

## GRANT AGREEMENT

Title: House Bill 4123 (2022 Regular Session) General Fund Grant

Agreement Number: 107-2022-4123-02

This grant agreement ("Contract"), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through its Department of Administrative Services ("DAS" or "State"), and Coos County ("Recipient"). This Contract becomes effective only when fully signed and approved as required by applicable law (the "Effective Date") and, unless earlier terminated, expires on June 30, 2023 (the "Expiration Date"). The period from the Effective Date through the Expiration Date is hereinafter referred to as the "Grant Term." **Certain terms of the Contract survive its termination or expiration as set forth in Section 8.K below.**

The Contract includes attached Exhibit A - Project Description, which is incorporated by this reference.

Pursuant to the Oregon Laws 2022, chapter 70, section 3 (the "Authorization"), the Oregon Legislature appropriated \$1,000,000 from the General Fund for a grant to Recipient to establish a coordinated homeless response system consisting of Recipient, the City of Coos Bay, the City of North Bend and any other parties to the agreement forming the response system, as more particularly described in Exhibit A (the "Project").

### SECTION 1 – GRANT

DAS shall provide Recipient, and Recipient shall accept from DAS, a grant (the "Grant") in the amount of \$1,000,000.

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

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

### SECTION 2 – DISBURSEMENT

A. Full Disbursement. Upon satisfaction of all conditions precedent, DAS shall disburse the full Grant to Recipient.

B. Condition to Disbursement. DAS has no obligation to disburse funds unless, in the reasonable exercise of its administrative discretion, it has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.

### SECTION 3 - USE OF GRANT

A. Use of Grant Moneys. Recipient shall use the Grant to implement the Project, as more particularly described in Exhibit A.

B. Costs Paid for by Others. Recipient may not use any of the Grant to cover costs to be paid for by another State of Oregon agency or any third party.

#### SECTION 4 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

Recipient represents and warrants to DAS:

A. Organization and Authority.

- (1) Recipient is a county validly organized and existing under the laws of the State of Oregon.
- (2) Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract, (b) incur and perform its obligations under this Contract, and (c) receive the Grant funds.
- (3) This Contract has been authorized by an ordinance, order or resolution of Recipient's governing body.
- (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. Full Disclosure. Recipient has disclosed in writing to DAS all facts that materially adversely affect its ability to perform all obligations required by this Contract. 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 is true and accurate in all respects.

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

D. No Defaults. No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract.

E. 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; (ii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient or its properties or operations.

#### SECTION 5 - COVENANTS OF RECIPIENT

Recipient covenants as follows:

A. Notice of Adverse Change. Recipient shall promptly notify DAS of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient related to the ability of Recipient to perform all obligations required by this Contract.

B. Compliance with Laws. Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract and Recipient's use of the Grant funds.

C. Annual Progress Reports. Recipient must submit to DAS annual progress reports (each a "Progress Report") until Grant funds are fully expended. A Progress Report is due one year from distribution of funding and thereafter annually until the Grant funds are fully expended. Each Progress Report shall contain a brief narrative and financial report on the total use of Grant funds. The narrative and financial report should include, but need not be limited to, the following information:

- (1) Brief description of the Project and use of Grant funds to date;
- (2) Timeline for major Project deliverables;
- (3) Grant funds spent to date; and
- (4) Project milestones met to date.

- D. **Books and Records.** Recipient shall keep accurate books and records of the uses of the Grant and maintain them according to generally accepted accounting principles.
- E. **Inspections; Information.** Recipient shall permit DAS and any party designated by DAS to inspect and make copies, at any reasonable time, of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters. Recipient shall supply any related reports and information as DAS may reasonably require.
- F. **Records Maintenance.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract for a minimum of six years beyond the later of the final and total expenditure or disposition of the Grant. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.
- G. **Notice of Default.** Recipient shall give DAS prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.
- H. **Contribution.**

- 1) If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
- 2) With respect to a Third Party Claim for which State is jointly liable with Recipient (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
- 3) With respect to a Third Party Claim for which Recipient is jointly liable with State (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses

(including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

#### SECTION 6 - DEFAULTS

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

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

#### SECTION 7 - REMEDIES

- A. Remedies. Upon any Event of Default, DAS may pursue any or all remedies in this 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 DAS's commitment and obligation to make the Grant.
  - (2) Barring Recipient from applying for future awards.
  - (3) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this 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 DAS pursuant to section 7.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by DAS; then, as applicable, to repay any Grant proceeds owed; then, to pay other amounts due and payable under this Contract, if any.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to DAS is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. DAS is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 7 of this Contract.

**SECTION 8 - 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 DAS, Recipient, and their respective successors and permitted assigns.
  - (4) Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract without the prior written consent of DAS. DAS may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to DAS, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of DAS's counsel. Any approved assignment is not to be construed as creating any obligation of DAS beyond those in this Contract, nor does assignment relieve Recipient of any of its duties or obligations under this Contract. For the avoidance of doubt, nothing in this Section 8.B(4) prevents Recipient from distributing Grant funds to contractors or subgrantees for the Project purposes described in Section 3.A.
- C. Disclaimer of Warranties; Limitation of Liability. Recipient agrees that:
- (1) DAS makes no warranty or representation.
  - (2) In no event are DAS or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract.
- 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 DAS at the addresses set forth below, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

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

If to DAS:                      Oregon Department of Administrative Services  
  ATTN: Kate Nass, Deputy Chief Financial Officer  
  155 Cottage St. NE  
  Salem OR 97301  
  [kate.nass@oregon.gov](mailto:kate.nass@oregon.gov)

If to Recipient: Coos County  
ATTN: Jessica Terra, Grant Coordinator  
835 California Avenue  
North Bend, OR 97459  
jterra@northbendcity.org

- 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 DAS (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 Authorization. No waiver or consent is effective unless in writing and signed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- H. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this 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 DAS by its attorneys.
- I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this 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, if any) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.
- K. Survival. The following provisions survive expiration or termination of this Contract: Sections 5.C., 5.E., 5.F., 5.H., 6, 7, 8.H., 8.I and 8.K.
- L. 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.

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

RECIPIENT

By: Kate A

By: [Signature]

Date: May 9 2022

Date: 5/3/2022

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

Sam Zeigler, Senior Assistant Attorney General, via email dated 4/15/2022

**EXHIBIT A  
PROJECT DESCRIPTION**

Pursuant to the Authorization, Recipient shall use Grant funds for the Project as follows:

(1) Within 90 days of receiving the Grant funds, Recipient shall enter into an agreement among Recipient, the City of Coos Bay, the City of North Bend and any other parties to the agreement to create a coordinated homeless response system (the "System") that consists of, at a minimum:

- (a) The establishment of a coordinated homeless response office; ✓
- (b) An advisory board with representation from the governing body of each member government;
- (c) Specific roles of each member to support the advisory board and office; ✓
- (d) Plans for coordination with any local continuum of care receiving funding under 24 C.F.R. part 578; and
- (e) The establishment of a centralized point of contact for the office. ✓

(2) The System, with Recipient's oversight, shall use the Grant funds to:

- (a) Hire necessary staff for the office;
- (b) Support coordinated communications and public engagement;
- (c) Support community outreach and policy development, including stipends for people with current or recent lived experience of homelessness;
- (d) Acquire technical assistance and capacity building, including contracting with consultants; and
- (e) Pay for other expenses reasonably necessary to meet the requirements in this Exhibit A.

(3) Within one year of receiving the Grant funds, the System, through the advisory board or each member government to the agreement, shall adopt a five-year strategic plan that will identify and set goals for addressing:

- (a) Funding to support the ongoing operations of the System;
- (b) Increasing or streamlining resources and services to people at risk of or experiencing homelessness within the participating cities and counties;
- (c) Incorporating national best practices for ending homelessness;
- (d) Eliminating racial disparities within homeless services within the service area; and
- (e) Creating pathways to permanent and supportive housing that is affordable to local populations experiencing or at risk of homelessness.

(4) No later than November 15, 2023, and September 15, 2024, the System shall provide a report to the Housing and Community Services Department, Oregon Housing Stability Council and one or more appropriate interim committees of the Legislative Assembly in the manner provided in ORS 192.245 on:

- (a) The goals adopted in the five-year strategic plan and the progress made in implementing the plan;
- (b) Other changes in homelessness services, ordinances of member governments relating to homelessness and partnerships or programs established that are specifically related to member government actions arising out of the agreement; and



(c) Identified challenges and opportunities relating to:

- (A) Regional coordination of homelessness services and planning;
- (B) Needs for technical assistance regarding program development or other programs from the Housing and Community Services Department; and
- (C) Addressing racial disparities through partnerships with culturally specific and responsive organizations serving populations overrepresented in experiencing homelessness, including Black, Indigenous, People of Color, federally recognized tribes and tribal members and outreach and engagement with these populations.

(5) In performing the Project tasks identified in this Exhibit A, the System shall coordinate with and develop partnerships with local and regional stakeholders, including, but not limited to:

- (a) Advocates for people experiencing homelessness and for people with lived experience of homelessness;
- (b) Community action agencies;
- (c) Housing authorities;
- (d) Affordable housing providers;
- (e) Behavioral health providers;
- (f) Law enforcement;
- (g) Educational agency liaisons for homeless children as described in 42 U.S.C. 11432;
- (h) Local Department of Human Services offices;
- (i) Courts;
- (j) Legal aid;
- (k) Coordinated care organizations, as described in ORS 414.572;
- (l) Emergency shelter providers;
- (m) Homeless service providers;
- (n) Organizations serving and advocating for veterans, homeless youth, youth exiting the foster care system, individuals exiting the criminal justice system, people with disabilities and aging adults, health care systems, domestic violence and sexual assault survivors, members of lesbian, gay, bisexual, transgender, queer or questioning (LGBTQ) communities, people experiencing behavioral health and substance use disorders, faith communities and business communities; and
- (o) The Housing and Community Services Department.

(6) In performing its duties under this section, the System shall coordinate with law enforcement, service providers and governing bodies to implement safe and humane processes to maintain public and environmental health and safety, balancing important individual and community rights.

(7) The System may use Grant funds in excess of those funds needed by the System to accomplish the requirements of the System under sections (1) to (6) of this Exhibit A to support the delivery of homeless services and shelter consistent with the five-year strategic plan, including through contracts with service providers.