

STATE OF OREGON DEPARTMENT OF ENERGY
PERFORMANCE AGREEMENT
(Community Renewable Energy Grant Program)

This Agreement is between the State of Oregon, acting by and through its Department of Energy, hereinafter referred to as “Agency,” and [Grantee], hereinafter referred to as “Grantee.”

Administrators of this Agreement are:

| GRANTEE | AGENCY |
|-----------------------|--|
| Administrator: | Administrator: Duard Headley |
| Title: | Title: Energy Services Manager |
| Address: | Address: 550 Capitol Street NE Salem, OR 97301 |
| Phone: | Phone: (503) 378-4040 |
| Fax: | Fax: |
| Email: | Email: community.grants@energy.oregon.gov |
| Federal ID #: | |

AGREEMENT

1. **Authority.** This Agreement is authorized by Oregon Laws 2021, chapter 508, sections 29 through 32 (House Bill 2021 and Oregon Administrative Rule Chapter 330 Division 250.

2. **Definitions.**

“**Community renewable energy project**” means one or more renewable energy systems, storage systems, microgrids or energy-related infrastructure that promote energy resilience, increase renewable energy generation or renewable energy storage capacity and provide a direct benefit to a particular community in the form of increased community energy resilience, local jobs, economic development or direct energy costs savings to families and small businesses.

“**Business site**” means a site operated for business purposes that is owned by the applicant or partner or with whose owner the applicant or partner has a formal agreement to use the site. It is referred to in the definition of a “Partner”.

“**Partner**” means an entity listed as a partner to an eligible applicant on an application for a grant award. A partner may be a federally recognized Oregon Indian tribe, public body, nonprofit entity, private business with a business site in Oregon, or owner of a rental property in Oregon. A partner may assist or take a lead role in the acquisition, installation, construction or planning of a community renewable energy project. A partner may have a financial or ownership interest in the project. An entity whose only role is the provision of goods or services through a procurement contract are not considered a partner.

“**Project cost**” means the actual cost of the acquisition, construction and installation of a renewable energy system incurred by an applicant, or an applicant’s partner(s), before considering utility incentives.

“**Renewable energy system**” includes:

(a) A system that uses biomass, solar, geothermal, hydroelectric, wind, landfill gas, biogas or wave, tidal or ocean thermal energy technology to produce energy.

(b) One or more energy storage systems paired with an existing or newly constructed system described in paragraph (a) of this section.

(c) One or more vehicle charging stations paired with an existing or newly constructed system described in paragraph (a) of this section.

(d) Microgrid enabling technologies paired with an existing or newly constructed system described in paragraph (a) of this section, including microgrid controllers and any other related technologies needed to electrically isolate a community energy resilience project from the electric grid so that the project is capable of operating independently from the electric grid.

3. Effective Date and Duration. This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law (the “Effective Date”). Grantee shall have 30 calendar days from the date on which this performance agreement is provided to Grantee to accept the performance agreement. Grantee’s failure to accept this performance agreement by the deadline may cause rejection of the grant application and the performance agreement may be terminated. Unless earlier terminated, amended or extended, this Agreement shall expire **54 months from the execution date**.

4. Agreement Documents. This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all Exhibits, Exhibit A (Project Description), Exhibit B (Agency’s Opportunity Announcement #23-078), Exhibit C (Reporting Forms), Exhibit D (Financial Reporting Guidance) and Exhibit E (Grantee’s Application). Exhibits A, C and D are attached hereto, Exhibit C is also available online at <https://www.oregon.gov/energy/Incentives/Documents/CREP-Quarterly-Report-Construction.docx>, Exhibit B is available to view online on Agency’s website at <https://www.oregon.gov/energy/Incentives/Documents/2024-CREP-OA-23-078.pdf>, and Exhibit E is available from the online application portal for the Community Renewable Energy Grant program at <https://odoe.powerappsportals.us/en-US/crephome/>. All Exhibits are incorporated herein by this reference.

5. Grant. In accordance with the terms and conditions of this Agreement, Agency shall provide Grantee an amount not to exceed **\$1,000,000** (“Grant” or “Grant Monies”) for the purpose of constructing the Community Renewable Energy Project described in Exhibit A (the “Project”). Agency shall pay Grantee from monies dedicated from the Community Renewable Investment Fund. Disbursement of Grant Monies is contingent, as of the time of disbursement, on Agency having received sufficient expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement.

6. Reporting.

a. Quarterly Reporting. Grantee shall submit Quarterly Reports beginning the first calendar quarter following the Effective Date of this Agreement and each calendar quarter thereafter until the Project is complete. Reports are due by the 15th day of the month immediately following the end of each quarter (January 15th, April 15th, July 15th, October 15th). Grantee shall submit Quarterly Reports in accordance with the Quarterly Report Form as set forth in Exhibit C, Reporting Forms. Agency shall notify Grantee of any additional Quarterly reporting requirements by email to Grantee’s Administrator of this Agreement.

b. Final Report. Grantee shall submit a Final Report in accordance with the Final Report Form as set forth in Exhibit C, Reporting Forms. The Final Report is due promptly after commencement of

operation of the Project, and before receiving final payment of funds from Agency. Grantee's Final Report must include, but may not be limited to, the items described below. If any aspect of the Project is inspected by any entity, the Final Report must include a copy of the inspection report(s).

1. An account of total Project Costs that identifies all funding sources and includes all receipts, paid invoices, unpaid invoices for incurred costs, cancelled checks (if applicable), and bank loan or promissory note documentation. If the total Project Costs are \$50,000 or more, Grantee must also include an independent Certified Public Accountant's attestation to the validity and accuracy of the account.
 2. If a description of how disadvantaged business enterprises, emerging small businesses, or businesses that are owned by minorities, women, or disabled veterans would be involved in the Project was provided in the application, proof of their involvement or a statement of why they were not involved.
 3. If they pay property taxes, proof that Grantee or owner of the Project's location, if other than Grantee, is current on the property taxes for the Project's location.
- c. **Annual Reporting.** Grantee shall submit Annual Reports for a period of five years, beginning one year after the Final Report is submitted. Annual Reports are due after the Project has been operational for at least six months and by the 15th day of January following each anniversary of the Final Report. Grantee shall submit Annual Reports in accordance with the Annual Report Form as set forth in Exhibit C, Reporting Forms. Agency shall notify Grantee of any additional Annual reporting requirements by email to Grantee's Administrator of this Agreement.

7. Disbursement and Recovery of Grant.

a. Disbursement.

If requested by the Grantee, the Agency shall disburse a preliminary amount up to 30% of the Grant Monies to Grantee upon execution of this performance agreement and receipt and approval of evidence that the Grantee has:

1. Taken meaningful steps to seek site control, including but not limited to an option to lease or purchase the site or an executed letter of intent or exclusivity agreement to negotiate an option to lease or purchase the site;
2. Filed a request for interconnection with a host utility or appropriate transmission provider;
3. Provided an account of paid invoices and unpaid invoices for incurred Project Costs at the time of the disbursement request;
4. Demonstrated a need for use of the funds within 12 months of execution of this agreement.

If requested by Grantee, the Agency shall disburse an in-progress amount up to 30 percent of additional Grant Monies to Grantee not to exceed 30 percent of project cost upon receipt and approval evidence Grantee has:

1. Fulfilled all requirements for a preliminary amount disbursement;
2. Incurred a minimum of 25% of projected Grant Monies on eligible costs prior to the request for the in-progress amount;
3. Demonstrated construction or installation of the renewable energy system has started at the project location or will start no later than 60 days of the submission of the request, and not later than the required construction start date. Documentation may include, but is not

limited to, bills of lading, contractor agreements or other relevant and timely documentation; and

4. Submitted updated project budget detailing eligible and ineligible costs along with estimated project completion date.

Agency shall disburse, the remaining Grant Monies, up to 100 percent of the Grant Monies, to Grantee upon commencement of operation of the Project under this Agreement and submission of the final report, subject to all of the following conditions:

1. Agency shall not disburse an amount that exceeds the actual Project Costs;
2. Agency shall not disburse an amount that exceeds 50 percent of the Project Costs, when combined with other incentives or grants available to Grantee.
3. Grantee, or partner, has site control of the project location.
4. Grantee has complied with all the terms and conditions of this Agreement.
5. The project has been installed or constructed substantially as described in the application.

Agency may inspect the Project and audit all documentation relating to a project prior to disbursement. Commencement of operation of the Project is the point that all renewable system technologies detailed in the Project Description are in use.

- b. **Allowable Costs.** The Grant provided through this Agreement is a project development grant for the Project. Grant funds may be used only for eligible costs described in OAR 330-250-0100 or other eligible costs as determined by the Agency by rule and published on the program website at <https://www.oregon.gov/energy/Incentives/Documents/CREP-Construction-Cost-Guidance.pdf> and shall not be used for any other purpose. No Grant Monies will be disbursed for any changes to the Project unless such changes are approved by Agency by Amendment pursuant to Section 14.b hereof.
- c. **Recovery of Grant Monies.** Grantee shall repay Agency all Grant Monies if Grantee has not cured any default under Section 12 hereof within 30 days of notice of default by Agency, or such other longer period as may be set by Agency in its notice of default. Agency's notice that Grantee is in default shall specify a deadline for the repayment of the Grant Monies.

8. **Inspection.** Grantee shall allow Agency to inspect the Project or its proposed location at any time during project development, installation or construction during normal working hours, following reasonable notice by Agency to Grantee.

9. **Representations and Warranties of Grantee.** Grantee represents and warrants to Agency as follows:

- a. **Organization and Authority.** Grantee is a:

- ☐ Federally recognized Oregon Indian tribe
☒ Public body
☐ Consumer-owned Utility

Grantee has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Grantee of this Agreement: (1) have been duly authorized by all necessary action of Grantee, (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other

administrative agency or any provision of Grantee's organizational documents, and (3) 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 may be bound or affected. 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.

- b. Binding Obligation.** This Agreement has been duly executed and delivered by Grantee and constitutes a legal, valid and binding obligation of Grantee, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. Location of System.** The Project will be permanently located in Oregon.
- d. Authorizations.** Grantee will obtain all applicable licenses, permits, or other authorizations that are required for the Project. All required final inspections conducted by the authority having jurisdiction must be passed.
- e. Full Disclosure.** Grantee has disclosed in writing to Agency all material facts related to the Project or the ability of Grantee to construct the Project. Grantee has made no false statements of fact to Agency, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Agreement and Grantee's application for the Grant is true and accurate in all respects.
- f. Release of relevant information.** The Grantee authorizes any incentivizing entity outside of the Agency to release all relevant information on this project to the Agency. This includes, but is not limited to, project information, incentives offered and received, and inspection results.

The warranties set forth above are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

10. Certain Covenants of Grantee.

- a. Partner Compliance.** Grantee must require by contract and monitor any Partners' compliance with all program requirements listed in this performance agreement, Oregon Laws 2021, chapter 508, sections 29 through 32 (House Bill 2021) and Oregon Administrative Rule Chapter 330 Division 250, including recordkeeping and retention of records. Agency may request a copy of any contract with a partner to ensure Grantee and Partner's compliance.
- b. Grant Monies.** Grantee shall vigilantly safeguard the Grant Monies received hereunder and maintain financial controls sufficient to protect such monies and ensure that the Grant Monies are used solely for the Project.
- c. Start of Construction.** Construction of the Project shall commence within 12 months of execution of this agreement. Beginning construction means to start the physical assembly of the Project or its infrastructure at the project site. Guidance for what activities and evidence documentation will be considered as beginning construction is available from Agency website at <https://www.oregon.gov/energy/Incentives/Documents/CREP-Construction-Start-Guide.pdf>.

- d. **Completion.** Construction of the Project shall be complete within 36 months of the Effective Date of this Agreement. Construction of the Project is complete when the Project commences operation, this is the point that all renewable system technologies detailed in the Project Description are in use.
- e. **Mandatory Flow Downs.** Grantee shall ensure the following requirements are incorporated into the provisions, terms, and conditions of Grantee's Partner contract(s) by inclusion or by reference.
 - 1. the right for Agency to conduct a physical inspection of all aspects of the project.
 - 2. the right for Agency to access and audit all documentation relating to the project.

11. Records Maintenance and Access.

- a. **Access to Records.** Grantee acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Grantee that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts, transcripts, and copies.
- b. **Retention of Records.** Grantee shall retain and keep accessible all books, documents, papers, plans, records, and writings, that are directly related to this Agreement, the Grant Monies or the Project for a minimum of 6 years, or such longer period as may be required by applicable law, following the later of (1) termination or expiration of this Agreement or (2) the date of the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

12. 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 set forth herein;
- b. Any representation, warranty or statement made by Grantee herein or in any documents or reports relied upon by Agency to monitor implementation of the Project, the expenditure of Grant Monies or the performance by Grantee is untrue in any material respect when made;
- c. The Director of the Oregon Department of Energy determines that Grantee has violated the provisions of Oregon Laws 2021, chapter 508, sections 29 through 32 (House Bill 2021), and applicable rules;
- d. Grantee (i) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or any substantial portion 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 U.S. 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 U.S. Bankruptcy Code (as now or hereafter in effect), or (vii) takes any action for the purpose of effecting any of the foregoing; or

- e. 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 consecutive days, or an order for relief against Grantee is entered in an involuntary case under the U.S. Bankruptcy Code (as now or hereafter in effect).
- f. **Remedies upon Default.** Upon the occurrence of Grantee's default under Section 12. b., d. or e, or if Grantee's default under Section 12.a. or c. is not cured within 30 calendar days of written notice thereof to Grantee from Agency or such longer period as Agency may authorize in its sole discretion, Agency may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of Agency's obligation to make the Grant under this Agreement, return of the Grant Monies, payment of interest earned on the Grant Monies, and declaration of ineligibility for the receipt of future funding awards from Agency. If, as a result of Grantee's default, Agency demands return of the Grant Monies or payment of interest earned on the Grant Monies, Grantee shall pay the amount upon Agency's demand in accordance with Section 7.
- g. **Failure to meet timeline.** If a grantee fails, or expects to fail, to commence construction within 12 months of the execution date of this agreement, complete the construction within the 36 months of the execution date of this agreement, or fails to submit all final reporting requirements within the time frame specified in this agreement, the grantee must notify the department in writing in a timely manner and no later than one month after the 12 month deadline for failing to commence construction, the 36 month deadline for failing to complete construction, and prior to the expiration date of this agreement for failing to submit the final reporting requirements. The notification must describe the cause of the delay, measures taken by the grantee to resolve the delay, and a revised timeline for completing the requirements. If the director determines that the grantee has demonstrated good cause for the delay, the department in its sole discretion may agree to an extended deadline. If the director determines that the grantee has not demonstrated good cause for the delay, the department may terminate the performance agreement and recover any Grant Monies released to the applicant.

13. Termination.

- a. **Termination for Convenience.** Either party may terminate this Agreement at any time prior to the expiration date of this Agreement upon 15 days of written notice to the other party. Upon termination under this Section 13.a by Grantee, Grantee shall repay Agency all amounts disbursed by Agency to Grantee under this Agreement. Upon termination by Agency, Agency will not be obligated to make payments for any work not completed by Grantee as of the date of the Notice of Termination.
- b. **Agency Termination.** Agency may terminate this Agreement:
 - 1. Immediately upon written notice to Grantee, if Agency does not obtain sufficient funding and expenditure authorizations to allow Agency to meet its payment obligations under this Agreement.
 - 2. Immediately one month after the first anniversary of the Effective Date of this Agreement if construction of the Project has not begun on or before the first anniversary of the Effective Date,

or a notification of delay has not been received one month after the first anniversary. For purposes of this requirement, construction begins when physical assembly of the Project or its supporting infrastructure at the Project's location begins.

3. Immediately upon written notice to Grantee if state or federal laws, regulations, or guidelines are modified, changed or interpreted in such a way that Agency does not have the authority to provide Grant Monies for the Project or no longer has the authority to provide the Grant Monies from the funding source it had planned to use.

14. General Provisions.

- a. **Indemnification.** Grantee shall indemnify, defend (subject to ORS chapter 180), and hold harmless the State of Oregon and Agency and their officers, employees, and agents from all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature, resulting from, arising out of or relating to the activities of the Grantee or Grantee's officers, employees, sub-contractors, or agents under this Agreement.
- b. **Amendments.** This Agreement may be amended only by a written instrument signed by both parties. Any such amendment is effective only when fully executed and approved as required by applicable law. Requests for amendments must follow the process outlined in [OAR 330-250-0140](#).
- c. **Participation in Similar Activities.** This Agreement in no way restricts Grantee or Agency from participating in similar activities with other public or private agencies, organizations, or individuals, except that Grant Monies may not exceed 100 percent of the Project Costs, when combined with other incentives or grants available to Grantee.
- d. **No Third Party Beneficiaries.** The State of Oregon 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 or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- e. **Notices.** Except as otherwise expressly provided in this Agreement, any notice to be given hereunder to a party shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to that party's Agreement Administrator at the address or number set forth on page 1 of this Agreement. Any communication or notice so addressed and mailed shall be effective 5 days after mailing. Any notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. Any notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by personal delivery shall be effective when actually delivered.

Either party may designate a different Agreement Administrator or change the contact information given herein by providing notice in the manner provided in this section and such change shall be effective without need for amendment under Section 14.b.

- f. **Governing Law, 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 Agency (and any other agency 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 in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Grantee 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. If a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

- g. Compliance with Law.** Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project. All employers, including Grantee, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126(2). Grantee shall require each of its subcontractors, if any, to comply with, and shall ensure that each of its subcontractors, if any complies with, these requirements.

h. Compliance with Prevailing Wage.

1. Public Entity. If Grantee is a public entity, Grantee shall comply with the applicable 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").

2. Private Entity. If \$750,000 or more of public funds (including this Grant and any other contributions from public entities) is used for the Project, or the Project is otherwise subject to PWR, 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"). Grantee is responsible for determining the applicability of the prevailing wage requirement within the statute and rule. Pursuant to ORS 279C.817, Grantee and any contractors or subcontractors may request that the Commissioner of BOLI make a determination about whether the Project is a public works on which payment of the prevailing rate of wage is required under ORS 279C.840. 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 839-025-0015. 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/WHDPWR/Pages/pwr_state.aspx and <http://www.wdol.gov>.

- i. Public Records.** Grantee acknowledges that all information and records submitted to Agency are subject to the Oregon Public Records Law, ORS 192.311 to 192.478. If Grantee believes that any information or records it submits to Agency contain trade secrets, as defined by ORS 192.345(2), or are otherwise exempt from disclosure under the Oregon Public Records Law, Grantee must identify

such information or records with particularity and describe the bases for Grantee's belief that the information or records are exempt from disclosure.

Funding from the State of Oregon through this Agreement may be reported on Oregon Transparency, a state agency tool available for Oregonians to learn about how state government works, taxes are used, and more at <https://www.oregon.gov/transparency/Pages/index.aspx>. The information on this website is provided to users for general knowledge and information. It excludes date and information that is confidential, protected, or private under state and federal laws, and is unaudited.

j. Oregon False Claims Act.

1. Grantee acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action or conduct by the Grantee pertaining to this Agreement that constitutes a "claim" (as defined by ORS 180.750 (1)). By its execution of this Agreement, the Grantee certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Agreement or the System for which the Agreement work is being performed. In addition to other penalties that may be applicable, Grantee further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Grantee. Nothing in this section or this Agreement may be construed as limiting or derogating from any authority granted the Oregon Attorney General under 180.750 to 180.785.
2. Grantee shall immediately report in writing, to the Agency, any credible evidence that a principal, employee, agent, or subcontractor of the Grantee, or any sub-grantee or other person, has made a false claim or committed a prohibited act under the Oregon False Claims Act, or has committed a criminal or civil violation of laws pertaining to fraud, bribery, gratuity, conflict of interest, or similar misconduct in connection with this Agreement or moneys paid by the Agency under this Agreement.
3. Grantee must include subsections (i) through (ii) of this section in each subcontract or sub grant the Grantee may award in connection with the performance of this Agreement. In doing so, the Grantee may not modify the terms of those subsections, except to identify the subcontractors or sub grantee that will be subject to those provisions.

k. Sensitive Information. Except for information that is already a matter of public record, Grantee shall not publish or otherwise disclose, except to Agency or as otherwise required by law, any information or data obtained hereunder from private individuals, organizations, or public agencies in a publication wherein the information or data furnished by or about any particular person or establishment can be identified, except with the written consent of such person or establishment. Unless otherwise required by law, information concerning the business of Agency, its financial affairs, and its relations with its clients and employees, as well as any other information that may be specifically classified as confidential by Agency, shall be kept confidential. Grantee shall instruct its employees and subcontractors to keep such information confidential by using the same care and discretion that they use with similar information that the Grantee designates as confidential.

l. 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.

- m. Assignment of Agreement, Successors in Interest.** Grantee shall not assign or transfer any interest in this Agreement without the prior written approval of Agency. Any such assignment or transfer, if approved, is subject to such conditions and provisions, as Agency may deem necessary, including without limitation that Agency shall have reasonable access to the records and facilities of the assignee or transferee to the same extent as to the records and facilities of Grantee as described in Sections 8 and 11 hereof. No approval by Agency of any assignment or transfer shall be deemed to create any obligation of Agency in addition to those set forth in this Agreement nor will Agency's approval of an assignment or transfer relieve Grantee of any of its duties or obligations under this Agreement.
- n. Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning of or to interpret this Agreement.
- o. Construction.** The parties agree and acknowledge that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not be applicable to the interpretation of this Agreement.
- p. Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that Grantee is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
- q. Force Majeure.** Neither Agency nor Grantee shall be held responsible for delay or default caused by fire, civil unrest, natural causes or war which is beyond, respectively, the Agency's or Grantee's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- r. Integration and Waiver.** This Agreement, including all Exhibits, 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. The delay or failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision.
- s. Survival.** All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Sections 6.c, 11, 14.a, and any other provisions that by their terms are intended to survive termination of this Agreement.

Signatures on following page.

THE PARTIES, by execution of this Agreement of their authorized representatives, hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.



State of Oregon
Acting By and Through Its
Department of Energy

GRANTEE

By: _____
(Signature of Printed Name below)

Printed Name

Title

Date

By: _____
Danae Hammitt, Designated Procurement Officer Date

Pandian Krishnaswam, Assistant Director Date

Janine Benner, Director Date

Baseline Construction Resilience CREP Round 3 Grant
Performance Agreement

Approved for Legal Sufficiency in accordance with ORS 291.047

By: Jeffrey B. Grant, Assistant Attorney General

By Email dated: September 17, 2024

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EXHIBIT A – PROJECT DESCRIPTION**Project Data**

| | |
|----------------------|-------------------------|
| Application ID | |
| Contact Name | |
| Organization Name | |
| Organization Type | |
| Project Type | Construction OA #23-078 |
| Agency Agreement No. | NN-YYY |

Project Scope Baseline

| | |
|----------------------------|--|
| Project Address: | |
| Geo Coordinates [Lat/Long] | |

| | |
|-----------------------------|--|
| Project Partners (List all) | |
|-----------------------------|--|

Project Details

| | |
|--|--|
| System Nameplate Capacity (kW) | |
| Storage Nameplate Capacity (kW) | |
| System Technologies | |
| Estimated Electrical Production (kWh/yr) | |
| Operational Use (Summary) | |

Project Major Components (Estimated)

| Type | Make | Model | Quantity |
|------|------|-------|----------|
| | | | |

Project Schedule Baseline

| | |
|--|--|
| Project Start Estimated/Actual | |
| Anticipated Project Completion: System Operational | |

* Reference: [OAR 330-250-0130 \(2\)\(6\)\(b\)\(f\)](#)

Project Budget Baseline

| | |
|---|--|
| Project Costs | |
| Total Project Cost | |
| Total Grants/Incentives/Other Funding (Estimated or Actual) | |
| Projected ODOE Grant Awarded | |
| Total Funding | |

* Reference: [OAR 330-250-0100 \(1\)\(a-f\)](#) & [OAR 330-250-0130 \(6\)\(b\)](#)

Notes and Definitions:

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DRAFT

EXHIBIT C – REPORTING FORMS

Quarterly Report Form (<https://www.oregon.gov/energy/Incentives/Documents/CREP-Quarterly-Report-Construction.docx>)

| | | | |
|-------------------------------------|-----------|------------------------------------|--------|
| App ID: | CG-XX-XXX | PA#: (Agency Agreement No.) | YY-NNN |
| Organization Name (Grantee): | | | |

| | | | |
|-------------------------|----------------|------|-------------|
| Reporting Period | Select Quarter | Year | Select Year |
|-------------------------|----------------|------|-------------|

| | | | |
|--|--|--------------|--------------------------|
| Submitted By: | | | |
| Email: | | Phone | |
| Please confirm Exhibit A from the Performance Agreement has been reviewed before proceeding. | | | <input type="checkbox"/> |

| | |
|--|--|
| Has Construction Started on the Renewable Energy System Project? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| NOTE: “Beginning construction” as outlined in your Performance Agreement, means to start the physical assembly of the Renewable Energy System Project or its infrastructure at the system’s Project site. Before answering above, please review the program’s Project Construction Start Guidance . | |
| If Yes, please enter the date construction started. ODOE may request visual evidence of construction start at project site location. | MM/DD/YYYY |

| |
|---|
| Provide a Brief Summary of the Project’s Current Status (Even if Not Started): |
| |

| | |
|--|---|
| Project Scope Status: | <input type="checkbox"/> Unchanged <input type="checkbox"/> Changed |
| If Project Scope has changed, provide details below. | |
| | |

| | |
|--|---|
| Project Schedule Status: | <input type="checkbox"/> On time <input type="checkbox"/> Not on time |
| If Project Schedule is not on time, provide details below. | |
| | |

| | |
|---|---|
| Project Budget Status: | <input type="checkbox"/> At budget <input type="checkbox"/> Below budget <input type="checkbox"/> Over budget |
| If Project Budget Status is over budget, provide details below. | |
| | |

| | | | |
|---|--|--------------------------|------------|
| Project Completion Status: | | | |
| NOTE: Construction projects are only considered complete upon commencement of operation of the community renewable energy project (within 36 months of the Performance Agreement effective date), followed by prompt submission of a Final Report See Performance Agreement Sections 5(b) and 9(c) and Exhibits C and D. | | | |
| Is the Project Complete? | <input type="checkbox"/> Yes <input type="checkbox"/> No | If Yes, Completion Date: | MM/DD/YYYY |

| |
|--|
| Additional Project Updates / Issues / Comments: |
| |

Final Report Form

Application ID:
Organization Name:
Agency Agreement No. YY-NNN

Final Report

1. Was the project completed as specified in the performance agreement? Y/N
2. If project has completed, provide project completion date:

Please upload the following documentation:

- CPA verification letter, if the total Project Costs paid and incurred are \$50,000 or more.
- If a description of how disadvantaged business enterprises, emerging small businesses, or businesses that are owned by minorities, women, or disabled veterans would be involved in the Project was provided in the application, Grantee must provide proof of their involvement or a statement of why they were not involved.
- If they pay property taxes, proof that Grantee or owner of the Project's location, if other than Grantee, is current on the property taxes for the Project's location.

Financial Summary

The Grant amount is initially calculated based on Grantee's estimate of the total Project Costs. Agency will withhold the final payment of the estimated grant funds, up to 100 percent, until submission of the Final Report. Upon receipt of the Final Report, Agency will recalculate the Grant amount using actual Project Costs paid and incurred, and Agency's disbursement of the Grant Monies may be reduced as a result. So that Agency may calculate the disbursement, provide the following information:

Actual Total Project Cost: \$ _____
(replaces the "Estimated Project Cost" from Grantee's application)

Other Government Incentives & Grants Available: \$ _____
(directly related to the Project; not including this Grant; identify source(s) and amount(s))

Prepared By: Name, Title
Date Prepared: MM/DD/YYYY

The remainder of the page is blank intentionally.

Annual Report Form

Application ID:

Organization Name:

Agency Agreement No. YY-NNN

Annual Report

1. Please provide information on the type and number of jobs associated with the project in the past year.
2. State the quantity of energy produced in the past year in kWh.

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EXHIBIT D

Financial Reporting Guidance

Promptly following commencement of operation of the Project, the Grantee must submit an account of total Project Costs that identifies all funding sources and includes all receipts, paid invoices and unpaid invoice for costs, cancelled checks (if applicable), and bank loan or promissory note documentation. If they pay property taxes, Grantee must also provide proof that Grantee or owner of the Project's location, if other than Grantee, is current on the property taxes for the Project's location. If the total Project Costs are \$50,000 or more, Grantee must include an independent Certified Public Accountant's attestation to the validity and accuracy of the account. The following guidance is intended to help Grantee comply with these requirements.

A. Total Project Costs (Grantee should provide this guidance to the Certified Public Accountant responsible for verifying cost and payments.)

"Project cost" means the actual cost of the acquisition, construction and installation of a renewable energy system paid or incurred by an applicant, or an applicant's partner, before considering utility incentives.

To verify the total Project Costs that received a Community Renewable Energy Program (CREP) grant from the Oregon Department of Energy, you must be a Certified Public Accountant with a current license who is **NOT** an employee or affiliate of the Grantee or any partner listed on the application.

Obtain the following documents to complete your verification:

- A copy of the Grantee's Performance Agreement (the Project must comply with all conditions of the Performance Agreement).
- All receipts, paid invoices and unpaid invoices for incurred costs, cancelled checks (if applicable), and bank loan or promissory note documentation that pertains to the Project.
- A copy of the applicable Oregon Administrative Rules (OAR). The permanent rules related to Community Renewable Energy Program grants can be found here:
<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=6901>

Verify and document the following information:

- The actual total Project Costs (regardless of whether the costs are eligible to be covered by the Community Renewable Energy Project Grant Program).
- The actual total paid or incurred **eligible** Project Costs. These are the costs that concur with the "Project Description" in the Performance Agreement and that are eligible costs according to [OAR 330-250-0100](#).
- The total amount of the payments made by the Grantee or Grantee's partners for the Project.
- An itemization of all financial incentives and grants received for the Project by the Grantee or any affiliate (e.g., utility incentives, Energy Trust of Oregon incentives, federal tax credits, grants, etc.).
- The Project's completion date. This is the date on which the Project became operational.
- The date the Project was paid or incurred in full (paid outright or loan contracts were fully executed).

B. Property Tax Status. If they pay property taxes, provide proof that the Grantee or owner of the Project location, if other than the Grantee, are current on their property taxes for the Project's location. This can be provided in the form of a receipt or statement indicating no balance is due.