**POLK COUNTY**

**BUSINESS DEVELOPMENT GRANT AGREEMENT**

This Grant Agreement (this “Agreement”) is entered into by and between Polk County (a political subdivision of the State of Oregon), acting by and through its Community Development Department, hereinafter called “County” and INSERT NAME hereinafter referred to as "Grantee".

**Recitals**

1. This Agreement is made pursuant to Polk County’s Business Development Grant for projects implemented within Polk County that have economic development significance as defined in ORS 461.540 and is made possible through funding proceeds received from the Oregon Economic Development Video Lottery Grant Program.
2. County has received an allocation from the Oregon State Treasury’s Administrative Services Economic Development Fund, pursuant to the authority of ORS 461.500 et seq. The program established pursuant to ORS 461.500 et seq. and referenced in this Agreement is known as the “Business Development Grant” or “BDG.”
3. The grant of funds under this Agreement (the “Grant”) is subject to ORS 461.500 et seq., including any special conditions. Each of these regulations and the Funding Approval constitute part of this Grant Agreement and are incorporated herein by reference.

**D.** The Grant is also subject to Polk County’s BDG Funding Criteria; regulatory changes; and guidelines and other official notices or clarification that may become available from time to time.

**E.** County has determined that the Grantee’s activities, as hereinafter defined, to be feasible and merit funding.

**Agreement**

NOW THEREFORE, for good and sufficient consideration, including the terms and conditions herein, it is agreed by and between the parties hereto as follows:

1. Incorporation of Recitals; Agreement Purpose

**a. Incorporation of Recitals.**

The foregoing Recitals are incorporated herein by reference, but are subject to the express terms of this Agreement.

1. **Agreement Purpose.**

The purpose of BDG is to fund economic development programs or that have countywide significance and/or strong support within a Polk County community. Grantee projects and use of funds awarded through this agreement must support the following ORS 461.540 requirements:

1. Create jobs in Polk County which includes, but is not limited to: (a) Supporting the creation of new jobs in Oregon; (b) Helping prevent the loss of existing jobs in Oregon; (c) Assisting with work transition to new jobs in Oregon; or (d) Training or retraining workers.
2. Further economic development in Polk County which includes, but is not limited to, providing: (a) Services or financial assistance to for-profit and nonprofit businesses located or to be located in Oregon; (b) Services or financial assistance to business or industry associations to promote, expand or prevent the decline of their businesses; or (c) Services or financial assistance for facilities, physical environments or development projects

Grant funds are derived from lottery sources and are subject to the conditions restricting their use as set forth above, and as provided in this agreement and Polk County policies.

1. Term of Agreement

Unless terminated or extended, this Agreement covers the period from the date of execution to INSERT DATE. The remedies available to County and Grantee shall survive the expiration of this Agreement, whether upon expiration or termination pursuant to Section 11 herein.

1. Statement of Work

Grantee shall perform all activities described in the Business Development Grant Application (Exhibit A) in accordance with the terms and conditions of this Agreement. Grantee shall perform its obligations hereunder efficiently, effectively and within applicable BDG timelines, all to the satisfaction of County.

Any changes to the approved grant application shall require the prior written approval of County. Requests for and justification of any change must be submitted in writing to County and be approved in writing by County prior to commencement of the requested change.

1. Grant Funding
2. County has agreed to make a conditional award of funds to the Grantee in the not-to-exceed amount of **(INSERT AMOUNT HERE)** (the “Grant”). Disbursements are considered an advance of funds to Grantee which Grantee may retain only if properly expended, in accordance with the terms and conditions of this Agreement, prior to the termination of this agreement.
3. Grant distributions will be made by County to Grantee upon receipt of invoice(s).
4. If Grantee fails to complete the project described in the grant application, Grantee shall return grant funds to County by making repayment of total amount of disbursed Grant. If Grantee completes the project described in the grant application , but fails to meet outcomes described, County may in its discretion determine that disbursed Grant funds be returned to County through repayment, and Grantee shall comply with County’s determination. Grantee shall make repayment within 30 days of expiration of this agreement.
5. Reporting Requirements.

Grantee must complete and submit a final report upon completion of the project and prior to any new funding application.

6. Grant Monitoring

1. **County Authorized to Monitor Grantee**

County may monitor the activities of each Grantee as it deems necessary or appropriate to determine whether grant funds are used in accordance with this Agreement. Monitoring activities may include, but are not limited to the following: (1) review (including copying) of any and all Grantee files, records and other information related to performance under this Agreement; (2) on-site and field visits and inspections; (3) demand that Grantee provide full itemization, financial records, receipts, and any other information for review of Grantee activities; and (4) any other investigatory activities necessary to determine Grantee compliance.

1. Grantee Shall Fully Cooperate

Grantee shall cooperate fully with all County monitoring activities and shall promptly respond to all requests. Failure by Grantee to fully cooperate or promptly respond will be considered a material breach of this Agreement.

1. Records Maintenance

Grantee shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition Grantee shall maintain any other records pertinent to this agreement in such a manner as to clearly document Grantee’s use of funds, activities, and performance.

The Grantee shall establish and maintain records and statistics as follows:

Financial records, which indicate the number of hours of service provided under this contract and other appropriate records pertinent to this contract shall be retained for a minimum of three (3) years after the end of the contract period. If there are unresolved audit questions, or active litigation, at the end of the three-year period, the records must be maintained until the questions are resolved.

1. **Records Access**

The County, the State of Oregon, or the applicable audit agencies of the U.S. Government shall have free access to and the right to copy all or any part of the books, documents, papers, audits and records of Grantee which are related to this Agreement as they deem appropriate, including without limitation, for the purpose of making audit, examination, excerpts, and transcripts. These records are the property of County who may take possession of them at any time after three (3) business days’ notice to Grantee. Grantee may retain copies of all records taken by County under this Section.

1. Monitoring: Major Findings Resolution

County may make findings and may require that Grantee take corrective actions to ensure proper performance under this Agreement. The Grantee shall resolve findings and take required corrective actions within the timeframes identified by County.

**7. Misexpenditures, Underexpenditures and Excess Payments**

1. It is the responsibility of Grantee to monitor expenses and ensure funds are expended in compliance with this agreement.
2. An “underexpenditure” means money disbursed from County to Grantee under this Agreement remains unexpended at Agreement termination.
3. A “misexpenditure” means money disbursed to Grantee from County under this Agreement that is expended in a manner other than that permitted by this Agreement, including without limitation, any money expended by Grantee contrary to applicable statutes, rules or any other authority that governs permissible expenditure of such money.
4. An “excess payment” means money disbursed to Grantee from County under this Agreement that is in excess of the not-to-exceed amount identified in Section 4 of this Agreement.
5. Upon County’s identification of a misexpenditure or excess payment, County shall notify Grantee thereof. Upon Grantee’s identification of a misexpenditure or excess payment, Grantee shall notify County thereof.
6. Within 30 days of identifying a misexpenditure or excess payment, Grantee shall make full payment to County. Within 30 days of receiving notice of a misexpenditure or excess payment, Grantee shall make full payment to County.
7. Grantee shall return any underexpenditure to County within 30 days of Agreement termination.
8. The obligations set forth in this Section 7 survive termination of this agreement.
9. Withholding and Redistribution of Grant Funds

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### Withholding of Grant Funds from Request

County may withhold any and all Grant funds from Grantee if County, in its sole discretion, determines that Grantee has failed to timely satisfy any material obligation arising under this Agreement including, but not limited to, providing complete, accurate and timely reports satisfactory to County detailing Grantee performance under this Agreement. County also may withhold any and all requested Grant funds from Grantee if County, in its sole discretion, determines that the rate of requests for funds in any expenditure category is substantially different from approved budget submissions.

1. **Redistribution or Retention of Funds**

If Grant funds are not obligated for reimbursement by Grantee in a timely manner as determined by County at its sole discretion, County may reduce Grantee funding as it determines to be appropriate in its sole discretion and redistribute such funds to other Grantees or retain such Grant funds for other County use. This remedy is in addition to any other remedies available to County under this Agreement.

1. Nothing in this section limits the County’s ability or authority to pursue any or all legal or equitable remedies for Grantee’s breach of this Agreement.

1. Funding Appropriation

In the event the Board of Commissioners of the County reduces, changes, eliminates, or otherwise modifies funding in a manner that reduces this grant award, the Grantee agrees to abide by any such decision including termination of this Agreement.

1. **Dual Payment**

Grantee shall not be compensated for work performed under this Agreement if Grantee receives, or will receive, compensation from the State of Oregon, the federal government or from any other source, for the same work. Any additional funds received through or for activities arising under this Agreement shall immediately be reported to County.

1. Termination
   1. County may immediately terminate this Agreement as set forth below:
2. For its convenience upon thirty (30) days’ prior written notice from County;
3. Immediately upon written notice if County fails to receive funding,
4. Immediately upon written notice if federal or state laws, regulations or guidelines are modified or interpreted in such a way that County cannot lawfully perform its obligations under this Agreement;
5. Immediately upon written notice by County to Grantee, or at such later date as County may establish in such notice, if Grantee is in default. Grantee shall be in default under this Agreement if:

i. Grantee is in material breach or default of any obligation under this Agreement, fails to perform the work under this Agreement within the time specified herein, or so fails to pursue the work so that performance is endangered, and such breach, default or failure is not cured within thirty (30) days after County’s notice, or such longer period as County may specify in such notice.

ii. Grantee (a) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (e) is adjudicated as bankrupt or insolvent, or (f) fails to controvert in a timely or appropriate manner, or agrees in writing to, an involuntary petition for bankruptcy;

iii. Any certification, license or certificate required by law to be held by Grantee or others to provide the services required by this Agreement is for any reason denied, revoked, suspended, limited or not renewed.

b. Grantee may, upon thirty (30) days written notice, terminate this Agreement in whole or in part, if:

1) County unreasonably fails to provide timely funding hereunder and does not correct such failure within the thirty (30) day notice period.

2) County provides one or more material directives which are contrary to federal or state laws, rules, regulations, guidelines, or original funding source requirements and does not correct any such directive within thirty (30) days of being informed that it is contrary to any such law.

c. Upon issuance of any notice to terminate this Agreement and prior to the effective date of the termination, County may, in its sole and absolute discretion, require that Grantee obtain prior County approval for any additional expenditure from Agreement grant funds.

d. In the event of termination of this Agreement by either party, all unexpended money, property, finished or unfinished documents, data, financial reports, audit reports, program reports, studies and reports purchased or prepared by Grantee under this Agreement shall be delivered to County within thirty (30) days of the date of termination or upon such date as requested by County.

e. Termination of this Agreement shall not impair or invalidate any remedy available to County or to Grantee hereunder, at law, or otherwise.

1. Agreement Documents in Order of Precedence

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits and then Exhibit A (Grant Application) and Exhibit B (Project Report).

1. **Governing Law; Venue; Consent to Jurisdiction**

This Agreement shall be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, “Claim”) between County and Grantee related to this Agreement shall be conducted exclusively within the Circuit Court of Polk County, Oregon (unless Oregon law requires that it be brought and conducted where the real property is located) or, if necessary, the United States District Court for the District of Oregon. GRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

1. Compliance with Applicable Law

Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement. Without limiting the generality of the foregoing, Grantee expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.

1. No Third-Party Beneficiaries

County and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

1. Notices

Any notice of termination or other communication having a material effect on this AGREEMENT shall be served by U.S. Mail to:

County Contact Person: Ciera Atha Grantee Contact Person:

Contact Telephone Number: 503-623-8173 Contact Telephone Number:

E-Mail Address: [atha.ciera@co.polk.or.us](mailto:atha.ciera@co.polk.or.us) E-Mail Address:

Mailing Address: 850 Main St., Dallas, OR 97338 Mailing Address:

1. Fixed Assets

Grantee shall maintain policies and procedures for property management that comply with all requirements of the applicable OMB Circulars and specific requirements of the source of funds, to the extent applicable.

1. Insurance and Workers Compensation

a. The Grantee shall maintain at all times commercial general liability insurance, property damage insurance, and medi­cal/professional malpractice if applicable, covering its activities and operations under this Agreement.

The Grantee shall add Polk County, its officers/officials, agents, employees, and volunteers as additional insureds for general liability and property damage insurance coverage and a **separate** endorsement shall be issued by the company showing Polk County as an Additional Insured and provide Notice of Cancellation as set forth in the policy. Such insurance shall be in the forms and amounts not less than set forth in ORS 30.260 to 30.300. All insurance shall be evidenced by a Certificate of Insurance and Endorsement provided to the County, indicating coverages, limits and effective dates, by an insurance company licensed to do business in the State of Oregon.

b. The County, pursuant to applicable provisions of ORS 30.260 to 30.300, maintains insurance that provides property damage and personal injury coverage.

c. The Grantee shall obtain and maintain at all times during the term of this contract, workers' compensation insurance with statutory limits and employers' liability insurance. The Grantee shall provide the County with evidence that it is a carrier-insured or self-insured employer in full compliance with the requirements of ORS Chapter 656, or that it employs no persons subject to the requirements of ORS 656, Workers' Compensation Coverage.

d. The Grantee and the County agree that there is no relationship under this Agreement except as specified herein. The County exercises no control over, is not responsible for the act of, and assumes no specific responsibilities to or for officers, employees, or agents of the grantee, or the public in general, except as specified in this Agreement.

1. Grantee Status

a. The Grantee is a separate and independently established business, retains sole and absolute discretion over the manner and means of carrying out the Grantee’s activities and responsibilities for the purpose of implementing the provisions of this contract, and maintains the appropriate license/certifications, if required under Oregon Law. This Agreement shall not be construed as creating an agency, partnership, joint venture, employment relationship or any other relationship between the parties other than that of independent parties. The Grantee is acting as an “independent contractor” and is not an employee of County, and accepts full responsibility for taxes or other obligations associated with payment for services under this contract. As an “independent contractor”, Grantee will not receive any benefits normally accruing to County employees unless required by applicable law.  Furthermore, Grantee is free to contract with other parties for the duration of the contract.

b. Grantee agrees that insurance coverage, whether purchased or by self-insurance, for Grantee’s agents, employees, officers and/or subcontractors is the sole responsibility of Grantee.

c. Grantee certifies that it is not employed by or contracting with the federal government for the Services covered by this Agreement.

1. Captions

The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

1. Severability

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, 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 the Agreement did not contain the particular term or provision held to be invalid

1. Execution and Counterparts

This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

1. Indemnity

The Grantee shall defend, indemnify, and hold harmless the County, its officers, agents, and employees from damages arising out of the tortious acts of the Grantee, its officers, agents, and employees acting within the scope of their employment and duties in performance of this agreement.

1. **Time is of the essence**

Time is of the essence in the performance of all under this Agreement.

1. **Amendments**

This Agreement may be amended only by a written instrument executed by the parties or by their successors.

1. Merger Clause

This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind all parties unless in writing and signed by both parties and all necessary County approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of County to enforce any provision of this Agreement shall not constitute a waiver by County of that or any other provision.

1. **[CERTIFICATIONS AND SIGNATURE OF GRANTEE'S AUTHORIZED REPRESENTATIVE](#Contract_TOC)**

THIS AGREEMENT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF GRANTEE.

The undersigned certifies under penalty of perjury both individually and on behalf of Grantee that:

A. The undersigned is a duly authorized representative of Grantee, has been authorized by Grantee to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Grantee;

B. By signature on this Agreement for Grantee, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Grantee and that Grantee is, to the best of the undersigned’s knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, “Oregon Tax Laws” means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

C. Grantee is bound by and will comply with all requirements, terms and conditions contained in this Agreement.

D. Grantee further certifies to having a formal statement of nondiscrimination in employment policy.

GRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT GRANTEE HAS READ THIS AGREEMENT, UNDERSTANDS IT, HAS THE LEGAL AUTHORITY TO BIND, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Grantee (print Grantee’s name):

Authorized Signature:

Title:

By (print name): Date:

Contact Person (Type or Print):

Contact Telephone Number:

Contact E-Mail Address:

Grantee Address:

**44**[**. POLK COUNTY SIGNATURE**](#Contract_TOC)

Authorized Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Administrative Officer Date

Reviewed by Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Polk County Legal Counsel Date

BOARD OF COMMISSIONERS:

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Chair Date

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Commissioner Date

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Commissioner Date