

# CROOK COUNTY WORK SESSION

Administration Conference Room  
203 NE Court Street, Prineville, OR

Tuesday **March 2, 2021** at **9a.m.**

Members of the public and media are welcome to attend in person with social distancing  
or via Webex 1-408-418-9388; Access Code: 623 057 025  
Meeting Password: zRNvGMYM286

## Discussion Items

	<i>Requester's Name</i>	<i>Matter</i>	<i>Docs?</i> ✓
1	Muriel	COVID-19 Update (if any)	
2	Eric Blaine	Consider Approval of Professional Services Contract with Fourth Mobility for Grant Management Services	Y
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## Executive Discussion Items

	<i>Requester's Name</i>	<i>Matter</i>	<i>Docs?</i> ✓
Exec #1		ORS 192.660(2)(e) For the purpose of conducting deliberations with persons designated by the governing body to negotiate <b>real property transactions.</b>	Y
Exec #2			

*Items placed on the Work Session agenda are intended for discussion only, without making decisions or finalizing documents unless an emergency exists.*

*\*The Court may add additional items arising too late to be part of this Agenda. Agenda items may be rearranged to make the best use of time.*

*\*The meeting location is accessible to persons with disabilities. If additional accommodations are required, please submit your request 48 hours prior to the meeting by contacting County Administration at 541-447-6555.*

*Requests to be placed on the Work Session agenda are  
due at 5 p.m. on Thursday before the Work Session*

**March 2, 2021 Work Session Agenda Items**

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### PROFESSIONAL SERVICES CONTRACT

CONTRACTOR: Forth Mobility Fund DATE: 2/24/2021

ADDRESS: 2035 NW Front Ave, Suite 101 Portland OR 97754  
Street Address City State Zip

PHONE NUMBER: 602.410.8288 EMAIL: ering@forthmobility.org

This Professional Services Contract (Agreement) by and between Forth Mobility Fund, an Oregon nonprofit Corporation (Contractor) and Crook County, a political subdivision of the State of Oregon (County), entered into this date written above, authorizes Contractor to carry out and complete the services as described below in consideration of the mutual covenants set forth herein.

1. PROJECT: The services as described on Exhibit D to this Agreement are to be provided by Contractor in connection with a Project identified as follows: Project management services for the Pacific Power Mobility Grant as described herein.
2. DURATION: This Agreement shall run from January 1, 2021 (“effective date”) through June 30, 2022 unless terminated or extended according to the provisions of this Agreement.
3. SCOPE OF SERVICES: Contractor will perform the services as described on Exhibit D, attached hereto.
4. FEE FOR SERVICES: Contractor’s fee for the services identified on Exhibit D to this Agreement shall be: An amount not to exceed One Hundred Eighty Thousand Two Hundred Twenty Nine and no/100 Dollars (\$180,229.00). See Exhibit D
5. EXTRA SERVICES: Contractor may also perform Extra Services (services not specified in the Scope of Services), provided Contractor and County have agreed in advance and in writing to the scope and fees for such Extra Services.
6. EXHIBITS: The following documents which are attached to this Agreement are incorporated herein and by this reference made part hereof:
  - Exhibit A: Required Terms for All Public Contracts
  - Exhibit B: Independent Contractor Status
  - Exhibit C: Protected Information
  - Exhibit D: Scope of Services
7. TAX DUTIES AND LIABILITIES: Contractor shall be responsible for all taxes applicable to any payments received pursuant to this Agreement and is currently and will remain fully compliant with tax laws, as certified in Exhibit A. County shall not withhold, pay, or in any other manner be responsible for payment of any taxes on behalf of Contractor.
8. SUBMITTAL OF W-9 BEFORE PAYMENT: Contractor must provide County with a fully completed W-9 form upon execution of the Agreement and prior to beginning services. Contractor will not be paid until a fully completed W-9 form is submitted.

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9. REIMBURSEMENT OF EXPENSES: Contractor shall not be entitled to reimbursement by County for any expenses incurred by Contractor unless otherwise agreed in writing.

10. PAYMENT BY COUNTY: Unless otherwise agreed to within this Agreement, County will pay invoices on the 10th or 25th days of the month based upon date the invoice is received.

11. INDEMNIFICATION AND HOLD HARMLESS; LIMITATION OF LIABILITY:

11.1 INDEMNIFICATION: Contractor agrees to indemnify and hold harmless the County from and against any and all causes of action, claims, damages, liabilities, losses, judgments, and costs (including reasonable attorneys' fees and disbursements) (collectively, "Claims") by third parties arising out of or relating to: (a) Contractor's negligence or willful misconduct; or (b) any alleged patent or copyright infringement arising out of Contractor's performance of this Agreement or out of the use of any material furnished by Contractor or work or services performed by Contractor hereunder.

11.2 LIMITATION OF LIABILITY: NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, OR SPECIAL DAMAGES OR COSTS (INCLUDING LOST PROFITS, LOST REVENUES, LOST DATA, COSTS OF RECREATING LOST DATA, OR LOSS OF USE) RESULTING FROM ANY CLAIM OR CAUSE OF ACTION BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE (INCLUDING STRICT LIABILITY), OR ANY OTHER LEGAL THEORY, EVEN IF EITHER OR BOTH OF THEM KNEW, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY THEREOF.

NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE LIMITATIONS UPON THE TYPES AND AMOUNTS OF EACH PARTY'S LIABILITY, AND THE EXCLUSIONS OF CERTAIN TYPES OF DAMAGES, SET FORTH IN THIS SECTION 11 SHALL NOT APPLY TO CLAIMS SUBJECT TO OR AMOUNTS PAYABLE PURSUANT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS HEREUNDER.

12. CONTRACTOR STATUS: Contractor certifies it is a "Contractor" under ORS 670.600 and relevant law as it pertains to this contract and as further described in incorporated Exhibit B.

13. CONFORMANCE WITH OREGON PUBLIC CONTRACT LAWS: Contractor shall fully comply with Oregon law for public contracts, as more fully set forth in the Exhibits.

14. TERMINATION:

14.1. [RESERVED]

14.2. With reasonable cause, either party may terminate this Agreement effective upon ten (10) days after giving written notice of termination for cause. Reasonable cause shall include material violation of this Agreement or any act exposing the other party to liability to others for personal injury or property damage;

14.3. Notwithstanding any other provision of this Agreement, County shall not be obligated for Contractor's performance hereunder or by any provision of this Agreement during any of County's future fiscal years unless and until the Crook County Court appropriates funds for

this Agreement in County's budget for such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated.

15. INSURANCE:

- 15.1. GENERAL INSURANCE: Contractor shall maintain in force for the duration of this agreement a Commercial General Liability insurance policy written on an occurrence basis with limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury or property damage. The policy will contain a "per project" Aggregate endorsement. Automobile Liability (owned, non-owned and hired) insurance with limits not less than \$2,000,000 per occurrence shall be maintained. The County, its employees, officials and agents will be named as an Additional Insured where operations are being conducted related to this Agreement, on the General Liability policy as respects to work or services performed under this Agreement to the extent that the death or bodily injury to persons or damage to property arises out of the fault of Contractor or the fault of Contractor's agents, representatives or subcontractors. This insurance will be primary over any insurance the County may carry on its own. Contractor understands that County is a public entity subject to the requirements of the Oregon Governmental Tort Claims Act, ORS 30.260 et seq. In the event that County's financial obligations or liabilities are modified by any amendment to the liability limits imposed by the Oregon Governmental Tort Claims Act, Contractor agrees that the limits regarding liability insurance set forth in this section 15.1 will be modified to conform to such limits. Contractor and County shall sign an amendment to this Agreement incorporating such modification.
- 15.2. WORKERS' COMPENSATION: Contractor shall provide and maintain workers' compensation coverage with limits not less than \$500,000 for its employees, officers, agents, or partners, as required by applicable workers' compensation laws as defined in ORS 656.027 and ORS 701.035(5). If Contractor is exempt from coverage, a written statement signed by Contractor so stating the reason for exemption shall be provided to the County.
- 15.3. EVIDENCE OF INSURANCE COVERAGE: Evidence of the required insurance coverages issued by an insurance company satisfactory to the County shall be provided to the County by way of a County approved certificate of insurance before any work or services commence.
- 15.3.1. NOTICE OF CANCELLATION OR MATERIAL CHANGE IN COVERAGE: The certificate of insurance shall contain a requirement that the insurance company notify the County 30 days prior to any cancellation or material change in coverage. If the approved insurance company will not provide this 30-day notice, Contractor shall provide written notice to County within 2 calendar days after Contractor becomes aware that its coverage has been canceled or has been materially changed. Regardless of what circumstances caused Contractor's insurance coverage to cease or be modified, it is Contractor's responsibility to notify County. Failure to maintain proper insurance or provide notice of cancellation or modification shall be grounds for immediate termination of this contract.
- 15.4. EQUIPMENT AND MATERIAL: Contractor shall be responsible for any loss, damage, or destruction of its own property, equipment, and materials used in conjunction with the work.

- 15.5. **SUBCONTRACTOR:** The Contractor shall require all subcontractors to provide and maintain general liability, auto liability, professional liability (as applicable), and workers' compensation insurance with coverage's equivalent to those required of the general contractor in this Agreement. Contractor shall require certificates of insurance from all subcontractors as evidence of coverage.
- 15.6. **EXCEPTION OR WAIVERS:** Any exception or waiver of these requirements shall be subject to review and approval from the County.
- 15.7. [RESERVED]
16. **GENERAL PROVISIONS:**
- 16.1. **ENTIRE AGREEMENT:** This Agreement signed by both parties is the final and entire agreement and supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives
- 16.2. **AMENDMENTS:** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, without prior written approval of County. No modification of this Agreement shall bind either party unless reduced to writing and subscribed by both parties, or ordered by a Court.
- 16.3. **ASSIGNMENT/SUBCONTRACT:** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this agreement, in whole or in part, without the prior written approval of County, which approval will not be unreasonably withheld or delayed. No such written approval shall relieve Contractor of any obligations of this Agreement, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable as between the original parties to this Agreement as if no such assignment had occurred.
- 16.4. **SUB-AGREEMENTS:** If this project is funded in whole or in part with grant funds received by County, Contractor, as a sub-recipient of those funds, shall fully comply with all applicable terms, conditions, and requirements of the Grant Agreement, including but not limited to procurement regulations, property and equipment management and records, indemnity, and insurance provisions.
- 16.5. **SUCCESSORS IN INTEREST:** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns.
- 16.6. **AUTHORIZED SIGNATURES REQUIRED:** Only those persons authorized by the Crook County Purchasing Rules and Procedures may enter into a binding agreement or contract, including a purchase order, for the purchase or sale of goods or services on the part of the County. All persons doing business with the County shall be responsible for being familiar with the Crook County Purchasing Rules and Procedures and for ensuring that the person purporting to act for the County has been duly authorized.
- 16.7. **NO ENCUMBRANCES:** Any property delivered or granted to County under this Agreement, and Contractor's Services rendered in the performance of Contractor's obligations under this Agreement, shall be provided to County free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

- 16.8. **NO AUTHORITY TO BIND CROOK COUNTY:** Neither party has authority to enter into contracts on behalf of the other. This Agreement does not create a partnership between the parties.
- 16.9. **HOW NOTICES SHALL BE GIVEN:** Any notice given in connection with this Agreement must be in writing and be delivered either by hand to the party or by certified mail, return receipt requested, to the party at the party's address as stated on the work authorization or to Crook County at 300 NE 3<sup>rd</sup> Street, Prineville, OR 97754, attention "Legal Department."
- 16.10. **GOVERNING LAW AND VENUE:** Any dispute under this Agreement shall be governed by Oregon law, with venue being located in Crook County, Oregon.
- 16.11. **SEVERABILITY:** If any provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- 16.12. **ACCESS TO RECORDS:** County and its duly authorized representatives shall have access to books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- 16.13. **CONFIDENTIALITY:** During the course of performance of work under this Agreement, Contractor may receive information regarding organizations and County's business practices, employees, clients, etc. Contractor agrees to maintain the confidentiality of such information and to safeguard such information against loss, theft or other inadvertent disclosure.
- 16.14. **FEDERAL EMPLOYMENT STATUS:** In the event payment made pursuant to this Agreement is to be charged against federal funds, Contractor hereby certifies that it is not currently employed by the Federal Government and the amount charged does not exceed Contractor's normal charge for the type of services provided.
- 16.15. **COMPLIANCE WITH ALL GOVERNMENT REGULATIONS:** Contractor shall comply with all Federal, State and local laws, codes, regulations and ordinances applicable to the work performed under this Agreement. Failure to comply with such requirements shall constitute a breach of contract and shall be grounds for termination of this Agreement. Damages or costs resulting from noncompliance shall be the sole responsibility of Contractor.
- 16.16. **FORCE MAJEURE:** Neither party to this Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. County may terminate this Agreement upon written notice after determining such delay or default will unreasonably prevent successful performance of the Agreement.
- 16.17. **RIGHTS IN DATA:** All original written material, including programs, card decks, tapes, listings, and other documentation originated and prepared for County pursuant to this Agreement, shall become exclusively the property of County. The ideas, concepts, know-how, or techniques developed during the course of this Agreement by Contractor personnel can be used by either party in any way it may deem appropriate. Material already in Contractor's possession, independently developed by Contractor, outside the scope of this Agreement, or rightfully obtained by Contractor from third parties, shall belong to Contractor. This Agreement shall not preclude Contractor from developing materials

which are competitive, irrespective of their similarity to materials which might be delivered the County pursuant to this Agreement. Contractor shall not, however, use any written materials development under this Agreement in developing materials for others, except as provided in this section.

- 16.18. ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT: [RESERVED]
- 16.19. EQUIPMENT, TOOLS, MATERIALS, AND/OR SUPPLIES: Contractor will provide all equipment, tools, materials or supplies necessary to fulfill Contractor's obligations under the terms of this Agreement.
- 16.20. ATTORNEY FEES: In the event an action, lawsuit, or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall bear its own attorney fees, expenses, costs, and disbursements for said action, lawsuit, proceeding, or appeal.
- 16.21. WAIVER: The failure of either party at any time or from time to time to enforce any of the terms of this Agreement shall not be construed to be a waiver of such term or of such party's right to thereafter enforce each and every provision of the Agreement.
- 16.22. [RESERVED]
- 16.23. COUNTERPARTS: This Professional Services Contract may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together shall constitute one in the same instrument. Facsimiles and electronic transmittals of the signed document shall be binding as though they were an original of such signed document.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective the date first set forth above.

**For Contractor**

**For Crook County**

FORTH MOBILITY FUND

CROOK COUNTY COURT

By:   
Signature

\_\_\_\_\_  
Seth Crawford, County Judge

Jeff Allen  
Printed Name

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

Title: Executive Director

\_\_\_\_\_  
Jerry Brummer, County Commissioner

Date: 02/24/2021

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

\_\_\_\_\_  
Brian Barney, County Commissioner

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

## **EXHIBIT A**

### **REQUIRED TERMS FOR ALL PUBLIC CONTRACTS**

#### **1. PAYMENTS AND DEBTS:**

- 1.1. Contractor shall promptly, as due, make payment to:
  - 1.1.1. Any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services;
  - 1.1.2. All persons supplying to Contractor labor or material for the performance of the work provided for in the Agreement;
  - 1.1.3. All contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Agreement; and
  - 1.1.4. The Department of Revenue all sums withheld from employees under ORS 316.167.
- 1.2. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished under this Agreement.

#### **2. EMPLOYEES:**

- 2.1. Contractor and subcontractors shall either be employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- 2.2. Contractor shall comply with the prohibition on wage discrimination of ORS 652.220; failure to do so is a material element of the contract and a breach that entitles County to terminate this Agreement for cause.
- 2.3. For all work under this Agreement, Contractor may not employ an employee for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or when the public policy absolutely requires otherwise, and in such cases, Contractor shall pay the employee at least time-and-a-half pay for:
  - (a) All overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or all overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and
  - (b) All work the employee performs on Saturday and on any legal holiday specified in ORS 279B.020;
- 2.3.1. If this Agreement is for services, Contractor shall pay employees at least time-and-a-half pay for work the employees perform under this Agreement on the legal holidays specified in a collective bargaining agreement or in 279B.020 (1)(b)(B) to (G) and for all time the employees work in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater;
- 2.3.2. If this Agreement is for personal services, as described in ORS 279A.055, Contractor shall pay its employees who work under this Agreement at least time-and-a-half for all overtime the employees work in excess of 40 hours in any one week, unless said employees are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime;
- 2.3.3. If this Agreement is for services at a county fair, or for another event that Crook County Fair Board authorizes, Contractor shall pay employees who work under this Agreement at least time-and-a-half for work in excess of 10 hours in any one day or 40 hours in any one week.
- 2.4. Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.
- 2.5. Contractor shall give notice in writing to employees who work under this Agreement, either at the time of hire or before work begins on the Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that Contractor may require the employees to work.

#### **3. OTHER PROVISIONS:**

- 3.1. By executing this Agreement, Contractor represents and warrants that it has complied with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318; Contractor further covenants to continue with said compliance during the term of this Agreement. Noncompliance with this provision is a default for which County may terminate the Agreement, in whole or part, and seek damages under the terms of this Agreement or applicable law.
- 3.2. If this Agreement involves lawn and landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.



## **EXHIBIT B**

### **INDEPENDENT CONTRACTOR STATUS**

Contractor states and represents that contractor is an Independent Contractor as that term is defined in Oregon Revised Statute 670.600 and more specifically represents, states and agrees that in providing the services and scope of work specified in this Agreement:

1. Contractor provides services for remuneration; and
2. Contractor is free from direction and control over the means and manner of providing the services and scope of work subject only to the right of County to specify the desired results; and
3. Contractor is customarily engaged in an independently established business; and
4. Contractor is licensed within the state of Oregon to provide any services for which a license is required under ORS Chapter 671 or 701 and is responsible for obtaining other licenses or certificates necessary to provide the service or scope of work; and
5. Contractor complies with at least three of the following requirements:
  - (a) A business location is maintained that is separate from the business or work location of County; or is in a portion of the Contractor's residence and that portion is used primarily for the business.
  - (b) The Contractor bears the risk of loss related to the provision of services or scope of work such as entering into a fixed price contract, defective work is required to be corrected, the services provided are warranted or indemnification agreements, liability insurance and performance bonds and errors and omissions insurance are provided.
  - (c) Contracted services for two or more different persons or entities within a twelve month period have been obtained, or routinely engaged in business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
  - (d) Significant investment in the business has been made such as purchasing tools or equipment, paying for premises or facilities where services are provided, paying for licenses, certificates or specialized training.
  - (e) Possesses authority to hire other persons to assist in providing their services and has the authority to fire those persons.
6. Contractor will immediately inform County in the event that it fails to conduct its services in one or more particulars as represented in 1 through 5 above.

## EXHIBIT C

### PROTECTED INFORMATION

If Contractor obtains any personal information as defined in ORS 646A.602(11) related to this Agreement or concerning any County employee, Contractor agrees to provide appropriate safeguards to protect the security of this information. Contractor shall have provided appropriate safeguards by meeting or exceeding the requirements stated in ORS 646A.622. Furthermore:

1. **“Protected Information”** shall be defined as *data or information* that has been designated as private or confidential by law or by the County. Protected Information includes, but is not limited to, employment records, medical records, personal financial records (or other personally identifiable information), trade secrets, and classified government information. To the extent there is any uncertainty as to whether any data constitutes Protected Information, the data in question shall be treated as Protected Information until a determination is made by the County or proper legal authority.
2. **Data Confidentiality.** Contractor shall implement appropriate measures designed to ensure the confidentiality and security of Protected Information, protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action of unauthorized disclosure that could result in substantial harm to the County or an individual identified with the data or information in Contractor’s custody or access.

To the extent that Contractor may have access to County protected health information (as the same is defined in the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and the implementing regulations known and referred to as Privacy Rule, Security Rule, Enforcement Rule and Breach Notification Rule, referred to herein collectively as “HIPAA”), Contractor agrees to protect such information in compliance with HIPAA and represents that it has the processes, systems and training to assure compliance with the same.

3. **Data and Network Security.** Contractor agrees at all times to maintain commercially reasonable network security that, at a minimum, includes: network firewall provisioning, intrusion detection/prevention and periodic third party penetration testing. Likewise Contractor agrees to maintain network security that at a minimum conforms to current standards set forth and maintained by the National Institute of Standards and Technology, including those at: <http://checklists.nist.gov/repository>. Contractor agrees to protect and maintain the security of data with protection security measures that include maintaining secure environments that are patched and up to date with all appropriate security updates as designated by a relevant authority.
4. **Security Breach.** In the unlikely event of a security breach or issue, Contractor will notify the appropriate County contact no later than one hour after they are aware of the breach. Contractor will be responsible for all remedial action necessary to correct the breach; provided however, that Contractor will not undertake litigation on behalf of the County without prior written consent.
5. **Data Storage and Backup.** Contractor agrees that any and all County data will be stored, processed, and maintained solely on designated servers and that no County data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is in use as part of the Contractor's designated backup and recovery processes. All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by a County officer with designated data, security, or signature authority. An appropriate officer with the necessary authority can be identified by the County Information Security Officer for any general or specific case.

Contractor agrees to store all County backup data stored as part of its backup and recovery processes in encrypted form, using no less than AES 256.

6. **Data Re-Use.** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor further agrees that no County data of any kind shall be revealed, transmitted, exchanged or otherwise passed to other Contractor or interested parties except on a case-by-case basis as specifically agreed to in writing by a County officer with designated data, security, or signature authority.
7. **PCI Compliance.** Contractor agrees to comply with PCI DSS (Payment Card Industry Data Security Standard). As evidence of compliance, Contractor shall provide upon request a current attestation of compliance signed by a PCI QSA (Qualified Security Assessor).
8. **End of Agreement Data Handling.** Contractor agrees that upon termination of this Agreement it shall erase, destroy, and render unreadable all County data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities, and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of the request of an agent of County whichever shall come first.
9. **Mandatory Disclosure of Protected Information.** If Contractor becomes compelled by law or regulation (including securities' laws) to disclose any Protected Information, Contractor will provide County with prompt written notice so that County may seek an appropriate protective order or other remedy. If a remedy acceptable to County is not obtained by the date that Contractor must comply with the request, Contractor will furnish only that portion of the Protected Information that it is legally required to furnish, and the Contractor shall require any recipient of the Protected Information to exercise commercially reasonable efforts to keep the Protected Information confidential.
10. **Remedies for Disclosure of Confidential Information.** Contractor and County acknowledge that unauthorized disclosure or use of the Protected Information may irreparably damage County in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Protected Information shall give County the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). Contractor hereby waives the posting of a bond with respect to any action for injunctive relief. Contractor further grants County the right, but not the obligation, to enforce these provisions in Contractor's name against any of Contractor's employees, officers, board members, owners, representatives, agents, contractors, and subcontractors violating the above provisions.
11. **Non-Disclosure.** Contractor is permitted to disclose Confidential Information to its employees, authorized subcontractors, agents, consultants and auditors on a need-to-know basis only, provided that all such subcontractors, agents, consultants and auditors have written confidentiality obligations to both Contractor and County.
12. **Criminal Background Check.** County shall perform criminal background checks on all talent assigned to this project before a person is allowed to work on any of the County's Criminal Justice Information System (CJIS) protected data, software systems or facilities.
13. **Survival.** The confidentiality obligations shall survive termination of any agreement with Contractor for a period of ten (10) years or for so long as the information remains confidential, whichever is longer and will inure to the benefit of County.

## **EXHIBIT D**

### **SCOPE OF SERVICES**

Contractor will perform professional project management services in furtherance of the Pacific Power Mobility Grant. These professional services include the following:

**1 Periodic meetings and updates:**

1.1 Contractor will arrange for its project management personnel to meet with Crook County's project representative on at least a monthly basis to provide updates on the progress to date. The dates and times for such meetings will be as the parties may reasonably agree.

1.2 At least twice yearly, Contractor will attend a meeting virtually of the Crook County Court, the board of county commissioners for Crook County, to update the commissioners regarding the project's scope, successes, hindrances, and budget outlays. The dates and times for such meetings will be as the parties may reasonably agree.

1.3 After review and approval by Crook County, Contractor will submit the reports to Pacific Power as may be required by the Pacific Power Mobility Grant agreement, including but not limited to quarterly reports, and final project completion reports.

**2 Advancements of Grant-Related Expenses:**

2.1 Crook County will provide advancements for funds to support budgeted Equipment, such as the Electric Tractor and "Black Widow" Implement, in the amount described below in section 7 "Project Budget." Contractor will provide supporting documentation for all expenses, such as an invoice or quote.

**3. Reimbursement of Grant-Related Expenses:**

3.1 Crook County will review requests to reimburse Contractor for expenses and costs incurred in furtherance of the Pacific Power Mobility Grant up to a cumulative total of \$180,229.00.

3.2 Contractor will submit invoices for grant-related expenses to Crook County for review. Upon approval, Crook County will remit payment within thirty (30) days of invoice receipt.

3.3 Both parties will maintain grant- and program-related records, and will promptly provide copies of such to each other upon request.

**4. Implementation Management:**

4.1 Contractor will manage the project budget, will monitor program expenditures, and will coordinate with Crook County on the allocation of project resources.

4.2 In coordination with Crook County, Contractor will evaluate and monitor all program activities to ensure compliance with the Pacific Power Mobility Grant requirements.

**5. Purchase of Electric Tractor / "Black Widow" Implement:**

5.1 Contractor will procure an electric-powered tractor (hereinafter “the Tractor”) and “Black Widow” tractor implement (hereinafter “the Implement”) according to the specifications contained in the grant agreement executed between Pacificorp, an Oregon corporation doing business as Pacific Power, and Crook County. This procurement will be in accordance with applicable law, including but not limited to ORS Chapters 279A and 279B.

5.2 Contractor is responsible for ongoing maintenance of the Tractor and Implement, including but not limited to, insuring the Tractor in an amount not less than \$40,000.00; and insuring the Implement in an amount not less than \$10,000.00, throughout the useful life of each.

5.2.1 If the Tractor or Implement is damaged or requires repairs the costs of which is equal to or greater than \$1,000.00, Contractor will inform Crook County prior to any repair work being performed. Notwithstanding the foregoing, either party is authorized to immediately perform any repair work as may be reasonably necessary to address danger to operator or public safety. In such event, the Party performing the emergency maintenance will promptly inform the other Party of the circumstances giving rise to this expenditure.

5.22 In the event that any insurance claim is made for or in regards to the Tractor or Implement, Contractor will promptly notify Crook County. Any proceeds from such insurance claim will be used solely to repair or refurbish the Tractor or Implement or, upon agreement of the Parties, for other purposes in furtherance of the purposes of the Pacific Power Mobility Grant.

## 6. Infrastructure Installation:

6.1 Crook County will undertake the solicitation of qualified service providers for the installation of two (2) “Level 2” electric charging stations at the Crook County Fairgrounds. Crook County, and not Contractor, will be solely responsible for executing any resulting public improvement contracts, and will be solely responsible for payment to the construction contractor.

6.11 Both electric charging stations will each meet or exceed the specifications contained in Pacific Power Mobility Grant agreement and grant application.

6.12 The location and timing of the charging stations will be as Crook County may determine.

6.13 The solicitation will be conducted in accordance with applicable law, including but not limited to ORS Chapters 279A and 279C.

6.14 Both Parties will reasonably cooperate with each other in the furtherance of these responsibilities.

6.2 Contractor will serve as project manager for the installation process, providing technical advice to County and serving as Crook County’s representative to the construction contractor(s) engaged for the installation project.

6.3 Contractor will schedule and attend at least one pre-bid meeting of potentially interested contractors, and will thereafter cooperate with Crook County to address issues raised at such meetings. If a modification of the solicitation or contract documents is necessary or prudent, the Parties will cooperate to effectuate those changes and distribute them as appropriate.

6.4 No decision regarding Crook County’s real property or capital assets, including but not necessarily limited to the Fairgrounds, will be made without first obtaining the prior approval of the County’s project representative. Any decision with a dollar value equal to or greater than \$20,000.00 affecting the County’s real property or capital assets, must be approved in writing by a Crook County commissioner.

6.5 Contractor will undertake to procure signage containing the necessary statements regarding the Pacific Power Mobility Grant and Pacific Power’s participation therewith, and cause such signage to be installed at the Fairgrounds at locations mutually agreed upon by the Parties.

6.6 Except as otherwise described herein, Contractor is responsible for the acquisition of all supplies, equipment, licensing, materials, and all other items necessary to effectuate the requirements of the Pacific Power Mobility Grant.

7. Project Budget:

1/1/21 - 6/30/22	Amount	Upfront Payment to Forth	Crook County Expenses	Notes
Forth Personnel	\$36,000			
SNW Personnel	\$28,000			
Wy'East Personnel	\$27,229			
Trailer	\$3,000	\$3,000.00		Not included in initial budget
Trailer Licensing				Not included in initial budget
Transport of Tractor	\$3,600			Travel and Meals*
Equipment	\$79,800	\$79,800		E-utility, Extra Battery, Aux Hydraulics, Front-end Loader, SCADA, Black Widow groomer (Moved shipping)
Shipping	\$1,000	\$1,000.00		Tractor Shipping
Charging			\$4,199	Dual Juicebox
Installation			\$5,850	Durst Energy
Supplies	\$1,600			Not included in initial budget, signage for 2 arer
Indirect			\$9,722	Paid directly to Crook County
Total	\$200,000	\$83,800	\$19,771	Upfront costs covers 75%
Total passed to Forth for management	\$180,229			

\* Note: expenses for alcohol are not eligible for reimbursement.

This budget may be amended from time to time as the Parties may agree, confirmed in writing.

Expected project timeline:

Task Description Electrifying Oregon's Agricultural Economy			2020	2021			
Task #	Task Description	Milestone #	Q4	Q1	Q2	Q3	Q4
0	<b>EV Charger Project Management &amp; Installation</b>						
0.1	Initiate EVSE Collaboration between Crook County Fairgrounds (CCF), Forth, Durst Energy & Pacific Power						
0.2	Organize Zoom Meeting with all Partners						
0.3	Partners Agree on Pacific Power's EVSE Reporting and Communications Requirements						
0.4	Durst Energy Designs and Completes Project Plan, Including Data Collection Schema	1					
0.5	Durst Energy Manages EVSE Installation and Setup	2					
0.6	EVSE Is Deployed and Live at CCF	3					
0.7	Forth Produces EVSE Utilization Reports for Pacific Power Review	4					
0	<b>E-Tractor Pre-Delivery Planning</b>						
0.1	Project Team Initiates E-Tractor Collaboration between CCF, Forth, WyEast & Pacific Power						
0.2	Zoom Kickoff Meeting with all Partners						
0.3	Project Team Confirms Pacific Power's E-Tractor Reporting and Communications Requirements						
0.4	Project Team Finalizes E-Tractor Users Survey	1					
0.5	Project Team Outlines E-Tractor Operations and Distribution Calendar, with COVID Contingency Plan						
0.6	Forth Manages E-Tractor Insurance, Acquisition, and Delivery	2					
1	<b>E-Tractor Project Design and Post-Delivery Planning</b>						
1.1	Project Team Finalizes E-Tractor Operations and Distribution Calendar, with COVID Contingency Plan	3					
1.2	Project Team Finalizes Public Outreach and Promotion Plan	4					
2	<b>E-Tractor Project Initiation</b>						
2.1	WyEast Takes Delivery and Installs SCADA to Collect Data; Sets Up E-Tractor Reporting Dashboard	5					
2.2	E-Tractor Is Branded with Partner & Funder Logos	6					
2.3	Forth Executes E-Tractor Test Drive Agreements (i.e. Indemnification Waivers) with Producers	7					
3	<b>E-Tractor Project Implementation</b>						
3.1	Crook County Fairgrounds Deploys E-Tractor for General Use						
3.2	WyEast and Project Partners Circulate E-Tractor to Surrounding Events and Producers						
3.3	SNW Collects SCADA Data, and E-Tractor Survey Data from CCF, Surrounding Events and Producers	8					
4	<b>E-Tractor Project Assessment and Refinement</b>						
4.1	SNW and Project Partners Compile Survey and SCADA Data						
4.2	Partners Analyze and Review Data; Share it with Pacific Power	9					
4.3	Partners Develop Plan for Continued Market Transformation: More Pilots? Subsidies? Financing?						
5	<b>Final E-Tractor Report and Summary</b>						
5.1	Partners Produce Final Case Study	10					
5.2	Partners Disseminate Case Study to all Partner Networks and Media						