

RESTATED SUNRIVER SERVICE DISTRICT MANAGEMENT AGREEMENT

Document No. 20~~2418-395695~~

PARTIES: The parties to this Restated Agreement are: (1) the Governing Body of the Sunriver Service District, a duly formed county service district; and (2) the Sunriver Service District Managing Board. In addition, ~~and (3)~~ the Sunriver Owners Association is provided acknowledgement status.

1. **Effective Date and Termination Date.** The effective date of this agreement shall be November 1, 2018 (agreed start date) or the date on which each party, the Governing Board and Managing Board ~~has~~ have signed this Agreement, whichever is later. This agreement is a successor/replacement agreement to the original Sunriver Service District Management Agreement, Document No. 2002-147, as amended by Restated Sunriver Service District Management Agreement, Document No. 2018-695, as amended, and upon execution of this agreement, Documents Nos. 2002-147, and 2018-695, as amended shall become void. Unless earlier terminated as provided below, this Agreement shall automatically renew in the manner provided for in Section 143.
2. **Purpose.** The Sunriver Service District ("District") was formed on June 26, 2002, pursuant to ORS 451.410, et seq., for the purpose of acquiring, constructing, maintaining and operating services as set out below. The District shall continue to be managed and operated by a Managing Board which shall have the authority and duties as set out in this Agreement.
3. **Debt Limitation.** This agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated. Therefore, any provisions herein, which would conflict with law, are deemed inoperative to that extent. Additionally, the District Managing Board shall not incur any debt unless authorized by this agreement or the District Governing Body.
4. **Structure.** The District Governing Body is comprised of the Board of County Commissioners of Deschutes County, Oregon ("BOCC"). The District Governing Body has delegated, pursuant to a Memorandum of Understanding, the operation of the District to the District Managing Board (hereinafter, the "District Managing Board"). The District Managing Board, as agent for and acting on behalf of the District Governing Body, shall have the duties and authority as set out in this Agreement.

5. **District Managing Board.**

- a. Composition. The District shall be managed and operated by the District Managing Board. The District Managing Board shall consist of ~~seven~~ five members, as follows:

1) Official Positions.

- Position 1: ~~Current Sunriver Owners Association Board member.~~^[JF1] District property owner, registered district elector, or business owner representative within the district bounds.
- Position 2: ~~Current Sunriver Owners Association Board member.~~ District property owner, registered district elector, or business owner representative within the district bounds.
- Position 3: ~~Sunriver property owner.~~ District property owner, registered district elector, or business owner representative within the district bounds.
- Position 4: ~~Sunriver property owner.~~ District property owner, registered district elector, or business owner representative within the district bounds.
- Position 5: ~~Sunriver property owner.~~ District property owner, registered district elector, or business owner representative within the district bounds.
- ~~Position 6: Sunriver property owner.~~
- ~~Position 7: Sunriver property owner.~~

2) ~~Sunriver Owners Association ("Association") board members shall not hold a majority of the positions on the District Managing Board, nor shall any such member serve as Chair of the District Managing Board.~~Any board member who serves in any other capacity that has financial or regulatory dealings with the District must acknowledge those conflicts and is unable to serve in any District Managing Board officer capacity if the Managing or Governing Board indicates that the conflict (actual or perceived) is unresolvable. No more than one board position may be filled by such members at any given time. All board members will submit an updated conflict of interest disclosure annually.

3) Ex-Officio Positions. In addition to the above-designated positions there may be an ex-officio position held by a Deschutes County official. The Sunriver Owners' Association may also ~~nominated~~ designate an ex-officio position consisting of a board member, or other board-appointed representative. The ex-officio positions shall be appointed by and serve at the pleasure of the District Governing Body. shall not participate in executive session matters, and shall be ~~a~~ non-voting positions.

4) Two members of the District Managing Board or the District Managing Board's designee shall be members of the Deschutes County 911 User Board.

- 5) Officers. The Chair, Vice Chair and Treasurer of the District Managing Board shall be selected in accordance with the District Bylaws.
- 6) A District Administrator may ~~also~~ be designated and employed by the District Managing Board.
- b. Term. Each member of the District Managing Board shall serve for a term of three years. Terms shall begin on September 1st and expire on August 31st of the ending year. A member shall serve for no more than two consecutive full terms. Partial terms are not counted as part of the two consecutive term limitation. ~~Positions 1 and 2 members must be current members of the Association's board at the time of their appointment to the District Managing Board. If either such member's service on the Association's board terminates prior to the expiration of their term on the District Managing Board, their term on the District Managing Board shall terminate at the same time as the termination of their term on the Association board.~~
- c. Appointments. The District Managing Board, except the ex-officio positions, shall be appointed by the District Governing Body after reviewing recommendations ~~from~~^{by} the ~~Association~~^{the District Managing Board}. When a vacancy on the District Managing Board occurs, ~~the Mmanaging Bboard shall convene a group made up of no fewer than three district property owners to recommend suitable candidates to the Managing Board. The Managing Board will make recommendations to the Governing Body for consideration of approval. Any nomination discussion shall include a criminal and conflict of interest background investigation prior to approval. the chair of the District Managing Board and the president of the Association shall meet as needed to discuss skill sets and backgrounds desired for the vacant position(s). The Association president shall then convey such information to the Association's nominating committee who will use the information in their search for candidates. The District will be advised of and allowed input in any proposed changes to the Association's Nominating Committee charter as it relates to processes impacting the solicitation, vetting and recommendations of SSD directors. The Association shall solicit applications and vet potential candidates for all positions for which the Association makes recommendations to the District Governing Body. Solicitation for candidates shall appear in a publication of general circulation within the District, or any other generally accepted method of notification which reasonably ensures notice to all property owners in the District.~~
- d. Removal. Members of the District Managing Board shall serve at the pleasure of the Governing Body and may be removed with or without cause by action of the Governing body.
- e. Compensation And Expenses. The District Managing Board members shall not be entitled to receive any compensation attributable to service as a member of the District Managing Board. A District Managing Board member may be reimbursed for any expense which he or she incurs on behalf of the District Managing Board, provided such expenditure is approved by the Chair of the District Managing Board and proper voucher(s) supporting such expenditure is submitted to the Chair. All of the Chair's expense reimbursement requests shall be submitted to the Vice Chair of the District Managing Board.
- f. Committees. The District Managing Board shall have the authority to appoint such committees as in its discretion it deems necessary to assist the District Managing Board and/or the District Administrator in the operation of District. The duties and powers of such committees shall be determined by the District Managing Board.

g. Meetings. Each member of the District Managing Board, except ex-officio members, shall have an equal vote in all District Managing Board decisions. The District Managing Board shall hold regular meetings and may hold special meetings as necessary. A special meeting may be called by the District Managing Board Chair or upon the request of any three Board members. All meetings shall be held in accordance with the Bylaws of the District and shall comply with applicable requirements set forth in ORS Chapter 192.

6. **Administration.** The District Managing Board is authorized to contract for administrative services, leasing of District Facilities and employ an Administrator to manage the daily operations of the District.

7. **Authority and Duties of Managing Board.**

a. District Services. Upon the issuance of an order by the District Governing Body pursuant to the provisions of ORS 451.485, and subsequent majority approval in a referendum vote upon such an order pursuant to ORS 451.487, the District Managing Board may acquire, construct, maintain, and operate any one or more of the following service facilities:

1. Fire prevention and protection;
2. Security services provided by agreement;
3. Law enforcement services;
4. Emergency medical services, including ambulance services.

~~b. Association Recommendations. Nothing herein shall be construed so as to prevent either the Association, Managing Board, or any other owner of property or elector within the District from initiating a recommendation to the District Governing Body either favoring or opposing an order relating to the above listed services, and the District Governing Body may by its own initiative request recommendations from the Association, Managing Board, or other members of the public~~

~~b. the public.~~

c. Contracting.

1. The authority to create any of the above service facilities shall include the authority to enter into agreements with necessary associations or public agencies. Purchasing of facilities, materials and services shall be in compliance with ORS Chapter 279, 279A, 279B, and 279C as applicable. All equipment, facilities, and materials purchased with public funds shall remain public property unless expended in the course of operation of the service facilities or disposed in accordance with the applicable laws relating to the disposal of surplus property of the district.
2. The District Managing Board shall have the authority to enter into agreements to be completed within the respective fiscal year for financing in anticipation of tax revenues or other funding sources.
3. Any lease, license, or other agreement with or sale or transfer (“agreement”) to the Association shall not be greater than the fair market value of the reasonable cost for the agreement and must include an analysis by an independent third party verifying the value and reasonableness of the agreement. The requirement for a third-party analysis shall not, however, be required for any agreement whereby: 1) the District provides services to the Association for the enforcement

of the homeowners' covenants, conditions and restrictions; or 2) the annual amounts then being paid to or received by the District or Association are increased or decreased by no more than ten (10) percent of the total of all amounts paid pursuant to all agreements for the most recent fiscal year of the District.

- d. Financing Authority. The District Managing Board may obtain financing for any or all of the service facilities by any method authorized by law including, but not limited to the establishment of a tax base, the use of funds from a fund established under ORS 280.055 or ORS 451.540.
- e. Bylaws. The District Managing Board shall adopt Bylaws for the operation of the District. The Bylaws shall be adopted by a two-thirds vote of the District Managing Board.
- f. Budgeting. The District Managing Board shall prepare a proposed fiscal year budget for the District. The District Managing Board shall submit the proposed fiscal year budget to the Deschutes County Budget Committee established pursuant to the requirements of ORS 294.305 et seq.
- g. Personnel. The District Managing Board may employ, evaluate and terminate employees necessary for performing the services of each service facility. The District Managing Board shall prepare and approve personnel standards and policies relating to all employees. Further, the District Governing Board delegates the authority and responsibility to the District Managing Board to establish personnel regulations for employees of the District which shall substantially accomplish the general purposes of ORS 242.702 to 242.824.
- h. Purchasing. The District Managing Board may purchase, lease or otherwise contract for equipment and supplies necessary for any service facility approved in the fiscal year budget. The District Managing Board may enter into contracts to provide for financing of needed equipment and supplies. The District Managing Board may not, however, enter into any obligation to be performed under a subcontract unless such subcontract provides for termination upon non-appropriation of funds by the District Governing Body.
- i. Liability Insurance. The District Managing Board shall maintain public liability insurance coverage in an amount not less than the tort limits for public bodies as set out in Oregon Tort Claims Act, ORS 30.260 et seq., naming the District, Governing Body, and District Managing Board as insureds. If required pursuant to any agreement with the Association, liability insurance purchased by the District Managing Board shall name the Association as an additional insured. The District Managing Board shall also maintain insurance covering the buildings, equipment and other tangible property, either owned or leased, by District in an amount not less than replacement value.
- j. Compliance with Budget and Public Records Laws. The financial transactions of the District Managing Board shall be in compliance with the requirements of the local budget laws and expenditure limitations contained in the laws of the State of Oregon. As applicable and subject to lawful non-disclosure or redaction, records of the District Managing Board shall be deemed public records in accordance with ORS Chapter 192.
- k. Confidentiality. The District Managing Board shall not use, release or disclose any information concerning any employee, client, applicant or person doing business with

the District for any purpose not directly connected with the administration of the District Governing Body's or the District Managing Board's responsibilities under this Agreement except upon written consent of the District Governing Body, and if applicable, the employee, client, applicant or person. The District Managing Board shall ensure that its agents, officers and subcontractors and District employees with access to the District Governing Body and District Managing Board records understand and comply with this confidentiality provision..

- l. Drugs and Alcohol. The District Managing Board shall enforce a zero tolerance as to dealing, possession, or use of drugs or alcohol by the District Managing Board or the District's employees, subcontractors and agents while performing work under this agreement.
- m. Expense Reimbursement. The District Managing Board shall enforce the Expense Reimbursement Policies for each District Managing Board member, District employee and contractor. Only expenses reasonably and necessarily incurred in the performance of this agreement, an employee's employment or a contract shall be reimbursed. Expenses reimbursed shall be at the actual cost incurred, including any taxes paid, and shall not include any mark-up unless the mark-up on expenses is specifically agreed to in the agreement. The cost of any contracted work approved in the agreement shall not be marked up. The District Managing Board shall not pay for any time expended to complete the documents necessary for reimbursement of expenses or for payment under this agreement. The maximum amounts for certain reimbursable expenses are set forth in Exhibit "1," attached hereto and by this reference incorporated herein.
- n. Access to Records. The District Managing Board shall maintain fiscal records and all other records pertinent to this Agreement.
 - 1) All fiscal records shall be maintained pursuant to generally accepted accounting standards, and other records shall be maintained to the extent necessary to clearly reflect actions taken. All records shall be retained and kept accessible for at least three years following the final payment made under the agreement or all pending matters are closed, whichever is later. If an audit, litigation or other action involving the agreement is started before the end of the three-year period, the records shall be retained until all issues arising out of the action are resolved or until the end of the three-year period, whichever is later.
 - 2) The District Governing Body's authorized representatives shall have the right to direct access to all of the District Managing Board's books, documents, papers and records related to this Agreement for the purpose of conducting audits and examinations and making copies, excerpts and transcripts. These records also include licensed software and any records in electronic form, including but not limited to computer hard drives, tape backups and other such storage devices.

The District Governing Body, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives, shall have license to enter upon the District Managing Board's premises to access and inspect the books, documents, papers, computer software, electronic files and any other records of the District Managing Board which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, copies and transcriptions.
 - 3) The District Managing Board shall include this provision in any subcontracts.

- o. Materials. At all times, the District Managing Board shall make reasonable efforts to use recycled materials in the performance of work required under this agreement.
- p. Compliance with provisions, requirements of funding source and Federal and State laws, statutes, rules, regulations, executive orders and policies. The District Administrator and the District Managing Board shall comply with any requirements, conditions or limitations arising under the terms of any grant funding source or required pursuant to any Federal or State law, statute including all provisions in ORS 279, 279A, 279B, 279C, rule, regulation, executive order and policy applicable to this agreement.
- q. Subcontractor. Any contracts that the District Administrator or District Managing Board may authorize shall contain all pertinent requirements of this agreement; the District Administrator and/or the District Managing Board shall be responsible for monitoring and reviewing the performance of the contractor.

8. Authority and Duties of District Governing Body.

- a. The District Governing Body shall provide, upon request of the District Managing Board, the necessary auditing services for the service facilities at reasonable cost to the District Managing Board.
- b. The District Governing Body, acting as members of the Budget Committee required by ORS 294.414, shall participate in the review and approval of the fiscal year budget, and shall assume responsibility for compliance with all publication, notice and hearing requirements for the budget process. The District Governing Body or its designee shall also prepare and complete all necessary election filings and other requirements for any tax base levy.

9. Accounting. The fiscal year of the District shall be the same as that established for Deschutes County, Oregon.

10. Ownership of Work. All work of the District Managing Board that results from this Agreement (the "Work Product") is the exclusive property of the District Governing Body.

11. Review. This Agreement shall be reviewed regularly (but not less than every three years) by the District Managing Board and the District Governing Board. Modifications or amendments to this Agreement may be proposed by the District Managing Board, electors of the District or the District Governing Body. Such modifications or amendments will become effective only upon the receipt of a two-thirds favorable vote by the District Governing Body.

12. The Managing Board shall provide the District Governing Body with periodic reports at the frequency and with the information prescribed by the District Governing Body. Further, at any time, the District Governing Body has the right to demand adequate assurances that the services provided by the District Managing Board will be in accordance with this Agreement. Such assurances provided by the District Managing Board shall be supported by documentation from third parties.

13. Criminal and Conflict Background Investigations. The District Managing Board understands that members of the District Managing Board and the District's employees are subject to periodic criminal background investigations as well as conflict of interest discovery by the District

Governing Body and, if such investigations disclose criminal activity not disclosed by any member, such non-disclosure shall constitute a material breach of this agreement and the District Governing Body may terminate that District Managing Board member or employee effective upon delivery of written notice to the Board Member or employee, or at such later date as may be established by the District Governing Body. The District Managing Board shall include this provision in each contract with District contractors.

- 14. Duration of Agreement.** This Agreement shall be automatically extended from year to year on the same terms and conditions, including modifications and amendments.
- 15. Early Termination.** Notwithstanding Paragraph 14, this Agreement may be terminated as follows:
- a. Mutual Consent. District Governing Body and District Managing Board, by mutual written agreement, may terminate this Agreement at any time.
 - b. Party's Convenience. District Governing Body or District Managing Board may terminate this Agreement for any reason upon 30 days written notice to the other party.
 - c. For Cause. District Governing Body may also terminate this agreement effective upon delivery of written notice to the District Managing Board, or at such later date as may be established by the District Governing Body, if state laws, regulations or guidelines are modified, changed or interpreted in such a way that the responsibilities may no longer be delegated to the District Managing Board.
 - d. District Managing Board Default or Breach. The District Governing Body, by written notice to the District Managing Board, may immediately terminate the whole or any part of this agreement under any of the following conditions:
 - 1) If the District Managing Board fails to provide services called for by this agreement within the time specified or any extension thereof.
 - 2) If the District Managing Board fails to perform any of the other requirements of this agreement or so fails to pursue the work so as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from the District Governing Body specifying such failure, the District Managing Board fails to correct such failure within 10 calendar days or such other period as the District Governing Body may authorize.
- 16. Remedies.** In the event of breach of this Agreement the parties shall have the following remedies:
- a. Termination under paragraphs 15 a. through c. above shall be without prejudice to any obligations or liabilities of the District already reasonably incurred prior to such termination. The District Managing Board may not incur obligations or liabilities after the District Managing Board receives written notice of termination.
 - b. If terminated under 15 d. by the District Governing Body due to a breach by the District Managing Board, the District Governing Body may pursue any remedies available at law or in equity. Such remedies may include, but are not limited to, termination of this agreement and declaration of ineligibility for the receipt of future agreement awards. Additionally, District Governing Body may complete the work either itself, by agreement with another contractor, or by a combination thereof.

- c. In addition to the remedies in paragraph 15.b. for a breach by the District Managing Board, the District Governing Body also shall be entitled to any other equitable and legal remedies that are provided by law.
- d. Neither the District Governing Body nor the District Managing Board shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, riot, acts of God, or war where such cause was beyond reasonable control of District Governing Body or the District Managing Board, respectively. The District Managing Board shall, however, 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.
- e. The passage of the agreement expiration date (one year from the date of the signing of this agreement) shall not extinguish or prejudice the District Governing Body's right to enforce this agreement with respect to any default or defect in performance that has not been cured.

17. **District Managing Board's Tender upon Termination.** Upon receiving a notice of termination of this Agreement, the District Managing Board shall immediately cease all activities under this Agreement, unless the District Governing Body expressly directs otherwise in such notice of termination. Upon termination of this Agreement, the District Managing Board shall deliver to the District Governing Body all documents, information, works-in-progress and other property that are or would be deliverables had the agreement been completed. Upon the District Governing Body's request, the District Managing Board shall surrender to anyone District Governing Body designates, all documents, research, objects or other tangible things needed to complete the work.
18. **Waiver.** The District Governing Body's delay in exercising, or failure to exercise any right, power, or privilege under this agreement shall not operate as a waiver thereof, nor shall any single or partial exercise or any right, power, or privilege under this agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.
19. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between District Governing Body and the District Managing Board members that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim must be brought in federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. The UN Convention on International Sales of Goods will not apply.
20. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions 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 term or provision held invalid.
21. **Anti-discrimination Clause.** No person shall, on the grounds of race, color, creed, national origin, sex, marital status, or age, suffer discrimination in the performance of this agreement when employed by the District. The District Managing Board shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Additionally, each party shall comply with the Americans with Disabilities Act of 1990 (Pub. L.

No. 101-336), ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Further, District Managing Board shall not discriminate against minority-owned, women-owned or emerging small businesses in awarding subcontracts.

22. **Amendments.** This agreement may not be waived, altered, modified, supplemented, or amended in any manner except by written instrument signed by the District Governing Body and the District Managing Board.
23. **Merger Clause.** The Memorandum of Understanding - Contract No. 2002-201, entered into in 2002 shall remain as a historic formation document, but is invalidated to the extent that any provision in it conflicts with any provision in this Restated Agreement. Accordingly, and upon signatures below, this Agreement constitutes the entire agreement between the parties. All understandings and agreements between the parties and representations by either party concerning this Agreement are contained in this Agreement. No waiver, consent, modification or change in the terms of this Agreement shall bind the parties unless in writing signed by the parties. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.
24. **Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, electronically, or mailing the same, postage prepaid, to District Managing Board or District Governing Body at the address or number set forth below, or to such other addresses or numbers as any party may hereafter indicate pursuant to this Section 23. Any communication or notice so addressed and mailed shall be deemed delivered five (5) days after mailing. Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. Any communication sent electronically shall be deemed delivered, unless a notice to the sender indicating it was undelivered. To be effective against District Governing Body, such facsimile transmission or electronic transmittal must be confirmed by telephone notice to District Governing Body's Administrator or Legal Counsel. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.

To District Governing Body:
County Administrator
Deschutes County
1300 NW Wall St.
Bend, Oregon 97703

Courtesy copy to:
Sunriver Owners
Association
PO Box 3278
Sunriver, Oregon 97707

To District Managing Board:
PO Box 2108
Sunriver, Oregon 97707

25. **Survival.** All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 7. k., n., o., p., 15-16, and 18-20.

Dates this ____ of _____, 2024~~18~~

BOARD OF COUNTY COMMISSIONERS
Acting as Governing Body for
Sunriver Service District

PATTI ADAIR~~ANTHONY DeBONE~~, CHAIR

ANTHONY DeBONE~~PHILIP. G. HENDERSON~~, VICE
CHAIR

PHIL CHANG~~TAMMY BANEY~~, COMMISSIONER

ATTEST:

Recording Secretary

SUNRIVER SERVICE DISTRICT MANAGING BOARD

Chair

Date

SUNRIVER OWNERS ASSOCIATION - Acknowledging Identified Status and
Designated ~~Managing Board Positions~~Ex-Officio position

President

Date

EXHIBIT 1

**SUNRIVER SERVICE DISTRICT MANAGEMENT AGREEMENT
Expense**

Reimbursement

1. **Travel and Other Expenses.** (When travel and other expenses are reimbursed.)
 - a. The District Managing Board will reimburse Board members and employees for expenses related to official business only. Reimbursement shall not exceed the current government rates for mileage, meals, lodging and incidentals as per Deschutes County policy.
 - b. Any exception to this reimbursement policy shall be approved by the District Managing Board.