

POLK COUNTY BOARD OF COMMISSIONERS

DATE: February 15, 2023
TIME: 9:00 a.m.
PLACE: Polk County Courthouse, Dallas, Oregon

THE LOCATION OF THIS MEETING IS ADA ACCESSIBLE. PLEASE ADVISE THE BOARD OF COMMISSIONERS AT (503-623-8173), AT LEAST 24 HOURS IN ADVANCE, OF ANY SPECIAL ACCOMMODATIONS NEEDED TO ATTEND OR TO PARTICIPATE IN THE MEETING VIRTUALLY.

PAGE: **AGENDA ITEMS**

- 1. CALL TO ORDER AND NOTE OF ATTENDANCE**
- 2. ANNOUNCEMENTS**
 - (a)** Regular meetings of the Board of Commissioners are held on Tuesday and Wednesday each week. Each meeting is held in the Courthouse Conference Room, 850 Main Street, Dallas, Oregon. Each meeting begins at 9:00 a.m. and is conducted according to a prepared agenda that lists the principal subjects anticipated to be considered. Pursuant to ORS 192.640, the Board may consider and take action on subjects that are not listed on the agenda. The Board also holds a department staff meeting at 9:00am on every Monday in the Commissioners Conference Room at 850 Main Street, Dallas, Oregon.
 - (b)** The Polk County Board of Commissioners will be meeting with Congresswoman Andrea Salinas on February 21, 2023 at 1pm located in the small conference room in the Board of Commissioners Office.
- 3. COMMENTS (for items not on this agenda)**
- 4. APPROVAL OF AGENDA**
- 5. APPROVAL OF THE MINUTES FROM February 8, 2023**
- 6. APPROVAL OF CONSENT CALENDAR**
- 7. RECLASSIFICATION OF AN EMPLOYEE – Matt Hawkins**

CONSENT CALENDAR

- (a)** Polk County Contract No. 23-19, Polk County Community Preparedness IGA
(Dean Bender, Emergency Manager)
- (b)** Polk County Order No. 23-05, West Valley Housing Authority Appointment,
Michael Sewell
(Morgan Smith, County Counsel)

**THE BOARD OF COMMISSIONERS WILL MEET IN EXECUTIVE SESSION
PURSUANT TO ORS 192.660.**

ADJOURNMENT

POLK COUNTY PUBLIC MEETINGS AND PUBLIC HEARINGS
GUIDELINE FOR CITIZENS

REGULAR MEETING AGENDA

Regular meetings of the Polk County Board of Commissioners convene at 9 a.m. each Wednesday morning. Any person wishing to bring a matter before the Board at one of these meetings may do so by mailing or delivering written notice, concisely describing the nature of the item, to the Board of Commissioners, Polk County Courthouse, Dallas, Oregon 97338, by noon on the preceding Thursday. Unless otherwise announced, meetings are held in the Main Conference Room of the Courthouse.

APPEARANCE OF INTERESTED CITIZENS

The Board sets aside a time at each regular meeting for comment by the public on subjects not appearing on the Agenda. Individuals may come forward and make any statement they wish, but not to exceed three (3) minutes in length, except as is required to give concise answers to questions from Board members. If the subject will require a lengthier presentation, or merits inclusion as an item on the Agenda of a future meeting, the Board shall schedule it accordingly.

PUBLIC HEARING FORMAT

Land Use

1. Chairman opens hearing.
 - a. Reading of hearing request or appeal statement.
 - b. Call for abstentions (ex parte contact or conflict of interest).
2. County staff presents background, summary and its recommendation (20-minute limit).
3. Applicant (Appellant) presents his/her case (15-minute limit).
4. Public testimony. Note that all testimony and evidence must be directed toward the applicable factual and legal criteria as identified in the record and/or during this hearing. Do not repeat previous testimony. Simply note for the record that you are in agreement with that earlier testimony. Your time to present testimony is limited. FAILURE TO RAISE AN ISSUE IN THIS HEARING, IN PERSON OR BY LETTER, OR FAILURE TO PROVIDE ADEQUATE SPECIFICITY TO AFFORD THE BOARD AN OPPORTUNITY TO RESPOND TO THE ISSUE MAY PRECLUDE LATER APPEAL TO LUBA ON THAT ISSUE.
 - a. Individuals in favor of the application or appeal.
 - b. Individuals against the application or appeal. At the discretion of the Chairman, an attorney, consultant, or other designated representative of two or more individuals may be allowed the combined time for each represented individual who does not speak, not to exceed 20 minutes. The Chairman may require proof of designation.
5. Rebuttal by Applicant (Appellant) (10-minute limit).
6. Questions from Board (discussion limited to individuals questioned by the Board).
 - a. Staff.
 - b. Applicant (Appellant).
 - c. Individuals testifying.
7. Chairman closes hearing and announces closing of Record.
8. Chairman announces date for deliberation and decision.
9. The Board's decision is deemed the final decision of Polk County. It may be appealed to LUBA within 21 days of its issuance in written form. The address and phone number of LUBA may be obtained from the Polk County Community Development Department and will also appear on the Notice of Decision which will be mailed to all persons who testify, submit comments, or print their name and address on the hearing attendance sheet at the back of the hearing room.

POLK COUNTY BOARD OF COMMISSIONERS
MINUTES February 8, 2023

1. CALL TO ORDER & ATTENDANCE

At 9:00 a.m., Commissioner Gordon declared the meeting of the Polk County Board of Commissioners to be in session. Commissioner Pope and Commissioner Mordhorst were present.

Staff present: Greg Hansen, Administrative Officer
Morgan Smith, County Counsel
Matt Hawkins, Administrative Services Director

2. ANNOUNCEMENTS

Regular meetings of the Board of Commissioners are held on Tuesday and Wednesday each week. Each meeting is held in the Courthouse Conference Room, 850 Main Street, Dallas, Oregon. Each meeting begins at 9:00 a.m. and is conducted according to a prepared agenda that lists the principle subjects anticipated to be considered. Pursuant to ORS 192.640, The Board may consider and take action on subjects that are not listed on the agenda. The Board also holds a department staff meeting at 9:00 a.m. on every Monday in the Commissioners Conference Room at 850 Main Street, Dallas, Oregon.

3. COMMENTS

None.

4. APPROVAL OF AGENDA

MOTION: COMMISSIONER MORDHORST MOVED, COMMISSIONER POPE SECONDED, TO APPROVE THE AGENDA.

MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.

5. APPROVAL OF MINUTES OF BOARD MEETING OF February 1, 2023

MOTION: COMMISSIONER POPE MOVED, COMMISSIONER MORDHORST SECONDED, TO APPROVE THE MINUTES OF February 1, 2023.

MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.

6. APPROVAL OF CONSENT CALENDAR

MOTION: COMMISSIONER MORDHORST MOVED, COMMISSIONER POPE SECONDED, TO APPROVE THE CONSENT CALENDAR.

MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.

7. RECLASSIFICATION OF AN EMPLOYEE

Matt Hawkins, Admin Services Director, is recommending that the Board of Commissioners approve the reclassification of an employee from an Engineer Survey Tech II to an Engineer Survey Tech III. Should the reclassification be approved, it would be effective February 1, 2023 and would have a fiscal impact for the FY 22-23 budget of approximately \$3500.00 including PERs contribution should it be for 12 months.

MOTION PASSED BY CONSENSUS OF THE BOARD.

8. PUBLIC HEARING – CONSIDERATION OF A BALLOT MEASURE FOR PUBLIC SAFETY

Greg Hansen, Administrative Officer, went over a Memorandum that was given to the

Commissioners and staff. Mr. Hansen is recommending that the Commissioners consider the following:

1. To place a Local Option Tax (operating levy) measure on the ballot for the May 16, 2023, general election to re-authorize the 2019 public safety levy in Polk County.
2. A local option tax (operating levy) in an amount not to exceed \$0.495/\$1,000 assessed value for the duration of five (5) years.
3. As part of the measure, the County would eliminate the final year of the 2019 voter approved public safety operating levy.

Mr. Hansen provided some background information and went over the timetable for the operating levy re-authorization. Commissioner Pope asked what date does the Board need to make a decision. Mr. Hansen stated preferably today, but no later than next week. Commissioner Gordon opened the public hearing to public comment at 9:10 am.

Ted Campbell provided public testimony that he supports the re-authorization of the public safety levy.

The following items were approved by Motion under **5. APPROVAL OF CONSENT CALENDAR:**

- a) Polk County Contract No. 23-13, Oregon Health Authority
(Rosana Warren, Behavioral health)
- b) Polk County Contract No. 23-18, Oregon Health Authority
(Rosana Warren, Behavioral Health)

At 9:12 a.m. County Counsel announced that the meeting was recessed to Executive Session pursuant to ORS 192.660(2) (e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions. (h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. The Executive Session ended at 9:20 a.m and Commissioner Gordon recessed the meeting until 6 p.m.

PUBLIC HEARING (CONTINUANCE) – CONSIDERATION OF A BALLOT MEASURE FOR PUBLIC SAFETY:

Commissioner Gordon called the meeting to order at 6:07 p.m. Greg Hansen, Administrative Officer, provided a recap of the morning meeting and some background information. Commissioner Gordon opened the meeting up at 6:07 p.m. for public comment.

Mandy Straus wanted to ask the Board and staff questions about the sheriff's budget. Mr. Hansen answered her questions.

Public comment closed at 6:20.

MOTION: COMMISSIONER POPE MOVED TO DIRECT STAFF TO DRAFT AN ORDER RE-AUTHORIZING THE PUBLIC SAFETY LEVY, COMMISSIONER MORDHORST SECONDED, TO DIRECT STAFF TO DRAFT AN ORDER RE-AUTHORIZING THE PUBLIC SAFETY LEVY.

MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.

Commissioner Gordon adjourned the meeting at 6:20 p.m.

POLK COUNTY BOARD OF COMMISSIONERS

Jeremy Gordon, Chair

Craig Pope, Commissioner

Lyle Mordhorst, Commissioner

Minutes: Nicole Pineda
Approved: February 8, 2023



HUMAN RESOURCES

POLK COUNTY COURTHOUSE ★ DALLAS, OREGON 97338-3174
(503) 623-1888 ★ FAX (503) 623-1889

MEMORANDUM

TO: Board of Commissioners
FROM: Matt Hawkins, Admin. Services Director
DATE: February 10, 2023
SUBJECT: Reclassification of a GIS Cartographer

Wednesday – February 15, 2023 (5 minutes)

RECOMMENDATION:

The Board of Commissioners approve the reclassification of the GIS Cartographer.

ISSUE:

Shall the Board approve the reclassifications?

DISCUSSION:

It is recommended that Christi Pontier of the Assessor's Office be reclassified from a GIS Cartographer to the Lead GIS Cartographer. With the recent retirement of Donna Postma the Lead GIS Cartographer position needs to be filled and Christi is the only person able to do so within the Assessor's Office. Christi is an excellent employee and performs at a high level with many years of experience. With this change the Assessor's Office will be looking to fill either the GIS Cartographer position or the GIS Cartographic Trainee positions and Christi will be the person expected to train the successful candidate.

Christi is currently at step 6 of the GIS Cartographer position which is \$5,735. If the reclassification is approved she will move to step 5 of the Lead GIS Cartographer position which is \$6,079.

Should the reclassification be approved it would be effective March 1, 2023.

FISCAL IMPACT:

This reclassification will have an impact on the budget for FY 22-23 of approximately \$5,500 including PERS contribution should it be for 12 months.

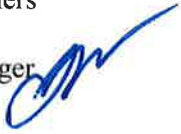


POLK COUNTY

820 S.W. ASH STREET ★ DALLAS, OREGON 97338-2112
(503) 623-0715 ★ FAX (503) 623-6819

EMERGENCY MANAGEMENT

To: Polk County Board of Commissioners

From: L. Dean Bender, Emergency Manager 

Date: February 8, 2023

Subject: Polk County Community Preparedness Intergovernmental Agreement
(Agreement # PO-25700-00016087)

Recommendation:

Direct Polk County Emergency Management to accept funds (\$10,000) from this intergovernmental agreement to develop a pilot program to emphasize wildfire community preparedness as it relates to wildfire evacuation education, communication, or planning in Polk County.

This pilot project was made available by the Oregon State Fire Marshal's Office through its Community Risk Reduction Program.

Issue:

Should Polk County Emergency Management accept funds from this intergovernmental agreement to enhance preparedness and reliance to help emphasize wildfire community preparedness as it relates to wildfire evacuation education, communication or planning in Polk County from the list of acceptable projects identified in "Exhibit A - Statement of Work".

Please note, Polk County may request in advance for expenditures up to the \$10,000 budget amount for this project in accordance with "Exhibit A - Statement of Work".

Discussion/Alternatives:

Decline the grant award and look for other sources of funding to facilitate community education that includes the Oregon Evacuation Levels 1-3 (Be Ready. Be Set. And Go!)

Fiscal Impact:

The fiscal impact to Polk County would only be the costs associated with administering the grant funds of \$10,000.

POLK COUNTY COMMUNITY PERPAREDNESS INTERGOVERNMENTAL AGREEMENT

Agreement No. PO-25700-00016087

This Agreement is between the State of Oregon acting by and through its Oregon State Fire Marshal's office ("Agency") and Polk County each a ("Contractor") and, together, the "Parties".

SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110 and 283.110, allowing State agencies to enter into agreements with other agencies to cooperate in performing duties, exercising, or administering policies or programs.

SECTION 2: PURPOSE

The purpose of this Intergovernmental Agreement is to clearly define the responsibilities of each Party. Polk County is requesting financial assistance to emphasize wildfire community preparedness as it relates to wildfire evacuation education, communication, and planning in the county ("the Project")

SECTION 3: EFFECTIVE DATE AND DURATION

This Agreement is effective the date of the last signature, ("Effective Date") and terminates on (June 30, 2023), unless terminated earlier in accordance with Section 15.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 Agency's Authorized Representative is:
Fraser Wick, Community Risk Reduction Program Analyst
Oregon State Fire Marshal's office
3565 Trelstad Ave. SE
Salem, OR 97317
Phone: (503)934-8283
Email: Fraser.Wick@osp.oregon.gov

4.2 Polk County's Authorized Representative is:
Dean bender – Emergency Manager
Polk County
820 SW Ash Street
Dallas, Oregon 97338

Phone: 503-831-3495

Email: Bender.Dean@co.polk.or.us

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

SECTION 5: RESPONSIBILITIES OF EACH PARTY

- 5.1** Polk County shall develop a pilot program to emphasize wildfire community preparedness as it relates to wildfire evacuation education, communication, or planning in the respective county.
- 5.2** Agency shall pay Polk County as described in Section 6.

SECTION 6: COMPENSATION AND PAYMENT TERMS

Agency shall pay Polk County Not to Exceed ("NTE") sum of \$10,000.00 for the Project. Upon and after execution of the Agreement, Polk County may request in advance of expenditures up to \$10,000.00 of the reimbursements described. Funds are to be used in accordance with Exhibit A Statement of Work.

SECTION 7: REPRESENTATIONS AND WARRANTIES

Polk County represents and warrants to Agency that:

- 7.1** Polk County is a Polk County duly organized and validly existing. Polk County has the power and authority to enter into and perform this Agreement;
- 7.2** The making and performance by Polk County of this Agreement (a) have been duly authorized by Polk County, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Polk County's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Polk County is party or by which Polk County may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Polk County of this Agreement, other than those that have already been obtained;
- 7.3** This Agreement has been duly executed and delivered by Polk County and constitutes a legal, valid and binding obligation of Polk County enforceable in accordance with its terms;
- 7.4** Polk County shall, at all times during the term of this Agreement, be professionally competent, to perform its obligations under this Agreement.

The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by Polk County.

SECTION 8: GOVERNING LAW, CONSENT TO JURISDICTION

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

SECTION 9: CONTRIBUTION

- 9.1** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section 10 with respect to the Third Party Claim.
- 9.2** With respect to a Third Party Claim for which Agency is jointly liable with Polk County (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Polk County in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of Polk County on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of Polk County on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any

instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

- 9.3** With respect to a Third Party Claim for which Polk County is jointly liable with Agency (or would be if joined in the Third Party Claim), Polk County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of Polk County on the one hand and of Agency on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Polk County on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Polk County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

SECTION 10: POLK COUNTY DEFAULT

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

- 10.1** Polk County fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;
- 10.2** Any representation, warranty or statement made by Polk County in this Agreement or in any documents or reports relied upon by Agency to measure the delivery of services, the expenditure of funds or the performance by Polk County is untrue in any material respect when made;
- 10.3** Polk County (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or
- 10.4** A proceeding or case is commenced, without the application or consent of Polk County, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Polk County, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Polk County or of all or any substantial part of its assets, or (c) similar relief in respect to Polk County under any law relating to bankruptcy,

insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Polk County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

SECTION 11: AGENCY DEFAULT

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

SECTION 12: REMEDIES

- 12.1** In the event Polk County is in default under Section 10, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 16, (b) reducing or withholding payment that Polk County has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Polk County to provide, at Polk County's expense, additional buckets necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 13 of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- 12.2** In the event Agency is in default under Section 11 and whether or not Polk County elects to exercise its right to terminate this Agreement under Section 15.3.3, or in the event Agency terminates this Agreement under Sections 15.2.1, 15.2.2, 15.2.3, or 15.2.5. In no event will Agency be liable to Polk County for any expenses related to termination of this Agreement.

SECTION 13: RECOVERY OF OVERPAYMENTS

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

SECTION 14: LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 10, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY

CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

SECTION 15: TERMINATION

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

15.2 Agency may terminate this Agreement as follows:

15.2.1 Upon 30 days advance written notice to Polk County;

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

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

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

15.2.5 As otherwise expressly provided in this Agreement.

15.3 Polk County may terminate this Agreement as follows:

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

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

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

15.3.4 As otherwise expressly provided in this Agreement.

15.4 Upon receiving a notice of termination of this Agreement, Polk County will immediately cease all activities under this Agreement, unless Agency expressly directs otherwise in such

notice. Upon termination, Polk County will deliver to Agency all documents, information, product and other property that are or would be deliverables under the Agreement. And upon Agency's reasonable request, Polk County will surrender all documents, research or objects or other tangible things needed to complete the project that was to have been provided by Polk County under this Agreement.

SECTION 16: INSURANCE

Polk County shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorney's fees, resulting from, arising out of, or relating to the activities of Polk County or its officers, employees, subcontractors, or agents under this Agreement.

Polk County will have control of the defense and settlement of any claim that is subject to this Section. But neither Polk County nor any attorney engaged by Polk County may defend the claim in the name of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon. Nor may Polk County settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Polk County is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue at the State of Oregon desires to assume its own defense.

SECTION 17: NONAPPROPRIATION

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

SECTION 18: AMENDMENTS

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

SECTION 19: NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement shall be given in writing by email, personal delivery, facsimile, or mailing the

same, postage prepaid, to a Party's Authorized Representative at the address, number or email address set forth in this Agreement, or to such other addresses or numbers as a Party may indicate pursuant to this Section 9.

SECTION 20: SURVIVAL

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 8, 9, 10, 13, 14 and 20 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

SECTION 21: SEVERABILITY

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

SECTION 22: COUNTERPARTS

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

SECTION 23: COMPLIANCE WITH LAW

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

SECTION 24: INTENDED BENEFICIARIES

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

SECTION 25: FORCE MAJEURE

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or

war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Agency may terminate this Agreement upon written notice to Polk County after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 26: ASSIGNMENT AND SUCCESSIONS IN INTEREST

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

SECTION 27: SUBCONTRACTS

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

SECTION 28: TIME IS OF THE ESSENCE

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

SECTION 29: MERGER, WAIVER

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SECTION 30: RECORDS

The Parties shall create and maintain records documenting their performance under this Agreement. The Oregon Secretary of State's Office, the federal government, the other Party, and their duly authorized representatives shall have access to the books, documents, papers, and

records of a Party that are directly related to this Agreement for the purposes of making audit, examination, excerpts, and transcripts for a period of six years after termination of this Agreement.

SECTION 31: HEADINGS

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

SECTION 32: AGREEMENT DOCUMENTS

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

SECTION 33: SIGNATURES

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

STATE OF OREGON acting by and through its Oregon State Fire Marshal's Office, Department of Oregon State Police

Shirley Smith, DPO

Date

Polk County Emergency Management

Polk County Board of Commissioners, Chair

Date

Exempt from Legal Sufficiency in accordance with ORS190.430

EXHIBIT A

STATEMENT OF WORK

Fire Adapted Home: County Emergency Management Evacuation Pilot Project

Section 1 PILOT PROJECT:

The pilot project is to provide Polk County Emergency Management with a stipend to emphasize wildfire community preparedness as it relates to wildfire evacuation education, communication, or planning in the respective county.

Polk County may choose one or more of the following to complete the pilot project:

- May include wildfire evacuation route planning, countywide wildfire evacuation plan, wildfire evacuation zones, or other wildfire evacuation-related topics.
- May include pre-evacuation planning (i.e., Sign up for emergency alerts, developing a plan or checklist, assembling an emergency go-kit, or purchasing emergency go-kits/supplies).
- May include a public service announcement (PSA), social media, print materials, or other forms of media for marketing for wildfire evacuation.
- May include wildfire evacuation for the following target audiences or services:
 - Socially and economically vulnerable communities.
 - Translation services for persons with limited proficiency in English.
 - Persons of lower income.
 - Critical and emergency infrastructure.
 - Schools, hospitals, and facilities that serve seniors (older adults).

All projects are required to use Oregon Evacuation Levels 1-3 (Be Ready. Be Set. and Go!)

- <https://wildfire.oregon.gov/Pages/evacuations.aspx>
- Emergency Manager/Project Manager must submit a budget identifying how funding will be used to support the selected activities within 30 days of execution of the Agreement. Examples of expenses include, but not limited to, personnel time, equipment, product, etc.
- Complete pilot project by June 30, 2023. Polk County shall email a summary of the items completed to Stephanie.Stafford@osp.oregon.gov upon completion and prior to June 30th, 2023. The county is required to meet monthly with the Fire Risk Reduction Specialist to provide status updates on the progression of this project at Agency's request.

EXHIBIT B

INSURANCE CERTIFICATION



State of
Oregon-Selfins_Cert

EXHIBIT C

ADDITIONAL REQUIREMENTS

SECTION 1: CONFIDENTIALITY AND NONDISCLOSURE

- 1.1** Each Party acknowledges that it and any of its officers, directors, employees and agents may, in the course of performing its responsibilities under this Agreement, be exposed to or acquire information that is confidential to the other Party. Any and all information of any form provided to a Party or its officers, directors, employees and agents in the performance of this Agreement that reasonably could at the time of its disclosure be understood to be confidential is confidential information of the disclosing Party ("Confidential Information"). Any reports, summaries, or other documents or items (including software) that result from a receiving Party's use of Confidential Information of the disclosing Party is also confidential Information of the disclosing Party. Confidential Information does not include information that:
- a) Is or becomes (other than by disclosure by the receiving Party) publicly known or is contained in a publicly available document, except to the extent that applicable law continues to restrict or prohibit disclosure;
 - b) Is furnished by the disclosing Party to others without restrictions similar to those imposed on the receiving Party under this Agreement;
 - c) Is rightfully in the receiving Party's possession without the obligation of nondisclosure prior to the time of its disclosure by the disclosing Party under this Agreement;
 - d) Is obtained from a source other than the disclosing Party without the obligation of confidentiality;
 - e) Is disclosed with the written consent of the disclosing Party; or
 - f) Is independently developed by the receiving Party's officers, directors, employees and agents who can be shown to have had no access to the Confidential Information of the disclosing Party.
- 1.2** The receiving Party shall hold all Confidential Information of the disclosing Party in strict confidence, using at least the same degree of care that is uses in maintaining the confidentiality of its own confidential information; shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information of the disclosing Party to third parties; shall not use Confidential Information of the disclosing Party for any purposes whatsoever other than as contemplated by this Agreement or reasonably related thereto; and shall advise its officers, directors, employees and agents that receive or have access to the Confidential Information of their obligations to keep

Confidential Information of the disclosing Party confidential. These confidentiality obligations do not restrict disclosure of Confidential Information if the receiving Party can show that any one of the following conditions exists:

- a) The disclosure was required to respond to a subpoena or court order duly issued in a judicial or legislative process and the receiving Party notified the disclosing Party of the subpoena or court order at least five days prior to the disclosure of the disclosing Party's Confidential Information, unless such notice could not reasonably be given; or
- b) The disclosure was required to respond to a public records request made under the Oregon Public Records Law, ORS 192.410 to 192.505, and the receiving party notified the disclosing Party of the public records request at least five days prior to the disclosure of the disclosing Party's Confidential Information.

1.3 The receiving Party shall use its best efforts to assist the disclosing Party in identifying and preventing any unauthorized use or disclosure of Confidential Information of the disclosing Party. Without limiting the generality of the foregoing, the receiving Party shall advise the disclosing Party immediately in the event it learns or has reason to believe that any person who has had access to Confidential Information of the disclosing Party has violated or intends to violate the terms of this Agreement.

1.4 As requested by the disclosing Party, the receiving Party shall return to the disclosing Party, or destroy, all Confidential Information of the disclosing Party disclosed to the receiving Party, except that the receiving Party may retain one archival copy of the Confidential Information of the disclosing Party as and to the extent required by applicable records retention laws. Nothing in the Agreement is intended to make the receiving Party a custodian of any record or any information, documents or materials provided by the disclosing Party to the receiving Party.

MEMORANDUM

TO: Board of Commissioners
FROM: Nicole Pineda, Executive Assistant
DATE: February 13, 2023
SUBJECT: Appointment's to the West Valley Housing Authority Board

RECOMMENDATION:

Adopt Order 23-05 in the matter of appointing Michael Sewell to the West Valley Housing Authority Board, term to expire February, 2027.

ISSUE:

Should the above named applicant be appointed to the West Valley Housing Authority Board?

BACKGROUND:

Michael Sewell interviewed in front of the Board on Tuesday, February 7, 2023.

ALTERNATIVES:

1. Adopt Order 23-05, appointing Michael Sewell to the West Valley Housing Authority Board of Commissioners.
2. Don't adopt Order 23-05, appointing Michael Sewell to the West Valley Housing Authority Board of Commissioners and advertise for others who might be interested in serving.

FISCAL IMPACT:

No direct fiscal impact.

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6 **BEFORE THE BOARD OF COMMISSIONERS FOR**
7 **POLK COUNTY, OREGON**
8

9 In the Matter of Appointing)
10 Commissioners for the)
11 Housing Authority and)
12 Urban Renewal Agency of)
13 Polk County)
14

15 **ORDER NO. 23-05**
16

17 WHEREAS, the Polk County Board of Commissioners, pursuant to ORS 456.095 have
18 the authority to appoint a Board of Commissioners to oversee the operations of the Housing
19 Authority; and
20

21 WHEREAS, the Bylaws which govern operation of the Housing Authority and Urban
22 Renewal Agency of Polk County, allow for appointment of Commissioners to four (4) year terms;
23 and
24

25 WHEREAS, the Polk County Commissioners have sought out qualified individuals to
26 serve on the Board of Commissioners for the Housing Authority and Urban Renewal Agency of
27 Polk County;
28

29
30 **NOW THEREFORE, THE POLK COUNTY BOARD OF COMMISSIONERS ORDER AS FOLLOWS:**
31

- 32 1. Michael Sewell is appointed to Position #3. Term of appointment is through February
33 2027;
34

35 Dated this 15th day of February, 2023 at Dallas, Oregon.
36

37 BOARD OF COMMISSIONERS
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39
40 _____
41 Jeremy Gordon, Chair
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43
44 _____
45 Craig Pope, Commissioner
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47 Approved as to Form
48

49 _____
50 Lyle Mordhorst, Commissioner
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51 _____
Morgan Smith, County Counsel