

**INTERGOVERNMENTAL AGREEMENT TO  
ESTABLISH REGIONAL RURAL REVITALIZATION (R3) STRATEGIES CONSORTIUM**

This Intergovernmental Agreement to Establish Regional Rural Revitalization (R3) Strategies (this “Agreement”) is dated April \_\_, 2023, but made effective for all purposes as of May 1, 2023 (the “Effective Date”), and is entered into between Town of Lakeview (“Lakeview”), an Oregon municipal corporation, whose address is 525 North 1st Street, Lakeview, Oregon 97630, City of Burns (“Burns”), an Oregon municipal corporation, whose address is 242 South Broadway Burns, Oregon 97720, and City of John Day (“John Day”), whose address is 450 East Main Street, John Day, Oregon 97845.

RECITALS:

A. The Parties entered into a certain Memorandum of Understanding dated October 26, 2021 pursuant to which the Parties formalized their intent to establish an intergovernmental entity and enter into an intergovernmental agreement to govern the sharing of resources to perform and complete certain housing and community development projects.

B. The Parties find that their mutual need for improved resources to execute and assist housing and community improvement projects necessitates the establishment of an intergovernmental entity organized under ORS chapter 190. This intergovernmental entity will be a legal entity separate and distinct from the Parties. The intergovernmental entity will be responsible for evaluating, approving, and providing logistical assistance in the execution of housing and community development projects including, without limitation, determining the feasibility and requirements of proposed projects, sources of project funding, and assisting and managing project completion.

C. This Agreement is made pursuant to ORS 190.010, which statute provides that units of local government may enter into agreements for the performance of any functions and activities that any party to the agreement, or its officers or agents, has the authority to perform.

AGREEMENT:

NOW, THEREFORE, in consideration of the Parties’ respective obligations under this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions. Unless defined elsewhere in this Agreement, capitalized terms contained in this Agreement have the meanings assigned to them in the attached Appendix A.

2. Housing and Public Development Consortium.

2.1 Formation; Responsibility. The Parties hereby create the Rural Regional Revitalization (R3) Strategies Consortium (“Consortium”), an intergovernmental entity created pursuant to ORS chapter 190. Consortium’s initial members are the Parties. Consortium will have responsibility and authority to (a) approve and evaluate proposed Projects, (b) assist and coordinate necessary logistics to execute approved Projects (including functions related thereto), and (c) subject to the terms of this Agreement and/or ORS chapter 190, perform such other duties and responsibilities assigned by the Parties from time to time. Without otherwise limiting the generality of the immediately preceding sentence, and subject to the Laws, Consortium will have the following general powers: (y) adopt, through action of the Board, such bylaws, rules, regulations, standards, and/or policies necessary or appropriate to carry out Consortium’s purposes and/or this Agreement; and (z) perform and exercise all powers pursuant to the Laws, including, without limitation, the Oregon constitution, the principal acts of the Parties and ORS chapter 190, which are necessary and/or appropriate to perform (or cause to be performed) the Services.

2.2 Purpose. Consortium's purposes include, without limitation, the following:

(a) stimulating economic recovery and revitalization for each Party by pooling resources and enabling increased efficiency for each Party to complete the Projects; (b) plan for the most effective and efficient use of combined resources to complete the Projects; (c) recruit, select, and employ the Managing Director; (d) provide a forum for communication and consultation among the Parties and provide an opportunity for a cooperative and equitable sharing of expenses, resources, data, expertise, and experience of each unit of local government; and (e) carry out such other necessary and/or appropriate responsibilities and functions identified by the Parties from time to time.

2.3 General Authority. Except as otherwise provided in this Agreement and/or ORS chapter

190, Consortium will have the authority to act in the interests of the Parties to oversee and direct operation of the Projects (and such other duties and responsibilities assigned by the Parties from time to time). Without otherwise limiting the generality of the immediately preceding sentence, and subject to the Laws, Consortium will have the following general powers: (a) purchase, own, hold, appropriate, and/or condemn land, property, facilities, and/or right-of-way either in Consortium's name or in the name of individual Parties in furtherance of the construction, ownership, operation, and/or maintenance of the Projects; (b) enter into agreements with other public and/or private entities for the purpose of design, construction, ownership, operation, and/or maintenance of the Projects; (c) issue, sell, and/or otherwise dispose of bonds, securities, and/or other forms of indebtedness, including, without limitation, the power to raise revenue bonds under ORS chapter 287A; and (d) exercise all powers pursuant to the Laws, including, without limitation, the principal acts of the Parties and ORS chapter 190, which are necessary and/or appropriate to carry out the purposes of Consortium and/or this Agreement.

2.4 Party Responsibilities. In addition to all other Party responsibilities contained in this

Agreement, including, without limitation, the cost-sharing obligations described in Section 5, each Party will (a) require that the Party's Board member provide the Party's respective governing body with regular updates concerning Consortium activities and the Services, and (b) host any required Board and/or community meetings from time to time.

2.5 Office Space. Consortium's initial office space(s), equipment, and furnishings will be

located at 242 S Broadway Burns, Oregon 97720. The Board may, consistent with the terms of this Agreement, change the location of its offices as needed to serve Consortium's interests and the Parties.

### 3. Board of Directors.

3.1 Membership. Consortium will be governed by a board of directors consisting of four

members (the "Board") with three standing board positions (the "Standing Member(s)") and one at-large position (the "At-Large Position"). The governing body of each Party will appoint one of its elected officials to serve as a Standing Member. Each Standing Member will serve at the pleasure of his or her appointing Party and may be removed and replaced by the governing body of the appointing Party. If a Standing Member vacates his or her position, the governing body of the Party that appointed the departed Standing Member will fill the vacancy. The At-large Member will be appointed, and may be removed and replaced, by the unanimous vote of the Standing Members. If an At-Large Member vacates his or her position, the Standing Members will fill the vacancy. Each fiscal year the Board will elect a chairperson and vice-chairperson from its membership, each of whom will serve a one-year term; provided, however, no Board member will serve more than one year as chairperson in any four-year period. The chairperson will preside at all meetings of the Board and perform such other duties prescribed by the Board from time to time.

3.2 Meetings. A majority of the then-appointed Board members will constitute a quorum

for the purpose of conducting its business, exercising its powers, and for all other purposes. Except as this Agreement and/or applicable Law requires otherwise, the express concurrence (approval) of a quorum of the Board is necessary to decide any question before the Board. Each Board member will be entitled to vote on all Board decisions, subject to applicable Laws. Regular meetings of the Board will be held no less than twice per fiscal year on such day(s), time(s), and place(s) determined by the Board. Subject to applicable Law, special

meetings (with at least five days' prior written notice) and emergency meetings may be called by the chairperson or two or more Board members. All Board meetings are subject to Oregon's Public Meetings Law, ORS 192.610 – ORS 192.690, as amended. Unless otherwise provided, Robert's Revised Rules of Order will govern all procedural matters.

3.3 Authority. Subject to any limitations set forth in this Agreement and/or ORS chapter 190, the Board will have the authority and responsibilities set forth in this Agreement, including, without limitation, the following:

3.3.1 The Board will have authority to perform the following: (a) oversee and have full responsibility for all matters pertaining to Consortium's operations; (b) review and approve Consortium's budget pursuant to applicable Law, including, without limitation, ORS 294.900 – ORS 294.930 (to the extent applicable); (c) approve capital purchase requests if not previously approved in the Budget; (d) review performance concerning the implementation of Consortium's policies and the Budget; and/or (e) carry out such other activities as are necessary, required, and/or implied to accomplish Consortium's purposes, this Agreement, and/or as provided under ORS chapter 190.

3.3.2 Without otherwise limiting the generality of Section 3.3.1, the Board has the authority to perform the following: (a) recruit and select a Managing Director; (b) establish a job description, salary, and budget for the Managing Director; (c) receive and review reports from the Managing Director concerning the Consortium's Projects and ancillary operations and duties; (d) approve expenditures for Consortium assets for the benefit of all Parties; and (e) prepare and provide each Party with a monthly financial report consisting of an accounting of Consortium funds. Notwithstanding anything contained in this Agreement to the contrary, the Board will not have the authority to perform the following: (x) commit the taxing authority or general funds of any Party's governing body; (y) impose ad valorem property taxes or issue general obligation bonds; and/or (z) expend (or cause the expenditure of) funds exceeding (or inconsistent with) the Budget.

3.3.3 Within ninety (90) days after the Effective Date, the Parties will adopt certain Bylaws of Morrow County Broadband Network Consortium substantially in the form attached hereto as Exhibit A (the "Bylaws").

#### 4. Consortium; Managing Director.

4.1 Responsibilities; Costs. Subject to the terms and conditions contained in this Agreement, Consortium will be responsible for, and is hereby empowered to take, all actions necessary and/or appropriate to support Consortium's operations and its affairs in accordance with this Agreement and all Board policies. Without otherwise limiting the generality of the immediately preceding sentence, Consortium will provide and/or perform the following: (a) contract with or employ and terminate the Managing Director subject to and in accordance with Consortium's policies and procedures; (b) enter into contracts subject to and in accordance with this Agreement, the Laws, and all Board policies (including, without limitation, all applicable public contracting rules and procedures); and (c) carry out such other necessary and/or appropriate responsibilities and functions that the Board may impose from time to time.

#### 4.2 Managing Director.

4.2.1 Consortium will employ (or contract with) a person to serve as the Managing Director. Consortium will pay all compensation, benefits, taxes, costs, and expenses arising out of or resulting from Consortium's employment of or contracting with the Managing Director, including, without limitation, vacation, sick leave, holidays, social security, unemployment benefits, contributions to any applicable employee retirement programs, workers' compensation insurance, medical insurance, dental insurance, and life and disability insurance (all to the extent applicable).

4.2.2 The Managing Director will report to the Board and be subject to the general direction and control of the Board. Subject to the terms and conditions contained in this Agreement, the Managing Director will perform those Managing Director services identified in the attached Schedule 4.2.2 (the “Services”). The Managing Director will (a) consult with and advise the Board on all matters concerning the Services reasonably requested by the Board, (b) communicate all matters and information concerning the Services to the Board and perform the Services under the general direction of the Board, (c) devote such time and attention to performance of the Services as is necessary or appropriate, and (d) perform the Services to the best of the Managing Director’s ability in accordance with this Agreement and the Managing Director’s letter of employment with Consortium.

4.2.3 Subject to the terms and conditions contained in this Agreement, Consortium is responsible for all personnel matters concerning the Managing Director, including, without limitation, compensation, benefits, standards of service, discipline, performance of duties, working hours, termination, and contracting with or employment. The Managing Director will not be entitled to any wages and/or benefits which accrue to employees of the Parties, including, without limitation, unemployment benefits, contributions to the Public Employees Retirement System, workers’ compensation insurance, medical insurance, dental insurance, and life and disability insurance. Consortium employees, if any, (including, without limitation, the Managing Director) are not employees of the Parties.

5. Budget; State Grant; Contributions; Ownership; Accounting.

5.1 Operating Budget. In accordance with and subject to the Laws, including, without limitation, applicable Oregon Local Budget Law provisions, Consortium may make expenditures for the acquisition, purchase, and/or lease of materials, services, supplies, facilities, personnel, real and/or personal property, and/or equipment as necessary or appropriate to carry out Consortium’s purposes and/or this Agreement. Expenditures will not exceed funds appropriated for the specific purposes and will be made in accordance with applicable Law. The Managing Director will prepare, develop, and recommend Consortium’s annual operating budget (the “Budget”) for the Board’s review and approval. Consortium will adhere to the fiscal year budget preparation cycle and will endeavor to adopt its annual budget in May or June each year. The budget period will be on a fiscal year basis beginning on July 1 each year and ending on the immediately following June 30.

5.2 State Grant. R3 Consortium will be initially funded through an appropriation from the State of Oregon (the “State Grant”). Parties will each receive an initial capacity building grant of \$250,000 from the State Grant for administrative costs related to the planning, organization, and implementation of the Consortium or any related Projects or capital equipment (the “Capital Equipment”).

5.3 Contributions. Subject to the terms and conditions contained in this Agreement, Consortium’s activities, including, without limitation, employment of or contracting with the Managing Director, will be paid in equal parts through the cost sharing formula/Parties’ annual contributions (each a “Contribution”) identified in the Contribution Schedule attached hereto as Schedule 5.3.2 (the “Contribution Schedule”). The Contribution Schedule will be reviewed by the Board no less than annually and will be based on the then-applicable Budget. The Parties may increase or decrease the total Contribution amount from time to time if and when the Board determines necessary or appropriate. Any change in the total Contribution amount will be proportionally borne by all Parties consistent with the Contribution percentages identified in the Contribution Schedule.

5.4 Payment; Consortium Funds. Each Party will timely pay its Contribution amount based on the then-applicable Contribution Schedule. In September each year, Consortium will invoice each Party for the Party’s Contribution amount. Each Party will pay the amount due under each invoice within thirty (30) days after the Party’s receipt of the invoice. Consortium will maintain one or more bank accounts dedicated to the purpose of recording financial transactions specific to Consortium activities. All funds received by the Consortium, including but not limited to funds contributed in accordance with Section 5.3 will be maintained in Consortium

accounts. Consortium funds will not be commingled with any Party funds (and will be maintained in accounts separate from any Party accounts).

5.5 Party Employees; Consultants. The time of a Borrowed Employee will be expensed to the Project Sponsor at the Borrowed Employee fully-burdened charge out rate based on a pre-approved Task Order. Consortium will bill the Project Sponsor monthly for the Borrowed Employee's time and reimburse the Party employing the Borrowed Employee. The expense for time and materials of any consultant under contract with Consortium who performs work for a Project Sponsor will be expensed and billed monthly to the Project Sponsor. *[This section is vague, ambiguous, and needs to be expanded/clarified as to intent and purpose.]*

5.6 Project Ownership. Any tangible asset created through a Community Development Project will be owned and operated by the Project Sponsor. *[This section is vague, ambiguous, and needs to be expanded/clarified as to intent and purpose.]*

5.7 Accounting. In September each year, Consortium will complete an accounting of Consortium expenditures during the immediately preceding fiscal year. If Consortium's accounting determines that the Contributions identified in Contribution Schedule were insufficient to cover Consortium's expenditures during the immediately preceding fiscal year, each Party will pay the unpaid balance (on a proportionate basis consistent with the Party's percentage identified in the Contribution Schedule) within thirty (30) days after the Party's receipt of notice from Consortium. Subject to the Laws and this Agreement, contributions received exceeding budgeted operational costs may be (a) returned to the Parties when such action is made part of Consortium's adopted budget, (b) expended for other Consortium activities, and/or (c) held in a reserve account for Consortium's future needs.

5.8 Initial Projects. Consortium's initial Projects are described in Schedule 5.8. [to discuss]

## 6. Insurance; Indemnification; Relationship.

6.1 Consortium Insurance. Consortium will obtain and maintain adequate insurance to cover Consortium's operations. Without otherwise limiting the generality of the immediately preceding sentence, Consortium will obtain and maintain, in addition to all other insurance required under this Agreement, the following minimum levels of insurance: (a) general liability insurance for all losses or claims arising out of or related to Consortium's operations (including, without limitation, damages as a result of death or injury to any person or destruction or damage to any property) with limits of no less than \$1,000,000.00 per occurrence, \$2,000,000.00 in the aggregate; (b) if applicable, employer liability insurance with limits of no less than \$500,000.00 per occurrence and in the aggregate; and (c) workers' compensation insurance in form and amount sufficient to satisfy the requirements of applicable Oregon law (the workers' compensation insurance policy will contain a waiver of subrogation in favor of each Party). Each liability insurance policy required under this Agreement will be in form and content satisfactory to the Board, will list each Party (and each Party's Representatives) as additional insured(s), and will contain a severability of interest clause. Notwithstanding anything in this Agreement to the contrary, the Board may increase the minimum levels of insurance Consortium is required to carry under this Agreement so that Consortium's insurance at least equals the applicable limits of liability identified under the Oregon Tort Claims Act (ORS 30.260 – ORS 30.300).

6.2 Consortium Indemnification. To the fullest extent permitted under applicable law, Consortium will defend, indemnify, and hold the Parties and their respective Representatives harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of Consortium's operations.

6.3 Party Indemnification. To the fullest extent permitted under applicable law, each Party will defend, indemnify, and hold Consortium and the other Parties (and their respective Representatives) harmless

for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of the Party's breach and/or failure to perform the Party's obligations contained in this Agreement. Each Party will retain all immunities and privileges granted under the Oregon Tort Claims Act (ORS 30.260 – ORS 30.300) and all other statutory rights granted due to the Party's status as a public body or agency.

6.4 Relationship. Each Party is an independent contractor of the other Parties. This Agreement does not create a joint venture and/or agency relationship between the Parties. No Party has the authority to bind the other Parties and/or represent to any person that a Party is an agent of the other Parties. No Party will provide any benefits to any other Party; each Party will be solely responsible for obtaining the Party's own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans. Notwithstanding anything contained in this Agreement to the contrary, Consortium (or the Board) will not have the authority to bind and/or encumber a Party in any manner except as the Party agrees through both the policy and administrative authority granted to the Party's then-appointed Standing Member.

## 7. Term; Termination.

7.1 Term. Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date and will remain in full force and effect until June 30, 2028 (the "Initial Term"), unless sooner terminated as provided in this Agreement. Upon expiration of the Initial Term, this Agreement will automatically renew for one or more term(s) of one year each, unless sooner terminated in accordance with this Agreement. Commencing on or about July 1, 2024 and continuing on or about the same day each year thereafter during the term of this Agreement, the Parties will review this Agreement to determine whether any changes and/or modifications to this Agreement are necessary or appropriate. Any changes and/or modifications to this Agreement require the Parties' written agreement. Notwithstanding anything contained in this Agreement to the contrary, the Parties may terminate this Agreement by the Parties' written agreement.

7.2 Voluntary Withdrawal by a Party. Any Party may terminate its participation in the Consortium (and its obligations under this Agreement) by providing no less than six months' prior written notice to the chairperson and the governing body of each Party. Withdrawal (and the Party's release under this Agreement) will be effective at 11:59 PM of the June 30 that is no less than six months after the date the withdrawal notice is transmitted. The withdrawing Party will continue to pay its share of, and/or be responsible for, its Contribution amounts and will defend, indemnify, and hold Consortium and the remaining Parties harmless for, from, and against those financial responsibilities and obligations attributable to the withdrawing Party and/or accruing prior to the effective date of the withdrawing Party's withdrawal. Termination of this Agreement does not relieve any Party from its obligations incurred prior to the effective date of termination.

## 7.3 For Cause Termination.

7.3.1 Either Party may terminate the Party's participation in the Consortium (and this Agreement) immediately upon notice to the other Parties upon the occurrence of any of the following "for cause" events: (a) continuous and repeated problems occur in connection with Consortium's and/or another Party's performance of its obligations under this Agreement; and/or (b) Consortium and/or another Party breaches and/or otherwise fails to perform any of Consortium's and/or another Party's representations, warranties, covenants, and/or obligations contained in this Agreement.

7.3.2 Prior to any Party's termination of this Agreement for cause under Section 7.3.1, the non-defaulting Party will provide Consortium and the alleged defaulting Party(ies) (if applicable) prior written notice of the alleged default (the "Default Notice"), which Default Notice will specify with reasonable particularity the default the non-defaulting party believes exists. Commencing on Consortium and the alleged defaulting Party's receipt of the Default Notice, Consortium (if applicable) and the alleged defaulting Party will

have ten (10) days within which to cure or remedy the alleged default(s) (the “Cure Period”); provided, however, if the nature of the default(s) is such that it cannot be completely remedied or cured within the Cure Period, there will not be a default by Consortium (if applicable) and/or the alleged defaulting Party under this Agreement if the Consortium and/or the alleged defaulting Party begins correction of the default within the Cure Period and thereafter proceeds with reasonable diligence to effect the remedy as soon as practicable. Notwithstanding anything contained in this Agreement to the contrary, a non-defaulting Party is not required to provide, and Consortium and/or the alleged defaulting Party is not entitled to receive, a Default Notice upon Consortium’s and/or the alleged defaulting Party’s commitment of a default under this Agreement for which Consortium and/or the alleged defaulting Party has previously received a Default Notice within the immediately preceding twelve (12) months (commencing from the date of the previous default).

#### 7.4 Dissolution.

7.4.1 The Parties may terminate this Agreement and dissolve Consortium at any time by the Parties’ unanimous written consent. If all then-Parties to this Agreement agree to terminate this Agreement and dissolve Consortium, the dissolution motion will provide an estimated timeline for the dissolution and will name three Board members (the “Dissolution Manager(s)”) responsible for overseeing the dissolution process. The Dissolution Managers may retain professional assistance as needed and will take immediate steps to permanently terminate and dissolve Consortium. These dissolution steps may include, without limitation, the following:

7.4.1.1 Providing written notice of Consortium’s dissolution to the elected officials of each Party. This notice will include the proposed timeline for the dissolution and such other information the Dissolution Managers determined necessary or appropriate.

7.4.1.2 Notification of Consortium’s dissolution to all neighboring agencies, all necessary state and federal agencies, and all partners.

7.4.1.3 Preparation of a budget document accounting for all Consortium funds, revenues, assets, and liabilities.

7.4.1.4 Payment of all Consortium debts and other financial responsibilities, including a final accounting of all debts and resources.

7.4.1.5 Payment and/or performance of those dissolution related tasks or responsibilities identified under Section 7.5.

7.5 Liquidation. Upon Consortium’s dissolution, each Party on the date of dissolution will be responsible for its Contribution amount through the date of dissolution. Upon dissolution and subject to applicable law, (a) Consortium’s cash, if any, will be distributed to each Party in proportion to each Party’s Contribution percentage, (b) all remaining Consortium assets will be distributed in the manner agreed upon by the Parties, which may include, without limitation, the sale of Consortium’s facilities and equipment, and (c) Consortium personnel and employees will be transferred or terminated subject to and in accordance with applicable Oregon law.

#### 8. Miscellaneous.

8.1 Coordination; Assignment; Binding Effect. The Parties will maintain adequate levels of communication to ensure maximum cooperation and coordination between the Parties. No Party may assign any of the Party’s rights and/or obligations under this Agreement to any person without the prior written consent of all other Parties. Subject to the immediately preceding sentence, this Agreement will be binding on the Parties and their respective administrators, successors, and permitted assigns and will inure to their benefit. The Parties will

execute all documents or instruments and will perform all lawful acts necessary or appropriate to carry out the intent of this Agreement. All exhibits, schedules, instruments, and other documents referenced in this Agreement are part of this Agreement. Subject to the Laws, including, without limitation, ORS chapter 190, the Standing Members of the Board may authorize a new party to join Consortium only if approved by the unanimous vote of the Standing Members of the Board. The addition of an additional party may be accomplished by the new party taking the actions necessary under ORS chapter 190 and signing a copy of this Agreement, as amended, after approval of the additional party by the Standing Members of the Board. Upon the addition of the first new party, the Board will increase its membership by one Standing Member to be appointed by and serve at the pleasure of the governing body of the new party consistent with the provisions of Section 3.1. The Board will also appoint a second at-large member, consistent with the provisions of Section 3.1, so that the Board will have five members. Should the Board approve the membership of a second new party, the Board will remove one of the at-large members and the governing body of the second new party will appoint and may remove, consistent with the provisions of Section 3.1, a fourth Standing Member. In no event will the Board's membership be greater than five members unless and until an amendment to this Agreement is agreed upon and approved by the governing body of each party that is a member of the Consortium at the time the amendment is proposed.

8.2 Notices; Severability; Remedies. Any notice will be deemed given when personally delivered or delivered by facsimile or email transmission (with electronic confirmation of delivery), or will be deemed given three days following delivery of the notice by U.S. mail, certified, return receipt requested, postage prepaid, by the applicable Party to the address shown in Appendix A (or any other address that a Party may designate by notice to the other Parties), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed delivered on the next following business day. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. Subject to the terms and conditions contained in this Agreement, each Party will pay all wages and benefits due the Party's personnel, including, without limitation, overtime, workers' compensation, and death benefits. If a Party breaches and/or otherwise fails to perform any of the Party's representations, warranties, covenants, and/or obligations under this Agreement, the non-defaulting Parties may, in addition to any other remedy provided to the non-defaulting Parties under this Agreement, pursue all remedies available to the non-defaulting Parties at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

8.3 Waiver; Entire Agreement; Amendment; Counterparts. Notwithstanding anything contained in this Agreement to the contrary, no provision of this Agreement may be modified, waived, and/or discharged unless such waiver, modification, and/or discharge is agreed to in writing by the Parties. No waiver by a Party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between Parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the Parties' agreement and supersedes any other oral or written negotiations, discussions, representations, and/or agreements, including, without limitation, the Original Agreement. No addition, modification, amendment, or alteration to this Agreement will be effective against the Parties unless specifically agreed upon in writing and signed by the Parties. The Parties may execute this Agreement by electronic means or deliver executed signature pages to this Agreement by electronic means to the other party, and the electronic signature and/or copy will be deemed to be effective as an original. This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which counterparts together will constitute one agreement with the same effect as if the parties had signed the same signature page. The Parties intend to be bound by the signatures on the PDF or facsimile document, are aware that the other party and third parties, may rely upon the PDF or facsimile signatures and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

8.4 Applicable Law; Venue; Attorney Fees. This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. Any action or proceeding arising out of this



Agreement will be litigated in courts located in Crook County, Oregon. Each Party consents and submits to the jurisdiction of any local, state, or federal court located in Crook County, Oregon. With respect to any dispute relating to this Agreement, or if a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing Party will be entitled to recover from the losing Party(ies) its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

8.5 Legal Representation. The Parties have thoroughly reviewed this Agreement with their own legal counsel or have knowingly waived their right to do so. The rule of construction that a written instrument is construed against the party preparing or drafting such agreement will specifically not be applicable in the interpretation of this Agreement and any documents executed and delivered pursuant to, or in connection with, this Agreement.

8.6 Person; Interpretation; Signatures. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, and/or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the Parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be binding and effective for all purposes as of the Effective Date.

LAKEVIEW:  
Town of Lakeview,  
an Oregon municipal corporation

BURNS:  
City of Burns,  
an Oregon municipal corporation

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

JOHN DAY:  
City of John Day,  
an Oregon municipal corporation

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

Appendix A  
Definitions

“Agreement” has the meaning assigned to such term in the preamble.

“At-Large Member” has the meaning assigned to such term in Section 3.1.

“Consortium” has the meaning assigned to such term in Section 2.1.

“Board” has the meaning assigned to such term in Section 3.1.

“Borrowed Employee” means an employee of a Party who works on a Project for and within the incorporated limits of another Party. [to discuss]

“Budget” has the meaning assigned to such term in Section 5.1.

“Burns” has the meaning assigned to such term in the preamble.

“Bylaws” has the meaning assigned to such term in Section 3.3.3.

“Capital Equipment” means an article of nonexpendable, tangible property with a useful life of more than one year, and an acquisition cost of \$5,000 or more per unit, needed by the Parties for Consortium Services.

“Community Development Project(s)” means an undertaking or activity of a Party to improve social, economic, physical, and environment well-being within that Party’s incorporated limits, but does not include a Housing Development Project. [to discuss]

“Contribution” has the meaning assigned to such term in Section 5.2.

“Contribution Schedule” has the meaning assigned to such term in Section 5.2.

“Cure Period” has the meaning assigned to such term in Section 7.3.2.

“Default Notice” has the meaning assigned to such term in Section 7.3.2.

“Dissolution Manager(s)” has the meaning assigned to such term in Section 7.3.1.

“Effective Date” has the meaning assigned to such term in the preamble.

“Housing Development Project(s)” means an undertaking or activity that is primarily concerned with the construction of new housing or the rehabilitation of existing housing within a Party’s incorporated limits. [to discuss]

“Initial Term” has the meaning assigned to such term in Section 7.1.

“John Day” has the meaning assigned to such term in the preamble.

“Lakeview” has the meaning assigned such term in the preamble.

“Law(s)” mean all federal, state, and/or local laws, statutes, ordinances, and/or regulations directly or indirectly affecting this Agreement, Consortium, and/or Consortium’s services and/or activities, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder) and ORS chapter 190, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

“Managing Director” means Consortium’s then-employed or contracted Managing Director.

“Party” or “Parties” means Burns, Lakeview, and/or John Day, individually and collectively.

“Projects” means Community Development Projects and Housing Development Projects.

“Project Proposal” means a written request containing the specific scope and project background from a party to the Consortium to generate a Statement of Work for a proposed Project. [to discuss]

“Project Sponsor” means a party who submits a Project Proposal and executes a Task Order. [to discuss]

“Representative(s)” mean the officers, employees, volunteers, and authorized representatives of the identified person or Party.

“Services” has the meaning assigned to such term in Section 4.2.2.

“Standing Member” has the meaning assigned to such term in Section 3.1.

“Statement of Work” means a document signed by the Party’s then-appointed city or town manager and the Managing Director, which explains requirements, objectives, desired outcomes, proposed staff mix and budget estimate for the proposed Project. [to discuss]

“State Grant” means the grant moneys appropriated to the Oregon Department of Administration Services in House Bill 3138 to plan for and develop housing.

“Task Order” means a contract between the Consortium and a Project Sponsor that provides the specific Project’s scope, cost, and schedule. [to discuss]

Schedule 4.2.2  
Managing Director Services

Subject to the terms and conditions contained in this Agreement, the Managing Director will provide the following project services:

- I. General. [to discuss]
  1. Annual Budget. Prepare and present Consortium's annual budget to the Board.
  2. Personnel. If additional Consortium employees and/or contractors are approved by the Board, recruitment and hiring of additional employees and/or contractors.
- II. Housing Development.
  1. Concept Development. Assist private applicants and the Parties with housing concepts for proposed master planned communities, neighborhoods, individual home site and infill development for missed use residential/commercial and/or industrial areas.
  2. Pre-development Coordination. Facilitate initial planning/scoping meetings by pre-screening Housing Development Projects to determine the types of permits, financing, and other necessary resources.
  3. Land Use and Development Planning. Assist private developers and individual applicants through the development process. Duties include, but are not limited to assisting with the following:
    - a. Land use and site design reviews;
    - b. Master planned development applications;
    - c. Floodplain, geo-hazard, and other environmental permitting;
    - d. Urban renewal applications;
    - e. Zoning and annexation;
    - f. Transportation system plan updates;
    - g. Utility overlays (water, sewer, storm water, reclaimed water, power, broadband);
    - h. Community development overlays (recreation, tourism, and public benefit amenities);
    - i. Housing Development Project management (milestone planning, synchronizing public and private developments); and
    - j. Financing strategies (capital finance, economic modeling, grant and loan administration, and other advisory services)
  4. Development Oversight and Risk Mitigation. Assist Parties with independent verification and validation that housing developments meet the terms of their land use agreements to ensure developments are implemented effectively and in compliance with approved plans.
  5. Community Engagement. Execute housing project strategic messaging and public information through project websites, social media, public meetings/stakeholder engagement, written materials and radio broadcasts.
  6. Staff Assistance. Leverage the unique skillsets and staff capabilities of each Party to provide services to the three Parties' communities.
  7. Professional Service Agreements. Issue bi-annual requests for qualifications for professional services firms and leverage existing contracts of each Party on behalf of all Parties to select the optimal firm for a project.

III. Community Development.

1. Capital Improvement Project Assistance. Assemble capital improvement projects groups by identifying the appropriate mix of public staff and professional consultants to assist each Party with strategic planning, capital improvement project management, capital finance, auditing, and regulatory compliance.

Schedule 5.8  
Initial Projects

*This schedule will identify the parties' respective priority projects. To discuss.*

Schedule 5.2.2  
Contribution Schedule

Unless and until modified in accordance with this Agreement, each Party will make the contribution amount set forth below for costs approved in the Budget that are not paid through the State Grant and/or other funding received by Consortium:

<u>Party</u>	<u>Percentage of Total Contribution</u>
Burns	1/3 or 33.33%
Lakeview	1/3 or 33.33%
John Day	<u>1/3</u> or 33.33%
Total Contribution	3/3 or 100%