

MORROW COUNTY BOARD OF COMMISSIONERS MEETING AGENDA
Wednesday, June 16, 2021 at 10:00 a.m.
Morrow-Grant County OHV Park
71000 East of Morphine Lane (33 miles southwest of Heppner on Highway 207)
Heppner, Oregon

(No Zoom Link Available)

AMENDED

- 1. Call to Order and Pledge of Allegiance:** 10:00 a.m.
- 2. City/Citizen Comments:** Individuals may address the Board on issues not on the agenda
- 3. Open Agenda:** The Board may introduce subjects not already on the agenda
- 4. Consent Calendar**
 - a. Approve Accounts Payable & Payroll Payables
 - b. Contract with Helion Software, Inc., for Assessment and Taxation Computer Software Services
 - c. Amendment #1 to Department of Revenue Intergovernmental Services Agreement #DOR-136-20, Map Maintenance and Related Activities
- 5. Legislative Updates**
- 6. Business Items**
 - a. Department of Administrative Services Contract #2625, CARES Recovery Fund Grant, Vaccine (Kate Knop, Finance Director)
 - b. Bombing Range Road Overlay Project (Matt Scrivner, Public Works Director)
 - c. **Energy Facility Siting Council Comment Letter, Boardman Solar Energy Facility, Request for Amendment 1 (Tamra Mabbott, Planning Director)**
 - d. Building Projects Update
- 7. Department Reports – None Scheduled**
- 8. Correspondence**
- 9. Commissioner Reports**
- 10. Sign documents**
- 11. Adjournment**

Agendas are available every Friday on our website (www.co.morrow.or.us/boc under “Upcoming Events”). Meeting Packets are also available the following Monday.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Roberta Lutcher at (541) 676-5613.

Pursuant to ORS 192.640, this agenda includes a list of the principal subjects anticipated to be considered at the meeting; however, the Board may consider additional subjects as well. This meeting is open to the public and interested citizens are invited to attend. Executive sessions are closed to the public; however, with few exceptions and under specific guidelines, are open to the media. The Board may recess for lunch depending on the anticipated length of the meeting and the topics on the agenda. If you have anything that needs to be on the agenda, please notify the Board office before noon of the preceding Friday. If something urgent comes up after this publication deadline, please notify the office as soon as possible. If you have any questions about items listed on the agenda, please contact Darrell J. Green, County Administrator at (541) 676-2529.



AGENDA ITEM COVER SHEET
Morrow County Board of Commissioners
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(For BOC Use)
Item #
4b

Please complete for each agenda item submitted for consideration by the Board of Commissioners
(See notations at bottom of form)

Presenter at BOC: Mike Gorman
Department: Assessment & Tax
Short Title of Agenda Item:
(No acronyms please)

Phone Number (Ext): 5607
Requested Agenda Date: 6/16/21

Helion Software Contract Renewal

This Item Involves: (Check all that apply for this meeting.)

- Order or Resolution
Ordinance/Public Hearing:
1st Reading 2nd Reading
Public Comment Anticipated:
Estimated Time:
Document Recording Required
Contract/Agreement
Appointments
Update on Project/Committee
Consent Agenda Eligible
Discussion & Action
Estimated Time:
Purchase Pre-Authorization
Other

N/A

Purchase Pre-Authorizations, Contracts & Agreements

Contractor/Entity: Helion Software, Inc
Contractor/Entity Address: PO Box 3506 Salem, OR 97302
Effective Dates - From: 7/1/21 Through: 6/30/22
Total Contract Amount: \$52,892 Budget Line: 101-103-5-20-3718
Does the contract amount exceed \$5,000? Yes No

Reviewed By:

Mike Gorman 6/11/21 Department Director Required for all BOC meetings
R. Tovey email 6-11-21 County Counsel *Required for all legal documents
K. Knop email 6-11-21 Finance Office *Required for all contracts; other items as appropriate.
Human Resources *If appropriate

*Allow 1 week for review (submit to all simultaneously). When each office has notified the submitting department of approval, then submit the request to the BOC for placement on the agenda.

Note: All other entities must sign contracts/agreements before they are presented to the Board of Commissioners (originals preferred). Agendas are published each Friday afternoon, so requests must be received in the BOC Office by 1:00 p.m. on the Friday prior to the Board's Wednesday meeting. Once this form is completed, including County Counsel, Finance and HR review/sign-off (if appropriate), then submit it to the Board of Commissioners Office.

AGENDA ITEM COVER SHEET

Morrow County Board of Commissioners

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1. ISSUES, BACKGROUND, DISCUSSION AND OPTIONS (IF ANY):

Annual maintenance contract for our assessment and tax software.

2. FISCAL IMPACT:

Contract Amount \$52,892 Budgeted Amount \$70,000

3. SUGGESTED ACTION(S)/MOTION(S):

Approve contract with Helion Software and authorize Mike Gorman to sign.

Attach additional background documentation as needed.

PROFESSIONAL SERVICES CONTRACT BETWEEN MORROW COUNTY AND HELION SOFTWARE, INC.

This contract is between Morrow County ("County") and Helion Software, Inc. ("Contractor"). County's supervising representative for this contract is the County Administrator or the Administrator's designee as noted in Paragraph 21, Notices. County and Contractor agree to the following:

1. Effective Date and Duration. This contract shall become effective on the date it has been signed by every party and when required, approved by the Morrow County Board of Commissioners, and once approved has an effective date starting July 1, 2021. Unless extended or earlier terminated, this contract shall expire when County has accepted Contractor's completed performance or on June 30, 2022, whichever date occurs last. However, expiration or termination shall not extinguish or prejudice County's right to enforce this contract with respect to: (a) any breach of Contractor warranty or indemnity; or (b) any default or defect in Contractor performance that has not been cured.

2. Statement of Work. The County and Contractor intend to contract for Assessment and Taxation Computer Software Services. Contractor shall perform the work ("Work") as set forth in the Statement of Work and these terms and conditions. The Statement of Work, including the delivery schedule for the Work, is contained in the attached Exhibit A.

3. Consideration.

(a) The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$52,892 payable according to Exhibit A. County will not pay Contractor any amount in excess of the not-to-exceed compensation for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

(b) All interim payments to Contractor shall be made only in accordance with the terms and conditions of this contract. Unless another schedule is stated in Exhibit A, the Statement of Work, Contractor shall submit monthly invoices to County for Work performed.

(c) Invoices shall describe all Work performed with particularity and by whom it was performed and shall itemize and explain all expenses that this Contract requires County to pay and for which Contractor claims reimbursement. Each invoice also shall include the total amount invoiced to date by Contractor prior to the current invoice. Contractor will specifically note in the appropriate invoice when it has requested payment for one-third and two-thirds of the maximum, not-to-exceed compensation. Contractor shall send invoices to the person designated in Paragraph 21, Notices.

4. Travel and Other Expenses. Travel and other expenses of the Contractor shall not be reimbursed by the County.

5. Independent Contractor; Responsibility for Taxes and Withholding; Retirement System Status.

(a) Contractor shall perform all Work as an independent contractor. Although the County reserves the right (i) to determine (and modify) the delivery schedule for the Work and (ii) to evaluate the quality of the completed performance, the County cannot and will not control the means or manner of the Contractor's performance. The Contractor is responsible for determining the appropriate means and manner of performing the Work.

(b) If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Contract, represents and warrants that: Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no statutes, rules or regulations of the state or federal agency for which Contractor currently performs work would prohibit Contractor's Work under this Contract.

(c) Contractor is not an "officer," "employee" or "agent" of the County, as those terms are used in ORS 30.265.

(d) Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, County will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

6. Subcontracts and Assignment; Successors in Interest. Contractor shall not enter into any subcontracts for any of the Work, and shall not assign, delegate or transfer any of its rights or obligations under this Contract without County's prior written consent. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns, if any.

7. No Third Party Beneficiaries. County and Contractor are the only parties to this contract and are the only parties entitled to enforce its terms. Nothing in this contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this contract.

8. Funds Available and Authorized. County has sufficient funds currently available and authorized for expenditure to finance the costs of this contract within the County's current annual budget. Contractor understands and agrees that County's payment of amounts under this contract attributable to work performed is contingent on County budgetary limitations and other expenditure authority sufficient to allow County, in the exercise of its reasonable administrative discretion, to continue to make payments under this contract. County may terminate this contract without penalty or liability to County, effective upon the delivery of written notice to Contractor, with no further liability if County determines that there are insufficient funds available to make payments under this contract.

9. Representations and Warranties. Contractor represents and warrants to County that (a) Contractor has the power and authority to enter into and perform this Contract, (b) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (c) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession, and (d) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

10. Default; Remedies; Termination.

(a) **Default by Contractor.** Contractor shall be in default under this Contract if:

- (i) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
- (ii) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar days after County's notice or such longer period as County may specify in such notice; or
- (iii) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after County's notice, or such longer period as County may specify in such notice.

(b) **County's Remedies for Contractor's Default.** In the event Contractor is in default under Section 10.a, County may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

- (i) termination of this Contract under Section 10e(ii);

- (ii) withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
- (iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
- (iv) exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under Sections 10a, then Contractor shall be entitled to the same remedies as if this Contract was terminated pursuant to Section 10e(i).

(c) **Default by County.** County shall be in default under this Contract if:

- (i) County fails to pay Contractor any amount pursuant to the terms of this Contract, and County fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or
- (ii) County commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

(d) **Contractor's Remedies for County's Default.** In the event County terminates the Contract under Section 10e(i), or in the event County is in default under Section 10c and whether or not Contractor elects to exercise its right to terminate the Contract under Section 10e(iii), Contractor's sole monetary remedy shall be (a) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses incurred, and (b) with respect to deliverable-based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by County, less previous amounts paid and any claim(s) that County has against Contractor. In no event shall County be liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 10d, Contractor shall pay immediately any excess to County upon written demand.

(e) **Termination.**

(i) **County's Right to Terminate at its Discretion.** At its sole discretion, County may terminate this Contract:

- (A) For its convenience upon thirty (30) days' prior written notice by County to Contractor;
- (B) Immediately upon written notice if County fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products; or
- (C) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the County's purchase of the Work or Work Products under this Contract is prohibited or County is prohibited from paying for such Work or Work Products from the planned funding source.

(ii) **County's Right to Terminate for Cause.** In addition to any other rights and remedies County may have under this Contract, County may terminate this Contract immediately upon written notice by County to Contractor, or at such later date as County may establish in such notice, or upon expiration of the time period and with such notice as provided in Section 10e(ii)(B) and 10e(ii)(C) below, upon the occurrence of any of the following events:

- (A) Contractor is in default under Section 10a(i) because Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- (B) Contractor is in default under Section 10a(ii) because Contractor no longer holds a license or certificate that is required for it to perform services under the Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar days after County's notice or such longer period as County may specify in such notice; or

(C) Contractor is in default under Section 10a(iii) because Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after County's notice, or such longer period as County may specify in such notice.

(iii) **Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract with such written notice to County as provided in Sections 10e(iii)(A) and 10e(iii)(B) below, or at such later date as Contractor may establish in such notice, upon the occurrence of the following events:

(A) County is in default under Section 10c(i) because County fails to pay Contractor any amount pursuant to the terms of this Contract, and County fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or

(B) County is in default under Section 10c(ii) because County commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and County fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

(iv) **Return of Property.** Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to County all of County's property (including without limitation any Work or Work Products for which County has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such County property is expressed or embodied at that time. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

11. Records Maintenance; Access. Contractor shall maintain all financial records relating to this contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that County and their duly authorized representative shall have access to such financial records and to all other books, documents, papers, plans and writings of Contractor that are pertinent to this contract for the purpose of performing examinations and audits, and making excerpts and transcripts. All such financial records, books, documents, papers, plans, and writings shall be retained by Contractor and kept accessible for a minimum of 6 years, except as required longer by law, following final payment and termination of this contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this contract, whichever date is later.

12. Compliance with Applicable Law. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (a) Titles VI and VII of the Civil Rights Act of 1964, as amended; (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (c) the Americans with Disabilities Act of 1990, as amended; (d) Executive Order 11246, as amended; (e) the Health Insurance Portability and Accountability Act of 1996; (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (h) ORS Chapter 659, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. County's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230 and 279B.235 which are incorporated by reference herein.

13. Foreign Contractor. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of

State Corporation Division all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this contract.

14. Governing Law; Jurisdiction; Venue. This contract shall be governed and construed in accordance with the laws of Morrow County and the State of Oregon without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit or proceeding (collectively, "claim") between the County and the Contractor that arises from or relates to this contract shall be brought and conducted solely and exclusively within the Circuit Court of Morrow County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively with the United States District Court for the District of Oregon. Contractor by the signature below of its authorized representative, hereby consents to the *in personam* jurisdiction of said courts.

15. Indemnity. Contractor shall defend (with legal counsel of County's choice), save, hold harmless, and indemnify the Morrow County its officers, employees, agents, and members, from all claims, suits, losses, damages, liabilities, costs, expenses or actions, of any nature whatsoever resulting from, arising out of or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this contract.

16. Insurance. Contractor shall provide insurance as indicated on Exhibit C, attached hereto and incorporated by this reference.

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

18. Severability. If any term or provision of this Agreement is declared 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 the Agreement did not contain the particular term or provision held to be invalid.

19. Waiver. The failure of the County to enforce any provision of this contract shall not constitute a waiver by the County of that or any other provision.

20. Amendments. County may amend this Contract to the extent permitted by applicable statutes, administrative rule, and as provided in the solicitation documents, if any. The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, except by written instrument signed by the parties.

21. Notices. All notices to the respective parties shall either be personally delivered or sent certified mail to the following addresses:

Morrow County
Mike Gorman
Tax and Assessment
PO Box 247
Heppner, OR 97836
phone: 541-676-5607

Helion Software, Inc.
Murray Giesbrecht
P.O. Box 3506
Salem, OR 97302
phone: 503.362.9394

22. Survival. All rights and obligations shall cease upon termination or expiration of this Contract, except those rights and obligations set forth in Sections 1, 7, 8, 9, 10, 11, 14, 15, 16, 17, 19, 22, 24 and 25.

23. Time is of the Essence. Contractor agrees that time is of the essence under this Contract.

24. Force Majeure. Neither County nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of County or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause,

diligently pursue performance of its obligations under this Contract.

25. Attorney Fees. In the event of a dispute between Contractor and County, each shall pay his or her own attorney fees. Attorney fees are not recoverable from the other party.

26. Contractor Certification. Contractor, by execution of this Contract, acknowledges that s/he has read this Contract, understands it, and agrees to be bound by its terms and conditions. Contractor shall complete the full certification attached and incorporated as Exhibit B.

IT IS SO AGREED:

_____	_____		<u>6-4-2021</u>
Morrow County	Date	Murray Giesbrecht Helion Software, Inc.	Date

Exhibit A: Statement of Work

STATEMENT OF WORK, COMPENSATION PAYMENT TERMS and SCHEDULE

Section 1. Contractor's Services

Contractor's services are divided into TWO parts:

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

Part 2 – Discretionary Support Hours for a maximum of 0 hours (at \$145.00/hour) of offsite/onsite staff for ORCATS support and program development for Morrow.

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

Work will be billed monthly.

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

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

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

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

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

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

Section 2. Service Level Agreement

1. Supported Software and Maintenance

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

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

Tax Balance Service
Prepaid Tax Processing
Tax Rate Calculation
Tax Amount Calculation
Tax District Adjustments
Tax Statements
Assessment and Tax Database Views

- 1.02 Maintenance shall include providing County with new releases, updates, and corrections to the Software, including the Software documentation. Maintenance shall also include necessary assistance and consultation to assist County in resolving problems with the use of the Software including the verification, diagnosis and correction of errors and defects in the Software. Maintenance shall include third party software bundled with the ORCATS system, as well as updates to documentation.
- 1.03 Helion shall correct any defect or error or non-conformity comprising a problem by, among other things, supplying to County and installing such corrective codes and making such additions, modifications or adjustments to the Software as may be necessary to keep the Software in operating order and in conformity with the warranties contained in this Agreement.

The corrective services provided by Helion may include:

- Providing a resolution to the problem immediately; or
 - Providing documented clear steps that county staff can reasonably take to correct the problem; or
 - Following analysis, providing documented clear steps toward problem resolution; or
 - Performing configuration changes to the Helion software; or
 - Modifying corrupt data caused by a defect in the software.
- 1.04 Helion will provide support for modifications or specialized features made at the request of the County and performed by Helion.
- 1.05 All modifications or specialized features made at the request of the County and performed by Helion will be ported to and supported in all future versions and releases of the Software unless authorized in writing from the County.
- 1.06 Any changes to comply with legal requirements will be performed under Section 1, Part 1.
- 1.07 Helion will assist County with the following Data Manipulation either directly or by providing an application so the County can perform the tasks themselves:
- Changing a value from Entered to Calculated or Calculated to Entered at the following levels:

- Improvement
 - Accessories
 - Floor
 - Inventory
 - Land Fragment
 - OSD
- Changing a Neighborhood Code
 - Changing an Improvement, Land Fragment or OSD from Trendable to Non-Trendable or Non-Trendable to Trendable
 - Change one RMV class to another
 - Bulk load LCM Schedules

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

2.00 Database Maintenance

- 2.01 Helion will provide on-going consulting on procedures for the backup and restoration of all databases required to run the ORCATS software.
- 2.02 Helion will consult with the County technical staff as needed on the status of all databases required to run the ORCATS software and ensure that all database indexes and database features are configured appropriately to ensure the proper functioning of all Helion supported software.
- 2.03 If requested, Helion will ensure that database backups are performed prior to any modification to the database structure and/or schema as part the implementation of new ORCATS software through new version release or problem resolution.
- 2.04 Helion will perform all database repair and recovery due to database corruption, malfunction, or inconsistency brought about by implementation of new ORCATS software through new version release or problem resolution, by defects in or improper functioning of the client software, or by third party software used within any Helion supported software.
- 2.05 The obligations described in Sections 1.00 through 2.05 are hereafter referred to as "Maintenance."

3.00 Response Times and System Access

- 3.01 Unless visit was requested by the County, Helion will provide the County IT Division with 2 days notice prior to performing a site visit to perform software upgrades or modifications to the database or the client software.
- 3.02 County shall notify Helion, either by telephone or in writing or email, of any

deficiency and shall provide any other information that Helion may reasonably request in determining the nature of the deficiency. Helion shall commence correction of such deficiency in accordance with this section. Helion will provide problem resolution through telephone, electronic, remote and onsite assistance to the County designated representatives. Resolving the problem may include the initial contact and any subsequent contact and actions necessary to address the initial issue for the County. Helion will provide the County with a local telephone or toll-free telephone number, an email address, and a designated point of contact to receive calls or e-mails for trouble reports. The County shall designate authorized callers (who may change from time to time) for access to the telephone support.

- 3.03 The County agrees to provide Helion with VPN access or through other secure electronic access technology and services at the County's expense for purposes of Helion's fulfillment of its maintenance obligations. Such access shall not result in the unnecessary or unreasonable disruption of the County's business operations.
- 3.04 Helion will respond to system problems that do not prevent normal daily operation of the system (Non- Emergency Response) within 16 business hours of the receipt of the trouble call.
- 3.05 On-Site Support. In an emergency or if all other support options fail, Helion shall have a technician on-site within one (1) business day of a request from the County. This does not apply to Down System events, as described in Section 3.06.
- 3.06 Down-System Response: The system is considered "down" when any part of the system prevents daily operation ("Down System"). Helion shall respond within two business hours of telephone notification. Response may be by telephone.
- 3.07 Normal Support Hours: At all times from 8:00 a.m. to 5:00 pm Pacific Standard Time (PST) (note: Pacific Daylight Saving Time (PDST) when in effect) weekdays. The hours of Support shall not include New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving, and Christmas Day.
- 3.08 Helion will provide Tax Season assistance to ensure the timely completion of tax amount calculation, statement printing and state reporting.
- 3.09 Helion will provide support for and is solely responsible for the proper functioning, licensing and distribution of additional or third party software used within their products or distributed with their products as a component of their software. Helion guarantees the functioning of this third party software as a component of their software.
- 3.10 Helion is not liable for any failure or delay in performance due to any cause beyond its control.
- 3.11 The obligations described in Sections 3.00 through 3.11 are hereafter referred to as "Support."
- 4.00 County's Responsibilities
- 4.01 To receive Maintenance and Support, the County is responsible for complying with the following:

- The situation giving rise to the question is reproducible or a documented history

of the same event has been provided;

- The hardware and client workstation operating systems meet minimum Helion requirements as published and distributed with each ORCATS version update;
- County designated representatives will submit all questions to Helion;
- County designated representatives must have knowledge regarding the facts and circumstances surrounding the incident;
- The full system, including software and hardware, is available to the County representative and accessible by him or her without limit during any telephone discussions with Helion support personnel;
- The County representative will follow the instructions and suggestions of Helion's support personnel, using the full system.

4.02 County will provide remote electronic access using VPN access through Internet connection (this is the preferred method) or will provide remote electronic access using other technologies and services that meet County's security requirements.

4.03 Helion must have received payment per this Agreement, Section 3, Paragraph 2.

4.04 If the resolution of a problem requires the installation of a newer version of the product, the County agrees that Helion may install the new version as part of the resolution process, depending upon the urgency of the problem resolution.

5.00 Services NOT Covered by Helion Under Part 1

5.01 Helion is not responsible for support in instances in which the County has made significant changes to the computing environment without consultation with Helion or in which the County has made significant client workstation configuration changes, such as Operating System version updates or Microsoft Office version updates, without consultation with Helion.

5.02 Helion is not responsible for remote or on-site training assistance unless specifically arranged through a separate services contract with Helion.

5.03 Helion is not responsible for software support on any products that are not part of the ORCATS system. Examples include Deschutes Download, County's web sites, Microsoft Office, etc.

5.04 The following services are excluded from coverage under Part 1:

- Creation of new Custom Queries
- Importing data or images
- Manipulation of data unless covered under section 1.03 or 1.07 above
- Display changes to forms, reports, letters or export
- Onsite Installation

- A&T View Access Database

- 5.05 Helion is not responsible to maintain compatibility with any application not listed as part of the ORCATS system. Helion will make a good faith effort to notify the County of any incompatibility between ORCATS and third party software.

Section 3 Schedule and Payment Terms

1. **Effective Date and Duration:** Contractor's services will begin on July 1, 2021. Unless earlier terminated or extended, this contract shall expire on June 30, 2022 or when Contractor's completed performance has been accepted by County. However, such expiration shall not extinguish or prejudice County's right to enforce this contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor's performance that has not been cured.
2. **Compensation by the County:** Payment for all work performed under this contract shall be made as set forth below from available and authorized County funds, and shall not exceed the maximum sum of \$52,892 for Part 1 and \$0 for Part 2, \$52,892 in Total. Travel and other expenses of the Contractor shall not be reimbursed by County unless specifically provided herein as a supplementary condition.
 1. Interim payments shall be made to Contractor following County's review and approval of billings submitted by Contractor. Contractor will also submit copies of other billings for work performed under the contract when such bills are to be paid by other parties. These other billings are not subject to the maximum compensation amount of this contract.
 2. Contractor shall not submit billings for, and County will not pay, any amount in excess of the maximum compensation amount of this contract, including any travel and other expense when noted below. If the maximum compensation amount is increased by amendment of this contract, the amendment must be fully effective before Contractor performs work subject to the amendment. Contractor shall notify County's supervising representative in writing 30 calendar days before this contract expires of the upcoming expiration of the contract. No payment will be made for any services performed before the beginning date or after the expiration date of this contract. This contract will not be amended after the expiration date.
 3. Contractor shall submit a separate annual billing for Part 1. Billing for Part 1 will be for the contract total for Part 1. Billing for Part 2 will be based upon projects identified. Projects done as "not to exceed" quotes and requirement development will be billed monthly as they occur. Contractor will bill for other Part 2 hours as they occur. Payment structure may be adjusted with advance consent of County and Contractor. Billings shall be sent to the supervising representative.

STATUTORY PUBLIC CONTRACT PROVISIONS

1. Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any subcontractor. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the contractor or a subcontractor by any person in connection with the contract as such claim becomes due, the Owner may pay such claim to the persons furnishing the labor or materials and charge the amount of payment against funds due or to become due contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the contractor or his surety from his or its obligation with respect to any unpaid claim. If the owner is unable to determine the validity of any claim for labor or materials furnished, the owner may withhold from any current payment due contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
2. Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from contractor or any subcontractor in connection with the performance of the contract shall promptly be paid.
3. Contractor shall not permit any lien or claim to be filed or prosecuted against the owner on account of any labor or materials furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
4. Contractor and any subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
5. If this contract involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost effective.
6. Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such contractor, of all sums which the contractor agrees to pay for such services and all monies and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or Agreement for the purpose of providing or paying for such service.

7. Contractor shall employ no person for more than ten (10) hours in any one day, or forty (40) in any one week, except in cases of necessity, emergency or where public policy absolutely requires it.

Contractor's employees shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one week, except for individuals under Personal Services Contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC 201 to 209 from receiving overtime.

Persons employed by Contractor shall receive at least time and a half pay for work performed on legal holidays specified in a collective bargaining agreement or in ORS 279C.540(1)(b)(B) to (G) and for all time worked in excess of ten (10) hours in any one day or in excess of forty (40) hours in any one week, whichever is greater.

8. The contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.
9. All employers working under the contract are either subject employers who will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
10. The contract may be cancelled at the election of owner for any willful failure on the part of contractor to faithfully perform the contract according to its terms.

Exhibit C: INSURANCE

During the term of this contract Contractor shall maintain in force at Contractor's own expense, each insurance noted below:

1. Workers Compensation Insurance is required for Contractors that employ subject workers, as defined in ORS 656.027. All those Contractors shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

2. Professional Liability Insurance:

is not required.

is required with a combined single limit or the equivalent, of not less than:

\$200,000 \$500,000 \$1,000,000 \$2,000,000

for each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the services to be provided under this contract.

3. General Liability Insurance:

is not required.

is required with a combined single limit or the equivalent, of not less than:

\$200,000 \$500,000 \$1,000,000 \$2,000,000

for each claim, incident or occurrence.

4. Automobile Liability Insurance:

is not required.

is required with a combined single limit or the equivalent, of not less than:

Oregon Financial Responsibility Law (ORS 806.070)
 \$200,000
 \$500,000
 \$1,000,000

each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

5. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days written notice from the Contractor or its insurer(s) to County.

6. Certificates of insurance. As evidence of the insurance coverages required by this contract, the Contractor shall furnish acceptable insurance certificates to County within 30 days of signing this contract. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to County acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

REVISED 11/2007

AGENDA ITEM COVER SHEET

Morrow County Board of Commissioners

(Page 2 of 2)

1. ISSUES, BACKGROUND, DISCUSSION AND OPTIONS (IF ANY):

Amendment for an additional \$3,000 for Assessment Map Maintenance with Oregon Dept. of Revenue. The original contract was for 330 hours of map maintenance which equates to \$19,800. We have used all those hours due to large volume of partitions, subdivisions, combinations and property line adjustments so far this budget year.

2. FISCAL IMPACT:

\$3,000

3. SUGGESTED ACTION(S)/MOTION(S):

Approve and authorize Mike Gorman to sign.

Attach additional background documentation as needed.



AGENDA ITEM COVER SHEET
Morrow County Board of Commissioners
(Page 1 of 2)

(For BOC Use)
Item #
60a

Please complete for each agenda item submitted for consideration by the Board of Commissioners
(See notations at bottom of form)

Presenter at BOC: Kate Knop/Darrell Green

Phone Number (Ext): 5302

Department: Finance

Requested Agenda Date: 6/16/2021

Short Title of Agenda Item:

(No acronyms please)

State of Oregon - Department of Administration Services (DAS) Grant Agreement
#2625 - Cares Recovery Fund (CRF) - Vaccine

This Item Involves: (Check all that apply for this meeting.)

- Order or Resolution
Ordinance/Public Hearing:
1st Reading 2nd Reading
Public Comment Anticipated:
Estimated Time:
Document Recording Required
Contract/Agreement
Appointments
Update on Project/Committee
Consent Agenda Eligible
Discussion & Action
Estimated Time:
Purchase Pre-Authorization
Other

N/A

Purchase Pre-Authorizations, Contracts & Agreements

Contractor/Entity: State of Oregon - Department of Administrative Services (DAS)

Contractor/Entity Address: Gerold Floyd, 155 Cottage Street NE Salem, OR 97301

Effective Dates - From: March 1, 2020

Through: December 31, 2021

Total Contract Amount: \$164,052.50

Budget Line: TBD

Does the contract amount exceed \$5,000? Yes No

Reviewed By:

Department Director Required for all BOC meetings
Administrator Required for all BOC meetings
J. Nelson email 6-9-21 County Counsel *Required for all legal documents
Kate Knop 6/9/2021 Finance Office *Required for all contracts; other items as appropriate.
Human Resources *If appropriate

*Allow 1 week for review (submit to all simultaneously). When each office has notified the submitting department of approval, then submit the request to the BOC for placement on the agenda.

Note: All other entities must sign contracts/agreements before they are presented to the Board of Commissioners (originals preferred). Agendas are published each Friday afternoon, so requests must be received in the BOC Office by 1:00 p.m. on the Friday prior to the Board's Wednesday meeting. Once this form is completed, including County Counsel, Finance and HR review/sign-off (if appropriate), then submit it to the Board of Commissioners Office.

AGENDA ITEM COVER SHEET

Morrow County Board of Commissioners

(Page 2 of 2)

1. ISSUES, BACKGROUND, DISCUSSION AND OPTIONS (IF ANY):

The Grant Agreement is between the State of Oregon acting by and through its Department of Administration Services (DAS) and Morrow County for additional CRF funding:

1. The grant amount is not to exceed \$164,052.50;
2. Federal Funds; CFDA 21.019;
3. Disbursement of 50% within five business days of contract execution; and
4. Final disbursement after submission of equity report due not later than August 31, 2021 (exhibit E).

The Project:

1. Access to COVID-19 vaccination to populations experience inequality or reduced vaccination rates;
2. Marketing and promotional cost encouraging vaccination;
3. Transport persons to and from vaccination sites; and
4. Direct administrative cost shall not exceed 5% of the grant (\$8,202.63).

Reporting requirements:

1. For the period 4/1/2021 to 6/30/2021, report due: 7/6/2021;
2. For the period 7/1/2021 to 9/30/21, report due: 10/5/2021; and
3. For the period 10/1/2021 to 12/31/2021, report due: 12/31/2021.

2. FISCAL IMPACT:

Morrow County will receive up to \$164,052.50. If approved, further discussion is needed on where dollars are received and appropriated.

3. SUGGESTED ACTION(S)/MOTION(S):

Motion to approve Grant Agreement #2625 between the State of Oregon - Department of Administration Services (DAS) and Morrow County.

Attach additional background documentation as needed.

STATE OF OREGON GRANT AGREEMENT

Grant No. 2625

This Grant Agreement (“Grant”) is between the State of Oregon acting by and through its Department of Administrative Services (“Agency”) and Morrow County (“Grantee”), each a “Party” and, together, the “Parties”.

SECTION 1: AUTHORITY

Pursuant to funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and as allocated to Agency by the Oregon Emergency Board, Agency is authorized to enter into a grant agreement and provide funding for the purposes described in this Grant.

SECTION 2: PURPOSE

Section 5001 of the CARES Act provides funds to state, local and tribal governments through the Coronavirus Relief Fund to be used for expenditures incurred due to COVID-19. This Grant governs the disbursement of funds from the Coronavirus Relief Fund to Grantee for the period of March 1, 2020, through December 31, 2021 (the “Performance Period”) to reimburse the costs of the activities described in Exhibit A.

SECTION 3: EFFECTIVE DATE AND DURATION

When all Parties have executed this Grant, and all necessary approvals have been obtained (“Executed Date”), this Grant is effective and has a Grant funding start date as of March 1, 2020 (“Effective Date”), and, unless extended or terminated earlier in accordance with its terms, will expire on December 31, 2021.

SECTION 4: GRANT MANAGERS

4.1 Agency’s Grant Manager is:

Gerold Floyd
Department of Administrative Services
Attention: Coronavirus Relief Fund
155 Cottage Street NE, Salem, OR 97301
Phone: 503-378-2709
Email: CoronavirusReliefFund@Oregon.gov

4.2 Grantee's Grant Manager is:

Name: _____

Address: _____

Phone: _____

Email: _____

4.3 A Party may designate a new Grant Manager by written notice to the other Party.

SECTION 5: PROJECT ACTIVITIES

To receive funds under this Grant, Grantee must perform the project activities set forth in Exhibit A (the "Project"), attached hereto and incorporated in this Grant by this reference, during the Performance Period.

SECTION 6: GRANT FUNDS

In accordance with the terms and conditions of this Grant, Agency will provide Grantee up to an amount not to exceed \$164,052.50 (the "Grant Funds") for eligible Project costs incurred during the Performance Period. Agency will pay the Grant Funds from monies available through the Coronavirus Relief Fund ("Funding Source").

SECTION 7: DISBURSEMENT GENERALLY

7.1 Disbursement. Agency will disburse the Grant Funds to Grantee in two installments:

50% of the Grant Funds within five business days of the Executed Date; and

50% of the Grants Funds upon Grantee delivering to Agency **both** (i) complete responses to the questions set forth in Exhibit E and the fully executed Attestation Statement set forth in Exhibit E **and** (i) demonstrated progress towards implementing the strategies outlined in Grantee's question responses (collectively, the "Equity Submission"). Grantee's deadline to deliver the Equity Submission to Agency is August 31, 2021. Grantee shall not receive, and Agency shall have no obligation to disburse, the second installment of Grant Funds if Grantee fails to deliver the Equity Submission by the August 31, 2021, deadline for doing so. The Oregon Health Authority and the Governor's Office will review the Equity Submission and determine whether Grantee's responses to the questions set forth in Exhibit E are complete.

7.2 Conditions Precedent to Disbursement. Agency's obligation to disburse Grant Funds to Grantee under this Grant is subject to satisfaction of each of the following conditions precedent:

7.2.1 Agency has received sufficient funding, appropriations, expenditure limitation, allotments or

other necessary expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement from the Funding Source;

7.2.2 No default as described in Section 13 has occurred; and

7.2.3 Grantee's representations and warranties set forth in Section 8 are true and correct on the date of disbursement(s) with the same effect as though made on the date of disbursement.

7.3 **No Duplicate Payment.** Grantee may use other funds in addition to the Grant Funds to complete the Project; provided, however, funds received pursuant to this Grant are not used for expenditures for which a local government entity has received any other supplemental funding (whether state, federal or private in nature) for that same expense unless otherwise authorized by Agency in writing.

SECTION 8: REPRESENTATIONS AND WARRANTIES

8.1 **Organization/Authority.** Grantee represents and warrants to Agency that:

8.1.1 Grantee is a local government duly organized and validly existing;

8.1.2 Grantee has all necessary rights, powers and authority under any organizational documents and under Oregon Law to (i) execute this Grant, (ii) incur and perform its obligations under this Grant, and (iii) receive financing, including the Grant Funds, for the Project;

8.1.3 This Grant has been duly executed by Grantee and when executed by Agency, constitutes a legal, valid and binding obligation of Grantee enforceable in accordance with its terms;

8.1.4 If applicable and necessary, the execution and delivery of this Grant by Grantee has been authorized by an ordinance, order or resolution of its governing body, or voter approval, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings; and

8.1.5 There is no proceeding pending or threatened against Grantee before any court or governmental authority that if adversely determined would materially adversely affect the Project or the ability of Grantee to carry out the Project.

8.2 **False Claims Act.** Grantee acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) made by (or caused by) Grantee that pertains to this Grant or to the Project. Grantee certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Grantee further acknowledges in addition to the remedies under Section 14, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Grantee.

8.3 **No limitation.** 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 Grantee.

SECTION 9: INDEMNITY/LIABILITY

- 9.1 Indemnity.** Subject to the limitations of Article XI, § 10, of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), Grantee must defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorneys' fees, resulting from, arising out of, or relating to the activities of Grantee or its officers, employees, subgrantees, contractors, subcontractors, or agents under this Grant (each of the foregoing individually or collectively a "Claim" for purposes of this Section).
- 9.2 Defense.** Grantee may have control of the defense and settlement of any Claim subject to this Section. But neither Grantee nor any attorney engaged by Grantee may defend the Claim in the name of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon. Nor may Grantee settle any Claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event the State of Oregon determines Grantee is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or an important governmental principle is at issue and the State of Oregon desires to assume its own defense. Grantee may not use any Grant Funds to reimburse itself for the defense of or settlement of any Claim.
- 9.3 Limitation.** Except as provided in this Section, neither Party will be liable for incidental, consequential, or other direct damages arising out of or related to this Grant, regardless of whether the damages or other liability 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 Grant in accordance with its terms.

SECTION 10: INSURANCE

As a "public body" as defined in ORS 30.260, Grantee agrees to insure any obligations that may arise for Grantee under this Grant, including any indemnity obligations, through (i) the purchase of insurance as indicated in Exhibit B; or (ii) the use of self-insurance or assessments paid under ORS 30.282 that is substantially similar to the types and amounts of insurance coverage indicated on Exhibit B; or (iii) a combination of any or all of the foregoing.

SECTION 11: GOVERNING LAW, JURISDICTION

This Grant is 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

Grantee that arises from or relates to this Grant must 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 will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event may 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. GRANTEE, BY EXECUTION OF THIS GRANT, HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURTS.

SECTION 12: ALTERNATIVE DISPUTE RESOLUTION

The Parties should attempt in good faith to resolve any dispute arising out of this Grant. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Grant. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each Party will bear its own costs incurred for any mediation or non-binding arbitration.

SECTION 13: DEFAULT

- 13.1 Grantee.** Grantee will be in default under this Grant upon the occurrence of any of the following events:
- 13.1.1** Grantee fails to use the Grant Funds for the intended purpose described in Exhibit A or otherwise fails to perform, observe or discharge any of its covenants, agreements or obligations under this Grant;
 - 13.1.2** Any representation, warranty or statement made by Grantee in this Grant or in any documents or reports relied upon by Agency to measure the Project, the expenditure of Grant Funds or the performance by Grantee is untrue in any material respect when made; or
 - 13.1.3** A petition, proceeding or case is filed by or against Grantee under any federal or state bankruptcy, insolvency, receivership or other law relating to reorganization, liquidation, dissolution, winding-up or adjustment of debts; in the case of a petition filed against Grantee, Grantee acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal; or Grantee becomes insolvent or admits its inability to pay its debts as they become due, or Grantee makes an assignment for the benefit of its creditors.
- 13.2 Agency.** Agency will be in default under this Grant if, after 15 days written notice specifying the nature of the default, Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Grant; provided, however, Agency will not be in default if Agency fails to disburse Grant Funds because there is insufficient expenditure authority for, or moneys available from, the Funding Source.

SECTION 14: REMEDIES

- 14.1 Agency Remedies.** In the event Grantee is in default under Section 13.1, Agency may, at its option, pursue any or all of the remedies available to it under this Grant and at law or in equity, including, but not limited to: (i) termination of this Grant under Section 16.2, (ii) reducing or withholding payment for Project activities or materials that are deficient or Grantee has failed to complete by any scheduled deadlines, (iii) requiring Grantee to complete, at Grantee's expense, additional activities necessary to satisfy its obligations or meet performance standards under this Grant, (iv) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, (v) exercise of its right of recovery of overpayments under Section 15 of this Grant or setoff, or both, or (vi) declaring Grantee ineligible for the receipt of future awards from Agency. 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.
- 14.2 Grantee Remedies.** In the event Agency is in default under Section 13.2 and whether or not Grantee elects to terminate this Grant, Grantee's sole monetary remedy will be, within any limits set forth in this Grant, reimbursement of Project activities completed and accepted by Agency and authorized expenses incurred, less any claims Agency has against Grantee. In no event will Agency be liable to Grantee for any expenses related to termination of this Grant or for anticipated profits.

SECTION 15: WITHHOLDING FUNDS, RECOVERY

Agency may withhold from disbursements of Grant Funds due to Grantee, or Grantee must return to Agency within 30 days of Agency's written demand:

- 15.1** Any Grant Funds paid to Grantee under this Grant, or payments made under any other agreement between Agency and Grantee, that exceed the amount to which Grantee is entitled;
- 15.2** Any Grant Funds received by Grantee that remain unexpended or contractually committed for payment of the Project at the end of the Performance Period;
- 15.3** Any Grant Funds determined by Agency or the U.S. Department of the Treasury to be spent for purposes other than allowable Project activities; or
- 15.4** Any Grant Funds requested by Grantee as payment for deficient activities or materials.

SECTION 16: TERMINATION

- 16.1 Mutual.** This Grant may be terminated at any time by mutual written consent of the Parties.
- 16.2 By Agency.** Agency may terminate this Grant as follows:
- 16.2.1** At Agency's discretion, upon 30 days advance written notice to Grantee;
- 16.2.2** Immediately upon written notice to Grantee, 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 Grant;

- 16.2.3 Immediately upon written notice to Grantee, if federal or state laws, rules, regulations or guidelines are modified or interpreted by a court in such a way that Agency's performance under this Grant is prohibited or Agency is prohibited from funding the Grant from the Funding Source; or
 - 16.2.4 Immediately upon written notice to Grantee, if Grantee is in default under this Grant and such default remains uncured 15 days after written notice thereof to Grantee.
- 16.3 **By Grantee.** Grantee may terminate this Grant as follows:
- 16.3.1 Immediately upon written notice to Agency, if Grantee fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to perform its obligations under this Grant.
 - 16.3.2 Immediately upon written notice to Agency, if applicable laws, rules, regulations or guidelines are modified or interpreted by a court in such a way that the Project activities contemplated under this Grant are prohibited by law or Grantee is prohibited from paying for the Project from the Grant Funds or other planned Project funding; or
 - 16.3.3 Immediately upon written notice to Agency, if Agency is in default under this Grant and such default remains uncured 15 days after written notice thereof to Agency.

SECTION 17: MISCELLANEOUS

- 17.1 **Conflict of Interest.** Grantee by signature to this Grant declares and certifies the award of this Grant and the Project activities to be funded by this Grant, create no potential or actual conflict of interest, as defined by ORS Chapter 244, for a director, officer or employee of Grantee.
- 17.2 **Nonappropriation.** Agency's obligation to pay any amounts and otherwise perform its duties under this Grant 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 Grant. Nothing in this Grant 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.
- 17.3 **Amendments.** The terms of this Grant may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.
- 17.4 **Notice.** Except as otherwise expressly provided in this Grant, any notices to be given under this Grant must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Grant Manager at the physical address or email address set forth in this Grant, or to such other addresses as either Party may indicate pursuant to this Section. 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.

- 17.5 Survival.** All rights and obligations of the Parties under this Grant will cease upon termination of this Grant, other than the rights and obligations arising under Sections 9, 11, 12, 14, 15 and subsections 17.5 and 17.13 hereof and those rights and obligations that by their express terms survive termination of this Grant; provided, however, termination of this Grant will not prejudice any rights or obligations accrued to the Parties under this Grant prior to termination.
- 17.6 Severability.** The Parties agree if any term or provision of this Grant 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 Grant did not contain the particular term or provision held to be invalid.
- 17.7 Counterparts.** This Grant may be executed in several counterparts, all of which when taken together constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Grant so executed constitutes an original.
- 17.8 Compliance with Law.** In connection with their activities under this Grant, the Parties must comply with all applicable federal, state and local laws.
- 17.9 Intended Beneficiaries.** Agency and Grantee are the only parties to this Grant and are the only parties entitled to enforce its terms. Nothing in this Grant 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 Grant.
- 17.10 Assignment and Successors.** Grantee may not assign or transfer its interest in this Grant without the prior written consent of Agency and any attempt by Grantee to assign or transfer its interest in this Grant without such consent will be void and of no force or effect. Agency's consent to Grantee's assignment or transfer of its interest in this Grant will not relieve Grantee of any of its duties or obligations under this Grant. The provisions of this Grant will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.
- 17.11 Contracts and Subgrants.** Grantee may enter into contracts or subgrants for any of the Project activities required of Grantee under this Grant, however Grantee is required to communicate subgrantee information to Agency in such a manner and timing as prescribed by Agency that Agency considers necessary to fulfill its federal reporting obligations.
- 17.12 Time of the Essence.** Time is of the essence in Grantee's performance of the Project activities under this Grant.
- 17.13 Records Maintenance and Access.** Grantee must maintain all financial records relating to this Grant in accordance with generally accepted accounting principles. In addition, Grantee must maintain any other records, whether in paper, electronic or other form, pertinent to this Grant in such a manner as to clearly document Grantee's performance. All financial records and other records, whether in paper, electronic or other form, that are pertinent to this Grant, are collectively

referred to as “Records.” Grantee acknowledges and agrees 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. Grantee must 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 Grant, or until the conclusion of any audit, controversy or litigation arising out of or related to this Grant, whichever date is later.

- 17.14 Headings.** The headings and captions to sections of this Grant have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Grant.
- 17.15 Grant Documents.** This Grant consists of the following documents, which are incorporated by this reference and listed in descending order of precedence:
- This Grant less all exhibits
 - Exhibit A (The Project)
 - Exhibit C (Federal Terms and Conditions)
 - Exhibit B (Insurance)
 - Exhibit D (Federal Award Identification)
 - Exhibit E (Equity Plan Submission Guidance)
- 17.16 Merger, Waiver.** This Grant 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 Grant. No waiver or consent under this Grant 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.
- 17.17 Real Property.** If the Project includes the acquisition, construction, remodel or repair of real property or improvements to real property, and if such assets are disposed of prior to December 30, 2020, the proceeds would be subject to the restrictions on the eligible use of payments from the Grant Funds provided by section 601(d) of the Social Security Act.

The signatures of the parties follow on the next page.

SECTION 18: SIGNATURES

EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES IT HAS READ THIS GRANT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. The Parties further agree that by the exchange of this Grant electronically, each has agreed to the use of electronic means, if applicable, instead of the exchange of physical documents and manual signatures. By inserting an electronic or manual signature below, each authorized representative acknowledges that it is their signature, that each intends to execute this Grant, and that their electronic or manual signature should be given full force and effect to create a valid and legally binding agreement.

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

STATE OF OREGON acting by and through its Department of Administrative Services

By: _____
George Naughton, Chief Financial Officer

Date

Morrow County

By: _____
Authorized Signature

June 16, 2021
Date

Don Russell
Printed Name

Chair, Board of Commissioners
Title

93-6002308
Federal Tax ID Number

010741189
DUNS Number

Approved for Legal Sufficiency in accordance with ORS 291.047

By: Samuel B. Zeigler
Senior Assistant Attorney General
Oregon Department of Justice

by email dated 5/21/2021
Date

EXHIBIT A THE PROJECT

SECTION I. PROJECT DESCRIPTION

Subject to the eligibility requirements of 42 U.S.C. § 801 and any implementation guidance from the U.S. Department of the Treasury, including, without limitation, the guidance identified in Section II below, Grantee will use the Grant Funds for the following costs incurred during the Performance Period:

- Providing culturally responsive, low-barrier access to COVID-19 vaccination, with a special emphasis on populations experiencing vaccine inequality or reduced vaccination rates;
- Marketing and promotional costs encouraging COVID-19 vaccination; and
- Transporting persons to and from COVID-19 vaccination sites.

SECTION II. U.S. Treasury Guidelines and Answers to FAQs

Agency will disburse Grant Funds only for eligible costs incurred by Grantee for the Performance Period and in accordance with criteria and guidance established by US Treasury:

<https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

Additionally, the US Treasury has provided answers to frequently asked questions regarding eligible costs under the Coronavirus Relief Fund:

<https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>

Direct Administrative Costs Allowed. Grantee’s administrative costs directly attributable to the administration of its grant program funded by this Grant can be reimbursed or otherwise paid with Grant Funds. Such direct administrative costs shall not exceed 5% of the Grant Funds awarded under this Grant.

Indirect Costs Not Allowed. In accordance with U.S. Treasury guidance, Grantee shall not reimburse or otherwise pay any of its indirect costs with Grant Funds. The information described in this paragraph overrides any other verbal or written rate(s) or information provided by Agency.

SECTION III. REPORTING REQUIREMENTS

No later than July 6, 2021, for the period of April 1, 2021 to June 30, 2021, and October 5, 2021, for the period of July 1, 2021, to September 30, 2021, and January 5, 2022, for the period of October 1, 2021, to December 31, 2021, Grantee shall report the following information, as applicable, to Agency:

- a. Amount spent on administrative expenses;
- b. Amount spent on budgeted personnel and services diverted to a substantially different use;
- c. Amount spent to COVID-19 testing and contract tracing;

DAS GRANT #2625 – Coronavirus Relief Fund

- d. Amount spent on economic support (other than small business, housing, and food assistance);
- e. Amount spent on expenses associated with the issuance of tax anticipation notes;
- f. Amount spent on facilitating distance learning;
- g. Amount spent on food programs;
- h. Amount spent on housing support;
- i. Amount spent to improve telework capabilities of public employees;
- j. Amount spent on medical expenses;
- k. Amount spent on nursing home assistance;
- l. Amount spent on payroll for public health and safety employees;
- m. Amount spent on personal protective equipment;
- n. Amount spent on public health expenses;
- o. Amount spent on small business assistance;
- p. Amount spent on unemployment benefits;
- q. Amount spent on workers' compensation;
- r. Amount spent on items not listed above; and
- s. The primary place of performance of this Project.

The requirements of this Section III survive termination of this Grant.

EXHIBIT B INSURANCE

INSURANCE REQUIREMENTS

Grantee must obtain at Grantee’s expense, and require its first tier contractors and subgrantees, if any, to obtain the insurance specified in this exhibit prior to performing under this Grant, and must maintain it in full force and at its own expense throughout the duration of this Grant, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Grantee must obtain and require its first-tier contractors and subgrantees, if any, to obtain the following insurance from insurance companies or entities acceptable to Agency and authorized to transact the business of insurance and issue coverage in Oregon. Coverage must be primary and non-contributory with any other insurance and self-insurance, with the exception of professional liability and workers’ compensation. Grantee must pay and require its first-tier contractors and subgrantees to pay, if any, for all deductibles, self-insured retention and self-insurance, if any.

WORKERS’ COMPENSATION

All employers, including Grantee, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers’ compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Grantee shall require and ensure that each of its subgrantees, contractors, and subcontractors complies with these requirements. If Grantee is a subject employer, as defined in ORS 656.023, Grantee shall also obtain employers’ liability insurance coverage with limits not less than \$500,000 each accident. If Grantee is an employer subject to any other state’s workers’ compensation law, Grantee shall provide workers’ compensation insurance coverage for its employees as required by applicable workers’ compensation laws including employers’ liability insurance coverage with limits not less than \$500,000, and shall require and ensure that each of its out-of-state subgrantees, contractors, and subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY

Required **Not required**

Commercial general liability insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to Agency. This insurance must include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Grant, and have no limitation of coverage to designated premises, project or operation. Coverage must be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit may not be less than \$2,000,000.

AUTOMOBILE LIABILITY INSURANCE

Required **Not required**

Automobile liability insurance covering Grantee’s business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the commercial general liability insurance (with separate limits for commercial general liability and automobile liability). Use

of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

PROFESSIONAL LIABILITY

Required Not required

Professional liability insurance covering any damages caused by an error, omission or any negligent acts related to the activities performed under this Grant by the Grantee and Grantee’s contractors, subgrantees, agents, officers or employees in an amount not less than \$_____ per claim. Annual aggregate limit may not be less than \$_____. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months must be included in the professional liability insurance coverage, or the Grantee must provide tail coverage as stated below.

NETWORK SECURITY AND PRIVACY LIABILITY

Required Not required

Grantee must provide network security and privacy liability insurance for the duration of the Grant and for the period of time in which Grantee (or its business associates, contractors, or subgrantees) maintains, possesses, stores or has access to Agency or client data, whichever is longer, with a combined single limit of no less than \$_____ per claim or incident. This insurance must include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of Agency or client data (which may include, but is not limited to, Personally Identifiable Information (“PII”), payment card data and Protected Health Information (“PHI”)) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of Agency data.

POLLUTION LIABILITY

Required Not required

Pollution liability insurance covering Grantee’s or appropriate contractor or subgrantee’s liability for bodily injury, property damage and environmental damage resulting from sudden, accidental, or gradual pollution and related cleanup costs incurred by Grantee, all arising out of the Project activities (including transportation risk) performed under this Grant is required. Combined single limit per occurrence may not be less than \$_____. Annual aggregate limit may not be less than \$_____.

An endorsement to the commercial general liability or automobile liability policy, covering Grantee’s, contractor, or subgrantee’s liability for bodily injury, property damage and environmental damage resulting from sudden, accidental, or gradual pollution and related clean-up costs incurred by Grantee that arise from the Project activities (including transportation risk) performed by Grantee under this Grant is also acceptable.

DIRECTORS, OFFICERS AND ORGANIZATION LIABILITY

Required Not required

Directors, officers and organization liability insurance covering the Grantee’s organization, directors, officers, and trustees actual or alleged errors, omissions, negligent, or wrongful acts, including improper governance, employment practices and financial oversight - including improper oversight and/or use of Grant Funds and donor contributions - with a combined single limit of no less than \$_____ per claim.

CRIME PROTECTION COVERAGE: EMPLOYEE DISHONESTY or FIDELITY BOND

Required Not required

Employee dishonesty or fidelity bond covering loss of money, securities and property caused by dishonest acts of Grantee’s employees. Coverage limits may not be less than \$_____.

PHYSICAL ABUSE AND MOLESTATION INSURANCE COVERAGE

Required Not required

Abuse and molestation insurance in a form and with coverage satisfactory to the State covering damages arising out of actual or threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment, supervision, investigation, reporting to proper authorities, and retention of any person for whom the Grantee, its contractors, subcontractors or subgrantees (“Covered Entity”) is responsible including but not limited to any Covered Entity’s employees and volunteers. Policy endorsement’s definition of an insured must include the Covered Entity and its employees and volunteers. Coverage must be written on an occurrence basis in an amount of not less than \$_____ per occurrence. Any annual aggregate limit may not be less than \$_____. Coverage can be provided by a separate policy or as an endorsement to the commercial general liability or professional liability policies. The limits must be exclusive to this required coverage. Incidents related to or arising out of physical abuse, mental injury, or sexual molestation, whether committed by one or more individuals, and irrespective of the number of incidents or injuries or the time period or area over which the incidents or injuries occur, must be treated as a separate occurrence for each victim. Coverage must include the cost of defense and the cost of defense must be provided outside the coverage limit.

EXCESS/UMBRELLA INSURANCE

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

ADDITIONAL INSURED

All liability insurance, except for workers’ compensation, professional liability, and network security and privacy liability (if applicable), required under this Grant must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Grantee’s activities to be performed under this Grant. Coverage must be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of Grantee’s ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

WAIVER OF SUBROGATION

Grantee waives, and must require its first tier contractors and subgrantees waive, rights of subrogation which Grantee, Grantee’s first tier contractors and subgrantees, if any, or any insurer of Grantee may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Grantee must obtain, and require its first tier contractors and subgrantees to obtain, any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Grantee or the Grantee’s insurer(s).

TAIL COVERAGE

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Grantee must maintain, and require its first tier contractors and subgrantees, if any, maintain, either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the Effective Date of this Grant, for a minimum of 24 months following the later of (i) Grantee’s completion and Agency’s acceptance of all Project activities required under this Grant, or, (ii) Agency or Grantee termination of Grant, or, iii) the expiration of all warranty periods provided under this Grant.

CERTIFICATE(S) AND PROOF OF INSURANCE

If Grantee is self-insured for any of the Insurance Requirements specified in Exhibit B of this Agreement, Grantee may so indicate by submitting a certificate of insurance as required in this Exhibit B.

At Agency’s request, Grantee must provide to Agency a Certificate(s) of Insurance for all required insurance. The Certificate(s) must list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) must also include all required endorsements or copies of the applicable policy language effecting coverage required by this Grant. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance, Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Grant. Grantee must furnish acceptable insurance certificates to: CoronavirusReliefFund@oregon.gov or by mail to: Department of Administrative Services, Attention: Coronavirus Relief Fund, 155 Cottage Street NE, Salem, OR, 97301 prior to commencing the work.

NOTICE OF CHANGE OR CANCELLATION

Grantee or its insurer must provide at least 30 days’ written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW

Grantee agrees to periodic review of insurance requirements by Agency under this Grant, and to provide updated requirements as mutually agreed upon by Grantee and Agency.

STATE ACCEPTANCE

All insurance providers are subject to Agency acceptance. If requested by Agency, Grantee must provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency’s representatives responsible for verification of the insurance coverages required under this exhibit.

EXHIBIT C

FEDERAL TERMS AND CONDITIONS

1. FEDERAL FUNDS

1.1. If specified below, Agency's payments to Grantee under this Grant will be paid in whole or in part by funds received by Agency from the United States Federal Government. If so specified then Grantee, by signing this Grant, certifies neither it nor its employees, contractors, subcontractors or subgrantees who will perform the Project activities are currently employed by an agency or department of the federal government.

Payments will will not be made in whole or in part with federal funds.

1.2. In accordance with the Chief Financial Office's Oregon Accounting Manual, policy 30.40.00.104, Agency has determined:

Grantee is a subrecipient Grantee is a contractor Not applicable

1.3. Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Grant: 21.019

2. FEDERAL PROVISIONS

2.1. The use of all federal funds paid under this Grant are subject to all applicable federal regulations, including the provisions described below.

2.2. Grantee must ensure that any further distribution or payment of the federal funds paid under this Grant by means of any contract, subgrant, or other agreement between Grantee and another party for the performance of any of the activities of this Grant, includes the requirement that such funds may be used solely in a manner that complies with the provisions of this Grant.

2.3. Grantee must include and incorporate the provisions described below in all contracts and subgrants that may use, in whole or in part, the funds provided by this Grant.

2.4. Grantee must comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Grantee must inform subrecipients, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC § 4712.

In accordance with U.S. Treasury guidance – Grantee is subject to the following provisions, as applicable.

If a government has not used funds it has received to cover costs that were incurred by December 30, 2020, as required by the statute, those funds must be returned to DAS.

For purposes of these provisions, the following definitions apply:

“Contract” means this Grant or any contract or subgrant funded by this Grant.

“Contractor” and **“Subrecipient”** and **“Non-Federal entity”** mean Grantee or Grantee's contractors or subgrantees, if any.

(A) 2 CFR §200.303 Internal Controls

(B) 2 CFR §§ 200.330 through 200.332 Subrecipient Monitoring and Management

(C) Subpart F – Audit Requirements of 2 CFR §§ 200.500 *et seq.*

i. Contractor must comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.

ii. If Contractor receives federal awards in excess of \$750,000 in a fiscal year, Contractor is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Copies of all audits must be submitted to Agency within 30 days of completion.

iii. Contractor must save, protect and hold harmless Agency from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Contract. Contractor acknowledges and agrees that any audit costs incurred by Contractor as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Contractor and State.

(D) System for Award Management. Grantee must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM. The Grantee also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the Grantee) the unique entity identifier required for SAM registration.

3. ADDITIONAL FEDERAL REQUIREMENTS

None.

EXHIBIT D
FEDERAL AWARD IDENTIFICATION
(Required by 2 CFR 200.331(a))

(i) Grantee Name: <i>(must match DUNS registration)</i>	Morrow County
(ii) Grantee's DUNS number:	010741189
(iii) Federal Award Identification Number (FAIN):	SLT0038
(iv) Federal award date: <i>(date of award to DAS by federal agency)</i>	March 27, 2020
(v) Grant period of performance start and end dates:	Start: March 1, 2020 End: December 31, 2021
(vi) Total amount of federal funds obligated by this Grant:	\$164,052.50
(vii) Total amount of federal funds obligated to Grantee by Agency, including this Grant:	\$1,318,464.96
(viii) Total Amount of Federal Award committed to Grantee by Agency: <i>(amount of federal funds from this FAIN committed to Grantee)</i>	\$1,318,464.96
(ix) Federal award project description:	Coronavirus Relief Fund
(x)	
a. Federal awarding agency:	U.S. Department of the Treasury
b. Name of pass-through entity:	Oregon Department of Administrative Services
c. Contact information for awarding official of pass-through entity:	Gerold Floyd, CoronavirusReliefFund@Oregon.gov
(xi) CFDA number, name, and amount:	Number: 21.019 Name: Coronavirus Relief Fund Amount: \$1,388,506,837.10
(xii) Is award research and development?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(xiii) Indirect cost rate:	Not allowed per U.S. Treasury guidance
(xiv) Is the 10% de minimis rate being used per §200.414?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

EXHIBIT E

EQUITY PLAN SUBMISSION GUIDANCE



May 2021

Purpose

- Provide process through which jurisdictions may move to Lower Risk once 65% of their population age 16 years or older have received a first COVID-19 vaccine dose while also demonstrating their commitment to continuing to eliminate racial and ethnic vaccine inequities.

Background

- OHA has the following goals:
 - Reach parity in vaccination rates by closing gaps in race and ethnicity vaccination rates by August 31, 2021.
 - Ensure vaccine access to all populations with a focus on populations experiencing racial and ethnic vaccine inequities.
 - Encourage and facilitate local public health partnerships with community-based organizations (CBOs) and employers in their jurisdiction.
- OHA has an expectation that jurisdictions are using multiple channels for providing meaningful, culturally-responsive, low-barrier vaccine access. While mass vaccination sites are a key strategy for vaccine access, these sites likely do not meet the needs for many populations that have borne the greatest burden of COVID-19 disease and death. In addition, due to decreased vaccine demand, many of these sites are starting to ramp down.
- OHA expects the LPHA and its partners have been and will continue to actively collaborate with community-based organizations, employers and others to proactively reach all eligible populations who have not yet been vaccinated, especially those experiencing racial and ethnic vaccine inequities. These collaborations are essential to ensuring groups such as migrant and seasonal farm workers, Black, Indigenous, Tribal, other communities of color, houseless populations and others have low-barrier, culturally responsive, meaningful access to vaccine.

Moving to Lower Risk

- The earliest a county may move to Lower Risk is May 21, 2021.
- To move to Lower risk, at least 65% of all people age 16 years or older in the jurisdiction must have received a first dose.
- In addition, an LPHA must do the following to move to Lower Risk:
 - Submit to OHA responses to questions related to LPHA's ongoing and future efforts to maximize meaningful, low-barrier access to vaccine for all eligible populations, especially those experiencing racial and ethnic vaccine inequities.
 - Submit an attestation statement form signed by the Local Public Health Administrator, Local Public Health Officer and the Chair of the LPHA Governing Body (this is the Board of Commissioners in all counties except Gilliam, Sherman, Wasco and Wallowa).

Required Questions

- LPHA must respond to each of the following questions. Please restate the question and provide a subsequent response specific to each question.
 - Please review race/ethnicity data for the LPHA jurisdiction on the [OHA website](#) and the race/ethnicity vaccination rate data shared weekly with the LPHA. Based on the experience of the LPHA and its partners, including community-based organizations, what are the operational, policy, and systemic barriers or strengths demonstrated in these data?
 - What steps have the LPHA and its partners already taken to address specific racial and ethnic vaccination inequities in the community?
 - What steps do the LPHA and its partners plan to take to continue to address these inequities in the jurisdiction?
 - What plan does the LPHA and its partners have to close the specific vaccine equity gaps among specific racial and ethnic populations?
 - OHA has provided LPHAs county level survey data from OHA-funded CBOs indicating their preferred involvement in vaccination efforts. In reviewing the CBO survey results that outline the interest of CBOs in your community to host, support, and/or promote vaccine events in your jurisdiction:
 - What steps are the LPHA and its partners taking to engage and actively partner with these and other organizations to increase meaningful, culturally-responsive, low-barrier access to vaccines?
 - How will the LPHA and its partners ensure that CBOs and

navigators are aware of vaccine events so they can assist with registration and outreach as able?

- The agricultural employer survey results were shared with the LPHA and the LPHA has provided information to its Regional Emergency Coordinator (REC) about how the LPHA and its partners plan to use the survey results. OHA will be reviewing the information provided by the LPHA to the REC. Does the LPHA have any additional updates regarding work to serve agricultural workers in its jurisdiction since the LPHA last provided information to the REC?
- What steps have the LPHA and its partners taken to actively address vaccine confidence in the community?
- What plans do the LPHA and its partners have continue addressing vaccine confidence?
- What is the communications plan to dispel misinformation through a comprehensive, multi-modal communications strategy for communities experiencing racial and ethnic vaccine inequities in your jurisdiction? Examples could include: Spanish language radio spots, physically distanced outdoor information fair, training local faith leaders and equipping them with vaccine facts and information to refer a community member to a health care professional for follow up, etc.
- How has and how will the LPHA and its partners ensure language accessibility at vaccine events?
- What plans do the LPHA and its partners have to decrease transportation barriers to accessing vaccine?
- What plans do the LPHA and its partners have to ensure meaningful, low-barrier vaccine access for youth, especially those from Black, Indigenous, Tribal and other communities experiencing inequities in COVID-19 disease, death and vaccination?
- How will the LPHA and its partners regularly report on progress to and engage with community leaders from the Black, Indigenous, Tribal, other communities of color to regularly review progress on its vaccine equity plans and reassess strategies as needed?

Required Attestation Statement

- Please copy/paste the statement in italics onto letterhead. The LPH administrator, LPH Officer and Chair of LPHA governing body are all required to sign (electronic signature accepted):

We have each reviewed the attached responses to all questions and affirm that the LPHA jurisdiction will continue to make meaningful efforts to offer culturally-responsive, low-barrier vaccination opportunities, especially for populations in our jurisdiction experiencing racial or ethnic vaccine inequities. We commit to implementing this plan to close the racial and ethnic vaccine inequities in our jurisdiction.

The LPHA and its partners will continue to ensure that vaccine sites are culturally-responsive, linguistically appropriate and accessible to people with physical, intellectual and developmental disabilities and other unique vaccine access needs.

Timeline and Review Process

- Complete documentation (as outlined above) must be submitted by Close of Business on the Friday prior to the Friday on which the jurisdiction would move to Lower Risk. Announcement of jurisdictions moving to Lower Risk will be made on Tuesday prior to the Friday when movement will occur.
 - For example, to move to Lower Risk on Friday, May 21, LPHAs should submit complete documentation to OHA by 4:00 p.m. on Friday, May 14.
 - Jurisdictions moving to Lower Risk on Friday, May 21 will be announced on Tuesday, May 18.
- LPHAs submit the following to paul.shively@dhsosha.state.or.us by 4:00 p.m. on Friday a week prior to the Friday the jurisdiction seeks to move to Lower Risk:
 - Attestation Statement
 - Document that address each question outlined above by restating the question and providing response to each question individually.
 - Please note that late or incomplete submissions may result in delayed movement to Lower Risk due to additional review time required.
- Once OHA has reviewed and accepted the submission, the documentation and attestation statement will be posted on OHA's website.



AGENDA ITEM COVER SHEET
Morrow County Board of Commissioners
(Page 1 of 2)

(For BOC Use)
Item #

Please complete for each agenda item submitted for consideration by the Board of Commissioners
(See notations at bottom of form)

Presenter at BOC:
Department:
Short Title of Agenda Item:
(No acronyms please)

Date submitted to reviewers:
Requested Agenda Date:

This Item Involves: (Check all that apply for this meeting.)
List of checkboxes for various agenda items: Order or Resolution, Ordinance/Public Hearing, Appointments, etc.

N/A
Purchase Pre-Authorizations, Contracts & Agreements
Contractor/Entity:
Contractor/Entity Address:
Effective Dates - From: Through:
Total Contract Amount: Budget Line:
Does the contract amount exceed \$5,000? Yes No

Reviewed By:

Department Director Required for all BOC meetings
Administrator Required for all BOC meetings
County Counsel *Required for all legal documents
Finance Office *Required for all contracts; other items as appropriate.
Human Resources *If appropriate

Note: All other entities must sign contracts/agreements before they are presented to the Board of Commissioners (originals preferred). Agendas are published each Friday afternoon, so requests must be received in the BOC Office by 1:00 p.m. on the Friday prior to the Board's Wednesday meeting. Once this form is completed, including County Council, Finance and HR review/sign-off (if appropriate), then submit it to the Board of Commissioners Office.

AGENDA ITEM COVER SHEET

Morrow County Board of Commissioners

(Page 2 of 2)

1. ISSUES, BACKGROUND, DISCUSSION AND OPTIONS (IF ANY):

2. FISCAL IMPACT:

3. SUGGESTED ACTION(S)/MOTION(S):

Attach additional background documentation as needed.

June 7, 2021

Matt Scrivner
Morrow County Public Works
P.O. Box 428
Lexington, Oregon 97839

via email: mscrivner@co.morrow.or.us

RE: Bombing Range Road Overlay - 2021
Award of Construction Contract

Dear Matt:

Bids for the Bombing Range Road Overlay - 2021 project were received and opened on June 7, 2021. Four bids were received. The apparent low bidder for the project is Granite Construction Company. A bid tabulation of all bids received is attached. The total bid price amounts from the bidders are summarized on the following table.

Bidder	Total Bid Price
Granite Construction Company	\$1,305,009.60
Kerr Contractors Oregon, LLC	\$1,329,720.00
American Rock Products	\$1,402,060.00
Brix Paving Northwest, Inc.	\$1,637,960.00

The total bid amount for the apparent low bidder is lower than the Engineer's Estimate of \$1,554,000.00. We have reviewed the Bid and the accompanying documents provided in the Bidder's Packet as submitted by Granite Construction Company, and their bid appears to be responsive. We have reviewed the State of Oregon Construction Contractors Board website, and it appears the license held by Granite Construction Company is in good standing. We see no reason why Granite Construction Company is not qualified to perform the work called for in the Contract Documents.

One copy of the Notice of Intent to Award and four copies of the Notice of Award are enclosed with this letter. Per Oregon state rules associated with project funding, the Notice of Intent to Award must be sent to contractors that submitted bids for the project, and then a seven-day protest period will begin. If Morrow County desires to award the Contract to Granite Construction Company please sign and return the Notice of Intent to Award and the Notice of Award and return to me. We will distribute the Notice of Intent to Award to all bidders. Once the required seven-day protest period has expired, if no protests have been filed, we will then forward the Notice of Award, along with the required Contract insurance and bonding forms, to Granite Construction Company so the Contracts, including Performance and Payment Bonds, can be prepared for the County's review and approval.

Matt Scrivner
June 7, 2021
Page -2-

If you have any questions regarding the bidding and award process or any other project information, please feel free to contact me.

Sincerely,

ANDERSON PERRY & ASSOCIATES, INC.

By 
Derek Rich, E.I.

DR/jg

Enclosures

cc:

File No. 530-11-55 (w/encl.)

G:\Clients\Morrow County\530-11 Bombing Range Road Overlay\Correspondence\Scrivner - Award Letter.doc

NOTICE OF INTENT TO AWARD CONTRACT

TO: All Bidders for the Project Listed Below

DATE OF NOTICE: June 7, 2021

**PROJECT NAME: Morrow County, Oregon
Bombing Range Road Overlay - 2021**

NOTICE IS HEREBY GIVEN that Morrow County, Oregon (Owner) intends to award the above-described Contract to the following apparent low Bidder:

Granite Construction Company
80 Pond Road
Yakima, Washington 98901

NOTICE IS FURTHER GIVEN that any protest of the Owner's Notice of Intent to Award Contract must be filed with Morrow County Public Works, P.O. Box 428, Lexington, Oregon 97839 on or before seven calendar days from the date of this Notice. Protests must be in writing stating the basis of the protest in detail as provided by Oregon Law and be physically received at the above address on or before said date.

If no protest is filed on or prior to said date, the Owner will thereafter award the above described Contract to the Bidder named above by issuance of a Notice of Award of Contract to said Bidder.

Dated this 7th day of June 2021.

Morrow County, Oregon

By _____
Matt Scrivner, Public Works Director

NOTICE OF AWARD

Date of Issuance: **June 14, 2021**

Owner: **Morrow County, Oregon**

Engineer: **Anderson Perry & Associates, Inc.**

Project: **Bombing Range Road Overlay - 2021**

Bidder: **Granite Construction Company**

Bidder's Address: **80 Pond Road, Yakima, Washington 98901**

TO BIDDER:

You are notified that Owner has accepted your Bid dated June 3, 2021, for the above Contract, and that you are the Successful Bidder and are awarded a Contract for installation of approximately 5.4 miles of 2 to 3 inches of asphalt concrete pavement overlay.

The Contract Price of the awarded Contract is: \$1,305,009.60

You must comply with the following conditions within 15 days of the date you receive this Notice of Award.

1. Notice of Award

Acknowledge acceptance of the Project award in the space provided on this Notice of Award form. Be sure to include the date, as well as the signature and title of the person signing the Award form. **Return all 3 copies to the Engineer.**

2. Agreement Between Owner and Contractor

Date and sign all **3** copies of the attached Agreement form. **Return all 3 copies** to the Engineer.

3. Payment and Performance Bonds

Provide the Construction Performance and Payment Bonds. Enclosed are **3** copies of the Payment Bond and **3** copies of the Performance Bond forms. Include an appropriate Power of Attorney which is properly dated with each of the bonds. **Additionally, note that the date shown on the Payment and Performance Bonds must be on or after the date shown on the Agreement.** The date on the Power of Attorney should be the same as shown on the Bond. These Payment and Performance Bond forms must be used, and no others will be accepted. Return **3** completed copies to the Engineer.

4. Certificate of Insurance

Complete the enclosed Certificate of Insurance form. The enclosed Certificate of Insurance form is the only acceptable form to be used for this project. Standard ACORD forms from the insurance company will be required to be attached to this form. Be sure to include Worker's Compensation certificates. Return all **3** copies to the Engineer.

5. Statutory Public Works Bond

The Contractor and applicable Subcontractors must file a Public Works Bond with the Construction Contractor's Board in accordance with Oregon Laws 2005, Chapter 360, Section 2. Verification that this bond has been filed by the Contractor must be submitted to the Engineer.

6. Other requirements

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 20 days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement and Contract Documents.

Morrow County, Oregon
(OWNER)

By: _____
(AUTHORIZED SIGNATURE)

Matt Scrivner
(NAME)

Public Works Director
(TITLE)

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged by _____
_____ this the _____ day of _____, 20____.

By: _____

Name: _____

Title: _____

Copy to Owner

BALL, JANIK & NOVACK
ATTORNEYS AT LAW
ONE MAIN PLACE
101 S. W. MAIN STREET, SUITE 1100
PORTLAND, OREGON 97204-3274
TELEPHONE (503) 228-2525
TELECOPY (503) 295-1058
TELEX 910-380-5470

ROBERT S. BALL
STEPHEN T. JANIK
KENNETH M. NOVACK
JACK L. ORCHARD
WILLIAM H. PERKINS
JACOB TANZER

BRUCE MACGREGOR HALL, P. C.
OF COUNSEL

April 7, 1988

APR 11 1988
4:20 PM f.c. 11/1988
CHARLES E. ARMSTRONG
NANCY CRAVEN
DONALD W. DOUGLAS
MICHELE L. FRIEDMAN
ROBERT J. HORVAT, JR.
SUSAN MACDONALD NELSON
BARBARA W. RADLER
SARAH J. RYAN
DAVID A. URMAN

Mr. John B. Leahy
Williams, Frederickson,
Stark & Weisense
Suite 900
1600 SW Fourth Avenue
Portland, OR 97201

Re: Tidewater/Morrow County Agreement

Dear John:

Pursuant to our conversation, I have enclosed a copy of the contract which has been executed between Morrow County and Tidewater. As we discussed, Morrow County is considering retaining you for the issuance of an opinion as set forth in the agreement. Prior to undertaking that task, we have agreed that the parties need to discuss your fees and any conflict issues which may exist.

I will be in contact within the next week to finalize those arrangements with you and Jeff Wallace, District Attorney of Morrow County.

Thank you for your consideration.

Sincerely,

Nancy Craven

NC/jrp
Enclosure
cc: Mr. Wesley J. Hickey
Mr. Jeffrey M. Wallace
56.01.50

M-30761

AGREEMENT
between
MORROW COUNTY
and
TIDEWATER BARGE LINES, INC.

This document (the "Agreement") constitutes the agreement between MORROW COUNTY (the "County"), a political subdivision of the State of Oregon, acting by and through its County Court, with its principal office at the Morrow County Courthouse, Heppner, Oregon 97836, and TIDEWATER BARGE LINES, INC. ("Tidewater"), a Washington corporation duly authorized to transact business in the State of Oregon, with its principal offices at 6 Beach Drive, Vancouver, Washington 98661.

RECITALS

WHEREAS, Tidewater has acted as developer for the Finley Buttes Landfill, located in the County, and in conjunction therewith desires to enter into this Agreement for the benefit of Tidewater and the County to reflect the understandings and agreements between Tidewater and the County for the establishment, operation, and closure of the Finley Buttes Landfill.

WHEREAS, the County desires to enter into this Agreement in order to benefit the County for improved disposal of the County's solid waste, to provide additional economic growth to the County, and to provide employment to its citizens.

WHEREAS, the County is willing to enter into this Agreement in reliance upon Tidewater's skill and experience with landfilling technology, and Tidewater's provision of the land, personnel, and equipment necessary to facilitate the construction and operation of a landfill as described in the application filed by Tidewater with the Morrow County Planning Department for a Conditional Use Permit. Said Conditional Use Permit was issued by the County Court on July 22, 1987.

WHEREAS, Tidewater has agreed to enter into this Agreement as a condition to the Conditional Use Permit, and as required by the Morrow County Solid Waste Management Ordinance (Ordinance No. MC-1-87) to allow for the establishment and operation of a regional solid waste disposal site under the terms of the Conditional Use Permit and the License to be issued pursuant to the Morrow County Solid Waste Management Ordinance (MC-1-87) as consideration for the payment of fees and surcharges.

WHEREAS, Tidewater, as further consideration for approval of the Conditional Use Permit and License issued under the Morrow County Solid Waste Management Ordinance (MC-1-87), was granted the right to operate an exclusive regional disposal site in Morrow County including the obligation of Tidewater to allow for disposal of solid waste by the citizens of Morrow County at Finley Buttes Landfill.

NOW, THEREFORE, in consideration of the premises and the mutual obligations undertaken herein, the parties hereby agree as follows:

SECTION 1 DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

1.1 "Agreement" means this Agreement.

1.2 "Contract Date" means the date of signing of this Agreement.

1.3 "Conditional Use Permit" means the Conditional Use Permit issued by the County to Tidewater on July 22, 1987.

1.4 "DEQ" means the Oregon Department of Environmental Quality or its state or federal successor.

1.5 "Emergency" means any act, event or condition that has had, or may reasonably be expected presently to have, a material adverse effect upon the ability of Tidewater to perform under the terms and conditions of this Agreement, including but not limited to the following:

(a) Acts of God, including volcanic eruption, landslides, lightning, earthquakes, fire, flood (but not including reasonably anticipated weather conditions for the geographic area of the Columbia River, the County or the Finley Buttes Landfill), explosions, sabotage or other similar occurrences, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance; and/or

(b) The order and/or judgment of any federal, state, or local court, administrative agency, or governmental body, excepting decisions of the federal courts, federal agencies, state courts, or state agencies interpreting federal or state tax laws, which order and/or judgment is not the result of the willful or negligent action or inaction of Tidewater; provided that neither the contesting in good faith of any such order and/or judgment nor the failure to so contest shall constitute or be construed as a willful or negligent action or inaction of Tidewater.

1.6 "EQC" means the Oregon Environmental Quality Commission or its state or federal successor.

1.7 "Finley Buttes Landfill" means the site operated by Tidewater as a regional Solid Waste disposal site.

1.10 "Hazardous Waste" means that portion of any Solid Waste which is hazardous waste as defined by ORS Chapter 466, or as implemented by rules or regulations adopted by EQC or DEQ.

1.11 "License" means that contract or agreement entered into between the Parties pursuant to which Tidewater will be entitled to provide exclusive Solid Waste disposal service pursuant to the Morrow County Solid Waste Management Ordinance.

1.12 "Operational Commencement Date" means the date on which Solid Waste is first deposited at the Finley Buttes Landfill.

1.13 "Operational Year" means each period of 12 months duration measured from the Operational Commencement Date and each anniversary thereof.

1.14 "Party" or "Parties" means Tidewater and/or County.

1.15 "Percentage Adjustment" means, with respect to any Operational Year, the percentage increase or decrease in the Consumer Price Index for Urban Wage Earners and Clerical Workers (1967=100), for the Portland, Oregon SMSA, as published by the U.S. Department of Labor, Bureau of Labor Statistics. In the event publication of such Index ceases, a comparable index mutually acceptable to the Parties shall be utilized to calculate the Percentage Adjustment.

1.16 "Person" or "Persons" means the Federal Government, the State of Oregon, any political subdivision of the State of Oregon, any state, including cities, counties, port districts, school districts, or other special districts, and/or any corporation, partnership, business, trust, joint venture, company, firm or individual.

1.17 "Solid Waste" has the definition set forth in ORS Chapter 459, as amended, or as implemented by rule or regulation adopted by EQC or DEQ.

1.18 "Ton" means a "short ton" of 2,000 pounds avoirdupois weight.

1.19 All other terms not defined above will be controlled by those definitions set forth in the Morrow County Solid Waste Management Ordinance (MC-1-87) or, if not otherwise defined, will have their normal meaning.

SECTION 2 CONDITIONS PRECEDENT

The rights, obligations, and liabilities of each Party hereunder shall be subject to the satisfaction of each of the following conditions precedent:

2.1 Tidewater has (1) purchased the Finley Buttes Landfill site, and/or (2) entered into agreements with third persons that

are satisfactory to the County, showing the availability of the Finley Buttes Landfill site to be used as a regional Solid Waste disposal site pursuant to the terms of the Conditional Use Permit.

2.2 Tidewater has received an appropriate permit issued by the DEQ or EQC or its successors to establish and operate a regional Solid Waste disposal site, sanitary landfill, or disposal site at Finley Buttes.

2.3 Tidewater has delivered to the County a certificate of an authorized officer of Tidewater, identifying the Person or Persons who are authorized to sign this Agreement on behalf of Tidewater and certifying such Person's authority to enter into this Agreement on behalf of Tidewater.

2.4 Tidewater has submitted to the County certificates of insurance as required by this Agreement.

2.5 Tidewater has provided to the County an opinion of an attorney licensed to practice law in the State of Oregon that the person designated by Tidewater is in fact authorized and has full authority under the corporate charter and bylaws of Tidewater or such delegated authority as Tidewater has established, to fully bind Tidewater to the terms, conditions, and obligations set forth in this Agreement.

2.6 Tidewater has provided to the County an opinion of an attorney licensed to practice law in the State of Oregon that, to the actual current knowledge of such attorney, there are no suits, actions, proceedings, or official investigations presently pending or threatened by any federal, state, or local government authority or agency, or by any party in any federal, state, or local court that seeks to enjoin, assess criminal penalties or civil damages against, or obtain any judgment, order, or consent decree with respect to Tidewater or any of its subsidiaries, which injunction, penalties, damages, judgment, order, or consent decree would in any way adversely affect the validity of any permit, license or other governmental authorization necessary for Tidewater's operation of the Finley Buttes Landfill.

2.7 Tidewater has provided to the County an opinion of an attorney licensed to practice law in the State of Oregon that this Agreement constitutes the valid and legally binding obligation of Tidewater, fully enforceable in accordance with its terms, except insofar as enforceability may be limited by applicable bankruptcy laws or by applicable principles of equity.

2.8 The County has issued to Tidewater a the License under the terms of the Morrow County Solid Waste Management Ordinance (MC-1-87).

2.9 Tidewater has obtained all governmental or regulatory approvals, permits, rights, and licenses necessary for the

construction and operation of Finley Buttes Landfill, and all appeals, if any, with respect to such approvals, permits, rights, and licenses have terminated or expired.

SECTION 3 ESTABLISHMENT AND CONSTRUCTION OF FINLEY BUTTES LANDFILL

3.1 Tidewater shall complete the design and construction of the Finley Buttes Landfill within such period as may be necessary to enable the Operational Commencement Date to occur within five (5) years following the date of the satisfaction of all conditions precedent of Section 2; provided, however, that in the event construction is delayed by reason of any Emergency, the time within which the Operational Commencement Date must occur shall be extended by the number of days that construction is so delayed. In addition, Tidewater may at any time request a single extension of one year's duration of the time within which the Operational Commencement Date must occur and the County following public hearing shall not unreasonably withhold its consent to any such request. In the event the Operational Commencement Date does not occur as required under this Section 3.1, this Agreement shall automatically terminate and be of no further force and effect.

3.2 Tidewater agrees to design, construct, maintain, operate, and close the Finley Buttes Landfill at its sole cost and expense. The design, construction, maintenance, operation, and closure shall be in accordance with the terms, conditions, and specifications of the DEQ or EQC permit. Morrow County has

no obligation under this Section 3 to pay any money for the establishment and construction of Finley Buttes Landfill.

3.3 Tidewater may contract with any Person for the disposal of Solid Waste at the Finley Buttes Landfill. The terms and conditions of such contracts are not subject to this Agreement, nor shall the County have any right to regulate, review, approve, or disapprove such contracts.

3.4 Tidewater agrees to permit the disposal at the Finley Buttes Landfill of Solid Waste generated within the County. Tidewater agrees that the rates of disposal for Solid Waste generated within the boundaries of the County and disposed of at the Finley Buttes Landfill will be established by the Morrow County Court pursuant to the Morrow County Solid Waste Management Ordinance (MC-1-87); provided that such rates not be less than Tidewater's actual cost of disposal.

3.5 Tidewater is not an employee, official, or agent of the County. Tidewater shall not in any action, suit, proceeding, or official investigation by any federal, state, or local governmental authority or agency contend that Tidewater, its subsidiaries, employees, officials, directors, agents, subcontractors, associates, partners, or shareholders are or reasonably could be employees, officials, or agents of County.

SECTION 4

OPERATION OF FINLEY BUTTES LANDFILL

4.1 Tidewater agrees to keep the Finley Buttes Landfill open during reasonable and regular business hours mutually agreed to between Tidewater and the County for the receipt of Solid Waste generated within the County.

4.2 Tidewater agrees to operate the Finley Buttes Landfill in accordance with the Conditional Use Permit and in compliance with the DEQ or EQC permit and applicable local, state, and federal statutes and regulations.

4.3 No Solid Waste may be stored on site without proper disposal for more than seven (7) calendar days, except during an Emergency.

4.4 During the operation and/or maintenance of the Finley Buttes Landfill, the County Engineer, County Planner, or any other engineer or consultant designated by the County shall have access to the landfill to observe its operation at any time during the term of this Agreement. The County shall indemnify and hold Tidewater harmless under the provisions of the Oregon Tort Claims Act, as amended, for any willful or negligent act or omission of the County's employees, officials, or agents under the terms of this Section 4.4, and for any injury to the County's employees, officials, or agents occurring while at the Finley

Buttes Landfill and not the result of the willful or negligent act or omission of Tidewater or its employees or agents.

4.5 All Solid Waste delivered to the Finley Buttes Landfill shall be weighed by Tidewater at a scale house on site operated by Tidewater unless the Solid Waste has been weighed off-site. If the Solid Waste is weighed off-site, Tidewater shall maintain records of such weighing. The County maintains the right to review such records unless the weighing process was completed by a governmental unit. Tidewater shall maintain scale house records reflecting the number of Tons of Solid Waste delivered to the site. Copies of all truck, train, or barge weight tickets and bills of lading shall be maintained by Tidewater for a period of five (5) years after the date received.

4.6 If Tidewater supplies and maintains scale house computer software, such software shall be satisfactory to the County and shall not be modified without the prior written consent of the County, which consent shall not be unreasonably withheld. Tidewater shall take such security precautions as the County may reasonably request to prevent improper modification of the computer software. Tidewater shall bear all responsibility for the maintenance and repair of the scale house record-keeping system and computer system and related software.

4.7 The County has the right to monitor, without prior notice, the weighing of all Solid Waste arriving at the scale

house and may, at the County's expense, provide a qualified county employee(s) to perform the function of monitoring the weighing of Solid Waste arriving at the Finley Buttes Landfill. Tidewater shall preserve the County's right to monitor the weighing process in any of its contracts negotiated with third Persons for on-site weighing. The County employee(s) shall be under the sole supervision, direction, and control of the County. The County shall indemnify and hold Tidewater harmless under the terms of the Oregon Tort Claims Act, as amended, for any action of the County employee while on Tidewater's property for the purpose of monitoring the weighing of Solid Waste arriving at the Finley Buttes Landfill.

4.8 The County may, upon reasonable advance notice and at its sole expense, audit scale house records, including scale house computer software (if applicable), or test any and all equipment related to the determination of the number of Tons of Solid Waste delivered to the site, as the County reasonably deems necessary.

4.9 If the County, during the term of this Agreement, reasonably believes Tidewater has failed to provide satisfactory operation of the scale house, the County shall give Tidewater written notice specifying with reasonable particularity the nature of such unsatisfactory performance. Tidewater shall have twenty (20) days after receipt of any such notice within which to cure the unsatisfactory performance; provided, however, that if

such cure cannot be completed within twenty (20) days despite the exercise of reasonable diligence, Tidewater shall have an additional ninety (90) days to effect such cure. If Tidewater cures the alleged unsatisfactory performance to the reasonable satisfaction of the County, Tidewater shall continue to operate the scale house.

4.10 Subject to the provisions of Section 4.11, if Tidewater fails to effect a satisfactory cure within the time required by Section 4.9, the County shall have the right to operate the scale house and scales and computer system (if applicable). The total expense of such operation shall be borne, in all respects, by Tidewater. If the County is obligated to repair, maintain, or replace the scales, any related computer hardware or software systems, or interconnecting devices necessary to operate a scale for the weighing of Solid Waste and the recording of such weights, Tidewater shall bear all associated expenses.

4.11 If Tidewater disputes any alleged unsatisfactory performance or if the County believes that Tidewater has failed to effect a satisfactory cure pursuant to Sections 4.9 and 4.10, the matter shall be submitted to binding arbitration pursuant to the provisions of ORS 33.210 - 33.340. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall select a third arbitrator. Each Party shall bear the cost of selection of its arbitrator, and the Parties shall divide equally the cost of selection of the third arbitrator. The decision of the

arbitrators shall be binding upon the Parties under the provisions of ORS 33.210-33.340.

4.12 If at any time the testing of any weighing facilities indicates that such scales do not meet the accuracy requirements of the Oregon Department of Agriculture Weights and Measures Division, any adjustments of scale records actually recorded during the preceding ninety (90) days shall be negotiated in good faith by the County and Tidewater. If at any time all weighing facilities are incapacitated or are being tested, Tidewater shall determine the quantity of Solid Waste delivered by multiplying (i) the number of cubic yards of Solid Waste delivered to the Finley Buttes Landfill during the period that the weighing facilities are incapacitated or are being tested, by (ii) the average weight per cubic yard of all Solid Waste delivered to the Finley Buttes Landfill during the 30-day period immediately preceding the date on which the weighing facilities became incapacitated or testing began.

4.13 In the event Tidewater discovers that Hazardous Waste has been disposed of at the Landfill, Tidewater shall immediately notify the DEQ and the County. Tidewater, at its sole expense, subject to the rights, if any, of Tidewater against third Persons, shall bear all costs associated with the handling and disposal of such Hazardous Waste. Tidewater shall indemnify and hold the County harmless from any and all claims by the Federal Government, the State of Oregon, or third Persons for any

financial obligation in the handling and removal of Hazardous Waste at the Finley Buttes Landfill.

SECTION 5 INSURANCE REQUIREMENTS; LIABILITIES

5.1 Tidewater shall obtain and maintain the following insurance with respect to the construction, operation, maintenance, and closure of the Finley Buttes Landfill:

(a) Worker's compensation insurance coverage in compliance with the worker's compensation law of the State of Oregon, the United States Longshoreman and Harbor Workers' coverage and endorsement, and the Voluntary Compensation Coverage Endorsement.

(b) Employer's liability insurance coverage subject to the minimum limit of primary bodily injury liability insurance of not less than \$1,000,000 and sufficient to cover any claims under the Oregon Tort Claims Act as presently in existence or as amended.

(c) Comprehensive general liability insurance, comprehensive general liability form, covering all premises and operations including independent contractors, products, and operations for not less than \$1,000,000.

(d) Comprehensive automobile liability insurance coverage applicable to all owned, hired, and non-owned vehicles related to the Finley Buttes Landfill operation, subject to the minimum combined single limit of \$1,000,000.

5.2 Tidewater shall provide proof of coverage to the County for the insurance policies described in Section 5.1(a)-(d).

5.3 All insurance policies described in Section 5.1 shall be issued by reputable insurance companies licensed to do business in the State of Oregon, shall be in form reasonably satisfactory to the County, shall (except as to the insurance described in Section 5.1(a)) name the County as an additional insured, and shall provide for not less than ten (10) days prior written notice to the County prior to any cancellation, termination, or reduction in coverage. In the event Tidewater at any time fails to maintain insurance as required by this Agreement, the County shall have the right to obtain such insurance, and Tidewater shall reimburse the County for the cost thereof within thirty (30) days after written demand.

5.4 The County, from time to time during the term of this Agreement, may, in the exercise of its reasonable judgment, require Tidewater to obtain additional types of insurance reasonably related to the operation of the Finley Buttes Landfill; provided that the County shall bear one-half of the cost of obtaining any such additional insurance.

5.5 If any actions or suits are brought against the County, its agents, officials, or employees for alleged negligence in taking or failing to take any action in furtherance of this Agreement or in connection with the operation of the Finley Buttes Landfill, the County shall defend said suit or action in its own name and at its own expense, without any cost to Tidewater.

5.6 If any actions or suits are brought against Tidewater, its agents, officials, directors, associates, subsidiaries, partners, or employees for alleged negligence in taking or failing to take any action in furtherance of this Agreement or in connection with the operation of the Finley Buttes Landfill, Tidewater shall defend such suit or action at its own expense, without any cost to the County.

5.7 Tidewater agrees to indemnify and hold the County harmless from damages for any and all errors, omissions, or acts of Tidewater's agents, officials, subsidiaries, associates, partners, or employees arising out of or under this Agreement.

5.8 The County and Tidewater hereby waive any and every claim for recovery from the other for any and all loss or damage resulting from the performance of this Agreement, which loss or damage is covered by valid and collectible insurance policies, to the extent that such loss or damage is recovered under said insurance policies. Inasmuch as this mutual waiver will preclude

the assignment of any such claim to the extent of such recovery by subrogation (or otherwise) to an insurance company (or any other Person), the County and Tidewater each agree to give to each insurance company which has issued, or may issue in the future, policies of insurance related to this Agreement, written notice of the terms of this mutual waiver, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of this waiver. The waiver of subrogation contained in this Section 5.8 shall be valid only if the insurance carriers for Tidewater and the County agree thereto and such waiver is not contrary to the legislative intent of the Oregon Tort Claims Act.

SECTION 6 TERM OF AGREEMENT; MODIFICATION; TRANSFER

6.1 Subject to the provisions of Section 3.1, this Agreement shall remain in full force and effect for the effective useful life of the Finley Buttes Landfill. The useful life of the Finley Buttes Landfill shall be determined by the appropriate permits and permit renewals or extensions issued by DEQ or EQC. In the event any DEQ or EQC permit necessary for the operation of the Finley Buttes Landfill is terminated for any reason, this Agreement shall thereupon terminate.

6.2 The Parties may, by mutual consent, modify the terms and conditions of this Agreement; provided that any such modification shall be in writing and signed by the Parties.

6.3 This Agreement represents the total and complete agreement of the Parties. The Parties agree there are no other oral or written agreements between them with respect to the subject matter of this Agreement as of the Contract Date.

6.4 Tidewater agrees that neither its interest in this Agreement nor its ownership, if any, of the real property occupied by the Finley Buttes Landfill shall be transferred without the prior written consent of the County, which consent shall not be unreasonably withheld.

6.5 Prior to giving approval to any such transfer, the County shall have the right to hold a public hearing, following public notice, at which the County shall determine, in the exercise of its reasonable discretion, whether the proposed transferee has adequate financial resources to pay the license fees due or to become due the County under this Agreement and the ability to perform all other obligations under the terms of any state or federal regulatory landfill permit issued for the Finley Buttes Landfill.

6.6 Any approved transferee shall further agree, in writing, to abide by all of the terms and conditions of this Agreement.

SECTION 7

TERMINATION AND NOTICE

7.1 The following shall constitute events of default by either Party: Persistent and repeated failure by either Party timely to perform any material obligation under this Agreement; failure to pay fees as set forth in this Agreement; failure to comply with the DEQ or EQC permit for the operation, maintenance, and closure of the Finley Buttes Landfill; disregard for the laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction over the Finley Buttes Landfill; failure to comply with the provisions of the Conditional Use Permit or the Morrow County Solid Waste Management Ordinance (MC-1-87) unless such failure to comply is the result of an Emergency.

7.2 Prior to termination of this Agreement based upon the occurrence of an event of default, the Party in default shall have the right of cure. The Party declaring default shall give written notice to the other Party, identifying with reasonable particularity the nature of the default. If the default results from a failure to pay any amount due hereunder, the Party receiving such notice shall have fifteen (15) days to cure the default. Otherwise, the Party receiving such notice shall have ninety (90) days to cure the default, unless a cure cannot be effected in ninety (90) days despite the exercise of reasonable diligence, in which case such Party shall have such time to effect a cure as may reasonably be required, so long as curative

action is commenced within ninety (90) days and pursued with reasonable diligence thereafter. If the Party receiving notice of default fails to cure such default within the required time, the other Party may terminate this Agreement upon written notice. Notwithstanding the foregoing, if the Parties are in dispute as to the occurrence of an event of default or its cure, such dispute shall be resolved by binding arbitration in accordance with Section 4.11.

7.3 Any notice or communication required or permitted under this Agreement shall be in writing and sufficiently given if delivered in person or sent by certified mail, return receipt requested, postage prepaid, as follows:

(a) If to Tidewater:

General Offices
Tidewater Barge Lines, Inc.
6 Beach Drive
Vancouver, WA 98661

Attn: Wesley J. Hickey, Executive Vice President

(b) If to the County:

Morrow County Court
Morrow County Courthouse
Heppner, OR 97836

Attn: County Judge

Changes in the respective addresses to which such notices shall be directed may be made from time to time by either Party by written notice to the other party.

(b) \$1.00 per Ton for the next 200,000 Tons per Operational Year. *200,000*

(c) \$1.25 per Ton for the next 200,000 Tons per Operational Year. *250,000*

(d) \$1.50 per Ton for all Tons in excess of 1,000,000 Tons per Operational Year. *1,500,000*

8.2 In each of the third through the fifth Operational Years, inclusive, the fee per Ton shall be adjusted from the fee per Ton payable for the immediately preceding Operational Year by the applicable Percentage Adjustment.

8.3 In the sixth Operational Year, the fee per Ton shall be adjusted from the fee per Ton payable for the immediately preceding Operational Year by the applicable Percentage Adjustment and shall be increased by an additional \$0.25 per Ton.

8.4 In each of the seventh through the tenth Operational Years, inclusive, the fee per Ton shall be adjusted from the fee per Ton payable for the immediately preceding Operational Year by the applicable Percentage Adjustment.

8.5 In the eleventh Operational Year, the fee per Ton shall be adjusted from the fee per Ton payable for the immediately preceding Operational Year by the applicable Percentage Adjustment and shall be increased by an additional \$0.25 per Ton.

8.6 In each of the eleventh through the fifteenth Operational Years, inclusive, the fee per Ton shall be adjusted from the fee per Ton payable for the immediately preceding Operational Year by the applicable Percentage Adjustment.

8.7 In the sixteenth Operational Year, the fee per Ton shall be adjusted from the fee per Ton payable for the immediately preceding Operational Year by the applicable Percentage Adjustment and, if and only if 1,000,000 or more Tons of Solid Waste were deposited in the Finley Buttes Landfill during the immediately preceding Operational Year, shall be increased by an additional \$0.25 per Ton.

8.8 In each of the seventeenth through the twentieth Operational Years, inclusive, the fee per Ton shall be adjusted from the fee per Ton payable for the immediately preceding Operational Year by the applicable Percentage Adjustment.

8.9 In the twenty-first Operational Year, the fee per Ton shall be adjusted from the fee per Ton payable during the immediately preceding Operational Year by the applicable Percentage Adjustment and, if and only if 1,000,000 or more Tons of Solid Waste were deposited in the Finley Buttes Landfill during the immediately preceding Operational Year, shall be increased by an additional \$0.25 per Ton.

8.10 In each Operational Year after the twenty-first Operational Year, the fee per Ton shall be adjusted from the fee per Ton payable for the immediately preceding Operational Year by the applicable Percentage Adjustment.

8.11 Notwithstanding the foregoing provisions of this Section 8, and regardless of the number of Tons of Solid Waste deposited in the Finley Buttes Landfill, the license fee payable by Tidewater shall be not less than \$50,000 for the third Operational Year and not less than \$50,000 adjusted by the applicable Percentage Adjustment for each succeeding Operational Year. There shall be no minimum license fee for the first and second Operational Years.

8.12 Except as provided in Sections 8, 10, and 13, and excluding property taxes, the County agrees that no other fees or assessments shall be imposed by the County on Tidewater or on any third Person depositing Solid Waste at the Finley Buttes Landfill.

SECTION 9 PAYMENT OF FEES

Tidewater agrees to pay the license fee provided for in Section 8 to the County on a monthly basis. The monthly payment will be due by the 20th day of each calendar month and will be calculated on the basis of the tonnage received at the Finley Buttes Landfill during the immediately preceding calendar month.

SECTION 10

CLOSURE

10.1 Tidewater agrees to provide for the closure and post-closure of the Finley Buttes Landfill pursuant to all applicable federal and state laws and DEQ or EQC administrative regulations, including without limitation, closure permit, closure plan, and financial assurance plan prepared in accordance with DEQ administrative regulations.

10.2 The Parties shall establish a closure fund (the "Closure Fund") into which Tidewater shall deposit monthly an amount equal to \$0.15 per Ton of Solid Waste delivered to the Finley Buttes Landfill during the calendar month prior to the date of payment. Tidewater's obligation to make such deposits shall terminate at such time as the total amount deposited plus accumulated interest equals \$1,000,000. All amounts paid by Tidewater pursuant to this Section 10.2 shall be held by the County Treasurer in a special county fund and deposited in an interest-bearing account from which disbursements shall be made as provided in this Section 10. All disbursements from the Closure Fund shall be made solely for the purposes described in this Section 10 and shall be made by the County upon the written application of Tidewater. Tidewater may make such application for disbursement at any time unless Tidewater has filed for bankruptcy under the federal bankruptcy act.

10.3 Prior to closure of the Finley Buttes Landfill, Tidewater shall be entitled to obtain disbursements from the Closure Fund for the purpose of paying the cost of repairs to the facility required by reason of any Emergency, remedial pollution control measures, or the handling and disposal of Hazardous Waste. Within one year after the date of any such disbursement, Tidewater shall repay to the Closure Fund (i) the amount disbursed, plus (ii) the interest which would have been earned on such amount had it not been disbursed from the Closure Fund.

10.4 Tidewater may include all funds held in this Closure Fund in the financial assurance plan submitted to DEQ as a part of the DEQ approval of the financial assurance, closure and post-closure plans. The Parties agree that all funds accumulated as provided in this Section 10 may be incorporated in and be made a part of the financial assurance requirements of the DEQ approved closure and post-closure plans. Disbursements from the Closure Fund for closure and post-closure of the Finley Buttes Landfill shall be made upon written application of Tidewater to the County. Such disbursements for closure and post-closure shall be in accordance with and for such purposes allowed by the DEQ approved closure and post-closure plans. Disbursements from the Closure Fund shall not be made for ongoing closure of solid waste cells. No repayment to the Closure Fund is required for disbursements made to Tidewater for the closure and post-closure of Finley Buttes Landfill.

10.5 Tidewater agrees that, to the extent permitted by DEQ or EQC rules, Tidewater shall request in its financial assurance plan submittal to DEQ or EQC that any funds remaining in this Closure Fund which are in excess of the funds necessary for closure and post-closure and which remain following closure and post-closure of the Finley Buttes Landfill shall be utilized in accordance with DEQ administrative rules to reduce Solid Waste disposal rates of Persons within the County or to enhance Solid Waste disposal facilities within the County.

SECTION 11 PAYMENT FORM

The Parties agree to enter into subsequent good faith negotiations to establish the documentation which shall be utilized by Tidewater in calculating its monthly payment of fees to the County. The documentation form shall include, without limitation, the following information:

(a) The total number of Tons or cubic yards delivered to the Finley Buttes Landfill during the applicable calendar month.

(b) The license fee due per Ton of Solid Waste delivered to the Finley Buttes Landfill for the applicable Operational Year.

(c) Any reductions from the license fee payment as a result of improvements to Bombing Range Road pursuant to Section 13.

(d) Adjustments to the license fee resulting from the purchase of additional insurance pursuant to Section 5.4.

SECTION 12 NO OBLIGATION BY THE COUNTY TO PAY FUNDS

12.1 The County shall not be obligated under the terms of this Agreement to make any payment of funds. The Parties agree that the County has not entered into a debtor relationship with Tidewater as defined by Article XI of the Oregon Constitution. In furtherance of the debt limitation provision, the Parties agree that the contractual provisions relating to the improvements of Bombing Range Road are for the benefit of the citizens of the County and are being provided by Tidewater at its sole expense and obligation. Any reduction in the license fee based upon the terms of this Agreement is not intended by the Parties to create a debt owed by the County to Tidewater.

12.2 Within three months of the Contract Date the County agrees to provide an opinion of an attorney licensed to practice law in the State of Oregon that this Agreement constitutes the valid and legally binding obligation of the County and that the terms and conditions of this Agreement are in all respects lawful and enforceable.

SECTION 13

BOMBING RANGE ROAD

13.1 The Parties acknowledge that trucks delivering Solid Waste to the Finley Buttes Landfill will travel from Interstate 84 to the landfill entrance over a road commonly known as the Bombing Range Road (the "Road"). The Parties further acknowledge the need to establish a fund (the "Road Fund") to pay a portion of the costs of improving, maintaining, and repairing that portion of Bombing Range Road north of the access to the Finley Buttes Landfill. The Road Fund shall be established and administered in accordance with this Section 13.

13.2 Subject to the provisions of Section 13.5 and in addition to the license fees payable pursuant to Section 8 and the amounts payable pursuant to Section 10, Tidewater agrees to pay to the County monthly from and after the Operational Commencement Date a "Road Fund Fee" in an amount equal to \$0.25 per Ton of Solid Waste delivered to the Finley Buttes Landfill during the calendar month prior to the date of payment. Commencing in the third Operational Year and continuing in each Operational Year thereafter, the amount of the Road Fund Fee shall be adjusted by the applicable Percentage Adjustment. All amounts paid by Tidewater pursuant to this Section 13.2 shall be held by the County Treasurer in the Road Fund, which shall be deposited in an interest-bearing account and from which disbursements shall be made solely for the purposes described in this Section 13.

13.3 Until such time as the need for reconstruction of the Road has been determined as hereinafter provided, the County shall maintain the Road in accordance with established standards for county roads and shall be entitled to withdraw from the Road Fund the cost of such maintenance of that portion of the Road from the landfill access, north to the Interstate 84 interchange.

In the event the amount available from the Road Fund is insufficient to pay all costs of such maintenance, the excess shall be borne by the County and Tidewater shall have no liability therefor.

13.4 Promptly after the Fifth Operational Year or at such time as the Parties may agree, the Parties shall undertake to determine whether the Road requires reconstruction in order to ensure its availability for continuous year-round use in all weather conditions normally encountered in the County and in accordance with such standards as may be established by the County. Such determination shall be made by an independent engineer engaged by and mutually acceptable to the Parties, following consultation with the County Engineer and, if Tidewater elects to retain an engineer on its own behalf, such engineer; provided that in the event that the independent engineer's determination is disputed by the County Engineer or Tidewater's engineer, if one is retained, the matter shall be resolved by arbitration conducted in accordance with Section 4.11, except that all arbitrators shall be qualified engineers with experience in road construction. All fees of the independent engineer and

associated costs shall be paid by the County. If reconstruction of any portion of the Road is determined to be required, the County shall proceed in accordance with this Section 13.4 to reconstruct the Road. Subject to reimbursement as provided in Section 13.5, Tidewater shall pay all costs reasonably incurred in connection with reconstruction, to the extent such costs exceed any amount available from the Road Fund. The Road shall be reconstructed as necessary to continue its use as a two-lane county road with gravel shoulders and side drainage. The Road as reconstructed shall have a sufficient base and overlay to ensure its availability for continuous year-round use in all weather conditions normally encountered in the County. The County's plans and specifications for reconstruction of the Road shall be reviewed by the independent engineer and be consistent with such engineer's determination of the reconstruction requirements. The County agrees to seek competitive bids for reconstruction of the Road and to contract for such reconstruction with the lowest responsible bidder.

13.5 As contemplated by Section 13.4, Tidewater shall pay all costs associated with reconstruction of the Road. Notwithstanding the foregoing or any other provision of this Agreement, from the date on which reconstruction commences until such time as Tidewater has recovered one-half of the total reconstruction costs, the fees payable by Tidewater pursuant to this Agreement except for the Closure Fund shall be reduced as follows:

(a) The license fee payable by Tidewater pursuant to Section 8 shall be reduced to the greater of \$0.50 per Ton or one-half the license fee per Ton otherwise payable under this Agreement, regardless of the number of Tons delivered to the Finley Buttes Landfill during the period in question.

(b) The Road Fee shall be suspended.

13.6 At any time after initial reconstruction of the Road as contemplated by Section 13.4, either Party can require, by written notice to the other Party, the retention of a mutually acceptable independent engineer to determine whether additional reconstruction of the Road is required to ensure continued satisfaction of the standard set forth in Section 13.4. The independent engineer shall make his determination following consultation with the County engineer and Tidewater's engineer, if one is retained. If the independent engineer's determination is disputed by either Party, the dispute shall be resolved by arbitration in the manner contemplated under Section 13.4. The fees of the independent engineer and associated costs shall be paid from the Road Fund and the County shall proceed with the necessary reconstruction in the manner described in Section 13.4. To the extent the cost of reconstruction exceeds the amount available in the Road Fund, each Party shall pay one-half of the excess.

13.7 Following any reconstruction of the Road, the County shall maintain the Road in good condition and repair in accordance with county standards so as to ensure its availability for continuous year-round use in all weather conditions normally encountered in the County. The County shall bear all costs of such maintenance and repair, but shall be entitled to withdraw the amount of such costs from the Road Fund. In the event the amount available from the Road Fund is insufficient to pay all such costs, the excess shall be borne by the County and Tidewater shall have no liability therefor.

13.8 Within thirty (30) business days after any withdrawal from the Road Fund, the County shall give Tidewater written notice setting forth the amount withdrawn and the purpose for the withdrawal, together with copies of related invoices or other supporting documentation. In addition, Tidewater shall have the right to inspect the county's records relating to administration of the Road Fund at any time upon reasonable advance notice.

13.9 The County's responsibility for the expenditure of funds in this Section 13 is subject to the future appropriation of funds by the County through the budgeting process. The County agrees to exercise good faith in the future appropriation of funds necessary to meet its obligations in this Section 13.

SECTION 14

APPLICABLE LAW

This Agreement and any question concerning its validity, construction or performance, shall be governed by the laws of the State of Oregon, irrespective of the place of execution or of the order in which the signatures of the parties are affixed, or of the place or places of performance.

MORROW COUNTY COURT

Louis A. Carlson
LOUIS A. CARLSON, JUDGE

Irvin E. Raugh
IRVIN E. RAUGH, COMMISSIONER

G. W. Peck
G. W. PECK, COMMISSIONER

TIDEWATER BARGE LINES, INC.

Wesley J. Hilly
Executive Vice President

DATE 3-30-88

DATE 3-30-88

56/02/0022/12 ATTEST:

Barbara Bloodsworth
Clerk

RECORDED NO. 138652
INDEXED NO. 30761
MORROW COUNTY CLERK'S OFFICE
36

STATE OF OREGON } ss. 138652
County of Morrow

I hereby certify that the within instrument was received for record.

on 03-30-88 at 11:45 AM

and assigned No. 30761

in the Microfilm Records of said county

Witness My Hand and Seal of County Affixed

Barbara Bloodsworth
County Clerk

By Donna M. Lietmann
Deputy

BALL, JANIK & NOVACK
ATTORNEYS AT LAW
ONE MAIN PLACE
101 S. W. MAIN STREET, SUITE 1100
PORTLAND, OREGON 97204-3274
TELEPHONE (503) 228-2525
TELECOPY (503) 295-1058
TELEX 910-380-5470

ROBERT S. BALL
STEPHEN T. JANIK
KENNETH M. NOVACK
JACK L. ORCHARD
WILLIAM H. PERKINS
JACOB TANZER

BRUCE MACGREGOR HALL, P. C.
OF COUNSEL

March 28, 1988

CHARLES E. ARMSTRONG
NANCY CRAVEN
DONALD W. DOUGLAS
MICHELE L. FRIEDMAN
ROBERT J. HORVAT, JR.
SUSAN MACDONALD NELSON
BARBARA W. RADLER
SARAH J. RYAN
DAVID A. URMAN

Federal Express

Mr. Jeffrey M. Wallace
District Attorneys' Office
Morrow County Courthouse
PO Box 788
Heppner, OR 97836

Mr. Robert C. Cannon
Marion County Counsel
Marion County Courthouse
100 High Street, NE
Salem, OR 97301

Re: Morrow County/Tidewater Agreement

Gentlemen:

Enclosed is the final draft agreement.

From the draft dated March 15, 1988, only three changes were made and I will highlight them here. As requested by the county, on page 16 the word "or" was changed to "and" in the final clause of Section 4.13. In Section 10.4, the closure fund provisions were amended as agreed to in the recent telephone conference and, in Section 12.2 the parties have agreed to the inclusion of language which obligates the county to provide an opinion of counsel.

In our discussion Bob and I agreed to contact Mr. John Leahy, former Multnomah County Counsel, to determine whether he would be available to issue the opinion on behalf of the county. Approximately \$3,000 remains from that fee so those funds remaining as of this date will be utilized for the attorney costs. Tidewater has agreed to reimburse the county to the extent that the costs exceed the remainder of the \$10,000 filing fee. However, Tidewater will confirm the total costs with Mr. Leahy prior to engaging his services. Please note that Section 12.2 obligates the county to issue its opinion within three months of the Contract Date.



AGENDA ITEM COVER SHEET
Morrow County Board of Commissioners
(Page 1 of 2)

(For BOC Use)
Item #
60

Please complete for each agenda item submitted for consideration by the Board of Commissioners
(See notations at bottom of form)

Staff Contact: Tamra Mabbott
Department: Planning
Short Title of Agenda Item:
(No acronyms please)

Phone Number (Ext): 541-922-4624
Requested Agenda Date: June 9 2021

Letter to Energy Facility Siting Council (EFSC) regarding Boardman Solar
Request for Amendment 1 which includes an extension

This Item Involves: (Check all that apply for this meeting.)

- Order or Resolution
Ordinance/Public Hearing:
1st Reading 2nd Reading
Public Comment Anticipated:
Estimated Time:
Document Recording Required
Contract/Agreement
Appointments
Update on Project/Committee
Consent Agenda Eligible
Discussion & Action
Estimated Time:
Purchase Pre-Authorization
Other Letter to EFSC

N/A

Purchase Pre-Authorizations, Contracts & Agreements

Contractor/Entity:
Contractor/Entity Address:
Effective Dates - From: Through:
Total Contract Amount: Budget Line:
Does the contract amount exceed \$5,000? Yes No

Reviewed By:

Tamra Mabbott June 12, 2021 Department Head Required for all BOC meetings
Admin. Officer/BOC Office Required for all BOC meetings
County Counsel *Required for all legal documents
Finance Office *Required for all contracts; other items as appropriate.
Human Resources *If appropriate

*Allow 1 week for review (submit to all simultaneously). When each office has notified the submitting department of approval, then submit the request to the BOC for placement on the agenda.

Note: All other entities must sign contracts/agreements before they are presented to the Board of Commissioners (originals preferred). Agendas are published each Friday afternoon, so requests must be received in the BOC Office by 1:00 p.m. on the Friday prior to the Board's Wednesday meeting. Once this form is completed, including County Counsel, Finance and HR review/sign-off (if appropriate), then submit it to the Board of Commissioners Office.

AGENDA ITEM COVER SHEET

Morrow County Board of Commissioners

(Page 2 of 2)

1. ISSUES, BACKGROUND, DISCUSSION AND OPTIONS (IF ANY):

Boardman Solar, a large solar project located in the northwest part of Morrow County, was approved by the Oregon Energy Facility Siting Council. The developer has asked EFSC for an extension to their permit, known as RFA1. EFSC notified Morrow County and asked county to provide comments on the extension and also to clarify several land use matters.

Morrow County Board of Commissioners acts also as the Special Advisory Group (SAG) appointed by the EFSC.

Planning staff have drafted a letter for Board consideration regarding the RFA1 for Boardman Solar project.

2. FISCAL IMPACT:

There is no direct fiscal impact to the County.

3. SUGGESTED ACTION(S)/MOTION(S):

Approve the attached letter to EFSC.

Attach additional background documentation as needed.



Board of Commissioners

P.O. Box 788 • Heppner, OR 97836
541-676-5613
www.co.morrow.or.us

Commissioner Don Russell, Chair
Commissioner Jim Doherty
Commissioner Melissa Lindsay

June 16, 2021

Kathleen Sloan, Senior Siting Analyst
Oregon Department of Energy
550 Capitol Street N.E., 1st Floor
Salem, Oregon 97301

RE: Comment letter, Boardman Solar Energy Facility Preliminary Request for Amendment 1

Dear Ms. Sloan,

Thank you for the request to provide comments on Boardman Solar Energy Facility's Preliminary Request for Amendment 1. It is the understanding of Morrow County that the Amendment 1 request is for the approval of a three-year extension to both the construction commencement and completion deadlines found in the Boardman Solar Energy Facility Site Certificate. Morrow County would not be opposed to this request, as presented, and would support the Applicant's request for extension.

Applicant did, on October 29, 2020 via electronic letter, request an extension to Conditional Use Permit CUP-N-333-18. The request was made prior to the expiration date of November 17, 2020 and was granted with a new expiration date of November 17, 2021. Should the applicant not perfect this CUP by applying for, and receiving zoning approval prior to that date, a new CUP would need to be applied for and approved for this project.

This letter also responds to the specific questions you raised with Planning Department staff. While Morrow County Zoning Ordinance (MCZO) Section 3.010(C)(24) does not reflect the Land Conservation and Development Commission's 2019 amendments, Oregon Revised Statute would be directly applied. Additionally, Morrow County has not made any other changes to the MCZO that could be applied to the facility. No additional Goal 5 Inventory, or recreational opportunities have been added since 2018. A map of the current Goal 5 inventory can be found in the Morrow County Comprehensive Plan, posted on the County website at: www.co.morrow.or.us/planning/page/comprehensive-plan

Thank you again for the opportunity to comment on the Boardman Solar Energy Facility Preliminary Request for Amendment 1. If you have any questions about these comments, please contact Planning Director Tamra Mabbott at 541-922-4624 or by email at tmabbott@co.morrow.or.us.

Sincerely,

Don Russell
Chair

Jim Doherty
Commissioner

Melissa Lindsay
Commissioner

cc: Matt Scrivner, Sandra Pointer, Dave Pranger, Morrow County Public Works
Mike Gorman, Morrow County Assessor & Tax Collector
Michelle Colby, Gilliam County Planning Director
Laura Minor, Invenergy

DRAFT

PUBLIC NOTICE



Boardman Solar Energy Facility

Receipt of Preliminary Request for Amendment 1 of Site Certificate

Summary:

Date Notice Issued: January 13, 2021

Site Certificate Amendment Request: Boardman Solar Energy LLC (certificate holder) seeks approval from the Energy Facility Siting Council (EFSC or Council) to extend the construction commencement and completion deadlines.

Facility Location: Both Morrow and Gilliam counties

Information Only: Please note, this notice is to provide early notification of this amendment request. There is no comment period associated with this phase of review.

Review Process: Certificate holder requests review under the Type B amendment process, which is being evaluated by Oregon Department of Energy (Department) staff.

Introduction: On January 7, 2021, the Department, staff to Council, received preliminary Request for Amendment 1 (pRFA1) for the Boardman Solar Energy Facility site certificate. In pRFA1, the certificate holder includes a request that the amendment be processed under Type B review per OAR 345-027-0357(8).

Description of Facility (Approved): The Boardman Solar Energy Facility is an approved 75 megawatt (MW) solar photovoltaic (PV) facility in Gilliam and Morrow counties, located within a site boundary of approximately 798 acres. The facility has not yet been built. Construction must begin by February 23, 2021 and be completed by February 23, 2024, unless extension of the deadlines is approved by Council through review of the amendment request.

Description of Amendment Request: Preliminary Request for Amendment 1 (pRFA1) seeks Council approval for a three year extension to both the construction commencement and completion deadlines. This change would make the new construction commencement deadline February 23,

2024, and the new construction completion deadline February 23, 2027.

Facility Location: The solar energy generation components of the Boardman Solar Energy Facility are approved to be located in Morrow County, whereas the 115-kilovolt (kV) transmission line that will connect the energy facility to the grid will be located within Gilliam County. The approved facility site is located between the cities of Arlington and Boardman, and is south of U.S. Highway 84. A map of the facility site boundary is included in this notice. For a detailed map, please see the Revised Project Overview figure provided in the Revised Property Owner Map and Information available at <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/BSE.aspx> or visit our online mapping tool at <https://tinyurl.com/EFSCmap>.

Current and Next Review Phase: The current preliminary request for amendment phase consists of staff reviewing the request to ensure there is information adequate for Council to make findings or impose conditions on all applicable Council standards. Once the amendment request is determined complete by staff, staff will issue a Public Notice and Draft Proposed Order (initial staff recommendation), notifying members of the public of a comment period on the complete amendment request and Draft Proposed Order.

Receipt of this Notice:

Please note that you may be receiving this notice for multiple reasons:

1. You own property within or adjacent to (within 500 feet) the property on which the project is located. You will automatically receive all future notices on this facility.
2. You have requested to receive paper notices on the Boardman Solar Energy Facility. If you wish to be removed from this mailing list, please contact Chase McVeigh-Walker.
3. You have previously signed up via GovDelivery/ClickDimensions or by contacting ODOE to receive notices related to the Boardman Solar Energy Facility or all EFSC project-related notices. You will automatically receive all future notices per your request, unless you unsubscribe via ClickDimensions or by contacting ODOE.

More Information: Please contact Chase McVeigh-Walker, Senior Siting Analyst, at the phone, email address or mailing address listed in this notice.

Chase McVeigh-Walker, Senior Siting Analyst
Oregon Department of Energy
550 Capitol Street NE, 1st Floor
Salem, OR 97301
Email: chase.mcveigh-walker@oregon.gov
Phone: 503-934-1582

More information about the facility and updates on the review process is available using any of the following options.

1) Oregon Department of Energy's webpage:

More details on the Boardman Solar Energy Facility including the certificate holder's Type B Review Amendment Determination Request (ADR) and pRFA1 are available online at:

<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/BSE.aspx>

Additional resources to help you participate in the state siting process can be found at:

<http://www.oregon.gov/energy/facilities-safety/facilities/pages/default.aspx>

- 2) **Updates by email/mail:** Subscribe to ClickDimensions, a self-managed, automated email system that sends notices and updates related to the Boardman Solar Energy Facility as well as any or all other energy facilities and events under EFSC jurisdiction. For more information, please visit:
<https://tinyurl.com/ODOE-EFSC>.

To receive notices by U.S. Mail, please contact Chase McVeigh-Walker.

- 3) **In hardcopy:** Hard copies of the Type B Review ADR and pRFA1 are available for public inspection at:

Oregon Department of Energy
550 Capitol Street NE
Salem, OR 97301

Please contact Chase McVeigh-Walker if you wish to arrange a time to review hard copies. Hard copies will be provided at reasonable cost upon request to the Department.

Accessibility information:

The Oregon Department of Energy is committed to accommodating people with disabilities. If you require any special physical or language accommodations, or need information in an alternate format, please contact Michiko Mata at 503-378-3895, toll-free in Oregon at 800-221-8035, or email to michiko.mata@oregon.gov.

Figure 1: Boardman Solar Energy Facility – Facility Location and Site Boundary

