

AGREEMENT FOR FUNDING

Funding Source: Economic Development Fund
(a special fund from state video poker distributions; and not a county general fund)
Project Manager and Professional Services for Treasure Valley Reload Center

This Agreement (“Agreement”) is made and entered into by and between Malheur County (“County”), a political subdivision of the State of Oregon, and Malheur County Development Corporation, Oregon Business Registry No. 1358171-95, acting by and through its authorized representative (MCDC), both referred to individually or collectively as “party” or “parties”.

SECTION 1: PURPOSE AND EFFECTIVE DATE

The purpose of this Agreement is to collaborate and establish funding for MCDC in order for it to manage and perform services related to the Treasure Valley Reload Center (“TVRC”) and to meet the remaining milestones in Grant Agreement Oregon Department of Transportation (ODOT) Connect Oregon Fund Program Misc. Contracts and Agreement No. 33744 between ODOT and MCDC (ODOT Agreement).

This Agreement shall commence on July 1, 2022 and will terminate as set forth below.

SECTION 2: MCDC will:

- A. TVRC Project Manager. Hire or contract with a qualified project manager to administer the ODOT Agreement and to oversee all aspects of the TVRC (project manager or TVRC Project Manager). Services and obligations of the TVRC Project Manager are to include:
- Provide to County copies of the ODOT progress reports specified in Sections 5.a and 5.b. of ODOT Agreement.
 - Establish terms, use and operations of TVRC with Treasure Valley Onion Shippers (TVOS), Americold, Union Pacific Railroad and other agricultural shippers to include revenue to Malheur County (i.e. TVOS will pay a user/shipper fee of .10 cents per 100-pound weight on onions or approximately 5 cents per shipped onion bag to County; user/shipper fee referenced in paragraph 2.2.3 of Lease agreement with Americold).
 - Administer the Road Improvement Agreement between Froerer, County and MCDC.
 - Attend trade shows approved by MCDC to promote Malheur County and TVRC. Costs for attendance will be paid by County within the travel line item of the 2022-2023 Malheur County economic development budget.
 - Ensure real estate and use transactions on TVRC property include a user fee to Malheur County as can be mutually agreed upon by the parties.
 - Timely inform Malheur County of inquiries related to the Arcadia Industrial Park Subdivision. Discussions, meetings, inquiries and correspondence related to any inquiry, sale, rent, release, request for information or development of the

Arcadia Industrial Park Subdivision on Lots 1, 3, 4, 5 and 6 will be directed to or include a member of the Malheur County Court or its designee (i.e. County staff).

- Timely inform Malheur County on matters related to the Farmland Lease between Farmers and Malheur County. Discussions, meetings, negotiations and correspondence related to the Farmland Lease will be directed to or include a member of the County Court or its designee (i.e. County staff).

- If an independent contractor is the project manager, said contractor shall maintain general liability insurance with limits not less than the limits of local body tort liability as specified in ORS 30.272 and ORS 30.273. Malheur County shall be named as an additional insured on said insurance containing a 30-day Notice of Cancellation endorsement. The contractor shall defend, hold harmless and indemnify the County and MCDC, their officers, agents and employees against all liability, loss, and costs arising from action, suits, claims or demands for the acts or omissions of contractor in performance as the TVRC Project Manager. All services or work products created by the TVRC Project Manager shall belong to MCDC.

- B. Update County Court. Keep Malheur County timely informed on progress of TVRC construction and MCDC.
- C. Seek additional funding for TVRC from State of Oregon and/or ODOT (i.e. IOF funds, Governor's Office).
- D. \$50,000 for MCDC operations. Administer \$50,000 set aside in the 2022-2023 Malheur County economic development budget to pay operating expenses and third-party professional services including: materials; supplies; costs and fees of accounting, bookkeeping and audit; interest and bank expenses; fees and costs for printed procurement, advertisement and public notices; and attorney fees. Expenses for MCDC outside the costs and expenses stated above must be approved in advance by the County Administrative Officer.
- E. Accountant. Ensure that a qualified and professional accountant is hired or on contract for all budgets, account payables, account receivables, accounting and bookkeeping related to TVRC, ODOT Agreement and Treasurer functions for MCDC. MCDC shall cause its financial records to be audited annually. The results and a copy of the audit shall be provided to County.
- F. Office. Maintain a physical office in Malheur County for use by the project manager and Officer/Secretary to MCDC. Office staffing and hours to be determined by MCDC or by appointment. As mutually agreed upon by the parties, MCDC may use a vacant office space in a County-owned or County-leased building.
- G. Comply with Laws. In connection with the activities under this Agreement and in connection with the services of the project manager, comply with all applicable federal, state and local laws and rules.

SECTION 3: COUNTY will:

- A. Approve Officer to the Board. Consistent with the MCDC Articles of Incorporation and Bylaws, approve the Officer of the Board who shall also serve as Secretary for MCDC.
- B. Pay or reimburse operating expenses. Set aside within the 2022-2023 economic development budget \$50,000 to be used for operating expenses of MCDC consistent with Section 2 C above. MCDC shall invoice the County monthly. At minimum the invoice must include a receipt of payments made by MCDC or the invoice of operating expenses/costs billed to MCDC. Invoices must be sent to ldubois@malheurco.org or Lorinda DuBois, Administrative Officer, Malheur County Courthouse, 251 B. Street W. #1, Vale, Oregon 97918. Payment will be paid by County within 30 (thirty) days of receiving said invoice from MCDC.
- C. Pay for services of a TVRC Project Manager. Pay to MCDC, \$6000 to \$9000 a month to hire or contract for a qualified TVRC Project Manager. No other expenses, costs or per diem of the project manager will be paid by County, except for attendance to trade shows. Project manager services will be paid out of the 2022-2023 Malheur County economic development budget. MCDC shall invoice the County monthly. At minimum the invoice must include: date of service and specific activities and work conducted. Invoices must be sent to ldubois@malheurco.org or Lorinda DuBois, Administrative Officer, Malheur County Courthouse, 251 B. Street W. #1, Vale, Oregon 97918.
- D. Line of credit. Continue to reasonably guarantee a line of credit for MCDC in order for MCDC to timely pay construction and other bills and receive reimbursement under the ODOT Agreement.

SECTION 4: JOINT REPRESENTATIONS/OBLIGATIONS

- A. Letter of commitment/operating agreement: The parties hereby re-affirm their commitments: (i) within the Letter of Agreement entered by and between them on December 20, 2019 and recorded with the Malheur County Clerk as instrument number 2019-4669; and (ii) to execute an operating agreement required by Oregon Infrastructure Finance Authority of the Business Development Department (OBDD) wherein MCDC is to pledge net operating revenue derived from the operations of TVRC, including income derived from the lease, rent, or sale of all or any portion of the TVRC property, in an amount sufficient to fully fund the annual debt services of the Special Public Works Fund loan made by OBDD to County and deliver said net revenues in annual payments to County.
- B. Withhold payments. Notwithstanding any other payment provision of this Agreement, failure of MCDC to comply with the terms of this Agreement, may result in withholding of payments under this Agreement. Such withholding of payment will begin thirty (30) days after written notice is given to MCDC by County, and shall continue until the terms and conditions of this Agreement are met. County will not withhold payments for causes beyond the control of MCDC.
- C. Further assurance. The parties will sign other documents and take other actions reasonably necessary to ensure that progress continues on the development and construction of the TVRC without interruption; and that functions to MCDC and its Board of Directors are performed.

SECTION 5: INDEMNIFICATION

MCDC agrees to indemnify, defend and hold harmless the County and its officers, agents and employees against all liability, loss, damage, expense and costs (including attorneys' fees) arising from third party actions, suits, claims or demands for the acts or omissions of MCDC, its officers, agents, contractors and employees, in performance of this Agreement.

In accordance with the Oregon Tort Claims act and the Oregon Constitution, County agrees to indemnify, defend and hold harmless MCDC and its officers, agents and employees against all liability, loss, damage, expense and costs (including attorneys' fees) arising from third party actions, suits, claims or demands for the acts or omissions of County its officers, agents, contractors and employees, in performance of this Agreement.

SECTION 7: RECORDS

- A. Audit and inspection. MCDC shall permit authorized representatives of County to review and copy the records of MCDC as they relate to this Agreement upon reasonable notice.
- B. Maintenance. MCDC shall maintain and keep accessible all books, documents, papers and records, that are related to this Agreement, the funds paid by County hereunder or to any services delivered hereunder, for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the termination of expiration of this Agreement. If there are unresolved audit or other questions at the end of the six-year period, MCDC shall retain the records until the questions are resolved.
- C. Records in possession of Gregory Smith & Company. All business and financial records, files and work products (collectively “records”) that are directly related to MCDC, ODOT Agreement and TVRC in the possession of Gregory Smith & Company pursuant to the personal service contracts entered into by and between County and Gregory Smith & Co. (i.e. instruments recorded with the Malheur Clerk as 2021-3553 and 3554) are owned by and belong to MCDC. MCDC will take custody and possession of the records within its sole discretion. County hereby assigns to MCDC all of its right, ownership and interest in said records. Upon reasonable request County shall execute such further documents and instruments necessary to fully vest such rights in MCDC.

SECTION 8: MISCELLANEOUS PROVISIONS

- A. Term of Agreement. This Agreement is effective on July 1, 2022 and will expire as set forth below.
- B. Termination of Agreement. This Agreement may be terminated:
- i. By mutual consent of both parties; or
 - ii. On June 30, 2023; or
 - iii. Upon written notice if MCDC is in default under this Agreement so long as County provides written notice to MCDC of the default and MCDC fails to cure the default within thirty (30) calendar days after delivery of notice of default or a longer period as specified by County; and
 - iv. Whichever event/date listed above shall first occur.
- C. Governing Law. This Agreement shall be governed by the State of Oregon. Any actions commenced in connection with this Agreement shall be in Circuit Court of Malheur County or Federal District Court for Oregon located in Pendleton.

D. Notices. Any communication between the parties or notice to be given shall be given in writing by personal delivery or mailing the same, postage prepaid to any party at the address set forth on the signature page below. Any communication so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed given on the date of delivery.

E. Amendments. This Agreement may not be waived, altered, modified, supplemented, or amended in any manner except by written instrument signed by the parties.

F. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, and their respective assigns.

G. Complete Agreement. This Agreement is the complete and exclusive statement of the Agreement between the parties relevant to the purpose described above and supersedes all prior agreements or proposals, oral or written and all other communication between the parties relating to the subject matter of this Agreement.

H. Disputes. The parties will attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the parties may agree to utilize a jointly selected mediator to resolve the dispute short of litigation.

I. Survival. All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: 2G, 3A, 4A, 4C, 5, 7A, 7B, 8C, 8D, 8E, 8F, 8G, 8H, 8K and 8L.

J. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

K. Affiliation. Neither party is an “officer”, “employee” or “agent” of the other party as those terms are used in ORS Chapter 30.265 or otherwise.

L. Attorney Fees. Neither party is entitled to recover attorney’s fees, court and investigative costs, or any other fees or expenses relating to any disputes to this Agreement between the parties.

MALHEUR COUNTY:
Malheur County Court
251 B. Street West #5
Vale, Oregon 97918

MALHEUR COUNTY DEVELOPMENT
CORPORATION:

Ontario, Oregon 97914

Dan P. Joyce, County Judge

Grant Kitamura, Chair