

## MORROW COUNTY BOARD OF COMMISSIONERS MEETING AGENDA

Wednesday, November 15, 2017 at **8:45 a.m.**  
Bartholomew Building Upper Conference Room  
110 N. Court St., Heppner, Oregon

Commissioners will call in from the Association of Oregon Counties  
Annual Conference in Eugene

1. **Call to Order: 8:45 a.m.**
2. **City and Citizen Comments** – This is the time provided for individuals wishing to address the Board regarding issues that are not already on the agenda.
3. **Open Agenda** – This is the time for the Board to introduce subjects that are not already on the agenda.
4. **Consent Calendar**
  - a. Approve Claims: Accounts Payable dated November 16<sup>th</sup>; three Payroll Payables Immediates & Electronic dated November 7<sup>th</sup> – Regular; HRA VEBA; Employee Final
  - b. Appointment Request to the Morrow County Fair Board
  - c. Contract Extension - Interim Administrative Officer
  - d. Contract for soil removal/replacement at the indoor Wilkinson Arena and outdoor Fairgrounds Arena
5. **Adjournment**

Agendas are available every Friday on our website ([www.co.morrow.or.us/boc](http://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 Kim Cutsforth, Interim Administrative Officer at (541) 676-2529.



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

Item #  
46

**This document must be completed for each agenda item submitted for consideration by the Board of Commissioners.**

Staff Contact: Ann Jones Phone Number (Ext): 541-676-9474  
 Department: Fair Requested Agenda Date: 11-15-17  
 Person Attending BOC Meeting (Required):  
 Short Title of Agenda Item: Appoint Raymond DeLoe to Morrow County Fair

<b>This Item Involves:</b> (Check all that apply for this meeting.)	
<input type="checkbox"/> Order or Resolution	<input checked="" type="checkbox"/> Appointments
<input type="checkbox"/> Ordinance/Public Hearing:	<input type="checkbox"/> Update on Project/Committee
<input type="checkbox"/> 1st Reading <input type="checkbox"/> 2nd Reading	<input type="checkbox"/> Discussion Only
<input type="checkbox"/> Public Comment Anticipated:	<input type="checkbox"/> Discussion & Action
Estimated Time:	Estimated Time:
<input type="checkbox"/> Document Recording Required	<input type="checkbox"/> Department Report
<input type="checkbox"/> Contract/Agreement	<input type="checkbox"/> Other:

<input type="checkbox"/> N/A	<b>For Contracts and Agreements Only</b>
Contractor/Entity:	
Contractor/Entity Address:	
Effective Dates – From:	Through:
Total Contract Amount:	Budget Line:
Does the contract amount exceed \$5,000? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If Yes, Attach Purchase Pre-Authorization Request if Applicable	

Reviewed By:

<u>Ann Jones</u>	11/7/17	Department Head	Required for all BOC meetings
	<small>DATE</small>		
<u>[Signature]</u>	11/13/17	Admin. Officer/BOC Office	Required for all BOC meetings
	<small>DATE</small>		
_____		County Counsel	Required for all legal documents
	<small>DATE</small>		
_____		Finance Office	Required for all contracts; Other items as appropriate.
	<small>DATE</small>		
_____		Human Resources	If appropriate
	<small>DATE</small>		

**Note: All entities must sign documents before they are presented to the Board of Commissioners. Original documents are preferred. Agenda requests, including this completed form and supporting documents, must be received by the Board's office by Noon on the Friday prior to the Board of Commissioners Wednesday meeting. County Counsel and Finance review is required for all contracts.**

# AGENDA ITEM COVER SHEET

Morrow County Board of Commissioners

(Page 2 of 2)

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1. TITLE OF AGENDA ITEM: Appoint Raymond DeLoe to Morrow County Fair Board
  
  2. ISSUES, BACKGROUND, AND DISCUSSION: The Fair Board had one member resign from their position (Zachary Lantis). Leaving us with 1 open position. Mr. DeLoe has been interested in becoming a board member since the summer of 2016 when he moved to Heppner.
  
  3. OPTIONS: Appoint Mr. DeLoe to the remainder of the resigned position which would end on 12/31/17, and then continue his 3 year term, or wait and begin his appointment 1/2018.
  
  4. FISCAL IMPACT:
  
  5. STAFF RECOMMENDATIONS: It is our recommendation that you appoint Mr. DeLoe to the resigned position and then continue his three year term beginning 1/2018 ending 12/31/2021.
  
  6. SUGGESTED ACTION(S) / MOTION(S): Move to approve Raymond DeLoe to the Morrow County Fair Board beginning 11/2017 to the resigned position and then continuing his 3 year term 1/2018-12/31/2021
- Attach additional background documentation as needed.

Routing: Original or copies of signed contract or document should be sent to the following:

- |   |   |
|---|---|
| <input type="checkbox"/> Clerk (Original for recording)         | <input type="checkbox"/> Finance Department (Copy for file) |
| <input type="checkbox"/> Board of Commissioners (Copy for file) | <input type="checkbox"/> Department – For distribution      |
| <input type="checkbox"/> Other _____                            |   |

Morrow County Fair Board;

October 13, 2017

Hello, my name is Raymond DeLoe. I am the minister at Heppner Christian Church. I would very much like to serve on the Fair Board for a couple of reasons.

- 1) The fair from my experience the last two years is all about the children of our county and I find this very encouraging.
- 2) The fair is very family oriented and this too I find to be much needed in our society today.

I believe I will bring to the board some traits which will make the fair even better in the years to come.

- 1) I have a sense for numbers and budgets which I have found to be helpful on other boards on which I have served
- 2) I believe I have the ability to listen and build consensus when it comes to solving issues or promoting new ideas.
- 3) I am not afraid to ask WHY? I find that often Boards hesitate to ask this question.

You can contact me if you have any questions at: [REDACTED] or email me at [REDACTED]

Sincerely,

Raymond DeLoe



AGENDA ITEM COVER SHEET
Morrow County Board of Commissioners
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Item #
4c

This document must be completed for each agenda item submitted for consideration by the Board of Commissioners.

Staff Contact: Karen Wolff
Department: Human Resources
Person Attending BOC Meeting (REQUIRED): Karen Wolff, by phone
Short Title of Agenda Item: Extension of Interim County Administrator Employment Agreement

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
Discussion Only
Discussion & Action
Estimated Time:
Department Report
Other:

For Contracts and Agreements Only
Contractor/Entity:
Contractor/Entity Address:
Effective Dates - From: Through:
Total Contract Amount: Budget Line:
Does the contract amount exceed \$5,000? Yes No
If Yes, Attach Purchase Pre-Authorization Request if Applicable

Reviewed By:
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

Note: All entities must sign documents before they are presented to the Board of Commissioners. Original documents are preferred. Agenda requests must be received by the Board's office by 5:00 PM on the Thursday prior to the Board of Commissioners Wednesday meeting. This form needs to be completed, including County Counsel and Finance review for all contracts, and submitted to the Board of Commissioners Office by noon on the Monday preceding the Board's Wednesday meeting.

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

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**1. ISSUES, BACKGROUND, AND DISCUSSION:**

The Board of Commissioners has extended an employment offer to a new County Administrator, who has accepted the offer and advised HR last on Thursday afternoon that he would be available to report to work on November 27. The Interim County Administrator, Kim Cutsforth, current contract expires on November 16. The agreement with the Interim CA states that it may be extended by mutual agreement. The attached Extension will allow Kim to remain at work until Darrell Green reports for work and will allow for one week of overlap. This overlap period will be an opportunity for Kim to hand-off projects that are currently in the works and to introduce Darrell to many of the departments. This overlap period is very valuable in my opinion.

If it is decided that an additional period of time would be beneficial to Morrow County and Kim is agreeable to the extension, an additional extension document may be produced.

**2. OPTIONS:**

- A. Approve the Extension of Employment Agreement.
- B. Other

**3. FISCAL IMPACT:**

There will be some additional fiscal impact for the period of overlap. The current budget is adequate to accommodate this impact.

**4. STAFF RECOMMENDATION:**

Human Resources recommend approval of the Extension of Employment Agreement.

**5. SUGGESTED ACTION(S) / MOTION(S):**

I move to approve the Extension of Employment Agreement between Morrow County and Kim Cutsforth to extend the Employment Agreement for Interim Administrative Officer until December 1, 2017.

Attach additional background documentation as needed.

1  
2  
3 **MORROW COUNTY**  
4 **Extension of Employment Agreement**  
5  
6  
7

8 This **Extension of Employment Agreement** is between **Morrow County**, a political subdivision of the State  
9 of Oregon, hereafter called **County**, and Kim Cutsforth, hereafter referred to as **Employee**.

10  
11 THIS EXTENSION OF EMPLOYMENT AGREEMENT ("Extension") is made this 15th day of November,  
12 2017, for the purpose of extending the employment agreement known as "Kim Cutsforth Employment  
13 Agreement for Interim Administrative officer", dated August 17, 2017, as authorized in Section 3 of the  
14 original agreement.

- 15  
16 1. The original agreement, which is attached hereto as a part of this Extension, is described below and  
17 will end on November 16, 2017.  
18  
19 2. The Parties agree to extend the agreement for an additional period, which will begin immediately upon  
20 the expiration of the original time period and will end on **December 1, 2017**.

21  
22 All other terms and conditions of the Original Contract remain unchanged.  
23  
24  
25

26  
27 \_\_\_\_\_  
28 Kim Cutsforth

\_\_\_\_\_ Date

29  
30  
31 \_\_\_\_\_  
32 Melissa Lindsay, Chair  
33 Morrow Country Board of Commissioners

\_\_\_\_\_ Date

34  
35  
36  
37  
38 **Attest:**  
39  
40

41 \_\_\_\_\_  
42 Bobbi Childers, County Clerk  
43  
44  
45

46  
47 **Approved as to Form:**  
48  
49

50 \_\_\_\_\_  
51 Morrow County Counsel  
52  
53  
54  
55  
56

**Kim Cutsforth**  
**Employment Agreement**  
for  
**Interim Administrative Officer**

THIS AGREEMENT is made and entered into this 16 day of August, 2017, by and between Morrow County, an Oregon municipal corporation, hereinafter referred to as "County," and Kim Cutsforth, hereinafter referred to as "Employee," both of whom understand and agree as follows:

**RECITALS**

Whereas, County desires to clarify the nature of its employment relationship with Employee, to provide certain benefits, set working conditions, and provide inducement for her to serve as Interim Administrative Officer; and

Whereas, Employee desires to enter into an employment agreement in order to begin her employment as Interim Administrative Officer; and

Now, therefore, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. **Duties.** County hereby agrees to employ Employee as Interim Administrative Officer to perform for a limited length of time the functions and duties which are generally described in the Interim Administrative Officer job description, and to perform other legally permissible and proper duties and functions as the Board of Commissioners shall assign.
2. **Hours of Work.** Employee shall devote 24 hours per week to the duties and responsibilities of her position. 20 hours shall be scheduled Monday through Thursday with the remaining four (4) hours scheduled as needed. When needed, Employee may work in excess of 24 hours per week upon mutual agreement of County and Employee.
3. **Term.** The term of this Agreement shall be for up to three (3) months commencing on August 16, 2017, ("Services Period") with the regularly scheduled hours of work commencing August 28, 2017. The term of this Agreement may be extended by written consent of the parties for a period mutually acceptable to both parties. (Continuing Service Period). Hours may be worked prior to August 28, 2017 for project hand-off and orientation upon mutual agreement of County and Employee.




4. **At-Will Employment.** Both Parties acknowledge and agree that Employee is considered to be an at-will employee who may be terminated by the County with or without cause, pursuant to the terms of this agreement.
5. **Termination.** Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of County for any reason whatsoever with or without cause to terminate the services of Employee at any time prior to the expiration of the Services Period, or Continuing Services Period.
6. **Resignation.** Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from this position with County subject to the provisions of the Agreement. In the event Employee voluntarily resigns this position before the expiration of the aforesaid term of employment, Employee shall give County a minimum of fourteen (14) days written notice, unless the parties agree otherwise.
7. **Compensation.** County agrees to pay Employee a wage of \$45.67 per hour, for services rendered under this contract. Such wage shall be payable in installments at the same time as the regular employees of County are paid.
8. **Use of Automobile.** Employee may have use of a County-owned vehicle to conduct County business when such a vehicle is available. When such a vehicle is not available, causing Employee to use her privately owned vehicle, or where Employee elects to use her privately owned vehicle, she shall be reimbursed by County for actual business travel as per the Morrow County Personnel Policies.
9. **Leave Time.** For the term of this agreement, Employee will not accrue vacation leave, comp time or other leave benefits, with the exception of Sick Leave as required by Oregon Revised Statutes. Employee may flex her hours worked, with advance notice to the Board of Commissioners.
10. **Liability.** County agrees to indemnify, hold harmless and defend at its expense Employee from any and all claims, actions, losses, damages, charges, expenses or attorney's fees to which Employee may be subject to arising out of, or resulting from, the performance of her official duties hereunder, excepting from criminal acts, intentional misfeasance, or gross negligence. Notwithstanding the foregoing, County's obligation under this Section shall not apply to any punitive or exemplary damages that may be awarded by a Court against Employee.

**11. Other Terms and Conditions**

- A. County may from time-to-time fix other terms and conditions relating to Employee's performance hereunder, provided such terms and conditions are not inconsistent or in conflict with the provisions of this Agreement.
- B. Employee shall perform her/his duties in accordance with all the laws, ordinances, rules and regulations applicable to her position.
- C. The entire Agreement between the parties with respect to the subject matter hereunder is contained in this Agreement. Except as herein expressly provided to the contrary, the provisions of this Agreement are for the benefit of the parties solely and not for the benefit of any other person, persons or legal entities.
- D. Employee acknowledges that she has not been induced to enter into this Agreement by any representation or statements, oral or written, not expressly contained herein or expressly incorporated by reference. County makes no representations, warranties or guarantees, expressed or implied, other than expressed representations, warranties and guarantees contained in this Agreement.

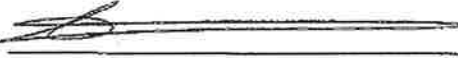
**12. Notice.** Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addresses as stated in this Agreement, or at such other address as may hereafter be specified by notice in writing. In lieu of mailing, written notice shall become effective as of the date it is personally delivered to the addressee. Any notice required to be given under the terms and conditions of this Agreement shall be given as follows:

Morrow County Board of  
Commissioners,  
P.O. Box 788  
Heppner, OR 97836

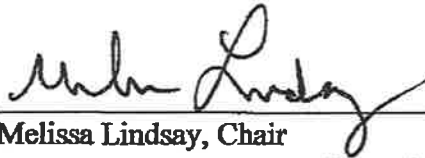
Kim Cutsforth  
Interim Administrative  
Officer  
68970 Willow Creek Road  
Heppner, OR 97836 

**13. Severability.** If any part, term, or provision of this agreement is held by the courts to be illegal or in conflict with the laws of the State of Oregon, the validity of the remaining portions of the Agreement 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 part, term, or provision.

In Witness Whereof, the parties hereto have executed this Agreement on the day and year first written above.

  
\_\_\_\_\_  
Kim Cutsforth

8/16/17  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Melissa Lindsay, Chair  
Morrow County Board of Commissioners

8/17/17  
\_\_\_\_\_  
Date

Attest:  
  
\_\_\_\_\_  
Morrow County Clerk





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

Item #
4d

This document must be completed for each agenda item submitted for consideration by the Board of Commissioners.

Staff Contact: Sandi Pointer
Department: Morrow County Public Works
Person Attending BOC Meeting (REQUIRED):
Short Title of Agenda Item:

Phone Number (Ext): 541-989-9500
Requested Agenda Date: 11/15/2017
Sandi Pointer
Personal/Professional services contract for arena dirt.

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
Discussion Only
Discussion & Action
Estimated Time:
Department Report
Other:

For Contracts and Agreements Only
Contractor/Entity: Millers and Sons Inc.
Contractor/Entity Address: POBox 650, Heppner, OR 97839
Effective Dates - From: 11/15/2017 Through: 11/15/2018
Total Contract Amount: 20,390.00 Budget Line: 230-301-5.40-4405
Does the contract amount exceed \$5,000? Yes No
If Yes, Attach Purchase Pre-Authorization Request if Applicable

Reviewed By:
[Signature] 11/07/2017 Department Head Required for all BOC meetings
[Signature] 11/13/17 Admin. Officer/BOC Office Required for all BOC meetings
J. Nelson email 11-7-17 County Counsel Required for all legal documents
[Signature] 11/9/17 Finance Office Required for all contracts; Other items as appropriate.
Human Resources If appropriate

Note: All entities must sign documents before they are presented to the Board of Commissioners. Original documents are preferred. Agenda requests must be received by the Board's office by 5:00 PM on the Thursday prior to the Board of Commissioners Wednesday meeting. This form needs to be completed, including County Counsel and Finance review for all contracts, and submitted to the Board of Commissioners Office by noon on the Monday preceding the Board's Wednesday meeting.

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

**1. TITLE OF AGENDA ITEM:**

Personal/Professional Services Contract - Arena Dirt

**2. ISSUES, BACKGROUND, AND DISCUSSION:**

Advertised Oct. 11, 2017. Wilkinson Arena removal of dirt with replacement in same arena. Outdoor arena dirt add to the arena.

**3. OPTIONS:**

Two proposals had been received on the deadline Miller and Sons along with ButterCreek Contracting, LLC Verification and project awarded to Miller and Sons.

**4. FISCAL IMPACT:**

**5. STAFF RECOMMENDATIONS:**

Morrow County Public works recommends signing the Personal Services contract

**6. SUGGESTED ACTION(S) / MOTION(S):**

Signing of the of the Personal Services contract.

- Attach additional background documentation as needed.

Routing: Original or copies of signed contract or document should be sent to the following:

<input type="checkbox"/>	Clerk (Original for recording)	<input type="checkbox"/>	Finance Department (Copy for file)
<input type="checkbox"/>	Board of Commissioners (Copy for file)	<input type="checkbox"/>	Department – For distribution
<input type="checkbox"/>	Other _____		

1 MORROW COUNTY PERSONAL/PROFESSIONAL SERVICES CONTRACT

2  
3 This Contract is between Morrow County, a political subdivision of the State of Oregon, hereafter called County, and Ryan Miller and Sons,  
4 hereafter called Contractor. County's Contract Administrator for this contract is Public Works Director.

5  
6 1. Effective Date and Duration. This contract shall become effective on the date this Contract has been signed by every party hereto. Unless  
7 earlier terminated or extended, this Contract shall expire within one (1) year of the effective date. Expiration shall not extinguish or prejudice  
8 County's right to enforce this Contract with respect to any breach of a Contractor warranty; or any default or defect in Contractor performance that  
9 has not been cured.

10  
11  
12 2. Statement of Work. Contractor has reviewed and responded to County's "Request for Bids" for removal and replacement of arena dirt.  
13 Contract terms and agreement is based upon Contractor's written response to that Request for Bids. County award of contract to Contractor  
14 was based upon Contractor's terms and response to the Request for Bids.

15 a. Indoor Wilkerson Arena- Contractor shall remove 6 inches of arena dirt from the Wilkerson Arena (approximately 180' x 90' area). This  
16 dirt material may shall be disposed of on site at the Morrow County Fairgrounds quarry area. Contractor shall replace the removed dirt with  
17 300 cubic yards of new clean soil hauled from the Morrow County Upper Rhea Creek work site. Replaced soil shall be placed to level grade.

18 b. Morrow County Fairgrounds Outdoor Rodeo Arena- Contractor shall add 750 cubic yards of new clean soil hauled from the Morrow  
19 County Upper Rhea Creek work site. Soil shall be placed to level grade.

20 c. All personnel and equipment required to perform this Statement of Work shall be provided by Contractor. County will provide no  
21 equipment or personnel for this project.  
22

23  
24 3. Consideration

25 a. County agrees to pay Contractor the maximum rate of \$20,390.00 for accomplishing the Work required by the various Scopes of Work  
26 generated under this Contract. Contractor and County agree a written Scope of Work will be approved and signed by County and Contractor  
27 prior to start of each project for work required under this Contract.  
28

29 4. Contract Documents. This contract consists of this Contract with all attached exhibits. All attached Exhibits are hereby incorporated by  
30 reference.  
31

32 5. Independent Contractor; Responsibility for Taxes and Withholding

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

37 b. If Contractor is currently performing work for County, the State of Oregon or the Federal Government, Contractor by signature to this  
38 Contract declares and certifies that: Contractor's work to be performed under this Contract creates no potential or actual conflict of interest as  
39 defined by ORS 244 and that no rules or regulations of Contractor's employing entity (county, state or federal) would prohibit Contractor's  
40 activities under this Contract. Contractor is not an "officer", "employee", or "agent" of County, as those terms is used in ORS 30.265.

41 c. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract  
42 and, unless Contractor is subject to backup withholding, County will not withhold from such compensation or payments any amount(s) to  
43 cover Contractor's federal or state tax obligations. Contractor is not eligible for any Social Security, unemployment insurance or workers'  
44 compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.  
45

46 6. Subcontracts and Assignment; Successors and Assigns.

47 a. Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this  
48 Contract, without County's prior written consent. In addition to any other provisions County may require, Contractor shall include in any  
49 permitted subcontract under this Contract a requirement that the subcontractor be bound by sections 6, 10, 11, 15, and 17 of this Contract as if  
50 the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations  
51 under this Contract.

52 b. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and  
53 assigns, if any.  
54

55 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.  
56 Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or  
57 otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of  
58 the terms of this Contract.  
59

60 8. Funds Available and Authorized

61 a. Contractor shall not be compensated for work performed under this contract by any other County or department of the State of Oregon.

62 County has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract.

63 b. County will only pay for completed work that is accepted by COUNTY.  
64

65 **9. Representations and Warranties**

- 66 **a. Contractor's Representations and Warranties.** Contractor represents and warrants to **County** that (1) Contractor has the power and  
67 authority to enter into and perform this Contract, (2) this Contract, when executed and delivered, shall be a valid and binding obligation of  
68 Contractor enforceable in accordance with its terms, (3) the Work under this Contract shall be performed in a good and workmanlike manner  
69 and in accordance with the highest professional standards, and (4) Contractor shall, at all times during the term of this Contract, be qualified,  
70 professionally competent, and duly license to perform the Work.  
71 **b. Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.  
72

73 **10. Ownership of Work Product.** All Work product of Contractor that results from this Contract ("the Work Product") are the exclusive property  
74 of **County**. **County** and Contractor intend that such Work Product be deemed "works made for hire" of which **County** shall be deemed the author.  
75 If for any reason the Work Product is not deemed "works made for hire", Contractor hereby irrevocably assigns all of its right, title, and interest in  
76 and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual  
77 property law or doctrine. Contractor shall execute such further documents and instruments as **County** may reasonably request in order to fully vest  
78 such right in **County**. Contractor forever waives any and all rights under 17 USC §106A or any other rights of identification of authorship or  
79 rights of approval, restriction or limitation on use or subsequent modifications.  
80

81 **11. Indemnity.** Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and **County**, their officers, employees, agents,  
82 from and against all claims, suits, or actions, losses, damages, liabilities costs and expenses of any nature whatsoever resulting from, arising out of,  
83 or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract.  
84

85 **12. Insurance.** Contractor shall provide insurance as required by State law.  
86

87 **13. Termination**

88  
89 **a. County's Right to Terminate for Convenience.** **County** may, at its sole discretion, terminate this Contract, in whole or in part, upon thirty  
90 (30) days notice to Contractor.  
91

92 **c. Remedies**

93 i) In the event of termination pursuant to Sections 13a, Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work  
94 multiplied by the percentage of Work completed and accepted by **County**, less previous amounts paid and any claim(s) which State has against  
95 Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to  
96 **County** upon demand.  
97

98 **d. Contractor's Tender Upon Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all  
99 activities under this Contract, unless **County** expressly directs otherwise in such notice of termination. Upon termination of this Contract,  
100 Contractor shall deliver to **County** all documents, information, works-in-progress and other property that are or would be deliverables had the  
101 Contract been completed. Upon **County** request, Contractor shall surrender to anyone **County** designates, all documents, research or objects or  
102 other tangible things needed to complete the Work.  
103

104 **14. Limitation of Liabilities. EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 9(a), NEITHER PARTY**  
105 **SHALL BE LIABLE FOR (i) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES UNDER THE**  
106 **CONTRACT OR (ii) ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS CONTRACT IN**  
107 **ACCORDANCE WITH ITS TERMS.**

108 **15. Records Maintenance; Access.** Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted  
109 accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document  
110 Contractor's performance. Contractor acknowledges and agrees that **County** and the Oregon Secretary of State's Office and the federal government and  
111 their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Contractor that  
112 are pertinent to this Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such  
113 fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable  
114 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  
115 this Contract, whichever date is later.  
116

117 **16. Compliance with Applicable Law.** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances  
118 applicable to the Work under this Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: (i) Title VI of  
119 Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all  
120 regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights  
121 and rehabilitation statutes, rules and regulations. **County's** performance under this Contract is conditioned upon Contractor's compliance with the  
122 provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which are incorporated by reference herein.  
123

124 **17. Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the  
125 Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract.  
126 Contractor shall demonstrate its legal capacity to perform the Work under this Contract in the State of Oregon prior to entering into this Contract.  
127

128 **18. Force Majeure.** Neither **County** nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, or war where  
129 such cause was beyond, respectively, **County's** or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove  
130 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  
131 contract.

132  
133 **19. Survival.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth  
134 in Sections 1, 9, 10, 11, 13, 14, 15, 19, and 25.

135  
136 **20. Time is of the Essence.** Contractor agrees that time is of the essence under this Contract.

137  
138 **21. Notice.** Except as otherwise expressly provided in this Contract, any communication between the parties hereto or notices to be given  
139 hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or **County** at the address or  
140 number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this  
141 Section 21. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or  
142 notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be  
143 effective against **County**, such facsimile transmission must be confirmed by telephone notice to **County's** Contract Administrator. Any  
144 communication or notice by personal delivery shall be deemed to be given when actually delivered.

145  
146 **22. Severability.** The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in  
147 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  
148 construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

149  
150 **23. Counterparts.** This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement  
151 binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall  
152 constitute an original.

153  
154 **24. Disclosure of Social Security Number.** Contractor must provide Contractor's Social Security number unless Contractor provides a federal  
155 tax ID number. This number is requested pursuant to ORS 305.385, OAR 125-20-410(3) and OAR 150-305.100. Social Security numbers  
156 provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

157  
158 **25. Governing Law, Venue, Consent to Jurisdiction.** This Contract shall be governed by and construed in accordance with the laws of the State of  
159 Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between **County** (and/or any other  
160 **County** or department of the State of Oregon) and Contractor that arises from or relates to this Contract shall be brought and conducted solely and  
161 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  
162 shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR, BY  
163 EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

164  
165 **26. Merger.** This contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no  
166 understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or  
167 change of terms of this Contract shall bind either party unless in writing and signed by both parties and all necessary State approvals have been  
168 obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.  
169 The failure of **County** to enforce any provision of this Contract shall not constitute a waiver by **County** of that or any other provision.

170  
171 **CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS**  
172 **CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

173 **CONTRACTOR DATA AND CERTIFICATION**

174 **Name (tax filing):** Miller and Sons

175 **Heppner, OR 97836**

176 **Citizenship**, if applicable: Non-resident alien  Yes  No

177 **Business Designation** (check one):

178  Corporation  Partnership  Limited Partnership  Limited Liability Company

179  Limited Liability Partnership  Sole Proprietorship  Other \_\_\_\_\_

180 **Federal Tax ID#:** \_\_\_\_\_ **or SSN#:** \_\_\_\_\_

181 Above payment information must be provided prior to contract approval. This information will be reported to the Internal Revenue Service (IRS)  
182 under the name and taxpayer I.D. number submitted. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not  
183 matching IRS records could subject contractor to 31 percent backup withholding.

184  
185 **Certification:** The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown on this form  
186 is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup  
187 withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest  
188 or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of  
189 Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in  
190 violation of any Oregon tax laws (including, without limitation, those listed in Exhibit B); (d) Contractor is an independent contractor as defined in ORS  
191 670.600; and (e) the above Contractor data is true and accurate.



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**CONTRACTOR**  
**MILLER AND SONS**

By: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Facsimile number: \_\_\_\_\_ Phone number: \_\_\_\_\_

**COUNTY**  
**Board of Commissioners**

**Date:** \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
County Clerk

\_\_\_\_\_  
**Melissa Lindsay, Chair**

\_\_\_\_\_  
**Don Russell, Commissioner**

\_\_\_\_\_  
**Jim Doherty, Commissioner**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
County Counsel