporated communities, Rural Residential Exception Areas, and nonresource lands. It has a two year effective date of July 1, 2025.

CDD needs to develop a multi-phased and likely multi-year work program to comply. This law requires amending definitions, land division code, five rural residential zones, Sunriver Urban Unincorporated Community zones, Tumalo and Terrebonne Rural Community zones, Flood Plain Zone, and Landscape Management, Sensitive Bird and Mammal, and Wildlife Area Combining Zones, with detailed findings, including those relating to Goal 5.

- SB 1013 / Recreation Vehicles / Housing Option (Bill language included as attachment to this memo)

The Oregon Legislature recently enacted SB 1013 into law. It allows counties to amend rural residential zones to site one recreational vehicle with an existing dwelling subject to certain siting standards.

The legislation requires that the recreational vehicle is:

- Located in an area zoned for rural residential use
- Used for residential purposes
- Co-located with an existing residence, which is occupied by the property owner
- Not used for vacation occupancy
- Owned or leased by the tenant
- Provided "essential services", including sewage disposal, water supply, electrical supply

The legislation allows counties to include other limitations and specifications.

Area and Community Plans

- Terrebonne Community and Newberry Country Plans

CDD has received requests to engage Terrebonne and/or Newberry Country residents to determine if community and/or area plans require updates. If so, staff can develop detailed work plans for the Board's consideration.

Legislative / Housekeeping Amendments

- Zoning Code Amendments

It is important to initiate zoning text amendments to keep Deschutes County Code up to date. Staff can coordinate with the Board to prioritize them prior to initiation. Potential Project identified in the adopted 2023-24 Work Plan are included as attachment to this memo, with relevant zoning text amendments on Page 37.

Planning

FY 2023-24 Work Plan Projects

Development Review

- Respond to phone and email customer inquiries within 48 to 72 hours.
- Issue all administrative (staff) decisions for land use actions that do not require prior notice within 21 days of determination of a complete application.
- Issue all administrative (staff) decisions for land use actions requiring prior notice within 45 days of determination of a complete application.
- Process Hearings Officer decisions for land use actions and potential appeals to the BOCC within 150 days per State law.
- Continue to improve website accessibility to the public to view records associated with complex land use applications.

Comprehensive Plan Update

- Amend Comprehensive Plan (Comp Plan 2040) to incorporate new existing conditions, goals and policies.
- Engage Newberry County and Terrebonne and residents to determine if community plans, goals, and policies meet the current and future needs of the area and whether there is an interest and readiness for area and/or community plan updates.

Natural Resources

- Natural Hazards—Develop a work plan to amend the Comprehensive Plan and County Code requiring defensible space and fire-resistant building materials per SB 762 (2021, Wildfire Mitigation).
- Natural Hazards—Initiate recommended development code amendments related to the Natural Hazard Mitigation Plan.
- Wildlife Inventories—Amend the Comprehensive Plan and Zoning Code to incorporate a new mule deer winter range inventory from ODFW.
- Sage-Grouse—Participate as a Coordinating Agency with the Bureau of Land Management (BLM).
- Dark Skies Update—Revisit County's existing outdoor lighting ordinance and update regulations to reflect current best practices and technology.

Transportation Growth Management (TGM) Grant

- Amend Comprehensive Plan to incorporate the Tumalo Community Plan update.
- Implement the rural trails portion of the Sisters Country Vision Action Plan.

Planning

FY 2023-24 Work Plan Projects, continued

Transportation Planning

- Amend Comprehensive Plan to incorporate Transportation System Plan (TSP) update in coordination with Road Department and ODOT.
- Process road naming requests associated with certain types of development on a semi-annual basis.
- Coordinate with ODOT and Parks Districts on regional trail projects.

City of Bend Coordination

- Adopt the Bend Airport Master Plan (BAMP) and amend the County's Comprehensive Plan and Development Code to implement measures that allow for a new air traffic control tower and new airport-related businesses.
- Coordinate on growth management issues, including technical analyses related to housing and employment needs and modernizing Title 19 for the Deschutes County Jail.
- Process a Plan Amendment and Zone Change to add the Stevens Road Tract to the Bend Urban Growth Boundary (UGB), in accordance with HB 3318.

City of La Pine Coordination

- Participate with Property Management and the City of La Pine process to update and amend the county-owned Newberry Neighborhood comprehensive plan designations, master plan and implementing regulations.

City of Redmond Coordination

- Coordinate on growth management issues, including with Central Oregon Intergovernmental Council on CORE3, a multi-stakeholder regional emergency center, and the City's upcoming East Redmond plan, which will involve over 1,000 acres of County-owned land.
- Process Conditional Use Permit and Site Plan Review applications for a new wastewater treatment plant.
- Coordinate on an update of the Airport Safety Zone associated with the Redmond Airport.
- Support City staff to modernize the Joint Management Agreement and assist with City-led updates to DCC Title 20 (i.e., Urban Holding-10 zone).
- Continue to engage the City as a stakeholder in the County's Comp Plan 2040 and TSP updates.

City of Sisters Coordination

- Participate in the implementation of Sisters Country Vision Plan and their Comprehensive Plan Update.



FY 2023-24 Work Plan Projects, continued

Growth Management Committees

- Coordinate and/or participate on Deschutes County BPAC, Project Wildfire, and Deschutes River Mitigation and Enhancement Committee.

Historic Preservation—Certified Local Government (CLG) Grant

- Administer 2023-24 Certified Local Government Grant from SHPO.

Housekeeping Amendments

- Initiate housekeeping amendments to ensure County Code complies with state law.

Housing Strategies

- Amend County Code to implement SB 391, Rural ADUs.
- Amend County Code to repeal Conventional Housing Combining Zone.
- Amend County Code to define family for unrelated persons HB 2538 (non-familial Individuals).
- Explore options and approaches to address rural housing and homelessness as allowed under state law.

Legislative Session (2023-24)

- Initiate Comprehensive Plan and/or Zoning Text amendments to comply with and implement new or revised state laws.
- Participate in legislative or rulemaking work groups to shape state laws that benefit Deschutes County.

Short Term Rentals

- Prepare a white paper describing methods for regulating short term rentals.
- Coordinate with BOCC on next steps

Zoning Text Amendments

- Accessory structure amendments clarifying it must be built concurrent with or after the establishment of a primary residence with certain allowed facilities.
- Applicant initiated plan amendment, zone changes, and/or text amendments.
- Allow “self-serve” farm stands in Rural residential Exception Areas
- Comply with House Bill 3109 (2021) pertaining to establishment of childcare facilities in industrial zones.
- Define family for unrelated persons per HB 2538 (Non-familial Individuals).
- Forest Zone Code—Review for compliance with Oregon Administrative Rule.
- In conduit hydroelectric generation code amendments.
- Lot Line Adjustments and Re-platting.
- Medical Hardship Dwellings—review for consistency with state law.
- Minor variance 10% lot area rule for farm and forest zoned properties.
- Outdoor Mass Gatherings update.

Planning

FY 2023-24 Work Plan Projects, continued

- Repeal Conventional Housing Combining Zone.
- Section 6409(a) of the Spectrum Act (Wireless Telecommunication Amendments).
- Sign code to become consistent with federal law.
- Temporary use of recreational vehicles as dwellings.
- Title 19, 20, 21—Language related to Class I, II, and III road projects as allowed uses.
- Title 22—Procedures Ordinance for consistency with state law and planning department interpretations.
- Wetland Regulation Clarification for Irrigation or Artificially Created Wetlands.



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Enrolled Senate Bill 1013

Sponsored by Senators HAYDEN, LINTHICUM, SMITH DB; Representatives BOICE, DIEHL, GAMBA, HELFRICH, LEVY B, MORGAN (at the request of Clackamas County Chair Tootie Smith)

CHAPTER

AN ACT

Relating to residential tenancies in recreational vehicles; creating new provisions; and amending ORS 197.493.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 215.

SECTION 2. (1) As used in this section:

(a) "Recreational vehicle" means a recreational vehicle that has not been rendered structurally immobile and is titled with the Department of Transportation.

(b) "Rural area" means an area zoned for rural residential use as defined in ORS 215.501 or land that is within the urban growth boundary of a metropolitan service district, but not within the jurisdiction of any city, and zoned for residential use.

(2) A county may allow an owner of a lot or parcel in a rural area to site on the property one recreational vehicle that is used for residential purposes and is subject to a residential rental agreement, provided:

(a) The property is not within an area designated as an urban reserve as defined in ORS 195.137;

(b) A single-family dwelling that is occupied as the primary residence of the property owner is sited on the property;

(c) There are no other dwelling units on the property and no portion of the single-family dwelling is rented as a residential tenancy;

(d) The property owner will not allow the use of the recreational vehicle space or recreational vehicle for vacation occupancy, as defined in ORS 90.100, or other short-term uses;

(e) The recreational vehicle is owned or leased by the tenant; and

(f) The property owner will provide essential services to the recreational vehicle space, as described in ORS 90.100 (13)(b).

(3) A county may require that an owner of a lot or parcel who sites a recreational vehicle under this section:

(a) Register the use with the county.

(b) Enter into a written residential rental agreement with the tenant of the recreational vehicle.

(c) Limit the amount of payments that the property owner may accept from the tenant under ORS 90.140 to those reasonably necessary to cover the owner's costs or losses.

(d) Require that the recreational vehicle comply with any reasonable appearance, repair, inspection or siting standards adopted by the county.

(4) Notwithstanding ORS 455.405, a recreational vehicle sited under this section is not subject to the state building code.

SECTION 3. ORS 197.493 is amended to read:

197.493. (1) A state agency or local government may not prohibit the placement or occupancy of a recreational vehicle, or impose any limit on the length of occupancy of a recreational vehicle as a residential dwelling, solely on the grounds that the occupancy is in a recreational vehicle, if the recreational vehicle is:

(a) Allowed under section 2 of this 2023 Act;

[(a)(A)] (b)(A) Located in a manufactured dwelling park, mobile home park or recreational vehicle park;

(B) Occupied as a residential dwelling; and

(C) Lawfully connected to water and electrical supply systems and a sewage disposal system;

or

[(b)] (c) On a lot or parcel with a manufactured dwelling or single-family dwelling that is uninhabitable due to damages from a natural [disasters] disaster, including wildfires, earthquakes, flooding or storms, until no later than the date:

(A) The dwelling has been repaired or replaced and an occupancy permit has been issued;

(B) The local government makes a determination that the owner of the dwelling is unreasonably delaying in completing repairs or replacing the dwelling; or

(C) Twenty-four months after the date the dwelling first became uninhabitable.

(2) Subsection (1) of this section does not limit the authority of a state agency or local government to impose other special conditions on the placement or occupancy of a recreational vehicle.

Passed by Senate April 5, 2023

Received by Governor:

Repassed by Senate June 15, 2023

.....M.,....., 2023

Approved:

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Lori L. Brocker, Secretary of Senate

.....M.,....., 2023

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Rob Wagner, President of Senate

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Tina Kotek, Governor

Passed by House May 31, 2023

Filed in Office of Secretary of State:

.....M.,....., 2023

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Dan Rayfield, Speaker of House

.....
Secretary of State

Enrolled House Bill 3197

Sponsored by Representative MCLAIN; Senator MANNING JR (at the request of Washington County)

CHAPTER

AN ACT

Relating to standards applicable to development of housing; creating new provisions; amending ORS 197.307 and 215.278; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 197.307, as amended by section 14, chapter 401, Oregon Laws 2019, section 2, chapter 54, Oregon Laws 2022, and section 81, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), is amended to read:

197.307. (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including agriculture workforce housing, is a matter of statewide concern.

(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.

(3) A local government shall permit needed housing in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing, **on land within an urban growth boundary**. The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(5) The provisions of subsection (4) of this section do not apply to:

(a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or greater.

(b) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria [*regulating, in whole or in part, appearance or aesthetics*] that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.

(7) Subject to subsection (4) of this section, this section does not infringe on a local government's prerogative to:

(a) Set approval standards under which a particular housing type is permitted outright;

(b) Impose special conditions upon approval of a specific development proposal; or

(c) Establish approval procedures.

SECTION 2. ORS 197.307, as amended by section 14, chapter 401, Oregon Laws 2019, section 2, chapter 54, Oregon Laws 2022, section 81, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), and section 1 of this 2023 Act, is amended to read:

197.307. (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including agriculture workforce housing, is a matter of statewide concern.

(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.

(3) A local government shall permit needed housing in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing, on land within an urban growth boundary, **unincorporated communities designated in a county's acknowledged comprehensive plan after December 5, 1994, nonresource lands and areas zoned for rural residential use as defined in ORS 215.501.** The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(5) The provisions of subsection (4) of this section do not apply to:

(a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or greater.

(b) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.

(7) Subject to subsection (4) of this section, this section does not infringe on a local government's prerogative to:

- (a) Set approval standards under which a particular housing type is permitted outright;
- (b) Impose special conditions upon approval of a specific development proposal; or
- (c) Establish approval procedures.

SECTION 3. ORS 215.278 is amended to read:

215.278. (1) The Land Conservation and Development Commission shall revise administrative rules regarding dwellings customarily provided in conjunction with farm use to allow, under ORS 215.213 and 215.283, the establishment of accessory dwellings needed to provide opportunities for farmworker housing for individuals primarily engaged in farm use whose assistance in the management of the farm is or will be required by the farm operator on the farm unit.

(2) County land use regulations may not establish standards for accessory farmworker housing that are in addition to those required under this chapter or commission rules unless the standards are clear and objective.

[(2)] (3) As used in this section:

(a) "Farm unit" means the contiguous and noncontiguous tracts in common ownership used by the farm operator for farm use as defined in ORS 215.203.

(b) "Farmworker" means an individual who, for an agreed remuneration or rate of pay, performs labor, temporarily or on a continuing basis, for a person in the:

- (A) Production of farm products;
- (B) Planting, cultivating or harvesting of seasonal agricultural crops; or
- (C) Forestation or reforestation of land, including but not limited to planting, transplanting, tubing, precommercial thinning and thinning of trees or seedlings, the clearing, piling and disposal of brush and slash and other related activities.

(c) "Farmworker housing" means housing:

- (A) Limited to occupancy by farmworkers and their immediate families; and
- (B) No dwelling unit of which is occupied by a relative of the owner or operator of the farmworker housing.

(d) "Owner" means a person that owns farmworker housing. "Owner" does not mean a person whose interest in the farmworker housing is that of a holder of a security interest in the housing.

(e) "Relative" means:

- (A) A spouse of the owner or operator; and
- (B) An ancestor, lineal descendant or whole or half sibling of the owner or operator or the spouse of the owner or operator.

SECTION 4. The amendments to ORS 197.307 and 215.278 by sections 2 and 3 of this 2023 Act become operative on July 1, 2025.

SECTION 5. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by House May 9, 2023

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Timothy G. Sekerak, Chief Clerk of House

.....
Dan Rayfield, Speaker of House

Passed by Senate June 23, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M,....., 2023

Approved:

.....M,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

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Secretary of State



**BOARD OF
COMMISSIONERS**

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 5, 2023

SUBJECT: Presentation of Countywide Long-term Financial Forecast with Courthouse Debt Service

RECOMMENDED MOTION:

The Board may consider motions to identify funding sources for current year fiscal obligations.

BACKGROUND AND POLICY IMPLICATIONS:

Following the Fiscal Year 2024 budget week and legislative update on courthouse funding, the Deschutes County Finance Department will share a long-term financial analysis with the Board. Staff’s presentation includes an overview of current and future County finances, including forecasts for key funds and future debt service obligations.

Specific current fiscal year obligations without identified funding sources include:

- \$100,000 per year, for ten years to fund Veterans Village ongoing operations
- \$300,000 to fund expansion of Veterans Village cabins for housing veterans experiencing houselessness
- \$500,000 funding the Housing Trust and creating local affordable housing

BUDGET IMPACTS:

Budget impacts are variable and contingent upon Board motions and direction. Board direction on courthouse debt service buy down effects short and long-term General Reserve funds.

ATTENDANCE:

- Robert Tittle – Chief Financial Officer
- Dan Emerson – Budget and Financial Planning Manager