

**STATE OF OREGON DEPARTMENT OF ENERGY  
PARTICIPANT SUPPORT COST INCENTIVE AGREEMENT  
(Building Energy Reduction Incentive (BERI) Program)**

Project Name: [ _____ ] Oregon Department of Energy Agreement # [ _____ ] PCA # [ _____ ]
---

This Agreement is between the State of Oregon, acting by and through its Department of Energy (“Agency”) and [ \_\_\_\_\_ ] (“Program Beneficiary”).

Program Beneficiary	Oregon Department of Energy
Program Administrator (if applicable):	Agency Administrator:
Program Beneficiary: Address: City, State, Zip code:	Organization: Address:
Phone: Email:	Phone: Email:
If applicable (for business, non-profit, local government): UEI:	
Program Beneficiary’s Taxpayer ID#:	

1. **Effective Date and Incentive Availability.** This Agreement is effective on the date it is fully executed and, if approval by the Oregon Department of Justice (“DOJ”) is required, approved by DOJ (the “Effective Date”). Program Beneficiary agrees to complete the Activities (described in Exhibit A) no later than [ \_\_\_\_\_ ] (“Activities Completion Deadline”) (the time period from the Effective Date through the Activities Completion Deadline, the “Activities Period”). Program Beneficiary must submit one (1) invoice for disbursement of funds under Section 4 no later than 30 days after the date that the Program Beneficiary completes the Activities which must be before the Activities Completion Deadline. Agency has no obligation to disburse funds for costs invoiced after the Activities Completion Deadline.
  
2. **Project.** Program Beneficiary agrees to complete the Activities in accordance with the terms and conditions of this Agreement no later than the Activities Completion Deadline.
  
3. **Agreement Documents.** This Agreement consists of this document and the attached Exhibits:  
 Exhibit A (Activities Requirements),  
 Exhibit B (Payment Request and Certification)  
 Exhibit C (Insurance Requirements)
  
4. **Participant Support Cost Funds.** Agency funding for this Agreement is provided through a federal grant #5E-84101101 (“CERTA”). Subject to the terms and conditions of this Agreement, Agency will reimburse Program Beneficiary actual eligible costs of the Activities, up to and not exceeding \$0.00 (“Participant Support Cost funds”) upon completion of the Activities and

submission of and approval of reimbursement request and supporting documents. Eligible costs are costs described in Exhibit A that Program Beneficiary incurs on or after the Effective Date of this Agreement and on or before the earlier of expiration or termination of this Agreement. Disbursements will be made only in accordance with the requirements contained in Exhibit A and only if Program Beneficiary is otherwise in compliance with the terms and conditions of this Agreement.

**5. [Reserved]**

**6. Disbursements and Expenses.**

- (a) This is a cost-reimbursement incentive. Agency will disburse Participant Support Cost funds as reimbursement of actual eligible costs only in accordance with the schedule and requirements contained in this Section 6 and Exhibit A, 2 (Invoicing) and subject to the conditions set forth in this Agreement. Supporting documentation must be provided for all actual eligible costs for which reimbursement is claimed. Eligible costs are listed in Exhibit A, (Invoicing). The reimbursement request must be made in the form of a completed and signed Exhibit B.
- (b) Program Beneficiary may not seek or receive from any third party any form of duplicate, overlapping or multiple payments for costs reimbursed under this Agreement nor may any costs under this Agreement be used to satisfy any match or cost sharing requirement of any other project or program. Participant Support Cost funds may not be used to reimburse costs for heat pump projects at a building for which the building owner has received funding under Oregon's Heat Pump Purchase Program for heat pump projects at that building's address.

**7. Recovery of Funds.** Any funds disbursed to Program Beneficiary under this Agreement that are used in violation or contravention of any of the provisions of this Agreement must be returned to Agency. Program Beneficiary shall return all funds found by the Agency to have been used in violation of this Agreement no later than fifteen (15) business days after Agency's written demand.

**8. Program Beneficiary's Representations And Warranties.** *As applicable*, Program Beneficiary represents and warrants to Agency as follows:

- (a) Program Beneficiary is duly organized, validly existing, and in good standing under the laws of Oregon. Program Beneficiary has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.
- (b) The making and performance by Program Beneficiary of this Agreement: (1) have been duly authorized by all necessary action of Program Beneficiary; (2) 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 agency, or any provision of Program Beneficiary's organic documents; and (3) do not and will not result in the breach of, or constitute a default or require any consent under, any agreement or instrument to which Program Beneficiary is a party or by which Program Beneficiary or any of its properties are bound or affected.
- (c) This Agreement has been duly authorized, executed and delivered on behalf of Program Beneficiary and constitutes the legal, valid, and binding obligation of Program Beneficiary, enforceable in accordance with its terms.
- (d) 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 Program Beneficiary of this Agreement.

**9. Conditions Precedent to Disbursement.** Agency's obligation to disburse funds to Program Beneficiary hereunder is subject to satisfaction of each of the following conditions precedent:

- (a) Agency has received appropriations, limitations, allotments or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement;
- (b) Program Beneficiary is in compliance with the reporting requirements described in Exhibit A Activities Requirements;
- (c) Program Beneficiary's representations and warranties set forth in Section 8 are true and correct on the date of disbursement, with the same effects as though made on the date of disbursement; and
- (d) Program Beneficiary is not in default under Section 16.

**10. Contracts.** Program Beneficiary may enter into contracts to complete the Activities without obtaining prior written consent from the Agency's Grant Administrator. Program Beneficiary is responsible for and must ensure that the work of its contractors, and any of the officers, agents, employees, or subcontractors of the contractor, complies with the requirements of this Agreement.

**11. Agreement Requirements.** Any and all equipment or materials purchased with funds made available by this Agreement must be used in the execution of the Activities Requirements. In addition, Program Beneficiary shall comply with the following requirements:

- (a) Any costs incurred by Program Beneficiary under this Agreement must be reasonable and adhere to 2 CFR 200.404. An example of reasonable costs is commercially off the shelf items purchased at a reasonable market rate.
- (b) The Program Beneficiary shall, at a minimum, maintain insurance coverage for equipment acquired with Participant Support Cost funds equivalent to the coverage Program Beneficiary maintains for other similar property owned by the Program Beneficiary. Further to the foregoing, Program Beneficiary shall obtain and maintain insurance that is substantially similar to the types and amounts of insurance that entities performing the project Activities set forth within Exhibit A would customarily obtain. Program Beneficiary must require its first-tier contractor(s) (i.e. a contractor with which the Program Beneficiary directly enters a contract) that are not units of local governments as defined in ORS 190.003, if any, to (i) obtain insurance specified under Exhibit C of this Agreement, (ii) maintain the insurance in full force throughout the duration of the contract. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Program Beneficiary shall not authorize contractors to begin work under the contract until the insurance is in full force. Thereafter, the Program Beneficiary shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Program Beneficiary shall incorporate appropriate provisions in the contracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce compliance. In no event shall Program Beneficiary permit a contractor to work under a contract when the Program Beneficiary is aware that the contractor is not in compliance with the insurance requirements.
- (c) The intention of Participant Support Costs is to reduce Greenhouse Gas emissions. Accordingly, the Program Beneficiary shall keep the equipment and materials obtained via Participant Support Costs in good working order.

**12. No Implied Waiver, Cumulative Remedies.** The failure of Agency to exercise, and any delay by Agency 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 are not exclusive of any remedies provided by law. Agency may, in its sole discretion, pursue any remedy or remedies singly, collectively, successively, or in any combination or order.

**13. Notices.** Any notification under this Agreement shall be in writing and provided to the party to be notified only by email. Notices emailed must be sent to the email address set forth in this Agreement on page 1. Any notice given by email shall be effective upon the sender's receipt of confirmation generated by the Program Beneficiary's email system that the notice has been received by the Program Beneficiary's email system.

**14. Amendments.** The terms of this Agreement will not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.

**15. Termination.**

- (a) This Agreement may be terminated by mutual consent of both parties or by Agency upon written notice to the Program Beneficiary.
- (b) Agency may terminate this Agreement effective upon written notice to Program Beneficiary, or at such later date as may be established by Agency in such notice, (i) if Agency fails to receive sufficient funding, appropriations, limitations, allotments or other expenditure authority to allow Agency, in the reasonable exercise of its administrative discretion, to make payments under this Agreement, (ii) if there is a change in federal or state laws, rules, regulations, or guidelines so that the Activities funded by this Agreement are no longer eligible for funding, or (iii) in accordance with Section 16.

**16. Default by Program Beneficiary.** Program Beneficiary shall be in default under this Agreement upon the occurrence of any of the following events:

- (a) Program Beneficiary fails to perform, observe, or discharge any of its covenants, agreements, or obligations contained in this Agreement, including any exhibit attached hereto;
- (b) Any representation, warranty or statement by Program Beneficiary made herein or in any documents or reports relied upon by Agency, including but not limited to any statement used by Agency to select Program Beneficiary for an incentive, measure progress on the Activities, the expenditure of Participant Support Costs funds, or the performance by Program Beneficiary, is untrue in any material respect when made;
- (c) Program Beneficiary: (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 to pay, or is generally unable to pay, its debts as they become due; (iii) makes a general assignment for the benefit of its creditors; (iv) is adjudicated as bankrupt or insolvent; (v) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect); (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect); or (viii) takes any corporate action for the purpose of effecting any of the foregoing; or
- (d) A proceeding or case is commenced, without the application or consent of Program Beneficiary, in any court of competent jurisdiction, seeking: (i) the liquidation, dissolution, or winding-up, or the composition or readjustment of, Program Beneficiary's debts; (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Program Beneficiary or of all or any substantial part of its assets; or (iii) similar relief in respect to Program Beneficiary 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 twenty (20) consecutive days, or an order for relief against Program Beneficiary is entered in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect).

**17. Remedies Upon Default.** If Program Beneficiary's default under Section 16(a) or 16(b) is not cured within fifteen (15) days of written notice thereof to Program Beneficiary from Agency (or such longer period as Agency may authorize in its sole discretion), if a default occurs under Section 16(a) or 16(b) that is not capable of cure, or if there is a default by Program Beneficiary under Section 16(c) or 16(d), Agency 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 Participant Support Costs amount and declaration of ineligibility for the receipt of similar future awards. If, as a result of Program Beneficiary's default, Agency demands return of all or a portion of the amount or payment of interest earned on the amount, Program Beneficiary shall pay the amount upon Agency's demand.

**18. Intangible Property.** The Program Beneficiary may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under this Agreement. For any such work, Program Beneficiary grants to Agency and U.S. EPA a nonexclusive, irrevocable, perpetual royalty-free, license to reproduce, publish, or otherwise use the work and to authorize others to do so.

**19. Suspension and Debarment.**

- (a) Program Beneficiary must notify Agency if Program Beneficiary knows that Program Beneficiary or any of Program Beneficiary's principals, as that term is defined in 2 CFR 180.995, involved in this Agreement:
  - (1) Are presently excluded or disqualified from receiving federal funds;
  - (2) Have been convicted within the preceding three (3) years of any of the offenses listed in 2 CFR 180.800(a) or had a civil judgment rendered against Program Beneficiary for one (1) of those offenses within that time period;
  - (3) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State or local) with commission of any of the offenses listed in 2 CFR 180.800(a); or
  - (4) Have had one (1) or more public transactions (Federal, State, or local) terminated within the preceding three (3) years for cause or default.
- (b) Program Beneficiary shall fully comply with Subpart C of 2 CFR Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business with Other Persons", as implemented and supplemented by 2 CFR Part 1532. Program Beneficiary is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, entitled "Covered Transactions", includes a term or condition requiring compliance with Subpart C. Program Beneficiary may access the Excluded Parties List System at <http://www.sam.gov>.

**20. Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

**21. Record Maintenance and Access.** The Program Beneficiary will maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, the Program Beneficiary will maintain any other records pertinent to this Agreement in such a manner as to clearly document Program Beneficiary's performance. Agency, the Oregon Secretary of State's Office, and their duly authorized representatives will have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Program Beneficiary that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Program Beneficiary will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following the end of the Activities Period,

or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

**22. Compliance with Applicable Law.** Program Beneficiary will comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the Activities under this Agreement. Without limiting the generality of the foregoing, Program Beneficiary expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) [reserved]; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) ORS 279A, ORS 279B, and ORS 279C, as applicable to the Program Beneficiary; (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes; and (xi) all regulations and administrative rules established pursuant to the foregoing laws. These laws, regulations, and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.

**23. Indemnity.**

FOR NON GOVERNMENT ENTITIES – DELETE THIS HEADER and delete other section, and include the below:

- (a) To the extent authorized by law, Program Beneficiary shall defend, indemnify, save and hold harmless and release the State of Oregon, Agency and their officers, employees and agents from and against any and all claims, demands, suits, actions, proceedings, losses, damages, liability and court awards, including but not limited to costs, expenses, and reasonable attorneys' fees incurred (collectively, "Claims"), related to any actual or alleged act or omission by Program Beneficiary, or its officers, employees, agents or contractors, in connection with this Agreement or the Activities, including without limitation violation of PWR or Davis-Bacon Act requirements, any expenses incurred or amounts paid in connection with an inquiry, investigation, audit or similar proceeding by BOLI, the U.S. Department of Labor, the Internal Revenue Service, Treasury and any other federal, state, governmental or quasi-governmental body with regulatory jurisdiction arising from the Activities or the actions or omissions of Program Beneficiary, or its officers, employees, contractors, or agents.
- (b) Program Beneficiary shall take all reasonable steps to require its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to defend, indemnify, save and hold harmless and release the State of Oregon, Agency and their officers, employees and agents from and against any and all claims, demands, suits, actions, proceedings, losses, damages, liability and court awards, including but not limited to costs, expenses, and reasonable attorneys' fees incurred (collectively, "Claims"), related to any actual or alleged act or omission by Program Beneficiary, or its officers, employees, agents or contractors, in connection with this Agreement or the Activities, including without limitation violation of PWR or Davis-Bacon Act requirements, any expenses incurred or amounts paid in connection with an inquiry, investigation, audit or similar proceeding by BOLI, the U.S. Department of Labor, the Internal Revenue Service, Treasury and any other federal, state, governmental or quasi-governmental body with regulatory jurisdiction arising from the Activities or the actions or omissions of Program Beneficiary, or its officers, employees, contractors, or agents.
- (c) Notwithstanding the foregoing, neither Program Beneficiary nor any attorney engaged by Program Beneficiary may defend any Claim in the name of the State of Oregon, nor purport to act as legal representative for the State of Oregon, without first receiving from the Oregon Attorney General in a form and manner determined appropriate by the Oregon Attorney General, authority to act as legal counsel for the State of Oregon, nor may Program Beneficiary settle any Claim on behalf of the State of Oregon without the approval of the

Oregon Attorney General. If the State of Oregon assumes its own defense, Program Beneficiary will be liable for the attorney fees of the State of Oregon, including but not limited to any fees charged by the Oregon Department of Justice. The provisions of this section are not to be construed as a waiver by the State of Oregon or Agency of any immunity, defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon. If attorney fees are awarded to Program Beneficiary, such attorney fees shall not exceed the rate charged to Agency by its attorneys.

For Oregon governmental entities - use the below section, and delete the other section and this header:

(a) Contributory Liability and Contractor Indemnification- Tort Claims.

- (1) 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 Tort Claim") against a party to this Agreement (the "Notified Party") with respect to which the other party may have liability, the Notified Party must promptly notify the other party in writing and deliver a copy of the claim, process, and all legal pleadings related to the Third-Party Tort Claim. Either party is entitled to participate in the defense of a Third-Party Tort Claim, and to defend a Third-Party Tort Claim with counsel of its own choosing. The foregoing provisions are conditions precedent for either party's liability to the other in regard to the Third-Party Claim.
- (2) If the parties are jointly liable (or would be if joined in the Third-Party Tort Claim), the parties 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 in such proportion as is appropriate to reflect their respective relative fault. The relative fault of the parties 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. Each party's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if that party had sole liability in the proceeding. This Section shall survive termination of this Agreement.
- (3) Program Beneficiary shall take all reasonable steps to require its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Program Beneficiary's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Contractor Tort Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Contractor Tort Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Contractor Tort Claims. This Section shall survive termination of this Agreement.

(b) Indemnity; Release- Claims Other Than Torts.

- (1) Except for Third-Party Tort Claims and Contractor Tort Claims as provided in the preceding subparagraphs, to the extent authorized by law, Program Beneficiary shall defend, indemnify, save and hold harmless and release the State, Agency and their

officers, employees and agents from and against any and all claims, demands, suits, actions, proceedings, losses, damages, liability and court awards including but not limited to costs, expenses, and reasonable attorneys' fees incurred (collectively, "Non-Tort Claims"), related to any actual or alleged act or omission by Program Beneficiary, or its officers, employees, contractors, or agents in connection with this Agreement or the Activities, including without limitation PWR or Davis-Bacon Act requirements, any expenses incurred or amounts paid in connection with an inquiry, investigation, audit or similar proceeding by BOLI, the U.S. Department of Labor, the Internal Revenue Service, Treasury and any other federal, state, governmental or quasi-governmental body with regulatory jurisdiction arising from the Activities or the actions or omissions of Program Beneficiary, or its officers, employees, contractors, or agents.

- (2) Notwithstanding the foregoing, neither Program Beneficiary nor any attorney engaged by Program Beneficiary may defend any Non-Tort Claim in the name of the State of Oregon, nor purport to act as legal representative for the State of Oregon, without first receiving from the Oregon Attorney General in a form and manner determined appropriate by the Oregon Attorney General, authority to act as legal counsel for the State of Oregon, nor may Program Beneficiary settle any Non-Tort Claim on behalf of the State of Oregon without the approval of the Oregon Attorney General. If the State of Oregon assumes its own defense, Program Beneficiary will be liable for the attorney fees of the State of Oregon, including but not limited to any fees charged by the Oregon Department of Justice. The provisions of this section are not to be construed as a waiver by the State of Oregon or AGENCY of any immunity, defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon. If attorney fees are awarded to Program Beneficiary, such attorney fees shall not exceed the rate charged to Agency by its attorneys.

**23. Governing Law.** 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. 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. 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.

Notwithstanding the prior paragraph, 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 paragraph 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 paragraph 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.

**24. Merger Clause.** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT WILL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, WILL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE PROGRAM

BENEFICIARY, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

- 25. Assignment; Successors and Assigns.** Program Beneficiary may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by Program Beneficiary to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. The provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
- 26. No Third Party Beneficiaries.** Agency and Program Beneficiary are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third party unless such third party is individually identified by name herein and expressly described as intended beneficiary of the terms of this Agreement.
- 27. Independent Contractors.** Agency and Program Beneficiary agree and acknowledge that their relationship is that of independent contracting parties and that Program Beneficiary is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
- 28. Severability.** Agency and Program Beneficiary agree that 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 will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 29. Survival.** All rights and obligations of the parties under this Agreement will cease upon termination or expiration of this Agreement, other than those rights or obligations that by their nature or express terms are intended to survive termination or expiration of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the parties under this Agreement prior to termination.
- 30. Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.
- 31. Federal Funds Compliance and Full Financial Responsibility.** Payments under this Agreement will be made from federal funds. Program Beneficiary accepts full financial responsibility for any requirements imposed by the Program Beneficiary's failure to comply with any applicable federal requirements. If, for any reason, the federal government fails to pay part of the cost or expense incurred by the Program Beneficiary, or in the event the total amount of federal funds is not available, the Program Beneficiary will be responsible for any and all costs or expenses incurred under this Agreement. The Program Beneficiary further agrees to pay any and all lawful claims arising out of or incidental to the performance of the Activities covered by this Agreement in the event the federal government does not pay the same.
- 32.** Projects over \$250,000 in federal funding may require compliance with the Buy America Build America Act (BABA). Should this project exceed that threshold in federal funding from all sources, Program Beneficiary must immediately consult with the Grant Administrator and adhere to BABA if applicable.
- 33.** [Reserved]

**The persons signing this Agreement represent and warrant that they have the power and authority to enter into this Agreement.**

AGREED BY THE PROGRAM BENEFICIARY:

\_\_\_\_\_ Date

AGREED BY THE AGENCY:

\_\_\_\_\_ Date

\_\_\_\_\_  
Index-PCA-PJT

SAMPLE

**EXHIBIT A  
ACTIVITIES REQUIREMENTS  
BUILDING ENERGY REDUCTION INCENTIVE (BERI) PROGRAM PARTICIPANT SUPPORT  
COST INCENTIVE AGREEMENT**

<b><i>Program Beneficiary:</i></b>	<b><i>Agreement No.</i></b>
------------------------------------	-----------------------------

**A. Activities Requirements**

1. Activities requirements may be revised from time to time by Agency. Notice to applicable Program Beneficiaries will be made available as needed with an appropriate period to accommodate any such revisions.
2. The total incentive awarded is [\$\_\_\_\_\_] (the "Award") for the building located at [covered building address] (the "Building"). The energy efficiency measures (EEM(s)) (the "Activities") must be completed by [Activities Completion Deadline] to receive the incentive.

3. Activities supported by this agreement:

Activity 1:

Description of EEM: \_\_\_\_\_

Total cost of EEM: \_\_\_\_\_

Documentation required to demonstrate activity completion

---

Activity 2:

Description of EEM: \_\_\_\_\_

Total cost of EEM: \_\_\_\_\_

Documentation required to demonstrate activity completion

---

[additional activities as necessary]

4. Agency may conduct on-site inspections to verify activities completion and operation. Program Beneficiary must email Agency 12 months before and 6 months before the Activities Completion Deadline with an update on the project status (e.g. the activities are on track, delayed, cancelled; if the activities have strayed from the project plan with timeline and milestones). Program Beneficiary must notify Agency if any substantial changes are made to planned activities,

proposed equipment or efficiency ratings (and an updated energy audit may be required). Requests for incentives must be submitted by September 30, 2028.

## B. Equipment

Title to equipment acquired by Beneficiary with funds provided by this Agreement shall vest in the Beneficiary subject to the requirements of 2 CFR 200.313. All replacement, repower, and retrofit equipment and materials purchased with funds made available by this Agreement must be used only for purposes described in this Exhibit A. During the term of this Agreement, the Recipient will immediately notify Agency of any equipment purchased with funds made available under this Agreement that is removed from service for any reason. Disposition and disposal of such equipment must be in accordance with 2 CFR 200.313. Equipment records shall be maintained accurately.

## C. Payment Requests

1. Program Beneficiary shall submit a payment request in the form of Exhibit B and in accordance with the terms of this Agreement to [Oregon.BPS.BERI@energy.oregon.gov](mailto:Oregon.BPS.BERI@energy.oregon.gov). Payment requests are subject to the review and approval of the Grant Administrator. Payments will be sent to: [**Name, Title, Organization, Error! Reference source not found., Error! Reference source not found.**] (**Program Beneficiary address**)
2. The payment request must describe all Activities performed with particularity and must contain supporting documentation that itemizes, explains and provides documentation (e.g. receipts) for all expenses for which reimbursement is claimed.
3. In addition to supporting documentation (e.g. receipts) for expenses, the Program Beneficiary must include the following documentation to demonstrate Activities Completion: Final invoices must be accompanied by all applicable final permits from the authority having jurisdiction or evidence that demonstrates activities completion (e.g. photos).
4. Activities invoices must be accompany a completed and signed Exhibit B.
5. **Program Beneficiary shall submit a payment request for the award which includes the full cost of the activities upon Activity Completion (e.g. Agency will not process a payment request for work partially completed), and the Activities must be completed by the Activities Completion Date.**

## D. Payment

Payments will be based on reimbursement of actual eligible costs authorized by this Agreement. Payment is contingent on compliance with all terms and conditions of this Agreement.

Costs must be reasonable, incurred within the project period and otherwise allocable under this agreement, and adequately supported by accounting records. Incentives or other payments to a program beneficiary for the one-time cost of purchasing and installing equipment is allowable for participation in statutorily authorized programs to encourage environmental stewardship. This is restricted to the actual, eligible cost of Activities as described herein and excludes costs such as

personnel, indirect costs, operations and maintenance, and design and engineering services.

**EXHIBIT B  
PAYMENT REQUEST AND CERTIFICATION  
BUILDING ENERGY REDUCTION INCENTIVE (BERI) PROGRAM PARTICIPANT SUPPORT  
COST INCENTIVE AGREEMENT**

<b><i>Program Beneficiary:</i></b>	<b><i>Agreement No.</i></b>
------------------------------------	-----------------------------

**Final Payment Request and Certification**

1. Were the activities completed as specified in the participant support cost incentive agreement?  
Y/N
2. If the activities are completed, provide Activities Completion Deadline:

Please include the following documentation with Exhibit B:

- All final invoices from the Activities performed. Must contain supporting documentation that itemizes and explains all work performed.
- Any final permits
- Evidence that demonstrates activities completion (e.g. photos)
- CPA verification letter, if the activities costs paid and incurred are \$50,000 or more.

Total Cost: \$ \_\_\_\_\_

Incentive Payment Funds Requested: \$ \_\_\_\_\_

Other Government incentives & Grants funding source(s): \$ \_\_\_\_\_  
( e.g. federal, state, local, utility grants, rebates or incentives (not including this incentive)

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

Remainder of the page left blank intentionally.

## EXHIBIT C

### Insurance Requirements

Program Beneficiary shall require its contractors or subgrantees (a reference to "Contractor" in this Exhibit C is a reference to, as applicable, a contractor or subgrantee), if any, to obtain the insurance in the types and amounts specified below and otherwise meet the requirements provided in this Exhibit C before performing under contracts between Program Beneficiary and its Contractor(s) (the "Subcontracts").

Program Beneficiary shall not authorize Contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Program Beneficiary shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Program Beneficiary shall incorporate appropriate provisions in the Subcontracts permitting it to enforce Contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts or pursuing legal action to enforce the insurance requirements. In no event shall Program Beneficiary permit a Contractor to work under a Subcontract when the Program Beneficiary is aware that the Contractor is not in compliance with the insurance requirements.

#### **CONTRACTOR INSURANCE REQUIREMENTS:**

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit prior to performing under this Agreement. Contractor shall maintain such insurance in full force and at its own expense throughout the duration of this Agreement, as required by any extended reporting period or continuous claims made coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon. All coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention, and self-insurance, if any.

If Contractor maintains broader coverage and/or higher limits than the minimums shown in this Exhibit, Program Beneficiary requires and shall be entitled to the broader coverage and/or higher limits maintained by Contractor.

#### **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY:**

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017, and provide Workers' Compensation Insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject

employer, as defined in ORS 656.023, Contractor shall also obtain Employers' Liability insurance coverage with limits not less than \$500,000 each accident.

If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide Workers' Compensation Insurance coverage for its employees as required by applicable workers' compensation laws including Employers' Liability Insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

As applicable, Contractor shall obtain coverage to discharge all responsibilities and liabilities that arise out of or relate to the Jones Act with limits of no less than \$5,000,000 and/or the Longshoremen's and Harbor Workers' Compensation Act.

**COMMERCIAL GENERAL LIABILITY:**

Contractor shall provide Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State of Oregon. This insurance must include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Agreement, and have no limitation of coverage to designated premises, project, or operation. Coverage must be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence and not less than \$2,000,000 annual aggregate limit.

**EXCESS/UMBRELLA INSURANCE:**

A combination of primary and Excess/Umbrella Insurance may be used to meet the required limits of insurance. When used, all of the primary and Excess or Umbrella policies must provide all of the insurance coverages required herein, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Excess or Umbrella or policies must be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, must be called upon to contribute to a loss until Contractor's primary and excess liability policies are exhausted.

If Excess/Umbrella Insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the Excess/Umbrella insurance.

**ADDITIONAL INSURED:**

All liability insurance, except for Workers' Compensation, Professional Liability, Directors and Officers Liability and Network Security and Privacy Liability (if applicable), required under this Agreement must include an Additional Insured endorsement specifying the State of Oregon, its officers, employees, and agents as Additional Insureds, but only with respect to Contractor activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Regarding Additional Insured status under the General Liability policy, Agency requires Additional Insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor activities to be performed under this Agreement. The Additional Insured endorsement with respect to liability arising out of Contractor ongoing operations must be on, or at least as broad as, ISO Form CG 20 10 and the Additional Insured endorsement with respect to completed operations must be on, or at least as broad as, ISO form CG 20 37.

**WAIVER OF SUBROGATION:**

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Contractor shall obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Agency has received a Waiver of Subrogation endorsement from Contractor or Contractor's insurer(s).

**CONTINUOUS CLAIMS MADE COVERAGE:**

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then Contractor shall maintain continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of:

- (i) Contractor's completion and Agency's acceptance of all Services required under this Agreement, or
- (ii) Agency or Contractor termination of this Agreement, or
- (iii) The expiration of all warranty periods provided under this Agreement.

**NOTICE OF CHANGE OR CANCELLATION:**

**Contractor** or its insurer must provide at least 30 calendar days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**INSURANCE REQUIREMENT REVIEW:**

**Contractor** agrees to periodic review of insurance requirements by Agency under this Agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency.

**STATE ACCEPTANCE:**

All insurance providers are subject to Agency acceptance. If requested by Agency, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this Exhibit.