

DESCHUTES COUNTY DOCUMENT SUMMARY

This form is required to be submitted with all contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If this form is not included with the document, the document will be returned to the Department.

Please complete all sections above the Official Review line.

Date: 6/4/2024 Department: Fair & Expo Document Number: 2024-541

Type of Document: Grant Agreement (e.g., grant*, IGA, services agreement)

If an amendment, which Document No. is being amended? _____

Starting Date: upon approval Ending Date: 8/5/2024

Contractor/Supplier/Consultant Name: _____
State of Oregon/Oregon Business Development Department

Annual Value or Total Payment: \$94,112.00

Purpose of Document: Business Oregon Operation Loss Support grant acceptance agreement: see January 24, 2024 agenda staff report.

Insurance certificate received (check box and add certificate to document or note N/A)
Insurance expiration date: _____ Risk Mgmt review/date: _____

Contract initiation method:

- RFP, solicitation or bid process
 Informal quotes (<\$150K)
 Exempt from RFP, solicitation or bid process (specify below – see DCC §2.37)

Does this contract or agreement require payment to a vendor? Yes No

If **Yes**, is the vendor registered in Munis? Yes No

Funding Source: Included in current budget? Yes No

Cost Center/Project String: 6159651

If **No**, is a budget amendment required? Yes No

Departmental Contact and Title: Geoff Hinds Phone #: 541-548-2711

Department Director Approval: _____
Signature 6/5/24
Date

Distribution of Document: Who gets the document after it has been signed?
Elyse.Ballinger@deschutes.org

*if a grant, see signature authority section on next page

Official Review:

County signature required (check one):

- BOCC (more than \$250,000) – BOARD AGENDA Item
- County Administrator (up to \$250,000)
- Department Head/Director (up to \$50,000)

For grants, signature required (check one):

- BOCC (more than \$50,000) – BOARD AGENDA Item
- County Administrator (up to \$50,000 if no match required and no new staff hired)
- Department Director (up to \$10,000 if no match required and no new staff hired)

Legal Review _____ Date _____

**STATE OF OREGON
COUNTY FAIRGROUNDS OPERATIONAL SUPPORT
GRANT AGREEMENT**

Contract Number: C2024219

Project Name: Deschutes County

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

This Contract includes Exhibit A - Project Description.

Pursuant to Oregon Laws 2023, Chapter 546, Sections 9 and 10 (the “Act”), OBDD is authorized to make grants for the operation of county fairs and the maintenance and repair of county fairgrounds.

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

Grant Amount: \$94,112.

Project Completion Deadline: 30 June 2025.

SECTION 2 - FINANCIAL ASSISTANCE

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

SECTION 3 - DISBURSEMENT

- A. Full Reimbursement. Upon satisfaction of all conditions precedent, OBDD shall disburse the full Grant to Recipient.

- B. Conditions to Disbursements. OBDD has no obligation to disburse Grant funds unless:
- (1) OBDD has sufficient funds currently available for this Contract; and OBDD has received appropriations, limitations, allotments or other expenditure authority sufficient to allow OBDD, in the exercise of its reasonable administrative discretion, to make payment, and notwithstanding anything in the Contract, occurrence of such contingency does not constitute a default.
 - (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
 - (3) All other conditions precedent under this Contract are met.
 - (4) There is no Event of Default by Recipient.

SECTION 4 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

Recipient represents and warrants to OBDD as follows:

A. Organization and Authority.

- (1) Recipient is a county fair board, validly organized and existing under the laws of the State of Oregon.
- (2) Recipient has all necessary right, power and authority under its organizational documents and applicable Oregon law to execute and deliver this Contract and incur and perform its obligations under this Contract.
- (3) This Contract has been authorized by an ordinance, order or resolution of Recipient's governing body if required by its organizational documents or applicable law.
- (4) This Contract has been duly executed by Recipient, and when executed by OBDD, is legal, valid and binding, and enforceable in accordance with their terms.

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

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

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

SECTION 5 - COVENANTS OF RECIPIENT

- A. Project Completion Obligations. Recipient covenants that it shall use grant proceeds only for allowable costs including the operation of county fairs and the maintenance and operation of county fairgrounds.
- B. Notice of Adverse Change. Recipient shall promptly notify OBDD of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient related to the ability of Recipient to perform all obligations required by this Contract.
- C. Compliance with Laws. Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract, the Project and the operation of the facilities or infrastructure of which the Project is a component. In particular, but without limitation, Recipient shall comply with the following, as applicable:
- (1) All federal or state tax laws applicable to Recipient's implementation of the Project and its use of the Grant or compensation or payments paid with the Grant.
 - (2) State procurement laws found in the Oregon Public Contracting Code, ORS Chapters 279A, 279B and 279C.
 - (3) State labor standards and prevailing wage rate requirements found in ORS Chapter 279C.
 - (4) ORS 280.518 requiring public display of information on Lottery funding of the project. Recipient shall include the following statement, prominently placed, on all plans, reports, bid documents and advertisements relating to the Project:

"This Project was funded in part by the Oregon State Lottery and administered by the Oregon Business Development Department."
- These laws and their respective implementing rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.
- D. Ownership of Project. Assets resulting from the Project will be owned by Recipient for not less than five (5) years following the Project Completion Deadline.
- E. Operation and Maintenance of the Project. Recipient shall operate and maintain assets resulting from 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 five (5) years following the Project Completion Deadline. On or before the Project Completion Deadline, Recipient shall adopt a plan acceptable to OBDD for the on-going operation and maintenance of the Project without reliance on OBDD financing and furnish OBDD, at its request, with evidence of such adoption. The plan must include measures for generating revenues sufficient to assure the operation and maintenance of the Project during the usable life of the Project.
- F. Insurance, Damage. For a period of not less than five (5) years following the Project Completion Deadline, Recipient shall maintain, or cause to be maintained, insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. Nothing in this provision precludes Recipient from exerting a defense against any party other than OBDD, including a defense of immunity.

- G. Sales, Leases and Encumbrances. For a period of not less than five (5) years following the Project Completion Deadline, Recipient shall not sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in the Project, unless worn out, obsolete, or, in the reasonable business judgment of Recipient, no longer useful in the operation of the Project. Nevertheless, OBDD may consent to such disposition if it has received 90 days' prior written notice from Recipient.
- H. Books and Records; Inspections; Information. Recipient shall keep accurate books and records and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient. Recipient shall permit OBDD and their duly authorized representatives, and any party designated by OBDD: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters. Recipient shall supply any related reports and information as OBDD may reasonably require, including cooperation with OBDD to provide all necessary financial information and records to comply with statutory reporting requirements.
- I. Records Maintenance. Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Grant for a minimum of six (6) years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Financing Availability Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.
- J. Notice of Event of Default. Recipient shall give OBDD prompt written notice of any Event of Default, or any circumstance that with notice or the lapse of time, or both, may become an Event of Default, as soon as Recipient becomes aware of its existence or reasonably believes an Event of Default is likely.
- K. Contributory Liability and Contractor Indemnification.

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

- 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/SearchCertifiedDirectory.asp?XID=2315&TN=oregon4biz>.

SECTION 6 - DEFAULT

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

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

SECTION 7 - REMEDIES

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

SECTION 8 - TERMINATION

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

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

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

SECTION 9 - MISCELLANEOUS

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

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

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

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

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

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

If to Recipient: Director, Dechutes County Fair & Expo Center
Dechutes County Fair Board
3800 SW Airport Way
Redmond, OR 97756

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

available to the public, whether directly, indirectly or otherwise, unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

- J. Survival. The following provisions, including this one, survive expiration or termination of this Contract: Sections 5, 6, 7, 9.B, 9.C, and 9.L.
- K. Time is of the Essence. Recipient agrees that time is of the essence under this Contract.
- L. Public Records. OBDD's obligations under this Contract are subject to the Oregon Public Records Laws.

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



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



DESCHUTES COUNTY FAIR BOARD

By: _____
Robert Ault, Emergency and Special
Programs Manager

By: _____
David Bishop, Fair Board Chair

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

Not Required per OAR 137-045-0030

EXHIBIT A - PROJECT DESCRIPTION

Recipient will use grant funds for the operation of county fairs and the maintenance and repair of county fairgrounds.