



ABBREVIATED CONSENT CALENDAR FORMAT

Memorandum Date: June 27, 2024

Order Date: July 16, 2024

TO: Board of County Commissioners

DEPARTMENT: Sheriff's Office

PRESENTED BY: Debby Haller, Finance Manager

AGENDA ITEM TITLE: ORDER/IN THE MATTER OF ACCEPTING A GRANT AWARD FROM THE STATE OF OREGON ACTING THROUGH ITS DEPARTMENT OF ADMINISTRATIVE SERVICES AS APPROPRIATED BY THE OREGON LEGISLATURE IN SENATE BILL 5701 (SB5701) IN THE AMOUNT OF \$900,000 FOR EMERGENCY COMMUNICATION EQUIPMENT AND DELEGATING AUTHORITY TO THE COUNTY ADMINISTRATOR TO EXECUTE THE GRANT AND ASSOCIATED CONTRACTS

I. MOTION

Move approval of a grant from the State of Oregon acting through its Department of Administrative Services as appropriated by the Oregon Legislature in SB5701 in the amount of \$900,000 for Emergency Communication Equipment and delegate authority to the County Administrator to execute the grant and associated contracts.

II. DISCUSSION

A. Background Analysis

The Sheriff's Office applied for Congressionally Directed Spending as part of the Fiscal Year 2023-2024 Federal Budget. The application was made to fund the replacement of the radio tower at Bear Mountain. The award is being administered through USDA Rural Development and matching funds are required.

In working with Alex Cuyler and local/state/federal representatives, we were able to identify both Federal and State funding to match the USDA grant requirements. This was initially requested after discovering that the Bear Mountain tower foundation was degrading, and the tower needed replacement for overall resiliency and future expansion needs.

A portion of this funding request will assist Rural Fire agencies in acquiring multi-band radios so they have access to the regional shared radio system (LRIG) for better interoperability with all agencies using this system.

B. Health Implications

Radio Communications for first responders is critical. Lane County Sheriff's Office owns and leases both communication towers, land, and equipment across the county. Maintaining communications is vital to the health and wellness of all residents in the county and ensures law enforcement, fire, medical, and utilities can communicate and respond to emergencies.

III. RECOMMENDATION

Staff recommend approval of this grant award. This award allows the Bear Mountain radio tower replacement project to be completed without the need for county funding.

IV. ATTACHMENTS

Board Order

Grant Agreement

GRANT AGREEMENT

Title: Senate Bill 5701 (2024 Regular Session) General Fund Grant

Agreement Number: 107-2024-5701-20

This grant agreement (“Agreement”), dated as of the date the Agreement is fully executed, is made by the State of Oregon, acting by and through its Department of Administrative Services (“DAS” or “State”), and Lane County (“Recipient”). This Agreement becomes effective only when fully signed and approved as required by applicable law (the “Effective Date”) and, unless earlier terminated, expires on June 30, 2025 (the “Expiration Date”). **Certain terms of the Agreement survive its termination or expiration as set forth in Section 8.K below.**

Pursuant to the Oregon Laws 2024, chapter 114, section 479(15) (the “Authorization”), the Oregon Legislature appropriated \$900,000 from the General Fund for a grant to Recipient for emergency communication equipment (the “Project”).

SECTION 1 – GRANT

DAS shall provide Recipient, and Recipient shall accept from DAS, a grant (the “Grant”) in the amount of \$900,000.

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 Agreement 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 for emergency communications equipment to replace the communications tower at the Bear Mountain Radio site and to purchase multi-band radios for Rural Fire in Lane County.
- 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 Agreement, (b) incur and perform its obligations under this Agreement, and (c) receive the Grant funds.
- (3) This Agreement has been authorized by an ordinance, order or resolution of Recipient's governing body.
- (4) This Agreement 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 Agreement. 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 Agreement 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 Agreement.

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

E. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Agreement 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 Agreement.
- 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 Agreement 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 Agreement 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 Agreement or in any document provided by Recipient related to this Grant.
- B. Recipient fails to perform any obligation required under this Agreement, 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 Agreement 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 Agreement.
- (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 Agreement, 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 Agreement 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 Agreement.

SECTION 8 - MISCELLANEOUS

- A. Time is of the Essence. Recipient agrees that time is of the essence under this Agreement.
- 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 Agreement 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 Agreement 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 Agreement. 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 Agreement.
- D. Notices and Communication. Except as otherwise expressly provided in this Agreement, 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, Chief Financial Officer
155 Cottage St. NE
Salem OR 97301
kate.nass@oregon.gov

If to Recipient: Lane County
ATTN: Debby Haller
125 East 8th Ave.
Eugene, OR 97401
debby.haller@lanecountyor.gov

- E. No Construction against Drafter. This Agreement is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Agreement 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 Agreement may not be amended without the prior written consent of DAS (and when required, the Department of Justice) and Recipient. This Agreement 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 Agreement 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 Agreement, 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 Agreement 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 Agreement (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 Agreement.
- K. Survival. The following provisions survive expiration or termination of this Agreement: Sections 5.C., 5.E., 5.F., 5.H., 6, 7, 8.H., 8.I and 8.K.
- L. Execution in Counterparts. This Agreement 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 Agreement, 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
Lane County

By: _____

By: _____

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

//s// Sam Zeigler, June 12, 2024

Assistant Attorney General

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 24-07-16-06

In the Matter of ACCEPTING A GRANT
AWARD FROM THE STATE OF OREGON
ACTING THROUGH ITS DEPARTMENT OF
ADMINISTRATIVE SERVICES AS
APPROPRIATED BY THE OREGON
LEGISLATURE IN SENATE BILL 5701
(SB5701) IN THE AMOUNT OF \$900,000
FOR EMERGENCY COMMUNICATION
EQUIPMENT AND DELEGATING
AUTHORITY TO THE COUNTY
ADMINISTRATOR TO EXECUTE THE
GRANT AND ASSOCIATED CONTRACTS

WHEREAS, the Oregon Department of Administrative Services (DAS) is administering funding awarded to the Sheriff's Office through Senate Bill 5701, which was approved in the 2024 Short Session, for Emergency Communications Equipment; and

WHEREAS, the Board of Commissioners heard a report from Intergovernmental Relations Manager Alex Cuyler on January 30, 2024 that the county would be requesting the funding from the state for emergency communications; and

WHEREAS, the funding for Senate Bill 5701 has been fully approved and appropriated by the state ; and

WHEREAS, per Lane Manual chapter 20, the Board of Commissioners must approve all grant awards that exceed \$150,000.

NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. Accept the grant award from the State of Oregon, authorized through Senate Bill 5701 and administered through DAS, in the amount of \$900,000 for emergency communications equipment.
2. Delegate authority to the County Administrator to execute the grant and associated contracts.

ADOPTED this 16th day of July, 2024.

Laurie Trieger, Chair
Lane County Board of Commissioners