



DAN JOHNSON  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

December 14, 2023

BCC Agenda Date/Item: \_\_\_\_\_

Board of County Commissioners  
Clackamas County

**Approval of State of Oregon County Fairgrounds Capital Improvements Grant Agreement with the Oregon Business Development Department toward construction of new County Fair multi-purpose building. Grant value is \$277,777. Funding is through Business Oregon. No County General Funds are involved.**

<b>Previous Board Action/Review</b>	12/12/2023 Request for Consent Agenda 10/12/2023 Grant Lifecycle Form approved		
<b>Performance Clackamas</b>	1. The purpose of the County Fair and Rodeo program is to provide venue marketing, entertainment and production services to residents and visitors so they can experience a Clackamas County tradition and create life-long memories for generations to come. 2. Build public trust through good government by conducting transactions in a transparent manner.		
<b>Counsel Review</b>	A. Naylor, 11/28/2023	<b>Procurement Review</b>	N/A
<b>Contact Person</b>	Sarah Eckman, DTD Assistant Director	<b>Contact Phone</b>	503-742-4303

**EXECUTIVE SUMMARY:**

Clackamas County's Fair & Event Center, through the Department of Transportation and Development, requests approval of a grant agreement from Business Oregon for \$277,777 in County Fair direct funding to go toward the Fairgrounds' new multi-purpose building construction project.

The Business Oregon grant is being awarded, in equal amounts, to all 36 Oregon counties, as well as the state fairgrounds. It is funded through the sale of lottery bonds by the State of Oregon.

**RECOMMENDATION:**

Staff respectfully recommends the Board of County Commissioners approve the attached grant agreement.

Respectfully submitted,

*Dan Johnson*

Dan Johnson, Director  
Department of Transportation and  
Development

For Filing Use Only

**STATE OF OREGON  
COUNTY FAIRGROUNDS CAPITAL IMPROVEMENTS  
GRANT AGREEMENT**

Contract Number: C2023248

Project Name: Multiuse Building

This grant agreement (“Contract”) is between the State of Oregon, acting through its Oregon Business Development Department (“OBDD”), and Clackamas County, Oregon (“Recipient”). This Contract becomes effective only when fully signed and approved as required by applicable law (“Effective Date”).

This Contract includes Exhibit A - Project Description.

Pursuant to Oregon Laws 2021, Chapter 669, Section 202, and Oregon Laws 2023, Chapter 475 (the “Act”), OBDD is authorized to make grants for county fair capital improvements.

**SECTION 1 - KEY TERMS**

The following capitalized terms have the meanings assigned below.

**Grant Amount:** \$277,777.

**Project Completion Deadline:** 06 February 2026

**SECTION 2 - FINANCIAL ASSISTANCE**

- A. OBDD shall provide Recipient, and Recipient shall accept from OBDD, a grant (the “Grant”) in an aggregate amount not to exceed the Grant Amount.
- B. Conditions Precedent. OBDD’s obligations are subject to the receipt of the following items, in form and substance satisfactory to OBDD and its Counsel:
  - (1) This Contract duly signed by an authorized officer of Recipient; and
  - (2) Such other certificates, documents, opinions and information as OBDD may reasonably require.
- C. Financing Availability. OBDD’s obligation to make, and Recipient’s right to request, disbursements under this Contract terminates 90 days after the Project Completion Deadline. Activities occurring after that date are the sole responsibility of Recipient.
- D. Unexpended Grant Funds. Any Grant funds that remain after all authorized disbursements or the date this Contract is terminated will be retained by the State of Oregon.
- E. Use of Grant funds. The Recipient shall use the Grant funds only for actual, reasonable and necessary Project costs for the activities described in Exhibit A (“Project”). Grant funds cannot be used for costs in excess of one hundred percent (100%) of the total Project costs and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit A.

### SECTION 3 - DISBURSEMENT

- A. Initial Disbursement followed by Reimbursement. OBDD will disburse 20% of the Grant to Recipient promptly after full execution of this Contract. Thereafter, Grant funds will be disbursed to Recipient on an expense reimbursement or costs-incurred basis. Recipient must submit a disbursement request for the Grant funds on an OBDD-provided or OBDD-approved disbursement request form (“Disbursement Request”), but not more frequently than once per month. Each Disbursement Request must be accompanied by a progress report as required by Section 5A(6).
- B. Conditions to Disbursements. OBDD has no obligation to disburse Grant funds unless:
- (1) OBDD has sufficient funds currently available for this Contract; and OBDD has received appropriations, limitations, allotments or other expenditure authority sufficient to allow OBDD, in the exercise of its reasonable administrative discretion, to make payment, and notwithstanding anything in the Contract, occurrence of such contingency does not constitute a default.
  - (2) For disbursements following the initial disbursement, OBDD (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as OBDD may require, and (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Project costs.
  - (3) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
  - (4) All other conditions precedent under this Contract are met.
  - (5) There is no Event of Default by Recipient.

### SECTION 4 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

Recipient represents and warrants to OBDD as follows:

- A. Organization and Authority.
- (1) Recipient is a County, validly organized and existing under the laws of the State of Oregon.
  - (2) Recipient has all necessary right, power and authority under its organizational documents and applicable Oregon law to execute and deliver this Contract and incur and perform its obligations under this Contract.
  - (3) This Contract has been authorized by an ordinance, order or resolution of Recipient’s governing body if required by its organizational documents or applicable law.
  - (4) This Contract has been duly executed by Recipient, and when executed by OBDD, is legal, valid and binding, and enforceable in accordance with their terms.
- B. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract will not: (i) cause a breach of any agreement or instrument to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) violate any provision of the charter or other document pursuant to which

Recipient was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.

- C. Full Disclosure. Recipient has disclosed in writing to OBDD all facts that materially adversely affect the Grant, or the ability of Recipient to perform all obligations required by this Contract. Recipient has made no false statements of fact, nor omitted information necessary to prevent any statements from being misleading. The information contained in this Contract, including Exhibit A, is true and accurate in all respects.
- D. Pending Litigation. Recipient has disclosed in writing to OBDD all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Grant or the ability of Recipient to perform all obligations required by this Contract.

## SECTION 5 - COVENANTS OF RECIPIENT

A. Project Completion Obligations. Recipient covenants that it shall:

- (1) Complete the Project using its own fiscal resources or money from other sources to pay for any costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
- (2) Provide OBDD with copies of all plans and specifications relating to the Project, and a timeline for the bidding/award process, at least ten (10) days before advertising for bids.
- (3) Provide a copy of the bid tabulation and notice of award to OBDD within ten (10) days after selecting a construction contractor.
- (4) Permit OBDD to conduct inspection of the Project at any time.
- (5) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by the OBDD in writing.
- (6) Deliver a progress report on the Project along with each Disbursement Request, in form as provided by or approved by OBDD.
- (7) Obtain and maintain as-built drawings for all facilities constructed as part of the Project.

B. Notice of Adverse Change. Recipient shall promptly notify OBDD of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient related to the ability of Recipient to perform all obligations required by this Contract.

C. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract, the Project and the operation of the facilities or infrastructure of which the Project is a component. In particular, but without limitation, Recipient shall comply with the following, as applicable:

- (1) All federal or state tax laws applicable to Recipient's implementation of the Project and its use of the Grant or compensation or payments paid with the Grant.
- (2) State procurement laws found in the Oregon Public Contracting Code, ORS Chapters 279A, 279B and 279C.

- (3) State labor standards and prevailing wage rate requirements found in ORS Chapter 279C.
- (4) ORS 280.518 requiring public display of information on Lottery funding of the project. Recipient shall include the following statement, prominently placed, on all plans, reports, bid documents and advertisements relating to the Project:

“This Project was funded in part by the Oregon State Lottery and administered by the Oregon Business Development Department.”

These laws and their respective implementing rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

- D. Ownership of Project. The Project will be owned by Recipient for not less than twenty (20) years following the Project Completion Deadline. The Project will be operated by Recipient or by a person under a management contract or operating agreement with Recipient. Any such management contract or operating agreement will be structured as a “qualified management contract” as described in IRS Revenue Procedure 2017-13, as amended or supplemented.
- E. Operation and Maintenance of the Project. Recipient shall operate and maintain the Project in good repair and operating condition so as to preserve the long-term public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements for not less than twenty (20) years following the Project Completion Deadline. On or before the Project Completion Deadline, Recipient shall adopt a plan acceptable to OBDD for the on-going operation and maintenance of the Project without reliance on OBDD financing and furnish OBDD, at its request, with evidence of such adoption. The plan must include measures for generating revenues sufficient to assure the operation and maintenance of the Project during the usable life of the Project.
- F. Insurance, Damage. For a period of not less than twenty (20) years following the Project Completion Deadline, the Recipient shall maintain, or cause to be maintained, insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. Nothing in this provision precludes Recipient from exerting a defense against any party other than OBDD, including a defense of immunity.
- G. Sales, Leases and Encumbrances. For a period of not less than twenty years following the Project Completion Deadline, Recipient shall not sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in the Project, unless worn out, obsolete, or, in the reasonable business judgment of Recipient, no longer useful in the operation of the Project. Nevertheless, OBDD may consent to such disposition if it has received 90 days’ prior written notice from Recipient. Such consent may require receipt by OBDD of an opinion of Bond Counsel to the effect that such disposition complies with applicable law and will not adversely affect the exclusion of interest on any Lottery Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code. The term “Bond Counsel” means a law firm determined by OBDD to have knowledge and expertise in the field of municipal law and whose opinions are generally accepted by purchasers of municipal bonds.
- H. Books and Records; Inspections; Information. The Recipient shall keep accurate books and records and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. Recipient shall have these records

audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient. The Recipient shall permit OBDD and their duly authorized representatives, and any party designated by OBDD: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters. The Recipient shall supply any related reports and information as OBDD may reasonably require, including cooperation with OBDD to provide all necessary financial information and records to comply with statutory reporting requirements.

- I. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Grant for a minimum of six (6) years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Financing Availability Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.
- J. Notice of Event of Default. Recipient shall give OBDD prompt written notice of any Event of Default, or any circumstance that with notice or the lapse of time, or both, may become an Event of Default, as soon as Recipient becomes aware of its existence or reasonably believes an Event of Default is likely.
- K. Contributory Liability and Contractor Indemnification.

(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 (“Third Party Claim”) against a party (the “Notified Party”) with respect to which the other party may have liability, the Notified Party must promptly notify the other party in writing and deliver a copy of the claim, process, and all legal pleadings related to the Third Party Claim. Either 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. The foregoing provisions are conditions precedent for either party’s liability to the other in regard to the Third Party Claim.

If the parties are jointly liable (or would be if joined in the Third Party Claim), the parties shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable in such proportion as is appropriate to reflect their respective relative fault. The relative fault of the parties shall be determined 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. Each party’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if that party had sole liability in the proceeding. This Section shall survive termination of this Contract.

(2) Recipient shall take all reasonable steps to require 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 the State of Oregon and its officers, employees and agents (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys’ fees) 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 Recipient’s contractor or any of the officers, agents, employees or subcontractors of the contractor (“Claims”). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims

arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the contractor from and against any and all Claims. This Section shall survive termination of this Contract.

L. Disadvantaged Business Enterprises. ORS 200.090 requires all public agencies to “aggressively pursue a policy of providing opportunities for disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses...” OBDD encourages Recipient in any contracting activity to follow good faith efforts as described in ORS 200.045, available at [https://www.oregonlegislature.gov/bills\\_laws/ors/ors200.html](https://www.oregonlegislature.gov/bills_laws/ors/ors200.html). Additional resources are provided by the Governor’s Policy Advisor for Economic and Business Equity. Also, the Certification Office for Business Inclusion and Diversity at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.

M. Exclusion of Interest from Federal Gross Income and Compliance with Code.

(1) The Recipient shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any Lottery Bonds from gross income for purposes of federal income taxation, as governed by Section 103(a) of the Code. OBDD may decline to disburse Grant funds if it finds that the federal tax exemption of the Lottery Bonds cannot be assured.

(2) The Recipient shall not take any action (including but not limited to the execution of a management agreement for the operation of the Project) or omit to take any action that would cause any Lottery Bonds to be “private activity bonds” within the meaning of Section 141(a) of the Code. Accordingly, unless Recipient receives the prior written approval of OBDD, Recipient shall not permit in excess of ten percent (10%) of either (a) the Grant funds or (b) the Project financed or refinanced with the Grant funds to be directly or indirectly used in any manner that would constitute “private business use” within the meaning of Section 141(b)(6) of the Code, including not permitting more than one half of any permitted private business use to be “disproportionate related business use” or private business use unrelated to the government use of the Grant funds. Unless Recipient receives the prior written approval of OBDD, Recipient shall not directly or indirectly use any of the Grant funds to make or finance loans to persons other than governmental units, as that term is used in Section 141(c) of the Code.

(3) The Recipient shall not directly or indirectly use or permit the use of any of the Grant funds or any other funds, or take any action or omit to take any action, which would cause any Lottery Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.

(4) The Recipient shall not cause any Lottery Bonds to be treated as “federally guaranteed” for purposes of Section 149(b) of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to “federally guaranteed” obligations described in Section 149(b) of the Code. For purposes of this paragraph, any Lottery Bonds will be treated as “federally guaranteed” if: (a) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (b) five percent (5%) or more of the

proceeds of the Lottery Bonds will be (i) used in making loans if the payment of principal or interest is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (ii) invested directly or indirectly in federally insured deposits or accounts, and (c) none of the exceptions described in Section 149(b)(3) of the Code apply.

(5) The Recipient shall assist OBDD to ensure that all required amounts are rebated to the United States of America pursuant to Section 148(f) of the Code. The Recipient shall pay to OBDD such amounts as may be directed by OBDD to satisfy the requirements of Section 148(f) applicable to the portion of the proceeds of any tax-exempt bonds, including any Grant funds or other amounts held in a reserve fund. The Recipient further shall reimburse OBDD for the portion of any expenses it incurs related to the Project that is necessary to satisfy the requirements of Section 148(f) of the Code.

(6) Upon OBDD's request, Recipient shall furnish written information regarding its investments and use of Grant funds, and of any facilities financed or refinanced therewith, including providing OBDD with any information and documentation that OBDD reasonably determines is necessary to comply with the arbitrage and private use restrictions that apply to the Lottery Bonds.

(7) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on any Lottery Bonds, the covenants contained in this subsection will survive payment of the Lottery Bonds, and the interest thereon, including the application of any unexpended Grant funds. The Recipient acknowledges that the Project may be funded with the proceeds of the Lottery Bonds and that failure to comply with the requirements of this subsection could adversely affect any exclusion of the interest on the Lottery Bonds from gross income for federal income tax purposes.

(8) Neither Recipient nor any related party to Recipient, within the meaning of 26 C.F.R.s §1.150-1(b), shall purchase any Lottery Bonds, from which proceeds were used to finance the Project, in an amount related to the amount of the Grant.

## SECTION 6 - DEFAULT

Any of the following constitutes an "Event of Default":

- A. Misleading Statement. Any material false or misleading representation is made by or on behalf of Recipient, in this Contract or in any document provided by Recipient related to this Grant.
- B. Failure to Perform. Recipient fails to perform any obligation required under this Contract, other than those referred to in subsection A of this Section, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by OBDD. OBDD may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.
- C. OBDD Default. OBDD fails to perform any obligation required under this Contract and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to OBDD by Recipient. Recipient shall agree in writing to an extension of time if it reasonably determines OBDD instituted and has diligently pursued corrective action.



## SECTION 7 - REMEDIES

- A. OBDD Remedies. Upon the occurrence of an Event of Default, OBDD may pursue any remedies available under this Contract, at law or in equity. Such remedies include, but are not limited to, termination of OBDD's obligations to make the Grant or further disbursements, return of all or a portion of the Grant Amount, payment of interest earned on the Grant Amount, and declaration of ineligibility for the receipt of future awards from OBDD. If, as a result of an Event of Default, OBDD demands return of all or a portion of the Grant Amount or payment of interest earned on the Grant Amount, Recipient shall pay the amount upon OBDD's demand. OBDD may also recover all or a portion of any amount due from Recipient by deducting that amount from any payment due to Recipient from the State of Oregon under any other contract or agreement, present or future, unless prohibited by state or federal law. These remedies are cumulative and not exclusive of any other remedies provided by law.
- B. Recipient Remedies. In the event of default by OBDD, Recipient's sole remedy will be for disbursement of Grant funds as required and eligible under this Contract, not to exceed the total Grant Amount, less any claims OBDD has against Recipient.

## SECTION 8 - TERMINATION

In addition to terminating this Contract upon an Event of Default as provided in Section 7, OBDD may terminate this Contract with notice to Recipient under any of the following circumstances:

- A. If OBDD anticipates a shortfall in applicable revenues or OBDD fails to receive sufficient funding, appropriations or other expenditure authorizations to allow OBDD, in its reasonable discretion, to continue making payments under this Contract.
- B. There is a change in federal or state laws, rules, regulations or guidelines so that the uses of the Grant are no longer eligible for funding.

This Contract may be terminated at any time by mutual written consent of the parties.

## SECTION 9 - MISCELLANEOUS

- A. No Implied Waiver. No failure or delay on the part of OBDD to exercise any right, power, or privilege under this Contract will operate as a waiver thereof, nor will any single or partial exercise of any right, power, or privilege under this Contract preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- B. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- C. Notices and Communication. Except as otherwise expressly provided in this Contract, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Recipient or OBDD at the addresses listed below, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system or 2) the recipient's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

If to OBDD:                               Deputy Director  
Oregon Business Development Department  
775 Summer Street NE Suite 200  
Salem, OR 97301-1280

If to Recipient:                           Deputy Director  
Clackamas County Finance  
2051 Kaen Road  
Oregon City, OR 97045

- D. Amendments. This Contract may not be altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties.
- E. Severability. If any provision of this Contract will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision.
- F. Successors and Assigns. This Contract will be binding upon and inure to the benefit of OBDD, Recipient, and their respective successors and assigns, except that Recipient may not assign or transfer its rights, obligations or any interest without the prior written consent of OBDD.
- G. Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.
- H. Integration. This Contract (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.
- I. No Third-Party Beneficiaries. OBDD and Recipient are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives or provides,

or is intended to give or provide, to third persons any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

J. Survival. The following provisions, including this one, survive expiration or termination of this Contract: Sections 5, 6, 7, 9.B, 9.C, and 9.L.

K. Time is of the Essence. Recipient agrees that time is of the essence under this Contract.

L. Public Records. OBDD’s obligations under this Contract are subject to the Oregon Public Records Laws.

Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



**STATE OF OREGON**  
acting by and through its  
Oregon Business Development Department



**CLACKAMAS COUNTY, OREGON**

By: \_\_\_\_\_  
Chris Cummings, Deputy Director

By: \_\_\_\_\_  
Tootie Smith, Clackamas County Board Chair

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:**

\_\_\_\_\_  
/s/ David Berryman per email dated 07 November 2023  
David Berryman, Assistant Attorney General

## EXHIBIT A - PROJECT DESCRIPTION

Recipient will make or will cause to have made capital improvements to its Clackamas County Events Center. Pre-award expenses incurred no more than 60 days prior to execution of this Contract shall be eligible for reimbursement, provided that Recipient submits sufficient documentation demonstrating that the pre-award expenditures are within the Project Description and meet all programmatic requirements, including, but not limited to, the nature of the activity, timing of the activity, and costs associated with the activity.

“Capital improvements” means the construction, modification, replacement, repair, remodeling or renovation of a structure, or addition to a structure, that is expected to have a useful life of more than one year, and may include, but is not limited to:

- (i) Acquisition of land, or a legal interest in land, in conjunction with a structure.
- (ii) Acquisition, installation of machinery or equipment, furnishings or materials that will become an integral part of a structure.
- (iii) Activities related to the construction, modification, replacement, repair, remodeling or renovation of a structure, including planning, design, authorizing, issuing, carrying or repaying interim or permanent financing, research, land use and environmental impact studies, acquisition of permits or licenses or other services connected with the structure.
- (iv) Acquisition of existing structures, or legal interests in structures, in conjunction with the capital improvements.

“Capital improvements” does not include:

- (i) Maintenance and repairs, the need for which could be reasonably anticipated;
- (ii) Supplies and equipment that are not intrinsic to the structure; or
- (iii) Furnishings, unless the furnishings are acquired in connection with the acquisition, construction, remodeling or renovation of a structure, or the repair of a structure that is required because of damage or destruction of the structure.