

GRANT AGREEMENT

PROJECT TITLE

OREGON WATER RESOURCES DEPARTMENT



GRANT AGREEMENT
G_#### 13
PROJECT TITLE

BETWEEN: State of Oregon, acting by and through its (Grantor)
Oregon Water Resources Department,

The Grantor's Coordinator for this Grant is
_____ – **Grant Program Specialist**
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
Phone Number: (503) 986-_____
Facsimile Number: (503) 986-0903
E-Mail Address: _____@wrds.state.or.us

AND: Grantee Name (Grantee)

Attn:
Title:
Mailing Address
City, State Zip
Contact:
Telephone Number:
Facsimile Number:
E-Mail Address:
Federal Identification Number:

SECTION 1
LEGAL BASIS OF AWARD

Section 1.01 Legal Basis of Award. Pursuant to ORS 541.561 Grantor is authorized to enter into a Grant Agreement and to make an award, from the Water Conservation, Reuse and Storage Investment Fund, to Grantee for the purposes set forth herein.

Section 1.02 Agreement documents. This Agreement consists of the following documents, which are attached hereto and hereby incorporated into this Agreement by reference and are listed in descending order of precedence: this Grant, less all exhibits; Exhibit A (The Grant Budget); and Exhibit B (Statement of Work).

SECTION 2 GRANT AWARD

Section 2.01 Grant. In accordance with the terms and conditions of this Agreement, Grantor shall provide Grantee with a maximum of \$ _____ (the "Grant") from the Water Conservation, Reuse and Storage Investment Fund to financially support development of feasibility or planning studies or activities designated within the Statement of Work set forth in Exhibit A attached hereto and incorporated herein by this reference. Grantee shall provide a dollar for dollar match of the amount of the Grant. Grantee agrees and acknowledges that Grantor may need to change the amount of the Grant based upon fluctuations in revenue, assessments to the Water Conservation, Reuse and Storage Investment Fund or other factors. Changes to the Grant amount will be implemented through amendments to this Grant Agreement. The Grant Budget is allocated as identified on Exhibit B attached hereto and incorporated herein by this reference.

Section 2.02 Disbursement of Grant Moneys. Subject to Sections 2.04 and 2.05, Grantor shall disburse the Grant moneys to Grantee upon submission of a Request for Release of Funds. The Request for Release of Funds form must be completed and signed by the Grantee prior to approval and payout of any funds by Grantor. All tasks identified within the Statement of Work must be completed by Grant Availability Termination Date. The final 10% of grant moneys will be released for payment upon submission and approval of the Study Completion Report.

Section 2.03 Conditions Precedent to Each Disbursement. Grantor's obligation to disburse Grant moneys to Grantee pursuant to Section 2.02 is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- a. Moneys are available in the Water Conservation, Reuse and Storage Investment Fund to finance the disbursement;
- b. Grantor has received sufficient funding, appropriations limitations, allotments, or other expenditure authorizations to allow Grantor, in the reasonable exercise of its administrative discretion, to make the disbursement;
- c. Grantee's representations and warranties set forth in Section 4 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement;
- d. Grantee is in compliance with all reporting requirements of all active or prior Water Conservation, Reuse and Storage Investment Fund grants; and
- e. No default as described in Section 6.03 has occurred.

Section 2.04 Grant Availability and Termination Date. The availability of Grant moneys under this Agreement and Grantor's obligation to disburse Grant moneys shall begin on _____ and end on the Grant Availability Termination Date (the "GATD") of **June 30, 2015** or upon exhaustion of the Water Conservation, Reuse and Storage Investment Fund, whichever occurs first. Grantee shall not submit any reimbursement request for expenditures that occur after the GATD.

SECTION 3 USES OF GRANT

Section 3.01 Eligible Uses of Grant. Grantee's use of the Grant moneys is limited to those expenditures necessary for the purposes described in Exhibit A. All equipment purchases are hereby approved by the Grantor as shown in Exhibit B, the Grant Budget.

Section 3.02 Ineligible Uses of Grant. Notwithstanding Section 3.01, Grantee shall not use the Grant moneys to retire any debt, to reimburse any person or entity for expenditures made or expenses incurred prior to the date of

this Agreement. Any equipment purchases must be specifically authorized in writing by the Grantor. The aggregate of all disbursements of the Grant shall not exceed \$500,000.

Section 3.03 Unexpended Grant Moneys. Any Grant moneys disbursed to Grantee, or any interest earned by Grantee on the Grant moneys, that are not expended by Grantee in accordance with this Agreement by the earlier of the Grant Availability Termination Date or the date this Agreement is terminated shall be returned to Grantor. Grantee shall return all unexpended funds to Grantor within fifteen (15) days after the Grant Availability Termination Date.

SECTION 4 GRANTEE'S REPRESENTATIONS AND WARRANTIES

Grantee represents and warrants to Grantor as follows:

Section 4.01 Existence and Power. Grantee has full power and authority to transact the business in which it is engaged and the legal right to execute and deliver this Agreement, and incur and perform its obligations hereunder.

Section 4.02 Authority, No Contravention. The making and performance by Grantee of this Agreement (a) have been duly authorized by all necessary action of Grantee, (b) do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative Grantor or any provision of Grantee's articles of incorporation or bylaws and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties are bound or affected.

Section 4.03 Binding Obligation. This Agreement has been duly authorized, executed and delivered on behalf of Grantee and constitutes the legal, valid, and binding obligation of Grantee, enforceable in accordance with its terms.

Section 4.04 Approvals. No authorization, consent, license, approval of, filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

SECTION 5 GRANTEE'S AGREEMENTS

Section 5.01 Study Completion Report. Grantee shall complete the Study by the end date in Section 2.05 (the "Grant Availability Termination Date") or such later date as the Grantor may designate, in Grantor's sole and absolute discretion, by written notice to Grantee; provided however, that if the total amount of the Grant is not available solely because one or more of the conditions set forth in Sections 2.04 (a) and (b) are not satisfied, Grantee will not be required to complete the Study.

Section 5.02 Quarterly Reports. No later than 30 days after the end of each calendar quarter, Grantee shall provide the Grantor with quarterly reports. The report must utilize the forms provided by the Grantor which will include information regarding the expenditure of Project and non-Project related funds, progress toward completion of the Study, and a narrative on the activities completed as part of the Study.

Section 5.03 Accounting for expenses. Grantee shall account for funds distributed by the Grantor using forms provided by the Grantor.

Section 5.04 Release of Reports. All reports that the Grantor determines to be final and complete may be made available to the public.

Section 5.05 Records and Inspection. Grantee shall keep proper books of account and records on all activities associated with the Grant including, but not limited to, books of account and records on expenditure of the Grant moneys and on the services financed with the Grant moneys. Grantee will maintain these books of account and records in accordance with generally accepted accounting principles and shall retain the books of account and records until the later of six years after the date set forth in Section 2.05 or the date that all disputes, if any, arising under this Agreement have been resolved. Grantee will permit Grantor, the Secretary of State of the State of Oregon, or their duly authorized representatives to inspect its properties, all work done, labor performed and materials furnished in connection with the activities financed with Grant moneys, and to review and make excerpts and transcripts of its books of account and records with respect to the receipt and disbursement of funds received from Grantor. Access to these books of account and records is not limited to the required retention period. The authorized representatives shall have access to records at any reasonable time for as long as the records are maintained.

Section 5.06 Compliance with Laws. Grantee shall comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances related to expenditure of the Grant moneys and the activities financed with the Grant moneys. Without limiting the generality of the foregoing, Grantee expressly agrees to comply with (a) Title VI of the Civil Rights Act of 1964, (b) Section V of the Rehabilitation Act of 1973, (c) the Americans with Disabilities Act of 1990 and ORS 659A.142, (d) all regulations and administrative rules established pursuant to the foregoing laws, and (e) all other application requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

Section 5.07 Work Product.

(a) The Grantor and Grantee each acknowledge that performance of this Agreement may result in the discovery, creation or development of inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship (collectively, the "Work Product"). Grantee agrees that it will promptly and fully disclose to the Grantor any and all Work Product generated, conceived, reduced to practice or learned by Grantee or any of its employees, either solely or jointly with others, during the term of this Agreement, which in any way relates to the business of the Grantor. Grantee further agrees that neither Grantee or Grantee's employees, nor any party claiming through Grantee or Grantee's employees, will, other than in the performance of this Agreement, make use of or disclose to others any proprietary information relating to the Work Product. All Services performed hereunder will include delivery of all source and object code and all executables and documentation. Grantee agrees that the Grantor shall have a copy of the most recent source code at all times.

(b) As part of the Work Product, the Grantee shall produce a Study Completion Report documenting the findings of the feasibility study. The Study Completion Report shall describe the findings of each of the project planning study elements (also known as key tasks) as identified in the attached Statement of Work.

(c) Grantee agrees that, whether or not the Services are considered works made for hire or an employment to invent, all Work Product discovered, created or developed under this Agreement shall be and remain the sole property of the Grantor and its assigns. Except as specifically set forth in writing and signed by both the Grantor and Grantee, Grantee agrees that the Grantor shall have all copyright and patent rights with respect to any Work Product discovered, created or developed under this Agreement without regard to the origin of the Work Product.

(d) If and to the extent that Grantee may, under applicable law, be entitled to claim any ownership interest in the Work Product, Grantee hereby transfers, grants, conveys, assigns and relinquishes exclusively to the Grantor any

and all right, title and interest it now has or may hereafter acquire in and to the Work Product under patent, copyright, trade secret and trademark law in perpetuity or for the longest period otherwise permitted by law. If any moral rights are created, Grantee waives such rights in the Work Product. Grantee further agrees as to the Work Product to assist the Grantor in every reasonable way to obtain and, from time to time, enforce patents, copyrights, trade secrets and other rights and protection relating to said Work Product, and to that end, Grantee and its employees will execute all documents for use in applying for and obtaining such patents, copyrights, trade secrets and other rights and protection with respect to such Work Product, as the Grantor may desire, together with any assignments thereof to the Grantor or persons designated by it. Grantee's and its employees' obligations to assist the Grantor in obtaining and enforcing patents, copyrights, trade secrets and other rights and protection relating to the Work Product shall continue beyond the termination of this Agreement.

(e) If and to the extent that any preexisting rights are embodied or reflected in the Work Product, Grantee hereby grants to the Grantor the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (a) use, execute, reproduce, display, perform, distribute copies of and prepare derivative works based upon such preexisting rights and any derivative works thereof and (b) authorize others to do any or all of the foregoing.

SECTION 6 TERMINATION AND DEFAULT

Section 6.01 Mutual Termination. This Agreement may be terminated by mutual consent of both parties.

Section 6.02 Termination by Grantor. Grantor may terminate this Agreement, for any reason, upon 30 days advance written notice to Grantee. In addition, Grantor may terminate this Agreement effective immediately upon written notice to Grantee, or effective on such later date as may be established by Grantor in such notice, under any of the following circumstances: (a) Grantor fails to receive sufficient appropriations or other expenditure authorization to allow Grantor, in the reasonable exercise of its administrative discretion, to continue making payments under this Agreement, (b) there are not sufficient funds in the Water Conservation, Reuse, and Storage Investment Fund to permit Grantor to continue making payments under this Agreement, (c) there is a change in federal or state laws, rules, regulations or guidelines so that the Study funded by this Agreement is no longer eligible for funding, or (d) in accordance with Section 6.04.

Section 6.03 Default. Grantee shall be in default under this Agreement upon the occurrence of any of the following events:

(a) Grantee fails to perform, observe or discharge any of its covenants, agreements or obligations contained herein or in any exhibit attached hereto; or

(b) Any representation, warranty or statement made by Grantee herein or in any documents or reports relied upon by Grantor to measure progress on the activities funded by the Grant, the expenditure of Grant moneys or the performance by Grantee is untrue in any material respect when made; or

(c) Grantee (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any action for the purpose of effecting any of the foregoing; or

(d) A proceeding or case is commenced, without the application or consent of Grantee, in any court of competent jurisdiction, seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Grantee, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any

substantial part of its assets, or (iii) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

Section 6.04 Remedies Upon Default. If Grantee's default is not cured within fifteen (15) days of written notice thereof to Grantee from Grantor or such longer period as Grantor may authorize in its sole discretion, Grantor may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of this Agreement, return of all or a portion of the Grant moneys, payment of interest earned on the Grant moneys, and declaration of ineligibility for the receipt of future Water Conservation, Reuse and Storage Investment Fund awards. If, as a result of Grantee's default, Grantor demands return of all or a portion of the Grant moneys or payment of interest earned on the Grant moneys, Grantee may, at Grantee's option, satisfy such demand by paying to Grantor the amount demanded or permitting Grantor to recover the amount demanded by deducting that amount from future payments to Grantee from Grantor. If Grantee fails to repay the amount demanded within fifteen (15) days of the demand, Grantee shall be deemed to have elected the deduction option and Grantor may deduct the amount demanded from any future payment from Grantor to Grantee, including but not limited to, any payment to Grantee from Grantor under this Agreement and any payment to Grantee from Grantor under any other contract or agreement, present or future, between Grantor and Grantee.

SECTION 7 MISCELLANEOUS

Section 7.01 No Implied Waiver, Cumulative Remedies. The failure of Grantor to exercise, and any delay in exercising any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

Section 7.02 Reserved

Section 7.03. Governing Law; Venue; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively, "Claim") between Grantor (or any other Grantor or department of the State of Oregon) and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. **GRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.**

Section 7.04 Notices. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto pertaining to this Agreement or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Grantee or Grantor at the address or number set forth on page 1 of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

Section 7.05 Amendments. This Agreement may not be waived, altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties.

Section 7.06 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Grantor, Grantee, and their respective successors and assigns, except that Grantee may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of Grantor.

Section 7.07 Entire Agreement. This Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

Section 7.08 Indemnity. Grantee shall defend, save, hold harmless, and indemnify the State of Oregon and Grantor and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities of Grantee or its officers, employees, Grantees, or agents under this Agreement.

Section 7.09 Time is of the Essence. Grantee agrees that time is of the essence under this Agreement.

Section 7.10 Survival. All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Section 3.03, Unexpended Grant Moneys; Section 5.05, Records and Inspection; and Section 7, MISCELLANEOUS.

Section 7.11 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.

Section 7.12 Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

Section 7.13 Relationship of Parties. The parties agree and acknowledge that their relationship is that of independent contracting parties and neither party hereto shall be deemed an agent, partner, joint venture or related entity of the other by reason of this Agreement.

Section 7.14 Headings. The section headings in this Agreement are included for convenience only, they do not give full notice of the terms of any portion of this Agreement and are not relevant to the interpretation of any provision of this Agreement.

Section 7.15 No Third Party Beneficiaries. Grantor and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the dates set forth below their respective signatures.



STATE OF OREGON
acting by and through its **Water Resources Department**

By:
Name: Tracy Louden
Title: Administrator, WRD Administrative Services Division

Date: _____

GRANTEE

By:
Name:
Title:

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047 AND OAR 137-045-0030:

Assistant Attorney General:

Date: _____

EXHIBIT A

Grant Budget

The Grant Budget is as follows:

Budget Category	Approved Budget
Staff Salary/Benefits	«Staff»
Contractual	«Contract»
Equipment*	«Equip»
Other	«Other»
Administration	«Adm»
Subtotal	«Subttl»
Expenditures from sources other than this grant program	«Exp»
Grand Total	«Grand_Ttl»

* Specific Equipment purchases (include function, cost, relevance to project):

- 1)
- 2)
- 3)

EXHIBIT B
Statement of Work

This section will contain a general statement regarding the conceptual framework of the grant and specific tasks which must be accomplished.

If a Project concerns a proposed storage project that would impound surface water on a perennial stream, divert water from a stream that supports sensitive, threatened or endangered fish or divert more than 500 acre-feet of surface water annually, the study shall include:

- (a) Analyses of by-pass, optimum peak, flushing and other ecological flows of the affected stream and the impact of the storage project on those flows;
- (b) Comparative analyses of alternative means of supplying water, including but not limited to the costs and benefits of conservation and efficiency alternatives and the extent to which long-term water supply needs may be met using those alternatives;
- (c) Analyses of environmental harm or impacts from the proposed storage project; and
- (d) Evaluation of the need for and feasibility of using stored water to augment in-stream flows to conserve, maintain and enhance aquatic life, fish life and any other ecological values.
- (e) In addition, if the storage project is for municipal use, the grant agreement will require an analysis of local and regional water demand and the proposed storage project's relationship to existing and planned water supply projects.

Additional conditions that may be required to carry out the purpose of the Project will be included here. Such conditions may include but are not limited to:

- (a) Special reporting requirements that are deemed appropriate;
- (b) A commitment to supply future reports on the Project; and
- (c) A commitment to provide a report of any future actions taken as a result of the Project.