



AGENDA ITEM BRIEFING
Gilliam County Court

TODAY'S DATE: July 29, 2020

MEETING DATE: August 5, 2020

FROM: Teresa Aldrich, Administrative Assistant

TITLE OF AGENDA ITEM (No acronyms please): Consent Agenda

SUMMARY

4.1 Approval of July 22nd Regular Meeting Minutes

4.2 Approval of July Bills Pending Review

4.3 Approval of Amendment to the Blanket Purchase Agreement with Greater Oregon Behavioral Health (GOBHI). The existing contract expired on July 31, 2020, and this amendment changes the agreement to a month to month, renewing for an additional month on the first day of each month unless terminated by either party or superseded by a subsequent agreement.

4.4 Approval of Amendment 3 to Water Purchase Agreement with Keven Haguewood. The Water Purchase Agreement would be extended for an additional eighteen months to December 31, 2021.

4.5 Approval of Community Action Program of East Central Oregon (CAPECO) Services Agreement for Senior Meal Services. The agreement outlines the operation of Senior Meal Services in Condon and Arlington from July 1, 2020 through June 30, 2021.

4.6 Approval of Engagement Letter from Sussman Shank, LLP for joint legal defense effort between all 36 Counties, who are being sued in a class-action lawsuit regarding land sales.

ATTACHMENTS (Please list supporting documents. All attachments should be submitted with this brief)

July 22nd Regular Meeting Minutes (5 pages)

Blanket Purchase Agreement with GOBHI (1 page)

Water Purchase Agreement with Keven Haguewood (1 page)

Services Agreement with CAPECO (10 pages)

Sussman Shank Engagement Letter (10 pages)

Gilliam County Court
Regular Meeting Minutes
July 22, 2020

Judge Farrar called the Gilliam County Court Regular meeting to order at 10:00 a.m. at the Memorial Hall Condon, Oregon. Present were Judge Elizabeth Farrar, Commissioner Leslie Wetherell (via Zoom), Commissioner Sherrie Wilkins, Chief of Staff Lisa Atkin and Court Administrative Assistant Teresa Aldrich.

REVISIONS TO AGENDA

None.

IN THE MATTER OF PUBLIC COMMENT/CORRESPONDENCE

None.

IN THE MATTER OF CONSENT AGENDA

Motion by Commissioner Wilkins, second by Commissioner Wetherell, to approve the Consent Agenda. Farrar – Yes; Wetherell – Yes; Wilkins – Yes; **Motion Carried.**

The Consent Agenda included the following:

Approval of July 1st Regular Meeting Minutes

Appointment of Commissioner Wilkins to OSU Extension Citizen's Advisory Committee

Approval of Amendment #4 to ODOT Grant Agreement #32393

Approval of State of Oregon Intergovernmental Pass through Grant Agreement #165272

Approval of Arlington TV Cooperative Loan Promissory Note Amendment and Trust Deed Addendum

Approval of Drive-In Loan Promissory Note Amendment and Trust Deed Addendum

Approval of Pat's Pheasant Grill Loan Promissory Note Amendment and Trust Deed Addendum

IN THE MATTER OF PUBLIC HEARING TO CONSIDER MODIFICATION OF CONDITIONS OF APPROVAL FOR A CONDITIONAL USE PERMIT ISSUED TO WASTE MANAGEMENT DISPOSAL SERVICES (WMDS) FOR A SOLID WASTE LANDFILL KNOWN AS COLUMBIA RIDGE LANDFILL & RECYCLING CENTER IN THE EXCLUSIVE FARM USE ZONE

Judge Farrar opened the proceedings at 10:05 a.m. as set and advertised for the public hearing. Commissioner Wetherell declared a conflict of interest, as her husband works for Waste Management and recused herself. Gilliam County Planning Director, Michelle Colby briefed the Court on a set of proposed findings addressing the relevant criteria for consideration. Colby, the Gilliam County Planning Commission and Waste Management Environmental Protection Manager, Leah Shannon worked together

reviewing each condition under consideration. Colby addressed questions and provided clarification throughout the presentation. Waste Management Environmental Protection Manager, Shannon addressed the Court and thanked Colby for all the hard work and calibration put into the Conditional Use Permit (CUP) review and agreed with all the recommendations presented. After hearing no public comments for proponent or neutral testimony, Judge Farrar moved to public comments in opposition of the CUP. James and Alcenia Wright addressed the Court. Areas of concern were Waste Management's lack of community involvement, accountability, protection of Gilliam County citizens and the Counties relationship with Metro. In conclusion, Shannon appreciated the Wrights concerns and will take them back to Waste Management. Judge Farrar closed the hearing 11:46 a.m. for deliberations. A recording can be found at <http://www.co.gilliam.or.us/>.

RECESS 11:20 a.m.

BACK IN SESSION 11:27 a.m.

IN THE MATTER OF AWARD OF FY 2020-2021 SPECIAL PROJECTS GRANT TO ARLINGTON EDUCATION FOUNDATION

During the July 1st Regular Court Meeting, Commissioners Wilkins and Wetherell requested more time to research and clarify the special projects grant application submitted by Arlington Education Foundation. Commissioner Wilkins recently spoke with Brad Anderson for additional information. After a discussion it was the decision of the Court to award a special projects grant for website and newsletter design.

Motion by Commissioner Wilkins, second by Commissioner Wetherell, to award a FY 2020-2021 North Gilliam Special Projects Grant to the Arlington Education Foundation in the amount of \$10,000 and to authorize the County Judge to prepare and execute a grant agreement reflecting the terms and conditions discussed. Farrar – Yes; Wetherell – Yes; Wilkins – Yes; **Motion Carried.**

IN THE MATTER OF FTE ADJUSTMENT OF GILLIAM COUNTY LIBRARIAN POSITION

Gilliam County Public Library Board Vice-Chair David Greiner submitted a letter from the library board along with documentation of librarian daily duties for review. The board is of the opinion the librarian position's hours and duties warrant the position be full time. Librarian Mary Reser was also present to answer questions. There was a discussion of extra duties due to the pandemic, additional non-pandemic related duties, BOLI's requirement for regular rest breaks and the Collective Bargaining Agreement consideration of 37.5 hours per week equating to full time. It was the consensus of the Court to move forward with the FTE adjustment. Judge Farrar explained to achieve the adjustment there are multiple steps that will need to be completed, before the item can be brought back to the Court.

IN THE MATTER OF RESOLUTION NO R2020-22; ADOPTING A SAFEGUARDING PERSONAL IDENTITY INFORMATION POLICY

CIS is requiring Gilliam County adopt a Safeguarding Personal Identity Information Policy (PII) to purchase the increased Cybersecurity coverage previously approved by the Court at the July 1st County Court Regular Meeting. The Safeguarding PII Policy is designed to establish a foundation for an organizational culture of security and helps ensure Gilliam County's compliance with the Oregon Identity Theft Protection.

Motion by Commissioner Wetherell, second by Commissioner Wilkins, to adopt Resolution No. R2020-22 as presented. Farrar – Yes; Wetherell – Yes; Wilkins – Yes; **Motion Carried.**

IN THE MATTER OF RESOLUTION NO R2020-23; ADOPTING A REVISED FY 2020-21 SHERIFF'S OFFICE SALARY SCHEDULE

The Court adopted FY2020-2021 salary schedules for Represented Employees, Non-Represented Employees, Sheriff's Office Employees and Elected Officials during the July 1st Regular Meeting. When loading the new salary schedules into the payroll system the County Clerk discovered an error in the Sheriff's Office Salary Schedule. The error occurred during the conversion of the Emergency Management Coordinator's position from 37.5 hours to 40 hours per week. The proposed resolution corrects the error and ensures the position receives the full 2.5% COLA provided to Sheriff's Office employees. No other changes were made to the Salary Schedule.

Motion by Commissioner Wilkins, second by Commissioner Wetherell, to adopt Resolution No. R2020-23 as presented. Farrar – Yes; Wetherell – Yes; Wilkins – Yes; **Motion Carried.**

IN THE MATTER OF GILLIAM COUNTY HISTORICAL SOCIETY SPECIAL PROJECT GRANT AWARD

The Historical Society was a recipient of a Special Projects Grant for FY 2019-20 to construct a new exhibit building. Due to a number of circumstances, the construction timeline for the project has been extended into FY 2020-2021, and the Historical Society is requesting the Grant Agreement be amended to provide them with more time to complete the project and expend the funds.

Motion by Commissioner Wetherell, second by Commissioner Wilkins, to amend the FY 2019-2020 Special Projects Grant Award to the Gilliam County Historical Society for construction of a new exhibit building by extending the deadline for expending the grant funds to June 30, 2021, and to authorize the County Judge to prepare and execute an amended grant agreement reflecting the same. Farrar – Yes; Wetherell – Yes; Wilkins – Yes; **Motion Carried**

IN THE MATTER OF ANNOUNCEMENTS

Judge Farrar, Commissioner Wilkins and Wetherell noted the following:

- The August 5th Regular Court Meeting will be held by Zoom.
- Commissioner Wilkins reported no NORCOR meeting was held in June, the next meeting will take place in July.
- Commissioner Wilkins will be attending the CAPECO Meeting via Zoom on Friday, July 24th at 11 a.m.
- Commissioner Wetherell attended the NCPHD meeting. Wasco County has been added to the COVID watch list. As of the meeting date, Wasco County had 119 positive cases, Gilliam County 2 and Sherman County 5. The NCPHD Board is continuing the search for an Administrator.
- Judge Farrar and Commissioners Wilkins and Wetherell all reported they had meetings with the new Arlington School District Superintendent, Brandon Hammond. All reported very positive interactions with Hammond and are looking forward to working with him in the future.
- Tri-County Court Meeting will be postponed until October.

Recess 12:41 p.m. Commissioner Wetherell was excused.

Back in Session 12:45 p.m.

IN THE MATTER OF ORDER NO. 2020-01; MODIFICATIONS TO CONDITIONS OF APPROVAL FOR A CONDITIONAL USE PERMIT 2020-0001, FOR WASTE MANAGEMENT DISPOSAL SERVICES OF OREGON FOR COLUMBIA RIDGE LANDFILL AND RECYCLING CENTER

County Court conducted a public hearing today, July 22nd for the purpose of considering Modification of Conditions of Approval for a Conditional Use Permit issued to Waste Management Disposal Services for a solid waste landfill known as Columbia Ridge Landfill & Recycling Center in the exclusive farm use zone. The Court Order is the official action to take place after the public hearing to acknowledge the matter brought before the Court during the public hearing.

Motion by Commissioner Wilkins, second by Judge Farrar, to approve Court Order No. 2020-01 with Exhibit A as amended. Farrar – Yes; Wilkins – Yes; **Motion Carried**

IN THE MATTER OF ADJOURNMENT

It appearing to the Court that there was no further business to be conducted at this time, Judge Farrar adjourned the meeting at 12:51 p.m.

GILLIAM COUNTY COURT

By _____

Elizabeth Farrar, Judge

By _____

Leslie Wetherell, Commissioner

By _____

Sherrie Wilkins, Commissioner

Teresa Aldrich _____

Court Administrative Assistant

DRAFT

SERVICES AGREEMENT

This Services Agreement (this “**Agreement**”) is between Community Action Program of East Central Oregon, an Oregon nonprofit corporation (“**CAPECO**”) and Gilliam County, (“**AGENCY**”).

AGENCY

Gilliam County
PO Box 427
Condon, OR 97823
Contact Name: Sabrina Wagenaar
Telephone: 541-384-2252
Fax: 541-384-3304
E-mail address: sabrina.wagenaar@co.gilliam.or.us

CAPECO

Community Action Program of East Central Oregon
721 SE Third Street, Suite D
Pendleton, OR 97801
Agreement Administrator: Paula Hall
Telephone: 541-278-5671
E-mail address: phall@capeco-works.org

SECTION 1 SERVICES; TERM

1.1 Services. AGENCY will operate a nutrition program in accordance with the specifications set forth on Exhibit 1, which is attached hereto and incorporated as part of this Agreement (the “**Services**”). Without limitation, the Services will include the following:

- (a) “**Food Service**” means the production and service or delivery of meals for the congregate meal recipients of AGENCY, in accordance with the specifications set forth on Exhibit 1. Each meal produced will contain at least one-third (1/3) of the Recommended Dietary Allowance (RDA), as established by the Food and Nutrition Board, National Research Council, National Academy of Science, as amended from time to time.
- (b) “**Meal Site Management**” means administration of the nutrition program in accordance with the specifications set forth on Exhibit 1, and includes, but is not limited to, the following tasks: supervising final on-site preparation and service or delivery of meals to eligible congregate and home delivered meal participants; recruiting, training, scheduling, and monitoring program volunteers; determining eligibility of participants; collecting and accounting for participant donations; completing and submitting required budget and program reports;

providing events and activities for eligible participants at AGENCY; and publicizing meal sites in the community to enhance visibility and encourage participation.

- 1.2 Term.** The term of this Agreement will commence on July 1, 2020 and will continue until terminated pursuant to Section 8 of this Agreement.

SECTION 2 COMPENSATION

The work defined in Exhibit A will be performed on a cost reimbursement basis in accordance with the terms of this Agreement. The maximum not to exceed compensation is **\$8,646.10 OAA** (CFDA 93.045), not to exceed **\$3,244.97 NSIP** (CFDA 93.053) for a total of **\$11,891.07**.

1. City of Arlington:
 - a. \$3,794.49 (OAA Congregate Meals reimbursed at 1/12th of Agreement amount per month)
 - b. \$1,424.11 (NSIP Meals reimbursed at 1/12th agreement amount per month)
2. City of Condon
 - a. \$4,851.61 (OAA Congregate Meals reimbursed at 1/12th of Agreement amount per month)
 - b. \$1,820.86 (NSIP Meals reimbursed at 1/12th agreement amount per month)

Funding awarded under this Agreement is consistent with the budget cycle of the Prime Award. It is anticipated that continuation awards will cycle each year on or about June 30, 2020. This Agreement may be modified to add continuation funding on or about the Anniversary Date; however, continuation funding is not guaranteed.

Compensation to AGENCY is expressly conditioned on the following:

- (a) Receipt by CAPECO of full funding allocated to CAPECO from the Oregon State Unit on Aging; and
- (b) Submittal by AGENCY to CAPECO of invoices and accompanying progress reports, in accordance with the reporting requirements set forth in Exhibit 1.

SECTION 3 RELATIONSHIP

- 3.1 Independent Contractor.** AGENCY will be an independent contractor of CAPECO. AGENCY will have the authority to hire other persons to provide or to assist in providing the Services, will direct and control their work, and will have the authority to fire those persons.

- 3.2 Taxes.** CAPECO will not withhold any taxes from any payments made to AGENCY, and AGENCY will be solely responsible for paying all taxes arising out of or resulting from the performance of the Services, including but not limited to, income, social security, worker's compensation, and employment insurance taxes.
- 3.3 Standards.** AGENCY represents, warrants, and covenants to CAPECO that, in the provision of the Services, AGENCY is customarily engaged in, and will continue to customarily engage in, an independently established business as described in ORS 670.600(3).
- 3.4 No Agency or Joint Employer Relationship.** This Agreement does not create an agency relationship between the parties and does not establish a joint venture or partnership between the parties. AGENCY does not have the authority to bind CAPECO or represent to any person that AGENCY is an agent of CAPECO. Nothing about this relationship is intended to establish or will establish an employment relationship or joint employer relationship of any kind between anyone, including, without limitation, any employment or joint employer relationship between or among the parties, or an employment relationship between CAPECO and any of AGENCY's employees, agents, or contractors, all of whom will remain solely under the direction and control of AGENCY. AGENCY acknowledges and agrees that it is solely responsible for compensating any of its employees or subcontractors.

SECTION 4 LIMITED WARRANTY

- 4.1 Warranty.** AGENCY represents and warrants to CAPECO that the Services will be performed by qualified personnel in a professional and safe manner, and in accordance with the specifications set forth on Exhibit 1, and that it has all rights and licenses necessary to perform the Services.

SECTION 5 COVENANTS OF AGENCY

AGENCY covenants to CAPECO as follows:

- 5.1 Insurance.** AGENCY will obtain and maintain insurance policies that provide adequate coverage for all risks normally insured against by a person carrying on a similar business in a similar location, and for any other risks to which AGENCY is normally exposed. Without limitation of the foregoing, AGENCY will obtain and maintain the following insurance policies with respect to the Services, which will include CAPECO as an additional insured:

- (a) Comprehensive general liability insurance in amounts of not less than \$500,000 combined single limit per occurrence / \$1,000,000 general annual aggregate for personal injury and property damage or loss of use thereof.

Any insurance required under this Section 5.1 will:

- (a) Provide for advance written notice of thirty (30) days to CAPECO in the event of cancellation or material change;

(b) Expressly state that no act on the part of the insured will affect the coverage afforded to CAPECO under the insurance; and

(c) Provide for written notice to CAPECO within thirty (30) days following any reduction in the general annual aggregate limit.

5.2 Compliance with Laws and Any Governmental Authorizations. AGENCY will comply with all applicable laws. AGENCY will obtain and maintain all of the licenses, permits, registrations, and other governmental authorizations required to conduct AGENCY’s business and perform the Services, and will be solely responsible for doing so.

5.3 Records; Access. AGENCY will maintain all financial records, including, without limitation, payroll records, related in any way to this Agreement or the performance of the Services, in a clearly identifiable and readily accessible format for a period of not less than three (3) years after receipt by AGENCY of final payment under this Agreement; provided, that AGENCY will retain any records that are the subject of audit findings until such audit findings are resolved. AGENCY acknowledges and agrees that CAPECO, the State of Oregon, the United States, and each of their respective duly authorized representatives will have access to the books and records of AGENCY, in any form whatsoever, including, without limitation, electronic form, related in any way to this Agreement, for the purposes of making audits, examinations, duplicates, copies, excerpts, and transcripts.

SECTION 6 INTELLECTUAL PROPERTY RIGHTS

6.1 Definition. “Creative Work” means, collectively, any and all work product and deliverables of every type and nature in any format that AGENCY creates or has created in connection with the Services, and all intellectual property rights therein, including, without limitation, all trademarks, patents, moral rights, and all other proprietary rights whatsoever.

6.2 Work Made for Hire, and Assignment. All right, title, and interest in and to Creative Work will be and hereby are vested and assigned to CAPECO. To that end, all Creative Work created hereunder will be on a “work made for hire” basis (as defined in the United States Copyright Act (17 U.S.C. 101, *et. seq.*)) to the maximum extent permitted by law. Any portion of or rights related to such Creative Work that cannot be considered work made for hire are hereby irrevocably assigned to CAPECO. AGENCY will not be entitled to receive any royalty, fee, or other payment in connection with its performance of its duties under this Agreement or in connection with Creative Work except the compensation for the Services under this Agreement. AGENCY agrees that no portion of the Creative Work may be used, disclosed, distributed, or adapted for the benefit of AGENCY or any third party. To the extent any third-party content or materials are included in Creative Work, AGENCY hereby grants to CAPECO a perpetual, non-exclusive, royalty-free license to use such content and materials as incorporated in Creative Work.

6.3 Perfection. At the request and expense of CAPECO, AGENCY will sign such documents and take such actions that CAPECO deems reasonably necessary to perfect, protect, and evidence CAPECO's rights in Creative Work. AGENCY further agrees that AGENCY's obligation to sign such documents will continue even after the termination of AGENCY's engagement with CAPECO. If CAPECO is unable, whether because of AGENCY's unavailability or for any other reason, to secure AGENCY's signature to apply for or to pursue any application for any United States or foreign copyright registrations or other intellectual property protection covering any Creative Work vested in or assigned to CAPECO above, then AGENCY hereby irrevocably designates and appoints CAPECO and its duly authorized officers and agents as AGENCY's agent and attorney in fact, to act for and in AGENCY's behalf and stead to execute and file any such application(s) and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance, or transfer of letters patent or copyright registrations thereon with the same legal force and effect as if originally executed by them. AGENCY hereby waives and irrevocably quitclaims to CAPECO any and all claims, of any nature whatsoever, which AGENCY now or hereafter has for infringement of any and all intellectual and proprietary rights assigned to CAPECO.

SECTION 7 INDEMNIFICATION

AGENCY will defend and indemnify CAPECO and each present and future director, commissioner, manager, officer, and authorized representative of CAPECO for, from, and against any and all claims, actions, proceedings, damages, liabilities, and expenses of every kind, whether known or unknown, including but not limited to, reasonable attorney's fees, resulting from or arising out of:

- (a) AGENCY's failure to pay any tax arising out of or resulting from the performance of the Services;
- (b) Any allegation or claim that the Services or Creative Work infringes any copyright, patent, or trademark, constitutes a misappropriation of any trade secret, or violates any other intellectual or proprietary right of any person;
- (c) Any employment relationship of AGENCY's, any claim brought by any current or former employee or applicant of AGENCY's, and any allegation that CAPECO is somehow an employer or joint employer of any of AGENCY's employees; or
- (d) AGENCY's breach of any representation, warranty, or covenant in this Agreement.

SECTION 8 TERMINATION

This Agreement will terminate on June 30, 2021, or, before that date, on the earliest to occur of the following:

- (a) Earlier termination as mutually agreed by the parties;
- (b) Thirty (30) days following notice by either CAPECO to AGENCY, or AGENCY to CAPECO; or

- (c) Notice by CAPECO to AGENCY, if: AGENCY engages in any form of dishonesty or conduct involving moral turpitude related to AGENCY's relationship with CAPECO or that otherwise reflects adversely on the reputation or operations of CAPECO; AGENCY fails to materially comply with any applicable law related to AGENCY's independent contractor relationship with CAPECO; continuous or repeated problems occur in connection with the performance of AGENCY's duties; or AGENCY materially breaches this Agreement and fails to cure the breach within fifteen (15) days after CAPECO notifies AGENCY of the breach.

SECTION 9 GENERAL

- 9.1 No Assignment or Subcontracts; Binding Effect.** AGENCY may not assign or delegate any of AGENCY's rights or obligations under this Agreement to, or subcontract for the performance of any of the Services with, any entity or person without the prior written consent of CAPECO, which CAPECO may withhold in its sole discretion. This Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit.
- 9.2 Amendment.** This Agreement may be amended only by a written document signed by the party against whom enforcement is sought. AGENCY agrees to modify this Agreement, as reasonably necessary, within a reasonable time after notice from CAPECO of the following:
- (a) A significant change, as determined by CAPECO, in program content or scope of the Services, or the RFP for awarding of this Agreement; or
 - (b) A change in any of the General or Special Provisions.
- 9.3 Notices.** All notices or other communications required or permitted by this Agreement: must be in writing; must be delivered to the parties at the addresses set forth underneath their signatures below, or any other address that a party may designate by notice to the other party; and are considered delivered:
- (1) On actual receipt if delivered personally, by fax, or by a nationally recognized overnight delivery service; or
 - (2) At the end of the third business day after the date of deposit, if deposited in the United States mail, postage pre-paid, certified, return receipt requested.
- 9.4 Waiver.** No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.
- 9.5 Severability and Construction.** If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired. The language

in all parts of this Agreement shall in all cases be construed according to its fair meaning and not strictly for or against any of the parties to this Agreement. Without limitation, there will be no presumption against any party on the ground that such party was responsible for drafting this Agreement or any part of it.

- 9.6 Further Assurances.** The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement.
- 9.7 No Third-Party Beneficiaries.** The parties do not intend to confer any right or remedy on any third party.
- 9.8 Termination and Survival.** The termination of this Agreement, regardless of how it occurs, will not relieve a party of obligations that have accrued before the termination. All provisions of this Agreement that would reasonably be expected to survive the termination of this Agreement will do so.
- 9.9 Attachments.** Any exhibits, schedules, and other attachments referenced in this Agreement are part of this Agreement, including without limitation, Exhibit 1 (Services).
- 9.10 Remedies.** The parties will have all remedies available to them at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.
- 9.11 Governing Law and Venue.** This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action, suit, or proceeding arising out of the subject matter of this Agreement will be litigated in courts located in Deschutes County, Oregon. Each party consents and submits to the jurisdiction of any local or state court located in Deschutes County, Oregon.
- 9.12 Entire Agreement.** This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.
- 9.13 Signatures and Authority.** This Agreement may be executed in counterparts, each of which will be deemed an original and together will constitute one instrument. Copies of signature by facsimile, electronic scan or otherwise will be treated as original signatures. The signatories to this Agreement warrant that they have the authority to execute this Agreement on behalf of the parties to this Agreement and that any entity on behalf of which they are signing has executed this Agreement pursuant to its governing documents or a resolution of those having the power to control its affairs of this nature. Each of the parties has obtained advice of legal counsel prior to and for the execution of this Agreement, or has knowingly waived the party's right to do so, and each party understands fully the contents of this Agreement.

Dated effective: July 1, 2020

CAPECO, an Oregon nonprofit corporation

AGENCY: GILLIAM COUNTY

By: _____
Name: Paula Hall
Title: CEO
Date: _____
Address: 721 SE Third Street, Suite D
Pendleton, OR 97801

By: _____
Name: _____
Title: _____
Date: _____
Address: _____

EXHIBIT 1

Scope of Work and Service Objectives and Elements of Completion

1. Nutrition Program Purpose

- a. The senior nutrition program is part of a continuum of care designed to support independent living of older Americans under the Title III (Grants to State and Community Programs on Aging) of the Older Americans Act (OAA).
- b. The objectives of the OAA nutrition programs are to provide an opportunity for older individuals to live their years in dignity by providing healthy, appealing meals; promoting health and preventing disease; reducing malnutrition risk and improving nutritional status; reducing social isolation and increasing social interaction; linking older adults to community-based services; and providing opportunity for meaningful community involvement, such as through volunteering.
- c. Adequate nutrition is key to a person maintaining the adequate health necessary to live at home. Frequent contact with others provides a means to monitor the participant's health, well-being, and safety. AAA programs across the state strive to accomplish this by providing congregate nutrition programs and home-delivered meals. Although the primary service is meals, other nutrition services authorized by the OAA include nutrition screening, education and counseling.

2. Nutrition Program Definitions

<http://www.oregon.gov/DHS/SENIORS-DISABILITIES/SUA/Pages/Nutrition-Program.aspx>)

- a. "Congregate Setting" means a social event where meals are served to qualifying clients. The congregate setting promotes health and independence through social contact, meaningful involvement, nutrition, community connection and access to information and services. The congregate setting is designed to provide a welcoming and pleasant atmosphere where people age 60 and older (and their spouses) can gather for a meal. Seniors can enjoy meeting new people, form friendships and support groups by coming together for meals on a regular basis. The balanced meal and the social contact together provide a positive motivation for self-care for seniors who often eat poorly on their own and can become lonely and depressed in isolation. The nutrition program is more than just a meal- it's purpose is to nourish the whole person.

3. Congregate Nutrition Services - Nutrition Program Standards

- a. AGENCY will provide at least one hot meal or other appropriate meal in the congregate setting at least once a week.

- b. Congregate meals may be offered in a variety of settings, including nutrition sites: Senior centers/community centers, churches, schools, adult care facilities, or some other congregate setting under the supervision of a nutrition project.
- c. Congregate meals must comply with the 2015-2020 Dietary Guidelines for Americans and provide a minimum of thirty-three and one-third percent (33- 1/3%) of the current daily Recommended Dietary Allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and the 2015-2020 Dietary Guidelines for Americans (Published by the Secretaries of the Department of Health and Human Services and USDA).
<https://www.oregon.gov/DHS/SENIORS-DISABILITIES/SUA/Documents/2018%20Nutrition%20Standards%20-%208-28-18.pdf>
- d. Congregate meal providers will advise participants to keep additional shelf stable emergency food at home in case of inclement weather that prevents travel to the congregate site or other such emergencies.
- e. CAPECO will coordinate and AGENCY will provide nutrition education to meal site participants on a quarterly basis, at a minimum. Nutrition education subjects will be based on the needs of the participants and should be culturally appropriate.
- f. AGENCY will develop a strategy that allows participants to make confidential donations for congregate meals.

4. Target Population

- a. Congregate: The target population for congregate meal services is persons age sixty (60) and over and their spouses, and individuals with disabilities who reside at home and accompany older individuals to the meal site. Meal services should be targeted to those persons with greatest economic need, greatest social need, those with low incomes, and eligible minorities.

5. Nutrition Service Standards - Food Service, Sanitation & Safety

- a. Compliance with applicable federal, state, and local fire, health, sanitation, safety and building codes, regulations, licensor requirements, and other provisions relating to the public health, safety, and welfare of meal patrons is required in all stages of food service operations. (Reference: <https://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/ucm374275.htm>)
- b. Copies of all current inspection reports by health department staff, registered sanitarian, or fire officials should be kept on file by the provider and posted at the meal site.

- c. Temperature checks should be taken with a food thermometer daily at the time the food leaves the production area, upon arrival if food is prepared off site, and again at serving time. Records of these temperature checks should be kept in the nutrition program files.
- d. Each meal site is required by state sanitation laws to control access to the kitchen to those who work in it.
- e. Foods must be prepared, served and transported with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed, and sanitized to prevent cross contamination.
- f. Effective procedures for sanitizing dishes, equipment, and work areas should be written, posted, and followed consistently.
- g. Hot food items must be maintained at or above 140 degrees Fahrenheit and cold food items must be maintained at or below 41 degrees Fahrenheit throughout the period of meal service. In order to retain maximum nutritional value and food quality, foods should be served as soon as possible after preparation.

6. Meal Packaging Supplies and Carriers

- a. Meal packaging supplies and carriers will be used to assure that hot foods are packaged and transported in separate carriers from cold foods.
- b. Meal carriers used to transport food will be enclosed and equipped with insulation and supplemental hot or cold sources as needed to maintain appropriate temperatures.
- c. Meal carriers will be cleaned and sanitized daily.
- d. Foods requiring refrigeration will be pre-chilled in less than four hours and held at or below 40 degrees Fahrenheit throughout transport.
- e. Foods requiring heated storage will be held at or above 140 degrees Fahrenheit throughout transport.

7. Volunteer Training

All volunteers shall be trained in safe food handling procedures. Providers shall develop written procedures for all aspects of meal services. Regular training should be provided and include:

- a. Client confidentiality
- b. General delivery procedures to the homebound

- c. Sanitation requirements
- d. Safe food handling practices
- e. Emergency situations while delivering meals to homebound participants.
- f. Donation policies

8. Site Location and Management

- a. Congregate meal sites should be conveniently located to the target population; be ADA compliant; be in a safe, well-lit, well-maintained location; easily visible and open to the public; have adequate space to support programming; have clear, inviting, and culturally appropriate exterior and interior signage.
- b. The physical interior of the meal site should create an atmosphere that is pleasant and inviting; have a welcoming ambience; adequate lighting and acoustics; accessible restroom locations; kitchens that support high quality and safe meal service; and furnishings that are functional, comfortable, tasteful, safe and appropriate.
- c. Site management should include: staff that are knowledgeable of the aging network system and services; sensitive to aging issues; competent in food service management; able to provide safe and appetizing meals that meet OAA requirements, adapt to client satisfaction, and provide opportunities for nutrition education.
- d. Site management should be able to: provide programs that create interaction opportunities and that meet participant needs and interests; create public awareness of programs and services; provide volunteer opportunities; and to provide consistent and accurate required reporting; monitoring of budget and fundraising activities.

9. Menus and Menu Planning

- a. Each meal served must meet the *2015-2020 Dietary Guidelines* and must contain at least one third (1/3) of the current Recommended Dietary Allowances (RDA) as established by the Food and Nutrition Board of the National Academy of Science-National Research Council.
- b. Further specification states that a minimum of 33 1/3 percent of the recommended allowances as established by the Food and Nutrition Board be present if one meal is provided. If two meals are provided, 66 2/3 percent will be included; and if all three meals are provided, 100% RDA must be met.
- c. Special needs of the elderly must be considered in menu planning. To help assure that menus will address the nutritional needs of the elderly, menu planning should be designed to:

- (1) Include a variety of foods;
 - (2) Avoid too much fat, saturated fat, and cholesterol;
 - (3) Include foods with adequate complex carbohydrates and fiber
 - (4) Avoid too much refined carbohydrates (sugars);
 - (5) Avoid too much sodium; and
 - (6) Provide an appropriate number of calories to help maintain ideal body weight.
- d. Menus should be planned and written for a minimum of three (3) months and be certified and signed by a Registered Dietitian.
 - e. A Registered Dietitian must perform a nutrition analysis and state that each meal meets one-third (1/3) of the RDA. Any departure from the certified menu must be documented and initialed on AGENCY's official file copy of the menu and/or nutrient analysis form by the Registered Dietitian.
 - f. A food identified and counted in one food group category cannot be counted as a food in another food group category. Example: A fruit identified as a dessert cannot also be counted toward a service of fruits and vegetables.
 - g. Beverages that are generally available at congregate sites do not contribute to the Nutrient intake of the meal; although they do enhance fluid intake of participants.
 - h. To the maximum extent practicable, meals will be adjusted to meet special dietary needs of program participants for health reasons and to provide flexibility in designing meals that are appealing to program participants.

10. Operating Policies

Contractor shall develop, implement and annually update an operating policy manual containing, at a minimum, the following:

- a. Fiscal management
- b. Food service management
- c. Safety and sanitation
- d. Staff responsibilities

11. NAPIS Reporting

- a. Contractor will receive training from CAPECO on how to complete NAPIS registration forms. (Attachment E).
- b. NAPIS data includes the OAA Nutrition Screening survey that should be completed at the time of intake and at annual update.
- c. NAPIS Registration Form will be updated annually. AGENCY must collect and report the information required by the Older Americans Act by sending the information to CAPECO. (Attachment E).
- d. Participants who decline to provide the NAPIS data may not be denied service.

12. Nutrition Education, Counseling, and Outreach

- a. Nutrition education is designed to promote better health by providing accurate and culturally sensitive nutrition, physical fitness, or health (as it relates to nutrition) information and instruction to participants (and caregivers when appropriate) in a group or individual setting.
- b. Each congregate meal program will provide nutrition education at a minimum of quarterly. Each home delivered meal program will provide nutrition education during the first nutrition risk assessment and a minimum of one time per year subsequently. CAPECO will provide supplies and on-going training. Nutrition education goals should:
 - (1) Foster positive attitudes toward good nutrition and provide motivation for improved dietary practices.
 - (2) Provide adequate knowledge and skills regarding diet and health so the individual can make appropriate food choices.
 - (3) Assist the individual in identifying resources for continuing access to sound food and nutrition information.
- c. Nutrition programs will maintain documentation of nutrition education. Suggested Nutrition Education content includes:
 - (1) Food: Including the kinds and amounts of food that are required to meet one's daily nutritional needs (USDA MyPlate)
 - (2) Nutrition: Including the combination of processes by which the body receives substances necessary for the maintenance of its functions and for growth and renewal of its components, i.e.: ingestion, digestion, absorption, metabolism, and elimination.
 - (3) Behavioral Practices: Including the factors which influence one's eating and food preparation habits

- (4) Consumer Issues: Including the management of food purchasing power to obtain maximum food value for the money spent.
- d. Nutrition outreach is designed to seek out and identify, on an ongoing basis, the maximum number of eligible individuals. Nutrition programs should develop an outreach plan to assure that the maximum number of eligible individuals in the service area have an opportunity to participate in nutrition services.
- e. Documentation for congregate meal sites shall include:
 - (1) Date of presentation or distribution of materials
 - (2) Name and title of presenter or title of materials distributed
 - (3) Topic discussed (if applicable)
 - (4) Number of persons in attendance
- f. Methods for Nutrition Education can include speakers, newsletters, printed materials, bulletin boards, displays, videos, the Internet, etc. The educational material will be supplied by CAPECO.

13. Meal Donations and Program Income

- a. Voluntary contributions will be allowed and may be solicited in a non-coercive manner. No eligible individual will be denied service because of failure to provide a donation for a meal as specified in OAA, Section 315(b)(1,3). The privacy and confidentiality of individuals should be informed that there is no obligation to contribute.
- b. A clearly visible and easy-to-read sign should be posted near the entrance or sign-in table and should state the actual cost of the meal, suggested donation and a statement indicating that individuals under 60 must pay the full cost of the meal.
- c. Volunteers offered the option of a meal on the same basis as meals provided to participating older adults should be encouraged to donate towards the cost of their meal.
- d. Program income includes all participant donations for meals. Appropriate procedures to safeguard and account for all contributions should be established and all collected contributions used to expand the service for which contributions were given.
- e. All program income will be used within the program year in which it is received and shall be used before federal, state, or local funds are used in accordance with OAA Section 314 (b)(4)(E).

14. Participant Input

AGENCY shall have a means of soliciting participant input on appropriate matters relating to Congregate and Home-delivered meal programs. Focus groups, advisory councils, suggestion boxes, surveys, and input from staff and volunteers are suggested ways to meet this requirement.

15. Administrative Requirements

CAPECO must approve in advance all proposed subcontracts between the AGENCY and any other agency or organization.

16. Records, Reports and Procedures

- a. AGENCY will use the Congregate Meal Roster and Guest Sign-In Sheet (Attachment A) as provided by CAPECO. These forms are used to record how many meals are served to each client every month and must be submitted on or before the 5th of the month following service. CAPECO will enter client names on the Meal Rosters based on the NAPIS Registration Form (Attachment E) as provided by AGENCY. CAPECO will enter all information into Oregon Access.

- b. AGENCY must also submit the Volunteer Hour & Mileage Form (Attachment C) and In-Kind Report (Attachment D) on or before the 5th of the month following service.

17. Nutrition Service Incentive Program Meals (NSIP)

The Nutrition Service Incentive Program (NSIP) is administered by the Administration on Aging (AOA). Meals eligible for NSIP funds must be served by a nutrition service provider under the jurisdiction, control, management and audit authority of the Area Agency on Aging (local AAA)

18. Criminal Records and Abuse Checks

AGENCY will comply with applicable background check requirements, including, without limitation, by procuring a criminal records check for each individual who is a “subject individual” within the meaning of OAR 407-007-0010 and is:

- a. An employee of AGENCY;
- b. A volunteer for AGENCY; or
- c. A subcontractor for AGENCY, including, without limitation, employees and volunteers of the subcontractor.

AGENCY will procure any such criminal records check as follows:

- a. Before requesting the criminal records check, AGENCY will clearly and conspicuously disclose in writing to the subject individual, in a document consisting only of the disclosure, that a criminal records check may be obtained for employment purposes;
- b. AGENCY will request CAPECO to procure a criminal records check for the subject individual; and
- c. On request by AGENCY for a criminal records check, AGENCY will provide to CAPECO the following documents:
 - a. Written authorization from the subject individual for CAPECO to procure a criminal records check for the subject individual;
 - b. A copy of the subject individual's driver license or state-issued identification card; and
 - c. A criminal history form provided to AGENCY by CAPECO and completed by the subject individual.

AGENCY acknowledges, understands, and agrees that: (i) CAPECO will not conduct criminal records checks for AGENCY or otherwise engage in the practice of assembling or evaluating information about subject individuals of the AGENCY, and is not a "consumer reporting agency," as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681-1681x; (ii) CAPECO will forward any requests from AGENCY for criminal records checks to the Oregon Department of Human Services for completion of the criminal records checks; and (iii) CAPECO makes no representations or warranties as to the accuracy or completeness of any criminal records checks.

Attachment A
Congregate Meal Roster and Guest Sign-In Sheet

Attachment B
Not Applicable

Attachment C
Volunteer Hour & Mileage Form

Attachment D
In-Kind Report

Attachment E
NAPIS Registration Form

AMENDMENT 3 TO GILLIAM COUNTY WATER PURCHASE AGREEMENT

PARTIES: Gilliam County, a political subdivision of the state of Oregon (“County”)
PO Box 427
Condon, OR 97823

Keven Haguewood (“Purchaser”)
64396 McNab Lane
Ione, OR 97843

RECITALS

- A. The Parties entered into a Gilliam County Water Purchase Agreement on December 7, 2018 (“The Agreement”) for the purchase of water from the County’s well located at Shutler Station, Gilliam County, Oregon.
- B. The Agreement was amended and extended (Amendment 1) to December 31, 2019.
- C. The Agreement was amended and extended again (Amendment 2) to June 30, 2020.
- D. Purchaser desires to continue the Agreement for an additional eighteen months.
- E. County agrees to continue the Agreement for an additional eighteen months.

NOW, THEREFORE, BASED ON THE MUTUAL PROMISES OF THE PARTIES, THE PARTIES AGREE AS FOLLOWS:

- 1. The Agreement is amended so that unless extended or terminated earlier in accordance with its terms, the Agreement terminates on December 31, 2021.
- 2. Except as set forth by this Amendment, all terms and conditions of the Agreement remain in full force and effect.

GILLIAM COUNTY:

PURCHASER:

By: _____
Elizabeth A. Farrar, County Judge (Date)

By: _____
Keven Haguewood, Purchaser (Date)

SERVICES AGREEMENT

This Services Agreement (this “**Agreement**”) is between Community Action Program of East Central Oregon, an Oregon nonprofit corporation (“**CAPECO**”) and Gilliam County, (“**AGENCY**”).

AGENCY

Gilliam County
PO Box 427
Condon, OR 97823
Contact Name: Sabrina Wagenaar
Telephone: 541-384-2252
Fax: 541-384-3304
E-mail address: sabrina.wagenaar@co.gilliam.or.us

CAPECO

Community Action Program of East Central Oregon
721 SE Third Street, Suite D
Pendleton, OR 97801
Agreement Administrator: Paula Hall
Telephone: 541-278-5671
E-mail address: phall@capeco-works.org

SECTION 1 SERVICES; TERM

1.1 Services. AGENCY will operate a nutrition program in accordance with the specifications set forth on Exhibit 1, which is attached hereto and incorporated as part of this Agreement (the “**Services**”). Without limitation, the Services will include the following:

- (a) “**Food Service**” means the production and service or delivery of meals for the congregate meal recipients of AGENCY, in accordance with the specifications set forth on Exhibit 1. Each meal produced will contain at least one-third (1/3) of the Recommended Dietary Allowance (RDA), as established by the Food and Nutrition Board, National Research Council, National Academy of Science, as amended from time to time.
- (b) “**Meal Site Management**” means administration of the nutrition program in accordance with the specifications set forth on Exhibit 1, and includes, but is not limited to, the following tasks: supervising final on-site preparation and service or delivery of meals to eligible congregate and home delivered meal participants; recruiting, training, scheduling, and monitoring program volunteers; determining eligibility of participants; collecting and accounting for participant donations; completing and submitting required budget and program reports;

providing events and activities for eligible participants at AGENCY; and publicizing meal sites in the community to enhance visibility and encourage participation.

- 1.2 Term.** The term of this Agreement will commence on July 1, 2020 and will continue until terminated pursuant to Section 8 of this Agreement.

SECTION 2 COMPENSATION

The work defined in Exhibit A will be performed on a cost reimbursement basis in accordance with the terms of this Agreement. The maximum not to exceed compensation is **\$8,646.10 OAA** (CFDA 93.045), not to exceed **\$3,244.97 NSIP** (CFDA 93.053) for a total of **\$11,891.07**.

1. City of Arlington:
 - a. \$3,794.49 (OAA Congregate Meals reimbursed at 1/12th of Agreement amount per month)
 - b. \$1,424.11 (NSIP Meals reimbursed at 1/12th agreement amount per month)
2. City of Condon
 - a. \$4,851.61 (OAA Congregate Meals reimbursed at 1/12th of Agreement amount per month)
 - b. \$1,820.86 (NSIP Meals reimbursed at 1/12th agreement amount per month)

Funding awarded under this Agreement is consistent with the budget cycle of the Prime Award. It is anticipated that continuation awards will cycle each year on or about June 30, 2020. This Agreement may be modified to add continuation funding on or about the Anniversary Date; however, continuation funding is not guaranteed.

Compensation to AGENCY is expressly conditioned on the following:

- (a) Receipt by CAPECO of full funding allocated to CAPECO from the Oregon State Unit on Aging; and
- (b) Submittal by AGENCY to CAPECO of invoices and accompanying progress reports, in accordance with the reporting requirements set forth in Exhibit 1.

SECTION 3 RELATIONSHIP

- 3.1 Independent Contractor.** AGENCY will be an independent contractor of CAPECO. AGENCY will have the authority to hire other persons to provide or to assist in providing the Services, will direct and control their work, and will have the authority to fire those persons.

- 3.2 Taxes.** CAPECO will not withhold any taxes from any payments made to AGENCY, and AGENCY will be solely responsible for paying all taxes arising out of or resulting from the performance of the Services, including but not limited to, income, social security, worker's compensation, and employment insurance taxes.
- 3.3 Standards.** AGENCY represents, warrants, and covenants to CAPECO that, in the provision of the Services, AGENCY is customarily engaged in, and will continue to customarily engage in, an independently established business as described in ORS 670.600(3).
- 3.4 No Agency or Joint Employer Relationship.** This Agreement does not create an agency relationship between the parties and does not establish a joint venture or partnership between the parties. AGENCY does not have the authority to bind CAPECO or represent to any person that AGENCY is an agent of CAPECO. Nothing about this relationship is intended to establish or will establish an employment relationship or joint employer relationship of any kind between anyone, including, without limitation, any employment or joint employer relationship between or among the parties, or an employment relationship between CAPECO and any of AGENCY's employees, agents, or contractors, all of whom will remain solely under the direction and control of AGENCY. AGENCY acknowledges and agrees that it is solely responsible for compensating any of its employees or subcontractors.

SECTION 4 LIMITED WARRANTY

- 4.1 Warranty.** AGENCY represents and warrants to CAPECO that the Services will be performed by qualified personnel in a professional and safe manner, and in accordance with the specifications set forth on Exhibit 1, and that it has all rights and licenses necessary to perform the Services.

SECTION 5 COVENANTS OF AGENCY

AGENCY covenants to CAPECO as follows:

- 5.1 Insurance.** AGENCY will obtain and maintain insurance policies that provide adequate coverage for all risks normally insured against by a person carrying on a similar business in a similar location, and for any other risks to which AGENCY is normally exposed. Without limitation of the foregoing, AGENCY will obtain and maintain the following insurance policies with respect to the Services, which will include CAPECO as an additional insured:

- (a) Comprehensive general liability insurance in amounts of not less than \$500,000 combined single limit per occurrence / \$1,000,000 general annual aggregate for personal injury and property damage or loss of use thereof.

Any insurance required under this Section 5.1 will:

- (a) Provide for advance written notice of thirty (30) days to CAPECO in the event of cancellation or material change;

(b) Expressly state that no act on the part of the insured will affect the coverage afforded to CAPECO under the insurance; and

(c) Provide for written notice to CAPECO within thirty (30) days following any reduction in the general annual aggregate limit.

5.2 Compliance with Laws and Any Governmental Authorizations. AGENCY will comply with all applicable laws. AGENCY will obtain and maintain all of the licenses, permits, registrations, and other governmental authorizations required to conduct AGENCY’s business and perform the Services, and will be solely responsible for doing so.

5.3 Records; Access. AGENCY will maintain all financial records, including, without limitation, payroll records, related in any way to this Agreement or the performance of the Services, in a clearly identifiable and readily accessible format for a period of not less than three (3) years after receipt by AGENCY of final payment under this Agreement; provided, that AGENCY will retain any records that are the subject of audit findings until such audit findings are resolved. AGENCY acknowledges and agrees that CAPECO, the State of Oregon, the United States, and each of their respective duly authorized representatives will have access to the books and records of AGENCY, in any form whatsoever, including, without limitation, electronic form, related in any way to this Agreement, for the purposes of making audits, examinations, duplicates, copies, excerpts, and transcripts.

SECTION 6 INTELLECTUAL PROPERTY RIGHTS

6.1 Definition. “Creative Work” means, collectively, any and all work product and deliverables of every type and nature in any format that AGENCY creates or has created in connection with the Services, and all intellectual property rights therein, including, without limitation, all trademarks, patents, moral rights, and all other proprietary rights whatsoever.

6.2 Work Made for Hire, and Assignment. All right, title, and interest in and to Creative Work will be and hereby are vested and assigned to CAPECO. To that end, all Creative Work created hereunder will be on a “work made for hire” basis (as defined in the United States Copyright Act (17 U.S.C. 101, *et. seq.*)) to the maximum extent permitted by law. Any portion of or rights related to such Creative Work that cannot be considered work made for hire are hereby irrevocably assigned to CAPECO. AGENCY will not be entitled to receive any royalty, fee, or other payment in connection with its performance of its duties under this Agreement or in connection with Creative Work except the compensation for the Services under this Agreement. AGENCY agrees that no portion of the Creative Work may be used, disclosed, distributed, or adapted for the benefit of AGENCY or any third party. To the extent any third-party content or materials are included in Creative Work, AGENCY hereby grants to CAPECO a perpetual, non-exclusive, royalty-free license to use such content and materials as incorporated in Creative Work.

6.3 Perfection. At the request and expense of CAPECO, AGENCY will sign such documents and take such actions that CAPECO deems reasonably necessary to perfect, protect, and evidence CAPECO's rights in Creative Work. AGENCY further agrees that AGENCY's obligation to sign such documents will continue even after the termination of AGENCY's engagement with CAPECO. If CAPECO is unable, whether because of AGENCY's unavailability or for any other reason, to secure AGENCY's signature to apply for or to pursue any application for any United States or foreign copyright registrations or other intellectual property protection covering any Creative Work vested in or assigned to CAPECO above, then AGENCY hereby irrevocably designates and appoints CAPECO and its duly authorized officers and agents as AGENCY's agent and attorney in fact, to act for and in AGENCY's behalf and stead to execute and file any such application(s) and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance, or transfer of letters patent or copyright registrations thereon with the same legal force and effect as if originally executed by them. AGENCY hereby waives and irrevocably quitclaims to CAPECO any and all claims, of any nature whatsoever, which AGENCY now or hereafter has for infringement of any and all intellectual and proprietary rights assigned to CAPECO.

SECTION 7 INDEMNIFICATION

AGENCY will defend and indemnify CAPECO and each present and future director, commissioner, manager, officer, and authorized representative of CAPECO for, from, and against any and all claims, actions, proceedings, damages, liabilities, and expenses of every kind, whether known or unknown, including but not limited to, reasonable attorney's fees, resulting from or arising out of:

- (a) AGENCY's failure to pay any tax arising out of or resulting from the performance of the Services;
- (b) Any allegation or claim that the Services or Creative Work infringes any copyright, patent, or trademark, constitutes a misappropriation of any trade secret, or violates any other intellectual or proprietary right of any person;
- (c) Any employment relationship of AGENCY's, any claim brought by any current or former employee or applicant of AGENCY's, and any allegation that CAPECO is somehow an employer or joint employer of any of AGENCY's employees; or
- (d) AGENCY's breach of any representation, warranty, or covenant in this Agreement.

SECTION 8 TERMINATION

This Agreement will terminate on June 30, 2021, or, before that date, on the earliest to occur of the following:

- (a) Earlier termination as mutually agreed by the parties;
- (b) Thirty (30) days following notice by either CAPECO to AGENCY, or AGENCY to CAPECO; or

- (c) Notice by CAPECO to AGENCY, if: AGENCY engages in any form of dishonesty or conduct involving moral turpitude related to AGENCY's relationship with CAPECO or that otherwise reflects adversely on the reputation or operations of CAPECO; AGENCY fails to materially comply with any applicable law related to AGENCY's independent contractor relationship with CAPECO; continuous or repeated problems occur in connection with the performance of AGENCY's duties; or AGENCY materially breaches this Agreement and fails to cure the breach within fifteen (15) days after CAPECO notifies AGENCY of the breach.

SECTION 9 GENERAL

- 9.1 No Assignment or Subcontracts; Binding Effect.** AGENCY may not assign or delegate any of AGENCY's rights or obligations under this Agreement to, or subcontract for the performance of any of the Services with, any entity or person without the prior written consent of CAPECO, which CAPECO may withhold in its sole discretion. This Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit.
- 9.2 Amendment.** This Agreement may be amended only by a written document signed by the party against whom enforcement is sought. AGENCY agrees to modify this Agreement, as reasonably necessary, within a reasonable time after notice from CAPECO of the following:
- (a) A significant change, as determined by CAPECO, in program content or scope of the Services, or the RFP for awarding of this Agreement; or
 - (b) A change in any of the General or Special Provisions.
- 9.3 Notices.** All notices or other communications required or permitted by this Agreement: must be in writing; must be delivered to the parties at the addresses set forth underneath their signatures below, or any other address that a party may designate by notice to the other party; and are considered delivered:
- (1) On actual receipt if delivered personally, by fax, or by a nationally recognized overnight delivery service; or
 - (2) At the end of the third business day after the date of deposit, if deposited in the United States mail, postage pre-paid, certified, return receipt requested.
- 9.4 Waiver.** No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.
- 9.5 Severability and Construction.** If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired. The language

in all parts of this Agreement shall in all cases be construed according to its fair meaning and not strictly for or against any of the parties to this Agreement. Without limitation, there will be no presumption against any party on the ground that such party was responsible for drafting this Agreement or any part of it.

- 9.6 Further Assurances.** The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement.
- 9.7 No Third-Party Beneficiaries.** The parties do not intend to confer any right or remedy on any third party.
- 9.8 Termination and Survival.** The termination of this Agreement, regardless of how it occurs, will not relieve a party of obligations that have accrued before the termination. All provisions of this Agreement that would reasonably be expected to survive the termination of this Agreement will do so.
- 9.9 Attachments.** Any exhibits, schedules, and other attachments referenced in this Agreement are part of this Agreement, including without limitation, Exhibit 1 (Services).
- 9.10 Remedies.** The parties will have all remedies available to them at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.
- 9.11 Governing Law and Venue.** This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action, suit, or proceeding arising out of the subject matter of this Agreement will be litigated in courts located in Deschutes County, Oregon. Each party consents and submits to the jurisdiction of any local or state court located in Deschutes County, Oregon.
- 9.12 Entire Agreement.** This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.
- 9.13 Signatures and Authority.** This Agreement may be executed in counterparts, each of which will be deemed an original and together will constitute one instrument. Copies of signature by facsimile, electronic scan or otherwise will be treated as original signatures. The signatories to this Agreement warrant that they have the authority to execute this Agreement on behalf of the parties to this Agreement and that any entity on behalf of which they are signing has executed this Agreement pursuant to its governing documents or a resolution of those having the power to control its affairs of this nature. Each of the parties has obtained advice of legal counsel prior to and for the execution of this Agreement, or has knowingly waived the party's right to do so, and each party understands fully the contents of this Agreement.

Dated effective: July 1, 2020

**CAPECO, an Oregon nonprofit
corporation**

AGENCY: GILLIAM COUNTY

By: _____
Name: Paula Hall
Title: CEO
Date: _____
Address: 721 SE Third Street, Suite D
Pendleton, OR 97801

By: _____
Name: _____
Title: _____
Date: _____
Address: _____

EXHIBIT 1

Scope of Work and Service Objectives and Elements of Completion

1. Nutrition Program Purpose

- a. The senior nutrition program is part of a continuum of care designed to support independent living of older Americans under the Title III (Grants to State and Community Programs on Aging) of the Older Americans Act (OAA).
- b. The objectives of the OAA nutrition programs are to provide an opportunity for older individuals to live their years in dignity by providing healthy, appealing meals; promoting health and preventing disease; reducing malnutrition risk and improving nutritional status; reducing social isolation and increasing social interaction; linking older adults to community-based services; and providing opportunity for meaningful community involvement, such as through volunteering.
- c. Adequate nutrition is key to a person maintaining the adequate health necessary to live at home. Frequent contact with others provides a means to monitor the participant's health, well-being, and safety. AAA programs across the state strive to accomplish this by providing congregate nutrition programs and home-delivered meals. Although the primary service is meals, other nutrition services authorized by the OAA include nutrition screening, education and counseling.

2. Nutrition Program Definitions

<http://www.oregon.gov/DHS/SENIORS-DISABILITIES/SUA/Pages/Nutrition-Program.aspx>)

- a. "Congregate Setting" means a social event where meals are served to qualifying clients. The congregate setting promotes health and independence through social contact, meaningful involvement, nutrition, community connection and access to information and services. The congregate setting is designed to provide a welcoming and pleasant atmosphere where people age 60 and older (and their spouses) can gather for a meal. Seniors can enjoy meeting new people, form friendships and support groups by coming together for meals on a regular basis. The balanced meal and the social contact together provide a positive motivation for self-care for seniors who often eat poorly on their own and can become lonely and depressed in isolation. The nutrition program is more than just a meal- it's purpose is to nourish the whole person.

3. Congregate Nutrition Services - Nutrition Program Standards

- a. AGENCY will provide at least one hot meal or other appropriate meal in the congregate setting at least once a week.

- b. Congregate meals may be offered in a variety of settings, including nutrition sites: Senior centers/community centers, churches, schools, adult care facilities, or some other congregate setting under the supervision of a nutrition project.
- c. Congregate meals must comply with the 2015-2020 Dietary Guidelines for Americans and provide a minimum of thirty-three and one-third percent (33- 1/3%) of the current daily Recommended Dietary Allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and the 2015-2020 Dietary Guidelines for Americans (Published by the Secretaries of the Department of Health and Human Services and USDA).
<https://www.oregon.gov/DHS/SENIORS-DISABILITIES/SUA/Documents/2018%20Nutrition%20Standards%20-%208-28-18.pdf>
- d. Congregate meal providers will advise participants to keep additional shelf stable emergency food at home in case of inclement weather that prevents travel to the congregate site or other such emergencies.
- e. CAPECO will coordinate and AGENCY will provide nutrition education to meal site participants on a quarterly basis, at a minimum. Nutrition education subjects will be based on the needs of the participants and should be culturally appropriate.
- f. AGENCY will develop a strategy that allows participants to make confidential donations for congregate meals.

4. Target Population

- a. Congregate: The target population for congregate meal services is persons age sixty (60) and over and their spouses, and individuals with disabilities who reside at home and accompany older individuals to the meal site. Meal services should be targeted to those persons with greatest economic need, greatest social need, those with low incomes, and eligible minorities.

5. Nutrition Service Standards - Food Service, Sanitation & Safety

- a. Compliance with applicable federal, state, and local fire, health, sanitation, safety and building codes, regulations, licensor requirements, and other provisions relating to the public health, safety, and welfare of meal patrons is required in all stages of food service operations. (Reference: <https://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/ucm374275.htm>)
- b. Copies of all current inspection reports by health department staff, registered sanitarian, or fire officials should be kept on file by the provider and posted at the meal site.

- c. Temperature checks should be taken with a food thermometer daily at the time the food leaves the production area, upon arrival if food is prepared off site, and again at serving time. Records of these temperature checks should be kept in the nutrition program files.
- d. Each meal site is required by state sanitation laws to control access to the kitchen to those who work in it.
- e. Foods must be prepared, served and transported with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed, and sanitized to prevent cross contamination.
- f. Effective procedures for sanitizing dishes, equipment, and work areas should be written, posted, and followed consistently.
- g. Hot food items must be maintained at or above 140 degrees Fahrenheit and cold food items must be maintained at or below 41 degrees Fahrenheit throughout the period of meal service. In order to retain maximum nutritional value and food quality, foods should be served as soon as possible after preparation.

6. Meal Packaging Supplies and Carriers

- a. Meal packaging supplies and carriers will be used to assure that hot foods are packaged and transported in separate carriers from cold foods.
- b. Meal carriers used to transport food will be enclosed and equipped with insulation and supplemental hot or cold sources as needed to maintain appropriate temperatures.
- c. Meal carriers will be cleaned and sanitized daily.
- d. Foods requiring refrigeration will be pre-chilled in less than four hours and held at or below 40 degrees Fahrenheit throughout transport.
- e. Foods requiring heated storage will be held at or above 140 degrees Fahrenheit throughout transport.

7. Volunteer Training

All volunteers shall be trained in safe food handling procedures. Providers shall develop written procedures for all aspects of meal services. Regular training should be provided and include:

- a. Client confidentiality
- b. General delivery procedures to the homebound

- c. Sanitation requirements
- d. Safe food handling practices
- e. Emergency situations while delivering meals to homebound participants.
- f. Donation policies

8. Site Location and Management

- a. Congregate meal sites should be conveniently located to the target population; be ADA compliant; be in a safe, well-lit, well-maintained location; easily visible and open to the public; have adequate space to support programming; have clear, inviting, and culturally appropriate exterior and interior signage.
- b. The physical interior of the meal site should create an atmosphere that is pleasant and inviting; have a welcoming ambience; adequate lighting and acoustics; accessible restroom locations; kitchens that support high quality and safe meal service; and furnishings that are functional, comfortable, tasteful, safe and appropriate.
- c. Site management should include: staff that are knowledgeable of the aging network system and services; sensitive to aging issues; competent in food service management; able to provide safe and appetizing meals that meet OAA requirements, adapt to client satisfaction, and provide opportunities for nutrition education.
- d. Site management should be able to: provide programs that create interaction opportunities and that meet participant needs and interests; create public awareness of programs and services; provide volunteer opportunities; and to provide consistent and accurate required reporting; monitoring of budget and fundraising activities.

9. Menus and Menu Planning

- a. Each meal served must meet the *2015-2020 Dietary Guidelines* and must contain at least one third (1/3) of the current Recommended Dietary Allowances (RDA) as established by the Food and Nutrition Board of the National Academy of Science-National Research Council.
- b. Further specification states that a minimum of 33 1/3 percent of the recommended allowances as established by the Food and Nutrition Board be present if one meal is provided. If two meals are provided, 66 2/3 percent will be included; and if all three meals are provided, 100% RDA must be met.
- c. Special needs of the elderly must be considered in menu planning. To help assure that menus will address the nutritional needs of the elderly, menu planning should be designed to:

- (1) Include a variety of foods;
 - (2) Avoid too much fat, saturated fat, and cholesterol;
 - (3) Include foods with adequate complex carbohydrates and fiber
 - (4) Avoid too much refined carbohydrates (sugars);
 - (5) Avoid too much sodium; and
 - (6) Provide an appropriate number of calories to help maintain ideal body weight.
- d. Menus should be planned and written for a minimum of three (3) months and be certified and signed by a Registered Dietitian.
 - e. A Registered Dietitian must perform a nutrition analysis and state that each meal meets one-third (1/3) of the RDA. Any departure from the certified menu must be documented and initialed on AGENCY's official file copy of the menu and/or nutrient analysis form by the Registered Dietitian.
 - f. A food identified and counted in one food group category cannot be counted as a food in another food group category. Example: A fruit identified as a dessert cannot also be counted toward a service of fruits and vegetables.
 - g. Beverages that are generally available at congregate sites do not contribute to the Nutrient intake of the meal; although they do enhance fluid intake of participants.
 - h. To the maximum extent practicable, meals will be adjusted to meet special dietary needs of program participants for health reasons and to provide flexibility in designing meals that are appealing to program participants.

10. Operating Policies

Contractor shall develop, implement and annually update an operating policy manual containing, at a minimum, the following:

- a. Fiscal management
- b. Food service management
- c. Safety and sanitation
- d. Staff responsibilities

11. NAPIS Reporting

- a. Contractor will receive training from CAPECO on how to complete NAPIS registration forms. (Attachment E).
- b. NAPIS data includes the OAA Nutrition Screening survey that should be completed at the time of intake and at annual update.
- c. NAPIS Registration Form will be updated annually. AGENCY must collect and report the information required by the Older Americans Act by sending the information to CAPECO. (Attachment E).
- d. Participants who decline to provide the NAPIS data may not be denied service.

12. Nutrition Education, Counseling, and Outreach

- a. Nutrition education is designed to promote better health by providing accurate and culturally sensitive nutrition, physical fitness, or health (as it relates to nutrition) information and instruction to participants (and caregivers when appropriate) in a group or individual setting.
- b. Each congregate meal program will provide nutrition education at a minimum of quarterly. Each home delivered meal program will provide nutrition education during the first nutrition risk assessment and a minimum of one time per year subsequently. CAPECO will provide supplies and on-going training. Nutrition education goals should:
 - (1) Foster positive attitudes toward good nutrition and provide motivation for improved dietary practices.
 - (2) Provide adequate knowledge and skills regarding diet and health so the individual can make appropriate food choices.
 - (3) Assist the individual in identifying resources for continuing access to sound food and nutrition information.
- c. Nutrition programs will maintain documentation of nutrition education. Suggested Nutrition Education content includes:
 - (1) Food: Including the kinds and amounts of food that are required to meet one's daily nutritional needs (USDA MyPlate)
 - (2) Nutrition: Including the combination of processes by which the body receives substances necessary for the maintenance of its functions and for growth and renewal of its components, i.e.: ingestion, digestion, absorption, metabolism, and elimination.
 - (3) Behavioral Practices: Including the factors which influence one's eating and food preparation habits

- (4) Consumer Issues: Including the management of food purchasing power to obtain maximum food value for the money spent.
- d. Nutrition outreach is designed to seek out and identify, on an ongoing basis, the maximum number of eligible individuals. Nutrition programs should develop an outreach plan to assure that the maximum number of eligible individuals in the service area have an opportunity to participate in nutrition services.
- e. Documentation for congregate meal sites shall include:
 - (1) Date of presentation or distribution of materials
 - (2) Name and title of presenter or title of materials distributed
 - (3) Topic discussed (if applicable)
 - (4) Number of persons in attendance
- f. Methods for Nutrition Education can include speakers, newsletters, printed materials, bulletin boards, displays, videos, the Internet, etc. The educational material will be supplied by CAPECO.

13. Meal Donations and Program Income

- a. Voluntary contributions will be allowed and may be solicited in a non-coercive manner. No eligible individual will be denied service because of failure to provide a donation for a meal as specified in OAA, Section 315(b)(1,3). The privacy and confidentiality of individuals should be informed that there is no obligation to contribute.
- b. A clearly visible and easy-to-read sign should be posted near the entrance or sign-in table and should state the actual cost of the meal, suggested donation and a statement indicating that individuals under 60 must pay the full cost of the meal.
- c. Volunteers offered the option of a meal on the same basis as meals provided to participating older adults should be encouraged to donate towards the cost of their meal.
- d. Program income includes all participant donations for meals. Appropriate procedures to safeguard and account for all contributions should be established and all collected contributions used to expand the service for which contributions were given.
- e. All program income will be used within the program year in which it is received and shall be used before federal, state, or local funds are used in accordance with OAA Section 314 (b)(4)(E).

14. Participant Input

AGENCY shall have a means of soliciting participant input on appropriate matters relating to Congregate and Home-delivered meal programs. Focus groups, advisory councils, suggestion boxes, surveys, and input from staff and volunteers are suggested ways to meet this requirement.

15. Administrative Requirements

CAPECO must approve in advance all proposed subcontracts between the AGENCY and any other agency or organization.

16. Records, Reports and Procedures

- a. AGENCY will use the Congregate Meal Roster and Guest Sign-In Sheet (Attachment A) as provided by CAPECO. These forms are used to record how many meals are served to each client every month and must be submitted on or before the 5th of the month following service. CAPECO will enter client names on the Meal Rosters based on the NAPIS Registration Form (Attachment E) as provided by AGENCY. CAPECO will enter all information into Oregon Access.

- b. AGENCY must also submit the Volunteer Hour & Mileage Form (Attachment C) and In-Kind Report (Attachment D) on or before the 5th of the month following service.

17. Nutrition Service Incentive Program Meals (NSIP)

The Nutrition Service Incentive Program (NSIP) is administered by the Administration on Aging (AOA). Meals eligible for NSIP funds must be served by a nutrition service provider under the jurisdiction, control, management and audit authority of the Area Agency on Aging (local AAA)

18. Criminal Records and Abuse Checks

AGENCY will comply with applicable background check requirements, including, without limitation, by procuring a criminal records check for each individual who is a “subject individual” within the meaning of OAR 407-007-0010 and is:

- a. An employee of AGENCY;
- b. A volunteer for AGENCY; or
- c. A subcontractor for AGENCY, including, without limitation, employees and volunteers of the subcontractor.

AGENCY will procure any such criminal records check as follows:

- a. Before requesting the criminal records check, AGENCY will clearly and conspicuously disclose in writing to the subject individual, in a document consisting only of the disclosure, that a criminal records check may be obtained for employment purposes;
- b. AGENCY will request CAPECO to procure a criminal records check for the subject individual; and
- c. On request by AGENCY for a criminal records check, AGENCY will provide to CAPECO the following documents:
 - a. Written authorization from the subject individual for CAPECO to procure a criminal records check for the subject individual;
 - b. A copy of the subject individual's driver license or state-issued identification card; and
 - c. A criminal history form provided to AGENCY by CAPECO and completed by the subject individual.

AGENCY acknowledges, understands, and agrees that: (i) CAPECO will not conduct criminal records checks for AGENCY or otherwise engage in the practice of assembling or evaluating information about subject individuals of the AGENCY, and is not a "consumer reporting agency," as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681-1681x; (ii) CAPECO will forward any requests from AGENCY for criminal records checks to the Oregon Department of Human Services for completion of the criminal records checks; and (iii) CAPECO makes no representations or warranties as to the accuracy or completeness of any criminal records checks.

Attachment A
Congregate Meal Roster and Guest Sign-In Sheet

Attachment B
Not Applicable

Attachment C
Volunteer Hour & Mileage Form

Attachment D
In-Kind Report

Attachment E
NAPIS Registration Form

SUSSMAN SHANK^{LLP}
— ATTORNEYS —

JEFFREY C. MISLEY

Attorney | Admitted in Oregon & Washington
503.243.1661 x 276 *direct*
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1000 SW Broadway, Suite 1400
Portland, Oregon 97205
503.227.1111 or 800.352.7078 *main*
503.248.0130 *fax*
sussmanshank.com

July 31, 2020

VIA EMAIL

Mr. Carlos Rasch
Senior Assistant County Attorney
Office of Multnomah County Attorneys
501 SE Hawthorne Blvd., Suite 500
Portland, OR 97214

Re: *Taressa Hutchinson v. Baker County, et al.*
Deschutes County Circuit Court, Case No. 20CV21480
Our Client: Oregon Counties
Our File No. 25864-001

Dear Counsel:

Thank you for retaining us to represent each of your respective counties (collectively, the "Oregon Counties") in connection with the defense of the class action suit referenced above. We very much appreciate the opportunity to assist and look forward to working with you.

Terms of Representation. This letter summarizes the terms under which we are representing the Oregon Counties. If this letter correctly reflects your understanding of the conditions of our representation, please sign in the space provided below and return it at your earliest convenience. If you have any questions please call or email Tom Christ and/or me.

Communication. Effective legal representation requires complete trust and candor between attorney and client. We ask that you respond promptly and completely to our requests for documents and for information which we believe might be relevant. We, in turn, will keep you informed of our work on this matter and will send you copies of all pertinent documents and correspondence, whether prepared by us or received from other sources. Except in a few circumstances, communications between us pertaining to the subject of our representation are confidential attorney-client communications and will be used by us solely for the purpose of pursuing your interests. As we discussed in our recent conference call, given the number of Oregon counties, we anticipate that we will primarily report to and communicate directly with a steering committee consisting of a smaller group of counties to be selected by the group.

SUSSMAN SHANK^{LLP}

July 31, 2020
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Input of Other Attorneys and Paralegals. The most effective use of our time may be to utilize the assistance of other attorneys and paralegals with experience in specific fields, many of whom charge lower hourly rates. From time to time we may make assignments to others when we believe such assignments will better serve you or minimize the cost to you.

Basis of Fees. The fee to be charged in this matter will be based upon a number of factors, primarily the time expended by me and other attorneys and paralegals, working on this case. Our billing rates for attorneys will be as follows: \$350/hr. for partners and \$250/hr. for associates. Our paralegals will charge \$200/hr.

Costs. You will be responsible for all out of pocket costs and expenses incurred on our behalf. Such charges include filing fees, deposition expenses, title company reports, long distance telephone charges, photocopying, printing, computerized legal research, travel expenses, messenger services, project staff, secretarial overtime, postage, and similar costs. Although all such charges are your responsibility, for administrative ease, we may advance payment to these providers. We will consult with you prior to entering into any commitments for any substantial expense items.

Time records. Each professional keeps a daily record of the time expended on each matter, which includes the activities undertaken on your behalf such as the initial interview, consultations, correspondence, preparation of documents, court appearances, telephone calls, etc. Time charges are recorded in minimum units of one tenth of an hour. Our time records in this matter will be available for your inspection at your request.

Retainer and Billing. We will bill you every sixty days (or such shorter billing period as may be appropriate) for charges incurred. Our statements are payable upon receipt. Individual statements will be sent directly to individual counties. Our statements will itemize the services provided and costs and expenses incurred during the month and will show the pro rata amount owed by each county.

We have not requested you provide us with a retainer deposit.

If our representation in this matter ends before the conclusion of the case, you will be responsible for your county's pro rata portion of all fees, costs, and expenses incurred up to the time of termination. We may suspend our activity in any matter where outstanding balances are more than thirty (30) days overdue unless other arrangements for payment have been agreed to in writing. We reserve the right to terminate our

July 31, 2020

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attorney-client relationship for non-payment of fees or costs. If our appearance has been entered of record on your behalf in any court or arbitration proceedings and if court or other approval is required to withdraw our appearance, you hereby consent to our withdrawal of that appearance and you authorize us to represent to the court or other tribunal that you have so consented.

Common Interest Agreement & Cost Sharing Agreement. We understand that the Oregon Counties have entered into a Common Interest Agreement. We further understand that the Oregon Counties have agreed to a cost sharing agreement (the "Cost Sharing Agreement") with respect to the fees and costs anticipated to be incurred in connection with this engagement. This will confirm that under the Cost Sharing Agreement the Oregon Counties have agreed to split the first \$360,000 in legal fees and costs evenly or (up to \$10k/2.8% per county of the bills/attorney fees and costs. In the event aggregate fees and costs exceed \$360,000, the Oregon Counties agree that the responsibility for such further fees and costs will be tiered, allocated, and paid as provided in Exhibit A attached hereto.

We believe that open and honest communication regarding all matters, including the fees charged, is crucial to our maintaining a good working relationship. If you ever have any question regarding our billing statements or otherwise, please do not hesitate to call me.

If you agree to the terms of this letter, please confirm your agreement by signing the letter, and scan and return the signed signature page by email to Janine Hume at jhume@sussmanshank.com as soon as possible.

We look forward to working with you on this matter.

Very truly yours,

SUSSMAN SHANK LLP



Jeffrey C. Misley

SUSSMAN SHANK^{LLP}

July 31, 2020

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I have read the enclosed Terms of Representation and agree to its terms and the terms set forth in this letter.

Baker County

Signature: _____ /s/

Date: _____

Benton County

Signature: _____ /s/

Date: _____

Clackamas County

Signature: _____ /s/

Date: _____

Clatsop County

Signature: _____ /s/

Date: _____

Columbia County

Signature: _____ /s/

Date: _____

Coos County

Signature: _____ /s/

Date: _____

Crook County

Signature: _____ /s/

Date: _____

July 31, 2020

Page 5

Curry County

Signature: _____ /s/ _____

Date: _____

Deschutes County

Signature: _____ /s/ _____

Date: _____

Douglas County

Signature: _____ /s/ _____

Date: _____

Gilliam County

Signature: _____ /s/ _____

Date: _____

Grant County

Signature: _____ /s/ _____

Date: _____

Harney County

Signature: _____ /s/ _____

Date: _____

Hood River County

Signature: _____ /s/ _____

Date: _____

Jackson County

Signature: _____ /s/ _____

Date: _____

SUSSMAN SHANK^{LLP}

July 31, 2020

Page 6

Jefferson County

Signature: _____ /s/ _____

Date: _____

Josephine County

Signature: _____ /s/ _____

Date: _____

Klamath County

Signature: _____ /s/ _____

Date: _____

Lake County

Signature: _____ /s/ _____

Date: _____

Lane County

Signature: _____ /s/ _____

Date: _____

Lincoln County

Signature: _____ /s/ _____

Date: _____

Linn County

Signature: _____ /s/ _____

Date: _____

Malheur County

Signature: _____ /s/ _____

Date: _____

SUSSMAN SHANK^{LLP}

July 31, 2020

Page 7

Marion County

Signature: _____ /s/ _____

Date: _____

Morrow County

Signature: _____ /s/ _____

Date: _____

Multnomah County

Signature: _____ /s/ _____

Date: _____

Polk County

Signature: _____ /s/ _____

Date: _____

Sherman County

Signature: _____ /s/ _____

Date: _____

Tillamook County

Signature: _____ /s/ _____

Date: _____

Umatilla County

Signature: _____ /s/ _____

Date: _____

Union County

Signature: _____ /s/ _____

Date: _____

SUSSMAN SHANK^{LLP}

July 31, 2020
Page 8

Wallowa County

Signature: _____ /s/ _____
Date: _____

Wasco County

Signature: _____ /s/ _____
Date: _____

Washington County

Signature: _____ /s/ _____
Date: _____

Wheeler County

Signature: _____ /s/ _____
Date: _____

Yamhill County

Signature: _____ /s/ _____
Date: _____

JCM:jeh
Enclosure

*25864-001\OREGON COUNTIES ENGAGEMENT LETTER (03513058);1

Exhibit A

COST SHARING AGREEMENT

The counties split the first \$360K in legal fees and costs evenly or (up to \$10K/2.8% per county of the bills/attorney fees). Any amount after the initial \$360K will be tiered as follows:

Counties with 100,000 population would pay ~70% each of the bill (there are 10) (Tier 1)

Counties with 99,999 - 50,000 would pay ~20% of the bill each (there are 7) (Tier 2)

Counties with less than 50,000 would pay ~10% of the bill each (there are 19) (Tier 3)