



Contract #: SO-3067-19

☐ Returned to _____ Department for _____ signatures



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 1/15/2020

Department: Sheriff's Office Agenda Planning Date: 1/9/2020 Time required:

☐ Audio/Visual aids

Contact: Camille Brignon Phone: 503-589-3261

Department Head Signature: 

TITLE State of Oregon Parks and Recreation Department Patrol Services agreement

Issue, Description & Background Marion County Sheriff's Office (MCSO) will provide law enforcement services by foot patrol and by vehicle patrol (services) at Silver Falls State Park and at the Detroit Lake State Recreation Area, Mongold Day-Use Area, and North Santiam State Recreation Area, all located within Marion County.

Financial Impacts: It is estimated that this agreement will generate \$250,000.00 for patrol services provided.

Impacts to Department & External Agencies Estimated \$250,000.00 in incoming funds.

Options for Consideration:
1. Approve
2. Deny
3. Take no action at this time

Recommendation: Approve

List of attachments: 19-25 Agreement, BOC agenda review form, Retro-active justification, Contract Review Sheet

Presenter: Sheriff Kast, Commander Stutrud

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Camille Brignon; cbrignon@co.marion.or.us
Jeff Stutrud; jstutrud@co.marion.or.us

REQUEST FOR AUTHORIZATION OF RETROACTIVE CONTRACT

Date: 12/26/2019

To: Chief Administrative Officer

Cc: Contract File

From: Sheriff's Office, Enforcement Division

The Marion County Sheriff's Office is requesting approval of a retroactive contract as described in Section 10-0580 of the Marion County Public Contracting Rules. The contract is with the State of Oregon through its Oregon Parks and Recreation Department where MCSO will provide law enforcement services by foot and vehicle patrol at recreation areas located in Marion County. This agreement has an estimated value of \$250,000.00 and will be effective retroactive to July 1, 2019 upon approval.

As required in Section 10-0580(2)(a), Department staff will provide an explanation of why the contract was not submitted before performance began:

This agreement is written by the State of Oregon in line with their fiscal biennium. This agreement was received on December 6, 2019.

As required in Section 10-0580(2)(b), Department staff will provide a description of the steps being taken to prevent similar occurrences in the future:

This may continue to happen in the future as long as we coordinate State and County agreements with the County's fiscal year and State fiscal biennium.

Submitted by:



Camille Brignon

Sheriff's Office, Operations Division

Acknowledged by:



Department Head

INTERGOVERNMENTAL AGREEMENT

Agreement No. 8906

LAW ENFORCEMENT SERVICES

This Agreement is between the State of Oregon acting by and through its Oregon Parks and Recreation Department (OPRD) and Marion County Sheriff's Office (MCSO or Contractor), each a Party and, together, the Parties.

SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110, ORS 279A.050(6)(d), ORS 390.121(4), and ORS 390.050.

SECTION 2: PURPOSE

MCSO will provide law enforcement services by foot patrol and by vehicle patrol (Services) at Silver Falls State Park and at the Detroit Lake State Recreation Area, Mongold Day-Use Area, and North Santiam State Recreation Area, all located within Marion County. Services are described in Exhibits A (Statement of Work), attached hereto and incorporated herein by this reference.

SECTION 3: EFFECTIVE DATE AND DURATION

The Effective Date of this Agreement is July 1, 2019 (Effective Date). The Agreement Execution Date will be that date by which the Agreement has been signed by the Parties. The Agreement will terminate on December 31, 2025 unless terminated earlier in accordance with Section 17.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 OPRD's Authorized Representative is:

Ryan Spark, Operation Support Manager
Oregon Parks and Recreation Department
10991 Wheatland Road NE
Gervais, OR 97026

503-390-0639 ext. 222
ryan.sparks@oregon.gov

4.2 MCSO's Authorized Representative is:

~~J~~ Jeff Stutrud
Enforcement Division
Marion County Sheriff's Office
100 High Street NE
Salem, OR 97301

503-316-615
jstutrud@co.marion.or.us

4.3 A Party may designate a new Authorized Representative by notice to the other Party, as provided by Section 22.

SECTION 5: RESPONSIBILITIES OF EACH PARTY

- 5.1 MCSO shall perform the Services as set forth on Exhibit A and perform as otherwise required under this Agreement, including Exhibit A.
- 5.2 OPRD will pay MCSO for provision of those Services as described in Section 6 and perform as otherwise required under this Agreement, including Exhibit A.

SECTION 6: COMPENSATION AND PAYMENT TERMS

- 6.1 OPRD will compensate MCSO for the performance of the law enforcement services described in this Agreement at an hourly rate of pay not less than **\$48.94 per hour** and not more than **\$109.49 per hour**, depending on the MCSO rates of compensation for each deputy assigned to perform services set forth in Exhibit A. Hourly rates paid by OPRD will include the deputy's hourly rate of pay, mileage, and any other expenses or costs (meaning OPRD will pay the hourly rate and will not pay any additional expenses such as mileage or other expenses or costs) and will be the sole monetary obligation of OPRD.
- 6.2 OPRD's obligation to pay is limited by the limitations imposed by the Oregon Constitution, Oregon law, and by all other terms and conditions of this Agreement.
- 6.3 MCSO shall provide law enforcement services at designated OPRD state parks in accordance with the coverage schedule stated in Exhibit A. Payment for all types of law enforcement activities shall be based on the following staffing levels, based on the coverage schedule established as laid out in Exhibit A:
 - Patrol Silver Falls State Park - One patrol deputy; and
 - Patrol Detroit Lake State Recreation Area, Mongold, and North Santiam State Parks - One patrol deputy for the combination of these areas.
- 6.4 MCSO shall submit all invoices to OPRD's Authorized Representative within 30 days of the Services being provided. All requests for payment must include documentation of law enforcement Services provided, including dates and hours services are provided; the location at which Services were provided; the name or number of the deputy who provided services; and any other documentation that OPRD may request to verify that services were provided for which payment is due. MCSO must include "Agreement 8609" on all invoices and other documents submitted. OPRD's Authorized Representative or designee will review monthly invoices received and will contact MCSO promptly to report any discrepancies or missing documentation.
- 6.5 OPRD will pay MCSO within 30 days of receipt of a timely invoice, unless OPRD has reported any discrepancy in which case payment will be made within 30 days of a corrected invoice. Payments will be based on the amount owed for Services performed, as established by the coverage schedule for the relevant year.
- 6.6 OPRD shall make payments in the form of a State of Oregon warrant (check) payable to Contractor. OPRD will send payments to Contractor at the address specified in the invoices.

SECTION 7: REPRESENTATIONS AND WARRANTIES

MCSO represents and warrants to OPRD that:

- 7.1 MCSO is a county duly organized and validly existing. MCSO has the power and authority enter into and perform this Agreement;
- 7.2 The making and performance by MCSO of this Agreement; (a) have been duly authorized by MCSO; (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of MCSO's charter or other organizational document; and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which MCSO is party or by which MCSO may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by MCSO of this Agreement, other than those that have already been obtained;
- 7.3 This Agreement has been duly executed and delivered by MCSO and constitutes a legal, valid and binding obligation of MCSO enforceable in accordance with its terms;
- 7.4 MCSO has the skill and knowledge possessed by well-informed members of the industry, trade, or profession most closely involved in providing the services under this Agreement, and MCSO shall apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade, or profession; and
- 7.5 MCSO shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement.
- 7.6 The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by MCSO.

SECTION 8: ALTERNATIVE DISPUTE RESOLUTION

The Parties should attempt in good faith to resolve any dispute arising out of or relating to this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (**for non-binding arbitration ONLY**) to resolve the dispute short of litigation.

SECTION 9: GOVERNING LAW, CONSENT TO JURISDICTION

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 OPRD or any other agency or department of the State of Oregon, or both, and MCSO that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion 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 State of Oregon 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, to or from any Claim or from the jurisdiction of any court. MCSO, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

SECTION 10: [RESERVED]

SECTION 11: CONTRIBUTION

- 11.1** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a Third Party Claim) against a Party (the Notified Party) with respect to which the other Party (the Other Party) may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section 11 with respect to the Third Party Claim.
- 11.2** With respect to a Third Party Claim for which OPRD is jointly liable with MCSO (or would be if joined in the Third Party Claim), OPRD shall contribute to the amount of expenses judgments, fines, and amounts paid in settlement actually and reasonably incurred and paid or payable by MCSO in such proportion as is appropriate to reflect the relative fault of OPRD on the one hand, and of MCSO on the other hand, in connection with the events that resulted in such expenses, judgments, fines, or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OPRD on the one hand, and of MCSO on the other hand, shall be determined by OPRD by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines, or settlement amounts. OPRD's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- 11.3** With respect to a Third Party Claim for which MCSO is jointly liable with OPRD (or would be if joined in the Third Party Claim), MCSO shall contribute to the amount of expenses judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OPRD in such proportion as is appropriate to reflect the relative fault of MCSO on the one hand, and of OPRD on the other hand, in connection with the events that resulted in such expenses, judgments, fines, or settlement amounts, as well as any other relevant equitable considerations. The relative fault of MCSO on the one hand, and of OPRD on the other hand, shall be determined by OPRD by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines, or settlement amounts. MCSO's

contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

SECTION 12: MCSO DEFAULT

MCSO shall be in default under this Agreement upon the occurrence of any of the following events:

- 12.1** MCSO fails to perform, observe, or discharge any of its covenants, agreements, or obligations under this Agreement;
- 12.2** Any representation, warranty, or statement made by MCSO in this Agreement or in any documents or reports relied upon by OPRD to measure the delivery of Services, the expenditure of funds, or the performance by MCSO is untrue in any material respect when made;
- 12.3** MCSO: (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property; (b) admits in writing its inability, or is generally unable, to pay its debts as they become due; (c) makes a general assignment for the benefit of its creditors; (d) is adjudicated a bankrupt or insolvent; (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect); (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code; or (h) takes any action for the purpose of effecting any of the foregoing;
- 12.4** A proceeding or case is commenced, without the application or consent of MCSO, in any court of competent jurisdiction, seeking: (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of MCSO; (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of MCSO or of all or any substantial part of its assets; or (c) similar relief in respect to MCSO under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving, or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against MCSO is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect); or
- 12.5** MCSO fails to maintain a policy and practice of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class that meets the requirements established by Oregon Laws 2017, Chapter 212, Section (2). MCSO agrees that it will maintain this policy and practice for the duration of the Agreement and that it will certify to the existence and maintenance of this policy and practice. MCSO recognizes that this is a material term of this Agreement.

SECTION 13: OPRD DEFAULT

OPRD will be in default under this Agreement if OPRD fails to perform, observe, or discharge any of its covenants, agreements, or obligations under this Agreement.

SECTION 14: REMEDIES

- 14.1** In the event MCSO is in default under Section 12, OPRD may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 17; (b) reducing or withholding payment for Services that MCSO has failed to provide or has performed inadequately or defectively; (c) requiring MCSO to perform, at MCSO's expense, additional Services necessary to satisfy its performance obligations or meet performance standards under this Agreement; (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or (e) exercise of its right of recovery of overpayments under Section 15 of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and OPRD may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.
- 14.2** In the event OPRD is in default under Section 13 and whether or not MCSO elects to exercise its right to terminate this Agreement under Section 17.3.3, or in the event OPRD terminates this Agreement under Sections 17.2.1, 17.2.2, 17.2.3, or 17.2.5, MCSO's sole monetary remedy will be: (a) a claim for unpaid invoices for Services completed and accepted by OPRD, for Services completed and accepted by OPRD within any limits set forth in this Agreement but not yet invoiced. In no event will OPRD be liable to MCSO for any expenses related to termination of this Agreement in accordance with its terms or for anticipated profits. If previous amounts paid to MCSO exceed the amount due to MCSO under this Section 14.2, MCSO shall promptly pay any excess to OPRD.

SECTION 15: RECOVERY OF OVERPAYMENTS

If payments to MCSO under this Agreement, or any other agreement between OPRD and MCSO, exceed the amount to which MCSO is entitled, OPRD may, after notifying MCSO in writing, withhold from payments due MCSO under this Agreement, such amounts, over such periods of time, as are necessary to recover the amount of the overpayment.

SECTION 16: LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 11, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY, OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

SECTION 17: TERMINATION

- 17.1** This Agreement may be terminated at any time by mutual written consent of the Parties.
- 17.2** OPRD may terminate this Agreement as follows:

- 17.2.1 Upon thirty (30) days advance written notice to MCSO;
 - 17.2.2 Immediately upon written notice to MCSO, if OPRD fails to receive funding, or appropriations, limitations, or other expenditure authority at levels sufficient in OPRD's reasonable administrative discretion, to perform its obligations under this Agreement;
 - 17.2.3 Immediately upon written notice to MCSO, if federal or state laws, rules, regulations, or guidelines are modified or interpreted in such a way that OPRD's performance under this Agreement is prohibited or OPRD is prohibited from paying for its obligations under the agreement from the planned funding source;
 - 17.2.4 Immediately upon written notice to MCSO, if MCSO is in default under this Agreement and such default remains uncured fifteen (15) days after written notice thereof to MCSO;
or
 - 17.2.5 As otherwise expressly provided in this Agreement.
- 17.3 MCSO may terminate this Agreement as follows:
- 17.3.1 Immediately upon written notice to OPRD, if MCSO fails to receive funding, or expenditure authority at levels sufficient in MCSO's reasonable administrative discretion, to perform its obligations under this Agreement;
 - 17.3.2 Immediately upon written notice to OPRD, if federal or state laws, rules, regulations, or guidelines are modified or interpreted in such a way that MCSO's performance under this Agreement is prohibited or MCSO is prohibited from paying for such performance from the planned funding source;
 - 17.3.3 Immediately upon written notice to OPRD, if OPRD is in default under this Agreement and such default remains uncured fifteen (15) days after written notice thereof to OPRD;
or
 - 17.3.4 As otherwise expressly provided in this Agreement.
- 17.4 Upon receiving a notice of termination of this Agreement, MCSO shall immediately cease all activities under this Agreement, unless OPRD expressly directs otherwise in such notice.

SECTION 18: INSURANCE

MCSO agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS Chapter 30.

SECTION 19: [RESERVED]

SECTION 20: INDEMNIFICATION BY SUBCONTRACTORS

MCSO shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OPRD and its officers, employees, and agents ("Indemnatee") from and against any and all Claims and Losses arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of MCSO's contractor or any of the officers, agents, employees, or subcontractors of the contractor. It is the specific intention of the Parties that the Indemnatee shall, in all instances, except for Claims or Losses arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all Claims and Losses.

SECTION 21: AMENDMENTS

The terms of this Agreement may not be altered, modified, supplemented, or otherwise amended, except by written agreement of the Parties.

SECTION 22: NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section 22. Any notice so addressed with correct postage and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Email Notices are deemed delivered to recipient when emailed.

Parties agree to respond to each other's communications in a timely manner.

SECTION 23: SURVIVAL

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 9, Governing Law, Consent to Jurisdiction; 11, Contribution; 15, Recovery of Overpayments; and 23, Survival hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

SECTION 24: SEVERABILITY

The Parties agree that 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 will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

SECTION 25: COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

SECTION 26: COMPLIANCE WITH LAW

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local laws.

SECTION 27: INDEPENDENT CONTRACTORS

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that MCSO is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

SECTION 28: INTENDED BENEFICIARIES

OPRD and MCSO are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

SECTION 29: FORCE MAJEURE

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. OPRD may terminate this Agreement upon written notice to MCSO after reasonably determining that any failure or delay will likely prevent successful performance of this Agreement.

SECTION 30: ASSIGNMENT AND SUCCESSORS IN INTEREST

MCSO may not may not assign or transfer its interest in this Agreement without the prior written consent of OPRD, and any attempt by MCSO to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. OPRD's consent to MCSO's assignment or transfer of its interest in this Agreement will not relieve MCSO of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

SECTION 31: SUBCONTRACTS

MCSO shall not, without OPRD's prior written consent, enter into any subcontracts for any of the work required of MCSO under this Agreement. OPRD's consent to any subcontract will not relieve MCSO of any of its duties or obligations under this Agreement.

SECTION 32: TIME IS OF THE ESSENCE

Time is of the essence in MCSO's performance of its obligations under this Agreement.

SECTION 33: MERGER, WAIVER

This Agreement and Exhibit A constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SECTION 34: RECORDS MAINTENANCE AND ACCESS

MCSO shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, MCSO shall maintain any other records, books, documents, papers, plans, records of shipments, and payments and writings of MCSO, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document MCSO's performance. All financial records, other records, books, documents, papers, plans, records of shipments, payments, and writings of MCSO, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as Records. MCSO acknowledges and agrees that OPRD and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. MCSO shall retain and keep accessible all Records for a minimum of six years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, MCSO shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

SECTION 35: HEADINGS

The headings and captions to Sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

SECTION 36: AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, and attached Exhibit A (Statement of Work).

SECTION 37: CERTIFICATIONS

Any individual signing on behalf of MCSO hereby certifies and swears under penalty of perjury: (a) MCSO is not subject to backup withholding because (i) MCSO is exempt from backup withholding, (ii) MCSO has not been notified by the IRS that MCSO is subject to backup withholding as a result of a failure to CERTIFICATIONS report all interest or dividends, or (iii) the IRS has notified MCSO that MCSO is no longer subject to backup withholding; (b) s/he is authorized to act on behalf of MCSO, s/he has authority and knowledge regarding MCSO's payment of taxes, and to the best of her/his knowledge, MCSO is not in violation of any Oregon tax laws. For the purposes of this certification, "OREGON tax laws" means a state tax imposed by ORS 320.005 to 320.150 and ORS 403.200 to 403.250 and ORS Chapters 118, 314, 316, 317, 318, 321 and 323 and local taxes administered by the Oregon Department of Revenue under ORS 305.620; (c) MCSO is an independent contractor as defined in ORS 670.600; and (d) MCSO has a policy of preventing sexual harassment, sexual assault, and discrimination against employees who are a member of a protected class that includes, at a minimum, the requirements established by Oregon Laws 2017, Chapter 212, section (2), including: written notice to each employee that clearly prohibits and specifies disciplinary measures for conduct that constitutes sexual harassment, sexual assault, or discrimination against any member of a protected class; a clear process that enables an employee that experiences or witnesses conduct that constitutes sexual harassment, sexual assault, or discrimination against a member of a protected class to report and stop the conduct; a clear process that guides the MCSO in responding to a report, resolving the issues identified in the report, and disciplining employees who engaged in proscribed conduct; a regular written procedure for submitting a report that identifies the specific individuals to whom an employee may submit the report and the individuals who have responsibility for resolving issues identified in the report; a practice of treating as confidential, to the extent permitted by law, any report that an employee makes; a prohibition against retaliating against an employee who experiences or witnesses, and reports, conduct that constitutes sexual harassment, sexual assault, or discrimination against a member of a protected class; a prohibition against discrimination in providing benefits to an employee or a dependent of the employee based on the employee's membership in a protected class or the membership of the employee's dependent in a protected class; and a prohibition on denying benefits to an employee or a dependent of the employee based solely on the employee's gender identity or the gender identity of the employee's dependent, if the prospective contractor provides health insurance or health care benefits. MCSO certifies that it will maintain the policy and practice in force during the entire term of this Agreement.

SECTION 38: SIGNATURES

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

[Signatures on following page.]

**STATE OF OREGON acting by and through its
Oregon Parks and Recreation Department (OPRD)**

Name, Title

Date

**Marion County Sheriff's Office (MCSO)
Board of Commissioners:**

Chair

Date

Commissioner

Date

Commissioner

Date

Authorized Signature: _____
Chief Administrative Officer

Date

Reviewed by Signature: _____
Marion County Legal Counsel

Date

Reviewed by Signature: _____
Marion County Contracts & Procurement

Date

Approved for Legal Sufficiency in accordance with ORS 291.047

By: Erika Hamilton, Assistant Attorney General (by email dated 11/12/2019)

Name and Title

By: Mark A. Williams, Attorney-in-Charge, Business Transactions Section (by email dated 11/25/2019)

Name and Title



Sheriff or Undersheriff

12/26/19

Date

EXHIBIT A

STATEMENT OF WORK

1. BACKGROUND

Silver Falls State Park and Detroit Lake State Park have high spring, summer and fall visitation in concentrated and sometimes remote areas of the parks. The purpose of this Agreement will be for OPRD to secure law enforcement services from Marion County Sheriff's Office (MCSO) to assist OPRD park rangers with the enforcement of the Oregon Administrative Rules that it has authority to enforce for state parks. Services will be provided at the above state parks and at the Mongold Day-Use Area, and North Santiam Recreation Area. This agreement also allows MCSO officers to legally access OPRD property and to enforce laws of the state that they otherwise have independent authority to enforce when they are lawfully on OPRD property.

Over the years, OPRD has determined that contracting for law enforcement services provides a quicker and dedicated response during peak visitation. Assistance from MCSO helps ensure disturbances and other situations are dealt with appropriately and in a timely manner, often before they escalate into more serious issues. The presence of an MCSP patrol deputy provides an improved visitor safety and experience, while visitors enjoy their recreation experience.

2. SCOPE

MCSO shall provide the law enforcement services on foot and by vehicle patrol at Silver Falls State Park and at the Detroit Lake State Park, Mongold Day-Use Area, and North Santiam State Recreation Area. Services will be scheduled in advance each year but are subject to the availability of MCSO patrol officers.

MCSO shall concentrate on visitor safety and enforcement of the Oregon Administrative Rules that OPRD has organic authority to enforce for state parks at Silver Falls State Park and the Detroit Lake State Park, which includes the Mongold Day-Use Area, and North Santiam Recreation Area.

3. Authority and Enforcement. This agreement provides MCSO with authority enforce to OAR 736-015-0010 through 0030, and OAR 736-016-0010 through 0020 and obligates them to enforce these rules when they are providing Services under this Agreement; including excluding persons from park property, using the minimum force necessary, given the nature of the offense and any mitigating circumstances.

Enforcement guidelines include, in the following order of escalation:

- Verbal Warnings
- Written Personal Notices of Exclusions
- Violation Notices
- Arrests

MCSO agrees to tailor its enforcement action (including the degree to which it escalates its response) to the severity of the relevant behavior or activity. This agreement also allows MCSO officers to legally access OPRD property and to enforce laws of the state that they otherwise have independent authority to enforce when they are lawfully on OPRD property, but does not provide MCSO officers with authority to enforce any laws that are outside of OPRD's organic authority.

4. Intervention. MCSO will provide on-site assistance including, but not limited to, all of the following:

- Resolving Visitor Disputes
- Promoting Positive Visitor Interaction

- Controlling Traffic
 - Patrolling Campground and Day Use areas in vehicles and on foot
 - Enforcing the requirements of the Oregon Administrative Rules stated above in Section 3 of this Exhibit A
5. **Patrol.** MCSO shall provide Services, in accordance with the annual coverage schedule established by the Parties, as stated in Section 6 of this Exhibit A below. MCSO shall provide coverage as following.
- One deputy sheriff to provide Services at Silver Falls State Park; and
 - One deputy to provide Services at Detroit Lake State Park, Mongold Day-Use Area, and North Santiam State Recreation Area.
6. **Annual Coverage Schedule.**
- 6.1 OPRD will prepare a coverage schedule each year, prior to Services beginning, and will provide the coverage schedule to MSCO's Authorized Representative for review and approval. MSCO shall review the coverage schedule and provide its deputies the opportunity to sign-up for scheduled dates and times. The annual coverage schedule will include the days and hours of Services needed at each of the locations stated in Section 5 of this Exhibit A. MSCO will return this coverage schedule to OPRD, indicating any dates and times when MSCO cannot provide coverage.
- 6.2 Parties agree the final coverage schedule will be approved at least 60 days prior to the start date in the schedule. The annual coverage schedule will become part of this Agreement when the parties have agreed in writing to the dates and times Services will be provided.
- 6.3 Additional Services may be requested in writing by OPRD and will be subject to availability, as determined by MSCO.
- 6.2 Either Party may revise the coverage schedule by providing written notice to the receiving party at least 72 hours prior to implementing the changes. Email notice sent to the Authorized Representatives identified in Section 4 of the Agreement will be acceptable.
7. **Outcomes.** To measure effective outcomes of MCSO's law enforcement services, MCSO shall:
- Provide Services as stated in the coverage schedule. The deputy providing services at any given date and time in the coverage schedule shall check-in with the OPRD Authorized Representative or designee, prior to providing services.
 - Prepare and deliver Monthly Activity Reports on contacts and incidents to the OPRD Park Manager within 30 day of providing the services;
 - Reports will be in the form of a monthly log sheet in a Word or Excel format. Reports must contain, at a minimum, the following information in detail:
 - Month, days worked, hours worked, including the name or number of the patrol deputy assigned;
 - Contacts made;
 - Warnings and violation notices issued;
 - Written personal notices of exclusion issued; and
 - Arrests made.
 - Provide additional information related to any Report within 10 calendar days of receipt of OPRD's written request. Participate in an annual September debriefing to be scheduled by OPRD. The debriefing will include a review and discussion of the services provided and recommendations for any changes to the agreement, if needed for the next service period

8. OPRD OBLIGATIONS

8.1 OPRD shall:

- Submit any requests for additional Services in writing to the MSCO Authorized Representative at least 72 hours in advance of the Service delivery date and time;
- Provide access to the OPRD properties for the dates and times shown in the coverage schedule and for any additional times and dates that Services have been requested by OPRD, as stated above;
- Provide MSCO deputy with a point of contact for each park for the deputy notify when they arrive to provide the services schedule;
- Schedule and facilitate September debriefing each year for the term of the Agreement.

9.0 DAY-TO-DAY OPERATIONS – CONTACTS

Silver Falls State Park

Chris Gilliand, Park Ranger Supervisor
Silver Falls State Park
20024 Silver Falls Hwy SE
Sublimity, OR 97385

503-873-8681
chris.gilliand@oregon.gov

Detroit Lake State Park, Mongold Day Use Area, and North Santiam State Recreation Area

Bob Rea, Park Manager
Detroit Lake State Parks
44000 N. Santiam Hwy SE
Detroit, OR 97342

503-872-5269
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