

KLAMATH COUNTY

TOURISM GRANT LETTER OF AGREEMENT

Organization (Grant Recipient):

Amount of Award:

Project Name:

Termination Date:

Project Contact:

Date:

Klamath County ("County") agrees to provide grant funding for the above referenced project as consideration for Grant Recipient satisfactorily performing the project described in the grant application received by the County, attached to and hereby made a part of this Agreement, and subject to the following additional terms and conditions:

1. **Project Description:** _____, as described in Exhibit 1, Grant Application.

2. **Use of Funds:** Funds shall be expended consistent with this Agreement and solely on projects that meet the requirements as set forth by the Tourism Grant Review Panel. Projects must be completed within nine (9) months of Agreement signature, by the termination date shown on the Letter of Agreement.

2.1. Funds not expended will be retained by the County and included in a future grant cycle. Funds may not be used for the following:

2.1.1. Legal and insurance expenses.

2.1.2. Projects that contravene current federal, state or local statutes and administrative regulations.

2.1.3. Projects that include fund raising, requests for feasibility studies, prizes or awards and requests for endowment or capital funding.

2.1.4. Projects that could be considered a regular cost of doing business.

2.2. Release of Funds: Grant funds will only be released upon receipt of the following:

2.2.1. The Grant Recipient must send the County an original drawdown request signed in ink (see Attachment 1). Checks will be issued according to the County's usual accounts payable schedule.

2.2.2. Drawdown requests (see Attachment 1) may be made as necessary and will include an accounting of all funds expended and supporting documentation including but not limited to: timesheets, bills, invoices, canceled checks, receipts, etc. Checks will be made payable to the Grant Recipient, not the organization's vendors. No expenses incurred prior to the effective date of the Agreement will be allowed for reimbursement. Klamath County may ask for proof of payment prior to reimbursement.

2.2.3. The total drawdown request submitted to the County should be equal to or less than the total of all attached documentation.

2.2.4. The Grant Recipient will keep records of all expenditures relating to tourism grant funding. Vouchers, consisting of bills, invoices, canceled checks, receipts, quotes, estimates, etc., shall be retained by the Grant Recipient for three (3) years after the submission and acceptance of a final copy by the County.

3. **Final Product(s):** Grant Recipient shall submit a written report (see Attachment 2) to the County summarizing and evaluating the accomplishments of the project within 60 days of the completion of the project but no later than the termination date shown on the Agreement, and provide electronic copies of ALL advertising or promotional materials created and/or used for their project on a CD or flash media drive. Documentation of the acknowledgement of support from the County, in accordance with item 8 of this Agreement, should be included in the final reporting.

4. **Applicable Laws, Legal Advice, Licenses:** Grant Recipient shall comply at their own expense with all laws of any municipal, county, state, federal or other public authority respecting the use of tourism grant funds, which may include public contracting laws. The Grant Recipient shall be responsible for obtaining their own legal advice, if necessary, concerning the applicability of such laws and/or compliance with such laws. The Grant Recipient shall be solely responsible for any licenses or permits required by law, and shall pay all costs, required taxes, fees and charges prescribed by law. The Grant Recipient, throughout the duration of this Agreement and any extensions, shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Agreement or to the Grant

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Recipient's obligations under this Agreement, as those laws, regulations and ordinances may be adopted or amended from time to time.

4.1. The County's performance under this Agreement is conditioned upon the Grant Recipient's compliance with ORS 279B.220, 279B.225, 279B.230 and 279B.235. The Grant Recipient shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010 (1) (ee)), recycled PETE products (as defined in ORS 279A.010 (1) (ff)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010 (1) (gg)).

4.2. Any violation of subsection (a.) of this section shall constitute a material breach of this Agreement. Any violation shall entitle the County to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to:

- Termination of this Agreement, in whole or in part;
- Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Grant Recipient, in an amount equal to State's setoff right, without penalty; and
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. The County shall be entitled to recover any and all damages suffered as the result of Grant Recipient's breach of this Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing the replacement services/replacement goods/a replacement Grant Recipient.

4.3. These remedies are cumulative to the extent the remedies are not inconsistent, and the County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

4.4. This Agreement shall comply with the requirements of the Civil Rights Act of 1964, including the following provisions:

- No person in the United States shall, on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving this assistance.
- It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual or to otherwise discriminate against any individual; with respect to compensation, terms, conditions, or privileges of employment, segregate, or otherwise adversely affect their status as an employee, because of such individual's race, color, sex, religion, or national origin.

5. **Insurance:** Grant Recipient shall procure and maintain in force, for the entire duration of this Agreement, insurance providing coverage for bodily injury and property damage which may arise out of the operations of the Grant Recipient or their subcontractors, employees, agents, assigns or for anyone whose acts any of them may be liable. Such insurance shall have coverage limits equal to or greater than the minimum limits set forth herein.

5.1. Grant Recipient shall furnish to the County an Accord 25-S certificate of insurance evidencing the existence of all insurance coverage(s) required by this Agreement prior to the commencement of any work.

5.2. Grant Recipient shall endorse the Grant Recipient's General Liability (CGL) to include Klamath County as an "additional insured", including coverage for products and completed operations, and a copy of this endorsement shall accompany each certificate. The additional insurance endorsement shall be CG2010\1985 edition or its equivalent.

5.3. **NOTICE OF CANCELLATION OR CHANGE.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days' written notice from the Grant Recipient or its insurer(s) to the County.

5.4. Grant Recipient's insurance shall be primary and not excess to, or contributory with any insurance coverage provided by the County. Grant Recipient's insurance shall be endorsed to provide project specific aggregate limits with respect to project covered by this Agreement.

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- 5.5. CGL coverage, including products and completed operations coverage, shall be maintained from the date work commences until two years after the work has been completed.
- 5.6. If the work required by this Agreement or the location of the work specified in this Agreement constitutes an exposure to the employees of the Grant Recipient or their subcontractors under the U.S. Longshoremen and Harbor Workers Act, The Jones Act, or under any laws, regulations or statutes that apply to maritime workers, the Grant Recipient shall ensure that proper coverage is purchased and maintained.
- 5.7. Grant Recipient and all subcontractors shall endorse the Worker's Compensation coverage to provide a "waiver of subrogation" in favor of Klamath County when available.
- 5.8. Klamath County will waive the required Worker's Compensation (WC) coverage if the Grant Recipient submits a letter, on official letterhead, stating they agree that they will obtain WC coverage immediately upon utilizing volunteers or hiring any employees during the period of the Agreement.
- 5.9. Klamath County will waive the required Auto Liability coverage if the Grant Recipient submits a letter, on official letterhead, stating absolutely no driving will be done related to the Agreement and that they will obtain Auto Liability coverage in advance if they travel in any way in support of the Agreement, i.e. training staff, meetings to implement, etc.
- 5.10. Grant Recipient shall ensure that the County is provided with a renewal certificate at least thirty (30) days prior to the expiration date of the coverage in the event that the original certificate expires prior to the scheduled termination of the Agreement.

❖ **Personal Services Agreement:**

Agreements should have the following:

- └ General Liability
 - Each Occurrence \$1,000,000
 - Aggregate \$2,000,000
 - Operations \$1,000,000
 - Products and Completed
 - Personal/Advertising Injury \$1,000,000
- └ Auto Liability
 - Combined Single \$1,000,000
- └ Workers' Compensation
 - Statutory Limits
 - Employers Liability
 - \$1,000,000

- ❖ **Professional Liability Coverage.** Professional Liability Coverage covering any damages caused by an error, omission or any negligent or wrongful acts related to the services to be provided under this Agreement. Per occurrence (for all claimants for claims arising out of a single accident or occurrence) in the amount of \$1,000,000.

6. **Indemnification:** Grant Recipient agrees to defend, indemnify and save County, its agents, officers and employees harmless from any and all losses, claims, actions, costs, expenses, judgments, subrogation or other damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to property, arising or resulting from the fault, negligence, wrongful act or wrongful omission of Grant Recipient or its agents or employees. Grant Recipient agrees to defend and hold harmless Klamath County from any claim or action alleging misuse, misappropriation, spending of funds for ineligible expenses, or inadequate oversight related to this grant.
7. **Public Access and Use:** If Grant Recipient's project includes any capital improvements, Grant Recipient agrees to maintain or ensure continued public access to such improvements.
8. **Publicity and Acknowledgement of Support:** Grant Recipient agrees to give appropriate credit to Klamath County for the financial support in any and all press releases, publications, annual reports, video credits, dedications, and other public communications regarding services performed pursuant to this Agreement or the Klamath County Logo Usage Agreement (if applicable), i.e. *"This project was partially funded by the Klamath County transient room tax grant program."*
9. **Amendments:** Should there be any material change in the purpose, character, method of operation, budget, personnel, subcontractors, governance, or grant period for the project as approved by Klamath County, the Grant

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Recipient will provide timely written notice of these changes to the Klamath County Commissioners. This Agreement and referenced attachments set forth the entire understanding of the parties and may be modified only by a written instrument duly executed by both the Grant Recipient and Klamath Board of County Commissioners.

10. **Termination:** This Agreement may be terminated or modified upon the occurrence of the following circumstances:
 - 10.1. Either party may terminate this Agreement upon thirty (30) days written notice to the other party. Failure to comply with the conditions of this Agreement or Logo Usage Agreement is cause for Klamath County to terminate and Grant Recipient becomes ineligible for grant funds for the next four (4) application cycles.
 - 10.2. In the event of termination prior to project completion, Klamath County will cancel all unpaid installments of the project and will be entitled to return of any funding expended for purposes not authorized by Klamath County.
 - 10.3. In the event Grant Recipient fails to comply with Section 4 (Applicable Laws) or Section 7 (Public Access and Use) of this Agreement, Grant Recipient shall refund the entire grant award to Klamath County.
 - 10.4. The Agreement terminates no later than nine (9) months following the date of Agreement signatures. No further drawdowns or extensions to the Agreement shall be granted, irregardless of project completion. All requests for funds and required supporting documentation must be received no later than nine (9) months following agreement signature date.
11. **Subcontracts:** Grant Recipient shall not enter into any subcontracts for any services required under this Agreement without the County's prior written consent. In addition to any other provisions the County may require, Grant Recipient shall include in any permitted subcontract provisions to ensure that County will receive the benefit of subcontractor's performance as if the subcontractor were Grant Recipient. Klamath County's consent to any subcontract shall not relieve Grant Recipient of any of its duties or obligations under this Agreement.
12. **Third Party Beneficiaries:** County and Grant Recipient are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement. Klamath County is an intended beneficiary of the terms of this Agreement.
13. **HIPAA Compliance:** If the services funded in whole or in part with financial assistance provided under this Agreement are covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), Grant Recipient agrees to deliver the services in compliance with HIPAA. Without limiting the generality of the foregoing, services funded in whole or in part with financial assistance provided under this Agreement are covered by HIPAA. The Grant Recipient shall comply and cause all providers to comply with the following:

Privacy and Security of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between Grant Recipient and Klamath County for purposes directly related to the provision of services to Grant Recipient's clients, which are funded in whole or in part under this Agreement. However, Grant Recipient shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate the Oregon Privacy Rules, OAR 407-014-0000 et. Seq., or Klamath County policy, Section 900." HIPAA Policy" of the Klamath County Human Resources Policy & Procedures Manual, if done by Klamath County. A copy of the most recent Klamath County Human Resources Policy & Procedures Manual is available through the Human Resources Department at 305 Main Street, Klamath Falls, Oregon 97601.
14. **Severability:** If any provision of this Agreement is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular provision held to be invalid.
15. **Attorneys' Fees:** Neither Klamath County nor Grant Recipient is entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to this Agreement.

16. Conflict of Interest:

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16.1. Klamath County desires to have Grant Recipient refrain from activities which could be interpreted as creating an organizational conflict of interest.

16.2. Grant Recipient agrees to avoid any activities which may influence the decisions of Klamath County or which directly or indirectly affect the interest of the County where Grant Recipient has a personal interest in the matter which may be incompatible with the interest of Klamath County Government, and to promptly notify County regarding any change in Grant Recipient's private interests or the services under this Agreement which may result or appear to result in a conflict of interest.

17. **Authorization:** The undersigned certifies under penalty of perjury both individually and on behalf of Grant Recipient that: The undersigned is a duly authorized representative of Grant Recipient, has been authorized by Grant Recipient to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Grant Recipient.

18. **Cancellation:** Neither party shall be held responsible for delay or failure in performance of this Contract when such delay or failure is due to causes beyond the control and without the fault or negligence of the party. Such causes may include, but are not restricted to, fire, flood, epidemic, public health emergencies, acts of God, unusually severe weather, strikes, or legal acts of public authorities, which cannot be reasonably forecast or provided against. Either party may terminate this Contract after reasonably determining that such delay or failure will prevent continued performance of the Contract and upon giving written notice to the other party of the cause, its effect upon Contract performance, and the effective date of termination. In the event that you have expended funds for your approved event(s) before the cancellation, but after contract ratification, you will be reimbursed for any allowable expenses paid toward your event(s). Reimbursement for expenses made after event cancellation will be forfeited.

**KLAMATH COUNTY
BOARD OF COMMISSIONERS:**

Klamath County Board of Commissioners
305 Main Street
Klamath Falls, OR 97601
(541) 883-5100

GRANT RECIPIENT:

Chair

Signature

Commissioner

Title

Commissioner

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

Klamath County Counsel