

**POLK COUNTY BOARD OF COMMISSIONERS**

**DATE:** November 29, 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.
3. COMMENTS (for items not on this agenda and limited to 3 minutes)
4. APPROVAL OF AGENDA
5. APPROVAL OF THE MINUTES FROM November 22, 2023
6. APPROVAL OF CONSENT CALENDAR
7. PUBLIC WORKS RECOGNITION
8. PUBLIC HEARING – AMBULANCE SERVICE AREA (ASA) DISCUSSION – Greg Hansen

**CONSENT CALENDAR**

- (a) Polk County Contract No. 23-228 (Amendment 3 to 23-109), Oregon Health Authority (Rosana Warren, Public Health)

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

**ADJOURNMENT**

**POLK COUNTY BOARD OF COMMISSIONERS**  
**MINUTES November 22, 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 was present and Commissioner Mordhorst was present via Zoom.

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.

A public hearing will be held in the Main Conference Room, Polk County Courthouse, located at 850 Main St Dallas at 9:00 a.m., on Wednesday, November 29, 2023. The purpose of the meeting is to discuss and determine Ambulance Service Areas (ASA) for Polk County.

**3. COMMENTS**

None.

**4. APPROVAL OF AGENDA**

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

**MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.**

**5. APPROVAL OF MINUTES OF BOARD MEETING OF November 8, 2023**

**MOTION: COMMISSIONER MORDHORST MOVED, COMMISSIONER POPE SECONDED, TO APPROVE THE MINUTES OF November 8, 2023.**

**MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.**

**6. APPROVAL OF CONSENT CALENDAR**

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

**MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.**

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

- (a) **Polk County Contract No. 23-218, Lake County  
(Eric McAvoy, GIS Manager)**
- (b) **Polk County Contract No. 23-219, Oregon Department of Education  
(Jodi Merritt, Community Corrections Director)**
- (c) **Polk County Order No. 23-12, West Valley Housing Authority Appointment  
(Nicole Pineda, Executive Assistant)**
- (d) **Right of Way Dedication Acceptance, Lamprecht  
(Todd Whitaker, Public Works Director)**
- (e) **Polk County Contract No. 23-225, Oregon Health Authority  
(Rosana Warren, Public Health)**
- (f) **Polk County Contract No. 23-226, State Homeland Security Grant Award #23-261  
(Dean Bender, Emergency Management Operations Manager)**
- (g) **Polk County Contract No. 23-227, State Homeland Security Grant Award #23-240  
(Dean Bender, Emergency Management Operations Manager)**

Commissioner Pope wanted to recognize the work that was completed at Buena Vista Park and thanked Matt Hawkins and team for all of their great work.

Commissioner Mordhorst wanted to wish everyone a happy Thanksgiving, especially to the first responders and members of the military.

There no need for an executive session and Commissioner Gordon adjourned the meeting at 9:05 a.m.

**POLK COUNTY BOARD OF COMMISSIONERS**

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Jeremy Gordon, Chair

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Craig Pope, Commissioner

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Lyle Mordhorst, Commissioner



Hansen, Greg &lt;hansen.greg@co.polk.or.us&gt;

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## Fwd: Recent Pavement Ratings

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**Whitaker, Todd** <whitaker.todd@co.polk.or.us>  
To: GREG HANSEN <HANSEN.GREG@co.polk.or.us>

Wed, Oct 25, 2023 at 9:56 AM

FYI

----- Forwarded message -----

From: **Joel Conder** <jconder@capitolasset.net>  
Date: Mon, Sep 25, 2023, 8:28 AM  
Subject: Recent Pavement Ratings  
To: Whitaker, Todd <whitaker.todd@co.polk.or.us>, Paul Wigowsky <paul@capitolasset.net>

Good morning Todd, just wanted to reach out to you this morning and let you know we finished your pavement ratings last Friday. I also wanted to let you know that I have been rating pavements since 1989 (34 years), and have never seen an entire road system in that good of a condition.

I know we were involved in getting that road bond passed many years ago that addressed most of the county's pavement needs. What I was most impressed with was your ability to maintain it at such a high level.

Your chip seal program was spot on from the quality of the aggregate to the proper oil shot rate. The rock retention is amazing as well as the proper fog seal placement. All-in-all your chip seal program has a great looking, and riding finished product that you should be very proud of.

I have never written an email like this before and most likely never will compliment someone on the condition of their entire road network. Kudos to you Todd and your road department staff for having by far and away the best road network in the entire state.

Keep up the great work,

Joel Conder  
Senior Project Manager (semi-retired)



Capitol Asset & Pavement Services, Inc.  
(503) 884-6663



# INTEROFFICE MEMORANDUM

POLK COUNTY COURTHOUSE

**TO:** Board of Commissioners  
**FROM:** Greg Hansen, Admin. Officer  
**DATE:** November 27, 2023  
**SUBJECT:** Assignment of Ambulance Service Areas

## RECOMMENDATION:

The Board of Commissioners take the following action:

1. Hold a Public Hearing (November 29<sup>th</sup>) to determine the geographical assignment of Ambulance Service Areas (ASA's) within Polk County.
2. Hear testimony from current and proposed ASA providers/general public to aide in the decision making process.
3. After conclusion of the public hearing consider next steps. Next steps could include extending the public hearing, taking all of the information under consideration for a decision at a later date, or making a motion for voting on decision today.

## ISSUE:

Should the Board hold a public hearing to hear recommendations and testimony to assist in the determination of assigning Ambulance Service Areas?

## BACKGROUND:

ORS 682.062 requires each County to develop a plan for the coordination of ambulance services within the County and to establish one or more service areas consistent with this plan. These requirements are further flushed out in PCCO chapter 65, which is attached.

Polk County and County ambulance providers have been in discussions for the past twenty months on the topic of ambulance service delivery. Those discussions have centered primarily on the geographical assigned areas for providers and ambulance service policy and procedures.

As a result of those discussions, the County hired a consultant (ESCI) to provide a report on recommended assigned areas and a separate update to our ASA plan that spells out policy and procedures.

After multiple meetings with providers and years of data retrieval, a document was produced (attached) and then later discussed with the ASA committee. The newly proposed service areas were vetted by the committee with the potential impacts to SW Polk (a new ASA provider) and Dallas (existing ASA provider), the only two (2) ASA areas affected by the new proposed map.

At the conclusion of the ASA committee meeting it was approved by the committee to move the decision of the assignment of ambulance service areas forward to the Board for their consideration and approval within the next 30 - 45 days. Within the time period it was stressed for Dallas and SW Polk to meet and develop a working compromise on the assigned ASA's for the two agencies.

**DISCUSSION:**

In my opinion, the decision of assigning Ambulance Service Areas will be no easy task. The report completed by ESCI does not provide the County with enough detailed information to make a clear and decisive decision without a mutual agreement between Dallas and SW Polk on ambulance boundaries.

**FISCAL IMPACT:**

None to Polk County, somewhat unknown to the two entities of Dallas and SW Polk.



# CONTRACT REVIEW SHEET

Staff Contact: Rosana Warren Phone Number (Ext): 3558  
Department: Health Services: Public Health Consent Calendar Date: November 08, 2023  
Contractor Name: Oregon Health Authority  
Address: 635 Capitol Street NE, Room 350  
City, State, Zip: Salem, OR 97301  
Effective Dates - From: September 01, 2023 Through: June 30, 2024  
Contract Amount: \$17,811.00

## Background:

The County receives funds from the Oregon Health Authority to provide Public Health Services to residents of the County by way of a grant. This contract is the third amendment to the initial award from the State. The grant award may be modified from time-to-time throughout the fiscal year to reflect changes to funds and/or programs that are made as part of the grant.

## Discussion:

This third Amendment provides funding to the Local Public Health Authority for the continued Program Service delivery under PE 51-03 - ARPA and a one time PE12-01 - Emergency Preparedness training travel reimbursement for a total amendment award amount of \$17,811.00.

## Fiscal Impact:

The total for this amendment is \$17,811.00 for FY24. The \$17,461 for 51-03 was not expected, but does not include any new expectations. The \$350 was expected.

## Recommendation:

It is recommended that Polk County sign amendment 3 to IGA 180027 with the Oregon Health Authority.

## Copies of signed contract should be sent to the following:

Name: Rosana Warren E-mail: hs.contracts@co.polk.or.us  
Name: \_\_\_\_\_ E-mail: \_\_\_\_\_  
Name: \_\_\_\_\_ E-mail: \_\_\_\_\_

## **MEMO NARRATIVE ADDENDUM**

### **NOT FOR PUBLIC DISCLOSURE**

#### **What is this?**

This is the third amendment to our Public Health contract IGA 180027 (No. 23-109, 23-190 & 23-204). This is considered a standard contracting practice for the PH division to reimburse services or redistribute funding throughout the contract as needed.

#### **What parts of the contract are updated?**

*The Emergency Preparedness Program*, is being funded \$350 to offset the cost of local program staff attending their annual in person state training and associated expenses, ie - mileage, food, and lodging.

- What will we do with it?
  - 1 EP staff will attend the conference as planned.

*The Modernization Program*,

Last year \$17,461 funds were inadvertently placed in a different funding category that has a lot of restrictions and it could not be fully expended. The state caught this and is allowing us to roll it over into this year in the flexible funding of Modernization where it should have gone.

- What will we do with it?

These funds will be combined with our other Modernization funds to offset PH staff salary and benefits of the current staff in these qualifying areas.



## OHA - 2023-2025 INTERGOVERNMENTAL AGREEMENT - FOR THE FINANCING OF PUBLIC HEALTH SERVICES

Agreement #180027



**AMENDMENT TO OREGON HEALTH AUTHORITY  
2023-2025 INTERGOVERNMENTAL AGREEMENT FOR THE  
FINANCING OF PUBLIC HEALTH SERVICES**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to [dhs-oha.publicationrequest@state.or.us](mailto:dhs-oha.publicationrequest@state.or.us) or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This **Third** Amendment to Oregon Health Authority 2023-2025 Intergovernmental Agreement for the Financing of Public Health Services, effective July 1, 2023, (as amended the “Agreement”), is between the State of Oregon acting by and through its Oregon Health Authority (“OHA”) and **Polk County**, (“LPHA”), the entity designated, pursuant to ORS 431.003, as the Local Public Health Authority for Polk County. OHA and LPHA are each a “Party” and together the “Parties” to the Agreement.

**RECITALS**

WHEREAS, OHA and LPHA wish to modify the Fiscal Year 2024 (FY24) Financial Assistance Award set forth in Exhibit C of the Agreement.

WHEREAS, OHA and LPHA wish to modify the Exhibit J information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200;

NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**AGREEMENT**

1. This Amendment is effective on **September 1, 2023**, regardless of the date this amendment has been fully executed with signatures by every Party and when required, approved by the Department of Justice. However, payments may not be disbursed until the Amendment is fully executed.
2. The Agreement is hereby amended as follows:
  - a. Exhibit C, Section 1 of the Agreement, entitled “Financial Assistance Award” for FY24 is hereby superseded and replaced in its entirety by Attachment A, entitled “Financial Assistance Award (FY24)”, attached hereto and incorporated herein by this reference. Attachment A must be read in conjunction with Section 3 of Exhibit C.
  - b. Exhibit J of the Agreement entitled “Information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200” is amended to add to the federal award information datasheet as set forth in Attachment B, attached hereto and incorporated herein by this reference.
3. LPHA represents and warrants to OHA that the representations and warranties of LPHA set forth in Section 4 of Exhibit F of the Agreement are true and correct on the date hereof with the same effect as if made on the date hereof.
4. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.
5. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.

6. This Amendment may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the dates set forth below their respective signatures.

7. **Signatures.**

**STATE OF OREGON, ACTING BY AND THROUGH ITS OREGON HEALTH AUTHORITY**

Approved by: \_\_\_\_\_

Name: /for/ Nadia A. Davidson

Title: Director of Finance

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

**POLK COUNTY LOCAL PUBLIC HEALTH AUTHORITY**

Approved by: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**DEPARTMENT OF JUSTICE – APPROVED FOR LEGAL SUFFICIENCY**

*Agreement form group-approved by Steven Marlowe, Senior Assistant Attorney General, Tax and Finance Section, General Counsel Division, Oregon Department of Justice by email on August 11, 2023, copy of email approval in Agreement file.*

**REVIEWED BY OHA PUBLIC HEALTH ADMINISTRATION**

Reviewed by: \_\_\_\_\_

Name: Rolonda Widenmeyer (or designee)

Title: Program Support Manager

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

**Attachment A  
Financial Assistance Award (FY24)**

State of Oregon Oregon Health Authority Public Health Division		
<b>1) Grantee</b> Name: Polk County  Street: 182 SW Academy, Suite 302 City: Dallas State: OR Zip: 97338-1900	<b>2) Issue Date</b> Friday, September 1, 2023	<b>This Action</b> Amendment
	<b>3) Award Period</b> From July 1, 2023 through June 30, 2024	

<b>4) OHA Public Health Funds Approved</b>				
<b>Number</b>	<b>Program</b>	<b>Previous Award Balance</b>	<b>Increase / Decrease</b>	<b>Current Award Balance</b>
PE01-01	State Support for Public Health	\$111,703.00	\$0.00	\$111,703.00
PE01-12	ACDP Infection Prevention Training	\$1,517.82	\$0.00	\$1,517.82
PE10-02	Sexually Transmitted Disease (STD)	\$151,254.00	\$0.00	\$151,254.00
PE12-01	Public Health Emergency Preparedness and Response (PHEP)	\$85,133.00	\$350.00	\$85,483.00
PE13	Tobacco Prevention and Education Program (TPEP)	\$8,642.86	\$0.00	\$8,642.86
PE40-01	WIC NSA: July - September	\$55,416.00	\$0.00	\$55,416.00
PE40-02	WIC NSA: October - June	\$166,250.00	\$0.00	\$166,250.00
PE40-05	Farmer's Market	\$2,000.00	\$0.00	\$2,000.00
PE42-03	MCAH Perinatal General Funds & Title XIX	\$3,251.00	\$0.00	\$3,251.00
PE42-04	MCAH Babies First! General Funds	\$10,394.00	\$0.00	\$10,394.00
PE42-06	MCAH General Funds & Title XIX	\$6,100.00	\$0.00	\$6,100.00
PE42-11	MCAH Title V	\$34,599.00	\$0.00	\$34,599.00
PE42-12	MCAH Oregon Mothers Care Title V	\$2,960.00	\$0.00	\$2,960.00
PE42-13	Family Connects Oregon	\$50,000.00	\$0.00	\$50,000.00
PE43-01	Public Health Practice (PHP) - Immunization Services	\$25,625.00	\$0.00	\$25,625.00
PE44-01	SBHC Base	\$60,000.00	\$0.00	\$60,000.00
PE44-02	SBHC - Mental Health Expansion	\$77,000.00	\$0.00	\$77,000.00
PE46-05	RH Community Participation & Assurance of Access	\$24,234.80	\$0.00	\$24,234.80
PE50	Safe Drinking Water (SDW) Program (Vendors)	\$12,678.00	\$0.00	\$12,678.00
PE51-01	LPHA Leadership, Governance and Program Implementation	\$515,304.00	\$0.00	\$515,304.00
PE51-03	ARPA WF Funding	\$0.00	\$17,461.00	\$17,461.00
PE51-05	CDC PH Infrastructure Funding	\$72,359.08	\$0.00	\$72,359.08
		\$1,476,421.56	\$17,811.00	\$1,494,232.56

<b>5) Foot Notes:</b>	
PE10-02	7/15/2023: Full FY24 award funds may be used in FY24 during the period of 7/1/23-12/31/2023 due to DIS WF federal grant funding being cut by CDC on 12/31/23.
PE10-02	8/2023: Prior Footnote dated 7/15/2023 Null and Void. Full FY24 award funds may now be used in FY24 during the period of 7/1/23-01/31/2024 due to new guidance from the CDC.
PE40-01	7/2023: Unspent SFY2024 Q1 award will be rescinded by the state, cannot be carried over to SFY2024 Q2-4 period.
PE40-02	7/2023: Q2-4 Unspent grant award will be rescinded by the state at end of SFY2024
PE42-11	7/2023: Indirect charges cap at 10%.
PE42-12	7/2023: Indirect Charges cap at 10%.
PE43-01	7/2023: Awarded funds can be spent on allowable costs for the period of 7/1/2023 - 9/30/23. Any unspent funds will be de-obligated.
PE43-01	9/2023: Prior Footnote dated 7/2023 Null and Void.
PE51-01	7/2023: Bridge funding for 7/1/23-9/30/23.
PE51-01	8/2023: Prior Footnote dated 7/2023 Null and Void
PE51-03	9/2023: Federal funds expire 6/30/24 and will be ineligible for carryover into SFY25.

<b>6) Comments:</b>	
PE01-01	8/2023: Prior Comment dated 7/2023 Null and Void 7/2023: SFY24 funding available 7/1/23-9/30/23 only.
PE12-01	8/2023: \$350 award for In-Person PHEPR/OHA Meeting and Listening Session Travel Award 8/2023: Prior Comment dated 7/2023 Null and Void 7/2023: SFY24 Award funding for first 3 months only
PE13	9/2023: All Prior Comments Null and Void 7/15/23: SFY24 Award adding funding for 10/1/23-6/30/24 7/2023: SFY24 Bridge Funding 7/1/23-9/30/23
PE40-01	7/2023: SFY2024 Q1 WIC NSA grant award. \$11,083 must spent on Nutrition Ed; \$1,659 on BF Promotion. Underspend Q1 award cannot be carried over to Q2-4 period.
PE40-02	7/2023: SFY2024 Q2-4 grant award. \$33,250 must be spent on Nutrition Ed, \$4,977 on BF Promotion.
PE40-05	7/2023: SFY2024 WIC Farmers Market Mini grant award. Final Q2 Rev & Exp Report is required for final accounting. Underspent funds will be rescinded by the state in February 2024
PE51-05	7/2023: SFY24 Award Available 7/1/23-6/30/24. Funding total is split over 60 months for the period of 12/1/22-11/30/27.

<b>7) Capital outlay Requested in this action:</b>				
Prior approval is required for Capital Outlay. Capital Outlay is defined as an expenditure for equipment with a purchase price in excess of \$5,000 and a life expectancy greater than one year.				
Program	Item Description	Cost	PROG APPROV	

**Attachment B**  
**Information required by CFR Subtitle B with guidance at 2 CFR Part 200**

**PE12-01 Public Health Emergency Preparedness and Response (PHEP)**

Federal Award Identification Number:	NU90TP922036
Federal Award Date:	06/07/23
Budget Performance Period:	07/01/2023-06/30/2024
Awarding Agency:	CDC
CFDA Number:	93.069
CFDA Name:	Public Health Emergency Preparedness (PHEP)
Total Federal Award:	8,466,536.00
Project Description:	Public Health Emergency Preparedness (PHEP)
Awarding Official:	Ms. Sylvia Reeves
Indirect Cost Rate:	18.06
Research and Development (T/F):	FALSE
HIPPA	No
PCA:	53628
Index:	50407

Agency	UEI	Amount	Grand Total:
Polk	MSNMZ3DRBRN5	\$85,483.00	\$85,483.00

**PE51-03 ARPWF Funding**

Federal Award Identification Number:	NU90TP922194
Federal Award Date:	10/05/22
Budget Performance Period:	07/01/2021-06/30/2024
Awarding Agency:	CDC
CFDA Number:	93.354
CFDA Name:	Public Health Emergency Response: Cooperative Agreement for Emergency Response: Public Health Crisis Response
Total Federal Award:	25,667,917
Project Description:	Cooperative Agreement for Emergency Response: Public Health Crisis Response - 2018
Awarding Official:	Jaime Jones
Indirect Cost Rate:	17.64%
Research and Development (T/F):	FALSE
HIPPA	No
PCA:	50271
Index:	50107

Agency	UEI	Amount	Grand Total:
Polk	MSNMZ3DRBRN5	\$17,461.00	\$17,461.00



# Contract Review Sheet

Staff Contact: Todd Whitaker Department: Public Works

Title: Director Consent Calendar Date: 11/29/23

Contractor Name: Buy Board

Address: PO Box 400

City, State, Zip: Austin, Texas 78767

Effective Dates - From: Nov 2023 Thru: Automatically Renew Annually

Contract Amount: \$ Varies based on equipment purchase amount.

Source Selection:

- |  |   |
|--|---|
| <input type="checkbox"/> Sole Source           | <input type="checkbox"/> Personal Services                                      |
| <input type="checkbox"/> Competitive Quotes    | <input checked="" type="checkbox"/> Special/Exempt Procurement (explain below): |
| <input type="checkbox"/> Formal Bid            | _____   |
| <input type="checkbox"/> Request for Proposals | _____   |

Background/Discussion:

State procurement requirements allows for an entity to enter into purchasing agreements with Cooperatives to identify qualified vendors of goods and services, ease the burden of government purchasing functions and provide administrative savings in procurement processes.

Fiscal Impact:

2% of purchases

Recommendation:

Staff recommends the Board approve the purchasing cooperative agreement with Buy Board

Copies of signed contract should be sent to the following:

Name: Heather Chase E-mail: chase.heather@co.polk.or.us

Name: \_\_\_\_\_ E-mail: \_\_\_\_\_

Name: \_\_\_\_\_ E-mail: \_\_\_\_\_



## NATIONAL PURCHASING COOPERATIVE INTERLOCAL PARTICIPATION AGREEMENT

This Interlocal Participation Agreement (“Agreement”) is made and entered into on the date indicated below by and between the National Purchasing Cooperative (“Cooperative”), an administrative agency of cooperating local governments and other governmental entities, acting on its own behalf and the behalf of all participating governmental entities, and the undersigned governmental entity (“Cooperative Member”).

### I. RECITALS

WHEREAS, the National Purchasing Cooperative was formed on May 26, 2010, by certain local governments that entered into an Organizational Interlocal Agreement; and

WHEREAS, the purpose of the Cooperative is to facilitate compliance with state procurement requirements, to identify qualified vendors of commodities, goods and services, to relieve the burdens of the governmental purchasing function, and to realize potential economies of scale, including administrative cost savings, for Cooperative Members;

NOW THEREFORE, in consideration of the mutual covenants, promises and obligations contained herein, the undersigned Cooperative Member and the Cooperative agree as follows:

### II. TERMS AND CONDITIONS

1. **Adopt Organizational Interlocal Cooperation Agreement.** The Cooperative Member by the execution or acceptance of this Agreement hereby adopts and approves the Organizational Interlocal Agreement, as last amended and restated, which agreement is incorporated herein by reference (and is available from the Cooperative upon request). The Organizational Interlocal Agreement establishes the Cooperative as an administrative agency of its collective participants, and Cooperative Member agrees to become a participant or additional party to the Organizational Interlocal Agreement.

2. **Term.** The initial term of this Agreement shall commence on the date it is executed by both parties and shall automatically renew for successive one-year terms unless sooner terminated in accordance with the provisions of this Agreement. If the Cooperative Member is an existing Cooperative Member that joined the Cooperative by executing a participation agreement which authorized amendment upon the Cooperative providing prior written notice, then this Agreement will be deemed an Amendment by Notice, effective on the 61<sup>st</sup> day that the Cooperative Member is sent notice of this Agreement. In addition, this Agreement will continue to automatically renew for successive one-year terms on the anniversary date of the Cooperative Member’s initial term (not the effective date of the amendment), unless the Agreement is sooner terminated in accordance with the provisions herein.

### 3. Termination.

(a) **By the Cooperative Member.** This Agreement may be terminated by the Cooperative Member at any time by 30 days prior written notice to the Cooperative as provided in Article III, Section 14, provided any amounts owed to any vendor have been fully paid.

(b) **By the Cooperative.** The Cooperative may terminate this Agreement by:

(1) Giving 10 days notice as provided in Article III, Section 14, to the Cooperative Member if the Cooperative Member breaches this Agreement; or

(2) Giving 30 days notice as provided in Article III, Section 14, to the Cooperative Member with or without cause.

(c) **Termination Procedure.** If the Cooperative Member terminates its participation under this Agreement or breaches this Agreement, or if the Cooperative terminates participation of the Cooperative Member, the Cooperative Member shall bear the full financial responsibility for all of its purchases made from vendors under or through this Agreement. The Cooperative may seek the whole amount due, if any, from the terminated Cooperative Member. In addition, the Cooperative Member agrees it will not be entitled to any distribution which may occur after the Cooperative Member terminates from the Cooperative.

4. **Payments by Cooperative Member.** The Cooperative Member will make timely payments to the vendor for the goods, materials and services received in accordance with the terms and conditions of the bid invitation, instructions, and all other applicable procurement documents. Payment for goods, materials and services and inspections and acceptance of goods, materials and services ordered by the procuring Cooperative Member shall be the exclusive obligation of the procuring Cooperative Member, and not the Cooperative. Furthermore, the Cooperative Member is solely responsible for negotiating and securing ancillary agreements from the vendor on such other terms and conditions, including provisions relating to insurance or bonding, that the Cooperative Member deems necessary or desirable under federal, state or local law, local policy or rule, or within its business judgment.

5. **Payments by Vendors.** The parties agree that the Cooperative will require payment from vendors which are selected to provide goods, materials or services to Cooperative Members. Such payment (hereafter "Vendor Fees") may be up to two percent (2%) of the purchase price paid by Cooperative Members or a flat fee amount that may be set from time to time by the Cooperative Board of Directors. Cooperative Member agrees that these Vendor Fees fairly compensate the Cooperative for the services and functions performed under this Agreement and that these Vendor Fees enable the Cooperative to pay the administrative, licensing, marketing, and other expenses involved in successfully operating a program of electronic commerce for the Cooperative Members. Further, Cooperative Member affirmatively disclaims any rights to such Vendor Fees, acknowledging all such fees are the property of the Cooperative. Similarly, in no event shall a Cooperative Member be responsible for payment of Vendor Fees.



6. **Distribution.** From time to time, and at the sole discretion of the Cooperative Board of Directors, the Cooperative may issue a distribution to Cooperative Members under a plan developed by the Cooperative Board of Directors. The Cooperative Member acknowledges that a distribution is never guaranteed and will depend on the overall financial condition of the Cooperative at the time of the distribution and the purchases made by the Cooperative Member.

7. **Administration.** The Cooperative may enter into contracts with others, including non-profit associations, for the administration, operation and sponsorship of the purchasing program provided through this Agreement. The Cooperative will provide reports, at least annually, to the Cooperative Member electronically or by mail. Cooperative Member will report purchase orders generated under this Agreement to the Cooperative or its designee, in accordance with instructions of the Cooperative.

8. **BuyBoard®.** Cooperative Member will have a non-exclusive license to use the BuyBoard electronic purchasing application during the term of this Agreement. Cooperative Member acknowledges and agrees that the BuyBoard electronic application and BuyBoard trade name are owned by the Texas Association of School Boards, Inc. ("TASB"), and that neither the Cooperative nor the Cooperative Member has any proprietary rights in the BuyBoard electronic application or trade name. The Cooperative Member will not attempt to resell, rent, or otherwise distribute any part of BuyBoard to any other party; nor will it attempt to modify the BuyBoard programs on the server or acquire the programming code. The Cooperative Member may not attempt to modify, adapt, translate, distribute, reverse engineer, decompile, or disassemble any component of the application. The Cooperative Member will use BuyBoard in accordance with instructions from the Cooperative (or its designee) and will discontinue use upon termination of participation in the Cooperative. The Cooperative Member will maintain equipment, software and conduct testing to operate the BuyBoard system at its own expense.

### III. GENERAL PROVISIONS

1. **Amendment by Notice.** The Board may amend this Agreement, provided that prior written notice is sent to the Cooperative Member at least 60 days prior to the effective date of any change described in such amendment and provided that the Cooperative Member does not terminate its participation in the Cooperative before the expiration of said 60 days.

2. **Authorization to Participate and Compliance with Local Policies.** Each Cooperative Member represents that its governing body has duly authorized its participation in the Cooperative and that the Cooperative Member will comply with all state and local laws and policies pertaining to purchasing of goods and services through its membership in the Cooperative.

3. **Bylaws.** The Cooperative Member agrees to abide by the Bylaws of the Cooperative, as they may be amended, and any and all written policies and procedures established by the Cooperative that apply to Cooperative Members. The Cooperative shall provide written notice to the Cooperative Member of any amendment to the Bylaws of the Cooperative and any written policy or procedure of the Cooperative that is intended to be binding on and applicable to the Cooperative Member. In addition to any other notice method specified in this Agreement, notice under this Section may be satisfied by posting of the applicable bylaws,

policy, or procedure on the Cooperative's website or BuyBoard application landing page for Cooperative Members.

4. **Cooperation and Access.** The Cooperative Member agrees that it will cooperate in compliance with any reasonable requests for information and/or records made by the Cooperative. The Cooperative reserves the right to review and audit the relevant and available records of any Cooperative Member. Any breach of this provision shall be considered material and shall make the Agreement subject to termination on 10 days written notice to the Cooperative Member.

5. **Coordinator.** The Cooperative Member agrees to appoint a program coordinator who shall have express authority to represent and bind the Cooperative Member, and the Cooperative will not be required to contact any other individual regarding program matters. Any notice to or any agreements with the coordinator shall be binding upon the Cooperative Member. The Cooperative Member reserves the right to change the coordinator as needed by giving written notice to the Cooperative. Such notice is not effective until actually received by the Cooperative.

6. **Current Revenue.** The Cooperative Member hereby represents that all payments, fees, and disbursements required of it hereunder shall be made from current revenues budgeted and available to the Cooperative Member.

7. **Defense and Prosecution of Claims.** The Cooperative Member authorizes the Cooperative to handle the commencement, defense, intervention, or participation in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution, or other appearances of the Cooperative (as an entity) in any litigation, claim or dispute which arises from the services provided by the Cooperative. Neither this provision nor any other provision in this Agreement will create a legal duty for the Cooperative to provide a defense or prosecute a claim; rather, the Cooperative may exercise this right in its sole discretion and to the extent permitted or authorized by law. The Cooperative Member shall reasonably cooperate and supply any information necessary or helpful in such prosecution or defense. Subject to specific revocation, the Cooperative Member hereby designates the Cooperative to act as a class representative on its behalf in matters arising out of this Agreement and pertaining to the collective or predominant interest of Cooperative Members. Nothing herein grants the Cooperative any rights to file, defend, or settle any claim on behalf of the Cooperative Member in its individual capacity.

8. **Governance.** The Board of Directors (Board) will govern the Cooperative in accordance with the Bylaws.

9. **Legal Authority.** The Cooperative Member represents to the Cooperative the following:

- a) The Cooperative Member has conferred with legal counsel and determined it is duly authorized by the laws of the jurisdiction in which the Cooperative Member lies to participate in cooperative purchasing, and specifically, the National Purchasing Cooperative.
- b) The Cooperative Member possesses the legal authority to enter into this Agreement and can allow this Agreement to automatically renew without subsequent action of its governing body.
- c) Purchases made under this Agreement will satisfy all procedural procurement requirements that the Cooperative Member must meet under all applicable local policy, regulation, or state law.

d) All requirements—local or state—for a third party to approve, record or authorize the Agreement have been met.

10. **Disclaimer.** THE COOPERATIVE, ITS ENDORSERS, SPONSORS, AND SERVICING CONTRACTORS, WHETHER CURRENT OR FORMER AND INCLUDING TASB, (“COOPERATIVE AND ASSOCIATES”) DO NOT WARRANT THAT THE OPERATION OR USE OF COOPERATIVE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

THE COOPERATIVE AND ASSOCIATES HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO ANY INFORMATION, PRODUCT OR SERVICE FURNISHED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. **Limitation of Liability.** To the extent permitted by law and without waiver of the disclaimer or other limitation of liability in this Agreement, the parties agree that:

- a) Neither party waives any immunity from liability afforded under law;
- b) In regard to any lawsuit or formal adjudication arising out of or relating to this Agreement, neither party shall be liable to the other under any circumstance for special, incidental, consequential, or exemplary damages;
- c) The maximum amount of damages recoverable will be limited to the amount of fees which the Cooperative received as a direct result of the Cooperative Member’s purchase activity, within 12 months of when the lawsuit or action was filed; and
- d) In the event of a lawsuit or formal adjudication the prevailing party will be entitled to recover reasonable attorney’s fees.

Without waiver of the disclaimer or other limitation of liability in this Agreement, the parties further agree to limit the liability of Cooperative and Associates up to the maximum amount each received from or through the Cooperative, as a direct result of the undersigned Cooperative Member’s purchase activity, within 12 months of the filing of any lawsuit or action.

12. **Limitation of Rights.** Except as otherwise expressly provided in this Agreement, nothing in this Agreement is intended to confer upon any person, other than the parties hereto, any benefits, rights, or remedies under or by reason of this Agreement.

13. **Merger/Entirety.** This Agreement, together with the Cooperative’s Bylaws and Organizational Interlocal Agreement, as amended and restated, represents the complete understanding of the Cooperative and Cooperative Member. To the extent there exists any conflict between the terms of this Agreement and that of prior agreements, the terms of this Agreement shall control and take precedence over all prior participation agreements.

14. **Notice.** Any written notice to the Cooperative may be given by email to BuyBoard Administrator at membership@buyboard.com; by U.S. mail, postage prepaid, and delivered to the National Purchasing Cooperative, P.O. Box 400, Austin, Texas 78767-0400; by overnight courier or hand delivery to National Purchasing Cooperative, 12007 Research Blvd., Austin, Texas 78759; or by other mode of delivery typically

used in commerce and accessible to the intended recipient. Notices to Cooperative Member may be given by email to the Cooperative Member's Coordinator or other email address of record provided by the Cooperative Member; by U.S. mail, postage prepaid, and delivered to the Cooperative Member's Coordinator or chief executive officer (e.g., superintendent, city manager, county judge or mayor); or by other mode of delivery typically used in commerce and accessible to the intended recipient.

15. **Severability.** If any portion of this Agreement shall be declared illegal or held unenforceable for any reason, the remaining portions shall continue in full force and effect.

16. **Signatures/Counterparts.** The failure of a party to provide an original, manually executed signature to the other party will not affect the validity, enforceability or binding effect of this Agreement because either party may rely upon an electronic or facsimile signature as if it were an original, including any Cooperative Member signature executed by click and accept or similar electronic signature and acceptance. Furthermore, this Agreement may be executed in several separate counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

17. **Authority.** By the execution and delivery of this Agreement, the undersigned individual represents that the individual is duly authorized by all requisite administrative action required to enter into and bind the entity that is a party to this Agreement.

*[Signature page follows.]*



WHEREFORE, the parties, acting through their duly authorized representatives, accept this Agreement.

**NATIONAL PURCHASING COOPERATIVE:**

By: \_\_\_\_\_  
Dan Troxell, Ph.D.  
Assistant Secretary

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

**COOPERATIVE MEMBER:**

*[Signature required unless accepted as an Amendment by Notice as described in the Agreement.]*

Polk County Public Works  
(Government Entity Name)

By: \_\_\_\_\_  
Signature of authorized representative of Cooperative Member

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

\_\_\_\_\_  
Printed name and title of authorized representative

Coordinator for the Cooperative Member is:

Todd Whitaker  
Name

Department Director  
Title

820 SW Ash St.  
Mailing Address

Dallas  
City

OR 97388  
State Zip Code

(503) 623-9287  
Telephone

\_\_\_\_\_  
Fax

whitaker.todd@co.polk.or.us  
Email