

STATE OF OREGON

DEPARTMENT OF CORRECTIONS

Inmate Work Program Agreement -- Public (Oregon Public Bodies other than State Agencies)

This INMATE WORK PROGRAM AGREEMENT (the "Agreement") is made by the DEPARTMENT OF CORRECTIONS ("DOC"), and City of John Day, a political subdivision of the State of Oregon ("Agency"). Capitalized terms shall have the meanings assigned to them in Section 1 of this Agreement. This Agreement will become effective on the date of the last signature approval of all of the parties.

RECITALS

WHEREAS, this Agreement is entered into pursuant to ORS 179.360, 190.110, 421.005, 421.405 through 421.445, 421.490, and Section 41, Article I of the Oregon Constitution (Ballot Measure 17);

WHEREAS, DOC desires to place selected minimum security Inmates in appropriate work situations to perform labor with a public benefit while providing opportunities for participating Inmates to learn work skills and develop appropriate work habits;

WHEREAS, Agency desires to accomplish those Projects identified in Work Orders entered into pursuant to this Agreement using minimum security Inmates;

WHEREAS, it is the policy of DOC and Agency to cooperatively administer this Agreement and manage the operations of the Work Crews through joint project planning to accomplish the parties' mutual objectives and goals; and

WHEREAS, this Agreement establishes the responsibilities of DOC and Agency in the use of Inmate workers to provide labor for Projects.

NOW, THEREFORE, in consideration of the mutual promises, terms and conditions contained in the Agreement, the parties do hereby agree to the following:

1. DEFINITIONS.

1.1 Agency Project Manager shall mean an Agency employee responsible for monitoring Project quality, timeliness, progress and completion.

1.2 Agency Technical Supervisor shall mean an Agency employee who is qualified by education, knowledge, training or experience and has the demonstrated ability to provide Project training and technical supervision, assign work tasks, and monitor and assess work progress.

1.3 Authorized Representatives shall mean the persons identified at Section 14.1 of this Agreement.

1.4 Custodial Supervisor/Personnel shall mean a DOC employee(s) assigned to a Project and designated in the Work Order to be responsible for maintaining custodial supervision of Inmates assigned to a Work Crew.

1.5 Inmate shall mean a convicted felon not on parole, probation, or post-prison supervision status who is under the custodial supervision of DOC.

1.6 Institution shall mean a correctional facility operated by DOC where Inmates reside.

1.7 Institution Safety Officer shall mean a DOC employee responsible for the safety management of an Institution or facility or satellite thereof.

1.8 Project shall mean an activity which is wholly or partially accomplished through the use of Inmates and described in the executed Work Order(s) under this Agreement.

1.9 Project Description shall mean that portion of a Work Order describing in detail the scope of the particular Project and tasks to be performed, identifying specific work site details and necessary equipment and allocating responsibilities for supervision and training between DOC and Agency.

1.10 Reimbursable Expenses shall include but are not limited to vehicle rental charges, mileage, special clothing, tools and equipment provided by DOC, and such other incurred costs agreed to and set forth in the Work Order.

1.11 Work Crew shall mean the Inmates who are assigned to perform work on a Project.

1.12 Work Order shall mean the document to be signed by both parties that includes the Project Description, incorporates the terms and conditions of this Agreement by reference, includes price, Reimbursable Expenses, Work Crew size and work schedule, and all other details necessary to describe the obligations of the parties in completing the Project, including those listed in Subsection 2.1, and includes any exhibits, schedules and other attachments to and amendments of any of the above.

1.13 Work Program Coordinator shall mean a DOC employee responsible for overseeing daily planning and coordination of a Work Crew assigned to a Project.

2. DOC SHALL:

2.1 Upon Agency's request, negotiate a Work Order for each Project in accordance with the attached Exhibit A;

2.2 Provide Work Crew labor to accomplish the Project(s) as agreed to and specified in the Work Order(s), in accordance with DOC rules and regulations and within the limits and responsibilities established by this Agreement. Inmates assigned to a Project shall be selected by DOC in accordance with its rules and regulations;

2.3 Provide a Work Crew Custodial Supervisor/Personnel to be responsible for maintaining custodial supervision of Inmates assigned to a Project and to assist the Agency Technical Supervisor(s) as authorized by DOC.

2.4 Provide for the basic needs of Inmates assigned to the Project(s), including providing meals at the Project site(s), clothing appropriate to the season, and transportation to and from the work site. DOC shall not be responsible for providing Inmates with special purpose clothing or with essential tools, equipment or Project supplies, except as specified in the Work Order(s).

2.5 Provide general orientation and training to Agency personnel, as DOC deems appropriate, with regard to DOC policies, procedures, rules and regulations, such as those relating to security issues, prohibited inmate conduct, disciplinary reporting and other relevant subjects as determined by DOC; and

2.6 Bill the Agency for costs incurred at the amount and rates specified in this Agreement and in the applicable Work Order(s).

3. AGENCY SHALL:

3.1 Initiate requests for Work Orders in accordance with the attached Exhibit A, which will provide specifics for individual projects and will incorporate the terms and conditions of this Agreement;

3.2 Provide Inmates with the necessary training to ensure Project completion in accordance with the requirements of the Work Order(s). Qualified Agency personnel shall provide each Inmate with the information and experience to develop the skills required to carry out assigned tasks in a safe, efficient and progressively improved manner. Project training necessary for proper performance of assigned tasks includes, but is not limited to, technical training, written reference materials and manuals, and specific training regarding the precautions and safety practices associated with proper operation, handling and use of tools, equipment and machinery.

3.3 Provide training materials to the Work Program Coordinator for prior approval. Agency agrees to keep individual training attendance records and to provide such records to the Work Program Coordinator upon request. Agency personnel shall not approve any Inmate to operate power equipment, unless the Inmate has received proper training in equipment operation and safety procedures, and unless appropriate authorization has been given by the Institution Safety Officer;

3.4 Assure that properly trained and qualified Agency personnel are available at the work site(s) at appropriate times to provide technical direction and supervision concerning the work specified in the Work Order. Agency agrees to provide qualified personnel to assign work tasks, direct work activities, provide technical supervision and support, and monitor and assess work progress.

3.5 Provide DOC the essential tools and equipment necessary to accomplish the Project(s), including the appropriate special purpose clothing and required materials and supplies adequate for project completion, except as specified in the Work Order. All tools, equipment and unused materials provided by Agency shall remain the Agency's property; and

3.6 Reimburse the DOC in accordance with each Work Order, based on the costs and expenses incurred, in an amount not to exceed the estimated maximum amount specified in this Agreement.

4. PROJECT DESCRIPTION; SCHEDULING OF INMATES FOR WORK PROJECT; LIMITATION ON SERVICES AND INMATE WORKER AVAILABILITY

4.1 Work Order; Project; Project Description. Agency and DOC agree to develop a Work Order for each Project under this Agreement. The Work Order shall include a comprehensive Project Description, the Project's estimated duration, interim progress deadlines, if any, the Project location, the number of Inmate workers required, estimated work schedule required to complete the Project, compensation and payment, and any other requirements, terms or conditions pertaining to the Project, including special safety or security provisions. No work shall be performed until the Work Order has been signed by both parties thereto.

4.2 Scheduling of Inmates for a Project. The number of Inmates to be assigned to a particular Project shall be identified in the Work Order and shall be based upon the number of Inmates requested by the Agency and the availability of Inmates, Custodial Personnel and transportation as determined by DOC. DOC intends

to make each Work Crew available to work 40 hours a week, inclusive of travel time to and from the Project site, if so required by the Agency, except as specified in the Work Order.

4.3 Limitation on Services; Inmate Worker Availability. Agency acknowledges and agrees that services under this Agreement will be provided by a workforce that is subject to change due to security and correctional limitations and that occasions may arise that will prevent DOC from providing such services. Although DOC will make every reasonable effort to provide the anticipated number of workers, DOC cannot guarantee their availability. In circumstances involving fire, riot, lockdown, workplace safety (as outlined under Section 8) or other emergency circumstances, or when it is otherwise in the best interest of DOC or the public to do so, DOC may, at its sole and absolute discretion and without further liability to Agency, reassign or suspend all or part of a Work Crew assigned to provide services under the Work Order for such period of time as DOC deems necessary. DOC will make every reasonable effort to give Agency advance notice whenever such reassignment or suspension of services becomes necessary.

5. COMPENSATION; PAYMENT.

5.1 Maximum Not-to-Exceed Amount. The total not-to-exceed cumulative value of all Work Orders entered into under this Agreement is \$_____. If Agency elects to use "Maximum Not-to-Exceed Amount" Agency shall keep track of amounts expended for any Work Order(s) under this Agreement. Agency shall furnish to DOC quarterly reports stating the cumulative total amount spent to date on each Work Order, identified by Project name and Work Order number, and the cumulative total amount spent to date on all Work Orders entered into under the Agreement. Agency shall forward a copy of the quarterly reports to the DOC Authorized Representative, and shall promptly notify the DOC Authorized Representative when Agency has expended between 60 and 70% of the total maximum amount(s).

5.2 General. DOC shall provide Work Crew labor for the amount and at the rates specified in the Work Order.

5.3 Reimbursable Expenses. In addition to the payment of any amounts for labor required under Section 5.2 above, Agency shall reimburse DOC such incurred Reimbursable Expenses as the parties have identified in the Work Order.

5.4 Invoices; Payment. Except as otherwise agreed in the Work Order, DOC shall submit a monthly invoice to Agency for services performed during the preceding calendar month, under the terms and conditions of this Agreement, identifying (i) the Project, (ii) the Work Order number, (iii) the amount due for labor performed and (iv) Reimbursable Expenses incurred by DOC during the billing period.

5.5 Payment is expected within 30 days following the date the invoice is received. After 45 days, overdue account charges may be assessed up to a maximum rate of two-thirds of one percent per month (8%) on the outstanding balance (ORS 293.462).

6. RESPONSIBILITY FOR INMATES AND PERFORMANCE REVIEW

6.1 Responsibility for Inmates. A DOC representative will act as the Work Crew Custodial Supervisor and be responsible for maintaining custodial supervision of Inmates assigned to a Project. To ensure public safety and the safe operation of the Work Crew, DOC reserves the right to conduct, and Agency hereby consents to, periodic physical searches of the Project site. These physical searches may include but may not be limited to searches of such things as Agency vehicles, equipment, tools and storage areas.

6.2 Inmate Compliance with Agency Rules. Inmates will be required to abide by Agency's rules and regulations which have been made known to them. Any Agency officer, employee, or agent who observes Inmate misconduct or activity which might give rise to misconduct shall immediately notify the Custodial Supervisor or other DOC Personnel. The Custodial Supervisor shall resolve questions that arise regarding an

Inmate's compliance with Agency's rules or regulations. In the event of a conflict between DOC's rules and regulations and Agency's rules and regulations, DOC's rules and regulations shall prevail.

6.3 Review of Projects. The Work Program Coordinator, the Agency Project Manager or Technical Supervisor and the Work Crew Custodial Supervisor will confer on a periodic basis to assess Project progress, Project site safety and security and overall performance satisfaction. The Work Program Coordinator or other DOC representative may periodically visit the Project site to evaluate work activities and work progress, including scope of work, use of equipment, machinery and tools, training requirements, safety issues, work hazards and any other work site and working conditions. See Exhibit C, Inmate Work Crew Work Site Inspection Form.

7. Prison Rape Elimination Act (PREA)/Custodial Sexual Misconduct.

7.1 Prison Rape Elimination Act. PREA is a federal law that was enacted and signed into law in 2003 for the purpose of establishing a zero-tolerance standard for the incidents of rapes and sexual misconduct in prison and local jail/detention facilities. The PREA requires that prevention of prison rapes and sexual misconduct will be a top priority in prison, police lock ups, local jails and juvenile detention facilities. It further requires the development and implementation of national standards for the detection, prevention, reduction and punishment of prison rape and sexual misconduct.

7.2 Crime of Custodial Sexual Misconduct. SB 89 was enacted into law in 2005 and makes custodial sexual misconduct in the first degree a felony crime. For purposes relevant to this Agreement, this law (codified at ORS 163.452) provides that an Agency employee or contractor commits the crime of custodial sexual misconduct if the person commits an act that constitutes sexual misconduct with an individual who is known to be participating as an inmate or offender in a DOC work crew and whom the employee or contractor is responsible to supervise. The Agency and its employees are required to report any witnessed violations of this law.

8. HEALTH AND WORK SITE SAFETY.

8.1 Agency's Compliance. Agency shall conduct its activities under this Agreement in compliance with all federal, state and local laws, ordinances, and standards for work and Project site health and safety. Minimally, a Project site shall meet the standards established by the Oregon Occupational Safety and Health Act (OSHA). The appropriate Institution Safety Officer or other representative shall visit each Project site prior to DOC approval of any Work Order, and at other times as appropriate, to evaluate the Project site and/or Work Crew activities for compliance with health and safety standards. See Exhibit B, Job Hazard Analysis and Certification.

8.2 DOC's Right to Stop Providing Inmate Workers and Services. DOC reserves the right, at its sole and absolute discretion, and without prior notice, to stop providing services and withdraw a Work Crew from a Project site whenever DOC determines that the Project site may be unsafe or that other working conditions may be unsafe or may violate applicable work site safety or security standards set forth by OSHA, DOC, or the Institution. In this event, DOC's Authorized Representative shall provide Agency with a written notice that describes the reason for work stoppage. Agency shall provide DOC a prompt written response detailing the steps Agency intends to take to address DOC concerns and to remedy any potentially unsafe condition. DOC shall review Agency's written response and, at its sole discretion and without further liability to Agency, may reassign or suspend all or some of the Inmate workers assigned under the Work Order for such period of time as DOC deems necessary, and may either resume work under the Work Order upon correction of any unsafe condition(s) or terminate the Work Order.

8.3 Responsibility for Costs Related to Inmate Injury or illness. The Oregon Legislative Assembly established an Inmate injury fund ("Fund"), administered by the Oregon Department of Administrative Services, Risk Management Division, pursuant to ORS 655.505 through 655.550, for the purpose of providing

compensation to Inmates who sustain work related illness, injury, disability or death during the performance of paid work assignments. Subject to the Fund's requirements and Section 8.4, and subject to the normal conditions and limits established by its policy on medical care for Inmates, DOC shall be responsible for the cost of medical care and treatment for participating Inmates.

8.4 Agency Liability. To the extent permitted by the Oregon Tort Claims Act, Agency shall reimburse DOC for the cost of medical care and treatment, and any other compensation DOC is required to pay, for Inmates who sustain work related injuries, disabilities, illnesses or death that arise from Agency's negligent, illegal or intentional activities, or activities prohibited by this Agreement. Subject to the provisions regarding indemnification in Section 9 herein.

9. INDEMNIFICATION; INSURANCE.

To the extent permitted by Article XI, Sections 8 and 10 of the Oregon Constitution and by the Oregon Tort Claims Act, each party to this Agreement shall defend, save, hold harmless and indemnify each other party and such other parties' officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of the indemnifying party or its officers, employees, subcontractors or agents under this contract, provided that no party to this Agreement shall be required to indemnify any other party for any liability arising out of the wrongful acts of the employees or agents of the other party.

Each party shall be responsible exclusively with respect to their employees, for providing for employment-related benefits and deductions that are required by law, including but not limited to federal and state income tax deductions, workers' compensation coverage, and contributions to the Public Employees Retirement System. If Agency employs subject workers as defined in ORS 656.027, Agency shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Agency shall require and ensure that each of its subcontractors complies with these requirements.

10. REPRESENTATIONS AND WARRANTIES.

Agency represents and warrants to DOC that it has full power and authority to enter into Work Orders of the type contemplated herein, and that all action on the part of Agency necessary for the authorization, execution, delivery and performance of this Agreement has been duly taken.

11. COMPLIANCE WITH APPLICABLE LAW

Agency shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work performed under this Agreement.

12. FORCE MAJEURE.

Neither party shall be held responsible to the other for any delay or default caused by fire, riot, lock down, civil commotion, war, act of God, or any other like condition or event which is beyond its reasonable control. Further, DOC shall not be liable to Agency for delays caused by DOC's exercise of its custodial duties, including discipline, security, and adherence to Institution policies and procedures regarding Inmate conduct.

13. TERMINATION.

Either party to a Work Order entered into under this Agreement may terminate it immediately (i) for breach of any material provision by the other party; (ii) in the event the party determines, in the exercise of its reasonable discretion, that the Oregon State Legislature has failed to approve funding, appropriations, limitations, allotment or other expenditure authority at levels sufficient to perform its obligations under the

Work Order; or (iii) under the circumstances set forth in Section 8.2 of this Agreement. The terminating party shall provide written notice to the other party as soon as possible, but any such termination shall not affect obligations that accrued prior to the date of such notice and for which funding is lawfully available. In addition to the above, the Work Order may be terminated upon mutual agreement of the parties in writing or by either party, with or without cause, upon thirty (30) days' prior written notice to the other party. Neither party shall incur any new obligations for the terminated portion of the Agreement after the effective date, and shall cancel as many obligations as is possible.

14. ADMINISTRATION; NOTICES.

14.1 Authorized Representative. Unless otherwise specified in the Agreement, DOC designates the Purchasing/Contracts Manager, or designee, as its Authorized Representative in the administration of the Agreement and Work Orders entered into thereunder. Agency designates Aaron Lieuallen as its Authorized Representative.

14.2 Notices. Except as otherwise provided in this Agreement, any communications between the parties or notices to be given under this Agreement shall be given in writing by personal delivery, facsimile transmission, or by mailing the same, postage prepaid, to the party's Representative as follows:

(DOC)	Department of Corrections 3601 State Street, Suite 280 Salem, OR 97301 Ph: (503) 378-5931
and	
(Agency)	City of John Day Attention: Aaron Lieuallen 450 E Main Street John Day, OR 97845

or to such other address or fax number as either party may hereafter indicate in accordance with the procedures set out in this Section 14.2.

Any communication or notice properly addressed and mailed shall be deemed received five (5) calendar days after mailing. Any communication or notice delivered via fax shall be deemed received upon confirmation by the transmitting machine of successful transmittal. Personal delivery shall be effective upon delivery into the possession of the party's authorized representative, or delivery into the possession of any employee at the party's address authorized to accept deliveries on behalf of the party.

15. WAIVER; AMENDMENT.

The parties may agree to amend this Agreement and any Work Order pursuant to the Agreement to the extent permitted by applicable statutes and administrative rules. No amendment shall be effective unless it is in writing and signed by the parties and unless all approvals required by applicable law have been obtained before becoming effective. No delay or omission to exercise any right, power or remedy accruing to either party to a Work Order upon any breach or default by the other shall impair any such right, power or remedy. Any waiver of breach or default must be in writing and shall be effective only to the extent specifically set forth in the writing. All remedies shall be cumulative and not alternative. No provision of a Work Order may be amended, waived, discharged or terminated orally.

16. INDEPENDENT CONTRACTOR.

DOC and Agency are, as to each other, independent contractors. This Agreement is not intended to, and shall not be construed to, create a partnership, joint venture or master-servant relationship between DOC

and Agency, nor does the Agreement give either party the power to act as a partner, joint venturer or agent on behalf of the other. Nothing in this Agreement shall be construed to create a master-servant, principal-agent, or employer-employee relationship between Agency and Inmate workers or DOC and Inmate workers.

17. NO THIRD PARTY BENEFICIARIES.

Nothing contained in any Work Order entered into under this Agreement is intended to give, or shall be construed to give or provide, any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of the Work Order.

18. INTEGRATION.

Each Work Order, together with its exhibits, if any, and matter incorporated by reference, contains the entire agreement between the parties on the subject matter thereof, and no statements made by any party thereto, or agent thereof, not contained therein shall be valid or binding.

19. SUCCESSORS AND ASSIGNS.

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties, except that Agency shall not have the right to assign or transfer any of its rights or interest herein, and any such attempted assignment or transfer shall be null and void.

20. GOVERNING LAW; VENUE.

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, suit, proceeding or action between the State of Oregon, DOC or any other agency or department of the State of Oregon, and Agency, for any cause whatsoever arising out of this Agreement, and regardless whether the relief sought is legal or equitable, shall be brought only in the Circuit Court for Marion County in Salem, Oregon; provided, however, that if the claim must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

21. IMPLEMENTATION AND DURATION.

This Agreement shall become effective as of the date of last signature and shall remain in effect through September 30, 2024, unless extended or earlier terminated in accordance with its terms. The parties, by written amendment, may extend the performance period.

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Agreement as of the date hereinabove written.

**STATE OF OREGON, acting by and through
the DEPARTMENT OF CORRECTIONS**

City of John Day

By: _____
Michael Gower
Assistant Director for Operations

By: _____
Name: _____

Title: _____

Date: _____

Date: _____