



# Oregon

John A. Kitzhaber, M.D., Governor

**Department of Land Conservation and Development**

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October 30, 2013

TO: Land Conservation and Development Commission  
FROM: Jim Rue, Director  
SUBJECT: **Agenda Item 5, November 14-15, 2013, LCDC Meeting**

## **DIRECTOR'S REPORT**

### **I. INFORMATION UPDATES**

#### **A. PARTICIPATION IN APPEALS, AND RECENT LUBA AND APPELLATE COURT OPINIONS**

ORS 197.090(2) requires the director of the Department of Land Conservation and Development (the department or DLCD) to report to the Land Conservation and Development Commission (the commission or LCDC) on each appellate case in which the department participates, and on the position taken in each such case.

ORS 197.040(1)(c)(C) requires LCDC to review recent Land Use Board of Appeals (LUBA) and appellate court decisions to determine whether goal or rule amendments are needed

##### **1. Department Participation in Appeals**

Between August 26, 2013 and October 21, 2013, the department received copies of 29 notices of appeal filed with LUBA. The department filed none of these notices, and was not named as a party in any of these notices.

##### **2. LUBA Opinions**

Between September 1, 2013 and September 30, 2013, the department received copies of eight recently issued LUBA opinions. Of these, LUBA dismissed two, remanded one, reversed none, affirmed four, remanded in part and transferred none, invalidated none, and transferred one petition to circuit court.

One decision concerns the application or interpretation of a statewide planning goal or LCDC administrative rule:

Goal 4, OAR 660-006-0025(4)(a), Uses allowed on forest resource land: *Fritch v. Clackamas County*, LUBA No. 2012-094, issued September 16, 2013. LUBA affirmed the county's denial of a conditional use permit to operate a custom log home business on a property zoned for forest use. The applicant asserted that the proposed use constituted a "permanent facility for the primary processing of forest products," a use allowed conditionally by the county in the property's zoning district and authorized by OAR 660-006-0025(4)(a). LUBA agreed with the county that, while the term "primary processing" applies to the initial treatment of the raw timber, it does not apply to further processing of the logs into a log structure, and all of the associated design and assembly involved. This latter processing constituted the "manufacturing" of the log home product, and thus was not an allowed use on the property.

This decision does not require goal or rule amendments.

**3. Appellate Court Opinions**

None.

**4. Other Opinions of Interest**

None

**5. Appeal Notices of Interest**

"Reasons" Exception to Goal 11 regarding water service: *Foland v. Jackson County*, LUBA 2013-82, filed September 6, 2013. Appeal of Jackson County's interpretation of its land development ordinance regarding a Goal 11 "reasons" exception providing urban level water service to a welcome center along I-5.

Parking Lot for Ski Area on Forest Land: *Navickas v. Jackson County*, LUBA 2013-58, filed September 13, 2013. Appeal of Jackson County decision approving construction of a 101-space parking lot for the Mt. Ashland Ski Area on land zoned Forest Resource.

Approval of private park and campground: *Linstromberg v. Lane County*, LUBA 2013-96, filed October 10, 2013. Appeal of a Lane County decision approving a private park and campground on rural land.

Denial of large planned unit development in Eugene: *Environ-metal Properties v. City of Eugene*, LUBA 213-098, filed October 17, 2013. Appeal of a City of Eugene decision denying a large planned unit development, known as the "LaurelRidge" residential project, in the southeastern area of the city.

**6. Measure 37/49**

*Rosboro, LLC v. DLCD* (Measure 49 claims E132948-9): The Court of Appeals affirmed a circuit court ruling that Rosboro LLC is the same entity as Rosboro Lumber Company (a

partnership) and therefore Rosboro LLC acquired the land in question when Rosboro Lumber Company purchased it in 1947, 1948 and 1954. DLCD had argued that the acquisition date for Rosboro LLC should be 1994 when it was created by conversion of the partnership Rosboro Lumber Company, which ceased to exist. The court also determined that the claim consists of four parcels divided by the McKenzie River and the state highway, with each parcel separately eligible for home sites. DLCD had initially concluded that areas separated only by the highway or river (no intervening properties) were still contiguous. The case will be remanded to DLCD to issue four Final Orders granting Rosboro LLC 11 new home sites.

## **B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS**

Grants are reported in the Community Services Division's report (see Section II.B).

## **II. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES**

### **A. COASTAL MANAGEMENT PROGRAM**

Ocean and Coastal Services Division (OCSD) staff are involved with numerous coastal and ocean issues.

Marine Issues: Staff continues to prepare the Geographic Location Description (GLD) submittal to the National Oceanic and Atmospheric Administration (NOAA). (Please see Agenda Item 7.) OCSD staff participate with other state agencies and stakeholders as members of the Coordination Committee for the Ocean Power Technologies (OPT) Reedsport marine renewable energy project pursuant to a Federal Energy Regulatory Commission (FERC) settlement agreement. The OPT request to FERC to amend its license agreement subsequent to the failed deployment of the buoy as planned during the summer of 2012 has been approved, and the license term now extends through 2017. Subsequent to OPT's failure to remove the anchor and other cables from the failed deployment last summer, DSL has informed OPT that they are in default on the lease agreement they hold for the site, and have ordered them to remove the gear or the state will do it for them.

OCSD staff, with other state and federal agencies, participate in the advisory team assisting the National Northwest Marine Renewable Energy Center (NNMREC) as it develops the Pacific Marine Energy Center (PMEC) site near Newport. NNMREC is in the process of submitting an application for a lease from BOEM for an area south of the Yaquina Bay inlet. This area is the PMEC South Energy Test Site (SETS), which along with the North Energy Test Site (NETS) off Yaquina Head and the Pacific Marine Energy Center (PMEC) engineering facilities located onshore in Newport, are divisions of NNMREC.

Coastal Hazards and Climate Change: Several staff members are involved with coastal hazards. OCSD staff are nearing completion of the tsunami land use planning guidance for local governments. Staff will be working actively with local governments on utilizing the guide to develop local land use resilience strategies and options beginning early in 2104. This work will be ongoing for a number of years and is not only important to address coastal hazard directives

related to Goals 7 and 18 but also to address Chapter 3 of the Oregon Resilience Plan (<https://www.google.com/#q=Oregon+Resilience+plan>).

On an ongoing basis, staff works with local governments and the Oregon Parks and Recreation Department (OPRD) on beachfront protective structure eligibility determinations based on Goal 18 requirements. As coastal erosion has increased so have the number of eligibility determinations. Some are controversial and potentially problematic. The OCSD was successful in bringing a NOAA Coastal Fellow on board to study the array of issues associated with beachfront protective structures (e.g., increasing erosion and climate factors, current processes and policies, potential future options). This information, developed over the next two years, should assist in future policy discussions with applicable agencies and local governments. In addition, the NOAA Coastal Fellow and Coastal Shores Specialist will be working with local coastal inventories which will produce a number of benefits including simplified eligibility determinations, greater consistency, and enhanced public awareness.

Staff continues to work with partner agencies and communities on the NOAA-funded “Coastal Community Resilience Networks Pilot Project.” At this point, the four north coast pilot communities are working on benchmarks for gauging community resilience. The partner agencies and an advisory group are working to define the contents of a community resilience plan, which involves clarifying how a resilience plan will differ from better-known plans like those for emergency management or mitigating natural hazards. Staff participated on the conference committee to help the Oregon Climate Change Research Institute plan for the 4<sup>th</sup> Annual Pacific Northwest Climate Science Conference, which was held in Portland in September. Staff also worked with South Slough National Estuarine Research Reserve to bring experts on tides and GIS mapping to the southwest Oregon community college to conduct a free intensive two-day professional training course on mapping areas subject to inundation by rising sea levels. Staff members from several other state agencies completed the class.

Estuary Updates: The Estuary Project of Special Merit continues to work towards the goal of producing estuary and shoreland habitat maps using the federally approved Coastal and Marine Ecological Classification System. Due to an expansion in scope as a result of feedback from our technical advisory committee, we have worked for longer than previously planned on the delineation of our project boundary area (the area within which all GIS products will be focused). As such, project staff have started the process for extension of the grant for a period of six months. That extension will allow for an appropriate amount of time to be spent on outreach and education to our local government partners once the finished projects have been packaged together for use. The revised timeline has map classification products being produced by the end of the year, with a final technical advisory committee meeting to occur early next year.

Federal Consistency: Through the Routine Program Change (RPC) process discussed in previous reports, the division is continuing to make progress updating and identifying specific “enforceable policies” within the local comprehensive plans and networked state statutes that comprise the Oregon Coastal Management Program (OCMP). The division has extended two contracts to prepare RPCs, one for local comprehensive plan RPCs and one for state statute

RPCs. After much time spent responding to comments, we are happy to report that NOAA has approved the RPC request seeking to incorporate updates to the Clatsop County Comprehensive Plan and Ordinance into the OCMP. The division submitted RPC requests for Coos County on October 1, and for the cities of North Bend and Coos Bay on November 1.

At the direction of NOAA, the division started the six-month review period for the Oregon LNG project and opened a thirty-day public comment period which closed November 7. The division received numerous comments that will be evaluated as part of the department's review process. The division sent a three-month status update to Oregon LNG in mid-October, indicating that because the OCMP is a networked program, DLCD cannot complete the federal consistency review until the Department of State Lands, the Department of Environmental Quality, the Water Resources Department and the local jurisdictions (Clatsop and Tillamook Counties, and the City of Warrenton) have completed their respective reviews and issued final decisions.

**B. COMMUNITY SERVICES**

General Fund Grants Program: Applications for all types of General Fund grants have been received for this biennium. Some of the grant fund was dedicated by the legislature to specific uses. The commission's Grants Allocation Plan guides the award of the remainder of the funds. A summary of funds is provided below.

<b>Grant Fund – Total</b>	<b>\$ 1,537,982</b>	
PSU Population Forecasting	440,000	Dedicated by legislature
Columbia River Gorge Comm.	80,000	Dedicated by legislature
PSU Dispute Resolution	20,000	Allocation plan
Columbia River Gorge counties	240,000	Allocation plan
Planning Assistance	104,000	Allocation plan*
Periodic Review applications	268,000	First priority for remainder*
<b>Remainder available for TA</b>	<b>\$ 385,982</b>	
Technical Assistance applications	\$ 1,608,174	

*\*Subject to change*

The Grants Allocation Plan sets the amount for each Planning Assistance grant at \$1,000 for small cities and \$3,500 for small counties, but the total amount granted varies based on how many jurisdictions take advantage of the opportunity. The total displayed in the table reflects amount requested at the time of this report. The deadline the department established for requesting Planning Assistance grants has passed, but late requests are likely to be honored up until the time Technical Assistance grants are awarded, so this line item could increase.

The allocation plan directs the department to fund Periodic Review grants ahead of Technical Assistance applications with the funds that remain after the dedicated funds are dispersed. This biennium, the department received five Periodic Review applications totaling the amount shown in the table. These grants have not been awarded at the time of this report, but it is likely that not all of the grants will be awarded at the full amount requested, so this line item could shrink.

After all other grant types have been awarded, the remainder is available for Technical Assistance grants. This biennium, the department received 42 Technical Assistance applications

totaling the amount shown in the table. While the amount available for Technical Assistance grants could still change, the ratio of demand to available funds is about four to one. The department expects to have Technical Assistance award decisions made by the end of November.

The legislature also appropriated funds for completion of the Southern Oregon Regional Pilot Program for studying alternative methods to protect resource lands. These funds were in dedicated in a separate appropriation and are not included in the calculations above. The three southern Oregon counties will receive \$246,000 (combined).

Periodic Review: There has been no activity regarding periodic review task submittals or decisions since the September director's report. Nine cities have active periodic review work programs established since 2007; these are the jurisdictions eligible for Periodic Review grants. Only five of these cities submitted applications for Periodic Review grants as the others are close enough to completion of their work programs that they did not need assistance this biennium.

Urban Growth Boundaries: As reported in September, the City of Newberg submitted an urban growth boundary amendment consisting of 260 acres (132 gross buildable) for employment use. The department received six objections to the submittal. Review is ongoing.

#### **C. DIRECTOR'S OFFICE**

An oral update will be provided.

#### **D. ADMINISTRATIVE SERVICES**

Fiscal (Budget, Accounting, and Procurement): The department has incorporated the Legislatively Adopted Budget into its budget systems and has submitted for the required audits by the Department of Administrative Services' Chief Financial Office. The department's administrative services manager will report results of that audit to you at your upcoming LCDC Budget and Management subcommittee meeting.

The fiscal team continues working with the director's office and division managers to ensure accuracy in financial reporting and timely expenditure projections for 2013-15, including evaluation of current financial models and potential changes to these models. A department-wide model is presented at each LCDC Budget and Management subcommittee meeting.

The accounting team continues its evaluation efforts in implementing the adopted budget into its cost allocation plan, including working with federal program managers and federal agency partners.

Procurement continues working with department managers and project officers in ensuring accountability and adherence to state procurement and leasing rules. This includes a recent agreement with the Office of Emergency Management in support of the Natural Hazards Program.

IT: The unit continues working with the Information Management Modernization Initiative Coordinator in the analyses and implementation of specific systems and modifications to current systems. An example of this effort includes beginning efforts toward migration of the PAPA/PR databases to SQL. The network administrator and administrative services manager continues working with department management in evaluating and determining current and future technological needs for the department in relation to information modernization management efforts.

#### **E. PLANNING SERVICES**

Natural Hazards: Chris Shirley (Floodplain Coordinator) was invited by Senator Merkley to testify at a congressional committee hearing about the implementation of the reform of the national flood insurance program (NFIP). Her testimony can be viewed online ([http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing\\_id=46b52a52-4d45-4c47-8ddc-de2f32cd348e](http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_id=46b52a52-4d45-4c47-8ddc-de2f32cd348e)). She also participated in an episode of *Think Out Loud*, a radio program on Oregon Public Broadcasting, about the NFIP reform and new floodplain maps. The program is available online (<http://www.opb.org/radio/programs/thinkoutloud/segment/flood-insurance-maps-impact-northwest-residents/>)

Transportation: The Transportation Growth Management website ([www.oregon.gov/LCD/TGM](http://www.oregon.gov/LCD/TGM)) has been significantly reorganized and improved. The legislative report on scenario planning for reducing greenhouse gas emissions is addressed in a separate agenda item.

Measure 49: With the commission approval of the policy agenda, we have begun background work on the questions surrounding transfer of development rights. A recent court decision in *Rosboro* is described above. The number of court cases has declined to around a dozen, but only two or three could be considered still active. In several cases we are not actively participating because we are not a party, but we monitoring the outcome. A couple of cases have been decided, but could still be appealed to the Oregon Supreme Court, although it is unlikely the Supreme Court take them.

#### **F. FORTIETH ANNIVERSARY OF SB 100**

On continuing theme of the 40<sup>th</sup> anniversary of SB 100, former DLCD staff member Jim Knight has had [an article](#) relating to the state land use planning program's past, present, and future published in the journal of [The Western Planner](#).

### **III. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION**

#### **A. NEW STAFF AND PROMOTIONS**

Doug Crook returned to our Fiscal Analyst 2 position on October 16, 2013. We welcome him to the Administrative Services Division and the department. Meg Gardiner started in August as the

new NOAA Coastal Fellow. She will be working on coastal shoreline protection issues with OCSD and Oregon Parks and Recreation Department staff over the next two years.

Scott Edelman has accepted the department's offer to become the Central Oregon Regional Representative. Scott will begin on Wednesday, November 13. Scott lives in Redmond with his wife and two sons. He is currently the planning director for the city of Prineville. He has also been a planner for the city of Redmond and the Central Oregon Intergovernmental Council. Scott holds a Master's Degree of Urban and Regional Planning from the University of North Carolina at Chapel Hill, with an emphasis in Economic Development.

#### **B. DEPARTING EMPLOYEES**

None.

#### **C. RECRUITMENTS**

None.

### **IV. LCDC POLICY AND RULEMAKING UPDATES**

The commission approved the department's policy agenda at its September meeting. Several projects on the agenda are already underway.

#### **A. CURRENT RULEMAKING**

UGB Streamlining: The department will convene its first meeting with the Urban Growth Boundary Rules Advisory Committee on October 31. The rules will implement HB 2254, which required LCDC to establish an alternative, simplified UGB amendment process.

Housekeeping Rulemaking: The department has drafted minor and technical changes to farm and forest rules (div 6 and 33) in order to align the rules with new legislation enacted by the 2013 legislature (see Item 12).

Solar Siting: The department is initiating rulemaking requested by legislators, and is proposing a rules advisory committee (RAC) for LCDC appointment (See Item 14).

#### **B. OTHER POLICY ACTIVITIES**

Southern Oregon Pilot Project: The Rogue Valley COG has executed a contract for a Technical Assistance Grant for work on this project this biennium (see Attachment A).

TDO's in Deschutes County: The department is participating in a workgroup convened by Representative Huffman to consider whether the Metolius transfer of development opportunity (TDO) law should be revised to broaden the allowed potential receiving areas from the transferred development. This conversation is initiated at the request of the owners of the Aspen

Lakes development and golf course, who hope to obtain additional development opportunities on or near their existing project in Deschutes County. This project is intended to seek a consensus on a proposal, and may result in legislation introduced by rep. Huffman for the 2015 session.

Population Forecasting (HB2253): The department has been working with PSU as it begins developing its rules for a methodology to guide population forecasting required by HB 2253.

**V. ATTACHMENT**

- A. Rogue Valley Council of Governments Grant Agreement

<b>Oregon</b> <b>Department of Land Conservation and Development</b> <b>635 Capitol Street N.E. Salem, Oregon 97301</b> <b>2011-2013 Grant Contract</b>		<b>Date</b> October 17, 2013
		<b>Type of Grant</b> Technical Assistance
<b>Grantee Name</b> Rogue Valley Council of Governments (RVCOG)		<b>Grant No.</b> <b>TA-OL-15-001</b>
<b>Street Address</b> 155 N. 1st Street P.O. Box 3275 Central Point, Oregon 97502		<b>DLCD Share of Cost</b>  <b>\$246,000.00</b>
<b>State General Fund</b> X	<b>Closing Date</b> <b>December 31, 2014</b>	<b>Grantee Share of Cost (if applicable)</b> <b>Not Required</b>
Last Legal Date to Amend Grant per Standard Condition 16:		<b>Total Cost</b> <b>\$246,000.00</b>
<b>Amendments Deadline</b> No later than <b>October 1, 2014</b>		
<b>Project Title</b> Southern Oregon Regional Pilot Program in Douglas, Jackson, and Josephine Counties		
<b>Grantee Representative</b> Michael Cavallaro, Executive Director Phone: 541.664.6674 <a href="mailto:mcavallaro@rvco.org">mcavallaro@rvco.org</a>		<b>DLCD Representative</b> Josh LeBombard, DLCD Grant Manager Phone: 541.414.7932 <a href="mailto:josh.lebombard@state.or.us">josh.lebombard@state.or.us</a>

This State of Oregon grant Contract herein referred to as Contract, is by and between the Department of Land Conservation and Development, herein referred to as DLCD, and the Rogue Valley Council of Governments (RVCOG) herein referred to as Grantee.

This Contract, approved by the Director of DLCD, acting on behalf of the Land Conservation and Development Commission, is issued in duplicate and constitutes an obligation of funds in return for the work described herein. By signing the two documents, Grantee agrees to comply with the grant provisions checked below and attached. Upon acceptance by Grantee, the signed complete documents shall be returned to DLCD via email.

Grantee shall either, digitally sign the copy of this Contract, or print out page 2 of this contract sign, pdf page 2 and return the copy to DLCD within thirty (30) days of the date at the top of this page. If not signed and returned without modification by Grantee within thirty (30) days of receipt, the DLCD Grant Program Manager may unilaterally terminate the grant award. Upon receipt of the signed Contract the DLCD Grant Program Manager shall sign and return a signed copy to Grantee via email.

The effective date of this Contract is the latest date on which all parties have signed this Contract and all necessary approvals have been obtained by the "Effective Date."

Funds provided under this Contract can only be used for expenditures incurred on or after the Effective Date and on or before the Closing Date specified above.

This grant may be amended according to the policies and procedures of DLCD, and with the Contract of all parties to the Contract, but the Closing Date cannot go beyond May 29, 2015.

This Contract consists of the required signatures and attachments listed and checked below. The attachments are listed in descending order of precedence. In the case of any conflict among the documents, the document with the higher precedence shall control.

Components of the Contract and required signatures are below.

- Department of Land Conservation and Development Special Award Conditions
- Department of Land Conservation and Development Standard Award Conditions
- Attachment A: Grantee Grant Application and Narrative
- Attachment B: Contact Names and Addresses identified in Attachment B
- Attachment C: Request for Reimbursement Form and Instructions
- Attachment D: Office of the Governor State of Oregon Executive Order No. 12-07
- Attachment E: Regional Solutions Team Names (RST)
- Attachment F: July 26, 2013 Letter from Department of Land Conservation and Development to Rogue Valley Council of Governments

<b>Approved for Legal Sufficiency,</b> Oregon Department of Justice  <b>Steven William Marlowe</b>	<b>Title</b> <b>Assistant Attorney General</b> <b>Tax and Finance Section</b> <b>General Counsel Division</b>	<b>Date</b>  <b>10/15/2013</b> <b>Email on file at DLCD</b>
Print Name of Authorized Official For the Grantee  <b>Michael Cavallaro</b>	<b>Title</b>  <b>Executive Director</b>	<b>Date</b>
Signature of Authorized Official For the Grantee		
Print Name of DLCD Grant Program Manager  <b>Rob Hallyburton</b>	<b>Title</b>  <b>Community Services Division</b> <b>Manager</b>	<b>Date</b>
Signature of DLCD Grant Program Manager		

## **DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT SPECIAL AWARD CONDITIONS**

Subject to any applicable debt limitation set forth in Article XI, Section 10, of the Oregon Constitution, by city charter or otherwise, and contingent upon funds being appropriated by the Legislative Assembly and sufficient allotment authority therefore, Grantee agrees to the provisions below.

1. Grantee agrees that this grant, number TA-OL-15-001, to Rogue Valley Council of Governments supports the work described in the Grantee's grant application (the "Project" or the "Work"), which is incorporated into this Contract as Attachment A – Grantee Grant Application and Narrative. Where the terms of the other Contract documents and Attachment A differ, the Contract will be given the priority set forth and these special award conditions shall prevail.
2. Grantee agrees that all reports, studies, and other documents produced under this scope of work must indicate on the cover or the title page an acknowledgement of the financial assistance provided by DLCD and bears the following legend: "This project is funded by Oregon general fund dollars through the Department of Land Conservation and Development. The contents of this document do not necessarily reflect the views or policies of the State of Oregon."
3. Grantee agrees to identify the location of the originals of any product(s) or work product(s), if the copy is submitted to DLCD or if the product(s), or work products is one-of-a-kind document.
4. Grantee agrees to produce and submit to DLCD those product(s) as specified in this Contract, including but not limited to those products further described in Grantee's grant application narrative or scope of work (SOW).
5. Grantee agrees that the term digital media means a compact disc (CD), digital video disc (DVD), USB flash drive, or an e-mail or FTP submittal authorized by the Grant Administrative Specialist.
6. Grantee agrees that the Regional Partners will include Douglas County, Jackson County, and Josephine County. Grantee will serve as the project's administrative coordinator.
7. Grantee agrees that any notice issued by Grantee, which is eligible for reimbursement under ORS 227.186 or ORS 215.503 (Notice to property owners of hearing on certain zone change under Measure 56) are not reimbursable under this Contract.
8. Grantee agrees to coordinate and provide notice to DLCD, Regional Partners, other agencies, and organizations listed in Attachment A of public meeting(s), workshop(s), work session(s), and/or hearing(s) to develop, review or approve products prepared under this Contract.
9. Grantee agrees to, in consultation with the DLCD Grant Manager and Regional Partners provide timely review of all draft copies of work product(s) and non-related draft work product(s) to DLCD and other affected agencies and organizations for review and comment.
10. Grantee agrees to submit a written report at the request of the DLCD Grant Manager, at any time outside of the payment schedule, in addition to the reports submitted with Attachment C.
11. Grantee agrees that DLCD will provide three payments; two interim payments and a final payment by the Closing Date, and agrees the payments in this condition will be made only upon submittal of qualifying product(s) and progress report(s) in accordance with the terms of Attachment C, Request for Reimbursement Form to this Contract. The report(s) must describe the progress to date on each task or product undertaken during the billing period. Other written or verbal progress reports will be provided upon reasonable request by the DLCD Grant Manager.

12. Grantee agrees that the total reimbursement request for products under Tasks 5 and 6 shall not exceed \$80,000.00, and for Task 7 shall not exceed \$103,000.00, and for Task 8 shall not exceed \$63,000. The total reimbursement of all products under all tasks shall not exceed \$246,000.00.
13. Grantee agrees and understands that payments under this Contract will be reduced if work task(s) or product(s) or both work task(s) and product(s) scheduled to be completed are not completed by the Regional Partners. The total grant payments under this Contract will not be reduced under this paragraph by more than 20 percent rounded up to the near dollar amount, which equals \$49,200.00. Grantee further understands and agrees that DLCD's payment obligations under this Contract are conditioned upon DLCD's receiving funding, appropriations, limitations, allotments or other expenditures authority sufficient to allow DLCD in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract.
14. Grantee agrees that if a new comprehensive plan map or zoning map is created, or an existing map is revised or updated, the product(s) need to be submitted in an electronic form compatible with the Environmental Systems Research Institute's (ESRI) ArcGIS (coverage, shapefile and geodatabase).
15. Grantee agrees Geographic Information System (GIS) data should be free of topological errors and Metadata compliant with the current State of Oregon Geospatial Enterprise Office (GEO) GIS Data Standards are accessible at <http://www.oregon.gov/DAS/CIO/GEO/pages/standards/standards.aspx> . The projection of the data may be determined by the jurisdiction. All data should have the projection defined with the dataset and must be documented in the metadata.
16. Grantee agrees that DLCD may display appropriate products on its Web interface or incorporate GIS data generated under this Contract and any additional data provided that is not specifically restricted into state agency databases, acknowledging that Grantee and agents of Grantee are not responsible for the accuracy of such data. DLCD may also share the data specifically generated under this Contract with other agencies and organizations, as this is data that DLCD owns as work products under Standard Award Conditions No. 5.
17. Grantee agrees that, while Grantee has entered into Intergovernmental Agreements with the Regional Partners for the Regional Partners to perform some of the Project, the Grantee is solely responsible to DLCD for timely completion of the Project. Grantee shall require the Regional Partners to perform those parts of the Project related to the Regional Partners. Grantee shall monitor the Regional Partner's continued compliance with the project. Grantee shall incorporate appropriate provisions in the subcontracts permitting it to enforce the Regional Partners compliance with the project's requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the project is in full force or pursuing legal action to enforce the requirements.

## Scope of Work

### **Project Purpose Statement**

#### **Introduction**

Utilizing the direction provided in Attachment D, Office of the Governor State of Oregon Executive Order No. 12-07, the Regional Partners will analyze identified strategies that may allow appropriate variation in what lands must be planned and managed as farm and forest lands in Douglas, Jackson, and Josephine counties. Grantee will provide administrative coordination and grant related support. The program consists of three major phases.

#### ***Phase 1***

Analysis of regional definitions and criteria for farm and forest lands, to explore:

- a. Alternative forest land designation, including revised methods for the authorization of dwellings;
- b. Alternative farm parcel size opportunities; and
- c. Designating non-resource lands.

#### ***Phase 2***

This phase will include:

- a. The identification of mapping errors made in the acknowledgement process; and
- b. An analysis of the appropriate level and types of uses on the carrying capacity of the land of pursuing the approaches listed above, as outlined in Attachment D: Office of the Governor State of Oregon Executive Order No. 12-07.

#### ***Phase 3***

Preparation of a petition for rulemaking to LCDC or a project summary report if information necessary to prepare a petition is not completed.

#### **Project Overview and Management**

Overall administrative coordination of the Project will be the responsibility of the Grantee as assisted by the DLCDC Grant Manager. The specific duties of the Grantee will include:

- a. Providing general administrative support to the Regional Partners, especially in terms of ensuring consistency with the requirements and timeline of Executive Order 12-07 and its implementation plan as agreed upon by DLCDC and the Regional Partners;
- b. Setting up and maintaining a listserv or other appropriate list with the help of each county. The list(s) will contain the name, mailing address, city, state, email address to send notice of meetings and pertinent information to the public;
- c. Establishing and maintaining a central website for the project, incorporating specific information and work products from each county on an ongoing basis; and
- d. Serving as the project grant administrator, submitting reimbursement requests and work products to DLCDC, and providing the individual counties with their scheduled reimbursements.

#### ***Advisory Committees***

The Project will employ a Steering Committee (SC) comprised of at least one county commissioner and one planning director from each county and a technical advisory committee (TAC) composed of local government staff, state agency staff, and others identified by the SC and TAC.

See Task 3 of this Contract for more details on the advisory committees. Additional representatives from other affected agencies and organizations may serve as recommended by the planning directors.

The SC and TAC will meet on a regular basis to review technical analysis and recommendations prepared by the Regional Partners. Individual TAC members will be responsible for communicating with officials from their respective jurisdictions and to assure that policy issues are incorporated into technical work at the appropriate time and in the most effective way.

### ***Agency Role***

DLCD will provide financial, administrative and technical assistance. DLCD supports the collaborative, regional approach envisioned in the Project and agrees to work equally and fairly with each jurisdiction to help assure that state and local interests are optimized. DLCD recognizes the Regional Pilot Program Project will inform, but will not bind, future land use decisions of the cooperating jurisdictions.

### ***Grantee Role***

The project will use Grantee's services to perform technical analysis related to identifying any issues that are not being resolved among the three jurisdictions and Grantee is expected to make sure the project is on time and will be completed as planned. If necessary, and if requested by a Regional Partner, Grantee may attend meetings of the SC, TAC, or other project-related meetings. Grantee will establish and maintain a website (*see* subtask 3.d).

### ***Project Meeting Materials***

Any written materials prepared by Grantee shall be provided to each of the Regional Partners in electronic format (PDF and Word) one week prior to any scheduled SC or TAC meetings or both. All written materials and pertinent information for each SC, TAC or county meeting shall be provided to Grantee for upload to the regional Grantee-maintained website. Minutes or summaries from these meetings shall be provided by Regional Partners to Grantee in electronic format within a reasonable time period for upload to the regional website.

Each of the Regional Partners shall prepare meeting agendas and summaries for each SC or TAC or county meeting. The county where the meeting is held shall distribute, where appropriate, meeting materials electronically to project committee members at least five (5) days prior to any scheduled meeting.

### ***Project Deliverables Schedule***

The deliverables, including "products" and "work products" identified throughout this scope of work have a specific due date by month, day, and year started after the Contract's Effective Date.

### ***Expectations about Written and Graphic Deliverables***

Grantee shall provide the final products on digital media to the DLCD Salem Office and to the Regional Partners. Grantee will distribute a final copy of this signed contract to each of the Regional Partners. Grantee and Regional Partners will share data, reports, agendas, minutes, GIS and other media with each other.

## **Work Program and Timeline**

The work performed under this grant is a continuation of work completed under a previous grant (TA-COG-13-176) and includes all tasks not completed under the previous grant. In order to provide uniformity with the former scope of work, task numbering for this grant maintains the same sequence; Tasks 1 and 2 from the previous grant were completed, so this grant begins with Task 3.

### **Phase 1**

#### **Task 3: Ongoing Project Administration and Oversight.**

Grantee and Regional Partners shall:

- a. Maintain regular communication with the Grantee, the Regional Partners, DLCD, other state agencies, and each other during the course of organizing and carrying out the Pilot Program.
- b. Maintain Steering Committees comprised of one county commissioner and the planning director from each county to oversee the progress of the Pilot Program and report to respective boards of commissioners.
- c. Maintain a consistent message regarding the progress and content of the Pilot Program.
- d. Maintain information available via the Web regarding the progress of the Pilot Program, public participation opportunities, and data and materials developed under this grant.

- e. Maintain a technical advisory committee for its respective county to review data and information and provide comments and recommendations to the County and Regional Partners regarding the completeness and accuracy of data and other tasks as the Regional Partner County assigns. To present a balanced approach, the committee shall include but not be limited to, local members with expertise in the following fields: farming, ranching, forestry, special districts, mining/aggregate, economic development, land use, and city government. The committee shall also include ex-officio members from DLCDC, members from the Oregon Departments of Agriculture, Fish and Wildlife, Forestry, Land Conservation and Development, Transportation, and Water Resources; and affected Indian Tribes. DLCDC will ensure participation by other State Agencies.
- f. Maintain a uniform method and format to create and disseminate data and information generated by the Regional Partners.

**Task 3 products**

- 3-1 Regional Partners provide evidence of steering and technical committees' continued participation during the process of developing data, analysis, and program deliverables.
- 3-2 Website accessible from the Grantee's and each Regional Partner County's current site containing up to date information pertinent to the public, state agencies, and stakeholders regarding the Pilot Program.

**Task 3 Timeline:** Effective Date of Contract through Closing Date.

**Task 3 Budget:** \$0

**Task 4 Data Acquisition - Mapping and associated data**

Each Regional Partner using GIS as described in Special Conditions 15 to 17 shall develop or revise maps and associated data regarding issues pertinent to subsequent analysis identified in Tasks 5, 6, and 7 as follows. The maps shall be consistent and compiled using existing data and methodology and shall be displayed in a uniform format across the region. Maps throughout this Contract are referenced by the following letter designation, which corresponds to the maps identified in Task 4 of Grant No. TA-COG-13-176:

- A. Soils capability for farm use
  - B. Forest productivity
  - C. High-value soils as defined in ORS 195
  - D. Groundwater resources
  - E. Goal 5 inventory areas
  - F. The most recent wildlife mapping with GIS data from ODFW
  - G. Fire protection districts
  - H. Parcelization and existing development
  - I. Current farm, forest, non-resource, and exception-area plan and zone designations
  - J. Level of utilization of existing rural residential lands
  - K. Areas of natural hazards and other development constraints
- a. Douglas County
    1. Illustrate on a second map for Map B, lands with lesser forest production capability of 20-49 and 50-84 cubic feet per acre per year. Also include a description of how lands without a forest capability rating were addressed and provide information on merchantable tree species used in determining forest productivity for mapping.
    2. Map of Class I and II waterways, data provided by ODFW and OWRD. Define the term "significant wetland."
    3. Add information to fire protection district Map G explaining role of DFPA/CFPA in fire protection priority.
  - b. Jackson County
    1. Map soils as Class I-IV with or without irrigation (Map A).
    2. Map all ORS 195 viticulture areas (Map C).
    3. Provide a second map illustrating water districts, and irrigation districts (Map D).

4. Identify the data source and date for the vernal pool fairy shrimp data used.
  5. Replace the salmonid bearing stream data with the Class 1 and 2 streams maintained by the County.
  6. Provide information in the legend of Map I as to what the areas depicted in white (or clear) are.
- c. Josephine County
1. Map soils as Class I-IV with or without irrigation (Map A).
  2. Map all ORS 195 viticulture areas (Map C).
  3. Provide a second map illustrating water districts, and irrigation districts (Map D).
  4. Depict wetlands, serpentine areas, and aggregate sites. Provide a description of “primary” and “secondary” aggregate sites.
  5. Display all available Goal 5 resource data on the Goal 5 maps, including waterways, wetlands and deer winter range.
  6. Replace the salmonid bearing stream data with the Class 1 and 2 streams maintained by the County.
  7. Map steep slopes (Map K).

#### **Task 4 products**

Maps and GIS data for all maps identified as needing revision above.

**Task 4 Timeline:** To be completed by Grantee by April 30, 2014

**Task 4 Budget:** \$0. Budget for Tasks 7 and 8 may be used to complete this Task.

#### **Task 5 Assessment of Resource Lands**

Using technical studies and GIS data, the Regional Partners shall, in consultation with appropriate state agencies, analyze lands currently designated for farm and forest use to:

- a. Explore establishing regional criteria or factors for designating:
  1. Alternative forest land designation, including revised methods for the authorization of dwellings. This also includes providing additional tools to manage interface areas with non-commercial forest characteristics and to protect other forest values.
  2. Alternative farm parcel size opportunities characteristic to Southern Oregon agricultural lands management and emerging agricultural practices while protecting other farm values.
- b. Explore establishing regional criteria or factors for determining which lands should not be designated under Goals 3 or 4, consistent with the requirements this Grant Contract Attachment D: Office of the Governor State of Oregon Executive Order No. 12-07.
- c. Using GIS data from Task 4 and GIS guidelines as described in Special Conditions Nos. 15–17, map all of the land in each county in the region that will be under consideration for alternative forest land designation, alternative farm parcel size opportunities, or to be re-designated to non-resource land. The maps shall be compiled using consistent data and methodology and shall be displayed in a uniform format across the region. The criteria or methods shall be consistent across the region.
- d. Jackson and Josephine counties shall conduct at least one noticed public meeting, at which public comment is allowed.

#### **Task 5 products**

5-1 A coordinated Technical Study Report identifying any criteria or methods established in items 5.a.1, 5.a.2, and 5.b above.

The Technical Study Report covering all three counties will summarize the identification of *regional* criteria or methods used to establish alternative forest land designations or alternative farm parcel size opportunities and the criteria or factors for determining which lands should not be designated under Goals 3 or 4. The report besides the summarization above will include: **a)** A narrative describing how any criteria or methods were developed, a justification for the selected criteria or methods and a discussion of how comments from each TAC affected the process; **b)** Address how the criteria or methods will retain, in farm or forest planning and zoning designations, lands that are functionally important to the types of farming and forest operations that occur, or that are likely to occur in the future (Item 4 in the executive order) in the region and in each county specifically; **c)** An analysis as to how other forest values were considered and are being protected for the region and each county specifically.

If a county's (or counties') analysis leads it to propose an approach that is not outlined in Task 5 but is allowed under current state law, then the Technical Study Report will summarize the approach, explain how it meets the requirements of current state law and indicate how comments from each TAC affected the process. In this case, the selected approach does not necessarily need to be regional in nature.

5-2 Maps and GIS data as described in subtask 5.c.

5-3 Agenda, signup sheets, minutes, and results of required meeting(s).

**Task 5 Timeline:** To be completed by Grantee by June 30, 2014

**Task 5 Budget:** \$52,000.00

## **Phase 2**

### **Task 6 Assessment of Mapping Errors**

Jackson County shall, in consultation with appropriate state agencies, use GIS guidelines described in Special Conditions 15 to 17 to analyze lands currently designated for farm and forest use to identify any mapping errors made in the acknowledgement process consistent with ORS 215.788-791.

#### **Task 6 product**

Report on Maps and GIS data for all mapping errors identified in Jackson County. If Jackson County finds that significant mapping errors do not exist in the county, then a report summarizing such will suffice.

**Task 6 Timeline:** To be completed by Grantee by June 30, 2014

**Task 6 Budget:** \$28,000.00 to Jackson County

### **Task P1 Interim Payment 1**

**Reimbursement of up to \$80,000.00 upon submittal of products listed in Tasks 5 and 6 and a signed Attachment C, DLCDC Interim Reimbursement Form, acceptable to DLCDC.**

Submit each of the products on digital media to the Grant Manager and the Grant Administrative Specialist to addresses listed in Attachment B, DLCDC Contact Information.

Send Attachment C, Interim Reimbursement Form, and accompanying products to the Grant Administrative Specialist. Payment will not be made until all materials are received in the Salem Office and approved by DLCDC.

**Task 7 Carrying Capacity Analysis**

Regional Partners shall:

- a. Using GIS guidelines as described in Special Conditions 15 through 17 establish common factors or criteria, in accordance with Attachment D, Office of the Governor State of Oregon Executive Order No. 12-07, section 5, to determine the appropriate level and types of uses for lands eligible for consideration for alternative forest land designation, alternative farm parcel size opportunities, or to be re-designated to non-resource land. The factors or criteria shall be applied to sample areas in each county. The number, size, and location of the sample areas shall be representative of all land identified for consideration in Task 5. Data utilized to create all maps identified in Task 4 of the contract for Grant No. TA-COG-13-176 and identified in Task 4 of this Grant Contract are to be used in Task 7. Additionally, the Task 7 analysis will include the following data:
  - 1. Douglas County:
    - i. Animal Unit Months (AUM) to be provided by the Department of Agriculture;
    - ii. The most recent and relevant wildlife and habitat data provided by Department of Fish and Wildlife (ODFW), such as Big Game Habitat, Threatened and Endangered Species (and other Goal 5 resources), Conservation Opportunity Areas, and wetlands; and
    - iii. Steep slopes
  - 2. Jackson County:
    - i. Animal Unit Months (AUM) to be provided by the Department of Agriculture;
    - ii. The most recent and relevant wildlife and habitat data provided by ODFW. Include a summary table identifying the data source and date of each GIS data layer;
    - iii. Northern spotted owl suitability, which includes non-federal ownership from data provided by ODFW;
    - iv. Sensitive nest sites from data provided by ODFW
  - 3. Josephine County:
    - i. Animal Unit Months (AUM) to be provided by the Department of Agriculture;
    - ii. The most recent and relevant wildlife and habitat data provided by ODFW, including Conservation Opportunity Areas. Include a summary table identifying the data source and date of each GIS data layer;
    - iii. Northern spotted owl suitability, which includes non-federal ownership from data provided by ODFW;
    - iv. Sensitive nest sites from data provided by ODFW
- b. Prior to Task 7 product submittal, conduct at least one noticed public meeting in Douglas County, Jackson County, and Josephine County, at which public comment is allowed.

**Task 7 products**

- 7-1 Maps, data, and narrative showing the results of the carrying capacity analysis on the identified sample areas.
- 7-2 Minutes of required meeting.

**Task 7 Timeline:** To be completed by Grantee by September 15, 2014

**Task 7 Budget:** \$103,000.00

**Task P2 Interim Payment 2**

Reimbursement of up to **\$103,000.00** upon submittal of products listed in **Task 7 or additional products, maps, and data required for Task 4**, and a signed Attachment C, DLCD Interim Reimbursement Form, acceptable to DLCD.

Submit each of the work products on digital media to the Grant Manager and the Grant Administrative Specialist to addresses listed in Attachment B, DLCD Contact Information.

Send Attachment C, Interim Reimbursement Form, and accompanying products to the Grant Administrative Specialist. Payment will not be made until all materials are received in the Salem Office and approved by DLCD.

**Phase 3**

**Task 8 Preparation of Petition for Rulemaking or A Detailed Project Summary Report**

Regional Partners shall:

- a. Utilize products from prior tasks to prepare a petition to the Land Conservation and Development Commission for rulemaking. The petition for rulemaking shall contain all products identified in the previous tasks as well as a summary of additional county-specific and regional tasks necessary to implement new rules.
- b. If a petition for rulemaking is not complete, then a project summary report will suffice. The project summary shall contain all products identified in the previous tasks as well as a summary of additional local/regional tasks necessary to complete a petition for rulemaking and to implement new rules.

**Task 8 product(s):** Draft petition for rulemaking or project summary report as described above.

**Task 8 Timeline:** To be completed by Grantee no later than December 31, 2014

**Task 8 Budget:** \$63,000.00

**Task FP Final Payment**

Reimbursement of up to **\$63,000.00 and the balance of the previously unused grant funds from P2 for this grant award upon submittal of the product listed in Task 8 (Petition or Report)**; and a signed Attachment C, DLCD Final Reimbursement Form, acceptable to DLCD.

Submit, no later than **December 31, 2014** the product on digital media to the Grant Manager and the Grant Administrative Specialist to addresses listed in Attachment B, DLCD Contact Information.

Send Attachment C, Final Reimbursement Form, and the accompanying products to the Grant Administrative Specialist. Payment will not be made until all materials are received in the Salem office and approved by DLCD.

**Budget Summary**

Task 1 – N/A	N/A
Task 2 – N/A	N/A
Task 3 – Ongoing Project Administration and Oversight	\$ 0
Task 4 – Data Acquisition - Mapping and associated data	\$ 0
Task 5 – Assessment of Resource Lands	\$ 52,000
Task 6 – Assessment of Mapping Errors	\$ 28,000
Task 7 -- Carrying Capacity Analysis	\$ 103,000
Task 8 – Petition for Rulemaking or Project Summary Report	<u>\$ 63,000</u>
TOTAL	<u>\$ 246,000</u>

## DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT STANDARD AWARD CONDITIONS

Subject to any applicable debt limitation set forth in Article XI, Section 10, of the Oregon Constitution, by city Charter or otherwise, and contingent upon funds being appropriated by the Legislative Assembly and sufficient allotment authority therefore, Grantee agrees to the provisions below.

1. **DLCD Funds:** DLCD certifies that on the Effective Date of this grant sufficient funds are authorized, available, and set-aside, Subject to the provision of ORS 291.261.
2. **Reporting:** At any time before the Closing Date, when requested by the DLCD Grant Manager, Grantee shall provide a written report on the status and progress of Work performed under this Contract within a mutually agreed time frame.
3. **Payments:** DLCD payments to Grantee under this Contract shall be made in accordance with the grant payment schedule described in the “Special Award Conditions Product(s), Activities, or Payments Table or Scope of Work” of this Contract. Payment is contingent upon DLCD’s acceptance of the Product(s) or Work Product(s) produced under the Contract. Grantee agrees that reimbursement of all amounts requested by Grantee is contingent upon compliance with all the terms and conditions of this Contract.
4. **Penalty:** Payments to Grantee may be withheld or reduced if DLCD determines that work performed under this Contract is unsatisfactory, based on the best professional judgment of the DLCD Grant Manager, or if one or more terms or conditions of this Contract have not been met to the extent required by law.
5. **Ownership of Work Product(s).**
  - a. **Definitions.** As used in this Paragraph 5 and elsewhere in this Contract, the following terms have the meanings set forth below:
    - i. **“Grantee Intellectual Property”** means any intellectual property owned by Grantee and developed independently from the Project.
    - ii. **“Third Party Intellectual Property”** means any intellectual property owned by parties other than DLCD or Grantee.
    - iii. **“Product(s)” or “Work Product(s)”** means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Grantee is required to deliver to DLCD pursuant to the Project and this Contract, including but not limited to any Product(s) or Work Product(s) described in Special Award Conditions Number 1.
  - b. **Original Works.** All Product(s) or Work Product(s) created by Grantee pursuant to the Project and this Contract, including derivative works and compilations, and whether or not such Work Product(s) is considered a work made for hire or an employment to invent, shall be the exclusive property of DLCD. DLCD and Grantee agree that such original works of authorship are “work made for hire” of which DLCD is the author within the meaning of the United States Copyright Act. If for any reason the original Product(s) or Work Product(s) created pursuant to the Project is not “work made for hire,” Grantee hereby irrevocably assigns to DLCD any and all of its rights, title, and interest in all original Product(s) or Work Product(s) created pursuant to the Project, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine.

- c. **Upon DLCD's reasonable request**, Grantee shall execute such further documents and instruments necessary to fully vest such rights in DLCD. Grantee forever waives any and all rights relating to original Product(s) or Work Product(s) created pursuant to the Project, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
  - i. **In the event that Product(s) or Work Product(s)** created by Grantee under this Contract is Grantee Intellectual Property or is a derivative work based on Grantee Intellectual Property is a compilation that includes Grantee Intellectual Property, Grantee hereby grants to DLCD an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Grantee Intellectual Property employed in the Product(s) or Work Product(s), and to authorize others to do the same on DLCD's behalf.
  - ii. **In the event that Product(s) or Work Product(s)** created by Grantee under this Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Grantee shall secure on DLCD's behalf and in the name of DLCD an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Product(s) or Work Product(s), and to authorize others to do the same on DLCD's behalf.
- d. **Grantee Intellectual Property.** In the event that Product(s) or Work Product(s) is Grantee Intellectual Property, Grantee hereby grants to DLCD an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Grantee Intellectual Property, and to authorize others to do the same on DLCD's behalf.
- e. **Third Party Works.** In the event that Product(s) or Work Product(s) is Third Party Intellectual Property, Grantee shall secure on DLCD's behalf and in the name of DLCD, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on DLCD's behalf.

6. **Indemnity.**

- a. **General Indemnity. Subject to Limitation of State of Oregon Constitution and State of Oregon Tort Claims Act.** Grantee shall defend, save, hold harmless, and indemnify the State of Oregon and DLCD and their Officers, Employees, Agents from and against all Claims, Suits, Actions, Losses, Damages, Liabilities, Costs and Expenses of any Nature whatsoever, including Attorney Fees, resulting from, arising out of, relating to the Activities of Grantee or its Officers, Employees, Subcontractors, or Agents under Contract.
- b. **Indemnity for Infringement Claims. Subject to Limitation of State of Oregon Constitution and State of Oregon Tort Claims Act. Without limiting the generality of section 6.a,** Grantee Expressly agrees to Defend, Indemnify, and hold DLCD, the State of Oregon and their Agencies, Subdivisions, Officers, Directors, Agents, and Employees harmless from any and all Claims, Suits, Actions, Losses, Liabilities, Costs, Expenses, including Attorney's Fees, and Damages arising out of or related to any claims that the Product(s) or Work Product(s) or Work Task(s) or any other tangible or intangible items delivered to DLCD by Grantee that may be the subject of protection under any State or Federal Intellectual Property Law or Doctrine, or DLCD's use thereof, infringes any Patent, Copyright, Trade Secret, Trademark, Trade Dress, Mask Work, Utility Design, or Other Proprietary Right of any Third Party; provided, that State shall provide Grantee with prompt written notice of any infringement claim.

- c. **Control of Defense and Settlement.** Grantee shall have control of the Defense and Settlement of any claim that is subject to sections 6.a or 6.b; however, neither Grantee nor any Attorney engaged by Grantee shall defend the claim in the name of the State of Oregon or any Agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its Agencies, without first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Attorney General, Authority to Act as Legal Counsel for the State of Oregon, nor shall Grantee settle any claim on behalf of the State of Oregon without the Approval of the Attorney General. the State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that grantee is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

**7. Termination:**

- a. **DLCD's Right to Terminate at its Discretion.** At its sole discretion, DLCD may terminate this Contract:
- i. **For its convenience** upon thirty (30) days' prior written notice by DLCD to Grantee;
  - ii. **Immediately upon written notice** if DLCD fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow DLCD, in the exercise of its reasonable administrative discretion, pay for the Product(s) or Work Product(s) or Work Task(s) hereunder; or
  - iii. **Immediately upon written notice** if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the DLCD's financial assistance under this Grant Contract is prohibited or DLCD is prohibited from paying for the Product(s) or Work Product(s) or Work Task(s) hereunder from the planned funding source.
- b. **DLCD's Right to Terminate for Cause.** In addition to any other rights and remedies DLCD may have under this Contract, DLCD may terminate this Contract immediately upon written notice by DLCD to Grantee, or at such later date as DLCD may establish in such notice, or upon expiration of the time period and with such notice as provided below, upon the occurrence of any of the following events:
- i. **Grantee is in default** because Grantee institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
  - ii. **Grantee is in default** because Grantee commits any material breach or default of any covenant, warranty, obligation or Contract under this grant Contract, fails to perform any of its obligations under this grant Contract within the time specified herein or any extension thereof, or so fails to pursue its work hereunder as to endanger Grantee's performance under this grant Contract in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after DLCD's notice, or such longer period as DLCD may specify in such notice.
- c. **Grantee's Right to Terminate for Cause.** Grantee may terminate this grant Contract with written notice to DLCD upon the occurrence of the following events:
- i. **DLCD is in default** because DLCD fails to pay Grantee any amount due pursuant to the terms of this Contract, and DLCD fails to cure such failure within thirty (30) calendar days after Grantee's notice or such longer period as Grantee may specify in such notice; or

- ii. **DLCD is in default** because DLCD commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and DLCD fails to cure such failure within thirty (30) calendar days after Grantee's notice or such longer period as Grantee may specify in such notice.
  - d. **Return of Property.** Upon termination of this Contract for any reason whatsoever, Grantee shall immediately deliver to DLCD all of DLCD's property (including without limitation any Product(s) or Work Product(s) or Work Task(s) for which DLCD has made payment in whole or in part) that is in the possession or under the control of Grantee in whatever stage of development and form of recordation such property is expressed or embodied at that time. Upon receiving a notice of termination of this Contract, Grantee shall immediately cease all activities hereunder, unless DLCD expressly directs otherwise in such notice of termination. Upon DLCD's request, Grantee shall surrender to anyone DLCD designates, all documents, research or objects or other tangible things needed to complete the Product(s) or Work Product(s) or Work Task(s).
  - e. **Termination** under Paragraph 7 shall be without prejudice to any claims, obligations, or liabilities either party may have incurred prior to such termination.
8. **Failure to Comply:** If a party fails to comply with any of the requirements or conditions of this Contract, the other may, without incurring liability, refuse to perform further pursuant to this Contract. DLCD shall make no further reimbursement to Grantee and Grantee shall upon demand by DLCD promptly repay DLCD all unexpended grant funds and grant funds expended in breach of this Contract.
9. **Accounting and Fiscal Records:** Using standard accepted accounting and fiscal records, the Grantee shall maintain records of the receipt and expenditure of all funds subject to this Contract for a period of six (6) years after the Closing Date, or for such longer period as may be required by applicable law or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. Accounting records related to this Contract will be separately maintained from other accounting records.
10. **Closeout report:** The Grantee shall submit a closeout report to DLCD within thirty (30) days after termination of the grant or the Closing Date of this Contract whichever is earlier.
11. **Closeout Payment:** Reimbursement up to the total amount of remaining grant funds will be made upon submittal of all required Product(s) or Work Product(s), up to and including those required for the final reimbursement, and a signed DLCD closeout form acceptable to DLCD. DLCD shall authorize payment to the Grantee within ninety (90) days of such submittal for all required Product(s) or Work Product(s) or Work Task(s) that are accepted by the DLCD Grant Manager after review for compliance with the Contract.
12. **Closeout Penalty:** DLCD reserves the right to reduce or withhold final payment if a closeout report is submitted to DLCD after the thirty (30) days, as referenced in Standard Condition Number 10.
13. **Subsequent funding:** Eligibility for subsequent funding to the Grantee is contingent upon receipt of the closeout report as referenced in Standard Condition Number 10.
14. **Audit:** The Oregon Secretary of State, Attorney General of the State of Oregon and the Director of DLCD or any other duly authorized representative of DLCD shall have access to and the right to examine any records of transactions related to this Contract for six (6) years after the final reimbursement under this Contract is authorized by DLCD.

**15. *Appropriate use of funds:*** Grant funds cannot be used for any purpose other than for the Project and Product(s) or Work Product(s) or Work Task(s) done in accordance with the Work Program and Timeline described in the Scope of Work.

**16. *Amendments:*** Amendments must be facilitated by the DLCDC Grant Manager. An amendment to this Contract may be initiated at any time during the grant period, and must be in writing on the jurisdictions letterhead with original signature of authorized personnel, but must be received at the DLCDC Salem Office at least ninety (90) days prior to the Closing Date and be signed by all parties on or before sixty 60 days prior to the Closing Date.