



Location: City Hall – Council Chambers
Date: May 24, 2022
Time: 6:00 PM

City Council Meeting Agenda

Mayor Jason Beebe, Council Members Steve Uffelman, Janet Hutchison, Patricia Jungmann, Gail Merritt, Jeff Papke, Raymond Law and City Manager Steve Forrester
ATTEND TELEPHONICALLY BY CALLING 346-248-7799 Meeting ID: 947 5839 2608 Passcode: 123456

Call to Order

Flag Salute

Additions to Agenda

Consent Agenda

- [1.](#) Regular Meeting Brief 4-26-2022
- [2.](#) Planning Commission Appointments - Josh Smith

Visitors, Appearances and Requests

Council Presentations

Council Business

- [3.](#) Reading of Poppy Days Proclamation - Mayor Beebe
- [4.](#) Vacation of a Portion of Alley (CCJC) **(PUBLIC HEARING)** - Josh Smith

Staff Reports and Requests

- [5.](#) City Manager's Report - Steve Forrester

Committee Reports

Ordinances

Resolutions

- [6.](#) Resolution No. 1517 - Establishing a Policy Governing Charitable Donations Made by City Council - Councilor Papke
- [7.](#) Resolution No. 1522 - Authorizing City of Prineville to Apply for Oregon Spire 2 Grants - James Wilson
- [8.](#) Resolution No.1523 - Authorizing the Agreement for the 2022 Recreational Trails Grant Benefiting the Barnes Butte Paved Loop Trail Project. - Casey Kaiser



[9.](#) Resolution No. 1523 - Authorizing the Agreement for the 2022 Recreational Trails Grant Benefiting the Barnes Butte Paved Loop Trail Project. - Casey Kaiser

[10.](#) Resolution No. 1525 - Approving a Personal Services Agreement with the Beck Group & Highland Economics - Eric Klann

Visitors, Appearances and Requests

Adjourn

11. Executive Session - Pursuant to ORS 192.660 (2)(i) & 192.660 (8) - Evaluation of Officer, Employee or Staff Member

Agenda items maybe added or removed as necessary after publication deadline



CITY OF PRINEVILLE
Regular Meeting Brief
387 NE Third Street – Prineville, OR 97754
541.447.5627 ph 541-447-5628 fax

Full Meeting Recordings Available at:
<http://cityofprineville.com/meetings/>

City Council Meeting Brief
April 26, 2022

Council Members Present:

Patricia Jungmann
Steve Uffelman
Gail Merritt

Janet Hutchison
Ray Law

Council Members Absent

Jason Beebe
Jeff Papke

Crook County Judge Seth Crawford, Commissioner Jerry Brummer, Commissioner Brian Barney and John Eisler – Assistant County Counsel were also present for a portion of the meeting and the County Court segment was called to order at 6:00 P.M.

Additions to the Agenda

Resolution No. 1517 will be postponed to the next meeting and move all resolutions on the agenda to after the first Visitors, Appearances and Requests.

Consent Agenda

1. Regular Meeting Brief 4-12-2022

Councilor Jungmann made a motion to approve consent agenda as presented. Motion seconded. No discussion on motion. Motion carried.

Visitors, Appearances and Requests:

None.

Resolutions

2. **Resolution No. 1517 – Establishing Policy Governing Charitable Donations Made by City Council**

Postponed to the next Council meeting.

3. Resolution No. 1519 – Approving the Strategic Investment Program Agreement with Crook County and EdgeConneX Inc. (Joint Meeting with Crook County) – Eric Klann

Eric Klann, City Engineer went through the power point presented to Council on April 12, 2022.

There were no questions from Council or County.

Councilor Merritt made a motion to approve Resolution No. 1519. Motion seconded. No discussion on motion. All in favor, motion carried.

Commissioner Brummer made a motion to approve the Oregon Strategic Investment Program Project Agreement. Commissioner Barney seconded. No discussion on motion. All in favor, motion carried.

4. Resolution No. 1520 – Approving an Intergovernmental Agreement for Administration of a Strategic Investment Program Project (Joint Meeting with Crook County)

Mr. Klann provided background information. Jered Reid, City Attorney added that this still has to go to the state of Oregon for review and approval.

Councilor Hutchison made a motion to approve Resolution No. 1520. Motion seconded. No discussion on motion. All in favor, motion carried.

Commissioner Barney made a motion to approve an Intergovernmental Agreement for Administration of a Strategic Investment Program Project County File Number CT: Real Estate 297. Commissioner Brummer seconded. No discussion on motion. All in favor, motion carried.

Judge Crawford adjourned the County Court portion of the meeting at 6:14 P.M.

5. Resolution No. 1521 – Approving an Intergovernmental Agreement with Hospital Facility Authority of Deschutes County and the City of Madras (PUBLIC HEARING) – Jered Reid / Gregory Blonde

Mr. Reid provided the background information stating that this had been done before in 2014 and that there is no fiscal impact or liability to the City of Prineville and is the sole responsibility of St. Charles Health System.

There were no questions.

Council President Uffelman opened the public hearing portion of the meeting.

No one came forward and no written comments were received.

Council President Uffelman closed the public hearing portion of the meeting.

Councilor Law made a motion to approve Resolution No. 1521. Motion seconded. No discussion on motion. All in favor, motion carried.

Council Presentations

6. EDCO Update – Kelsey Lucas / Mike Warren

Kelsey Lucas, Prineville EDCO Manager went through a power point presentation that highlighted EDCO activity, Enterprise Zones, growth, investments and jobs created.

Ms. Lucas continued with the new leads for 2020-2021 that were generated and already done deals. Ms. Lucas explained where these leads come from, and other leads they are working on. Talked about new staff and their focuses, CEO recruitment and interns.

The update continued regarding their strategic plans are done, top employer lists are done and will be coming out, legislation, being job ready and upcoming events.

Ms. Lucas explained that they are looking at increasing their budget and went over their 22-23 goal.

Mike Warren talked about increasing the budget and the last increase was in 2016. EDCO will be doing a large push and helping everyone understand what EDCO does. They are hoping of some kind of confirmation by June 1st and will follow up with by then.

No questions.

Council Business

None.

Staff Reports and Requests:

7. City Manager’s Report– Steve Forrester

Mr. Forrester went through his City Manager report that covered highlights from each department and added that the railroad received their first car of distillery grain today and Meadow Lakes is busy. Mr. Forrester explained that we may not have a quorum for the May 10th meeting and might need to cancel.

Council President Uffelman had questions regarding the housing development that was just approved and the traffic.

Josh Smith, Planning Director explained that ODOT is currently reviewing the plans and will make a determination from the traffic study. It will include speed studies and fixes and ODOT has the city's comments.

There were no questions or comments.

Councilor Hutchison made a motion to cancel the May 10th Regular Council meeting. Motion seconded. No discussion on motion. All in favor, motion carried.

Committee Reports

Council President Uffelman stated that he was pleased to have Justin Severance, Street Superintendent attend his first COACT meeting and explained what kind of projects are being done regionally ODOT will run out of money in 2026-2027 due to loss of fuel tax revenue.

Council President Uffelman attended the spring LOC conference and strongly encouraged Council to attend the fall conference which will be in Bend this year with a tour available of the wetlands.

There were no other committee reports.

Ordinances:

None.

Visitors, Appearances and Requests:

Mike Ervin, a resident on Paulina Highway explained that it was difficult for him to hear some parts of the meeting.

Jack Rabenberg challenged the city to look at other taxing districts being included in agreements and asked this body to consider looking at definition of public service. He did additional research on who is the biggest recipient which is the state.

Liz Patterson questioned power usage and her well drying up and wondered if we can really handle that much more electricity.

No one else came forward.

Adjourn

Councilor Jungmann made a motion to adjourn the meeting. Motion seconded. No discussion on motion. All in favor, motion carried.

Meeting adjourned at 6:58 P.M.

Motions and Outcomes:

Motion:	Outcome	Beebe	Hutchison	Jungmann	Law	Merritt	Papke	Uffelman
Consent Agenda	PASSED	-	Y	Y	-	Y	-	Y
Resolution No. 1517 – Establishing Policy Governing Charitable Donations Made by City Council	POSTPONED	-	-	-	-	-	-	-
Resolution No. 1519 – Approving the Strategic Investment Program Agreement with Crook County and EdgeConneX Inc. (Joint Meeting with Crook County)	PASSED	-	Y	Y	Y	Y	-	Y
Resolution No. 1520 – Approving an Intergovernmental Agreement for Administration of a Strategic Investment Program Project (Joint Meeting with Crook County)	PASSED	-	Y	Y	Y	Y	-	Y
Resolution No. 1521 – Approving an Intergovernmental Agreement with Hospital Facility Authority of Deschutes County and the City of Madras (PUBLIC HEARING)	PASSED	-	Y	Y	Y	Y	-	Y
Motion to cancel the May 10 th Regular Council meeting.	PASSED	-	Y	Y	Y	Y	-	Y
Adjourn Meeting	PASSED	-	Y	Y	Y	Y	-	Y

Public Records Disclosure

Under the Oregon public records law, all meeting information, agenda packets, ordinances, resolutions, audio and meeting briefs are available at the following URL:

<https://www.cityofprineville.com/meetings> .



STAFF REPORT

MEETING DATE: 5/24/2022 **PREPARED BY:** Joshua Smith, on behalf of the Council's Governance Committee.

SECTION: Consent **DEPARTMENT:** Planning

CITY GOAL: Position City for Future

SUBJECT: Planning Commission Appointments

REASON FOR CONSIDERATION: The City Council appoints a 7 member volunteer Commission to make decisions and recommendations on land use issues. The Commission currently has two open seats.

BACKGROUND: Commission members are appointed to 4-year terms and are typically re-appointed without issue. Unfortunately in the last year two members of the Commission have passed away, causing the vacancies. Ordinance 1272 made changes to Chapter 32 of the City code that administers the Planning Commission. This amendment placed the recommendation of new Commissioners in the hands of a committee (Governance Committee) appointed by the Mayor.

RECOMMENDATION: The Governance Committee has received and reviewed the applications of two individuals; Brian Samp and Joe Becker. City Planning staff has also reviewed the applications and spoken to both applicant's with no objections. Council members may request the applications for review, as they are not part of this packet.

The Council Governance Committee, formally recommends the appointment of Brian Samp and Joe Becker to the Planning Commission to continue the terms of two open seats ending December 31st, 2025.

PROCLAMATION

WHEREAS, the annual offering of Poppies by the American Legion Posts and the American Legion Auxiliaries and Buddy Poppies by the Veterans of Foreign Wars and Auxiliaries of the United States have been officially recognized and endorsed by governmental leaders since 1922, and

WHEREAS, Buddy Poppies are assembled by disabled veterans, and the proceeds of this worthy fund-raising campaign are used exclusively for the benefit of disabled veterans, and

WHEREAS, the basic purpose of offering the Poppies by the American Legion and the Veterans of Foreign Wars is eloquently reflected in the desire to "Honor the Dead by Helping the Living", therefore

I, Jason R. Beebe, Mayor of the City of Prineville, proclaim

POPPY DAYS

**May 21st and 22nd Were Distributed by the American Legion Post 29 & Auxiliary
May 26th, 27th and 28th Distributed by the
Veterans of Foreign Wars Post 1412 and Auxiliary**

and hereby urge the citizens of this community to recognize the merits of this cause by contributing generously to the support of Poppies on the days set aside for this distribution of these symbols of appreciation for the sacrifices of our honored dead.

I urge all patriotic citizens to wear a Poppy as mute evidence of our gratitude to the men and women of this country who have risked their lives in defense of the freedoms, which we continue to enjoy as American citizens.

I, Jason R. Beebe, Mayor of the City of Prineville hereto set my hand and cause the Seal of the City of Prineville to be affixed this 24th day of May in the year of our Lord two thousand twenty two.



Jason R. Beebe, Mayor



STAFF REPORT

MEETING DATE: 5/24/2022 **PREPARED BY:** Joshua Smith

SECTION: Public Hearing **DEPARTMENT:** Planning

CITY GOAL: Quality Municipal Services and Programs

SUBJECT: Public hearing for alley vacation

REASON FOR CONSIDERATION:

The vacation of this alley is necessary for the construction of the County's Justice Center.

BACKGROUND:

The County presented several requests to the Council at the March 8th City Council meeting. One of those requests was the vacation of the alley on the block the Justice Center would be built on. At that meeting the City Council voted to proceed with several items including the vacation. Proceeding on the Council's own motion allows the request to go directly to a public hearing before the Council. Property owners in the surrounding area were given notice of the project through the bond measure, public outreach and direct mailed notice during the land use process. There are no adjacent property owners that utilize the alley. Newspaper notice was provided for two consecutive weeks prior to this hearing on May 10th and May 17th.

FISCAL IMPACT:

The vacation itself has no fiscal impact to the City. The Council did approve a contribution to the County of no more than \$30,000 to be spent on relocating the City sewer line that currently runs through the alley.

RECOMMENDATION:

At this point the process the vacation of this alley is somewhat of a formality. The Justice Center has been approved and is already beginning development. The City has already re-located the sewer line and the power and gas lines will be re-located with the Justice Center development. Staff recommends approval of this alley vacation described in Exhibit A and shown in Exhibit B.

EXHIBIT A

The alley in Block 4 of Monroe Hodges Plat of Prineville, according to the official plat thereof, recorded July 31, 1883 in Plat Book 1, Page 1, on file and of record in the office of the County Clerk for Crook County Oregon.

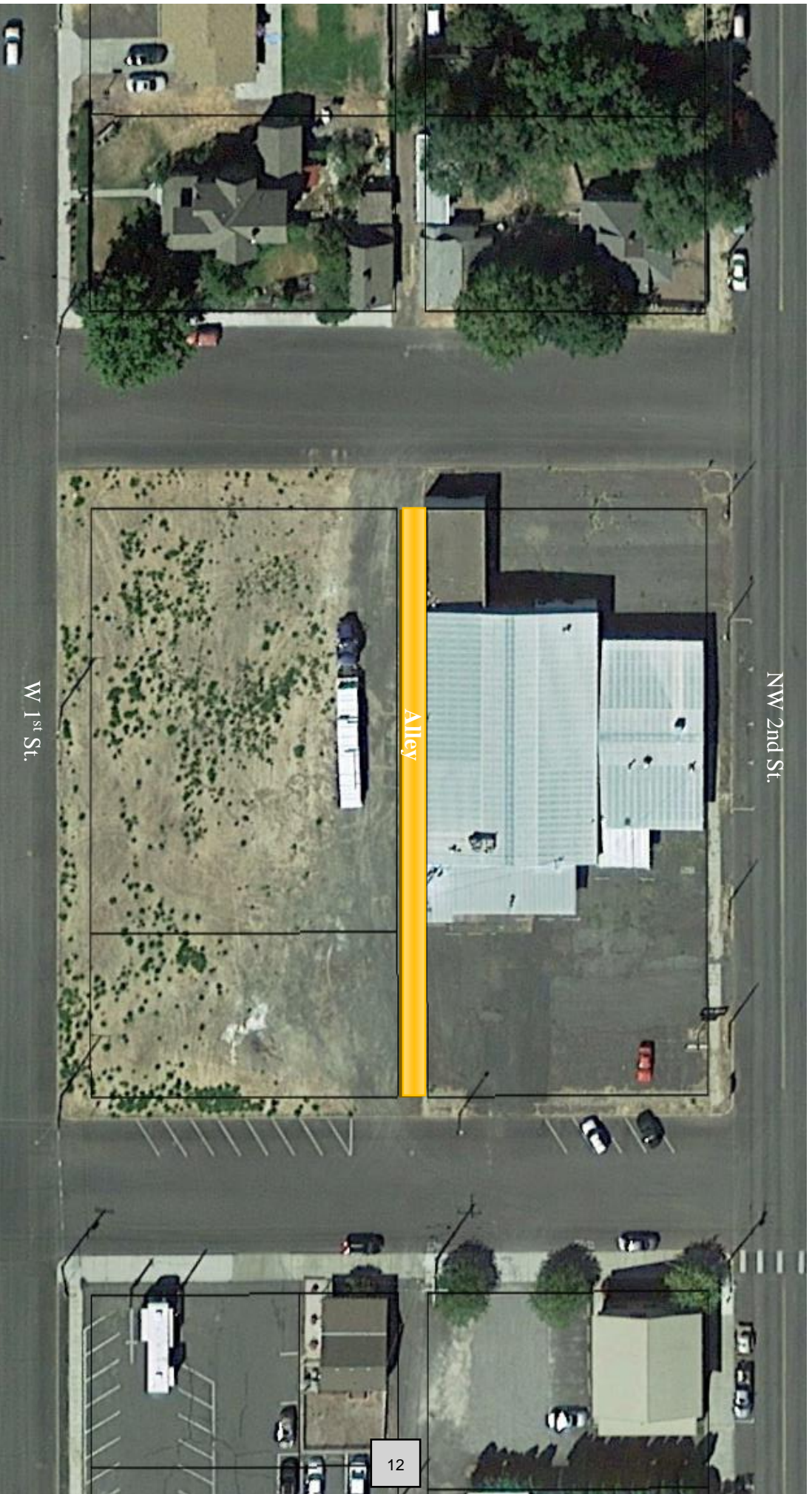
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Patrick Gage Cole 4/25/22

OREGON
JULY 10, 2007
PATRICK GAGE COLE
79157

EXPIRES: 12/31/23

Exhibit B



City Manager Update to Council

Council Meeting May 24, 2022

Public Safety / Dispatch

Recruitment efforts are going well for dispatch and underway for the Police Department which is also looking hopeful.

Public Works

Public Works put out an invitation to bid for the 2022 street rehabilitation project and the bids are due May 24th.

Rail Road

The railroad is receiving additional feed cars and remains busy on the reload side of business. The numbers continue to look good for the railroad.

Meadow Lakes Golf

Summer Leagues are starting up as well as junior golf lessons and keeping everyone busy on the course. Various community service groups such as Humane Society of the Ochocos will begin their fund raising events. Summer staff is almost full and we expect more applicants when school lets out for the summer.

Airport

There is a new Fixed Base Operator (FBO) that will be taking over the old Les Schwab hangar which will expand on available services at the airport. Four new hangars are now under construction. Erickson Air Crane continues to increase their training time at the Prineville Airport which increases our fuel sales substantially.

Planning

Several subdivision applications are moving along. Wilco is busy with ground work and moving lots of dirt around. Industrial development remains steady as well. Progress moving along for a possible multi-family development on the east side.

Human Resources

Remains busy with seasonal hires at Meadow Lakes, and recruitment in other departments mostly due to retirements or some career changes.

Information Technology – No Update

Finance

The Finance Department will be presenting their quarterly financial report at the next Council meeting. Year-end numbers are being closely monitored in preparation for the budget appropriation adjustments and supplemental budget by the end of June as presented to Council throughout the year.

City Recorder/Risk Management

City staff participated in OSHA's Annual Safety Break event on May 11th. It was a great time for everyone to rotate through and celebrate practicing safety. The Safety Committee will be reviewing existing safety handbooks and practices this upcoming year. They will also be implementing safety incentive and health & wellness programs.

City Legal – No Update

EDCO – No Update

Public Relations

The water conservation tips and recommendations campaign continues and is being well received overall. With the 4th of July right around the corner, the city will partner with the CC Fire & Rescue to promote safety while celebrating the holiday.

Mayor/Council

Just a reminder that The Crook County Foundation and The Chamber is looking for a council member to serve on their boards. June 1st from 10:00 AM – 11:30 AM will be Prineville EDCO's Waffle Wednesday Membership Brunch which is usually well attended and a great opportunity to network with local businesses. The annual EDCO luncheon is coming up on Monday June 13th, please let us know if you will be attending.

Other

The Crooked River Roundup will kick off its annual rodeo celebration on Wednesday evening June 22nd with the famous cattle drive through town. Keep an eye out as more details roll out.

**RESOLUTION NO. 1517
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION ESTABLISHING A POLICY GOVERNING CHARITABLE DONATIONS
MADE BY THE CITY COUNCIL**

Whereas, the City Council wishes to establish policies and procedures for community non-profit groups to request and receive public funds from the City of Prineville (“City”).

Whereas, the City Council recognizes the potential for misuse of public funds with insufficient oversight and policies.

Whereas, the City Council Governance Committee has made recommendations regarding guidelines and procedures for Council Contribution/Donations.

Whereas, the City Council desires to create a policy that avoids the appearance of impropriety and minimizes the opportunity for misuse of public funds.

Whereas, the charitable donation policy provided for herein provides for proper public purposes, a neutral, non-political process, and transparency.

Whereas, the City Council hereby establish the following Comprehensive Policy for City Council Governing Charitable Donations.

Now, Therefore, the City of Prineville resolves as follows:

1. The aforementioned recitals are true and correct.
2. **Applicability of Policy.** In order to establish a fair and transparent process for distribution of charitable donations, the City of Prineville hereby establishes this Comprehensive Policy for the City Council Governing Charitable Donations. This policy shall apply to any group, organization, or person requesting public funds.
3. **Public Purpose.** The donation of any public funds by the City of Prineville shall promote a valid public purpose that directly benefits City of Prineville residents and property owners.
4. **Comprehensive Policy Governing Charitable Donations by City Council.** Charitable donations shall be subject to the below guidelines. The eligibility requirements for the donation of any public funds are:
 - a. The solicitation request shall be for a public purpose as provided for in Section 3.
 - b. The solicitation request must be accompanied by a completed application and all required documentation.
 - c. Upon final approval of a solicitation request, the group/organization will be required to attend a City Council within sixty (60) days to present to City Council regarding the use of the funds.
 - d. All charitable donation requests shall be submitted on the application form available with the City Recorder.

e. Completed application forms for donations with supporting documentations shall be submitted to the City Recorder and forwarded to City Council for sponsorship. Upon a City Council Member's sponsorship, the application shall be presented at the next Regular City Council Meeting for City Council Consideration.

f. The applications, support documentation, and City Council determination shall be placed on the City's website.

5. **Funding Awards.** In preparing the annual budget, City staff will budget a discretionary fund for awards which are approved by City Council pursuant to this Resolution. Any funds appropriated for donations and not spent for such purpose during the then current fiscal year shall revert to the General Revenue Fund at the end of the fiscal year.

6. **Authorization.** The City Council hereby approves, in substantially, the stated criteria, acknowledgements, and required documentations.

7. **Exclusivity.** The matters set forth in this Resolution shall serve as the City's Comprehensive Policy Governing Charitable Donations for the City Council, and it shall be posted on the City's website.

Approved by the City Council this ____ day of May, 2022.

Rodney J. Beebe, Mayor

ATTEST:

Lisa Morgan, City Recorder



STAFF REPORT

MEETING DATE: 5/24/2022

PREPARED BY: James Wilson

SECTION: Resolutions

DEPARTMENT: Information
Technology

CITY GOAL: Fiscal Responsibility, Provide Quality Municipal Service & Programs, Position City for the Future and Community Safety

SUBJECT: Resolution No. 1522 – Authorizing to Apply for Oregon Spire 2 Grant

REASON FOR CONSIDERATION:

Crook County currently has 1 mobile repeater unit which the Information Technology department maintains through the city's 911 program. This deployable unit is only capable of radio communications, not data or cellular, and is approximately 20 years old.

BACKGROUND:

Resolution No 1522 authorizes the City to apply for an emergency management grant through the State Preparedness and Incident Response Equipment Program (SPIRE). The SPIRE program makes available certain pre-determined emergency response assets to local agencies. These assets vary in type, and include items such as emergency backup generators, bulk fuel storage cells, variable messaging signs, scene lighting, and other emergency response equipment. One of the items available through this program is an emergency communications platform. This item is a self-contained deployable trailer with a communications package capable of cellular, radio, data and satellite communications, which would greatly aid our 911 center's ability to provide reliable communications to our 911 system users.

This communications set is capable of multiple deployment scenarios. First it can be deployed to a remote scene to provide communications coverage in an area not served by fixed infrastructure communications sites. This would aid in response to missing persons or wildland fire incidents in the north and eastern parts of our County. In addition, this unit can be deployed as a backup communications link to any City facility in the event of a fiber optic cut or other outage affecting normal data and telephone communications. It could also be deployed to provide temporary communications capacity, for incidents such as fire camps at the

fairgrounds, emergency shelters at a school, or other scenarios where additional data or telephone coverage is necessary.

FISCAL IMPACT:

The SPIRE program is unique in which traditional homeland security and emergency preparedness grants provide funds for eligible applicants to procure items with the intent of the program. Under the spire program, successful applicants receive state owned assets which are placed with the eligible agency for the useful lifespan of the equipment. Under this program, the city would receive this communications unit at no direct cost to the city, but the city would be responsible for operational costs, maintenance and insurance. The city has evaluated these costs and intends to budget for them within the Information Technology department. The operational and incidental costs related to this asset are believed to be nominal and can be covered through existing appropriations.

RECOMMENDATION:

Staff recommends council approve Resolution No. 1522 to allow the city to proceed with this grant application.

**RESOLUTION NO. 1522
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION AUTHORIZING CITY OF PRINEVILLE TO APPLY FOR OREGON SPIRE 2
GRANT**

Whereas, the City of Prineville (“City”) wishes to apply for the State Preparedness and Incident Response Equipment (“SPIRE”) Grant Program II managed by the Oregon Office of Emergency Management (“Oregon SPIRE 2 Grant”).

Whereas, The Oregon SPIRE 2 Grant makes certain specific emergency communications equipment packages available through the approved equipment list.

Whereas, City is an eligible entity to receive equipment from the State of Oregon, and operates the Primary Public Safety Answering Point (“PSAP”) for all of Crook County.

Whereas, The City’s IT Department operates and maintains the 911 radio system for all first responders within Crook County. City has employees who are trained, certified and have specific technical expertise in using emergency deployable communications equipment while responding to evolving emergencies utilizing the incident command system (“ICS”).

Whereas, City has identified an equipment gap in the inventory of deployable communications sets available within Crook County.

Whereas, the City has prepared an application for the state of Oregon SPIRE 2 Grant, which acknowledges that the Oregon Office of Emergency Management will retain ownership of any equipment dispersed under the Oregon SPIRE 2 Grant program.

Now, Therefore, the City of Prineville Resolves as follows:

1. The attached State Preparedness and Incident Response Equipment (SPIRE) Grant Program II is hereby approved, and the City Manager is hereby authorized to sign the application on behalf of the City.

Approved by the City Council this ____ day of May, 2022.

Rodney J. Beebe, Mayor

ATTEST:

Lisa Morgan, City Recorder

GUIDANCE AND APPLICATION INSTRUCTIONS

**STATE PREPAREDNESS AND INCIDENT
RESPONSE EQUIPMENT (SPIRE)
GRANT PROGRAM II**

OREGON OFFICE OF EMERGENCY MANAGEMENT

www.oregon.gov/OEM



Mailing address:
P.O. Box 14370
Salem, OR 97309-5062

Physical address:
3225 State Street
Salem, OR 97301

Application Due Date: 5:00 PM, Tuesday, June 7, 2022

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INTRODUCTION

State Preparedness and Incident Response Equipment Grant (SPIRE)

As defined by House Bill 2687, Oregon Office of Emergency Management will create a grant to distribute emergency preparedness equipment, which may include vehicles or other property, to eligible applicants. The bill established the Resiliency Grant Fund, herein referred to as the State Preparedness and Incident Response Equipment (SPIRE) Grant Program. During the 2021 Legislative Session, HB 2426 added Urban Search and Rescue (USAR) equipment list. The fund will contain \$5,000,000. Funds will be made available by a bond sale through the State of Oregon, taking place in the May 2022 timeframe.

Eligibility

Qualified applicants include any organization responsible for or containing expertise in emergency preparedness and that is a local government, as defined by ORS 174.116, special government body, or a private organization eligible for tax exempt status under 501(c)(3) of the Internal Revenue Code. All equipment must be made available through ORS 402 Oregon Resources Coordination Assistance Agreement (ORCAA).

AVAILABLE FUNDING

Resiliency Grant Fund

Individual items purchased must qualify for depreciation under Oregon law, and therefore have a minimum cost of \$5,000 *per item*, and must be selected from an approved list, found on the attached equipment list. ***Leases, rentals, training, software, subscriptions, or partial funding will not be eligible.***

Application Evaluation Criteria

Through the application process, applicants will be scored based upon the following data:

- ***Demonstrated need:*** Clearly describe the need that will be fulfilled by this request. This may be based on historical data, upcoming events, or other forecasted variables.
- ***Ability to keep and maintain equipment:*** The applicant must demonstrate that it has the means to safely store the equipment, maintain and transport it. Please provide narrative that addresses each of these in your application.
- ***Inventory process:*** Although ownership will be maintained by the OEM, the applicant must include the equipment in its inventory, including all appropriate disposition tracking.
- ***Commitment to partnership based support:*** The SPIRE Grant, like all grants, seeks to provide the greatest level of benefit to the greatest number of Oregon's population as possible, within the limits of the funding provided. In order to accomplish that goal, greater weight will be given to applicants who seek acquisition of equipment for greater benefit than just one organization. Application Priority will fall into one of five categories. In descending order of population impact, they are: Regional, County, Tribal, Community, and Individual Organization. Regional based support efforts will earn the highest score in the application process, followed by County, tribal, Community (city), and Individual Organization.

- *Regional: A “region” is defined as two or more contiguous counties. Regional projects must include two or more county emergency managers as the applicant and or partner organization. All partner organizations must provide a letter of support to be included with the application.*
- *County: A “county” application must include a county emergency manager as the applicant and/or partner organization. All partner organizations must provide a letter of support to be included with the application.*
- *Tribal: A “tribal” application is an application is defined as an application that originates with a federally recognized tribe (Oregon). Tribes can be partner organization. All partner organizations must provide a letter of support to be included with the application.*
- *Community: A “community” application is defined as a jurisdiction smaller than a county. All partner organizations must provide a letter of support to be included with the application.*
- *Individual Organization: An “individual organization” application is defined as a single non-profit or public organization. See definition of eligible organizations identified in eligibility section.*
- *USAR Team: A full time paid or combination fire department capable of deploying NIMS Type 4 USAR Team (22-person) withing 24 hours and self-stained for up to 14 days. See Definition link below:
<https://rtlt.preptoolkit.fema.gov/Public/Resource/View/8-508-1262?q=urban%20search%20and%20rescue>*

Purpose of Equipment: Each piece of equipment has been assigned to one of four priorities under the grant. Each of these purposes will carry different weight in the application process. In descending order, they include: 1. Saving or Sustaining Lives, 2. Obtaining or Maintaining Situational Awareness, 3. Incident Stabilization, or 4. Recovery (see below).

Possession of Equipment

Unless reclaimed or repurposed by the State, the equipment will remain with the grantee for the duration of its useful life. The State will work with each grantee after the equipment’s useful life for final disposition.

Equipment Grant

The SPIRE Grant Program is an equipment grant. Successful applicants will receive a grant agreement with the specific legal requirements of the grant. Once the agreement is signed by OEM and the grantee, the project can begin and the equipment will be issued once available. OEM will facilitate all procurement steps.

ELIGIBLE EXPENSES

Equipment

Identified equipment will be purchased by OEM and provided to the grantee. Additional equipment expenditures or items necessary to operate the equipment, such as installation, connectors, maintenance, or any other expense, will be the responsibility of the applicant and will not be covered under the grant. See Equipment List attachment for detailed equipment list and approved items.

INELIGIBLE EXPENSES

No expenditures outside of OEM procurement will be covered outside of the approved equipment list for any reason. This includes, but is not limited to payroll, benefits, management and administration costs, engineering fees or other professional services, consulting fees, etc.

Leases, rentals, or partial funding of equipment are not eligible.

OWNERSHIP

The Oregon Office of Emergency Management will **retain ownership** of all equipment dispersed under the grant, and can reclaim the item(s) at any time and for any duration based on: Failure to meet requirements of grant agreement, community needs, or any other purpose, as determined solely by the OEM.

Possible reasons for OEM reclamation:

- Equipment has not been maintained
- Grantee refuses to deploy to a needed location
- Jurisdiction decides to return

At the end of the equipment's useful life, the OEM may sell the equipment to the jurisdiction, permanently transferring ownership, for any price that does not exceed fair market value.

APPLICATION INSTRUCTIONS

Project Worksheet

The applicant will provide one Project Planning Work Sheet for EACH piece of qualifying equipment it is applying for. There is a limit of three Project Planning Worksheets that can be included in an application. There is no limit on the amount Regional or County of Project Worksheets that an applicant can be part of. The Project worksheet must contain the following information:

- Box 1: Applicant Organization
- Box 2: Applicant Contact Information
- Box 3: Applicant Fiscal Contact Information
- Box 4: Applicant Organization Federal Tax ID number
- Box 5: Is this Regional, County, Tribal, Community, or Individual Organization application?

- Box 6: List partners for this project (N/A for individual organizations) All partner organizations must submit letter of support.
- Box 7: Identify State Priority
- Box 8: Complete description of the equipment selected from the Approved Equipment List, and define the capability this will create and/or identified capability gap that will be reduced.
- Box 9: Sustainment. Clearly describe the additional resources that will be committed to the project for the purpose of costs that are not covered under the grant, such as maintenance, storage, transportation, installation, etc.
- Box 10: Name and signature of Authorized Official for applicant organization.

Only completed applications with all requested information will be accepted and reviewed. The **Project Worksheet** will be scored based upon the criteria stated in this guidance and the Project Worksheet. Applicants will be scored individually and an applicant may receive all or a portion of the equipment included in the application. As indicated above, priority will be given to regional applications, followed by county, community, and individual projects, and further evaluated by equipment priority category (see approved equipment list). USAR equipment will be prioritized by approved USAR teams.

Application Due Date

All application packages must be sent via email to jim.jungling@mil.state.or.us no later than **5:00 PM, Tuesday June 7, 2022.**

Applicants are fully responsible for the timely delivery of grant applications. Late applications, or past due date modifications to meet minimum qualifications will not be accepted under any circumstances.

AWARD INFORMATION

Applicant Notification

Applicants will receive notification of the status of their application within 60 days of the application deadline.

Grant Award

Successful Applicants will receive a grant agreement within 90 days of notification. The grant agreement is a legal contract between the awarding agency (Oregon Office of Emergency Management) and the recipient (successful applicant). The agreement will include details regarding each specific piece of equipment and the location for use or storage. The agreement will include all legal commitments of both parties.

IMPLEMENTATION INFORMATION

The equipment and materials provided through SPIRE Grant Program are as provided. Any local, specific materials, additional equipment, training, configuration, fuel or service subscriptions or

other costs to make the equipment mission capable and deployable are the sole responsibility of the receiving grantee. The SPIRE Grant Program will not be responsible for any installation or follow on costs related to the provided materials. No modifications are allowed that will hamper or reduce the equipment effectiveness or original use.

PROCUREMENT STANDARDS

Standards

All items under the grant will be procured by the State of Oregon and delivered to grantees.

SUSPENSION OR TERMINATION OF AGREEMENT

Suspension or termination of agreement occurs only when the OEM has determined that the Grant Agreement has not been followed and is subject to termination. Recipients will be given not less than 72 hours to prepare the equipment for removal by the OEM if termination of funding occurs. In addition, the OEM may suspend or terminate the agreement, in whole or in part, or impose other measures for any of the following reasons:

- Failing to follow grant agreement requirements or standard or special conditions.
- Implementing substantial project changes, to the extent that, if originally submitted, the item would not have been selected for funding.
- Failing to submit required reports.
- Failing to comply with inspections for any reason.
- Filing a false certification in this application or other report or document, including correspondence with the OEM by any medium.
- Determined that the equipment could be of greater use to the community elsewhere.

Before taking action, Oregon Office of Emergency Management will provide the recipient with reasonable notice (Not less than 72 hours) of intent to impose measures and will make efforts to resolve the problem.

REPORTING

Narrative Reporting

A narrative report will be required to be submitted to Oregon Office of Emergency Management annually. OEM will provide a report template to grantees.

Inspection Reporting

The equipment will be subject to inspection by the Oregon Office of Emergency Management at any time, with or without notice, and will occur at least once per year. Failure to comply with inspections could result in suspension or termination of agreement.

EQUIPMENT LIST

Eligible types of equipment will include the following. This list is simply a summary and a more detailed description can be found under the “Equipment List” Document, attached to this packet. Greater weight will be given to equipment higher on the priority list, 1-4, below.

Priority 1: Save/Sustain Lives

- Portable power generation
- Fuel tank trailer
- Water tank trailer
- Remote Control Water Rescue Craft
- High-axle rescue vehicles
- Low water rescue boat
- USAR equipment package (includes BOTH items below)
 - *Rescue Trailer Gen2 Type*
 - *Side by Side (Rescue Package)*

Priority 2: Obtain/Maintain Situational Awareness

- Communications sets (trailer mounted)
- Snow-Cat (Mountain/Snow Terrain vehicle)
- Unmanned search/rescue/imaging vehicles

Priority 3: Incident Stabilization

- Portable lighting
- Dynamic Traffic Message Boards
- Morgue Trailers
- Tactical Communications Vehicle (Command Truck)
- Durable 10+pax transport vehicles
- Sandbagging machines

Priority 4: Initiate Recovery

- Mobile Command Trailer
- Portable Vehicle Barrier System
- Mobile HVAC System
- Mobile Flood Barrier System



STAFF REPORT

MEETING DATE: 5/24/2022

PREPARED BY: Casey Kaiser

SECTION: Resolutions

DEPARTMENT: Planning/Public Works

CITY GOAL(S): Provide Quality Municipal Services, Community Safety

SUBJECT: Resolution 1523 authorizing the agreement for the 2022 Recreational Trails Grant benefiting the Barnes Butte Paved Loop Trail Project.

REASON FOR CONSIDERATION: To authorize the Recreational Trails Program (RTP) grant agreement with Oregon Parks and Recreation Department that will allow the city to receive grant funding to complete the Barnes Butte Paved Loop Path project.

BACKGROUND: In 2021 City Council adopted the Barnes Butte Recreation Area Concept Plan which identified trails and other recreation related facilities to be constructed on the Barnes Butte Property. Since that time staff has been seeking funding opportunities for the construction of those identified improvements. The proposed RTP Grant is the first to be awarded. The RTP Grant will fund the construction of a 5k paved loop trail around the low lying lands. The proposed trail will provide a paved surface of some of the most used areas and will also provide access to the majority of the area for emergency vehicles.

FISCAL IMPACT: Receipt of \$199,395.64 in grant revenue, expenditure of \$75,000 in budgeted city funds, \$195,246.24 in kind matching labor & materials.

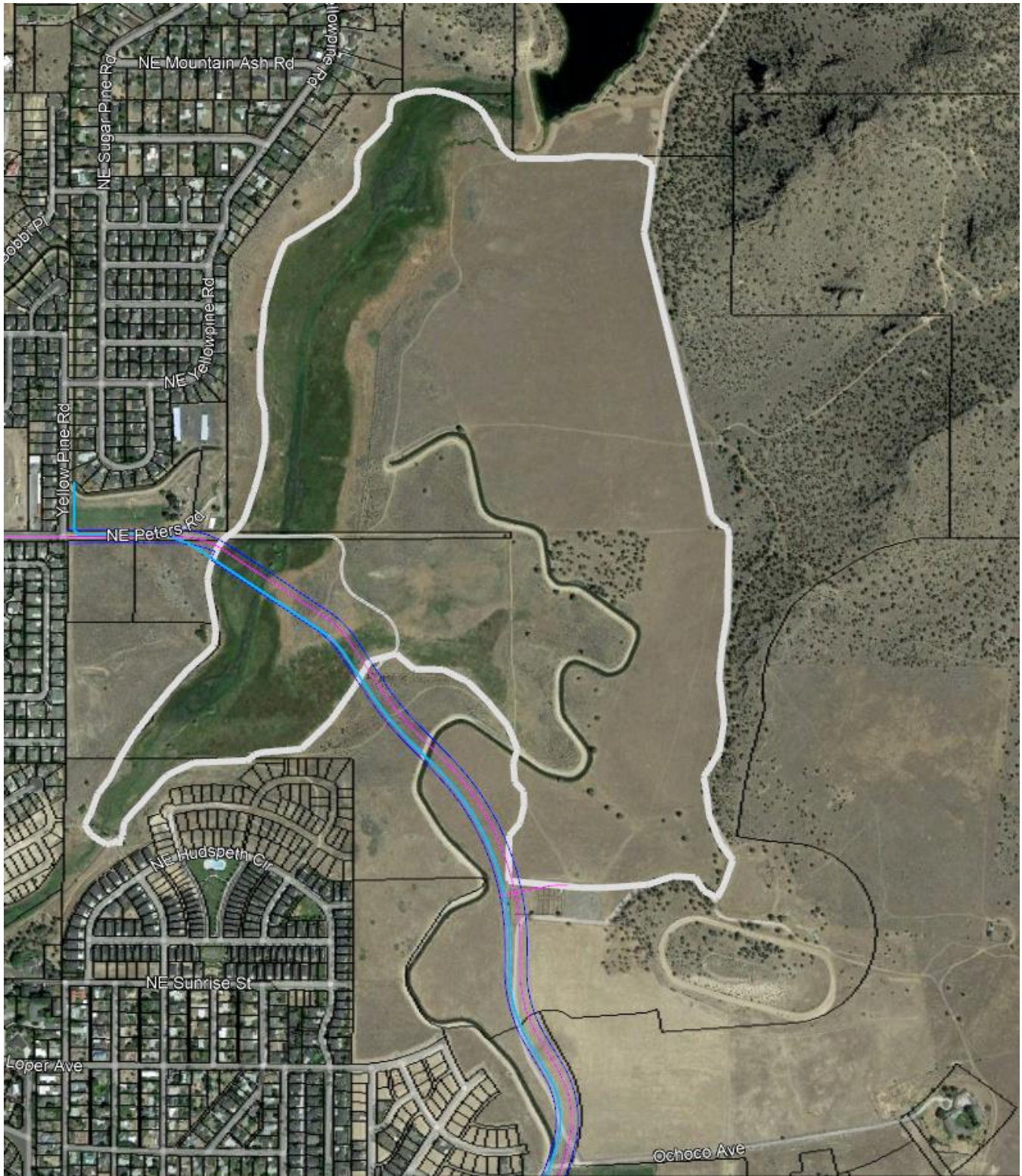
\$199,395.84	RTP Grant Funds
\$195,246.24	City Labor & Materials Match
<u>\$75,000.00</u>	<u>City Cash Contribution (Budgeted)</u>
\$469,642.08	Total Project Cost

RECOMMENDATION: Staff recommends approval of Resolution 1523 approving the RTP grant. This will allow the City to receive the grant funds and for staff to complete the Barnes Butte Paved Loop Path project.

RELATED DOCUMENT(S): Project Map, RTP Grant Agreement

RTP Grant Project Map

Proposed 5k Paved Loop Trail



**RESOLUTION NO. 1523
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION AUTHORIZING CITY OF PRINEVILLE TO ENTER INTO OREGON
PARKS AND RECREATION DEPARTMENT RECREATIONAL TRAILS PROGRAM
GRANT AGREEMENT**

Whereas, the City of Prineville (“City”) qualified for the Recreation Trail Program Grant for the construction of approximately 3.7 miles of multi-use trail in the Barnes Butte Recreation Area, providing connection between two large residential neighborhoods, new elementary school, and a commercial area of the city (“Project”).

Whereas, the total costs for Project is estimated at \$469,642.08; \$199,395.84 of which is eligible for reimbursement through the Oregon Parks and Recreation Department (“OPRD”) Recreational Trails Program Grant.

Whereas, OPRD has prepared the attached Grant Agreement.

Whereas, City Staff believe it’s in the City best interest to the sign the Grant Agreement.

Now, Therefore, the City of Prineville Resolves as follows:

1. The attached Recreational Trails Program Grant Agreement is hereby approved, and the City Manager is hereby authorized to sign the application on behalf of the City.

Approved by the City Council this ____ day of May, 2022.

Rodney J. Beebe, Mayor

ATTEST:

Lisa Morgan, City Recorder

Oregon Parks and Recreation Department

Recreational Trails Program Grant Agreement

THIS AGREEMENT (“Agreement”) is made and entered into by and between the State of Oregon, acting by and through its Oregon Parks and Recreation Department, hereinafter referred to as “OPRD” or the “State” and the City of Prineville, hereinafter referred to as the “Grantee”.

OPRD Grant Number: RT21-010
Project Title: Barnes Butte Multi-Use Trail

Project Description: Construct approximately 3.7 miles of multi-use trail in the Barnes Butte Recreation Area, providing connection between two large residential neighborhoods, new elementary school, and a commercial area of the city. The Project is further described in the Project Scope and Budget included as Attachment B.

Grant Funds /
Maximum Reimbursement: \$199,395.84 (42.46%)
Grantee Match Participation: \$270,246.24 (57.54%)
Total Project Cost: \$469,642.08

Grant Payments / Reimbursements: Grant funds are awarded by the State and paid on a reimbursement basis, and only for the Project described in this Agreement, and the original Project Scope and Budget included as Attachment B. To request reimbursement, Grantee shall use OPRD’s online grant management system accessible at [oprdrants.org](https://www.oregon.gov/oprd/GRA/Pages/GRA-rtp.aspx). The request for reimbursement shall include documentation of all project expenses plus documentation confirming project invoices have been paid. The request must also include documentation for all match expenses, as eligible under the rules, policies, and guidelines for the Recreational Trails Program, which may be found at <https://www.oregon.gov/oprd/GRA/Pages/GRA-rtp.aspx>. Grantee may request reimbursement as often as monthly for costs accrued to date. Once the first payment is made, Grantee must request reimbursement at least every six months.

State Fiscal Year-End Request for Reimbursement: Grantee must submit a Progress Report and a Reimbursement Request to OPRD for all Project expenses, if any, accrued up to June 30, of each state fiscal year. The State Fiscal Year-End Reimbursement Request must be submitted to OPRD by August 15th of each year, 45 days after June 30.

Reimbursement Terms: The total project cost is estimated at **\$469,642.08**. Subject to and in accordance with the terms and conditions of this Agreement, OPRD shall provide Grant Funds to Grantee for the project in an amount not to exceed **\$199,395.84** or **42.46** percent of the total eligible project costs, whichever is less, for eligible costs. Grantee shall accept the Grant Funds and provide Match Funds for the Project in an amount not less than **57.54** percent of the total eligible Project Costs. The reimbursement and match percentage rates apply to each individual request for reimbursement.

Progress Reports: After OPRD issues the Notice to Proceed, Grantee shall report to OPRD regarding the status and progress of the project on a quarterly basis, as follows:

For the period beginning January 1, ending March 31:	report is due April 30
For the period beginning April 1, ending June 30:	report is due July 31
For the period beginning July 1, ending September 30:	report is due October 31
For the period beginning October 1, ending December 31:	report is due January 31

Progress Reports shall be submitted using OPRD’s online grant management system accessible at oprdrants.org.

Agreement Period: The effective date of this Agreement is the date on which it is fully executed by both parties unless noted otherwise on the Notice to Proceed letter. Unless otherwise terminated or extended, the Project shall be completed by **June 30, 2024**. This Agreement shall expire on the date final reimbursement payment is made by OPRD to Grantee. No grant funds shall be available for any expenditures after the Project Completion Date.

Retention: OPRD shall disburse up to 75 percent of the Grant Funds to Grantee on a cost reimbursement basis upon approval of invoices submitted to OPRD. OPRD will disburse the final 25 percent of the Grant Funds upon approval by OPRD of the completed Project and Final Report.

Final Report: Grantee must submit a Final Progress Report, a Final Reimbursement Request and digital pictures of the completed project site to OPRD within 45 days of the Project Completion Date. OPRD may, at its sole discretion, conduct appropriate inspections of the Project within a reasonable time following submission of the Final Report. Grantee shall assist OPRD and cooperate fully to the satisfaction of OPRD with all inspections that OPRD conducts.

Publicity: Grantee shall make every effort to acknowledge and publicize OPRD's participation and assistance with the Project. Grantee agrees to place a sign(s) at the Project location acknowledging program support. Grantee also agrees to maintain the signs throughout the useful life of the Project.

Agreement Documents: Included as part of this Agreement are:

- Attachment A: Standard Terms and Conditions
- Attachment B: Project Scope and Budget
- Attachment C: Form FHWA-1273
- Attachment D: Federal Requirements
- Attachment E: Insurance Requirements
- Attachment F: Inadvertent Discovery Plan for Cultural Resources

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents is as follows, listed from highest precedence to lowest precedence: this Agreement without Attachments; Attachment A; Attachment D, Attachment C, Attachment E, Attachment F, Attachment B.

Contractor or Sub-Recipient Determination: In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, OPRD's determination is that:

Recipient is a sub-recipient; OR Recipient is a contractor

Federal Award Identification information required by 2 CFR 200.331(a)(1):

- (i) Subrecipient Name: **City of Prineville**
- (ii) Subrecipient DUNS Number: **086613296**
- (iii) Federal Award Identification Number (FAIN): **41RT21010**
- (iv) Federal Award Date: **April 19, 2022**
- (v) Sub-Award Period of Performance Start and End Date: **Date of execution – June 30, 2024**
- (vi) Total Amount of Federal Funds Obligated by this Agreement: **\$199,395.84**
- (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement: **\$199,395.84**
- (viii) Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: **\$199,395.84**
- (ix) Federal Award Project Description: **Construct approximately 3.7 miles of multi-use trail in the Barnes Butte Recreation Area, providing connection between two large residential neighborhoods, new elementary school, and a commercial area of the city.**
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the pass-through entity:
 - a. Name of Federal awarding agency: **U.S. Department of Transportation Federal Highway Administration**
 - b. Name of pass-through entity: **Oregon Parks and Recreation Department**
 - c. Contact information for awarding official of the pass-through entity: **Lisa Sumption, Director, (503)986-0660**
- (xi) CFDA Number and Name: **20.219, Recreational Trails Program**
- (xii) Is Award Research and Development (R&D): **No**
- (xiii) Indirect cost rate for the Federal Award: **0%**

Contact Information: A change in the contact information for either party is effective upon providing notice to the other party:

Grantee Administrator
Casey Kaiser
City of Prineville
387 NE 3rd St
Prineville, OR 97754
541-447-8338 X1122
CKaiser@cityofprineville.com

Grantee Billing Contact
Casey Kaiser
City of Prineville
387 NE 3rd St
Prineville, OR 97754
541-447-8338 X1122
CKaiser@cityofprineville.com

OPRD Contact
Jodi Bellefeuille, RTP Coordinator
Oregon Parks & Rec. Dept.
725 Summer ST NE STE C
Salem, OR 97301
503-856-6316
jodi.bellefeuille@opr.oregon.gov

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

GRANTEE

**STATE OF OREGON
Acting By and Through Its
OREGON PARKS AND RECREATION DEPT.**

By: _____
Signature

By: _____
Daniel Killam, Deputy Director of Administration

Printed Name

Date

Title

APPROVAL RECOMMENDED

Date

By: _____
Michele Scalise, Manager, Grants & Community Programs

Oregon Department of Justice (ODOJ) approved for legal sufficiency for grants exceeding \$150,000:

Date

*Approved for legal sufficiency by Assistant Attorney
By: General, Kristen Gallino, by email dated 12/21/21
ODOJ Authorization*

By: _____
Jodi Bellefeuille, RTP Grant Coordinator

Date

Attachment A – Standard Terms and Conditions

Oregon Parks and Recreation Department Recreational Trails Program Grant Agreement

1. **Compliance with Law:** Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to implementation of the Project, including without limitation, Title 23 U.S.C Section 206, Federal Highway Administration (FHWA) Recreational Trails Program Guidance, FHWA Form-1273 (Attachment C), Oregon’s Recreational Trails Program Manual, 2 CFR Part 200, and federal, state, and local program guidelines.
2. **Insurance; and Workers Compensation Laws:** All employers, including Grantee, that employ subject workers who provide services in the State of Oregon shall comply with ORS.656.017 and provide the required Worker’s Compensation coverage, unless such employers are exempt under ORS 656.126. Employer’s liability insurance with coverage limits of not less than \$500,000 must be included. Grantee shall ensure that it and each of its subgrantee(s), contractor(s), and subcontractor(s) complies with the insurance requirements provided in Attachment E.
3. **Amendments:** This Agreement may be amended only by a written amendment to the Agreement, executed by the parties.
4. **Expenditure Records:** Grantee shall document, maintain and submit records to OPRD for all Project expenses in accordance with generally accepted accounting principles, and in sufficient detail to permit OPRD to verify how Grant Funds were expended. These records shall be retained by the Grantee for at least six years after the Agreement terminates. If there are unresolved audit questions at the end of the six-year period, Grantee shall retain the records until the questions are resolved. The Grantee agrees to allow OPRD, Oregon Secretary of State auditors, the United States Department of Transportation, the Federal Highway Administration and any of their duly authorized representatives access to all records related to this Agreement for audit and inspection and monitoring of services. Such access will be during normal business hours, or by appointment. Grantee shall ensure that each of its subgrantees and subcontractors complies with these requirements.
5. **Equipment:** Equipment is defined as tangible personal property having a useful life of more than one year and per-unit acquisition cost of \$5,000 or more. Equipment purchased with Recreational Trails Program Grant funds must be used as described in the Project Agreement and Application throughout the Equipment’s useful life and in accordance with 2 CFR 200.313. The Grantee will maintain Equipment records in compliance with 2 CFR 200.313(d)(1). Within 90 days of purchase the Equipment records must be submitted to OPRD using the “RTP Equipment Record Form”, available on the OPRD website. The Grantee will take physical inventory of the Equipment at least every two years and submit the updated Equipment records to OPRD until the Equipment value is below \$5,000 or the Equipment is disposed of. The Grantee will not sell or dispose of the Equipment without prior approval from OPRD and the Federal Highway Administration. This section shall survive termination or expiration of this Agreement.
6. **Use of Project Property:** Grantee warrants that the land within the Project boundary described in the Application (Attachment B) shall be dedicated and used for a period of no less than 25 years from the completion of the Project. Grantee agrees to not change the use of, sell, or otherwise dispose of the land within the Project boundary, except upon written preapproval by OPRD. If the Project is located on land leased from the federal government, the lease shall run for a period of at least 25 years after the date the Project is completed. If the Project is located on land leased from a private or public entity, other than the federal government, the lease shall run for a period of at least 25 years

after the date the Project is completed, unless the lessor under the lease agrees that, in the event the lease is terminated for any reason, the land shall continue to be dedicated and used as described in the Project Application for a period of at least 25 years after the date the Project is completed.

7. **Inspection of Equipment and Project Property:** Grantee shall permit authorized representatives of State, the Secretary, or their designees to perform site reviews of the Project, and to inspect all Equipment, real property, facilities, and other property purchased by Grantee as part of the Project, and any transportation services rendered by Grantee.
8. **Public Access:** The Grantee shall allow open and unencumbered public access to the completed Project to all persons without regard to race, color, religious or political beliefs, sex, national origin or place of primary residence.
9. **Contribution:** 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 a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either 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 the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the Grantee (or would be if joined in the Third Party Claim), the 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 the Grantee in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Grantee 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 the State on the one hand and of the Grantee 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. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the Grantee is jointly liable with the State (or would be if joined in the Third Party Claim), the Grantee 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 the State in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of the 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 the Grantee on the one hand and of the 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. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

Grantee shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Grantee's contractor or any of the officers, agents,

employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

10. **Condition for Disbursement:** Disbursement of grant funds by OPRD is contingent upon OPRD having received sufficient funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OPRD, in the exercise of its reasonable administrative discretion, to make the disbursement and upon Grantee's compliance with the terms of this Agreement.
11. **No Third Party Beneficiaries.** OPRD and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as intended beneficiary of the terms of this Agreement.
12. **Repayment:** In the event that the Grantee spends Grant Funds in any way prohibited by state or federal law, or for any purpose other than the completion of the Project, the Grantee shall reimburse the State for all such unlawfully or improperly expended funds. Such payment shall be made within 15 days of demand by the State.
13. **Termination:** This Agreement may be terminated by mutual consent of both parties, or by either party upon a 30-day notice in writing, delivered by certified mail or in person to the other party's contact identified in the Agreement. On termination of this Agreement, all accounts and payments will be processed according to the financial arrangements set forth herein for Project costs incurred prior to date of termination. Full credit shall be allowed for reimbursable expenses and the non-cancelable obligations properly incurred up to the effective date of the termination.
14. **Governing Law:** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
15. **Entire Agreement:** This Agreement constitutes the entire Agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, Agreements, or representations, oral or written, not specified herein regarding this Agreement. The Grantee, by signature of its authorized representative on the Agreement, acknowledges that the Grantee has read this Agreement, understands it, and agrees to be bound by its terms and conditions.
16. **Notices:** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to Grantee contact or State contact at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may hereinafter indicate. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective

against State, such facsimile transmission must be confirmed by telephone notice to State Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received, or five days after mailing.

17. **Counterparts:** This agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.
18. **Severability:** If any term or provision of this agreement 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 Agreement did not contain the particular term or provision held to be invalid.

RTP Grant Agreement – Attachment B
 Project Scope and Budget
 RT21-010 Barnes Butte Multi-Use Trail

Project Scope:

Develop the Barnes Butte Multi-Use Trail. The 10-foot wide paved trail is designed in three segments totaling approximately 3.27 miles.

- Segment 1 includes a trail connection from a footbridge to the Stone Ridge Terrace neighborhood, connection to Segment 2 that includes paving an existing gravel trail, constructing a new section of paved trail, and raised boardwalk.
- Segment 2 includes paving an existing gravel trail of approximately 1.4 mile in length, connecting Segment 1 to the existing track loop and Segment 3.
- Segment 3 includes paving and development of an approximately 1.2-mile trail section, connecting the existing track loop to an existing footbridge and existing paved segment between the Ochoco Pointe Neighborhood access points. This segment also includes paving the existing gravel parking lot to ADA standards (lot at the SE side of the loop, connected to the school access road).

Budget Summary:

Grant Funds/Maximum Reimbursement	\$199,395.84 (42.46%)
Grantee Match Participation	\$270,246.24 (57.54%)
Total Project Cost	\$469,642.08

Project Budget:

Expense Item	Cost or Valuation
Trail Segment 1 – Materials	\$55,796.80
Trail Segment 1 – Labor and Equipment	\$31,401.92
Trail Segment 2 – Materials	\$127,589.60
Trail Segment 2 – Labor and Equipment	\$71,806.24
Trail Segment 3 – Materials	\$114,018.80
Trail Segment 3 – Labor and Equipment	\$64,168.72
Parking Lot – Materials	\$3,096.00
Parking Lot – Labor and Equipment	\$1,764.00
Total Project Cost	\$469,642.08

Source of Match:

Source	Amount
City of Prineville (in-kind and budgeted funds)	\$270,246.24
Total Match	\$270,246.24

ATTACHMENT C

Federal Form FHWA-1273

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted 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 the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal 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 entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) 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 may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

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

(2) Have not within a three-year period preceding this proposal 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 (a)(2) of this certification; and

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

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. 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.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal 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.

f. The prospective lower tier participant further agrees by submitting this proposal 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 exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e 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 Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. 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.

b. 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 Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. 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 31 U.S.C. 1352. 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.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

ATTACHMENT D

Federal Requirements

1. **Compliance with Law:** Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to implementation of the Project, including without limitation 23 USC 206 and ORS 390.980 which makes funds available for the purposes of the Oregon Recreation Trails System Act. Without limiting the generality of the preceding sentence, Grantee shall, in its performance of its obligations under this Agreement and implementation of the Project, comply with the following laws and regulations:
 - 23 U.S.C. 206 Recreational Trails Program
 - 23 U.S.C. 104 (h), Recreational Trails Program Apportionments
 - 23 U.S.C. 106, Project Approval and Oversight
 - 23 U.S.C. 114, Convict Labor
 - FHWA Recreational Trails Program Guidance: located at https://www.fhwa.dot.gov/environment/recreational_trails/guidance/rtp9908_toc.cfm
 - 40 U.S.C 3141-3148, The Davis-Bacon & Related Acts
 - Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
 - 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, *as supplemented by 2 CFR Part 1201 for Awards by the U.S. Department of Transportation*
 - 2 CFR 1201
 - 23 CFR 1.36, Compliance with other Federal Laws and Regulations
 - 23 CFR 771, Environmental Requirements
 - 23 CFR 635.410 Buy America, as further described below
 - 41 U.S.C. § 4712, Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information
2. **Required Contract Provisions for Federal-Aid Construction Contracts:** Form FHWA-1273 must be physically incorporated in each construction contract funded with Grant Funds provided under this Agreement. The contractor (or subcontractor) must insert Form FHWA-1273 in each subcontract and further require its inclusion in all lower tier subcontracts. See Attachment C: Form FHWA-1273.
3. **Buy America:** 23 CFR 635.410 is applicable to steel, iron and manufactured goods used in a “federal-aid highway construction project” including the Project funded under this Agreement. Based on the definitions of “construction” in 23 U.S.C. 101 and “project”, the Buy America provisions apply to steel and iron permanently incorporated in a project funded by RTP when the total value of these materials exceeds \$2,500. . A certificate of origination and manufacture location of the steel or iron is required to be obtained and retained with the Grantee’s grant records.
4. **Audit Clause:** Subrecipients receiving federal awards in excess of \$750,000 in the Subrecipient’s fiscal year are subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Subrecipient, if subject to this requirement, shall at Subrecipient’s own expense submit to Agency a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Agreement and shall submit or cause to be submitted to Agency the annual audit of any subrecipient(s),

contractor(s), or subcontractor(s) of Subrecipient responsible for the financial management of funds received under this Agreement.

5. **Debarment and Suspension.** Recipient certifies that it is not listed, and shall not permit any person or entity to be a subcontractor if the person or entity is listed, on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

ATTACHMENT E

Insurance Requirements

GENERAL.

Grantee shall require in its first tier contracts (for the performance of work on the Project) with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the contract commences, and ii) maintain the insurance in full force throughout the duration of the contract. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to the Oregon Parks and Recreation Department ("OPRD"). Grantee shall not authorize work to begin under contracts until the insurance is in full force. Thereafter, Grantee shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Grantee shall incorporate appropriate provisions in the contracts permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Grantee permit work under a contract when Grantee is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a contract in which the Grantee is a party.

TYPES AND AMOUNTS.

i. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.

ii. **COMMERCIAL GENERAL LIABILITY.**

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to OPRD. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following coverage amounts:

Bodily Injury, Death and Property Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED. The Commercial General Liability Insurance must include the State of Oregon, OPRD, its officers, employees and agents as Additional Insureds but only with respect to the activities to be performed under the contract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, either "tail" coverage or continuous "claims made" liability coverage must be maintained, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the contract, for a minimum of 24 months following

the later of : (i) the contractor's completion and Grantee's acceptance of all services required under the subagreement or, (ii) the expiration of all warranty periods provided under the contract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and OPRD may grant approval of the maximum "tail " coverage period reasonably available in the marketplace. If OPRD approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Grantee before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. Grantee shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the contract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

ATTACHMENT F

ARCHAEOLOGICAL INADVERTENT DISCOVERY PLAN (IDP)

Archaeological materials are the physical remains of the activities of people in the past. This IDP should be followed should any archaeological sites, objects, or human remains be found. Archaeological materials are protected under Federal and State laws and their disturbance can result in criminal penalties.

This document pertains to the work of the Contractor, including any and all individuals, organizations, or companies associated with the project.

WHAT MAY BE ENCOUNTERED

Archaeological material may be found during any ground-disturbing activity. If encountered, all excavation and work in the area **MUST STOP**. Archaeological objects vary and can include evidence or remnants of historic-era and pre-contact activities by humans. Archaeological objects can include but are not limited to:

- **Stone flakes, arrowheads, stone tools, bone or wooden tools, baskets, beads.**
- Historic building materials such as **nails, glass, metal** such as cans, barrel rings, farm implements, **ceramics, bottles, marbles, beads.**
- Layers of **discolored earth** resulting from hearth fire
- Structural remains such as **foundations**
- **Shell Middens** (mounds)
- **Human skeletal remains** and/or **bone fragments** which may be whole or fragmented.

If in doubt call it in.

DISCOVERY PROCEDURES: WHAT TO DO IF YOU FIND SOMETHING

1. Stop ALL work in the vicinity of the find
2. Secure and protect area of inadvertent discovery with 30 meter/100 foot buffer—work may continue outside of this buffer
3. Notify Project Manager and Agency Official
4. Project Manager will need to contact a professional archaeologist to assess the find.
5. If archaeologist determines the find is an archaeological site or object, contact SHPO. If it is determined to *not* be archaeological, you may continue work.

HUMAN REMAINS PROCEDURES

1. If it is believed the find may be human remains, stop ALL work.
2. Secure and protect area of inadvertent discovery with 30 meter/100 foot buffer, then work may continue outside of this buffer with caution.
3. Cover remains from view and protect them from damage or exposure, restrict access, and leave in place until directed otherwise. **Do not take photographs. Do not speak to the media.**
4. Notify:
 - Project Manager
 - Agency Official

- Contracted Archaeologist (if applicable)
 - Oregon State Police - **DO NOT CALL 911** 503-378-3720
 - SHPO (State Historic Preservation Office) 503-986-0690
 - LCIS (Legislative Commission on Indian Services) 503-986-1067
 - Appropriate Native American Tribes (as provided by LCIS)
5. If the site is determined not to be a crime scene by the Oregon State Police, do not move anything! The remains should continue to be *secured in place* along with any associated funerary objects, and protected from weather, water runoff, and shielded from view.
 6. Do not resume any work in the buffered area until a plan is developed and carried out between the State Police, SHPO, LCIS, and appropriate Native American Tribes, and you are directed that work may proceed.

CONFIDENTIALITY

The Agency and employees shall make their best efforts, in accordance with federal and state law, to ensure that its personnel and contractors keep the discovery confidential. The media, or any third-party member or members of the public are not to be contacted or have information regarding the discovery, and any public or media inquiry is to be reported to the Agency. Prior to any release, the responsible agencies and Tribes shall concur on the amount of information, if any, to be released to the public.

To protect fragile, vulnerable, or threatened sites, the National Historic Preservation Act, as amended (Section 304 [16 U.S.C. 470s-3]), and Oregon State law (ORS 192.501(11)) establishes that the location of archaeological sites, both on land and underwater, shall be confidential.



STAFF REPORT

MEETING DATE: 5/24/2022

PREPARED BY: Kelly Coffelt

SECTION: Resolutions

DEPARTMENT: Airport

CITY GOAL: Fiscal Responsibility, Provide Quality Municipal Service & Programs

SUBJECT: Oregon Dept. of Forestry – IGA – Resolution No. 1524

REASON FOR CONSIDERATION:

Oregon Department of Forestry will utilize the space for fire season starting 5/15/22 through 9/30/22.

BACKGROUND:

This Intergovernmental agreement allows for the Oregon department of Forestry to utilize a portion of Prineville airport parking apron for seasonal fire suppression using Single Engine Air Tankers (SEAT's). SEAT's carry fire retardant material in approximately 800 gallon loads to fires in a range up to 150 miles.

FISCAL IMPACT:

The airport is being compensated reasonably for the space and considers it beneficial to the community to have these assets close to the community.

RECOMMENDATION:

After reviewing the IGA documents, staff recommends the City of Prineville Council approve Resolution No. 1524.

**RESOLUTION NO. 1524
CITY OF PRINEVILLE, OREGON**

A RESOLUTION AUTHORIZING THE CITY OF PRINEVILLE TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF FORESTRY

Whereas, City of Prineville (“City”) is the manager of the Prineville/Crook County Airport (“Airport”); and

Whereas, State of Oregon, acting by and through its Department of Forestry (“ODF”) desires to locate two single engine air tankers, service trailer with truck, and office trailer (“Equipment”) and conduct air tanker operations at the Airport for the 2022 fire season; and

Whereas, the Parties have agreed on terms of ODF locating its Equipment and conducting air tanking operations; and

Whereas, ODF has prepared an Intergovernmental Agreement (“Agreement”) for City’s consideration; and

Whereas, Agreement is authorized by ORS 190.100; and

Whereas, City staff believes it is in the best interest of the City to approve and execute the Agreement;

Now, Therefore, the City of Prineville resolves that the Intergovernmental Agreement attached to this Resolution between the City and ODF is hereby approved and that the Mayor is authorized and instructed to sign such Agreement on behalf of the City.

Approved by the City Council this ____ day of May, 2022.

Rodney J. Beebe, Mayor

ATTEST:

Lisa Morgan, City Recorder



Oregon Department of Forestry INTERGOVERNMENTAL AGREEMENT

This agreement is between the **STATE of OREGON**, acting by and through its **DEPARTMENT OF FORESTRY**, hereafter called **Agency**, and the **City of Prineville**, hereafter called **City**.

Administrators of this agreement are:

City		Agency	
Administrator:	Kelly Coffelt	Administrator:	Neal Laugle
Title:	Airport Manager	Title:	State Aviation Manager
Organization:	Prineville Airport	State of Oregon,	Oregon Department of Forestry
Address:	4585 SW Airport Road Prineville, OR 97754	Address:	2600 State Street Salem, OR 97310
Phone:	541-416-0805	Phone:	503-945-7508
Fax:	541-416-0809	Fax:	503-945-7430
Email:	kcoffelt@cityofprineville.com	Email:	Neal.d.laugle@oregon.gov
Federal ID #:			

RECITALS

By the authority granted in Oregon Revised Statutes (ORS) 190.110 and 526.046, Agency may enter into cooperative agreements with counties, cities, and units of local government.

Commented [RS*O1]: This will need to stay local government since it is what the statute says and cities are already included in the list. 😊

1. AUTHORITY

This Agreement is authorized by ORS 190.110.

2. PURPOSE

The Prineville/Crook County Airport ("Airport") is owned by Crook County and managed by the City. ODF desires to locate two single engine air tankers, service trailer with truck, and office trailer (the "Equipment") and conduct air tanker operations at the Airport for the 2022 fire season. "Air Tanker Operations" include mixing Firelce (water enhancing gel), loading Firelce into the air tankers, maintaining the air tankers, and conducting administrative duties.

City shall allow ODF to use an area of the Airport upon which to locate the Equipment and to conduct air tanker operations.

The parties have agreed on the terms of ODF locating its Equipment and conducting its Air Tanker Operations at the Airport and desire to memorialize such agreement.

ODF will locate equipment on a 14,000 square foot area at the Airport designated by City ("Ramp Area"). ODF will conduct all its Air Tanker Operations using the Ramp Area and will be authorized to

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use other appropriate areas of the Airport for fueling, taxiing, take offs, and landing the Air Tankers. City shall also provide to the Ramp Area the following:

- Electricity for ODF's office trailer;
- Two porta-potties and wash station to be serviced on a regular schedule;
- Water for mixing BlazeTamer, washing aircraft, and washing the Ramp Area;
- Garbage service, including receptacle of a size needed and approved by ODF, together with regular removal of garbage; and
- The electricity and water shall be metered. At the end of this Agreement, City shall provide to ODF the beginning and ending readings for the electricity and water.

3. EFFECTIVE DATE AND DURATION

This Agreement is effective on May 15, 2022, ("Effective Date"), and terminates on September 30, 2022; or if the 2022 wildfire season extends past September 30, 2022, the date when ODF moves all the Equipment from the Airport, unless terminated earlier in accordance with Section 16.

4. AUTHORIZED REPRESENTATIVES

4.1 Agency's Authorized Representative is:

Neal Laugle
2600 State Street, Salem, OR 97310
503-945-7508
503-945-7430
Neal.d.laugle@oregon.gov
Billing/Invoice contact: SeverityFinance@odf.oregon.gov

4.2 City's Authorized Representative is:

Kelly Coffelt
4585 SW Airport Road, Prineville, OR 97754
541-416-0805
kcoffelt@cityofprineville.com

4.3 A Party may designate a new Authorized Representative by written notice to the other Party.

5. RESPONSIBILITIES OF EACH PARTY

5.1 City shall perform the work set forth on Exhibit A, attached hereto and incorporated herein by this reference.

5.2 Agency shall pay City as described in Section 6.

6. COMPENSATION AND PAYMENT TERMS

Agency shall pay the rate of \$1,400/month for usage and the final billing will include actual costs incurred by the City for water and electricity used by the Agency over the term of the Agreement used by ODF and their Vendors in this operation. City will also provide two porta-potties and a handwash station, to be serviced on a regular schedule. Also included is garbage service to include a receptacle of a size approved by ODF and regular removal of garbage.

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This Agreement is effective on May 15, 2022 ("Effective Date"), and terminates on September 30, 2022; or if the 2022 wildfire season extends past September 30, 2022, the date when ODF moves all the Equipment from the Airport, unless terminated earlier in accordance with Section 16. If ODF is still present on site beyond September 30, 2022, the Agency will pay \$40 per day for each additional day ODF uses the Ramp Area After September 30, 2022.

7. REPRESENTATIONS AND WARRANTIES

City represents and warrants to Agency that:

- 7.1 City is an Airport duly organized and validly existing. City has the power and authority to enter into and perform this Agreement.
- 7.2 The making and performance by City of this Agreement (a) have been duly authorized by City, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of City's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which City is party or by which City may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by City of this Agreement, other than those that have already been obtained.
- 7.3 This Agreement has been duly executed and delivered by City and constitutes a legal, valid and binding obligation of City enforceable in accordance with its terms.
- 7.4 City has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and City will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession; and
- 7.5 City shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement. The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by City.

8. GOVERNING LAW, CONSENT TO JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Agency or any other agency or department of the State of Oregon, or both, and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. CITY, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

9. OWNERSHIP OF WORK PRODUCT

- 9.1 As used in this Section 9 and elsewhere in this Agreement, the following terms have the meanings set forth below:
- 9.1.1 "City Intellectual Property" means any intellectual property owned by City and developed independently from the work under this Agreement.
 - 9.1.2 "Third Party Intellectual Property" means any intellectual property owned by parties other than City or Agency.
 - 9.1.3 "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item that City is required to deliver to Agency under this Agreement, and all intellectual property rights therein.
- 9.2 All Work Product created by City under this Agreement, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of Agency. Agency and City agree that all Work Product created by City under this Agreement is "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the Work Product created by City under this Agreement is not "work made for hire," City hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all Work Product created by City under this Agreement, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, City shall execute such further documents and instruments necessary to fully vest such rights in Agency. City forever waives any and all rights relating to Work Product created by City under this Agreement, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 9.3 If Work Product is City Intellectual Property, a derivative work based on City Intellectual Property or a compilation that includes City Intellectual Property, City hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the City Intellectual Property and the pre-existing elements of the City Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.
- 9.4 If Work Product is Third Party Intellectual Property, a derivative work based on Third Party Intellectual Property or a compilation that includes Third Party Intellectual Property, City shall secure on Agency's behalf and in the name of Agency 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 the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.
- 9.5 If state or federal law requires that Agency or City grant to the United States a license to any intellectual property in the Work Product, or if state or federal law requires that Agency or the United States own the intellectual property in the Work Product, then City shall execute such further documents and instruments as Agency may reasonably request in order to make any such grant or to assign ownership in such intellectual property to the United States or Agency.

10. CONTRIBUTION

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- 10.1 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 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. 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 the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section 10 with respect to the Third Party Claim.
- 10.2 With respect to a Third Party Claim for which Agency is jointly liable with City (or would be if joined in the Third Party Claim), Agency 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 City in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of City on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of City 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. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- 10.3 With respect to a Third Party Claim for which City is jointly liable with Agency (or would be if joined in the Third Party Claim), City 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 Agency in such proportion as is appropriate to reflect the relative fault of City on the one hand and of Agency on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of City on the one hand and of Agency 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. City's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

11. CITY DEFAULT

City will be in default under this Agreement upon the occurrence of any of the following events:

- 11.1 City fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement.
- 11.2 Any representation, warranty or statement made by City in this Agreement or in any documents or reports relied upon by Agency to measure the delivery of services, the expenditure of funds or the performance by City is untrue in any material respect when made.
- 11.3 City (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability,

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or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or

11.4 A proceeding or case is commenced, without the application or consent of City, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of City, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of City or of all or any substantial part of its assets, or (c) similar relief in respect to City under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against City is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

12. AGENCY DEFAULT

Agency will be in default under this Agreement if Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

13. REMEDIES

13.1 In the event City is in default under Section 11, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 16, (b) reducing or withholding payment for work or Work Product that City has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring City to perform, at City's expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 14 of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

13.2 In the event Agency is in default under Section 12 and whether or not City elects to exercise its right to terminate this Agreement under Section 16.3.3, or in the event Agency terminates this Agreement under Sections 16.2.1, 16.2.2, 16.2.3, or 16.2.5, City's sole monetary remedy will be (a) for work compensable at a stated rate, a claim for unpaid invoices for work completed and accepted by Agency, for work completed and accepted by Agency within any limits set forth in this Agreement but not yet invoiced, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less any claims Agency has against City, and (b) for deliverable-based work, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed on the deliverable and accepted by Agency, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less previous amounts paid for the deliverable and any claims that Agency has against City. In no event will Agency be liable to City for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to City

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exceed the amount due to City under this Section 13.2, City shall promptly pay any excess to Agency.

14. RECOVERY OF OVERPAYMENTS

If payments to City under this Agreement, or any other agreement between Agency and City, exceed the amount to which City is entitled, Agency may, after notifying City in writing, withhold from payments due City under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

15. LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 10, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

16. TERMINATION

16.1 This Agreement may be terminated at any time by mutual written consent of the Parties.

16.2 Agency may terminate this Agreement as follows:

16.2.1 Upon 30 days advance written notice to City;

16.2.2 Immediately upon written notice to City, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;

16.2.3 Immediately upon written notice to City, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited or Agency is prohibited from paying for such performance from the planned funding source;

16.2.4 Immediately upon written notice to City, if City is in default under this Agreement and such default remains uncured 15 days after written notice thereof to City; or

16.2.5 As otherwise expressly provided in this Agreement.

16.3 City may terminate this Agreement as follows:

16.3.1 Immediately upon written notice to Agency, if City fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in City's reasonable administrative discretion, to perform its obligations under this Agreement;

16.3.2 Immediately upon written notice to Agency, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that City's performance

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under this Agreement is prohibited or City is prohibited from paying for such performance from the planned funding source;

16.3.3 Immediately upon written notice to Agency, if Agency is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Agency; or

16.3.4 As otherwise expressly provided in this Agreement.

16.4 Upon receiving a notice of termination of this Agreement, City will immediately cease all activities under this Agreement, unless Agency expressly directs otherwise in such notice. Upon termination, City will deliver to Agency all documents, information, works-in-progress, Work Product and other property that are or would be deliverables under the Agreement. And upon Agency's reasonable request, City will surrender all documents, research or objects or other tangible things needed to complete the work that was to have been performed by City under this Agreement.

17. INSURANCE

See Section 10 Contributions.

18. NONAPPROPRIATION

Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of Agency.

19. AMENDMENTS

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.

20. NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section 20. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

21. SURVIVAL

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 8, 9, 10, 14, 15 and 21 hereof and those rights and obligations that by their express terms survive termination of this Agreement;

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provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

22. SEVERABILITY

The Parties agree that if any term or provision of this Agreement 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 will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

23. COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

24. COMPLIANCE WITH LAW

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

25. INDEPENDENT CONTRACTORS

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that City is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

26. INTENDED BENEFICIARIES

Agency and City are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

27. FORCE MAJEURE

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Agency may terminate this Agreement upon written notice to City after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

28. ASSIGNMENT AND SUCESSORS IN INTEREST

City may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by City to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to City's assignment or transfer of its interest in this Agreement will not relieve City of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

29. SUBCONTRACTS

City shall not, without Agency's prior written consent, enter into any subcontracts for any of the work required of City under this Agreement. Agency's consent to any subcontract will not relieve City of any of its duties or obligations under this Agreement.

30. TIME IS OF THE ESSENCE

Time is of the essence in City's performance of its obligations under this Agreement.

31. MERGER, WAIVER

This Agreement and all exhibits and attachments, if any, 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 or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

32. RECORDS MAINTENANCE AND ACCESS

City shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, City shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of City, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document City's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of City, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." City acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. City shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, City shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

33. HEADINGS

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

34. ADDITIONAL REQUIREMENTS

There are no additional requirements that the City shall be required to comply with.

35. AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, attached Exhibit A (the Statement of Work), Exhibit B (Insurance), and Exhibit C (Additional Requirements).

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

**STATE OF OREGON acting by and through its
Oregon Department of Forestry**

City of Prineville

By: _____

By: _____

Printed Name

Printed Name

Title

Title

Date

Date

**EXHIBIT A
STATEMENT OF WORK**

Overview: *This is a land-use agreement with City of Prineville for Ramp Space for two Single-Engine Air Tankers to conduct Air Tanker Operations for fire season 2022. This area includes space for a service trailer with truck and office trailer, as well as access for take-offs, landings, and taxiing.*

Prineville Airport is owned by Crook County, Oregon and managed by the City of Prineville. The Airport is located at 4585 SW Airport Road, Prineville, Oregon. The agreed upon area is 14,000 square feet of ramp space.

This agreement is necessary to provide the above listed amenities and access for an aviation contract for Two Single-Engine Air Tankers to be located at or near Prineville, Oregon for wildfire response. Prineville, Oregon provides a central location for operations of these assets.

Included in the Land Use Agreement is access to metered electricity and water. ODF will pay the Airport for these amenities at the end of the agreement for the metered amount consumed. City will also provide two porta-potties and a handwash station, to be serviced on a regular schedule. Also included is garbage service to include a receptacle of a size approved by ODF and regular removal of garbage.

Scope of Work: *This agreement is for the forementioned Ramp Space and access to Airport facilities, such as taxiways and runways for aerial firefighting equipment. The Airport will also provide access to metered water to support all aspects of the operation, as well as metered electricity for support of operations.*



STAFF REPORT

MEETING DATE: 5/24/2022

PREPARED BY: Eric Klann

SECTION: Council Business

DEPARTMENT: Public Works

CITY GOAL(S): Position the City for the future

SUBJECT: **Intent to direct award the BECK Group to complete an environmental and economic analysis for the Prineville Renewable Energy Project**

REASON FOR CONSIDERATION: Consideration for a direct award to the BECK Group for an environmental and economic analysis for the Prineville Renewable Energy Project (PREP).

BACKGROUND: The PREP is a proposed 24.9 MW biomass plant to be sited in Prineville. The environmental and economic analysis will provide third party, objective information regarding the project's impacts. The following items will be addressed in the study:

- **Establish baseline conditions-** identify the changes in environmental, social, and economic outcomes for Prineville and Crook County from PREP vs. alternative sources of energy
- **Forest health and wildfire risk-** determine how PREP-associated restoration would reduce fire and improve forest health
- **Environmental impact-** quantify the change in air emissions, water supply available for human use and instream flows, water quality, habitat, the amount of carbon stored and emitted, etc.
- **Economic value of environmental impact-** convert environmental impacts into valuation of what people care about, including the costs of fire damage and wildfire fighting, water supply costs, recreation opportunities and benefits, property values, reduced health care costs, and improve aesthetics
- **Jobs, income, and community resiliency-** quantify the direct and indirect jobs and income benefits of PREP, examine the multi-faced economic development benefits of PREP related to key economic, environmental, energy, and social vulnerabilities that may limit long-term economic development and community resiliency in Prineville
- **Carbon capture-** examine feasibility of utilizing this technology in association with the plant to store carbon that would otherwise be emitted

FISCAL IMPACT:

The total cost of the analysis is \$167,000 and broken into three phases:

\$25,000 Phase 1- Kick off meeting, define basis of comparison, carbon containment, review meeting

\$81,000 Phase 2- Environmental impacts, portion of economic impacts, preparation of written report, review meetings

\$61,000 Phase 3- Remainder of economic impacts, preparation of written report

\$167,000 Total

To date, funding has been secured from two private donors for \$25,000 and \$81,000, totaling \$106,000. The remaining \$61,000 is actively being pursued from multiple funding sources. This request is to approve the scope of work for \$167,000 with the caveat that work will be completed for phases one and two, but phase three will be delayed until the remaining \$61,000 is secured or not completed at all if funding cannot be obtained.

RECOMMENDATION: Staff recommend Council approve a direct award in the amount of \$167,000 to the BECK Group to complete the environmental and economic analysis as outlined above.

RELATED DOCUMENT(S): The scope of work from the Beck Group is included for review.

**RESOLUTION NO. 1525
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION APPROVING A PERSONAL SERVICES AGREEMENT WITH
THE BECK GROUP AND HIGHLAND ECONOMICS TO PROVIDE PEROSNAL SERVICES FOR AN
ENVIRONMENTAL AND ECONOMIC ANALYSIS FOR PRINEVILLE RENEWALABLE ENERGY
PROJECT**

Whereas, the City of Prineville (“City”) requires an environmental and economic analysis for the Prineville Renewable Energy Project (“PREP”).

Whereas, City requires professional consulting services to complete the aforementioned services.

Whereas, City’s Council serves as the Local Contract Review Board for the City and pursuant to City Resolution 1266 Section 8(C), may award personal services contracts according to specific criteria that are applicable to the services provided.

Whereas, Consulting services are considered personal services pursuant to City Resolution 1266.

Whereas, The BECK Group and Highland Economics have provided the attached material marked as Exhibit A and incorporated herein.

Whereas, City Counsel finds that the BECK Group and Highland Economics meets the following applicable criteria as set out in City Resolution 1266, Section 8(C): (1) total costs to the City for delivery of services; (2) expertise of the contractor in the required area of specialty; (3) references regarding prior work done by the Contractor; (4) capacity and capability to perform the work, including any specialized services within the time limitations for the work; (5) educational and professional records; (6) availability to perform the assignment and familiarity with the area in which the specific work is located; (7) timeliness of delivery of service; (8) experience in working with the City; and (9) knowledge of City’s needs and desires related to the contract, all of which are more particularly set forth on the attached Exhibit B, which is incorporated herein.

Now, Therefore, the City of Prineville Resolves as follows:

1. That the City Council, serving in its role as the Local Contract Review Board for the City, hereby approves the City entering into a personal services contract with the BECK Group and Highland Economics to provide an environmental and economic analysis related to the Prineville Renewable Energy Project and authorizes the City Manager to execute, on behalf of the City, such contract and any other related documents.

Approved by the City Council this ____ day of May, 2022.

Rodney J. Beebe, Mayor

ATTEST:

Lisa Morgan, City Recorder



Forest Products Planning & Consulting Services

13500 S.W. 72nd Ave., Suite 250
Portland, OR USA 97223-8013
Telephone (503) 684-3406
E-mail: roya@beckgroupconsulting.com

May 9, 2022

Caroline Ervin, Capital Project Manager
Eric Klann, City Engineer
City of Prineville
387 NE 3rd Street
Prineville, OR 97754
541-350-2557
cervin@cityofprineville.com & eklann@cityofprineville.com

RE: Prineville Renewable Energy Project (PREP) Phase I Proposal

Caroline and Eric,

Attached is our proposal for assisting the City of Prineville's biomass renewable energy project (PREP).

Included is a description of our understanding of the project, our general approach to the work, a detailed scope of work, project schedule, deliverables, cost, and a listing of our team, qualifications, and experience. Note the project is organized into three phases.

Thank you for the opportunity to provide a proposal.

Sincerely,

A handwritten signature in blue ink that reads "Roy Anderson". The signature is fluid and cursive.

Roy Anderson
Vice President

BACKGROUND

The Beck Group (BECK) and Highland Economics (HE) are pleased to provide the City of Prineville with this proposal for an Environmental and Economic Impact Study related to the Prineville Renewable Energy Project (PREP). PREP is a biomass power project aimed at simultaneously addressing forest health needs, reducing wildfire risk, revitalizing the local forest products sector, and generating renewable, baseload power to address power transmission constraints within the region.

TEAM QUALIFICATIONS



Founded in 1981, BECK is a leading, forest products planning and consulting firm based in Portland, Oregon. BECK offers a range of services to private, public, tribal, and non-profit clients in North America and around the world. Our goal is to provide practical and cost-effective solutions that improve our client's ability to plan and execute the actions that lead to better performance and accomplishing objectives. BECK's experienced staff provides clients with the innovative solutions needed to meet the challenges of today's highly competitive environment. The firm is well known in the forestry and forest products industry in the areas of biomass heat and power, project planning, management training, feasibility studies, mill modernizations, competitive assessments, due diligence, fiber supply, and timber procurement planning.



Complementing the Beck Group's deep experience and knowledge of the forest products industry, Highland Economics' team of four economists brings depth and breadth of experience in identifying and communicating effectively the social and economic impacts of natural resource management and development. We specialize in economic analysis of forests, water, recreation, energy, carbon, air, and habitat resources. We routinely conduct ecosystem service analyses and economic impact analyses that holistically portray how natural resource projects affect community well-being and socioeconomic values. In this work, often conducted for local, state, or federal agencies, we estimate how changes in natural resource management directly and indirectly affect local jobs, income, and quality of life for local residents (through ecosystem service impacts). We are adept at gathering information on local economic conditions and industry norms to customize economic impact models to ensure that ensure the model (and therefore the results) are a good representation of actual economic conditions and likely policy outcomes. Recent projects include analyzing economic development effects of biomass projects, including the economic benefits of associated forest restoration activity; quantifying how Marbled Murrelet critical habitat designations in Washington affected county economies and ecosystem services; quantifying ecosystem service benefits of forest restoration in Sonoma County, California; estimating how increased forest restoration in the Southwest 4FRI forest restoration initiative would affect timber industry businesses and local economic development; and quantifying how forest restoration in Southern California would increase water quantity and water quality, thereby resulting in economic value and cost savings to local water providers.

Table 1 on the following page summarizes relevant project experience for The Beck Group and Highland Economics. As illustrated in the table our firms have worked together in the past to successfully complete projects. We also have worked on projects where the scope of work was similar or identical to the scope of work for the PREP. In summary, we are well qualified to complete the work and we have experience working together for groups/clients that are similar to the City of Prineville. Additionally, bios and more detailed descriptions of past projects are included in the **Appendix**.

Table 1: The Beck Group and Highland Economics Example Relevant Project Experience

Prior Relevant Project	The Beck Group	Highland Economics	Biomass Feasibility	Sawmill Feasibility	Environmental Benefits of Restoration	Economic Impact Analysis	Ecosystem Impact Analysis	Ecosystem Service Analysis	Economic Development	Carbon/Energy	Air Quality	Water Quantity /Water Quality
Klamath Tribes Forest Restoration, Sawmill, Biomass Plant, Oregon	X	X	X	X			X		X		X	X
NorthWestern Energy Developing a Business Case for Sustainable Biomass Generation: A Regional Model for Western Montana	X	X	X	X	X		X		X			X
Southern Oregon University Biomass Plant, Ashland, Oregon	X		X							X	X	X
Lincoln County Nevada & A-Power Energy Systems Biomass Heat & Power Feasibility Study	X		X		X				X		X	X
Economic Impact Analysis and Economic Development Potential of Expanding Timber Harvest under the 4FRI Forest Restoration Initiative		X			X	X	X		X			X
Ecosystem Service Value of Forest Restoration and Conservation, Sonoma County California		X			X	X		X	X	X	X	X
Economic Value of Water Benefits from Forest Restoration in the Santa Ana Watershed, California		X		X	X	X		X				X
Economic Impact and Ecosystem Service Analysis of Reduced Timber Harvest from Marbled Murrelet Conservation		X					X	X	X	X	X	X
Economic Impact of Renewable Energy (10+ Projects throughout Western United States)		X					X	X	X	X	X	X

OUR GENERAL APPROACH TO COMPLETING THE WORK

Objective: The purpose of this study will be to bring together in one framework a holistic presentation of the social, economic, and environmental benefits and potential costs of the PREP. The socioeconomic analysis will present the economic value of the environmental impacts described above, as well as estimate the social and economic impacts of the PREP in terms of jobs and income generated, enhanced local quality of life, and enhanced community economic resiliency (through diversification of the economy, potential additional economic development opportunities enabled, and increased local baseload power generation).

Partnership Approach: BECK will be the prime consultant, partnering with HE to complete the work. BECK will lead the analysis on quantifying the environmental effects of the facilities and the forest restoration, while HE will estimate in social and economic terms the value of environmental effects (through ecosystem service valuation methods). HE will also estimate the economic development effects, including those related to jobs, income, quality of life, and community resiliency. Working together, BECK and HE can address the entire scope of work. BECK and HE worked together using this same arrangement in the past on a biomass heat and power feasibility study for The Klamath Tribe in Southern Oregon as well as a for a biomass plant in Montana. The responsibilities and expertise of each partner are described throughout the proposal.

Phased Work Schedule: To meet the aggressive timeline for completing a broad ranging scope of work, we have organized our work into three phases.

Compensation: We propose working with a flat fee structure with the amount and timing of our compensation tied to our team completing various phases and milestones. The specifics are described in the cost section of our proposal.

Reliance on Prior PREP Planning and Analysis: Our proposal addresses all items included in the RFP as the PREP was conceptualized by TRM Energy Solutions in their Engineering and Design Study and the accompanying Biomass Fuel Supply Study completed by TSS Consultants. However, as further described in the Scope of Work, there are several alternate scenarios for certain design and operational considerations that our team will consider in the environmental and economic analysis that differ from TRM Energy's conceptualization and from the scope of work in the RFP.

Deliverables: BECK and HE will design the deliverables in a way that concisely relays key findings and conclusions in simple, easy to understand terminology. Readers that want more detailed information about methodologies and discussion of complex issues will be able to find that information in report appendices.

SCOPE OF WORK

The diagram on the next page below summarizes our approach to all work phases, with detail provided in the following sections. Phase 1 addresses Step 1 in the diagram and several other related issues. Phase 2 addresses Step 3 in the diagram. Phase 3 addresses Steps 4 and Step 5 in the diagram.

Quantifying Economic & Environmental Impacts of PREP



Step 1: Baseline Conditions

What forest restoration and energy production would occur without PREP?

This step sets up the analysis for identifying the *changes* in environmental, social, and economic outcomes for Prineville and Crook County from PREP vs. alternative sources of energy.

Step 2: Forest Health & Fire Risk

How would forest restoration change wildfire severity and probability?

As so much of the environmental and economic value of PREP is tied to the restoration, this step is critical in determining how PREP-associated restoration would reduce forest fire and improve forest health.



Step 3: Environmental Impact

How would forest restoration and PREP affect forest health and local environmental conditions?

This step will quantify the change in air emissions, water supply available for human use and instream flows, water quality (such as reduced sedimentation), habitat, the amount of carbon stored and emitted, etc.

Step 4: Economic Value of Environmental Impact

How do environmental effects translate into economic and social benefits?

This step converts environmental impacts into valuation of what people care about, including the costs of fire damage and wildfire fighting, water supply costs, recreation opportunities and benefits, property values, reduced health care costs, and improved aesthetics.



Step 5: Jobs, Income, & Community Resiliency

How would restoration, baseload power, and new industry affect our economy?

This step quantifies the direct and indirect jobs and income benefits of PREP. It will highlight the multi-faceted economic development benefits of PREP related to addressing key economic, environmental, energy, and social vulnerabilities that may limit long-term economic development and community resiliency in Prineville.

Phase 1 - Foundational Tasks

1. Kick-Off Meeting & Other Project Meetings (\$2,000)

BECK and HE will organize a virtual kick-off meeting. The objectives of the meeting will be to acquaint our team with project stakeholders, review the study work plan and schedule, and identify key contacts and sources of information that will be helpful for the study. The kick-off meeting will address both the environmental impact study and the economic impact study.

2. Define A Basis of Comparison (i.e., Without PREP) (\$17,000)

In this foundational task, we will identify the social, economic, and environmental conditions that would exist *without* the PREP's presence. Key to this task is identifying the alternative sources of electricity and the level of forest restoration and wildfire risk that would occur without PREP, as well as the social and economic vulnerabilities in the local economy related to energy transmission, energy generation, and wildfire. This will form the basis of comparison to estimate the benefits of the PREP.

The information generated in this task will form the project's framework as described below.

1. Identify and describe the source of baseload electrical power that will be consumed in Prineville in the future. This is expected to be whatever technology the utility currently providing power to Prineville considers when calculating its avoided cost. In most cases this is power produced by a natural gas fired power plant, but this will be confirmed (or disproven) as part of the study. We will also identify the likely alternative renewable sources of energy (wind, solar, etc.) that could be developed if PREP were not developed.
2. From an environmental impact standpoint, the current source of power for Prineville and the level of forest restoration and the associated level of wildfire risk that would occur without PREP (and its associated environmental conditions) will serve as the basis of comparison to estimate the impact of PREP, including susceptibility to wildfire, water quantity and quality conditions, carbon emissions, air quality conditions, landfill usage, etc. Key to this task will be to fully identify and describe the level, type, and timing of forest restoration that would occur without the biomass facility, as well as the destination or use of forest materials resulting from this level of restoration. The task will also identify and quantify to the extent possible the risk of wildfire without restoration in terms of likelihood and magnitude of fire without the proposed Project, as well as the future state of the forest over time without the Project (i.e., we will investigate trends and not assume current forest conditions would be future conditions without the Project).
3. From a social and economic standpoint, we'll identify the vulnerabilities in local economic diversity, economic development, quality of life, and community resiliency without the PREP. In addition to considering the long-term threat of wildfire, this will include identifying the economic consequences of the limited transmission and baseload power generation in the region, and what alternatives the region has available, the cost of power with from PREP versus alternate sources, the jobs and income generated from PREP and the associated sawmill and forest restoration activities, and the effects of wildfire risk on social values, costs to Crook County and Prineville, and local economic development.

4. **Carbon Capture Technology Analysis (\$5,000)**

BECK will provide a high-level assessment of the current state of carbon capture technology. This will include describing the technology to the extent possible (e.g., typical project scale, amount of carbon contained per ton of biomass combusted, capital costs, operating costs, site requirements, etc.); identifying projects (if any) that have used the technology at a lab, pilot, or commercial scale; identifying typical carbon containment project development pathways.

5. **Review Meetings (\$1,000)**

We will hold a Phase 1 review meeting with City of Prineville staff and other project stakeholders. We anticipate a minimum of three review meetings, one for each of the three deliverables. Other review/progress meetings will be scheduled with the project stakeholders as appropriate/needed. Throughout the course of the study, we propose to have regularly scheduled meetings (such as biweekly) with the City to discuss project progress and our approach to any challenges that may arise.

Phase 2 –Environmental Impact

Phase 2 of the work will consist of three main tasks with all to be completed only upon approval to proceed granted by the City of Prineville. Each of the Phase 2 tasks are described as follows.

Task 1 of Phase 2: Environmental Impact Study (\$70,000)

As previously described, BECK will have lead responsibility for completing the environmental impact study. **Table 2** illustrates the various environmental factors (far left column) that will be considered. The approach will be to estimate and compare various environmental conditions With PREP and Without PREP. The difference in environmental conditions (positive and negative) is the environmental impact.

**Table 2 – Illustration of Environment Impact Study Framework
 Compare Environmental Conditions with/without PREP**

Environmental Attribute	With PREP Conditions	Without PREP Conditions	Net Positive/Negative Impact of PREP
Forest Health			
Wildfire Susceptibility			
Water Quantity			
Air Quality			
Landfill Usage			
Carbon Emissions			
Other (still TBD)			
Total Impact			

BECK will identify and quantify the estimated environmental health impacts of PREP (comparing the PREP scenario to the Without PREP scenario) for each of the following environmental impact considerations. Regarding the methodology for completing the environmental assessments, data from various university and U.S. Energy Administration research papers will be used to quantify the environmental impacts. Also note, that for some of the environment impacts, BECK will use a concept called “alternate fate” to analyze what would happen to the PREP facility’s fuels if the facility did not exist.

1. Forest Health

BECK will document current and expected forest conditions using factors such as estimates of trees/acre, total standing biomass, species mix, etc. Regarding species mix, special attention will be given to treating lands with Juniper encroachment and the associated impacts on forest/range health and water supply. Changes in habitat conditions (quality and quantity) for recreationally important species or for threatened and endangered species will also be identified. These forest health conditions will be compared against the expected conditions without PREP-associated forest restoration.

2. Wildfire Risk/Avoidance

Related to the previous bullet one alternate fate is in-forest accumulation of down/dead material and/or over-growth leading to high density wildfire-prone forests. All forests typically experience periodic fires. However, a combination of fire suppression efforts and accumulation of fuels have caused many recent fires to burn with much greater intensity than historical fires. BECK will estimate the likelihood, size, extent, and severity of a wildfire within a 75 mile radius of the PREP site where the bulk of the fuel supply is expected to be sourced.

3. Water Quantity

There is a variety of literature demonstrating that when forests are thinned there is a corresponding rise in water supply in both nearby surface waters as well as in nearby underground aquifers. Specific to the Prineville Region, it is our understanding that there has been research completed show the effect of thinning on water volume in a key nearby watershed. BECK anticipates using that data (or similar data) to estimate the amount of additional water that would be available based on the number of acres thinned/treated per year to supply the PREP plant. Water quantity will also consider water needs at the PREP plant and associated sawmill.

4. Air quality

BECK will document and quantify the air quality effects (such as carbon monoxide, carbon dioxide, methane, particulate matter (PM_{2.5}), and volatile organic compounds) associated with the avoidance of open burning of logging slash piles, as well as the avoidance of air emissions from forest fires, considering the reduced likelihood of fire due to forest restoration. The analysis will also estimate the expected emissions of the PREP facility that affect air quality.

5. Landfill Usage

BECK will analyze how landfill usage, and associated environmental impacts such as greenhouse gasses released, would be affected by PREP.

6. Carbon Impact of the PREP

As currently conceived, the PREP facility will generate about 209,000 MWH per year of power. The carbon emitted from that process (e.g., carbon emissions associated with the processing and transport of biomass fuel) will be compared to carbon emissions for the same number of MWHs

of power from the most likely alternative source of power (e.g., as previously described, a natural gas fired power plant). The carbon analysis will also consider carbon emissions from burning of logging slash piles and forest fires avoided, as well as carbon stored in lumber from an associated sawmill.

7. Other

There may be other environmental impacts to include based on input from project stakeholders.

8. Identifying the Most Probable Biomass Fuel Supply Scenario

The PREP biomass plant will consume about 191,000 bone dry tons of woody biomass fuel annually. There are a variety of biomass fuels available to the PREP (e.g., forest thinning, logging residues, mill residues, urban wood waste, ag/orchard waste, etc.). With PREP environmental impact analysis, BECK will define a *Most Probable Fuel Supply Scenario*. This is because the extent of environmental impacts will vary with differing fuel supply “recipes”. Therefore, BECK, in consultation with TRM and other project stakeholders, will identify the most probable fuel supply scenario. BECK will then analyze the environmental impacts of the most likely fuel supply scenario.

9. Special Considerations

BECK will analyze the environmental impacts associated with two special conditions that may arise as the planning and development process for PREP evolve.

- *Sawmill Scenario* – The financial performance of a power plant is enhanced considerably if it is co-located with a sawmill. A sawmill can provide a 24/7/365 thermal load for lumber drying. In other words, steam extracted from the power plant can be sold to the sawmill for thermal energy used in lumber drying, which typically occurs all day every day. Additionally, the by-products of sawmilling (e.g., sawdust, bark, and to a lesser extent planer shavings and wood chips) can be used as fuel for the power plant. Often the bark and sawdust have limited inherent market value for other uses. Therefore, they can serve as a low cost source of fuel for the nearby power plant since they have low market value and there is very little cost in moving the material from the sawmill to the power plant. Finally, the presence of a sawmill affects the types and amount of forest management treatments that can occur. Accordingly, BECK will analyze the environmental impact of a With PREP scenario when there is a co-located sawmill at (or near) the power plant. The analysis is expected to follow the same methodology as described in Tasks 1 and 2 above.
- *Identify Water Use Conditions in Two Boiler Design Scenarios* – Biomass power plants can use significant amounts of water for condensing steam to water as it exits the turbine. Much of the cooling water evaporates to the atmosphere during the cooling process. The water to replace the evaporated material is referred to as “make-up” water. Lesser amounts are also used in venting steam and “blowdown” of water in the steam cycle to reduce impurities. For example, a water-cooled 25 MW biomass power plant can use several hundred gallons per minute. If water supply is plentiful at the PREP site then a water-cooled design is preferred because it has lower capital costs and the system is more efficient. However, if water is in short supply at the PREP site, an air-cooled design may be required. An air-cooled system uses dramatically less water but comes with the penalty of higher capital costs and a system that is less efficient at producing power. Thus, an air-cooled design is likely to require a higher power sales price in order to provide the project developer with the same return (all other things being equal).

Given these circumstances, we suggest identifying water usage (based on consultation with TRM and/or Wellons) in both a Water-Cooled Design Scenario and an Air-Cooled Design Scenario. BECK will then calculate and document the environmental and economic impacts associated with the PREP facility's water usage in each scenario.

Phase 2 – Task 2 (\$11,000)

Much of the social and economic analysis in Phase 3 is based on the environmental effects and biomass facility operational considerations identified in Phase 2. To facilitate the social and economic analysis, the environmental analysis must provide certain types of findings. In this task, Highland Economics will collaborate with BECK on identifying and evaluating the environmental effects using metrics and units that are most suitable for use in the social and economic analysis to follow. This task will set up a more stream-lined Phase 3 analysis.

Phase 3: Social & Economic Benefits & Economic Impact Study (\$59,000)

The purpose of this element of the study will be to bring together in one framework a holistic presentation of the social, economic, and environmental benefits and potential costs of PREP. For comparison purposes, the Social & Economic Impact Study will also evaluate the social, economic, and environmental impacts of other renewable energy options such as wind and solar projects (and fossil fuel such as natural gas) using the same framework. In this way, the complete set of benefits and costs of the proposed biomass Project can be compared in an apples-to-apples fashion with other energy options.

The socioeconomic analysis will include the following three components:

1. **Economic and social value of the environmental impacts of PREP** as identified in the environmental impact study. (\$19,000).

Economic and social benefits are based on the location-specific benefits that would be expected to accrue to residents and visitors to Prineville and Crook County, given such factors as the importance and economic use of affected water resources, the effects on water supply costs of changes in water quality, the number and health vulnerability of people affected by air quality changes, the recreation locations and uses that may be affected, the infrastructure and lives that may be threatened by wildfire, landfill costs, property values that may be affected by wildfire threat and smoke, and the type of habitats and species that may be impacted.

The results of this analysis will include quantification and description of the avoided costs of changes in wildfire risk in terms of wildfire fighting costs, infrastructure damage, public safety/threat to human life; cost savings or benefits related to water quantity and water quality changes; avoided healthcare costs from smoke/air quality; effects on property values due to wildfire threat and aesthetics from smoke/air quality; economic value to recreationists and conservationists of changes in forest health; and the value of changes in carbon emissions.

2. **Economic impacts of the economic activity associated with PREP**, including the direct and indirect jobs and income associated with the biomass plant, sawmill, and forest restoration. We will also compare the economic impact of these facilities with the economic impacts of alternative energy generation options such as wind and solar. (\$25,000).

This analysis will include assessment of direct, indirect, and induced economic impacts in all linked sectors of the Crook County economy. We will estimate total economic impacts using an IMPLAN model of the Crook County economy; originally developed by the Forest Service, IMPLAN is a standard and well-accepted economic impact model used by professional and academic economists. Highland Economics has 20 years of experience using IMPLAN models and

customizing them for the most accurate total economic impact estimates; our analyses are distinguished by our careful and informed analysis of the appropriate inputs and customization of the IMPLAN model to reflect the conditions in the local economy and industries analyzed.

- 3. Community resiliency and overall economic development benefits of PREP** expected to result from increased local baseload power generation, diversification of the local economy with new or expanded industries, reduced wildfire threat and associated quality of life benefits, and other potential economic development opportunities enabled. (\$15,000).

This analysis will portray the energy-related limitations on Prineville economic development, and what the benefits are PREP are in alleviating these limitations. Overall, the analysis will highlight how PREP could provide multi-faceted economic development benefits to the region by helping to address key economic, environmental, and social vulnerabilities that may limit long-term economic development and community resiliency in Prineville.

Phase 2 & 3 Review Meetings (\$2,000)

We will hold various Task 2 review meetings with City of Prineville staff and other project stakeholders. We anticipate a minimum of two meetings, one for Task 1 of Phase 2 and one for Task 2 of Phase 2. Other review/progress meetings will be scheduled with the project stakeholders as appropriate/needed. Throughout the course of the study, we propose to have regularly scheduled meetings (such as biweekly) with the City to discuss project progress and our approach to any challenges that may arise.

PROJECT DELIVERABLES

BECK and HE will provide the following deliverables:

1. A Phase 1 review meeting that summarizes all of the key assumptions to be included in the Without PREP scenario and the with PREP scenario as well as the methodology to be applied in estimating the environmental and economic impacts. The Phase 1 review meeting will also include a review of findings related to carbon containment.
2. A Phase 2 written report documenting all key findings and conclusions regarding environmental and economic impacts. Appendices will be included provide sources, methods, and key assumptions used in reaching the key findings and conclusions.
3. A Phase 2 PowerPoint slide deck to accompany the written report. It will convey all key findings and conclusions from the study in bullet point style.
4. A Phase 2 graphic presentation of study results in a one to two-page document.

PROJECT SCHEDULE & COST

Assuming prompt approval to proceed, BECK and HE anticipate working on the project schedule shown in Table 3.

Table 3 – Project Schedule

Phase/Task	Start Date	End Date	Cost	Deliverable
Phase 1: Kick Off Meeting	5/4/22	5/15/22	\$2,000	Meeting to be held sometime within date range
Phase 1: Define Basis of Comparison	5/15/22	6/10/22	\$17,000	N/A
Phase 1 Carbon Containment	5/15/22	6/10/22	\$5,000	N/A
Phase 1 Review Meeting	6/10/22	6/30/22	\$1,000	BECK & HE to deliver Phase 1 Report
Phase 1 – Subtotal			\$25,000	
Phase 2: Environmental Impacts	TBD	TBD	\$70,000	Preparation of written report
Phase 2: Environmental Impacts, Ready for Economic Analysis	TBD	TBD	\$11,000	Integrated into environmental impact written report
Phase 2 – Subtotal			\$81,000	
Phase 3: Economic Impacts	TBD	TBD	\$59,000	Preparation of written report
Phase 2&3: Review Meetings	TBD	TBD	\$2,000	Delivery of Project Report
Phase 3 & Review Meetings – Subtotal			\$61,000	
Grand Total Cost			\$167,000	

As shown in the preceding table, the total cost for the project is \$167,000. We propose a payment schedule that includes three payments. The first would be for \$25,000 after completion of the kick-off meeting and completion of the interim report defining the basis of comparison. The second would be for \$81,000 after completion of the environmental impact report, and the third would be for the remaining balance of \$61,000 after completing the final report and submission of all associated deliverables. Please note that travel expenses are not included in the project cost. Travel if necessary will be billed to the City of Prineville at cost. Travel is not expected to exceed \$2,000.

APPENDIX – PROJECT TEAM BIOS & PROJECT TEAM QUALIFICATIONS/EXPERIENCE



Barbara Wyse, Principal

Barbara Wyse is a natural resource economist with expertise in energy, forestry, recreation/tourism, habitat, agriculture, water resources, carbon, and comprehensive land use analysis. Barbara’s environmental and economic impact experience includes leading studies for counties, regions, and Tribes evaluating economic development opportunities, natural resource management and development strategies, and value to the community of environmental quality and natural resource assets. Barbara has significant experience analyzing the economics of natural resources in Central Oregon, having led the land use, socioeconomic, and environmental justice analyses for Deschutes Basin Habitat Conservation Plan as well as numerous economic analyses to support watershed plans for Ochoco Irrigation District and other districts in the region. Barbara’s other recent projects include economic impact studies of biomass/wind/solar energy facilities; economic valuation of the environmental benefits of forest restoration in several locations in California; and the economic development benefits and opportunities associated with forest restoration in the Southwestern 4FRI initiative.

DISCIPLINES / SPECIALTIES

Environmental Economics
Social & Economic Impact Analysis
Recreation Planning & Economics
Economic Development
Forest Economics

EDUCATION

M.S., Agricultural and Natural Resource Economics, Oregon State University, Gamma Sigma Delta Honor Society
B.A., Environmental Sciences, Duke University, Phi Beta Kappa, Magna Cum Laude

Example Projects

- Land Use & Socioeconomic Deschutes Basin Habitat Conservation Plan (OR)
- Economic analysis for Deschutes Basin Watershed Plans (OR)
- Economic impacts on jobs and income of forest biomass energy projects (MT)
- Economic & environmental impact of sudden oak death disease in Oregon Forests (OR)
- Port Gamble Forest Heritage Park Master Plan Economic Analysis (WA)
- Forest Restoration & Economic Development in NE Arizona (AZ)
- Economic Value of Sonoma County Forest Restoration (CA)
- Economic Value of Riverside County Forest Restoration (CA)
- Economic & Environmental Impact of Marbled Murrelet Habitat (WA)
- Baron Ranch Land Use & Revenue Options Study (CA)
- Economics of forest and recreation on the Fort Apache Indian Reservation (AZ)
- Economic & Environmental Impact of Wind and Solar Projects (WA, OR, CA, NM, AZ)



Travis Greenwalt

Principal & Senior Economist

Summary of Experience

Travis Greenwalt is a natural resource economist with expertise in water resources, agriculture, business economics, valuation of ecosystem services, comprehensive land use analysis, and modeling of tradeoffs. His particular interest is in developing financial models and enterprise budgets for land and business managers to make informed decisions. Travis' work is often used in negotiation or litigation of water rights. He has served as lead economist and expert witness for economic studies conducted in several adjudications and water rights settlements. His work has also been used to inform valuation of specific water rights, prioritize funding opportunities for federal aid programs, to obtain financing for start-up enterprises, in forecasting and planning for economic growth for communities, and to enhance economic development. Travis regularly works with private entities, Native American tribes, attorneys, economic development groups, land use planners, trade associations, and local, state, and federal agencies. For these diverse clients, Travis has the ability to conduct and coordinate thorough, independent analysis of financial and economic issues to provide useful and innovative solutions for natural resource matters. Travis' relevant experience is highlighted below.

DISCIPLINE / SPECIALTIES

Ecosystem Service Valuation
Agricultural Economics
Natural Resource Economics
Water Resources
Financial Modeling

EDUCATION

Master of Business Administration, The University of Montana
B.S. Business Finance & Management, The University of Montana

PROFESSIONAL AFFILIATIONS

Treasurer, Missoula Conservation District
Member, Western Montana Growers Cooperative

SOFTWARE CAPABILITIES

Microsoft PowerPoint
Microsoft Excel
@Risk
Microsoft Word

PUBLICATIONS

"Valuation and Payment for Ecosystem Services as Tools to Improve Ecosystem Management," Chapter 12 in The Laws of Nature (Robbins), The University of Akron Press, 2013

Natural Resource Planning

Ecosystem Services from Conservation, Oregon

Developed methodology to value ecosystem services resulting from conservation practices on agricultural land, prepared for the Oregon Watershed Enhancement Board.

Bio Char Market Analysis, California

Conducted a market analysis for Carbon Based Solutions, as part of their business planning effort, for biochar manufacturing in the Sonora area. This independent market analysis followed USDA elements of an acceptable feasibility study.

Benefits and Costs of Cover Crop Fallowing, California

Analysis of public benefits and private costs associated with cover crop fallowing program in the Pajaro Valley of California, prepared for the Resource Conservation District of Santa Cruz.

Regional Economic Assessment & Strategy, Arizona

Economic impact analysis of the downturn in coal production for northeastern Arizona counties of Apache and Navajo. In addition, this analysis considered strategies for attracting and retaining other industrial developments, particularly around the Four Forest Restoration Initiative (4FRI), and the existing sawmill and biomass sectors already established.

Regional Economic Assessment & Strategy, New Mexico

Economic impact analysis of the downturn in coal production for northwestern New Mexico council of governments. In addition, this analysis considered strategies for attracting and retaining other industrial developments, including sawmill development potential.

Little Colorado River Water Claims, Navajo, Navajo Nation

Expert witness reports on economic analysis of Large Industrial water claims, including water needs for utilizing the biomass and commercial wood from Navajo Nation’s forests in Northeastern Arizona filed by DOJ on behalf of Navajo Nation.

Flathead Water Claims, Montana

Expert witness reports on economic analysis of Large Industrial water claims, as well as Practicably Irrigable Acreage (PIA) claims filed by DOJ on behalf of the Confederated Salish and Kootenai Tribes of the Flathead Reservation. The analyses supporting these claims considered the beneficial use of water for milling and wood product manufacturing.

Economic and Environmental Impacts of Forest Biomass, Montana

Co-authored analysis and written deliverables with Beck Group (Roy Anderson) on the economic and environmental impacts of a combined heat and power system associated with an existing sawmill in Montana. Study was completed for Northwestern Energy and Montana Department of Commerce.

Economic Benefit Assessment, Montana

Economic assessment of ability to pay for irrigators, as well as public benefits of recreators, for modifications to the East Fork Rock Creek Dam, prepared for Department of Natural Resources and Conservation (DNRC), under subcontract with DOWL HKM Engineering.

Economic Benefits of Forest Restoration, California

Analysis of economic benefits of forest restoration in terms of improved water supply and water quality. Prepared for the Santa Ana Watershed Protection Authority (SAWPA) in California.

Roy Anderson

Senior Consultant and Vice President

Since joining The Beck Group in 2006 Roy Anderson has led a variety of strategic planning and consulting projects. For one of Roy’s specialty areas, North American timber/fiber supply and demand studies, he has completed nearly 50 biomass cogeneration supply studies. Several of the cogeneration studies that progress farther in planning included assessments of the environmental and economic impacts of the projects. These included studies for the Klamath Tribe in Southern Oregon, Lincoln County in Nevada, Southern Oregon University, and all of Western Montana for NorthWestern Energy. Each is briefly described below:

Klamath Tribes, Southern Oregon – BECK assisted the Klamath Tribes in assessing the feasibility of a variety of forest products businesses included biomass heat and power. For the biomass power plant modelled BECK assessed a variety of environmental impacts related to permitting including air quality, water quality, environmental site assessment, forest health impacts. BECK also worked with Highland Economics to assess the biomass power plant’s economic impacts.

Lincoln County, Nevada – BECK assisted Lincoln County Nevada’s economic development department to assess the feasibility of a biomass power plant in the region. Included in the analysis was an assessment of the impact forest health and water availability caused by the prospective plant when using fuel from Pinyon-Juniper forests.

Southern Oregon University – BECK completed a biomass power feasibility study for Southern Oregon University. The project was aimed at converting the university’s natural gas fired boilers to biomass. As part of the project BECK assessed the supply available from local forests and estimated that carbon footprint of the campus under its natural gas scenario relative to the carbon footprint of the proposed biomass project.

NorthWestern Energy, Montana – BECK worked as part of a team that assessed the feasibility of siting biomass power plants at sawmills throughout Western Montana. Included in the analysis was an assessment of the plants’ environmental impacts on things such as air quality and carbon emissions.

Roy has more than 25 years of experience in the field of forestry and forest products. Before joining The Beck Group, he was a forest products specialist with the Montana State University Extension Service where his responsibilities included developing and delivering forest products utilization and marketing outreach programs to Montana’s forest products industry and private forest landowners. Roy has a PhD in forest products marketing from Oregon State University, a Masters in wood science from the University of Minnesota, and a BS in forest management from the University of Wisconsin-Stevens Point. His research has been published in the *Journal of Forestry* and the *Forest Products Journal*. Roy started his forestry career in Wisconsin’s hardwood timber industry where he worked as a procurement forester, hardwood lumber salesperson, and logger.

EDUCATION

PHD FOREST PRODUCTS MARKETING	<i>Oregon State University (2003)</i>
MS WOOD SCIENCE	<i>University of Minnesota-Twin Cities (1999)</i>
BS FOREST MANAGEMENT	<i>University of Wisconsin-Stevens Point (1991)</i>

**PROFESSIONAL
ACTIVITIES**

Oregon State University, Oregon Wood Innovation Center Advisory Council
Society of American Foresters, Portland, Oregon Chapter, Newsletter Editor
Oregon Woodland Cooperative, Board Member and Secretary

Steve Courtney

Senior Consultant and DRJ Consulting Assistance Project Manager

Steve Courtney joined The Beck Group in 2021 after a nearly 30 year career in the forest products industry in the US West. Steve brings to the company extensive industry experience, knowledge, and a broad contact network from various positions at major forest products manufacturing corporations including Roseburg Forest Products, International Forest Products (Interfor), and Sierra Pacific Industries. Steve’s roles at those companies included procuring raw materials for lumber and plywood operations; coordinating logistics for raw material delivery including truck, rail, and barge; developing corporate strategies to optimize log procurement among jointly owned milling operations; and buying and selling veneer products.

Steve also worked early in his career as an industry representative advocating for the timber industry on issues including US Forest Service timber sale planning, public education & outreach, and representing the industry’s interests to local, state, and federal government agencies.

During his career Steve has had the opportunity to work with a spectrum of co-workers, customers, and vendors ranging from the highest level executives at major forest products corporations to single entrepreneurs operating small forest products businesses.

Steve has a bachelor’s degree in Forest Engineering from Oregon State University and an MBA from National University.

EDUCATION	MBA	National University (2007)
	B.S. Forest Engineering	Oregon State University (1992)

BECK GENERAL QUALIFICATIONS

- The Beck Group is an established, highly experienced forest products planning, research, consulting, and benchmarking firm. Key personnel at BECK have extensive forest industry experience. Over the last 40 years, the firm has assisted well over 200 forest products companies at more than 350 locations. Our clients range from the largest multi-national forest products corporations to very small entrepreneurs seeking to establish a forest products business.
- BECK has completed many fiber supply studies, including biomass supply for wood pellet and cogeneration (heat and power) facilities. We have also assessed timber supply for sawmills, plywood plants, etc. Our approach to fiber supply studies is always to assess not only the available supply, but also account for the existing (or planned) demand. The result is an assessment of the overall supply and demand balance within a given region.
- BECK has worked with numerous publicly and privately owned corporations and various government agencies to assist in strategic planning and/or market strategy development processes. Thus, BECK is experienced with the process of identifying the client's current position, prioritizing objectives, and developing an appropriate strategic plan.
- BECK is the forest products industry leader in Competitive Assessment (benchmarking) studies for the forest products industry. We have completed well over 50 benchmarking studies for various segments of the industry, including softwood lumber, plywood, oriented strand board (OSB), particleboard, medium density fiberboard (MDF), and hardwood lumber. Consequently, we know the actual economics – including log costs, manufacturing costs, yields, production rates, staffing levels, etc. – of most segments of the forest products industry.
- BECK has completed over 100 feasibility studies for a variety of large and small forest products businesses. Aided by the data we collect in our benchmarking studies and from other sources, we are able to make realistic projections of new business performance for issues such as capital equipment costs and production capabilities, typical raw material to finished product recovery levels, manufacturing and labor costs, equipment installation costs, finished product values and staffing levels. We also have staff with extensive training and experience in accounting so that we can present comprehensive financial projections for a prospective business, including pro forma income statements, statement of cash flows, and balance sheets. We have the tools and the experience to complete the desired work in a cost effective and timely manner.
- We are a people-oriented company. We have a very practical, results-oriented approach



PHASE 1 - PROJECT ACCEPTANCE AGREEMENT

This document serves as the contract agreement for Phase 1 of the consulting assistance project as described in The Beck Group’s project proposal letter dated May 2, 2022. A separate agreement will be made covering work for Phases 2 and 3.

CITY OF PRINEVILLE – PRINEVILLE RENEWABLE ENERGY PROJECT (PREP)

Upon project acceptance, the City of Prineville agrees to assist The Beck Group in completing the described project activities, including making available the appropriate management and administrative personnel and allowing access to required information.

CONFIDENTIALITY

The Beck Group agrees to keep confidential all information relating to City of Prineville (PREP) including, but not limited to, strategies and proprietary product and process information.

With acceptance, the City of Prineville agrees to keep confidential all concepts, documents, programs, systems, and other proprietary features used or applied by The Beck Group for the project activities described herein.

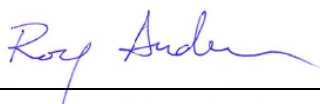
Submitted by:

Accepted by:

THE BECK GROUP

CITY OF PRINEVILLE

By



Roy Anderson
Vice President

By

Name:
Title:

Date

May 9, 2022

Exhibit B

1. General description of the scope of work-

The environmental and economic analysis will examine social, economic, and environmental benefits and potential costs of the Prineville Renewable Energy Project. The analysis will include the following components:

- **Establish baseline conditions-** identify the changes in environmental, social, and economic outcomes for Prineville and Crook County from PREP vs. alternative sources of energy
- **Forest health and wildfire risk-** determine how PREP-associated restoration would reduce fire and improve forest health
- **Environmental impact-** quantify the change in air emissions, water supply available for human use and instream flows, water quality, habitat, the amount of carbon stored and emitted, etc.
- **Economic value of environmental impact-** convert environmental impacts into valuation of what people care about, including the costs of fire damage and wildfire fighting, water supply costs, recreation opportunities and benefits, property values, reduced health care costs, and improve aesthetics
- **Jobs, income, and community resiliency-** quantify the direct and indirect jobs and income benefits of PREP, examine the multi-faced economic development benefits of PREP related to key economic, environmental, energy, and social vulnerabilities that may limit long-term economic development and community resiliency in Prineville
- **Carbon capture technology-** determine whether or not the technology would be feasible to employ with the PREP

2. Total cost to the City for the delivery of services:

\$167,000 broken out into three phases:

Phase 1: \$25,000

Phase 2: \$81,000

Phase 3: \$61,000

3. Expertise of the contractor in the requires area of specialty-

The BECK Group is a forest products planning and consulting firm based in Portland, Oregon with more than 40 years of experience. The company has experienced staff and is well known in the forestry and forest products industry in the area of biomass heat and power. Highland Economics specializes in analysis of forests, water, recreation, energy, carbon, air, and habitat resources. Together, the BECK Group and Highland Economics have relevant project experience working on more than nine different projects, including biomass energy projects.

4. References regarding prior work done by the Contractor-

The BECK Group and Highland Economics came highly recommended by Sustainable Northwest and similar project work includes biomass related projects for the Klamath Tribes, NorthWestern Energy, and Southern Oregon University.

5. Capacity and capability to perform the work, including any specialized services within the time limitations for the work

Based on prior project experience, the BECK Group and Highland Economics have the expertise necessary to complete the analysis and are available in a timeframe that is acceptable to the City of Prineville to complete the work.

6. Educational and professional records, including past records of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability in schedules, and contract administration, where applicable

Educational records for the project team include:

- Roy Anderson- PHD Forest Products Marketing, M.S Wood Science
- Barbara Wyse- M.S. Agricultural and Natural Resource Economics

The BECK Group and Highland Economics have committed to a project budget not to exceed \$167,000 for the deliverables presented as well as an acceptable project timeline.

7. Availability to perform the assignment and familiarity with the area in which the specific work is located

The BECK Group and Highland Economics are familiar Oregon and with the Central Oregon region.

8. Timeliness of delivery of service-

Both the BECK Group and Highland Economics have committed to a project timeline that is acceptable to the City of Prineville.

9. Experience in working with the City

The BECK Group and Highland Economics do not have prior experience working with the City.

10. Knowledge of City's needs and desires related to the Contract-

An initial meeting was held with the City, the BECK Group, and Highland Economics to discuss the project and the City's needs and desires were clearly communicated at that time. In response, the proposed scope of work encompasses all key points the City desires to have addressed.