



# BOARD OF COMMISSIONERS

## Agenda Item Summary

Agenda Category:	Amendment	Item No:
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**Meeting Date:** June 20, 2023

**Department:** Finance

**Issue:** In the matter of approving an amendment related to the signed and approved agreement with the State of Oregon acting by and through Department of Administrative Services for funding provided through Coronavirus State Fiscal Recovery Fund (CSFRF) Grant Agreement, also referred to as ARPA – Natalie Parker, Grant Manager

**Background:** Klamath County has been awarded funds through Oregon Legislature as a recipient of federal Coronavirus State Fiscal Recovery Funding. The attached amendment and agreement detail the terms and conditions related to spending, reporting, as well as the approved projects submitted to the State of Oregon.

**Recommended Motion:** Approve and authorize the chair to sign State of Oregon Grant Agreement No. 8036 Amendment No. 1. **Fiscal impact:** NONE.

DONE AND DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

_____	_____	_____
Chair	Vice-Chair	Commissioner
Approved <input type="checkbox"/>	Approved <input type="checkbox"/>	Approved <input type="checkbox"/>
Denied <input type="checkbox"/>	Denied <input type="checkbox"/>	Denied <input type="checkbox"/>

**STATE OF OREGON  
GRANT AGREEMENT NO. 8036**

Amendment No. 1

This is Amendment Number 1 ("Amendment") to Grant Agreement No. 8036 (the "Agreement") between the State of Oregon, acting by and through the Department of Administrative Services ("DAS"), and Klamath County ("Grantee"), each a "Party" and, together, the "Parties". This Amendment amends the Agreement to delete certain federal subaward requirements pursuant to the U.S. Office of Management and Budget's 2 CFR PART 200, APPENDIX XI COMPLIANCE SUPPLEMENT (May 2023) ("OMB 2023 Compliance Supplement").

1. Effective Date. This Amendment shall become effective when fully signed and approved as required by applicable law.
2. Amendments to Agreement:

Exhibit C and the reference thereto on the first page of the Agreement are deleted in their entirety.

Amendments elsewhere in the Agreement: New Language is indicated by **bolding** and underlining and deleted language is indicated by **bolding** and ~~striking~~:

**SECTION 6: Covenants of Recipient**

Recipient covenants as follows:

- C. ~~Federal Audit Requirements. The Grant is federal financial assistance, and the associated Assistance Listings number is 21.027. Recipient is a subrecipient.~~
  - (1) Pursuant to the OMB 2023 Compliance Supplement, and effective July 1, 2022, the category of federal financial assistance from which the Grant is drawn does not give rise to "subrecipient" relationships for purposes of 2 CFR part 200. Accordingly, the Grant is not subject to the audit requirements of 2 CFR part 200, subpart F from and after July 1, 2022. If Recipient receives expends federal funds in excess of \$750,000 or more during Recipient's fiscal year in federal awards, it is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at its own expense submit to DAS a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Contract and shall submit or cause to be submitted to DAS the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Contract. Subject to the limitations in 2 CFR 200.425, a reasonably proportionate share of the costs of any audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 USC 5701-7507) (the "Single Audit Act"), are allowable costs payable with Grant funds.
- F. Compliance with 2 CFR Part 200. Recipient must comply with all applicable provisions of 2 CFR Part 200, Uniform Administrative Requirements, which include Cost Principles, ~~but not and Audit Requirements for Federal Awards, including the Cost Principles and~~ Single Audit Act requirements, pursuant to the OMB 2023 Compliance Supplement.
- P. Administrative Costs. Recipient may use a negotiated indirect cost rate or an approved cost allocation plan to recover administrative costs in administering the grant. If Recipient does not have a

**negotiated rate or approved cost allocation plan, it is allowable to use the federal de minimis rate of 10%.**

3. This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
4. Except as expressly amended above, all other terms and conditions of the original Agreement remain in full force and effect.
5. The parties expressly affirm and ratify the Agreement as herein amended.
6. Parties certify that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

IN WITNESS WHEREOF, the Parties have executed this Grant as of the dates set forth below.



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

**KLAMATH COUNTY**

By: \_\_\_\_\_  
Kate Nass, Chief Financial Officer

By: \_\_\_\_\_  
Derrick DeGroot, Chair

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

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

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

*s/ Samuel B. Zeigler*      6/6/2023  
\_\_\_\_\_  
Samuel B. Zeigler, Senior Assistant Attorney General



# Oregon

Tina Kotek, Governor

Department of Administrative Services

Chief Financial Office

155 Cottage St. NE

Salem, Oregon 97301

(503) 378-3106

## MEMO

**TO:** Grant Manager/Authorized Representative

**FROM:** COVID Fiscal Relief Team

**DATE:** May 30, 2023

**RE: AMENDMENT to DAS Coronavirus State Fiscal Recovery Fund (CSFRF) agreement – Expenditure Category (EC) 6.1 – Revenue Replacement**

On May 22, 2023, the Office of Management and Budget (OMB) released the [2023 Compliance Supplement](#) for the CSFRF funds. The new *2023 Compliance Supplement* revised language to provide clarity and align with the guidance found in the U.S. Treasury's [Final Rule FAQ 13.14 for Revenue Replacement Expenditure Category \(EC 6.1\)](#). An excerpt of the FAQ is as follows:

*“Treasury has determined that there are no subawards under this eligible use category. The definition of subrecipient in the Uniform Guidance provides that a subaward is provided for the purpose of “carrying out” a portion of a federal award. Recipients’ use of revenue loss funds does not give rise to subrecipient relationships.”*

The change in guidance is found in the *2023 Compliance Supplement* for Assistance Listing Number (ALN) 21.027 (CSFRF) starting on page 4-21.027-6. This guidance states that the U.S. Treasury has determined that there are no subawards under the Revenue Replacement (EC 6.1) use category because a recipient's use of revenue loss funds does not give rise to subrecipient relationships given that there is no federal program or purpose to carry out in the case of the revenue loss portion of the award.

**Please note: All the allocations of funding made by individual members of the Oregon Legislature fall into the Revenue Replacement (EC 6.1) category.**

The result of this guidance is that a change is necessary in the nature of the CSFRF agreement between your organization and the Department of Administrative Services (DAS). An amendment is attached which addresses the recent guidance and removes the requirements that are specific to a subrecipient agreement.

Specifically, the amendment removes:

- 1) the Single Audit requirement for grants under the 6.1 category;
- 2) the requirement to report expenditures to the Schedule of Expenditures of Federal Awards (SEFA); and
- 3) the entirety of Exhibit C referencing the federal pass-through funding.

The **effective date for this change is retroactive to July 1, 2022**, and is reflected in the attached amendment to your agreement. Please sign and return the attached amendment at your earliest convenience, **but not later than June 23, 2023**. **If your entity is unable to meet this requested deadline, please contact me to discuss the earliest possible date you can return the amendment.**

Please contact me if you have any questions.



**BOARD OF COMMISSIONERS**  
**Agenda Item Summary**

Agenda Category:	Agreements	Item No: <u>11.3</u>
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**Meeting Date:** January 4, 2022

**Originating Department:** Finance

**Issue:** In the matter of an agreement with the State of Oregon acting by and through Department of Administrative Services for funding provided through Coronavirus State Fiscal Recovery Fund (CSFRF) Grant Agreement – Vickie Noel, Finance Director

**Background:** Klamath County has been awarded funds through Oregon Legislature as a recipient of federal Coronavirus State Fiscal Recovery Funding. The attached agreement details the terms and conditions related to spending, reporting, as well as the approved projects submitted to the State of Oregon.

**Fiscal Impact:** Revenue of \$1,500,000.00 to the COVID19 Pandemic Grant fund.

**Recommended Motion:** Move to approve and authorize Chair to sign agreement between the State of Oregon and Klamath County, Grant Agreement 8036. Fiscal Impact: Revenue of \$1,500,000.00 to the COVID-19 Pandemic Grant Fund.

DONE AND DATED this 4 day of January, 2022.

  
 \_\_\_\_\_  
 Chair

  
 \_\_\_\_\_  
 Vice-Chair

  
 \_\_\_\_\_  
 Commissioner

Approved   
 Denied

Approved   
 Denied

Approved   
 Denied

**CORONAVIRUS STATE FISCAL RECOVERY FUND  
GRANT AGREEMENT**

Contract Number: 8036

This grant agreement (“Contract”), dated as of the date the Contract is fully executed, is between the State of Oregon, acting through its Oregon Department of Administrative Services (“DAS”), and Klamath County (“Recipient”). This Contract becomes effective only when fully signed and approved as required by applicable law (“Effective Date”). Unless extended or terminated earlier in accordance with its terms, this Contract shall expire **October 1, 2024**.

This Contract includes Exhibit A - Contact Information, Use of Funds/Project Description and Reporting Requirements, Exhibit B - Insurance Requirements and Exhibit C - Federal Award Identification.

Pursuant to Oregon Laws 2021, chapter 669, section 74, DAS is authorized to distribute grant funds from funds received by the State of Oregon under the federal American Rescue Plan Act Coronavirus State Fiscal Recovery Fund (codified as 42 U.S.C. 802) for the purpose of Klamath County Infrastructure & Economic Development as more particularly described in Exhibit A.

**SECTION 1 - KEY GRANT TERMS**

The following capitalized terms have the meanings assigned below.

**Grant Amount:** \$1,500,000.00.

**Completion Deadline:** June 30, 2024.

**SECTION 2 - FINANCIAL ASSISTANCE**

DAS shall provide Recipient, and Recipient shall accept from DAS, a grant (the “Grant”) in an aggregate amount not to exceed the Grant Amount.

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

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

**SECTION 3 - DISBURSEMENT**

- A. Full Disbursement. Upon execution of this Contract and satisfaction of all conditions precedent, DAS shall disburse the full Grant to Recipient.
- B. Financing Availability. DAS’s obligation to make, and Recipient’s right to request disbursement under this Contract terminate on the Completion Deadline.
- C. Conditions to Disbursements. DAS has no obligation to disburse Grant funds unless:
  - (1) DAS has sufficient funds currently available for this Contract; and
  - (2) DAS has received appropriations, limitations, allotments or other expenditure authority sufficient to allow DAS, 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.

#### SECTION 4 - USE OF GRANT

As more particularly described in Exhibit A, Recipient will use the Grant to Klamath County Infrastructure & Economic Development (the “Project”). Recipient may only use Grant funds to cover Project costs incurred during the period beginning March 3, 2021, and ending on the Completion Deadline (“Eligible Costs”). Recipient must disburse the entire Grant Amount on Eligible Costs no later than the Completion Deadline.

#### SECTION 5 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

Recipient represents and warrants to DAS as follows:

A. Organization and Authority.

- (1) Recipient is a local government, as that term is defined in ORS 174.116, 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 DAS, is legal, valid and binding, and enforceable in accordance with their terms.

B. Compliance with Coronavirus State Fiscal Recovery Fund. Recipient will comply with the terms, conditions and requirements of the federal Coronavirus State Fiscal Recovery Fund (codified at 42 U.S.C. 802) from which the Grant is funded, including all implementing regulations (31 CFR 35.1 *et seq.*) and other guidance promulgated by the U.S. Department of the Treasury (collectively, the “CSFRF”).

C. Full Disclosure. Recipient has disclosed in writing to DAS 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 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 Grant or the ability of Recipient to perform all obligations required by this Contract.

#### SECTION 6 - 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 Contract.

B. Compliance with Laws.

- (1) Recipient will comply with the requirements of all applicable federal, state and local laws, rules, regulations, and orders of any governmental authority, except to the extent an order of a governmental authority is contested in good faith and by proper proceedings.
- (2) Recipient is responsible for all federal or state tax laws applicable to its implementation of the Project and its use of the Grant or compensation or payments paid with the Grant.

C. Federal Audit Requirements. The Grant is federal financial assistance, and the associated Assistance Listings number is 21.027. Recipient is a subrecipient.

- (1) If Recipient receives federal funds in excess of \$750,000 in Recipient's fiscal year, it is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at its own expense submit to DAS a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Contract and shall submit or cause to be submitted to DAS the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Contract.
- (2) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Recipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the funds received under this Contract.
- (3) Recipient shall save, protect and hold harmless DAS from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Contract. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and the State of Oregon.
- (4) Recipient is authorized to use the Grant to pay itself for those administrative costs that are eligible costs under the CSFRF to implement the Project. DAS's approval of Recipient's administrative costs does not preclude the State of Oregon from later recovering costs from Recipient if the U.S. Department of the Treasury disallows certain costs after an audit.

D. System for Award Management. Recipient must comply with applicable requirements regarding the federal System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM.

E. Employee Whistleblower Protection. Recipient must comply, and ensure the compliance by subcontractors or subrecipients, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Recipient must inform subrecipients, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

F. Compliance with 2 CFR Part 200. Recipient must comply with all applicable provision of 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, including the Cost Principles and Single Audit Act requirements.

G. Federal Funds. DAS's payments to Recipient under this Grant will be paid by funds received by DAS from the United States Federal Government. Recipient, by signing this Grant certifies neither it nor its employees, contractors, subcontractors or subrecipients who will administer this Contract are currently employed by an agency or department of the federal government.



- H. Insurance. Recipient shall maintain, or cause to be maintained, insurance policies with responsible insurers, insuring against liability, in the coverages and amounts described in Exhibit B.
- I. Return of Undisbursed Grant Funds. Recipient must return to DAS any Grant funds not disbursed by the Completion Deadline.
- J. Financial Records. Recipient will cooperate with DAS to provide all necessary financial information and records to comply with CSFRF reporting requirements, as well as provide DAS the reporting required in Exhibit A. Recipient will keep proper books of account and records on all activities associated with the Grant, including, but not limited to, invoices, cancelled checks, payroll records, instruments, agreements and other supporting financial records documenting the use of the Grant. Recipient will maintain these books of account and records in accordance with generally accepted accounting principles and will retain these books of account and records until five years after the Completion Deadline or the date that all disputes, if any, arising under this Contract have been resolved, whichever is later.
- K. Inspection. Recipient shall permit DAS, and any party designated by DAS, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives, at any reasonable time, to inspect and make copies of any accounts, books and records related to the administration of this Contract. Recipient shall supply any Contract-related information as DAS may reasonably require.
- L. Notice of Event of Default. Recipient shall give DAS 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.
- M. Contribution and Recipient Subcontracts.

(1) Contribution.

(i) 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 ("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. 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. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third-Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third-Party Claim.

(ii) With respect to a Third-Party Claim for which DAS is jointly liable with Recipient (or would be if joined in the Third-Party Claim), DAS 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 DAS on the one hand and of 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 DAS 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. DAS's contribution amount in any

instance is capped to the same extent it would have been capped under Oregon law if DAS had sole liability in the proceeding.

(iii) With respect to a Third-Party Claim for which Recipient is jointly liable with DAS (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 DAS in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of DAS 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 DAS 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.

(2) Recipient Subcontracts. Recipient may enter into agreements with contractors or subcontractors (collectively, "Subcontracts") for performance of the Project.

(i) Recipient shall take all reasonable steps to cause 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 Indemnitee, be indemnified by the contractor from and against any and all Claims.

(ii) Recipient shall require its first-tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance of the types and in the amounts specified in Exhibit B and meeting the requirements under ADDITIONAL INSURED, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under its Subcontracts, and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to DAS. Recipient shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall Recipient permit a contractor to work under a Subcontract when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which Recipient directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

N. Representations and Covenants Regarding Prevailing Wage.

- (1) The prevailing wage rate requirements that may apply to the Project are set forth in ORS 279C.800 through 279C.870, the administrative rules promulgated thereunder (OAR Chapter 839, Division 25) and Oregon Laws 2021, chapter 678, section 17 (collectively, state “PWR”), or, if applicable, 40 U.S.C. 3141 et seq. (federal “Davis-Bacon Act”). If applicable, Recipient shall:
  - a) comply with PWR, require its contractors and subcontractors to pay the applicable PWR or Davis-Bacon Act rates, as applicable, 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
  - c) unless exempt under Section 17(2) of Oregon Laws 2021, chapter 678, if Recipient is a “public body” and the Project is a “qualified project,” as those terms are defined in Section 17(3) of Oregon Laws 2021, chapter 678, Recipient shall require each contractor in a contract with an estimated cost of \$200,000 or greater to:
    - i. Enter into a project labor agreement that, at a minimum, provides for payment of wages at or above the prevailing rate of wage;
    - ii. Employ apprentices to perform 15 percent of the work hours that workers in apprenticeable occupations perform under the contract, in a manner consistent with the apprentices’ respective apprenticeship training programs;
    - iii. Establish and execute a plan for outreach, recruitment and retention of women, minority individuals and veterans to perform work under the contract, with the aspirational target of having at least 15 percent of total work hours performed by individuals in one or more of those groups; and
    - iv. Require any subcontractor engaged by the contractor to abide by the requirements set forth in subparagraphs (i), (ii) and (iii) above, if the work to be performed under the subcontract has an estimated cost of \$200,000 or greater.
- (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.

## SECTION 7 - DEFAULT

- A. Recipient Default. Any of the following constitutes an “Event of Default” of Recipient:
- (1) Misleading Statement. Any materially 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.
  - (2) Failure to Perform. Recipient fails to perform, observe or discharge any of its covenants, agreements, or obligations 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 DAS. DAS may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.
- B. DAS Default. DAS will be in default under this Contract if it fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Contract.

## SECTION 8 - REMEDIES

- A. DAS Remedies. Upon the occurrence of an Event of Default, DAS may pursue any remedies available under this Contract, at law or in equity. Such remedies include, but are not limited to, termination of DAS’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 DAS. If, as a result of an Event of Default, DAS 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 DAS’s demand. DAS 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. DAS reserves the right to turn over any unpaid debt under this Section 8 to the Oregon Department of Revenue or a collection agency and may publicly report any delinquency or default. These remedies are cumulative and not exclusive of any other remedies provided by law.
- B. Recipient Remedies. In the event of default by DAS, Recipient’s sole remedy will be for disbursement of Grant funds for Eligible Costs of the Project, not to exceed the total Grant Amount, less any claims DAS has against Recipient.

## SECTION 9 - TERMINATION

In addition to terminating this Contract upon an Event of Default as provided in Section 8, DAS may terminate this Contract with notice to Recipient under any of the following circumstances:

- A. If DAS anticipates a shortfall in applicable revenues or DAS fails to receive sufficient funding, appropriations or other expenditure authorizations to allow DAS, 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 10 - MISCELLANEOUS**

- A. No Implied Waiver. No failure or delay on the part of DAS 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 DAS at the addresses listed in Exhibit A, 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.

- 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 DAS, 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 DAS.
- 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.** DAS 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 6 (excepting 6.H, Insurance), 7, 8, 10.B, 10.C, 10.L and 10.M.
- K. **Time is of the Essence.** Recipient agrees that time is of the essence under this Contract.
- L. **Attorney Fees.** To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract will be entitled to recover from the other its reasonable attorney fees and costs and expenses at trial, in a bankruptcy, receivership or similar proceeding, and on appeal. Reasonable attorney fees shall not exceed the rate charged to DAS by its attorneys.
- M. **Public Records.** DAS'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  
 Department of Administrative Services

**KLAMATH COUNTY**

By:   
 DAS Authorized Representative  
 George Naughton  
 DAS Chief Financial Officer

By:   
 Authorized Representative Signature  
 Kelley Minty Morris, Chair  
 Authorized Representative Name and Title

Date: January 7, 2022

Date: 1/4/22

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

s/ Samuel B. Zeigler 12/16/2021  
 Samuel B. Zeigler, Senior Assistant Attorney General

**EXHIBIT A**  
**CONTACT INFORMATION, USE OF FUNDS/ PROJECT DESCRIPTION AND REPORTING REQUIREMENTS**

**Contact Information:**

**DAS**

State of Oregon, acting by and through its  
 Department of Administrative Services  
 155 Cottage St. NE  
 Salem, OR 97301-3966

**Contract Administrator:** Stephanie Tyrer

**Telephone:** 971-374-3308

**Email:** statefiscal.recoveryfund@das.oregon.gov

**Recipient**

Klamath County

305 Main Street  
 Klamath Falls OR 97601

**Contact:** Natalie Parker

**Telephone:** 541-883-4202

**Email:** nparker@klamathcounty.org

**Use of Funds/ Project Description:**

Recipient shall complete construction of a 7,500 square foot, student-prioritized Childcare Resource and Learning Center with ability to prioritize care for children 0-5 years of age. Recipient shall replace “porta potties” constructing a standard public restroom at the Klamath Community Youth Sports Complex dba Steen Sports Park. Recipient shall purchase a new F-450 4-wheel drive Ambulance, equipped with a new Bendix King VHF radio compatible with Klamath County 911’s radio system and built using a “standard configuration” Braun Northwest patient transport module equipped with a Stryker Power Load system. Recipient shall purchase or build a small house near the Rocky Point Fire Station to house firefighters and EMT’s in a safe and private area.

**Reporting Requirements:**

**Schedule**

Report Name	Frequency	Due Dates
Project Performance Plan	One-Time	January 15, 2022
Quarterly Report	Quarterly	April 15 <sup>th</sup> , July 15 <sup>th</sup> , October 15 <sup>th</sup> , January 15 <sup>th</sup>
Annual Report	Annually	January 15, 2022; July 15 <sup>th</sup> annually thereafter

**Project Performance Plan**

Recipient shall submit to DAS, using a template and instructions provided by DAS, the following information in the Project Performance Plan:

1. Problem Statement
2. Goal
3. Rationales
4. Assumptions
5. Resources
6. Activities

7. Outputs
8. Short-Term Outcomes
9. Intermediate Outcomes
10. Long-Term Outcomes

### **Quarterly Reports**

Recipient shall submit Quarterly Reports to DAS which shall include such information as is necessary for DAS to comply with the reporting requirements established by 42 U.S.C. 802, guidance issued by the U.S. Treasury, and 2 CFR Part 200 (known as the “Super Circular”). The reports shall be submitted using a template provided by DAS that includes the following information:

1. Expenditure Report
  - a) Quarterly Obligation Amount
  - b) Quarterly Expenditure Amount
  - c) Projects
  - d) Primary Location of Project Performance
  - e) Detailed Expenditures (categories to be provided by DAS)
2. Project Status Update
  - a) Status of project: not started, completed less than 50 percent, completed 50 percent or more, completed.
  - b) Progress since last update including project outputs and achieved outcomes.
  - c) Identify barriers/risks to outcomes and describe actions taken to mitigate delays/risks to the overall project goal.
  - d) Optional: Share with DAS community outreach/engagement or other positive local news stories.

### **Annual Reports**

Recipient shall submit to DAS a report annually on the following, as applicable, using a template provided by DAS:

1. How the Project is Promoting Equitable Outcomes, if applicable
2. How the Project is Engaging with the Community, if applicable

### **Administrative Costs**

Recipient shall also deliver to DAS no later than July 15, 2024, an accounting of all of its direct administrative costs paid by this Grant accompanied by a certification statement that all such costs comply with the CSFRF. Grant funds may not be used to pay for any costs incurred after the Completion Deadline. For any unexpended Grant funds that were allocated for administrative costs as provided in the not-to-exceed amount above, DAS will direct Recipient on how to return or expend any such funds.



## EXHIBIT B – INSURANCE REQUIREMENTS

Recipient shall obtain at Recipient's expense the insurance specified in this Exhibit B before performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or continuous claims made coverage requirements, and all warranty periods that apply. Recipient shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to DAS. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Recipient shall pay for all deductibles, self-insured retention and self-insurance, if any. Recipient shall require and ensure that each of its subcontractors complies with these requirements and maintains insurance policies with responsible insurers, insuring against liability, in the coverages and amounts identified below.

### **WORKERS' COMPENSATION & EMPLOYERS' LIABILITY**

All employers, including Recipient, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Recipient shall require and ensure that each of its subcontractors complies with these requirements. If Recipient is a subject employer, as defined in ORS 656.023, Recipient shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Recipient is an employer subject to any other state's workers' compensation law, Contactor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

As applicable, Recipient shall obtain coverage to discharge all responsibilities and liabilities that arise out of or relate to the Jones Act with limits of no less than \$5,000,000 and/or the Longshoremen's and Harbor Workers' Compensation Act.

### **COMMERCIAL GENERAL LIABILITY:**

**Required**     **Not required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

### **AUTOMOBILE LIABILITY INSURANCE:**

**Required**     **Not required**

Automobile Liability Insurance covering Recipient's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

#### **A. Automobile Liability Broadened Pollution Liability Coverage Endorsement**

If Recipient is transporting any type of **hazardous materials** to implement the Project, then endorsements CA 99 48 or equivalent and MSC-90 (if Recipient is a regulated motor carrier) are required on the Automobile Liability insurance coverage.

**PROFESSIONAL LIABILITY:**

Required     Not required

**Professional Liability** covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract by Recipient and Recipient's subcontractors, agents, officers or employees in an amount not less than \$1,000,000 per claim. Annual aggregate limit shall not be less than \$2,000,000. If coverage is on a claims-made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or Recipient shall provide continuous claims made coverage as stated below.

**POLLUTION LIABILITY:**

Required     Not required

Pollution Liability Insurance covering Recipient's or appropriate subcontractor's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Recipient, all arising out of the Project (including transportation risk) performed under this Contract is required. Combined single limit per occurrence shall not be less than \$1,000,000. Annual aggregate limit shall not be less than \$2,000,000.

An endorsement to the Commercial General Liability or Automobile Liability policy, covering Recipient's or subcontractor's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related clean-up cost incurred by Recipient that arise from the Project (including transportation risk) performed by Recipient under this Contract is also acceptable.

**EXCESS/UMBRELLA INSURANCE:**

Umbrella insurance coverage in the sum of \$2,000,000 shall be provided and will apply over all liability policies, without exception, including but not limited to Commercial General Liability, Automobile Liability, and Employers' Liability coverage. The amounts of insurance for the insurance required under this Contract, including this Excess/Umbrella insurance requirement, may be met by the Contractor obtaining coverage for the limits specified under each type of required insurance or by any combination of underlying, excess and umbrella limits so long as the total amount of insurance is not less than the limits specified for each type of required insurance added to the limit for this excess/umbrella insurance requirement.

**ADDITIONAL INSURED:**

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Recipient's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

**WAIVER OF SUBROGATION:**

Recipient shall waive rights of subrogation which Recipient or any insurer of Recipient may acquire against the DAS or State of Oregon by virtue of the payment of any loss. Recipient will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the DAS has received a waiver of subrogation endorsement from Recipient or Recipient's insurer(s).

**CONTINUOUS CLAIMS MADE COVERAGE:**

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then Recipient shall maintain continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of the Grant Agreement, for a minimum of 24 months following the later of:

- (i) Recipient 's completion and DAS's acceptance of all Services required under the Contract, or
- (i) DAS or Recipient termination of this Contract, or
- (ii) The expiration of all warranty periods provided under this Contract.

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

Recipient shall provide to DAS Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance DAS has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

**NOTICE OF CHANGE OR CANCELLATION:**

Recipient or its insurer must provide at least 30 days' written notice to DAS before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**INSURANCE REQUIREMENT REVIEW:**

Recipient agrees to periodic review of insurance requirements by DAS under this Contract and to provide updated requirements as mutually agreed upon by Recipient and DAS.

**STATE ACCEPTANCE:**

All insurance providers are subject to DAS acceptance. If requested by DAS, Recipient shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to DAS's representatives responsible for verification of the insurance coverages required under this Exhibit B.

**EXHIBIT C**  
**FEDERAL AWARD IDENTIFICATION**  
**(REQUIRED BY 2 CFR 200.332(A)(1))**

(i) Subrecipient* Name: <i>(must match name associated with UEI)</i>	Klamath County
(ii) Subrecipient's Unique Entity Identifier (UEI):	171481005
(iii) Federal Award Identification Number (FAIN):	SLFRP4454
(iv) Federal award date: <i>(date of award to DAS by federal agency)</i>	July 23, 2021
(v) Grant period of performance start and end dates:	Start: March 3, 2021 End: June 30, 2024
(vi) Grant budget period start and end dates:	Start: March 3, 2021 End: June 30, 2024
(vii) Amount of federal funds obligated by this Grant:	\$1,500,000.00
(viii) Total amount of federal funds obligated to Subrecipient by pass-through entity, including this Grant:	\$
(ix) Total amount of the federal award committed to Subrecipient by pass-through entity**: <i>(amount of federal funds from this FAIN committed to Recipient)</i>	\$1,500,000.00
(x) Federal award project description:	Coronavirus State Fiscal Recovery Fund
(xi) a. Federal awarding agency:	U.S. Department of the Treasury
b. Name of pass-through entity:	Oregon Department of Administrative Services
c. Contact information for awarding official of pass-through entity:	Stephanie Tyrer, COVID Fiscal Relief Mgr. statefiscal.recoveryfund@das.oregon.gov
(xii) Assistance listings number, title and amount:	Number: 21.027 Title: Coronavirus State and Local Fiscal Recovery Funds Amount: \$2,648,024,988.20
(xiii) Is award research and development?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(xiv) a. Indirect cost rate for the federal award:	
b. Is the 10% de minimis rate being used per 2 CFR § 200.414?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

\* For the purposes of this Exhibit C, "Subrecipient" refers to Recipient and "pass-through entity" refers to DAS.

\*\* The total amount of federal funds obligated to the Subrecipient by the pass-through entity is the total amount of federal funds obligated to the Subrecipient by the pass-through entity during the current state fiscal year.