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MEMORANDUM

TO: Clackamas County Board of County Commissioners (BCC)
FROM: Ryan Hammond, Assistant Legal Counsel, Clackamas County Counsel
RE: Indemnity for County Employees Certifying Federal Grant Terms
DATE: November 6, 2025

REQUEST:

Adoption of a resolution for defense-fee coverage and limited indemnity for employees executing federal grant certifications.

BACKGROUND:

Recent federal grant certifications impose broad conditions related to diversity, equity and inclusion, as well as immigration, backed by the threat of False Claims Act (FCA) enforcement. County employees who certify these conditions could face personal liability under the FCA or similar false-statement statutes or theories.

Under the FCA, a material false certification can trigger civil penalties. The U.S. Department of Justice has signaled aggressive FCA enforcement against grant recipients for noncompliance. The FCA extends to “any person” who knowingly submits a false claim or certification. Employees who certify federal grant terms could face personal liability if certifications are later deemed false. While enforcement typically targets public agencies, individual liability is possible when an official knowingly attests to conditions the agency fails to meet.

Certain federal grant terms and certifications have heightened concerns by requiring the signer attest all County operations broadly comply with federal law and policy. Many of the new grant conditions are broad and unclear. A good-faith certification could still expose the signer to FCA suits or administrative enforcement if a federal agency (or a whistleblower) later alleges a breach of any of the broad terms and conditions.

When federal grant certifications containing such terms and conditions are required, the Board may authorize an individual employee to certify on behalf of the County. The attached resolution states that the County will defend and indemnify employees for claims, actions, or proceedings alleging liability under the FCA or substantially similar false-statement statutes or theories, arising from the act of completing and executing required federal grant certifications pursuant to Board authority. The resolution will be updated to reflect any edits provided during Executive Session on November 12, 2025.

RECOMMENDATION:

Counsel recommends the Board approve the resolution to provide defense-fee coverage and limited indemnity for any claim that arises from a federal grant certification.

ATTACHMENT: Resolution (*To Follow Executive Session November 12, 2025*)

Respectfully Submitted,

Ryan Hammond
Assistant Legal Counsel
Clackamas County Counsel

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF CLACKAMAS COUNTY, STATE OF OREGON

In the Matter of Adopting a Limited Indemnity
Policy for Certifications of Federal Grant
Terms Under Board-Delegated Authority



Resolution No.

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Whereas, the Board of County Commissioners of Clackamas County (“Board”) regularly applies for and accepts federal grant funds that require execution of grant certifications; and

Whereas, the Board regularly authorizes employees to prepare, complete, and execute such certifications in the course and scope of their duties; and

Whereas, certain federal certifications contain broad or ambiguous terms (including provisions relating to diversity, equity, and inclusion, gender, reproductive health, and immigration), and such ambiguity may create a risk of liability under the False Claims Act (“FCA”) or similar false-statement statutes or theories for employees who sign certifications under Board-delegated authority; and

Whereas, Oregon’s Tort Claims Act (ORS 30.285–.287) requires a public body to defend and indemnify its employees for tort claims arising out of acts or omissions within the performance of their duties, subject to statutory exceptions; and

Whereas, the Board desires to adopt a parallel, narrow policy for defense-fee coverage and limited indemnity for any claim that arises solely from an employee’s act of executing a federal grant certification under Board-delegated authority;

NOW THEREFORE, the Clackamas County Board of Commissioners do hereby resolve to defend and indemnify employees of Clackamas County, subject to the provisions of the Oregon Tort Claims Act (ORS 30.260 through 30.300), for claims, actions, or proceedings alleging liability under the FCA (31 U.S.C. §§ 3729–3733) or substantially similar false-statement statutes or theories, that arises solely from the employee’s act of executing a federal grant certification under Board-delegated authority. Notwithstanding the above, the County’s obligations are conditioned upon the following:

- (a) The employee acted within the course and scope of their duties and in good faith in executing the certification.
- (b) The employee promptly provides written notice to County Counsel of any actual or threatened action against them and fully cooperates in the defense.
- (c) County Counsel shall select and control defense counsel and strategy, including use of outside counsel when appropriate.

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- (d) Coverage does not extend to acts or omissions amounting to malfeasance or willful or wanton neglect of duty, or to conduct constituting knowing falsity or fraud.
- (e) Nothing in this Resolution requires payment of any claims, penalties, or amounts prohibited by law or public policy.
- (f) This Resolution supplements and does not limit any rights or obligations under the Oregon Tort Claims Act (including ORS 30.285–.287) or other applicable law.

This Resolution is effective upon adoption.

DATED this ____ day of _____, 2025

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary