



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

May 23, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of an Intergovernmental Agreement with the Clackamas County Fair Board for project management and funding of the new fairground and event center multiuse building. Agreement value is \$5,077,777. Funding is through County-allocated ARPA Funds and Business Oregon grant funds. No County General Funds are involved.

Previous Board Action/Review	10/5/2022: BCC approved funding for County ARPA projects in policy session, to include \$4,800,000 for the Fairgrounds Multipurpose Facility building project. 12/14/2023: BCC approved grant agreement with the State of Oregon (Business Oregon) on Consent Agenda for \$277,777 in funding for the Fair & Event Center multiuse building project.		
Performance Clackamas	This project aligns with the Vibrant Economy Goal: It provides economic development, public spaces, and community enrichment services to residents, businesses, visitors, and partners so they can thrive and prosper in healthy and vibrant communities.		
Counsel Review	Yes, AN	Procurement Review	N/A
Contact Person	Sarah Eckman Laura Edmonds	Contact Phone	(503) 894-3135 (503) 319-2456

EXECUTIVE SUMMARY: The Clackamas County Fair Board is constructing a new fairground and event center multiuse building on the Clackamas County Fairgrounds, real property owned by Clackamas County and dedicated to the Fair Board’s use. The structure will be used for a wide variety of fair and event center uses. During disasters, it can be used for emergency purposes. The Intergovernmental Agreement between Clackamas County and the Clackamas County Fair Board outlines roles and responsibilities for the project, as well as a funding agreement for \$4,800,000 in County American Rescue Plan Act (ARPA) committed by the County for the project, as well as \$277,777 in State of Oregon (Business Oregon) grant funds that came to the County exclusively for fairgrounds capital projects.

County funding is an integral component of the overall funding plan for the multiuse building project. The project budget is as follows:

Funding Source	Amount
State ARPA	\$ 4,790,800.00
County ARPA	\$ 4,800,000.00
Business Oregon Grant	\$ 277,777.00
Facility Naming Rights	\$ 750,000.00
Facility Sponsorships	\$ 250,000.00
Fundraising	\$ 500,000.00
Loan / Line of Credit	\$ 2,500,000 (up to)
Total	\$ 13,868,577

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The only funding being passed through the IGA are the County ARPA (\$4,800,000) and the Business Oregon Grant (\$277,777). The Fair Board will first spend its own State ARPA funds before expending County funds. Once the State ARPA dollars are spent, the County will pay for project costs until the County ARPA (\$4,800,000) and State of Oregon (Business Oregon) (\$277,777) funds are fully expended. Once these funds are fully expended, the Fair Board will resume responsibility for project costs.

During public health emergencies, the multiuse building will be equipped to store, distribute and provide Point of Dispensing (POD) areas to provide mass medication or vaccination to the community. The building and the immediately surrounding areas are conducive to both drive-through and walk-in medication/vaccination clinic efforts, and the community already knows this is a location they can go to for support and assistance. In addition to acting as a POD, the building has the capacity to serve as a Commodity Point of Distribution (CPOD). Rooms within the building have space to store disaster supplies so they are readily available. The site can act as a CPOD, as the Fairgrounds has ample ingress and egress for large vehicles that would bring in supplies for distribution in the case of disaster.

In addition to public health emergencies, the multiuse building can be used as a support facility during other types of disasters such as wildfires, ice storms and more.

Fair & Event Center and County staff are managing the procurement, construction, and completion of the construction project. Pre-construction work, such as utility evaluation and placement, is underway. Construction timelines are being revised based on current permitting timelines. As of today, substantial completion is expected to be in October 2025. Upon completion, County will own the building as part of its real property inventory.

RECOMMENDATION: Staff recommends approval of this intergovernmental agreement.

Respectfully submitted,

Dan Johnson

Dan Johnson, Director
Department of Transportation & Development

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND CLACKAMAS COUNTY FAIR BOARD**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and the Clackamas County Fair Board ("Agency"), an entity formed under ORS 565.210, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

Agency desires that a new fairground and event center multiuse building (the "Facility") be constructed on real property owned by County and dedicated to Agency's use (the "Project").

Agency will manage the procurement, construction, and completion of the Project. County has agreed to procure the construction services on behalf of Agency and provide project management services through its Finance (Facilities Management) Department. Agency may utilize other County services in accordance with the Fair Management Agreement between the Clackamas County Fair Board and Clackamas County, Oregon. County will also offer procurement services (consistent with the Fair Management Agreement) as may be needed by Agency to perform under this Agreement. Upon completion, County will own the building as part of its real property inventory.

Agency has further requested County provide financial support for construction of the Facility. Contingent upon the terms of this Agreement, including priority use of the Facility for COVID-19 treatment, mitigation, temporary medical facilities, and as an emergency operation center in the event of an emergency, County has agreed to provide up to \$4,800,000 towards completion of the Facility. The source of the County's funds are the American Rescue Plan Act, State and Local Fiscal Recovery Funds ("ARPA" or "SLRF"). The County will also provide \$277,777 in funding received through a State of Oregon (Business Oregon) grant.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon execution and, unless otherwise specified herein, shall remain in effect until completion of the Project.
2. **Project Work.** The Parties will perform the work identified in Exhibit A, attached hereto and incorporated herein ("Work"), to assist in completion of the Project.
3. **Funding Sources.** Agency will complete the Project using the following funding sources, in the amounts estimated below, and agrees to comply with all funding source requirements:

Funding Source	Amount
State ARPA	\$ 4,790,800.00
County ARPA	\$ 4,800,000.00
Business Oregon Grant	\$ 277,777.00
Facility Naming Rights	\$ 750,000.00
Facility Sponsorships	\$ 250,000.00
Fundraising	\$ 500,000.00
Loan / Line of Credit	\$ 2,500,000 (up to)
Total	\$ 13,868,577

4. **ARPA/State Funds.** Contingent upon confirmation, in a form acceptable to County, that all other funding sources described in Section 3, above, are available or otherwise committed to the Project, County agrees to provide an amount not to exceed \$4,800,000 in ARPA funds and \$277,777 in Business Oregon grant funds (collective the "Funds") towards construction of the Project. Payment of the Funds shall be made in accordance with Exhibit A:

Agency shall use the Funds solely for the following eligible purposes: payment to a third-party contractor for construction of the Project under a construction contract to be executed between Agency and the third-party contractor (the "Construction Contract").

5. **No Duplicate Payment.** Agency may use other funds in addition to the Funds to complete the Project; provided, however, Agency may not credit or pay any Funds for Project costs that are paid for with other funds and would result in duplicate funding. Agency must ensure the Funds are used to supplement and not supplant public moneys received from any other source.
6. **Use of Facility.** The real property that the Facility will be constructed upon is owned by the County. The Facility is an improvement to the real property owned by County, and title to the Facility will remain with the County upon completion of construction. Subject to terms and conditions set forth in Exhibit A, Agency shall be granted exclusive management of the Facility for use of the Clackamas County Fair & Event Center.
7. **Representations and Warranties.**
- A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

8. **Termination.** This Agreement may be suspended or terminated prior to the expiration of its term as follows:
- A. At County's discretion, upon thirty (30) days' advance written notice to Agency;
 - B. Immediately upon written notice to Agency if Agency fails to comply with any term of this Agreement;
 - C. At any time upon mutual agreement by County and Agency;
 - D. Immediately upon written notice provided to Agency that County has determined funds are no longer available for this purpose.
 - E. Immediately upon written notice provided to Agency that County lacks sufficient funds, as determined by County in its sole discretion, to continue to perform under this Agreement.
 - F. Immediately upon written notice to Agency if Agency is in default under this Agreement.

Upon completion of the Project, or upon termination of this Agreement, any unexpended County Funds shall be retained by, or returned to, the County.

9. **Effect of Project Completion or Termination.** Following the completion of the Project, or termination of this Agreement, Agency shall promptly identify all unexpended County funds and return all unexpended County funds to County within 30-days of completion of the Project or the termination of the Agreement. Unexpended funds are those funds received by Agency under this Agreement that (i) have not been spent or expended in accordance with the terms of this Agreement; and (ii) are not required to pay County-approved allowable costs or expenses that will become due and payable as a result of completion of the Project or the termination of this Agreement.
10. **Future Support.** County makes no commitment of future support and assumes no obligation for future support for the Project.
11. **Indemnification.** Subject to the limitations set forth in the Oregon Tort Claims Act, Agency agrees to indemnify and hold County, and its elected officials, officers, employees, and agents, harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to (1) Agency's negligent or willful acts or those of its employees, agents, or those under Agency's control; (2) Agency's acts or omissions in performing under this Agreement including, but not limited to, any claim by State or Federal funding sources that Agency used Funds for an ineligible purpose; or (3) Agency's acts or omissions with respect to the Construction Contract. Agency is responsible for the actions of its own agents and employees, and County assumes no liability or responsibility with respect to Agency's actions, employees, agents or otherwise with respect to those under its control.
12. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.
13. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any

communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

A. Sarah Eckman or their designee will act as liaison for the County.

Contact Information:

Sarah Eckman
Department of Transportation and Development
Assistant Director of Community Services
sarahste@clackamas.us
503-742-4303
150 Beaver Creek Road, Suite 325
Oregon City, OR 97045

Fiscal Contact:

Joseph Rosevear
Clackamas County Finance Department
Grants Manager
jrosevear@clackamas.us
503-742-5429
2051 Kaen Road, Suite 490
Oregon City, OR 97045

Brian Crow or their designee will act as liaison for the Agency.

Contact Information:

Brian Crow
Executive Director
Clackamas County Fair & Event Center
brianc@ccfairevents.com
503-266-1136
694 NE 4th Ave.
Canby, OR 97013

14. General Provisions.

A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that

arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

- B. Compliance with Applicable Law/Compliance with Additional Funding Terms and Conditions.** Agency shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations including, but not limited to, the terms and conditions set forth in Exhibit B, attached hereto and incorporated by reference herein.

Agency shall further comply with any and all terms, conditions, and other obligations as may be required by the applicable local, State, or Federal agencies providing funding for performance under this Agreement, whether or not specifically referenced herein. Agency agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Agreement including, but not limited to, executing all additional documentation necessary to comply with applicable State or Federal other funding requirements.

All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein.

Failure to comply with the obligations of this Section 14(B) is a material breach of this Agreement.

- C. Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.

- E. **Hazard Communication.** Agency shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- F. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- G. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- H. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- I. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- J. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- K. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- L. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- M. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- N. **Survival.** All provisions in Sections 7, 11, and 14 (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (N), (Q), (S), and (T), shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- O. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- P. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- Q. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- R. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- S. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency uses in maintaining the confidentiality of its own

confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

T. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

Clackamas County Fair Board

Chair, Board of County Commissioners

Matt D Bunch
By: Matt D Bunch

Its: Chair

Date

4-19-24
Date

Approved as to form:

Approved as to form: _____

by

County Counsel

Summ

Counsel for the Fair Board

05/06/2024

5/13/24

Date

Date

Exhibit A

1. County will perform the following with respect to the Project:
 - a. Provide procurement services, as needed, to assist Agency in procuring goods or services necessary to complete the Project. The Parties acknowledge and agree that County has procured, and selected, a third-party contractor to complete the Project. The Parties acknowledge and agree that procurement was performed by County, on Agency's behalf, and Agency will execute and hold the Construction Contract.
 - b. Provide project management services throughout completion of the Project. As used herein, "project management" means all monitoring, management, and related tasks reasonably necessary to complete the Project including, but not limited to, monitoring and management of all contracts with third parties for completion of the Project, on-site visits, review, approval, and processing of all amendments associated with the same, review of invoices, and monitoring of construction of the Facility.
 - c. Process approved invoices when County funds are utilized. The Agency will process invoices for all other funding sources.
 - d. County may, upon execution of a written amendment, provide future maintenance support services for the Facility. Such services will be provided by County to Agency at the County's then-current hourly rate and upon such other terms and conditions as the Parties may agree.
 - e. Subject to availability of resources, as determined by County in its sole discretion, provide other support services reasonably related to completion of the Project as may be necessary.

2. Agency will perform the following with respect to the Project:
 - a. Coordinate and cooperate with County with respect to all project management services.
 - b. Except for invoices under the Construction Contract, which will be paid in accordance with Section 3 of this Exhibit A, below, Agency shall pay County for all project-related invoiced costs paid to support the Project within thirty (30) days of the date of the invoice.
 - c. Agency is responsible for, and will pursue, all additional funding necessary to complete the Project:
 - i. When funding opportunities do not require County application, Agency shall coordinate with County to review funding opportunities to support construction of the Project, prior to application, providing the County an opportunity to avoid conflicting provisions.
 - ii. When funding opportunities require a formal County application, Agency shall complete the County Financial Application Lifecycle Form and obtain appropriate approval from the County prior to pursuit of funding. The County shall make the application and receive the funds for disbursement to the Agency.
 - d. Agency shall adhere to County reporting requirements and any requests for information related to the County ARPA funding distribution, or any other grant funds related to the Project.
 - e. Project Reporting:

- i. Agency will provide monthly Project updates to the County Liaison.
- ii. Reporting specific to County ARPA funding will be done in accordance with County ARPA reporting requirements and will be submitted on templates provided by County.
- iii. Agency shall submit copies of all State ARPA reporting to County, upon submission to the State.
- f. Agency shall support County requests for modifications to Agency accounting structures, reporting or information related to the County ARPA funding distribution, or any other grant funds related to the Project.

3. Construction Contract. The parties agree to the following with respect to the Construction Contract:

- a. Contract management: the parties will jointly manage the Construction Contract. This includes, but is not limited, review and negotiation of any contract amendments, and any other project management tasks, as defined above, that may be associated with the Construction Contract. Agency shall be the primary point of contact under the Construction Contract but shall coordinate directly with County with respect to project management tasks. Invoices: Agency will pay construction contract invoices directly to Construction contractor until all State ARPA funds are fully expended. From then, until when all County ARPA and State of Oregon (Business Oregon) funds are expended, County will pay any approved invoices due under the Construction Contract directly to the third-party contractor.

After those funding sources are exhausted, Agency will resume responsibility for paying invoices under the Construction Contract directly to the third-party contractor and will use all other funding sources for approved invoices due under the Construction Contract.

County ARPA funds must be committed via contract or purchase order by December 31, 2024, and expended by December 31, 2026. All materials purchased must be received and services provided must be completed prior to December 31, 2026, to be eligible for payment under this Agreement.

County Business Oregon grant funds must be committed via contract or purchase order by February 6, 2026. All materials purchased must be received and services provided must be completed prior to this date to be eligible for payment under this Agreement.

- b. Escrow/retainage. County will establish and manage any required accounts for purposes of withholding retainage under the Construction Contract.
- c. Meetings. The parties will meet no less than weekly to review the status of the Project and address any issues that may arise under the Construction Contract.

4. Additional Terms and Conditions

- a. Agency hereby grants County the right to use the Facility as a COVID-19/medical countermeasures vaccination or testing site, a COVID-19 treatment and mitigation site, or other such use reasonably related to the same. The parties will negotiate, in good faith, dates and times for such use of the Facility to be available to County for the aforementioned uses.

- b. Agency hereby grants County the right to use the Facility for any purpose reasonably necessary to respond to emergency situations, including, but not limited to, a public health emergency under ORS Chapter 433, an emergency under ORS 401, or an emergency under Clackamas County Code Chapter 6.03. Such uses may include, but are not limited to, using the Facility for an emergency operations center, mass vaccination site, temporary shelter location, or temporary storage of livestock or other animals. In the event of a declared emergency, County's right to use the Facility shall be superior to Agency's right to use the Facility. Agency shall cooperate with County to the maximum extent practicable to facilitate use of the Facility in the event of a declared emergency. Other than normal wear and tear, when County uses the Facility under this Agreement, County will be responsible for damage caused by the County's use. The rights granted to County herein shall survive termination of the Agreement. In the event County exercises its right to use the Facility to respond to emergency situations the parties further agree to negotiate, in good faith, for the County to reimburse the fair fund established pursuant to ORS 565.325 for damages incurred by Agency. Each party reserves all rights, remedies, claims, or defenses available to them at law, in equity, or under contract with respect to reimbursement for County's exercise of its rights to use the Facility.

EXHIBIT B
General Administrative and Federal Terms & Conditions

1. Federal Funds

a) This Agreement is funded in part by federal funds. By signing this Agreement, Agency certifies neither it nor its employees, contractors, subcontractors, or Agencies who will perform the Project activities described herein are currently employed by an agency or department of the federal government.

b) County has determined:

Entity is a subrecipient Entity is a contractor Not applicable

c) Assistance Listing Number of federal funds paid through this Agreement: 21.027

2. Administrative Requirements. Agency agrees to its status as an Agency, and accepts among its duties and responsibilities the following:

a) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or “deferred” until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are “earned.” All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to County within 15 days.

b) **Change in Key Personnel.** Agency is required to notify County, in writing, whenever there is a change in Agency key administrative or programmatic personnel and the reason for the change. Key personnel include but are not limited to: Executive Director, Finance Director, Project Manager, Bookkeeper, or any equivalent to these positions within the organization.

c) **Cost Principles.** Agency shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of the Agency.

d) **Period of Availability.** Agency may charge to the award only allowable costs resulting from obligations incurred during the funding period.

e) **Payment.** Agency must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement. Routine requests for reimbursement should be submitted as specified in Exhibit A.

f) **Project Reporting.** Agency shall comply with reporting requirements as specified in Exhibit A.

- g) **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or Agency, in accordance with Treasurer regulations at 31 CFR Part 205.
- h) **Closeout.** County will closeout this project when County determines that all applicable administrative actions and all required work have been completed by Agency. Agency must liquidate all obligations incurred under this award and must submit all financial, project, and other reports as required by the terms and conditions of the SLFRF Finale Rule, Final Rule FAQ's and/or County, no later than 90 calendar days after the end date of this Agreement.
- i) **Unique Entity Identifier and Contractor Status.** Agency shall register and maintain an active registration in the Central Contractor Registration database using its Unique Entity Identifier ("UEI"), located at <http://www.sam.gov>.
- j) **Suspension and Debarment.** Agency shall comply with 2 CFR Part 180. These rules restrict subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. Agency is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Agency may access the Excluded Parties List System at <http://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- k) **Lobbying.** Agency certifies that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the Byrd Anti-Lobbying Amendment 31 U.S.C. 1352. In addition, the Agency certifies that it is a nonprofit organization described in Section 501(c) (3) of the Code, but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
- l) **Monitoring.** Agency agrees to allow County access to conduct site visits and inspections of financial records. County, the Federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Agency that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at County's discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by County, or c) be de-obligated and terminated.
- m) **Record Retention.** Agency will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years from the end of program date, or such longer period as may be required by the Federal agency or applicable state law, following final payment and

termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

- n) **Certification of Compliance with Documents.** Agency acknowledges that it has read the Agreement conditions and certifications for the SLFRF, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the Clackamas County, as County, under those grant documents.
- o) **Failure to Comply.** Agency acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between County and Agency to continue, and that failure to comply with such terms and conditions represents a material breach of the original grant and this Agreement. Such material breach shall give rise to County's right, but not obligation, to withhold Agency grant funds until compliance is met, reclaim grant funds in the case of omissions or misrepresentations in financial or programmatic reporting, require repayment of any funds used by Agency in violation of this Agreement, to terminate this Agreement, and to pursue any right or remedy available to County at law, in equity, or under this Agreement.

3. Compliance with Applicable Laws

- a) **Public Policy.** Agency expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to Agency.
- b) **Rights to Inventions Made Under a Contract or Agreement.** Agency agrees that contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any further implementing regulations issued by the U.S. Treasury Department.
- c) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).** Agency agrees that if this Agreement is in excess of \$150,000, the recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the

awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency.

- d) **State Statutes.** Agency expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to this Agreement.
- e) **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR 200.216).** Agency certifies funds provided in this Agreement will not be expended to procure, obtain, extend or renew a contract to procure or obtain, or enter into a contract to procure or obtain equipment, services, or systems that use telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation or any subsidiary or affiliate of such entities, per Public Law 115-232 Section 889.
- f) **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, Agency may in writing request County to resolve the conflict. Agency shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement. County shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. Agency shall remain obligated to independently comply with all applicable laws and no action by County shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.
- g) **Mileage reimbursement.** If mileage reimbursement is authorized in Agency budget or by the written approval of County, mileage must be paid at the rate established by Agency's written policies covering all organizational mileage reimbursement or at the IRS mileage rate at the time of travel, whichever is lowest.
- h) **Human Trafficking.** In accordance with 2 CFR Part 175, Agency, its employees, contractors and subcontractors under this Agreement and their respective employees may not:
- Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
 - Procure a commercial sex act during the period of time the award is in effect; or
 - Used forced labor in the performance of the Agreement or subaward under this Agreement.

Agency must inform County immediately of any information Agency receives from any source alleging a violation of any of the above prohibitions in the terms of this Agreement. County may terminate this Agreement, without penalty, for violation of these provisions. County's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. Agency must include these requirements in any subaward made to public or private entities under this Agreement.

- i) **Davis Bacon.** If applicable, comply with the provisions of the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) and the requirements of 29 C.F.R. Part 5.