



**OFFICE OF COUNTY COUNSEL**

**PUBLIC SERVICES BUILDING**  
 2051 KAEN ROAD | OREGON CITY, OR 97045

**Stephen L. Madkour**  
 County Counsel

July 18, 2019

Board of County Commissioners,  
 Clackamas County

Members of the Board:

**Kathleen Rastetter**  
**Scott C. Ciecko**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Shawn Lillegren**  
**Jeffrey D. Munns**  
**Andrew R. Naylor**  
**Andrew Narus**  
**Sarah Foreman**  
 Assistants

Approval of a Memorandum of Understanding (hereafter this "MOU") with  
Mount Hood Search and Rescue Council (hereafter the "Council")

<b>Purpose/ Outcomes</b>	This MOU is being presented to memorialize the BCC's decision to provide funding to the Council for the purpose of securing a facility for the Council to store search and rescue ("SAR") equipment.
<b>Dollar Amount and Fiscal Impact</b>	The County is agreeing to pay \$36,000.00 annually, for five consecutive fiscal years, to the Council subject to the terms and conditions described in the MOU.
<b>Funding Source</b>	The funding source for the above referenced payments will be the County's general fund.
<b>Duration</b>	Effective upon signature by the Board for the next five fiscal years; expiring on June 30, 2024 unless sooner terminated.
<b>Previous Board Action</b>	The decision to provide funding to the Council was previously made at a BCC policy session on January 30, 2018.
<b>County Counsel Review</b>	This MOU was drafted and approved by County Counsel in or about June 2019.
<b>Strategic Plan Alignment</b>	The Council exists to save lives and improve search and rescue in the region through identifying, documenting and applying mission best practices, and equipping and training their members in skills they need to support their rescue mission and duties. As a County partner, the Council helps ensure safe, healthy and secure communities, which is one of the County's five strategic priorities.
<b>Contact Person</b>	Scott Ciecko, Assistant County Counsel (503)742-5390

**BACKGROUND:**

At the direction of the BCC this MOU was drafted and is being presented for signature to memorialize the terms and conditions of the County's promise to provide funding to the Council so that it can secure a facility to store SAR equipment.

///

///

**RECOMMENDATION:**

County Counsel recommends that if the BCC intends to provide funding to the Council that it agree to and sign this MOU.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Ciecko". The signature is fluid and cursive, with a large initial "S" and a stylized "Ciecko".

Scott Ciecko  
Assistant County Counsel

**MEMORANDUM OF UNDERSTANDING  
BETWEEN CLACKAMAS COUNTY  
AND MT. HOOD SAR COUNCIL**

THIS AGREEMENT (the "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and the Mount Hood Search and Rescue Council ("Agency"), an Oregon domestic nonprofit corporation, which are collectively referred to as the "Parties" and each a "Party."

**RECITALS**

Agency consists of members from several search and rescue ("SAR") organizations that perform SAR activities on and near Mt. Hood, Oregon.

The Clackamas County Board of Commissioners wishes to provide financial support to Agency, specifically for the purpose of helping Agency secure a facility to be used for the storage of Agency SAR equipment.

Now, therefore, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**TERMS AND CONDITIONS**

1. **Term.** This Agreement shall be effective upon execution by all Parties, and shall expire on June 30, 2024, unless sooner terminated pursuant to section 4 below.
2. **Party obligations.**
  - A. County agrees to:
    - i. Provide Agency with funding of up to **thirty-six thousand dollars** (\$36,000.00) per year, for each of the next five consecutive years;
    - ii. For purposes of this Agreement each of the five years shall consist of the County's fiscal years, which run from July 1 to June 30. The first fiscal year in which payment shall be made by County will be July 1, 2019 to June 30, 2020;
    - iii. Payment by County shall be provided at or near the beginning of each County fiscal year, and must be used by Agency solely for Agency's use of a storage facility where Agency and its members will store SAR equipment;
    - iv. At the end of each fiscal year in which payment was made by County to Agency, the Agency shall promptly return any amount of the County's payment that was not used for the SAR equipment storage facility; however, upon a showing of good cause by Agency, the County in its sole discretion may permit Agency to retain the unused portion as a carryover amount to be used in subsequent years;
    - v. County will not provide funding to Agency for any purpose besides Agency expenses for use of a SAR equipment storage facility as described in this Agreement.

B. Agency agrees to:

- i. Accept from County payments of up to \$36,000 per each of the next five County fiscal years, only to be used by Agency for use of a SAR equipment storage facility;
- ii. Submit a written report at least once annually to County detailing amounts spent by Agency for SAR equipment storage facility or facilities. This written report shall be submitted to County no more than thirty-days following the end of the County fiscal year in which Agency received payment;
- iii. If Agency does not use the entire \$36,000 in any fiscal year, Agency shall promptly return any amount of the County's payment that was not used for the SAR equipment storage facility; however, Agency may make a showing of good cause to County as to why the full amount was not used and the County in its sole discretion may permit Agency to retain the unused portion as a carryover amount to be used in subsequent years;
- iv. Upon request by County, Agency shall provide physical access to an employee or employees of County to the SAR equipment storage facility or facilities so that County may inspect and verify use of the facility or facilities.

**3. Representations and Warranties.**

- A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided herein.

**4. Termination.**

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day

period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.

- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
  - D. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination, except when due to funding or budget shortfalls and County demonstrates that it does not have sufficient monies available to make the payments described in this Agreement.
5. **Indemnification.** Agency shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct related to this Agreement, or from any act, omission, or neglect of Agency, its subcontractors, agents, or employees. The Agency agrees to indemnify, hold harmless and defend Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Agency or the Agency's employees, subcontractors, or agents.

However, neither Agency nor any attorney engaged by Agency shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Agency settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

6. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.
7. **Notices and Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the

invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

- A. Tracy Moreland, Policy Advisor, Clackamas County Administration, or her designee will act as liaison for the County.

**Contact Information:**

2051 Kaen Road  
Oregon City, Oregon 97045  
503-742-5974  
[tracymor@clackamas.us](mailto:tracymor@clackamas.us)

Dave Prouty, Mt. Hood SAR Council President, or his designee will act as liaison for the Agency.

**Contact Information:**

Dave Prouty  
PO Box 1253  
Oregon City, OR 97045  
[sar4me@gmail.com](mailto:sar4me@gmail.com)

**8. General Provisions.**

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas 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 County 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, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this

Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement (“Records”) for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County’s authorized representatives’ access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Hazard Communication.** Agency shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County’s request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- F. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- G. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- H. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of

terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

- I. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- J. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- K. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- L. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the obligations required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- M. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- N. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- O. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.



- P. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- Q. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- R. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

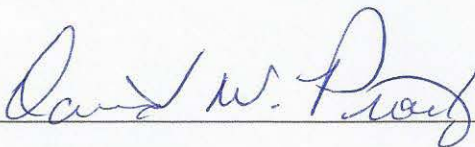
**[Signatures on Following Page]**

**IN WITNESS HEREOF**, the Parties have executed this Agreement by the date set forth opposite their names below.

**Clackamas County**

**Mt. Hood SAR Council**

\_\_\_\_\_  
Chair, Board of County Commissioners

  
\_\_\_\_\_  
Dave Prouty, President

\_\_\_\_\_  
Date

6/27/2019  
\_\_\_\_\_  
Date