



Contract Review Sheet

CS-5880-24

Intergovernmental Agreement #: CS-5880-24 Amendment #: _____

Contact: Ashley Gresley Department: Community Services Department

Phone #: (503) 584-7722 Date Sent: Tuesday, February 13, 2024

Title: Opal Creek Wilderness -North Santiam Community Self-Determination Project

Contractor's Name: Business Oregon

Term - Date From: January 18, 2024 Expires: November 30, 2026

Original Contract Amount: \$ 1,000,000.00 Previous Amendments Amount: \$ -

Current Amendment: \$ - New Contract Total: \$ 1,000,000.00 Amd% 0%

Incoming Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: ORS190 Intergovernmental Agreement Department

Description of Services or Grant Award

This grant will support the recovering economy of the North Santiam Canyon through the collaborative development of six local plans. The primary objective of this planning portfolio is to enhance the resilience and self-determination of the community by empowering local residents to actively participate in the decision-making processes that shape their lives, lands, and resources. Community members possess invaluable knowledge and aspirations which should inform the post-wildfire rebuilding and revitalization efforts, and this project aims to align economic and community development priorities with needs and values of local residents.

Desired BOC Session Date: 3/13/2024 Files submitted in CMS for Approval: 2/21/2024

Agenda Planning Date: 2/29/2024 Printed packets due in Finance: 2/27/2024

Management Update: 2/27/2024 BOC upload / Board Session email: 2/28/2024


BOC Session Presenter(s) Lari Rupp

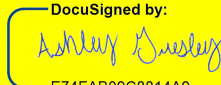
FOR FINANCE USE


Date Finance Received: _____ Date Legal Received: _____

Comments: Y

REQUIRED APPROVALS

DocuSigned by:

 2/23/2024
 Finance - Contracts Date

DocuSigned by:

 2/27/2024
 Contract Specialist Date

DocuSigned by:

 2/27/2024
 Legal Counsel Date

DocuSigned by:

 2/27/2024
 Chief Administrative Officer Date



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: March 13, 2024Department: Community ServicesTitle: Opal Creek Promise Intergovernmental Agreement with Business OregonManagement Update/Work Session Date: February 27, 2024 Audio/Visual aids Time Required: 10 minutes Contact: Lari Rupp Phone: 503-589-3235

Requested Action:

Consider approval of the incoming funds Intergovernmental Agreement with Oregon Business Development Department in the amount of \$1,000,000 to support wildfire recovery community planning projects.

Issue, Description & Background:

In 1996, the Omnibus Parks and Public Lands Management Act designated 37,500 acres of timberland in the Upper North Santiam Canyon region as the Opal Creek Wilderness and Scenic Recreation Area. As part of the overall agreement to transfer these lands, the legislation authorized \$15 million to support economic development activities for the affected communities in the area. The lands were designated and taken off Marion County's tax rolls, but the promised federal funding never arrived. Nearly 30 years later, a \$1,000,000 payment towards the \$15 million balance was appropriated through the 2023 Consolidated Appropriations Act. This payment was structured to be passed from the US Forest Service through Oregon Business Development Department to Marion County.

Financial Impacts:

This \$1,000,000 in incoming funds is directed to support six community planning projects in response to the 2020 wildfires. These projects focus on rebuilding and restoring the affected community through organized planning efforts.

Impacts to Department & External Agencies:

The planning projects are distributed throughout the North Santiam Canyon Region. \$115,000 is allocated for a Detroit downtown plan. \$120,000 is allocated for a Gates downtown Plan. \$120,000 is allocated for a Mill City Planning Project. \$120,000 is allocated for an Idanha Planning Project. \$115,000 is allocated for the Opal Creek Promise Implementation Plan. \$306,705 is allocated for a multi-jurisdictional North Fork Comprehensive Recreation Operations Plan with USFS and BLM.

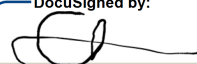
List of attachments:

Attachment 1- Intergovernmental Agreement with Oregon Business Development Department

Presenter:

Lari Rupp, Marion County Economic Development Specialist

Department Head Signature:

DocuSigned by:

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GRANT AGREEMENT

Project Name: Opal Creek Wilderness Economic Development Project - North Santiam Community Self-Determination Project

Project Number: C2023713

This grant agreement (“Contract”), dated as of the date of its last signature, is made by the State of Oregon, acting by and through its Oregon Business Development Department (“OBDD”), and Marion County (“Recipient”) for financing of the project referred to above and described in Exhibit B (“Project”). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in Section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

Under the authority provided in ORS 190.110, OBDD is sub-awarding the Grant Amount to Recipient that OBDD received in the Award of Domestic Grant 23-DG-11062765-123 from the United States Department of Agriculture-Forest Service (“USDA”), for the North Santiam Canyon Community Self-Determination Project (“Project”). The Project will assist rural communities in the North Santiam Canyon as authorized in the Opal Creek Wilderness Act (16 U.S.C. § 545b).

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

- Exhibit A – General Definitions
- Exhibit B – Project Description
- Exhibit C – Project Budget
- Exhibit D – Federal Terms and Conditions
- Exhibit E – Federal Award Information Required by 2 CFR 200.332(a)(1)

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

Estimated Project Cost: \$1,000,000.

Grant Amount: \$1,000,000.

Project Close-Out Deadline: 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

Project Completion Deadline: 30 November 2026.

SECTION 2 - FINANCIAL ASSISTANCE

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

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

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

SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Financing Proceeds will be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an OBDD-provided or OBDD-approved disbursement request form ("Disbursement Request).
- B. Financing Availability. The OBDD's obligation to make, and Recipient's right to request, disbursements under this Contract terminate on the Project Close-out Deadline.
- C. Conditions to Disbursements. As to any disbursement, OBDD has no obligation to disburse funds unless all following conditions are met:
- (1) There is no Default or Event of Default.
 - (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
 - (3) The OBDD, in the reasonable exercise of its administrative discretion, has sufficient moneys for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
 - (4) The OBDD (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as OBDD may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
 - (5) Any conditions to disbursement elsewhere in this Contract are met.

SECTION 4 - USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit B and according to the budget in Exhibit C. Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of OBDD.
- B. Costs of the Project. The Recipient shall apply the Financing Proceeds to the Costs of the Project in accordance with the federal Award of Domestic Grant 23-DG-11062765-123 and Oregon law, as applicable. Financing Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-award Costs of the Project, unless permitted by Exhibit B.
- C. Unexpended Grant Moneys. Any Grant moneys disbursed to Recipient, and any interest earned by Recipient on the Grant moneys, that are not used as set out herein or that remain after the Project is completed or this Agreement is terminated shall be immediately returned to OBDD.

SECTION 5 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to OBDD:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in Section 1.

B. Organization and Authority.

- (1) The Recipient is a County, and validly organized and existing under the laws of the State of Oregon.
- (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract, (b) incur and perform its obligations under this Contract, and (c) receive financing for the Project.
- (3) This Contract has been duly executed by Recipient, and when executed by OBDD, is legal, valid and binding, and enforceable in accordance with their terms.

C. Full Disclosure. The Recipient has disclosed in writing to OBDD all facts that materially adversely affect the Project, or the ability of Recipient to perform all obligations required by this Contract. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract, including Exhibit B and Exhibit C, is true and accurate in all respects.

D. Pending Litigation. The Recipient has disclosed in writing to OBDD all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to perform all obligations required by this Contract.

E. No Defaults.

- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract.
- (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to perform all obligations required by this Contract.

F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract will not: (i) cause a breach of any agreement or instrument to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.

G. Compliance with Tax Laws. Recipient is not in violation of any Oregon tax laws, including but not limited to a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and local taxes administered by the Department of Revenue under ORS 305.620.

H. Governmental Consent. The Recipient has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract and the undertaking and completion of the Project.

SECTION 6 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. Recipient shall promptly notify OBDD of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to perform all obligations required by this Contract.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract, the Project and the operation of the road, water, and waste water systems of which the Project is a component. In particular, but without limitation, Recipient shall comply with the following, as applicable:

- (1) Oregon Tax Laws, (as defined in Section 5.G).
- (2) State procurement regulations found in the Oregon Public Contracting Code, ORS Chapters 279A, 279B and 279C.
- (3) State labor standards and wage rates found in ORS Chapter 279C.

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

- C. Project Completion Obligations. Recipient shall:

- (1) Provide OBDD with copies of all plans and specifications relating to the Project, and a timeline for the bidding/award process, at least ten (10) days before advertising for bids.
- (2) Provide a copy of the bid tabulation and notice of award to OBDD within ten (10) days after selecting a construction contractor.
- (3) Permit OBDD to conduct inspection of the Project at any time.
- (4) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
- (5) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by the OBDD in writing.
- (6) No later than the Project Closeout Deadline, provide OBDD with a final project completion report on a form provided by OBDD, including Recipient's certification that the Project is complete, all payments are made, and no further disbursements are needed; provided however, for the purposes of this Contract, OBDD will be the final judge of the Project's completion.
- (7) Obtain and maintain as-built drawings for all facilities constructed as part of the Project.

- D. RESERVED.

- E. Operation and Maintenance of the Project. Recipient shall operate and maintain, or shall cause ODOT to operate and maintain, the Project in good repair and operating condition so as to preserve the long-term public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements for not less than ten years following the Project Close-Out Deadline. On or before the Project Closeout Deadline, Recipient shall adopt a plan acceptable to OBDD for the on-going operation and maintenance of the Project without reliance on OBDD financing and furnish OBDD, at its request, with evidence of such adoption. The plan must include measures for generating revenues sufficient to assure the operation and maintenance of the Project during the usable life of the Project.

- F. Insurance, Damage. For a period of not less than ten years following the Project Close-Out Deadline, the Recipient shall maintain, or cause to be maintained, insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. Nothing in this provision precludes Recipient from exerting a defense against any party other than OBDD, including a defense of immunity.
- G. No Transfer of Interest or Abandonment. For a period of not less than ten years following Project Close-Out Deadline, except as specifically described in Exhibit B (Project Description), Recipient shall not exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in the Project, unless worn out, obsolete, or, in the reasonable business judgment of Recipient, no longer useful in the operation of the Project. Nevertheless, OBDD may consent to such disposition if it has received 90 days' prior written notice from Recipient.
- H. Books and Records. The Recipient shall keep accurate books and records and maintain them according to generally accepted accounting principles by the Government Accounting Standards Board in effect at the time. Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.
- I. Inspections; Information. The Recipient shall permit OBDD and any party designated by OBDD: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters. The Recipient shall supply any related reports and information as OBDD may reasonably require.
- J. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds for a minimum of six years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Closeout Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.
- K. Economic Benefit Data. The OBDD may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion Date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by OBDD.
- L. Disadvantaged Business Enterprises. ORS 200.090 requires all public agencies to "aggressively pursue a policy of providing opportunities for disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses..." OBDD encourages Recipient in any contracting activity to follow good faith efforts as described in ORS 200.045, available at https://www.oregonlegislature.gov/bills_laws/ors/ors200.html. Additional resources are provided by the Governor's Policy Advisor for Economic and Business Equity. Also, the Certification Office for Business Inclusion and Diversity at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.
- M. Professional Responsibility. A professional engineer or architect, as applicable, registered and in good standing in Oregon, will be responsible for any construction design for the Project. All service

providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty. The Recipient shall follow standard construction practices, such as bonding requirements for construction contractors, requiring errors and omissions insurance, and performing testing and inspections during construction.

- N. Notice of Default. The Recipient shall give OBDD prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.
- O. Contributory Liability and Contractor Indemnification.

- (1) If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (“Third Party Claim”) against a party (the “Notified Party”) with respect to which the other party may have liability, the Notified Party must promptly notify the other party in writing and deliver a copy of the claim, process, and all legal pleadings related to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. The foregoing provisions are conditions precedent for either party’s liability to the other in regard to the Third Party Claim.

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

- (2) Recipient shall take all reasonable steps to require its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (“Indemnatee”) 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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the contractor from and against any and all Claims. This Section shall survive termination of this Contract.

SECTION 7 - DEFAULTS

Any of the following constitutes an “Event of Default”:

- A. Any false or misleading representation is made by or on behalf of Recipient, in this Contract or in any document provided by Recipient related to this Grant or the Project.
- B. Recipient fails to perform any obligation required under this Contract, other than those referred to in subsection A of this section 7, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by OBDD. The OBDD may agree in

writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 8 - REMEDIES

- A. Remedies. Upon any Event of Default, OBDD may pursue any or all remedies in this Contract and any other remedies available at law or in equity to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to any one or more of the following:
- (1) Terminating OBDD's commitment and obligation to make the Grant or disbursements of Financing Proceeds under the Contract.
 - (2) Barring Recipient from applying for future awards.
 - (3) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract.
 - (4) Requiring repayment of the Grant and all interest earned by Recipient on those Grant funds.
- B. Application of Moneys. Any moneys collected by OBDD pursuant to section 8.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by OBDD; then, as applicable, to repay any Grant proceeds owed; then, to pay other amounts due and payable under this Contract, if any.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to OBDD is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The OBDD is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 7 of this Contract.
- D. Default by OBDD. In the event OBDD defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of OBDD's obligations.

SECTION 9 - MISCELLANEOUS

- A. Time is of the Essence. Recipient agrees that time is of the essence under this Contract.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
 - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
 - (3) This Contract will be binding upon and inure to the benefit of OBDD, Recipient, and their respective successors and permitted assigns.
 - (4) Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract without the prior written consent of OBDD. The OBDD may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to OBDD, any fees or costs incurred because of such

assignment, including but not limited to attorneys' fees of OBDD's Counsel. Any approved assignment is not to be construed as creating any obligation of OBDD beyond those in this Contract, nor does assignment relieve Recipient of any of its duties or obligations under this Contract.

- (5) Recipient hereby approves and consents to any assignment, sale or transfer of this Contract that OBDD deems to be necessary.

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

- (1) The OBDD makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
- (2) In no event are OBDD or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.

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

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

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

If to Recipient: Administrative Officer
Marion County
555 Court Street NE, Suite 5235
Salem OR 97301

- E. No Construction against Drafter. This Contract is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- G. Amendments, Waivers. This Contract may not be amended without the prior written consent of OBDD (and when required, the Department of Justice) and Recipient. This Contract may not be amended in a manner that is not in compliance with the Act. No waiver or consent is effective unless in writing and signed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.

- H. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to OBDD by its attorneys.
- I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this 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.
- J. 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.
- K. Execution in 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.

SIGNATURES TO FOLLOW BELOW

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



Marion County
OREGON

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

MARION COUNTY

By: _____
Chris Cummings, Deputy Director

By: Please see signature page
Jan Fritz, Administrative Officer

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

 /s/ David Berryman per email dated 12 January 2024
David Berryman, Assistant Attorney General

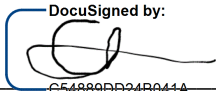
**SIGNATURE PAGE FOR
OPAL CREEK WILDERNESS -NORTH SANTIAM COMMUNITY SELF-
DETERMINATION PROJECT - CS-5880-24
between
MARION COUNTY and BUSINESS OREGON**


**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

Chair	Date
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Commissioner	Date
--------------	------

Commissioner	Date
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Authorized Signature:	<small>DocuSigned by:</small>  <small>654809DB24B041A...</small>	2/23/2024
	Department Director or designee	Date

Authorized Signature:	<small>DocuSigned by:</small>  <small>1E904094505E453...</small>	2/27/2024
	Chief Administrative Officer	Date

Reviewed by Signature:	<small>DocuSigned by:</small>  <small>60C98A6F708240B...</small>	2/27/2024
	Marion County Legal Counsel	Date

Reviewed by Signature:	<small>DocuSigned by:</small>  <small>D1FCCAACCB14CB...</small>	2/23/2024
	Marion County Contracts & Procurement	Date

EXHIBIT A - GENERAL DEFINITIONS

As used in this Contract, the following terms have the meanings below.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Financing Proceeds under applicable state or federal statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, OBDD or Recipient.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Financing Proceeds” means the proceeds of the Grant.

“ORS” means the Oregon Revised Statutes.

“Project Completion Date” means the date on which Recipient completes the Project.

EXHIBIT B - PROJECT DESCRIPTION

Background

The Project will support the recovering economy of the North Santiam Canyon through the collaborative development of six local plans. The primary objective of this planning portfolio is to enhance the resilience and self-determination of the community by empowering local residents to actively participate in the decision-making processes that shape their lives, lands, and resources. Community members possess invaluable knowledge and aspirations which should inform the post-wildfire rebuilding and revitalization efforts, and this project aims to align economic and community development priorities with needs and values of local residents.

Recipient will complete the following six local plans:

Plan 1: Detroit Downtown Visioning/Zoning Code Update

Recipient’s shall procure a contractor to support the facilitation of community workshops, consultations with urban planning experts, and the development of a comprehensive visioning and zoning code update plan (“Conceptual Plan”) for the City of Detroit. Recipient must seek community engagement for the evaluation of the Conceptual Plan. Community engagement requires the development of public information materials and hosting an open house where the public can voice their sentiments on the project and identify any opportunities or concerns. Community self-determination will be at the core of this initiative, enabling community members to shape the future of their downtown and participate in creating a vibrant and sustainable community.

Plan 2: Gates Business District Development Plan

Recipient shall procure a contractor to conduct a thorough assessment of the business district in the City of Gates. This will include engaging local business owners, residents and community leaders. The process will prioritize community self-determination, allowing the community to define the desired outcomes, guide the development planning and ensure economic growth and revitalization align with their aspirations.

Plan 3: Mill City Planning Project

Recipient must develop a planning project that may include infrastructure enhancements, public space improvements, and sustainable community development strategies. Recipient shall collaborate with city officials and residents to support the development of the planning Project . Through community self-determination, the planning project will empower Mill City residents to actively shape the future of their community.

Plan 4: Idanha Planning Project

Recipient must develop a community plan that focuses on infrastructure improvements, economic development opportunities, and the preservation of the City of Idanha's cultural heritage. Recipient shall collaborate with city representatives and community members to develop the community plan. Community self-determination will be the guiding principle in ensuring that the planning process reflects the goals and values of Idanha's residents.

Plan 5: Opal Creek Promise Implementation Plan

Grant funds will support Recipient's development of the Opal Creek Promise Implementation Plan for the remaining \$12 million of the Omnibus Parks and Public Lands Management Act of 1996, Sec. 1023 Opal Creek Wilderness and Scenic Recreation Area, 16 USC 545b. The development will include strategies for implementation of the Opal Creek Promise, a key initiative focused on fostering community resilience, economic recovery, and sustainable restoration. Community self-determination will be integrated into the Recipient's planning and implementation process, ensuring that local perspectives and aspirations inform the recovery efforts.

Plan 6: North Fork Comprehensive Recreation Operations Plan

Recipient shall develop a comprehensive recreation operations plan for the North Fork Corridor Area. Recipient will collaborate with the United States Forest Service (USFS) when developing the North Fork Comprehensive Recreation Operations Plan. Recipient will incorporate community self-determination principles in the planning process will actively engage stakeholders, including local residents and recreational users, to shape the plan and ensure it aligns with their recreational aspirations, safety needs and conservation plans.

Recipient may purchase supplies to support the implementation of the North Fork Comprehensive Recreation Operations Plan. Supplies include but are not limited to gateway treatments, themed interpretive signs, information kiosks, electronic pay stations, traffic control, ongoing maintenance and communications.

The Project includes pre-award costs for the above items. Pre-award costs for this project may begin 01 January 2023.

Reports

The Recipient is required to submit the following reports to Becky Baxter, Policy Coordinator at becky.baxter@biz.oregon.gov, phone (503) 931-4403:

Financial Status Reporting. A Federal Financial Report, Standard Form SF- 425 (and Federal Financial Report Attachment, SF-425A, if required for reporting multiple awards), must be submitted annually. These reports are due 85 days after the reporting period ending December 31. The final SF 425 (and SF-425A, if applicable) must be submitted either with the final payment request or no later than 120

days from the expiration date of the award. These forms may be found at <https://www.grants.gov/web/grants/forms.html> Program Performance Reports: In accordance with 2 CFR 200.301, reports must relate financial data to performance accomplishments of the federal award. An annual performance report is due 85 days after the reporting period ending December 31. The final performance report shall be submitted either with the final payment request, or separately, but not later than 120 days after the expiration date of the award.

EXHIBIT C - PROJECT BUDGET

	OBDD Funds	Other / Matching Funds
Activity	Approved Budget	Approved Budget
Plan 1- Detroit Downtown Visioning/Zoning Code Update	\$115,000	\$0
Plan 2- Gates Business District Business Development Plan	\$120,000	\$0
Plan 3- Mill City Planning Project	\$120,000	\$0
Plan 4- Idanha Planning Project	\$120,000	\$0
Plan 5- Opal Creek Promise Implementation Plan	\$115,000	\$0
Plan 6- North Fork Comprehensive Recreation Operations Plan	\$200,000	\$0
Supplies for the implementation of Plan 6- North Fork	\$106,705	\$0
Indirect Charges not to exceed 10.3296%	\$103,295	\$0
Total	\$1,000,000	\$0

EXHIBIT D – FEDERAL TERMS AND CONDITIONS

Recipient must include and incorporate the provisions described in this Exhibit in all contracts and subgrants that may use, in whole or in part, the funds provided by this Agreement.

Federal regulations applicable to this grant include, without limitation, the following:

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

Recipient must ensure that any further distribution or payment of the federal funds paid under this Agreement by means of any contract, subgrant, or other agreement between Recipient and another party for the performance of any of the activities of this Agreement, includes the requirement that such funds may be used solely in a manner that complies with the provisions of the federal Agreement.

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 OBDD 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 OBDD 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 must not be charged to the funds received under this Contract.
- (3) Recipient shall save, protect and hold harmless OBDD 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.

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.

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.

Notification. Recipient shall immediately notify OBDD of developments that have a significant impact on the activities supported under this Agreement. Also, notification must be given in case of problems, delays or adverse conditions that materially impair the ability to meet the objectives of the award. This notification must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

Debarment and suspension. Recipient shall immediately inform OBDD if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should Recipient or any of its principals receive a transmittal letter or other official federal notice of debarment or suspension, then it shall notify OBDD without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary. Recipient shall adhere to 2 CFR Part 180 Subpart C in regard to review of sub-recipients or contracts for debarment and suspension. All subrecipients and contractors must complete the form AD-1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Lower Tier Covered Transactions. Blank forms are available electronically. Completed forms must be kept on file with the primary recipient.

Eligible workers. Recipient shall ensure that all employees complete the I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 U.S.C. § 1324(a)). Recipient shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract or supplemental instruments awarded under this award.

BUILD AMERICA, BUY AMERICA (OMB Memo M-22-11). None of the funds provided under this award may be used unless:

- (1) All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) All manufactured products used in the project are produced in the United States— this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (3) All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. This excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

When necessary, Recipient may apply for a waiver from these requirements.

**EXHIBIT E – FEDERAL AWARD INFORMATION
REQUIRED BY 2 CFR 200.332(A)(1)**

Federal Award Identification:

- (i) Subrecipient* name (which must match registered name in SAM.gov): MARION COUNTY
- (ii) Subrecipient’s Unique Identifier number: J9U3RRVFMGB3
- (iii) Federal Award Identification Number (FAIN): 23-DG-11062765-123
- (iv) Federal Award Date: 9 August 2023
- (v) Sub-award Period of Performance Start and End Date: 31 December 2026
- (vi) Total Amount of Federal Funds Obligated by this Contract: \$1,000,000
- (vii) Total Amount of Federal Funds Obligated by this initial Contract and any amendments: \$1,000,000
- (viii) Total Amount of Federal Award to the pass-through entity: \$1,000,000
- (ix) Federal award project description: North Santiam Canyon Self-Determination Project.
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity: 10.726; Opal Creek Wilderness Economic Grant Program
 - (a) Name of Federal awarding agency: U.S. Department of Agriculture- Forest Service
 - (b) Name of pass-through entity: Oregon Business Development Department
 - (c) Contact information for awarding official of the pass-through entity: Ed Tabor, Administrator, Infrastructure and Programs Services, 503-949-3523
- (xi) CFDA Number and Name: 10.726, Opal Creek Wilderness Economic Grant Program
Amount: \$1,000,000
- (xii) Is Award R&D? No
- (xiii) Indirect cost rate for the Federal award: N/A

*For the purposes of this Exhibit E, “Subrecipient” refers to Recipient and “pass-through entity” refers to OBDD.