

August 15 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
 Clackamas County

Approval of a grant agreement with the Oregon Department of Administrative Services for construction of the Clackamas County Stabilization Center. Total agreement value is \$4,000,000. Funding through the Oregon Department of Administrative Services. No County General Funds are involved.

Previous Board Action/Review	Policy Sessions on April 19 and December 5, 2023, and July 30, 2024. Briefed at Issues on August 13, 2024.		
Performance Clackamas	1. Ensure safe, healthy, and secure communities		
Counsel Review	Yes – AN approved on 7/29	Procurement Review	No
Contact Person	Adam Brown	Contact Phone	971-421-0133

EXECUTIVE SUMMARY: Health Housing & Human Services and the Clackamas County Sheriff’s Office have partnered to develop a stabilization center in the former Women’s Center building located at 9200 McBrod Avenue in Milwaukie. This grant agreement allows the county to receive the \$4.0 million allocated for this project by the Oregon Legislature.

Currently, Clackamas County community members experiencing a behavioral health crisis do not have enough support resources to get back on their feet. Behavioral health includes mental health and wellbeing, and related behavior may include substance addiction. Often, these community members draw the attention of law enforcement and are taken to jail or the emergency room. Emergency departments and local jails are not equipped to provide the type of support they need, though that need is increasing.

The Clackamas County Stabilization Center, which will include two complimentary programs in the north and south halves of the building, will serve adults primarily referred by law enforcement, health providers, and mobile crisis responders. The program will build on the successful neighborhood relationships of the Clackamas County’s Corrections Center that has existed at the site for more than 25 years. The Stabilization Center will be a comfortable and safe place for community members who need short-term support, coping skills and connections to resources to

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manage a crisis. The building's north half will operate a 24/7 schedule to provide short-term, drop-in behavioral health crisis stabilization services. The building's south half will provide short- and medium-term housing stabilization to people experiencing homelessness through referrals from the county's Coordinated Housing Access system. The two programs will be complimentary, ensuring close coordination and collaboration between the county's behavioral health and housing systems. The site will be operated by one or more community-based organizations experienced in delivering related services.

In December 2023, the Board approved the one-time and ongoing funding plan for the Stabilization Center and approved staff to proceed with solicitations for construction and program delivery services. Shortly after Board approval of the funding plan, the Oregon Legislature allocated \$4.0 million in House Bill 5204 for the one-time capital renovation of the site. This will allow the county to reallocate most of the previously approved one-time capital funds, which includes \$1.0 million in Community Mental Health Program (post-settlement) funds and \$2.8 million of Supportive Housing Services funds.

RECOMMENDATION: The staff respectfully requests that the Board of County Commissioners approve this Agreement and authorize Chair Smith to sign on behalf of Clackamas County.

Respectfully submitted,



Rodney A. Cook
Director of Health, Housing, and Human Services

GRANT AGREEMENT

Title: House Bill 5204 (2024 Regular Session) General Fund Grant

Agreement Number: 107-2024-5204-03

This grant agreement (“Agreement”), dated as of the date the Agreement is fully executed, is made by the State of Oregon, acting by and through its Department of Administrative Services (“DAS” or “State”), and Clackamas County (“Recipient”). This Agreement becomes effective only when fully signed and approved as required by applicable law (the “Effective Date”) and, unless earlier terminated, expires on June 30, 2025 (the “Expiration Date”). **Certain terms of the Agreement survive its termination or expiration as set forth in Section 8.K below.**

Pursuant to the Oregon Laws 2024, chapter 71, section 36(3) (the “Authorization”), the Oregon Legislature appropriated \$4,000,000 from the General Fund for a grant to Recipient for the construction of a crisis stabilization center.

SECTION 1 – GRANT

DAS shall provide Recipient, and Recipient shall accept from DAS, a grant (the “Grant”) in the amount of \$4,000,000.

Conditions Precedent. DAS’s obligations are subject to the receipt of the following items, in form and substance satisfactory to DAS and its counsel:

- (1) This Agreement duly signed by an authorized officer of Recipient; and
- (2) Such other certificates, documents, opinions, and information as DAS may reasonably require.

SECTION 2 – DISBURSEMENT

- A. Full Disbursement. Upon satisfaction of all conditions precedent, DAS shall disburse the full Grant to Recipient.
- B. Condition to Disbursement. DAS has no obligation to disburse funds unless, in the reasonable exercise of its administrative discretion, it has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.

SECTION 3 - USE OF GRANT

- A. Use of Grant Moneys. Recipient shall use the Grant for the construction of a crisis stabilization center which may include retrofitting an existing structure (“the Project”).
- B. Costs Paid for by Others. Recipient may not use any of the Grant to cover costs to be paid for by another State of Oregon agency or any third party.

SECTION 4 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

Recipient represents and warrants to DAS:

- 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 under Oregon law to (a) execute and deliver this Agreement, (b) incur and perform its obligations under this Agreement, and (c) receive the Grant funds.
 - (3) This Agreement has been authorized by an ordinance, order or resolution of Recipient’s governing body.
 - (4) This Agreement has been duly executed by Recipient, and when executed by DAS, is legal, valid and binding, and enforceable in accordance with their terms.
- B. Full Disclosure. Recipient has disclosed in writing to DAS all facts that materially adversely affect its ability to perform all obligations required by this Agreement. Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Agreement is true and accurate in all respects.
- C. Pending Litigation. Recipient has disclosed in writing to DAS 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 ability of Recipient to perform all obligations required by this Agreement.
- D. No Defaults. No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Agreement.
- E. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Agreement will not: (i) cause a breach of any agreement or instrument to which Recipient is a party; (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 or its properties or operations.

SECTION 5 - COVENANTS OF RECIPIENT

Recipient covenants as follows:

- A. Notice of Adverse Change. Recipient shall promptly notify DAS 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 Agreement.
- B. Compliance with Laws. Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Agreement and Recipient’s use of the Grant funds.
 - 1. The prevailing wage rate requirements that may apply to the Project are set forth in ORS 279C.800 through 279C.870 and the administrative rules promulgated thereunder (OAR Chapter 839, Division 25) (collectively, “PWR”). If applicable, Recipient shall:
 - a. comply with PWR, require its contractors and subcontractors to pay the applicable PWR and to comply with all other Oregon Bureau of Labor and Industries (“BOLI”) requirements pursuant to the PWR, including on all contracts and subcontracts and in filing separate public works bonds with the Construction Contractors Board;
 - b. pay to BOLI, within the required timeframe and in the appropriate amount, the project fee required by OAR 839-025-0200 to 839-025-0230, including any additional fee that may be owed upon completion of the Project; and

2. Recipient represents and warrants that it is not on the BOLI current [List of Contractors Ineligible to Receive Public Works Contracts](#) and that it will not contract with any contractor on this list.
3. Pursuant to ORS 279C.817, Recipient may request that the Commissioner of BOLI make a determination about whether the Project is a public works on which payment of the prevailing rate of wage is required under ORS 279C.840.

C. Quarterly Progress Reports. Recipient must submit to DAS (ATTN: CFO.Grants@das.oregon.gov) and the Oregon Health Authority (ATTN: OHA.BHITeam@oha.oregon.gov) quarterly progress reports (each a "Progress Report") until Grant funds are fully expended. A Progress Report for each calendar quarter is due within 15 days of the quarter's end (that is, no later than each of January 15, April 15, July 15 and October 15). Each Progress Report shall contain a brief narrative and financial report on the total use of Grant funds. While DAS will provide Recipient a report template that requires Recipient to submit the information listed below, Recipient may provide additional information that it deems relevant as well.

1. Project summary
2. Summary of progress
3. Barriers to project deliverables
4. Plan to overcome barriers
5. Accomplishments
6. Expenditures
7. Risk and issue history
8. Conclusions/Recommendations

D. Books and Records. Recipient shall keep accurate books and records of the uses of the Grant and maintain them according to generally accepted accounting principles.

E. Inspections; Information. Recipient shall permit DAS and any party designated by DAS to inspect and make copies, at any reasonable time, of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters. Recipient shall supply any related reports and information as DAS may reasonably require.

F. Records Maintenance. Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement for a minimum of six years beyond the later of the final and total expenditure or disposition of the Grant. 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.

G. Notice of Default. Recipient shall give DAS prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.

H. Contribution.

- 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 State or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and

meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

- 2) With respect to a Third Party Claim for which State is jointly liable with Recipient (or would be if joined in the Third Party Claim), State 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 by Recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Recipient on the other hand 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. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
- 3) With respect to a Third Party Claim for which Recipient is jointly liable with State (or would be if joined in the Third Party Claim), Recipient 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 by State in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of State on the other hand 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. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

SECTION 6 - DEFAULTS

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

- A. Any false or misleading representation is made by or on behalf of Recipient, in this Agreement or in any document provided by Recipient related to this Grant.
- B. Recipient fails to perform any obligation required under this Agreement, other than those referred to in subsection A of this section 6, and that failure continues for a period of 10 business days after written notice specifying such failure is given to Recipient by DAS. DAS may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 7 - REMEDIES

- A. Remedies. Upon any Event of Default, DAS may pursue any or all remedies in this Agreement and any other remedies available at law or in equity to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to any one or more of the following:
- (1) Terminating DAS's commitment and obligation to make the Grant.
 - (2) Barring Recipient from applying for future awards.
 - (3) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Agreement.
 - (4) Requiring repayment of the Grant and all interest earned by Recipient on those Grant funds.
- B. Application of Moneys. Any moneys collected by DAS pursuant to section 7.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by DAS; then, as applicable, to repay any Grant proceeds owed; then, to pay other amounts due and payable under this Agreement, if any.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to DAS is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Agreement will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. DAS is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 7 of this Agreement.

SECTION 8 - MISCELLANEOUS

- A. Time is of the Essence. Recipient agrees that time is of the essence under this Agreement.
- B. Relationship of Parties; Successors and Assigns; No Third-Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
 - (2) Nothing in this Agreement gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
 - (3) This Agreement will be binding upon and inure to the benefit of DAS, Recipient, and their respective successors and permitted assigns.
 - (4) Recipient may not assign or transfer any of its rights or obligations or any interest in this Agreement without the prior written consent of DAS. DAS may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to DAS, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of DAS's counsel. Any approved assignment is not to be construed as creating any obligation of DAS beyond those in this Agreement, nor does assignment relieve Recipient of any of its duties or obligations under this Agreement. For the avoidance of doubt, nothing in this Section 8.B(4) prevents Recipient from distributing Grant funds to contractors or subgrantees for the Project purposes described in Section 3.A.

C. Disclaimer of Warranties; Limitation of Liability. Recipient agrees that:

- (1) DAS makes no warranty or representation.
- (2) In no event are DAS or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Agreement.

D. Notices and Communication. Except as otherwise expressly provided in this Agreement, 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 DAS at the addresses set forth 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 DAS: Oregon Department of Administrative Services
ATTN: Khela Singer, Grant Coordinator
155 Cottage St. NE
Salem OR 97301
CFO.Grants@das.oregon.gov

If to Recipient: Clackamas County
ATTN: Adam Brown
2051 Kaen Road
Oregon City, OR 97045
abrown@clackamas.us

E. No Construction against Drafter. This Agreement is to be construed as if the parties drafted it jointly.

F. Severability. If any term or condition of this Agreement is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.

G. Amendments, Waivers. This Agreement may not be amended without the prior written consent of DAS (and when required, the Department of Justice) and Recipient. This Agreement may not be amended in a manner that is not in compliance with the Authorization. No waiver or consent is effective unless in writing and signed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.

H. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Agreement is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to DAS by its attorneys.

I. 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 Agreement, 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 Agreement 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.

J. Integration. This Agreement (including all exhibits, schedules or attachments, if any) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Agreement.

K. Survival. The following provisions survive expiration or termination of this Agreement: Sections 5.C., 5.E., 5.F., 5.H., 6, 7, 8.H., 8.I and 8.K. Moreover, unless this Agreement is terminated pursuant to Section 7.A., Recipient may continue using the Grant funds to complete the Project beyond the Expiration Date.

L. Execution in Counterparts. This Agreement may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

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

STATE OF OREGON
acting by and through its
Department of Administrative Services

RECIPIENT
Clackamas County

By: _____

By: _____

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

Sam Zeigler, Assistant Attorney General, via email dated June 12, 2024