

**DRAFT INTERGOVERNMENTAL AGREEMENT
BETWEEN CENTRAL OREGON INTERGOVERNMENTAL COUNCIL
AND CROOK, DESCHUTES, AND JEFFERSON COUNTIES
REGARDING EMERGENCY TRANSPORTATION SERVICES**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered effective July 1st 2021, by and between Central Oregon Intergovernmental Council (COIC) existing under ORS 190, and the political subdivisions of the State of Oregon: Crook, Deschutes, and Jefferson counties, hereinafter referred to as the "Counties".

RECITALS

- A. COIC operates Cascades East Transit, Central Oregon's public transit service provider in Crook, Deschutes, and Jefferson counties, and The Confederated Tribes of Warm Springs.
- B. Each County oversees its own Emergency Management division.
 - a. Deschutes County Sheriff's Office oversees Emergency Management, a function included within the Special Services Division. The function is managed by a sworn sergeant (Emergency Services Manager).
 - b. Crook County's Emergency Management is a division of the Crook County Sheriff's Office with one full-time Emergency Manager.
 - c. Jefferson County's Emergency Management is a division of the Jefferson County Sheriff's Office with one full-time Emergency Management Coordinator.
- C. The Parties have the authority to enter into this Agreement pursuant to ORS 402.010 and 402.015.
- D. The purpose of this Agreement is to provide the legal framework and establish procedures and conditions for making COIC-owned vehicles and COIC operators available to the County Emergency Management divisions for deployment during declared emergencies and disasters.

TERMS OF AGREEMENT

County Responsibilities

The Counties are responsible for preparing and implementing an emergency response plan in the event of a disaster or emergency. The Counties, in coordination with COIC, should strive for an annual tabletop exercise to refresh all parties on emergency management coordination processes.

COIC's Responsibilities

COIC is responsible for deploying its active vehicles and its drivers to the Counties for use and deployment in an emergency or disaster as determined by Counties. COIC shall rely on emergency responders from County/Counties for direction and instructions. Other than the safe operation of COIC equipment and personnel, COIC shall not be responsible for strategic decisions related to the emergent situation or the consequences of those deployment decisions. COIC is also responsible for participating in annual tabletop exercises hosted by the Counties.

Assumptions

PURPOSE: It is understood that the Counties will not call for the use of COIC vehicles unless an emergent need or disaster arises requiring the use of those vehicles.

DURATION: Pursuant of Charter Rule at 49 CFR Part 601, Subpart D, COIC is not permitted to furnish emergency transportation services or allow its transit vehicles to be used for emergency transportation purposes for more than 45 days per declared emergency or disaster. Consequently, COIC shall not be obligated or required to provide to the Counties for more than 45 days per declared emergency or disaster or to allow its transit vehicles to be used for emergency or disaster.

REIMBURSEMENTS:

When an emergency is declared, it is understood that CET will seek reimbursement funds in the following priority order:

- 1) Direct Federal Transit Administration (FTA) emergency response funds;
- 2) Federal Emergency Management Agency (FEMA) funds; or,
- 3) Counties will reimburse CET for remaining, unpaid costs according to standard rates shown in Exhibit A that are not covered by direct funds through the FTA or FEMA.
 - a. The Parties agree that Exhibit A may need to be adjusted to reflect COIC's annual labor costs for drivers, dispatchers, or other personnel, as well as the most recent FEMA-issued Schedule of Equipment Rates.

To ensure eligibility for reimbursement, CET will track and report the following information:

- Type of any emergency transportation services being provided, including the number and type of vehicles, the number of trips provided, the number of passengers transported, the dates and hours of service, and any fares collected for emergency transportation services;
- Emergency protective measures put in place to protect transit assets and/or personnel;
- Damages to vehicles, facilities, or equipment; and,
- Any temporary or permanent repairs made to damaged vehicles, facilities, or equipment.

INDEMNIFICATION: In a declared emergency or disaster, COIC vehicles and operators requested by a County and employed for the emergency or disaster pursuant to the provisions of this Agreement may be entitled to certain privileges, benefits, and immunities and subject to certain liability waivers under applicable federal and state emergency management regulations for registered emergency workers and services. COIC drivers shall be required to document the condition of the exterior portions of the available COIC vehicles both immediately before and immediately after the same are used in any emergency or disaster or for emergency training purposes. The County shall be entitled to review such documentation concerning the condition of the exterior portions of the available COIC vehicles.

COIC shall be and operate as an independent contractor of County in the performance of any Emergency Assistance. Employees of COIC shall at all times while performing Emergency Assistance continue to be employees of COIC and shall not be deemed employees of County for any purpose. Wages, hours, and other terms and conditions of employment of COIC shall remain applicable to all of its employees who perform Emergency Assistance. COIC shall be solely responsible for payment of its employees' wages, any required payroll taxes and any benefits or other compensation. County shall not be responsible for paying any wages, benefits, taxes, or other compensation directly to the Lender's employees. The costs associated with borrowed personnel are subject to reimbursement process outlined in Exhibit A, attached. In no event shall COIC or its officers, employees, agents, or representatives be authorized (or represent that they are authorized) to make any representation, enter into any agreement, waive any right or incur any obligation in the name of, on behalf of or as agent for County under or by virtue of this Agreement.

Claims - Notwithstanding the foregoing, COIC and the requesting County shall fully and absolutely defend, indemnify and hold harmless each other from and against any action, case of action, claim, and/or litigation arising out of or from the employment, operation, or use of any available COIC vehicles(s) in a declared emergency or disaster under this Agreement or for emergency training purposes, including, but not limited to, any claim, action, cause of action, claim, and/or litigation arising from the act(s) or omission(s) of any COIC operator(s) and/or any County employee(s), officer(s), or agent(s) subject to, and to the extent permitted by, Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, all according to the extent of liability that each party bears in the matter.

- a. The Parties shall actively collaborate in the defense and settlement of any claim that is subject to the Indemnification section of this Agreement; however, neither COIC nor any attorney engaged by COIC shall defend the claim in the name of County or any department or agency thereof, nor purport to act as legal representative of the County or any of its departments or agencies without first receiving from the County's Legal Counsel, in a form and manner determined appropriate by the County's Legal Counsel, authority to act as legal counsel for the County, nor shall COIC settle any claim on behalf of the County without the approval of the County's Legal Counsel.

Vehicle and Equipment - In the event that any COIC-owned vehicle or equipment is damaged while being used or operated in a declared emergency or disaster under this Agreement or for emergency training purposes, the requesting County shall hold harmless and indemnify COIC from and against and shall fully pay all expenses and costs necessary to fix and repair the damaged COIC-owned vehicle or equipment and restore said vehicle to its prior condition, provided, however, the requesting County shall not be responsible for fixing, repairing, or replacing any part of component of a COIC-owned vehicle or equipment used or operated in a declared emergency or disaster or for emergency training purposes under this Agreement which merely fails or malfunctions during said use or operation.

TERM OF AGREEMENT: Unless this Agreement is terminated as provided below, this Agreement shall continue in perpetuity. Any Party can terminate this Agreement with 120-days written notice to each other Party, unless all Parties agree to an earlier date.

DISPUTE RESOLUTION: Any dispute that arises under this Agreement shall first be submitted to the applicable County Administrator and the COIC Executive Director, who shall meet and attempt to resolve the dispute-Should any dispute arise between the parties concerning this contract which is not resolved by mutual agreement, it is agreed the dispute will be mediated. In such an event, the parties in dispute agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the parties. Should mediation efforts fail, the disputing parties agree to binding arbitration. The arbiter shall be selected by mutual agreement of the disputing parties, but in the absence of such agreement each side shall select a temporary arbiter and those shall jointly select the permanent arbiter. All costs of arbitration shall be borne equally by the disputing parties.

TRAINING: COIC and each County's Emergency Services Manager will hold a tabletop exercise or commensurate training once a calendar year to remind and refresh COIC staff of its duties and obligations in the case of a declared emergency or disaster.

NOTICE: Any notice required or permitted to be given by either party to another shall be deposited in the United States mail, postage prepaid, addressed to:

If Counties: Deschutes Counties Sheriff's Office
63333 W Hwy 20
Bend, OR 97703

Crook County Sheriff's Office
308 NE 2nd St
Prineville, OR 97754

Jefferson County Sheriff's Office
675 NW Cherry Ln
Madras, OR 97741

If COIC: Central Oregon Intergovernmental Council Admin Office

Attn: Transportation Director
334 NE Hawthorne Ave
Bend, OR 97701

RELATIONSHIP OF THE PARTIES: No agent, official, employee, servant, or representative of COIC shall be deemed an officer, employee, agent, servant or representative of the Counties for any purpose. No agent, official, employee, servant or representative of the Counties shall be deemed an officer, employee, agent, servant, or representative of COIC for any purpose.

ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between COIC and the Counties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such subject matter. Any alteration or amendment or modification of this Agreement shall be valid only if set forth in writing and signed by all parties hereto.

APPLICABLE LAW: This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon.

SEVERABILITY: In the event any portion of this Agreement is determined to be void or unenforceable, such provision shall be severable and will not affect the validity of the remaining portion of this Agreement.

WHEREFORE, each party, by and through its undersigned representative acting with authority, has signed this Agreement to be effective on the first day and year written above.

COIC Date and Signature

COIC EXECUTIVE DIRECTOR

DATE

Deschutes County Date and Signature

DATE _____
DESCHUTES COUNTY COMMISSIONER

DATE _____
DESCHUTES COUNTY COMMISSIONER

DATE _____
DESCHUTES COUNTY COMMISSIONER

EXHIBIT A
COST REIMBURSEMENT FORM
(IF COIC IS NOT REIMBURSED DIRECTLY FROM FTA AND/OR FEMA)

| Service/Personnel/Labor Costs | Personnel Costs (Hourly Rates) |
|----------------------------------|--|
| Driver Services | \$39.47 per driver per vehicle |
| Dispatch and Management Services | \$4.13 (1 Dispatcher + Operations Manager) |

Provided: In the event a driver is required to work more than 40 hours in a week as a result of furnishing emergency services, Counties shall reimburse COIC associated overtime costs in excess of any regular hourly rates.

| Equipment Specification and Code | Equipment Costs (Hourly Rates) |
|-----------------------------------|--------------------------------|
| Bus; Cost Code 8180; Up to 150 HP | \$21.60 |
| Bus; Cost Code 8181; Up to 210 HP | \$25.82 |
| Bus; Cost Code 8182; Up to 300 HP | \$39.65 |

Equipment Specifications, Codes and Hourly Rates are based upon FEMA's Schedule of Equipment Rates. Each rate covers all costs eligible under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., for ownership and operation of equipment, including depreciation, overhead, all maintenance, field repairs, fuel, lubricants, tires, OSHA equipment and other costs incidental to operation. Rates above are applicable to major disasters and emergencies declared by the President of the United States on or after August 15, 2019.

Total Personnel and Equipment Cost Example: Driver operating a 300 horsepower vehicle for one hour amounts to \$79.12 (\$39.47 driver cost + \$39.65 equipment cost).

EXHIBIT B
COIC EMERGENCY CONTACT LIST

1st Andrea Breault - 617 599 7396 - abreault@coic.org - Transportation Director

2nd Marty Hopper - 541 815 7527 - mhopper@coic.org - Operations Supervisor

3rd Mike Murphy - 541 699 2386 - mmurphy@coic.org - Rural Supervisor