



Oregon Department of Environmental Quality

## Appendix 7.2

### American Rescue Plan Act

### Coronavirus State Fiscal Recovery Fund Federal Requirements

## I. Required Federal Provisions – ARPA Coronavirus State Fiscal Recovery Fund Projects

### General Compliance

Third-Party Grant Recipient must comply with the terms, conditions and requirements of the federal ARPA Coronavirus State Fiscal Recovery Fund (codified at 42 U.S.C. 802) from which the project budget is funded, in whole or in part, including all implementing regulations (31 CFR 35.1 *et seq.*) and other guidance promulgated by the U.S. Department of the Treasury (collectively, the statute and implementing regulations are referred to in these provisions as “CSFRF”).

### Employee Whistleblower Protection

Third-Party Grant Recipient must comply, and ensure the compliance by any of its subcontractors, suppliers or subrecipients, with 41 U.S.C. 4712, “Program for Enhancement of Employee Whistleblower Protection.” Third-Party Grant Recipient must inform its subcontractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

### Compliance with 2 CFR Part 200

Third-Party Grant Recipient must comply with all applicable provision of 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” including, but not limited to, the Cost Principles and Single Audit Act requirements.

### Federal Funds; Contractor Certification; Federal False Claims

DEQ’s payments to Third-Party Grant Recipient under this Agreement will be paid by funds received by DEQ from the United States Federal Government, in whole or in part. By signing this Agreement, Third-Party Grant Recipient certifies neither it nor its employees, subcontractors, suppliers or subrecipients who will administer this Agreement are currently employed by an agency or department of the United States Federal Government. Third-Party Grant Recipient acknowledges that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject Third-Party Grant Recipient to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise under 18 U.S.C § 1001; 31 U.S.C. §§ 3729-3733 and 3801-3812.

### Federal Non-Discrimination

Third-Party Grant Recipient must comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of the Work. Without limiting the generality of the foregoing, Third-Party Grant Recipient expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, (c) the Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975, (e) the Americans with Disabilities Act of 1990, and (e) all other

applicable requirements of federal 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 this Agreement and required by law to be so incorporated.

### **Compliance with 41 CFR § 60-1.4 - Equal opportunity clause**

During the performance of this Agreement, the Third-Party Grant Recipient agrees as follows:

- (1) The Third-Party Grant Recipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor Third-Party Grant Recipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
- (2) Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Third-Party Grant Recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (3) The Third-Party Grant Recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Third-Party Grant Recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (4) The Third-Party Grant Recipient will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Third-Party Recipient's legal duty to furnish information.
- (5) The Third-Party Grant Recipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Third-Party Grant Recipient's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Third-Party Grant Recipient will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

- (6) The Third-Party Grant Recipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Third-Party Grant Recipient's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Third-Party Grant Recipient may be declared ineligible for further Government contracts or federally

assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (8) The Third-Party Grant Recipient will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Third-Party Grant Recipient will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

### **Copeland Anti-Kickback Requirements**

Third-Party Grant Recipient must comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). Each Third-Party Grant Recipient or subcontractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which the person is otherwise entitled. Third-Party Grant Recipient acknowledges all suspected or reported violations will be reported to the appropriate Federal awarding agency.

### **Compliance with Contract Work Hours and Safety Standards Act**

Third-Party Grant Recipient must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Third-Party Grant Recipient must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

### **Federal Rights to Inventions Made Under a Contract or Agreement**

The federal funding agency associated with this Agreement, as the awarding agency of the funds used, at least in part, for the Work under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms "grant" and "award" refer to funding issued by the federal funding agency to the State of Oregon. The Third-Party Grant Recipient agrees that it has been provided the following notice:

- (1) The federal funding agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to: (1) The copyright in any Work developed under a grant, subgrant or contract under a grant or subgrant; and (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
- (2) If this Agreement meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the Third-Party Grant Recipient or subcontractor wish to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Third-Party Grant Recipient or subcontractor must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants,

Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

- (3) The Parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.

**Byrd Anti-Lobbying Amendment** –Third-Party Grant Recipient must comply with 31 U.S.C. 1352. In addition, each tiered contractor must certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Third-Party Grant Recipient and all subcontractors must forward all certifications to the DEQ Grant Administrator.

By signing this Agreement, the Third-Party Grant Recipient certifies, to the best of the Third-Party Grant Recipient’s knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of Third-Party Grant Recipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Third-Party Grant Recipient shall complete and submit Standard Form LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.
- (3) The Third-Party Grant Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- (4) This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### **Prohibition on certain telecommunications and video surveillance services or equipment (Huawei and ZTE)**

Third-Party Grant Recipient is prohibited from obligating or expending funds received under this Agreement to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment

produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (a) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (b) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

### **Compliance with Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended**

Third-Party Grant Recipient must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported by the Third-Party Grant Recipient to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (“EPA”).

### **Third-Party Grant Recipient Certification: No Federal Debarment or Suspension**

Third-Party Grant Recipient certifies that it has not been debarred or suspended from being awarded a contract pursuant to the governmentwide exclusions in the System for Award Management (“SAM”), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.”

### **Procurement of Recovered Materials**

Third-Party Grant Recipient must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include: (a) procuring only items designated in guidelines of the EPA at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (b) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (c) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **Domestic Preferences for Procurement of Goods, Products or Materials -**

The Third-Party Grant Recipient shall, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all sub[contracts](#) and purchase orders for work or products under this Agreement. For purposes of this section the following terms are defined as follows:

- (a) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

- (b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**Minority and Women Business Enterprises** -Third-Party Grant Recipient hereby agrees to comply with the requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). Accordingly, the Third-Party Grant Recipient hereby agrees to take affirmative steps to assure that women and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps include the following:

- (1) Including qualified women's business enterprises and small and minority businesses on solicitation lists;
- (2) Assuring that women's enterprises and small and minority businesses are solicited whenever they are potential sources;
- (3) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (4) Where the requirement permits, establishing delivery schedules which will encourage participation by women's business enterprises and small and minority business;
- (5) Using the services and assistance of the Small Business Administration, and the U.S. Office of Minority Business Development Agency of the Department of Commerce; and
- (6) If any subcontracts are to be let, requiring the prime Third-Party Grant Recipient to take the affirmative steps in a through e above. For the purposes of these requirements, a Minority Business Enterprise (MBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by members of the following groups: Black, Hispanic, Asian or Pacific Islander, American Indian, or Alaskan Natives. A Women Business Enterprise (WBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by women.