



Deschutes County Board of Commissioners  
1300 NW Wall St, Bend, OR  
97703

(541) 388-6570 – Fax (541) 385-3202 – <https://www.deschutes.org/>

## **AGENDA REQUEST & STAFF REPORT**

### **For Board of Commissioners Business Meeting of October 5, 2016**

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**DATE:** September 21, 2016

**FROM:** Kim Adamson, Community Development, 541-388-3193

**TITLE OF AGENDA ITEM:**

Consideration of Board Signature of Document No. 2016-430, for City of La Pine Advanced Planning Fee Collection Services

**PUBLIC HEARING ON THIS DATE?:** No

Deschutes County has Building Program jurisdiction in the City of La Pine. Planning services were provided until January, 2014 when the City notified the County that the City would assume responsibility for land use applications. The County has collected the Advanced Planning Fee to cover planning costs through 2013 and GIS costs to date. These funds have been minimal. CDD will now provide these funds to the City of La Pine to cover its costs to ensure land use compatibility with building permits.

## DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections **above** the Official Review line.

**Date:** 8/2/16

**Department:** CDD

**Contractor/Supplier/Consultant Name:** City of La Pine

**Contractor Contact:** Cory Misley, City Manager

**Contractor Phone**

**#:** 541-536-1432

**Type of Document:** IGA 2016-430

**Goods and/or Services:** The purpose of this IGA is to facilitate and coordinate the collection of advanced planning fees which are collected at the time building permits are issued for the City. The County will collect these fees and remit to the City less applicable credit card fees. The County will retain all building permit fees collected.

**Background & History:** Deschutes County has Building Program jurisdiction in the City of La Pine. Planning services were provided until January, 2014 when the City notified the County that the City would assume responsibility for land use applications. The County has collected the Advanced Planning Fee to cover planning costs through 2013 and GIS costs to date. These funds have been minimal. CDD will now provide these funds to the City of La Pine to cover its costs to ensure land use compatibility with building permits.

**Agreement Starting Date:** 7/1/16

**Ending Date:** Auto renew (90 day

termination notice per IGA).

**Annual Value or Total Payment:** Based on Advanced Planning fees collected monthly.

☐ Insurance Certificate Received (check box)

Insurance Expiration Date:

Check all that apply:

☐ RFP, Solicitation or Bid Process

☐ Informal quotes (<\$150K)

☐ Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

**Funding Source:** (Included in current budget? ☒ Yes ☐ No

If **No**, has budget amendment been submitted? ☐ Yes ☐ No

**Is this a Grant Agreement providing revenue to the County?** ☐ Yes ☒ No

Special conditions attached to this grant:

8/2/2016

Deadlines for reporting to the grantor:

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: ☐ Yes ☐ No

Contact information for the person responsible for grant compliance:

Name:

Phone #:

Departmental Contact and Title: Nick Lelack, CDD Director

Phone #: x1708

Department Director Approval:

Nick Lelack  
Signature

8/2/16  
Date

**Distribution of Document:** Who gets the original document and/or copies after it has been signed? Include complete information if the document is to be mailed.

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**Official Review:**

County Signature Required (check one):

- ☒ BOCC (if \$150,000 or more)  
☐ County Administrator (if \$25,000 but under \$150,000)  
☐ Department Director (if under \$25,000)

Legal Review

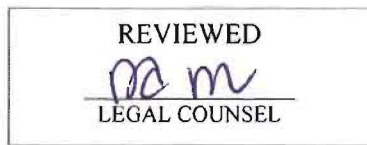
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Date

8/9/16

Document Number

2016-430



For Recording Stamp Only

**INTERGOVERNMENTAL AGREEMENT  
ADVANCED PLANNING FEE COLLECTION SERVICES  
Document No. 2016-430**

This Intergovernmental Agreement (this "Agreement"), is made and entered into by and between Deschutes County, a political subdivision of the State of Oregon, hereinafter referred to as "COUNTY," and the City of La Pine, an Oregon municipal corporation, hereinafter referred to as "CITY."

**WITNESSETH:**

**WHEREAS**, the COUNTY and the CITY are authorized pursuant to ORS 190.003 through 190.110 to enter into an intergovernmental agreement for the performance of any or all functions which a party to the agreement has the authority to perform; and

**WHEREAS**, the CITY imposes (a) system development charges for capital improvements for water and sewer, and (b) advanced planning fees ("Planning Fee(s)"), in order to cover costs associated with providing planning services; and

**WHEREAS**, such fees and charges are required by CITY ordinance to be paid to the CITY by property owners upon obtaining building or development permits; and

**WHEREAS**, by virtue of agreements with the CITY, the COUNTY issues building permits within the CITY and is therefore administratively set up to collect Planning Fees; and

**WHEREAS**, CITY desires to delegate to COUNTY the responsibility of collection of Planning Fees and COUNTY is willing to accept such delegation, all pursuant to the conditions of this Agreement.

**NOW, THEREFORE, IT IS HEREBY AGREED** by and between the parties for and in consideration of the mutual promises herein stated as follows:

**GENERAL:**

1. The purpose of this agreement is to facilitate and coordinate the collection of advanced planning fees imposed by the CITY.
2. The COUNTY has adopted certain fees which include an advance planning fee that is collected at the time the building permit is issued; COUNTY shall collect this fee on behalf of CITY and return this fee to CITY.

**COUNTY OBLIGATIONS:**

1. COUNTY shall endeavor to collect advanced planning fees for the benefit of the CITY. It is agreed that said funds at all times belong to the CITY.
2. COUNTY will calculate the advanced planning fee for each permit application as applicable.
3. COUNTY shall account for all such funds collected separately from other funds received and shall implement tracking systems to track such funds from receipt until transfer to the CITY.
4. COUNTY shall automatically disburse said funds to the CITY once each month in the ordinary course of accounts payable disbursements and shall provide the CITY with monthly documentation demonstrating the source and amount of each collection. COUNTY will deduct from each advanced planning fee collection paid by credit card a credit card transaction fee of Five Percent (5%) of the total amount charged. The transaction fee will be reviewed annually.
5. Other than the obligations set forth herein, COUNTY shall have no other obligations, responsibilities or liabilities with respect to any other fee.

**CITY OBLIGATIONS:**

1. CITY shall be responsible for payment and processing of any refunds of the advance planning fees.

**MISCELLANEOUS:**

1. This Agreement is effective July 1, 2016.
2. This Agreement shall automatically renew each fiscal year unless otherwise terminated as provided herein.
3. This Agreement may be terminated at the end of any fiscal year upon written notice of one party to the other party not later than ninety (90) days prior to the end of such fiscal year.

**LIMITATIONS:**

1. This Agreement, as applicable, is expressly subject to the provisions and requirements of ORS 279A and 279B, the Oregon Tort Claims Act, ORS 30.260 through 30.300 and to the debt limitation of Oregon counties as set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore.
2. In the event sufficient funds are not appropriated for the payment of consideration required to be paid under this Agreement, and if CITY has no funds legally available for consideration from other sources, then either party may terminate this Agreement.
3. Any provisions herein, which would conflict with law, are deemed inoperative to that extent.

**NON-DISCRIMINATION:**

1. Each party agrees that no person shall, on the grounds of race, color, creed, national origin, sex, marital status, or age, suffer discrimination in the performance of this Agreement when employed by either party.
2. Each party agrees to comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
3. Additionally, each party shall comply with the Americans with Disabilities Act of 1990 (as amended), ORS Chapter 659A., and all applicable regulations and administrative rules established pursuant to those laws.

**PARTNERSHIP:**

Neither party is, by virtue of this Agreement, a partner or joint venture in connection with activities carried out under this Agreement, and shall have no obligation with respect to the other party's debts or any other liability or obligation of the other party of whatever kind or nature.

**CITY'S REPRESENTATIVE:**

CITY's authorized representative for the purposes of this Agreement shall be the La Pine City Manager, Cory Misley or the City Manager's designee, P.O. Box 2460, La Pine, Oregon 97739, Phone (541) 536-1432, Fax (541) 536-1432.

**COUNTY'S REPRESENTATIVE.**

COUNTY's authorized representative for the purposes of this Agreement shall be Deschutes County Community Development Director, Nick Lelack or the Director's designee, 117 NW Lafayette, Bend, Oregon 97703, phone (541) 385-1708, Fax (541) 385-1764.

#### **SUBCONTRACT - ASSIGNMENTS AND DELEGATION:**

1. This Agreement and all of the covenants and conditions hereof, shall inure to the benefit of and be binding upon CITY and COUNTY respectively and their legal representatives and successors.
2. Except as otherwise proved herein, COUNTY shall not assign any rights nor delegate any duties incurred by this Agreement, or any part hereof without written consent of CITY and any assignment or delegation in violation hereof shall be void.

#### **ACCESS TO RECORDS:**

1. CITY shall have access to such books, documents, papers and records of COUNTY as are directly pertinent to the services performed under the terms of this Agreement for the purpose of conducting an audit or examination or obtaining excerpts and transcripts.
2. The COUNTY shall have reciprocal access to CITY planning and building files.

#### **FORCE MAJEURE:**

Neither party to this Agreement shall be liable to the other party for delays in performing the services or for the direct or indirect cost resulting from such delays that may result from strikes, riots, war, acts of governmental authorities, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

#### **NON-WAIVER:**

The failure by any party to enforce any provision of this Agreement shall not constitute a waiver by that party of that provision or of any other provision of this Agreement.

#### **ATTORNEY FEES:**

In the event an action, lawsuit or proceeding, including appeal therefrom, is brought for failure to fulfill or comply with any of the terms of this Agreement, each party shall be responsible for their own attorney fees, expenses, costs and disbursements for said action, lawsuit, proceeding or appeal.

#### **APPLICABLE LAW:**

This Agreement will be governed by the laws of the State of Oregon.

**INDEMNIFICATION:**

1. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, COUNTY shall defend, save, hold harmless and indemnify CITY and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of the COUNTY or its officers, employees, contractors, or agents under this Agreement.
2. To the extent permitted by the Oregon Tort Claims Act, ORS 30.260 through 30.300, CITY shall defend, save, hold harmless and indemnify COUNTY and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of CITY or its officers, employees, contractors, or agents under this Agreement.
3. In addition to any other indemnification terms in this Agreement, CITY agrees to indemnify, save harmless and defend the COUNTY, its officers, agents, and employees from and against all claims, suits, actions, damages, costs, losses and expenses in any manner resulting from or arising out of any claim that the Planning Fees collected by COUNTY and thereafter transferred to CITY, were assessed, misspent or collected in violation of ORS 223.297 to 223.314.
4. Neither party shall be liable to the other for any incidental or consequential damages arising out of or related to this Contract.
5. Neither party shall be liable for any damages of any sort arising solely from the termination of this Contract or any part hereof in accordance with its terms.

**ASSIGNMENT:**

Neither this Agreement nor any of the rights granted by this Agreement may be assigned or transferred by either party.

**BINDING EFFECT:**

The terms of this Agreement shall be binding upon and inure to the benefit of each of the parties and each of their respective administrators, agents, representatives, successors and assigns.

**SEVERABILITY:**

Should any provision or provisions of this Agreement be construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall affect only the provision or provisions so construed, and shall not affect, impair or invalidate any of the other provisions of this Agreement which shall remain in full force and effect.



**HEADINGS:**

The headings of this Agreement are for convenience only and shall not be used to construe or interpret any provisions of this Agreement.

**INCORPORATION OF RECITALS:**

The recitals set forth above are hereby incorporated into and made a part of this Agreement.

**COMPLETE AGREEMENT:**

1. This contract and any referenced attachments constitute the complete Agreement between CITY and COUNTY and supersede all prior written or oral discussions or agreements.
2. This Agreement may not be modified or amended except by writing signed by all parties to this Agreement.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 2016

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
ALAN UNGER, CHAIR

\_\_\_\_\_  
TAMMY BANEY, VICE CHAIR

ATTEST:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
ANTHONY DEBONE, COMMISSIONER

Dated this \_\_\_\_ day of \_\_\_\_\_, 2016

**CITY OF LA PINE**

\_\_\_\_\_  
KEN MULENEX, MAYOR

\_\_\_\_\_  
CORY MISLEY, CITY MANAGER

**APPROVED AS TO FORM:**

\_\_\_\_\_  
JEREMY GREEN, CITY ATTORNEY