

Water Supply Development Account

GRANT AGREEMENT

#[XX-XXX-XX]

[Project Name]

By: *[Grantee]*

OREGON WATER RESOURCES DEPARTMENT



GRANT AGREEMENT
[XX-XXXX-XX]
[Project Name]

BETWEEN: **State of Oregon**, acting by and through its
Oregon Water Resources Department (Grantor),
Address: 725 Summer Street NE, Suite A, Salem, Oregon 97301-1266
Phone Number: (971) 301-0718
Facsimile Number: (503) 986-0903
E-Mail Address: OWRD.Grants@water.oregon.gov
The Grantor's Coordinator for this Grant is
OWRD Staff Name

AND: [Grantee Name] (Grantee)
Attn: XXX
Title: XXX
Address: XXX
Telephone Number: XXX
E-Mail Address: XXX

SECTION 1
LEGAL BASIS OF AWARD

Section 1.01 Legal Basis of Award. Pursuant to ORS 541.656, Grantor is authorized to enter into a grant agreement and to make an award from moneys available to the Oregon Water Resources Department to Grantee for the purposes set forth herein.

Section 1.02 Agreement Documents. This grant agreement (“Grant Agreement” or “Agreement”) consists of this Agreement and the exhibits listed below. Exhibits A, B, C and E are attached hereto and all of the exhibits (Exhibits A through E) are incorporated into this Agreement by reference. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence:

- i. This Grant Agreement, less all exhibits;
- ii. **Exhibit A** (Conditions of Agreement);
- iii. **Exhibit B** (Grant Budget);
- iv. **Exhibit C** (Project Description);
- v. **Exhibit D** (Grant Application selected for funding by the Water Resources Commission); and
- vi. **Exhibit E** (Permits and Regulatory Approvals).

Section 1.03 Agreement Term. This Agreement shall be effective when it is signed by the Grantor and Grantee (“Parties”) and approved as required by law (the “Effective Date”). Unless terminated earlier pursuant to Section 6 of this Agreement, this Agreement will **terminate on [Date]** or on the date that Grantor disburses the final ten percent (10%) of Grant moneys as provided in Section 2.03 of this Agreement whichever comes first (the “Expiration Date”).

SECTION 2 GRANT AWARD

Section 2.01 Notice of Grant Award. In accordance with the terms and conditions of this Agreement, Grantor shall provide Grantee with a maximum of **\$XXX,XXX** (the “Grant”) from the Water Supply Development Account to financially support the water resource project activities designated within the project description set forth in Exhibit C (the “Project”). Grantee shall provide cost match of at least 25% of the grant total amount by the earlier of the last disbursement request or the Expiration Date. Pending commitments of match funding must be secured within 18 months from the Effective Date. The Grant amount may not be increased without a written amendment(s) to this Grant Agreement. The Grant Budget is set forth in Exhibit B.

Section 2.02 Grant Availability. Grantee shall not submit, and Grantor shall not pay, any reimbursement request for expenditures that occur before the Effective Date or after the Expiration Date.

Section 2.03 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 of Grant funds (“Fund Request”). The Fund Request Form must be completed and signed by Grantee with appropriate documentation of expenditures prior to approval and payout of any Grant moneys by Grantor. The Grantor will disburse the Grant moneys only as reimbursement for costs incurred by Grantee for the Project. The final 10% of Grant moneys will be disbursed to Grantee only after Grantee submits and Grantor approves the Final Report described in Exhibit A under item no. 4 and shall be contingent upon Grantee adherence to all conditions within Exhibit A. The Grantor may disburse Grant moneys after the Grant Expiration Date for reimbursement requests submitted within the Grant period. Grantee may submit a Fund Request no more often than monthly.

Section 2.04 Conditions Precedent to this Agreement or any Amendment to this Agreement. Grantor’s obligations under this Agreement or under any amendment to this Agreement are subject to compliance by Grantee with all its reporting obligations under any earlier or other existing grant agreements with the Grantor.

Section 2.05 Conditions Precedent to Disbursements. Grantor’s obligation to disburse Grant moneys to Grantee pursuant to Section 2.03 is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- (a) Grantee shall hold and maintain registration as a legal entity with the Oregon Secretary of State prior to, and throughout, the duration of the Grant;
- (b) Sufficient moneys to make the disbursement are available in the Water Supply Development Account from the issuance of the Lottery Revenue Bonds authorized by Oregon Laws 2023, chapter 599, sections 10 and 11 (the “Bonds”);
- (c) 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;
- (d) 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;
- (e) Grantee is in compliance with all reporting requirements of this Agreement identified in Exhibit A;
- (f) Grantee has submitted to the Grantor, the required permits and regulatory approvals listed in Exhibit E “Permits and Regulatory Approvals” or as are otherwise required for the Project. As required by ORS 541.692(1), the Grantor may identify additional permits or regulatory approvals that must be submitted to the Grantor prior to release of funds for the Project. This statute gives the Grantor discretion in

identifying additional permits or regulatory approvals required for the Project not previously identified by the Grantee. Grantor also has the discretion to condition its release of funds based on specific circumstances of the Project. Grantee should review Exhibit A Conditions of Agreement for any related conditions with respect to permitting, regulatory approvals and disbursement of Grant moneys;

- (g) For Project tasks that take place on private land(s), Grantee has submitted to the Grantor:
- 1) Evidence that landowner(s) are aware of and agree to the task. Evidence shall include, but is not limited to: (i) landowner(s) certification that the landowner owns the land where the work will be carried out, (ii) landowner's agreement to allow Grantee to carry out the work, or a portion of the work on the Landowner's property, and (iii) evidence that landowner(s) are aware that monitoring information associated with the Project is a public record; or
 - 2) Evidence documenting legal easement on all lands where the work will be carried out. Evidence shall include, but is not limited to: (i) documentation of easement, (ii) easement holder's agreement to allow Grantee to carry out the work, or a portion of the work on the servient estate, and (iii) evidence that easement holder(s) are aware that monitoring information associated with the Project is a public record;
- (h) Grantee has submitted to the Grantor, documentation that cost match of at least 25% of the grant total amount identified in Exhibit B "Grant Budget" has been secured from a source other than, and not including, Grantor funds;
- (i) No default as described in Section 6.03 has occurred; and
- (j) Grantee has submitted to a Fund Request that is in a format acceptable to and approved by Grantor and that is accompanied by all necessary supporting documentation.

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 to successfully execute the Project tasks described in Exhibit C and that are (i) in accordance with the allowable costs and budget procedures guidance document provided by the Grantor and (ii) capital expenditures for federal income tax purposes within the meaning of 26 C.F.R. § 1.150-1(b). Equipment purchases of a durable nature may not be financed with Grant moneys unless expressly authorized by Grantor in writing apart from and in addition to the approved Fund Request.

Section 3.02 Ineligible Uses of Grant. Notwithstanding Section 3.01, Grantee shall not use the Grant moneys to pay principal or interest on any debt; reimburse any person or entity for expenditures made or expenses incurred prior to the Effective Date; make loans or grants to third parties; for indirect costs that cannot be directly attributable to the Project; or pay internal costs charged to the Project by Grantee or payments made to Related Parties. A Related Party for this purpose includes members of the same controlled group within the meaning of 26 C.F.R. § 1.150-1(e). No more than 10% of the Grant may be used to pay for the administrative costs of Grantee. The aggregate of all disbursements of the Grant shall not exceed the maximum Grant amount set forth in Section 2.01.

Section 3.03 Mis-expended and Unexpended Grant Moneys. Any Grant moneys disbursed to Grantee that are not expended by Grantee in accordance with this Agreement (“Mis-expended Moneys”) or are not expended by the earlier of the Expiration Date or the date this Agreement is terminated pursuant to Section 6 of this Agreement (“Unexpended Moneys”) shall be returned to Grantor. Grantee shall return all Mis-expended or Unexpended Moneys to Grantor within fifteen (15) days after the earlier of the Expiration Date, the date this Agreement is terminated or Grantor’s demand.

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. Grantee is a [insert “person” as defined in ORS 536.007, Indian tribe as defined in ORS 391.802 or nonprofit organization – as applicable].

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 body or any provision of Grantee’s organization documents 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, or 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 4.05 Required Permits. To the best of Grantee’s knowledge the permits and regulatory approvals listed in Exhibit E to this Agreement constitute the permits and regulatory approvals required to construct, complete, and thereafter operate the Project as contemplated in this Agreement, including Grantee’s application in Exhibit D. If during the term of this Agreement, Grantee becomes aware of additional permits or regulatory approvals that are needed and not listed in Exhibit E, Grantee shall promptly notify Grantor of the additional permit(s) or regulatory approval(s) by submitting an addendum to Exhibit E to Grantor setting forth the additional permit(s) or regulatory approval(s).

SECTION 5 GRANTEE’S SUB-AGREEMENTS AND PROCUREMENTS

Section 5.01 Sub-agreements.

- (a) Grantee may enter into agreements with sub-recipients, contractors or sub-contractors (“Sub-agreements”) for performance of the Project. Regarding sub-agreements over \$25,000, the Grantee must have available and shall provide upon request documentation describing the Project tasks which the sub-agreement is intended to help complete, the cost of the Sub-agreement, and a description of the

selection process by which the Sub-agreement was awarded. All Sub-agreements must be in writing and duly executed by the Grantee and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the Sub-agreements. Grantee agrees to provide the Grantor with a copy of any signed Sub-agreements upon request by the Grantor. Any material breach of a term or condition of Sub-agreements relating to funds covered by this Agreement must be reported by the Grantee to the Grantor within ten (10) days of it being discovered. Use of a Sub-agreement does not relieve the Grantee of its responsibilities under this Agreement.

- (b) Grantee's Sub-agreement(s) shall require the other party to such Sub-agreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the Grantor and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Grantee's Sub-agreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that the Grantor shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Grantor, be indemnified by the other party to Grantee's Sub-agreement(s) from and against any and all Claims.
- (c) Any such indemnification shall also provide that neither Grantee's subrecipient(s), contractor(s) nor subcontractor(s), nor any attorney engaged by Grantee's subrecipient(s), contractor(s) or subcontractor(s) shall defend any claim in the name of the Grantor 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 the prior written consent of the Oregon Attorney General. The Grantor may, at any time at its election, assume its own defense and settlement in the event that it determines that Grantee's subrecipient is prohibited from defending the State, or that Grantee's subrecipient is not adequately defending the Grantor's interests, or that an important governmental principle is at issue or that it is in the best interests of the Grantor to do so. The Grantor reserves all rights to pursue claims it may have against Grantee's subrecipient if the State of Oregon elects to assume its own defense.

Section 5.02 Procurements for Public Entities. If Grantee is a public entity subject to the Oregon Public Contracting code, Grantee shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code and rules.

Section 5.03 Procurements for Private Entities. If Grantee is a private entity:

- (a) For procurements over \$25,000, Grantee must solicit quotes or bids from at least three sources.
- (b) The Grantee shall retain and provide upon request documentation of the bidding and selection process for all procurements over \$25,000.

Section 5.04 Sole Source Procurement for Private Entities. If Grantee is a private entity:

- (a) Grantee may make the determination that competitive procurement is not feasible if one of the following circumstances exist:
 - (i) Item or service is available only from a single source; or
 - (ii) A public exigency or emergency will not permit a delay resulting from a competitive solicitation or it can be shown unequivocally that desired time frames for delivery must be met or the entire Project will suffer as a direct result of the delay.
- (b) For all sole source procurements Grantee shall provide documentation to the Grantor in writing which shall contain:

- (i) a brief description of the Project, the amount to be designated for the sole source procurement, and the purpose of the contract;
- (ii) explanation of why it is necessary to contract in a noncompetitive manner; and,
- (iii) a declaration that this action is in the “best interest” of the Grantor.

Section 5.05 Compliance with Laws, including Prevailing Wage.

- (a) Public Entity. If Grantee is a public entity, Grantee shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Agreement including without limitation the prevailing wage rate requirements set forth in ORS 279C.800 through 279C.870 and the administrative rules promulgated thereunder (“Prevailing Wage Rate Law” or “PWR”), or, if applicable, 40 U.S.C. 3141 et seq. (“Davis-Bacon Act”).
- (b) Private Entity. If Grantee is a private entity, Grantee shall (i) comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Agreement and (ii) if \$750,000 or more of public funds (including this Grant and any other contributions from public entities) is used for the Project, Grantee must comply with the prevailing wage rate requirements set forth in ORS 279C.800 through 279C.870 and the administrative rules promulgated thereunder (“Prevailing Wage Rate Law” or “PWR”), or, if applicable, 40 U.S.C. 3141 et seq. (“Davis-Bacon Act”). The Grantee is responsible for determining the applicability of the prevailing wage requirement within the statute and rule. The Grantee shall, and shall require its contractors and subcontractors to, pay the applicable prevailing wage rate and to comply with all other Oregon Bureau of Labor and Industries (“BOLI”) requirements pursuant to the Prevailing Wage Rate Law, including on all contracts and subcontracts and in filing separate work bonds with the Construction Contractors Board, unless exempt under ORS 279C.836 and OAR 839-025-0115. If the Project is subject to the Davis-Bacon Act, Grantee shall comply with and require its contractors and subcontractors to comply with the Davis-Bacon Act and any applicable provisions of Oregon PWR. If the Project is or becomes subject to both PWR and the Davis-Bacon Act, all subject workers must be paid the higher of applicable state or federal prevailing wage rate. The applicable rates are those in effect on the Effective Date of this Agreement. PWR and Davis-Bacon Act prevailing wage rates may be accessed via: http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx and <http://www.wdol.gov>.

**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; or,
- (b) The Grantor does not have sufficient funds to continue making payments under this Agreement; or,
- (c) There is a change in federal or state laws, rules, regulations or guidelines so that the Project 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) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (v) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) 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 federal Bankruptcy Code (as now or hereafter in effect), or (vii) 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, reallocation of funds allocated to the Project but not used, and declaration of ineligibility for the receipt of future funding from the Grantor.

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 Choice of Law; Designation of Forum; Federal Forum.

- (a) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

- (b) Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each Party 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.
- (c) Notwithstanding Section 7.02(b), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

Section 7.03 Notices. Except as otherwise expressly provided in this Agreement, any notices or demands required or permitted 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 2 of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this section. Any such notice or demand so addressed and mailed shall be deemed to be given five (5) days after mailing. Any notice or demand delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any notice or demand by personal delivery shall be deemed to be given when actually delivered.

Section 7.04 Amendments. This Agreement may not be altered, modified, supplemented, extended or amended in any manner except by written instrument signed by both Parties. No term of this Agreement may be waived unless such waiver is agreed to in writing by the Party against whom such waiver is sought to be enforced.

Section 7.05 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 7.06 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 7.07 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, or agents under this Agreement.

Section 7.07 Contribution. [For use with local government grantees only and delete Section 7.07 above].

- (a) If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third-Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third-Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third-Party Claim. Either party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third-Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the

investigation, defense and settlement of the Third-Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third-Party Claim.

- (b) With respect to a Third-Party Claim for which Grantor is jointly liable with Grantee (or would be if joined in the Third-Party Claim), Grantor shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Grantee in such proportion as is appropriate to reflect the relative fault of Grantor on the one hand and of Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Grantor on the one hand and of Grantee on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Grantor's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if Grantor had sole liability in the proceeding.
- (c) With respect to a Third-Party Claim for which Grantee is jointly liable with Grantor (or would be if joined in the Third-Party Claim), Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Grantor in such proportion as is appropriate to reflect the relative fault of Grantee on the one hand and of Grantor on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Grantee on the one hand and of Grantor on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

Section 7.08 Time is of the Essence. Grantee agrees that time is of the essence under this Agreement.

Section 7.09 Survival. All provisions of this Agreement set forth in the following sections and all provisions of this Agreement that by their terms are intended to survive shall survive the expiration or termination of this Agreement: Section 3.03, Mis-expended and Unexpended Grant Moneys; Section 7, MISCELLANEOUS; Exhibit A items: 2. Measurement and Reporting; 5. Annual Reports; 8. Records and Inspection; 9. Representations and Covenants Regarding the Tax-Exempt Status of the Bonds; 10. Operation and Maintenance of the Project; 10. Restrictions on Use of Proceeds and the Project; 11. Publicity; 18. [Legal Protection of Conserved Water Instream](#); 19. [Transfer of Certificated Water Rights Instream](#). [if applicable]

Section 7.10 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 7.11 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 7.12 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 venturer

or related entity of the other by reason of this Agreement.

Section 7.13 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 7.14 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.

Section 7.15 Duplicate Payment. Grantee shall not receive duplicate payments from another entity for expenses invoiced to the Grantor.

Section 7.16 False Claims Act. Grantee will refer to the Grantor any credible evidence that a principal, employee, agent, contractor or other person has submitted a false claim under the False Claims Act (31 USC 3729-3733; ORS 180.750-180.785) or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving funds provided under this Grant Agreement.

Section 7.17 Cooperation. The Grantor and Grantee acknowledge that as the Project progresses, aspects of the Project captured in the Exhibits may need to be adjusted and refined through the amendment process, and that the ultimate success of this Project requires the cooperation of both Parties. Grantor and Grantee both agree to use good faith efforts and their best professional judgment to resolve any issues that may arise during the course of the Project.

Section 7.18 Dispute Resolution. The Grantor and Grantee shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Grantor and Grantee may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, have full power and authority to bind their respective Party and agree to be bound by the terms and conditions of this Agreement.

GRANTEE

GRANTOR

Grantee Name, by and through its Governing Body



STATE OF OREGON, by and through its Water Resources Department

By _____

Name: Insert name

Title: Insert title

Date _____

By _____

Name:

Title:

Date _____

By _____

Name: Insert name

Title: Administrative Services Administrator

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

(If required in local process)

By _____

Grantee's Legal Counsel

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

(For funding over \$150,000)

By _____

Assistant Attorney General

Name _____

(printed)

Date _____

Grantee Contact:

Name/Title

Address

Phone

Email

Grantor Contact:

Oregon Water Resources Department

Attn: OWRD Staff Name

725 Summer St NE, Suite A

Salem, OR 97301-1266

(971) 301-0718

OWRD.Grants@water.oregon.gov

EXHIBIT A

CONDITIONS OF AGREEMENT

The following conditions apply to the implementation of this Agreement:

1. **Permits and Regulatory Approvals.** Prior to disbursement of any Grant moneys for any Project activity that requires permits or regulatory approvals, the Grantee must obtain all permits and regulatory approvals from local, state, or federal agencies or governing bodies necessary to perform its obligations under this Agreement and provide a copy to the Grantor. Applicable permits and regulatory approvals are set forth with specificity in Exhibit E. Satisfaction of the condition related to permits and regulatory approvals precedent to disbursements is set forth in Section 2.05(f).
2. **Measurement and Reporting.** The Grantee shall regularly measure and report the water diverted and used from the Project. The Grantor shall make the final determination regarding the method, timing, frequency, and location of measurement.
3. **Semi-Annual Progress Reports.** Between the Effective Date and the Expiration Date, the Grantee shall provide the Grantor with a progress report two times per calendar year (submitted within 30 days of June 30 and December 31). The Grantee will use the forms provided by the Grantor, which will include information regarding the expenditure of the Grant moneys, compliance with the terms of this Agreement, progress toward completion of the Project as documented in the Exhibits, a narrative on the activities completed as part of the Project, match that has been contributed towards the Project to-date, and public benefits achieved.
4. **Final Report.** No later than 60 days prior to the Expiration Date, the Grantee shall file with the Grantor a signed Final Report. The Final Report must be completed on a form provided by the Grantor that will require a summary of the Project as completed and a summary of public benefits received as a result of the Project.
5. **Annual Reports.** Beginning on or before the one year anniversary of the Expiration Date, and continuing through the five year anniversary of the Expiration Date, Grantee shall submit an annual report to the Grantor on the public benefits of the Project. The Annual Report must be completed on a form provided by the Grantor.
6. **Release of Reports.** All reports that the Grantor determines to be final and complete will be made available to the public.
7. **Project Inspection.** During implementation of the Project and any time prior to Grantor approval of the Final Report, the Grantee shall permit the Grantor to inspect, at any reasonable time, the property, both real and personal, all work done, labor performed and materials furnished in connection with the activities financed with Grant moneys.
8. **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 activities 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 latest of (i) six years after the Expiration Date; (ii) three years following the later of the final maturity or earlier retirement or call of the Bonds (including the final maturity or redemption date of any obligations issued to refund the Bonds); or (iii) 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 and to review and make excerpts, transcripts and copies of its books of account and records with respect to the receipt and disbursement of funds received from Grantor, including, without limitation, its records regarding receipts, disbursements, contracts, investment of Grant moneys, if any, and any other matters related to the use of Grant moneys or Project work. Access to these books of account and records is not limited to the required retention period. The authorized representatives shall have access to these books of account and records at any reasonable time for as long as the records are maintained.

9. Representations and Covenants Regarding the Tax-Exempt Status of the Bonds.

- a. Grantee acknowledges that the Bonds have been or are expected to be issued with the interest paid on the Bonds excludable from gross income for federal income tax purposes and that the uses of the Grant proceeds and the Project by Grantee during the term of the Bonds may impact the tax-exempt status of the Bonds. Grantee agrees to comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”) necessary to protect the exclusion of interest on the Bonds from federal income taxation.
- b. The State of Oregon will not receive direct or indirect payments or revenues (excluding generally applicable taxes) from the operation of the Project. Grantee shall not, without prior written consent of Grantor, permit more than five percent (5%) of the Project to be used in a “private use” (as defined in the Code) by another “private person” (as defined in the Code) if such Private Use could result in the State of Oregon receiving direct or indirect payments or revenues (excluding generally applicable taxes) from the portion of the Project to be privately used.

10. Restrictions on Use of Proceeds and the Project.

- a. **Project Changes.** The Grantee shall not change the use of the Project, or alter its design, structure, or configuration in any way inconsistent with the currently approved plan, without first requesting and receiving the written consent of Grantor.
- b. **Sales, Leases and Encumbrances.** Grantee shall not sell, transfer, encumber, lease or otherwise dispose of any property paid for with disbursements of the Grant, unless worn out, obsolete, or, in the reasonable business judgment of Grantee, no longer useful in the operation of the Project. Nevertheless, Grantor may consent to such disposition if it has received prior written notice from Grantee. In the case of sale, lease, exchange, transfer or other disposition of any substantial portion of or interest in the Project, Grantee shall, within 30 days of receipt of any proceeds from such disposition, pay such proceeds to the State, not to exceed the amount necessary to call or defease the portion of the then outstanding Bonds relating to the Project (including all allocable costs of issuance), unless Grantor agrees otherwise in writing.
- c. **Insurance, Damage.** Grantee shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by parties constructing, operating and maintaining similar facilities. If the Project or any portion is destroyed, insurance proceeds will be paid to the State, not to exceed the amount necessary to call or defease the portion of the then outstanding Bonds relating to the Project (including all allocable costs of issuance), unless OWRD agrees in writing that the insurance proceeds will be used to rebuild the Project.

11. **Operation and Maintenance of the Project.** Until ten (10) years after the Expiration Date, Grantee shall monitor, evaluate, operate, and maintain the Project, or cause the Project to be operated and maintained, in good repair and operating condition so as to preserve the long-term public benefit of the Project, including making all necessary and proper repairs, replacements, additions and improvements to the Project.
12. **Publicity.** Grantee shall make every effort to acknowledge and publicize the State or Oregon's (Oregon Water Resource Department) participation and assistance with the project. Upon completion of the Project, Grantee shall post a permanent sign at the Project site or other location approved by Grantor, acknowledging the participation of the State of Oregon (Oregon Water Resources Department) in the Project. Grantee shall maintain the sign throughout the life of the project. Signage content must be approved by Grantor to be eligible for reimbursement as an eligible Project cost.
13. **Cultural Material.** If any cultural material is discovered during Project activities, all work should cease immediately (ORS 97.745 and ORS 97.750) until a professional archaeologist can assess the discovery, and Grantee shall immediately notify the Oregon State Police, the Water Resources Department, the Legislative Commission on Indian Services, the appropriate Tribe(s), and the State's Historic Preservation Office (SHPO). Additionally, in the case of cultural material discovery, Grantee shall prepare a report of the Project outlining the results of the archaeological monitoring and submit its report to SHPO for inclusion in SHPO's resource library and GIS database.
14. **Taxes and Assessments; Utilities.** Grantee shall pay, or cause to be paid, all taxes, utility charges and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project. If any governmental charges may lawfully be paid in installments over a period of years, the Grantee may pay, or cause to be paid, those charges in installments. The Grantee may contest, or permit to be contested, in good faith the validity or application of any tax, utility charge or governmental charge in any reasonable manner, so long as the contest does not subject any portion of the Project to loss or forfeiture.
15. **Certification of Compliance with Laws.** Grantee hereby certifies that it has complied, and agrees that it 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.
16. **Work Products and Intellectual Property.** Any work products developed using Grant moneys will remain in the public domain and cannot be used for proprietary purposes.
17. **Engineering Reviews.** If requested by the Grantor, the Grantee shall provide any engineering or other Project documentation for the review and approval by the Grantor prior to Project implementation.

REQUIRED CONDITION for grant funded Above-Ground Storage Projects that Meet the Requirements in ORS 541.681.

18. **Newly Developed Water Dedicated to Instream Use.** The water storage permit associated with the Project shall be conditioned to require the Grantee to annually report, on a schedule determined by the Department, the maximum volume of newly developed water stored in the funded reservoir, including newly developed water present in the reservoir during the immediate past storage season. No less than **twenty-five** percent of this volume shall be dedicated to instream use (“Water Dedicated Instream”). The method by which the Grantee meets the Water Dedicated Instream requirement shall be consistent with Oregon Administrative Rule 690-093-0110. Any permits or water right transactions needed to meet this requirement must be in place before any Grant moneys for the storage project are released.

REQUIRED CONDITION for Storage Projects that Meet the Requirements in ORS 541.689

19. **Seasonally Varying Flows.** The **water right permit or aquifer recharge permit and resulting certificate or limited license** associated with the Project shall be conditioned according to the seasonally varying flow established by the Grantor.

REQUIRED CONDITION for Projects that Legally Protect Conserved Water Instream

20. **Legal Protection of Conserved Water Instream.** No less than **[percent]** of the water conserved as a result of the Project shall be dedicated to in-stream use. The Grantor shall not release any Grant moneys under this Agreement until the Grantor has received a copy of the Allocation of Conserved Water Application. Grantee’s withdrawal from the Allocation of Conserved Water Program is prohibited and shall be a default under this Agreement. The Final Report shall include a copy of the Allocation of Conserved Water Finalization Order.

REQUIRED CONDITION for Projects that Transfer Certificated Water Rights Instream

21. **Transfer of Certificated Water Rights Instream.** Water Right Certificates **XXX** and **XXX** shall be transferred instream. The Final Report shall include a copy of the final order approving the transfer and the instream certificates confirming the instream use. In cases where funds are allocated to facilitate the transfer of water right(s) instream, no funds shall be released until after the petition/reconsideration period following Final Order issuance has elapsed.

EXHIBIT B
The Grant Budget

The Grant Budget is as follows:

Budget Categories	Approved Budget
Staff Salary/Benefits	\$0
Contractual/Consulting	\$0
Supplies	\$0
Materials	\$0
Travel	\$0
Equipment	\$0
Other:	\$0
Subtotal of Grant Funds	\$0
Match Funding – Expenditures from sources other than those managed by the Grantor	\$0
Grand Total	\$0

EXHIBIT C
Project Description

The Grantee shall [enter summary description of project work]. The project work is more particularly described in the project application referenced in Exhibit D and is subject to the Project tasks detailed below. Grant funds shall only be used to accomplish the following tasks in relation to the **Project Name** as detailed in the grant application:

Project Tasks

Task 1. *Name of Task*

- Task Description – *[from application]*

Task 2. *Name of Task*

- Task Description – *[from application]*

Task 3. *Name of Task*

- Task Description – *[from application]*

Task 4. *Name of Task*

- Task Description – *[from application]*

EXHIBIT D

OWRD GRANT APPLICATION

(On file at the Oregon Water Resources Department and incorporated into the Agreement by this reference)

EXAMPLE

EXHIBIT E
PERMITS AND REGULATORY APPROVALS

Section 2.05 (f) of this Agreement outlines requirements for disbursement of Grant moneys related to permits and regulatory approvals. Exhibit A Conditions of Agreement may contain additional conditions with respect to permitting, licensing, and regulatory approvals and the disbursement of Grant moneys.

Before the disbursement of Grant moneys for activities requiring a permit or regulatory approval, or for activities dependent on portions of the Project for which a permit or regulatory approval has yet to be issued, the Grantee must submit to the Grantor copies of all required permits or regulatory approvals, or submit written evidence acceptable to the Grantor that permits or regulatory approvals are not required.

The Department may disburse Grant moneys for elements of the Project that do not require a permit or regulatory approval. To be considered for release, Grantee must provide written documentation to the Grantor requesting such consideration and affirming that the Project element(s) for which no permits or regulatory approvals are required will lead to public benefits consistent with the Grant Application, and are not dependent on the portion of the Project for which a permit, license or regulatory approval has yet to be issued.

The following list of permits and regulatory approvals is not exhaustive. Grantee understands and agrees that it is Grantee’s responsibility to determine which permits and regulatory approvals are required for the Project.

The following lists the Project activities that require permits or regulatory approvals and the associated permit(s)/regulatory approvals(s). By its signature on this Agreement, the Grantee certifies to OWRD that the following is a complete and accurate list of the Project components requiring permits or licenses and the associated required permits or licenses.

Project Activity Requiring Permit/Regulatory Approval	Permit/Regulatory Approval Name and Entity Issuing

 Grantee Signature

 Date