

FOR OWEB USE ONLY

**Oregon Watershed Enhancement Board
LAND ACQUISITION GRANT AGREEMENT**

THIS AGREEMENT is made and entered into by and between the State of Oregon, acting by and through the Oregon Watershed Enhancement Board ("OWEB") and **[INSERT Grantee name]** ("Grantee"), with OWEB and Grantee referred to individually as a "**Party**" and collectively as "**the Parties**".

RECITALS

WHEREAS, under ORS 541.932, OWEB may fund projects involving the purchase of interests in land from willing sellers for the purpose of maintaining or restoring watersheds and habitat for native fish or wildlife.

WHEREAS, Grantee has proposed a project for OWEB funding and qualifies under ORS 541.932 as an entity that can hold an interest in land purchased with OWEB grant funds.

[DELETE IF FEDERAL FUNDS ARE THE ONLY FUND SOURCE] WHEREAS, this grant (the "Grant") is funded by Oregon Lottery funds or another state fund source and must comply with the requirements defined in Article XV, Section 4b(2) of the Oregon Constitution.

NOW, THEREFORE, OWEB and Grantee agree to the following:

AGREEMENT

1. Effective Date and Term. This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law (the "Effective Date"). Unless otherwise terminated or extended, the Agreement term (the "Term") shall be ten (10) years, or until such time that Grantee has fulfilled all obligations under this Agreement to the full satisfaction of OWEB, whichever occurs sooner.

2. Project and Project Purpose. Grantee intends to acquire or has acquired **[INSERT "fee title to" or "a conservation easement over"]** certain property that is depicted on **Exhibit A** (the "Property"), with said property interest referred to as the "Property Interest". Unless otherwise agreed in writing between OWEB and Grantee, the Property Interest shall affect an area substantially the same as depicted on Exhibit A. The purpose of the project (the "Project Purpose") is to protect or restore certain conservation values associated with the Property (the "Conservation Values"), with the Conservation Values more particularly described in Grantee's grant application (the "Grant Application") which is attached as **Exhibit B**. For the purposes of this Agreement, the project and Project Purpose are referred to as "the Project."

3. Conditional Grant Approval. OWEB conditionally approved the granting of up to \$_____ (the "Grant Funds") to Grantee for the purpose of completing the Project in accordance with the terms and conditions of this Agreement. The disbursement of Grant Funds

Project Name:
Grant Number:
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under this Agreement shall be made in accordance with Section 8 (Disbursements) and is subject to certain conditions being fulfilled by Grantee in a manner deemed acceptable by OWEB, with those conditions more specifically described in **Exhibit C** (the “Conditions”).

Notwithstanding anything to the contrary in Section 16(M) (Survival), ongoing obligations of the Grantee, if any, agreed to in Exhibit C, shall survive the expiration of this Agreement.

4. Project Schedule. The Project shall be completed in accordance with the Project schedule attached as **Exhibit D** (the “Project Schedule”). The Project Schedule specifies when key actions under this Agreement shall be completed. Additional key actions may be added to the Project Schedule depending on the circumstances of the Project.

5. Due Diligence.

- A. Grantee is solely responsible for completing all due diligence for the purchase of the Property Interest, for communicating OWEB’s requirements to the seller of the Property Interest (the “Seller”), and for any errors or omissions in the due diligence.
- B. OWEB may accept due diligence dated up to but not exceeding 18 months before the application deadline for the grant cycle in which the Project is awarded funding, except: i) appraisals will not be accepted for conservation easements that have not been reviewed and approved by OWEB; ii) if the project is funded by OWEB using a grant from a federal program that has a shorter appraisal age limit than OWEB’s, Grantee will be required to adhere to the federal age limit; iii) updated title documentation will be required prior to Closing; and iv) baseline documentation may need to be updated or confirmed with a site inspection by Grantee prior to Closing.
- C. OWEB may, but is not obligated to, identify and request corrections to errors or omissions in due diligence.

6. Approved Budget and Match.

- A. Subject to other terms and conditions of this Agreement, the authorized Project costs under the Agreement shall be as provided in the OWEB-approved budget attached as **Exhibit E** (the “Approved Budget”). The Approved Budget may be revised or amended, provided any revision or amendment is: (i) consistent with the requirements of this Agreement; (ii) consistent with the established requirements of OWEB’s Business Operations Program; and (iii) approved in writing by OWEB.
- B. Grantee shall contribute non-OWEB match in the amount of at least 25 percent of the Grant Funds (the “Match”). Match must be consistent with OAR 695-045-0175, OAR 695-005-0060(2), and OAR 695-045-0195(2). Grantee must secure the Match, including all funds necessary to complete the purchase of any Match Property pursuant to Section 6(D), by the time of OWEB’s first payment of Grant Funds and provide a report of expended Match at the time of OWEB’s final payment of Grant Funds.
- C. If Grantee will contribute Match from the restoration of Project property, the restoration must be complete prior to the release of Grant Funds for the purchase of the Property.
- D. If Grantee will contribute Match from the appraised value of a property interest other than the Property (the “Match Property”), Grantee must fulfill the following requirements to the

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full satisfaction of the Executive Director of OWEB (the "Director") prior to the release of Grant Funds for the purchase of the Property:

- i. The acquisition of the Match Property must be complete.
- ii. A licensed, qualified appraiser must document that the Match Property's fair market value is sufficient to meet the Match requirement under this Agreement.
- iii. Grantee must record a perpetual title restriction in the deed records that states that the Match Property will be protected and managed for the purpose of maintaining or restoring watersheds and habitat for native fish or wildlife.

7. Coordination. Grantee shall provide OWEB with the due diligence requirements, if any, of all entities contributing Match. Documentation of such requirements includes but is not necessarily limited to: title standards, general and project-specific appraisal specifications, minimum deed terms or conservation easement templates, requirements for legal and sufficient access to all tracts comprising the Property, management plan guidance, and baseline documentation report standards. Grantee agrees to execute any and all agreements necessary to facilitate the timely and efficient sharing of Project-related documentation and information, including any confidentiality agreements required by entities providing Match.

8. Disbursements. OWEB shall disburse funds in accordance with the Approved Budget and subject to the following:

- A. Grant Funds disbursements will be made only on a reimbursement basis, with the exception that OWEB may wire funds to an escrow for purchase of the Property Interest and payment of fees associated with the closing process (the "Closing").
- B. Grant Funds disbursements will not occur until the Director has reconciled conditionally approved funding with actual costs of the Project, as required under OAR 695-045-0195(1)(e). Project costs must be documented on the current version of OWEB's payment forms, submitted through OWEB's Online Payment Request system unless otherwise required by OWEB, and accompanied by all required receipts, expenditure tracking sheets, and other accounting records.
- C. Under OAR 695-045-0195(3), OWEB will only disburse Grant Funds to reimburse a Project expense prior to Closing if: (i) the expense is for a due diligence item that is consistent with OAR 695-045-0170(4) and is included in the Contracted Services category of the Approved Budget; (ii) Grantee obtained the written approval of the OWEB Project Manager prior to incurring the expense if the expense was incurred after the award of Grant Funds; (iii) the due diligence item complies with all applicable Conditions; and (iv) the due diligence item has been reviewed and approved by OWEB.
- D. Total OWEB disbursements will not exceed the total Grant Funds.
- E. OWEB's contribution to the purchase price of the Property Interest will not exceed the OWEB-approved appraised value of the Property Interest.
- F. If a Federally Negotiated Indirect Cost Rate (FNICR) is selected as the indirect cost method for the Project, then a FNICR plan, approved as of the Grant Application submission due date or a later date, must be submitted by Grantee to OWEB before Grant Funds will be released to Grantee for indirect costs.

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- G. The award of Grant Funds, less any Grant Funds disbursed to Grantee prior to Closing, may be rescinded if the Property Interest is not purchased, or is purchased before OWEB determines that Grantee has satisfied the Conditions.
- H. Within 60 days after OWEB's approval of the Management Plan described in Section 10, Grantee will submit one reimbursement request for actual Management Plan costs incurred by Grantee, if the Approved Budget includes Grant Funds for such costs.
- I. If the Approved Budget includes Grant Funds for site stabilization, Grantee will submit a final reimbursement request for actual site stabilization costs within 60 days after completing site stabilization activities. The request will include:
 - i. A written summary of the site stabilization activities that were completed; and
 - ii. Color photographs that document the site stabilization.
- J. Grantee's submittal, and OWEB's approval, of the final request for payment of Grant Funds will authorize OWEB to retain any remaining unspent Grant Funds. Grantee shall accompany the final request for payment of Grant Funds with a final accounting of all other funding in the Project, including all in-kind contributions, donations, and Match on a form required by OWEB.
- K. Grantee shall not be entitled to receive payment under this Agreement from any other part of Oregon state government other than OWEB, and nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations to the State of Oregon.
- L. All disbursements by OWEB are contingent on OWEB having received sufficient funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OWEB, in the exercise of its reasonable administrative discretion, to make the disbursement.
- M. All disbursements by OWEB are contingent on Grantee's continuing compliance with all terms of this Agreement and all other grant agreements it has with OWEB, including without limitation, the continuing truth and accuracy of the representations and warranties set forth in Section 13 (Representations and Warranties of Grantee) and the confirmations set forth in **Exhibit F** (Confirmations of Grantee).

9. Title Restrictions.

- A. After execution of this Agreement, Grantee shall not sell, transfer, impair, or cause the sale, transfer, or impairment of any interest in the Property without OWEB's prior written approval.
- B. In accordance with ORS 541.960, the Property Interest shall be made subject to title restrictions that are consistent with the Project Purpose and give the OWEB Board the authority to approve, approve with conditions or deny the subsequent sale or transfer of the Property Interest by Grantee.
- C. OWEB, at its sole discretion, will determine the sufficiency of title restrictions to be placed on the Property Interest in fulfillment of title restriction requirements under ORS 541.960, and will require certain terms and conditions as described in the current version of OWEB's land acquisition guidance, forms, templates, and other applicable documents.
- D. Grantee shall ensure that use of the Property is consistent with the title restrictions described in this section. If OWEB determines at its sole discretion that a title restriction compliance problem cannot be resolved to its full satisfaction, after providing reasonable

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written notice to Grantee, OWEB may initiate all legal remedies available to OWEB, including but not limited to the recovery of the Grant Funds used to purchase the Property Interest, together with reasonable interest and penalties.

- E. The OWEB Board will not approve a subsequent sale or transfer of the Property Interest if the sale or transfer results in Grantee or any other person receiving a Profit, as that capitalized term is defined in OAR 695-045-0010(2).

10. Management Plan. Grantee shall complete a management plan for the Property (the “Management Plan”) in accordance with the timeframe provided in Exhibit D and applicable Conditions. The Management Plan shall be subject to OWEB approval, which shall not be unreasonably withheld. The Management Plan is to be completed in accordance with OWEB’s management plan guidance. The Management Plan shall: (i) address all relevant issues related to the restoration, protection, or enhancement of the Conservation Values of the Property, including issues, if any, related to the reserved rights of the underlying Property owner in the case of a conservation easement acquisition; and (ii) specifically describe intended monitoring and evaluation activities, along with the intended one-time or recurring schedule for those activities.

11. Project Progress Report. Grantee shall complete a project progress report (the “Project Progress Report”) in accordance with the timeframe provided in Exhibit D. The Project Progress Report shall include: (i) a description of Grantee’s progress in implementing actions specified in the Management Plan, an explanation for why any of the actions specified in the Management Plan have not been completed, and a statement of plans for implementing any uncompleted actions; (ii) a summary of successes, challenges, and lessons learned, including but not limited to a summary of the benefits and impacts of any Tribal cultural uses that occurred on the Property if the Property is not owned by a federally recognized Tribe; (iii) plans for addressing any new or evolving threats for the Property; (iv) information about the process and timing of incorporating any new data into an update of the Management Plan; and (v) certification by Grantee that the Property is being used in a manner that is consistent with the Project Purpose.

12. Closing. Unless otherwise agreed by OWEB in writing, Closing shall occur on or before the closing date specified in the Project Schedule (the “Closing Date”). OWEB may, but is not obligated to, assist Grantee with Closing before the Closing Date. OWEB reserves the right, at its sole discretion, to require an escrow closing, in which case OWEB will wire payment of Grant Funds to an escrow agent with instructions for use of the funds in closing the purchase and providing for reimbursement to Grantee of authorized costs of the Project. Alternatively, at the sole discretion of OWEB, OWEB may pay Grant Funds directly to Grantee in a prior approved format (check or direct deposit) dependent upon the amount of the payment and Grantee’s enrollment in direct deposit through the State of Oregon. After Closing, Grantee shall provide OWEB with spatial data that OWEB determines is acceptable for depicting the Property’s boundary.

13. Representations and Warranties of Grantee. Grantee represents and warrants to OWEB as follows:

- A. **Organization and Authority.** In accordance with ORS 541.932, Grantee is eligible to hold title to an interest in property purchased with OWEB funds and is duly organized and validly existing under the laws of the State of Oregon. Grantee has full power, authority

and legal right to make this Agreement and to incur and perform its obligations under this Agreement, 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 Articles of Incorporation or Bylaws, 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. The individual signing on behalf of Grantee hereby certifies and swears under penalty of applicable law that they are authorized to act on behalf of Grantee, has authority and knowledge regarding Grantee's payment of taxes, and to the best of their knowledge, Grantee is not in violation of any Oregon tax laws.

- 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. **Use of Project Property.** Grantee fully understands that the Property shall be used in a manner that is consistent with this Agreement and Article XV, Section 4b of the Oregon Constitution.
- D. **Review of Law.** Grantee has reviewed and understands the provisions of law applicable to this Agreement, including but not limited to ORS 541.932, ORS 541.960, and OAR 695-045-0010 through 695-045-0215.
- E. **No Agreements.** No agreements exist or will exist between Grantee and others, including the Seller, in writing or otherwise, that will result in Grant Funds being used for anything other than those expenses provided for in the Approved Budget.
- F. **Grantee Compensation.** All compensation, if any, that Grantee expects for its role in the transaction, either in the form of payment for services or otherwise, is reflected in the Approved Budget, as well as in the option or purchase and sale agreement if compensation has been or will be paid by the Seller. Grantee records required under Section 14 (Records Maintenance and Access) shall clearly demonstrate compliance with this provision of the Agreement.
- G. **Warranties Not Exclusive.** The warranties set forth in this section are in addition to and not in lieu of, any other warranties set forth in this Agreement or implied by law.

14. Records Maintenance and Access.

- A. **Access to Records and Facilities.** OWEB, the Secretary of State of the State of Oregon ("Secretary") and their duly authorized representatives shall have access to the books, documents, papers, and records of Grantee that are directly related to this Agreement, the Grant Funds, or the Project for the purpose of making audits and examinations. In addition, OWEB, the Secretary, and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Grantee shall permit authorized representatives of OWEB and the Secretary to perform site reviews of all services delivered as part of the Project, subject to OWEB-approved access limitations, if any, provided in the warranty deed or conservation easement associated with this Project.

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- B. **Retention of Records.** Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds, or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following termination or expiration of this Agreement. If there are unresolved audit questions or litigation at the end of the six (6) year period, Grantee shall retain the records until the questions or litigation is resolved.
- C. **Expenditure Records.** Expenditure records shall be created and maintained in accordance with generally accepted accounting principles and in sufficient detail to permit OWEB to reconcile conditionally approved funding with actual costs of the Project as required under OAR 695-045-0195.

15. Default, Remedies and Termination.

- A. **Default.** Grantee shall be in default under this Agreement upon occurrence of the following events:
 - i. Key Grantee actions are not completed in accordance with the Project Schedule, with key Grantee actions to include, but not be limited to, completion of Grantee due diligence and delivery of the Management Plan and Project Progress Report, and OWEB reviews in accordance with the Project Schedule, the purchase of the Property Interest on or before the Closing Date, and completion of site stabilization as applicable, unless adjustments to the Project Schedule are agreed to in writing by OWEB.
 - ii. Any representation, warranty or statement made by Grantee or in any documents or reports relied upon by OWEB, is knowingly untrue in any material respect when made;
 - iii. Grantee is not in compliance with title restrictions imposed upon the Property in accordance with this Agreement; or
 - iv. Any other breach of the terms and conditions of this Agreement.
- B. **Remedies upon Default.** If Grantee's default is not cured within a reasonable term, as defined by OWEB at its sole discretion, OWEB may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to:
 - i. Terminating the Agreement and with it, OWEB's obligation to make the Grant.
 - ii. OWEB withholding its approval as to other transactions between OWEB and Grantee, including, but not limited to, other grants from OWEB to Grantee.
 - iii. Requiring repayment of the Grant Funds and all interest, if any, earned by Grantee on those Grant Funds.
 - iv. The award of Grant Funds, less any Grant Funds disbursed to Grantee prior to Closing, may be rescinded if the Property Interest is not purchased, or is purchased before OWEB determines that Grantee has satisfied the Conditions.
- C. **Termination.**
 - i. OWEB Termination.
 - (a) OWEB may immediately terminate this Agreement by written notice to Grantee:
 - (1) Upon Grantee's failure to cure a default under this Agreement; or

- (2) If OWEB does not obtain sufficient funding, appropriations, limitations, allotments, or other expenditure authority to allow OWEB to meet its payment obligations under this Agreement.
- (b) OWEB may terminate this Agreement upon 30 days written notice to Grantee for any other reason specified in writing.
- ii. Mutual Termination. OWEB and Grantee may mutually agree to terminate this Agreement in writing.
- iii. Effect of Termination. In the event of termination, OWEB will reimburse Grantee for any expenses incurred prior to termination, provided that those expenses are determined by OWEB to be eligible expenses under this Agreement and otherwise meet the requirements for disbursement under Section 8 (Disbursements).

16. General Provisions.

- A. **INDEMNITY.** *Grantee shall defend (subject to ORS Chapter 180), indemnify, save and hold harmless [for public entities **REPLACE** the first part of this sentence with: “**Subject to the limitations of the Oregon Tort Claims Act (ORS 30.260 - 30.300), Grantee shall defend (subject to ORS Chapter 180), indemnify, save and hold harmless**”] the State of Oregon and OWEB and their officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys’ fees incurred related to any actual or alleged act or omission by Grantee, or its employees, agents or contractors, that is related to this Agreement; however, the provisions of this section are not to be construed as a waiver by OWEB of any 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.*
- B. **Tax Benefits.** OWEB makes no representations or warranties as to: i) the suitability of the Property Interest for tax or any other benefits of the Seller; or ii) tax consequences, if any, of the Property Interest or any other contract or financial transaction that is part of or associated with the Project. If the Seller intends to obtain any tax benefits from the Project, the Seller and Grantee are solely responsible for obtaining any tax or other financial advice necessary to determine whether OWEB’s requirements for the Project are compatible with the Internal Revenue Service’s requirements. Unless the Property Interest is fee title acquired by Grantee before the Effective Date, Grantee shall provide this section of the Agreement to the Seller within 30 days from the Effective Date and provide OWEB with written confirmation of the notification.
- C. **Publicity.** Grantee shall make every effort to acknowledge and publicize OWEB’s participation and assistance with the Project. Consistent with this requirement, Grantee shall provide notice on any technical, educational, or informational material pertaining to the Project that funding was provided by OWEB.

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- D. **Permits and Licenses.** Grantee shall obtain all necessary permits and licenses for the Project from local, state and federal agencies or governing bodies and provide a copy of each permit or license to OWEB in accordance with **Exhibit H** (Permits and Licenses).
- E. **Amendments.**
- i. This Agreement may be amended or extended by the mutual agreement of the Parties. Any amendment or extension must be in writing, signed by the Parties.
 - ii. Grantee agrees to complete the Project as approved by the OWEB Board unless proposed modifications to the Project are submitted in writing to, and approved in writing by, OWEB prior to the beginning of any work proposed in the modification.
- F. **Participation in Similar Activities.** This Agreement in no way restricts Grantee or OWEB from participating in similar activities with other public or private agencies, organizations, or individuals.
- G. **No Third-Party Beneficiaries.** OWEB 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, such as an underlying landowner, is individually identified by name in this Agreement and expressly described as intended beneficiary of the terms of this Agreement.
- H. **Notices.** Except as otherwise expressly provided in this Agreement, notices to be given under this Agreement shall be given in writing by personal delivery, email, or mailing the same, postage prepaid to Grantee or OWEB to the applicable Project Manager at the address or number set forth below, or to such other addresses or numbers as either Party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective five (5) days after the date postmarked. Any communication or notice delivered by email shall be deemed to be given when confirmation of the transmission is generated by the transmitting computer. To be effective against OWEB, such email transmission must be confirmed by telephone notice to OWEB's Project Manager. Any communication or notice given by personal delivery shall be effective when actually delivered.

OWEB Project Manager:

Miriam Forney, Land Acquisitions Coordinator
Oregon Watershed Enhancement Board
Re: Grant No. _____
775 Summer Street NE, Suite 360
Salem, OR 97301-1290
Phone: 971-345-7023
Email: miriam.forney@oweb.oregon.gov

Grantee Project Manager:

Phone:
Email:

- I. **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

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of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OWEB (or 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. Each party 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. 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.

- J. **Compliance with Law.** Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement or the Project. Without limiting the generality of the foregoing, Grantee expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations, (b) Titles VI and VII of the Civil Rights Act of 1964, as amended, (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142, (e) the Health Insurance Portability and Accountability Act of 1996, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, and (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference to the extent that they are applicable to the Agreement or the Project and required by law to be so incorporated. Grantee shall not discriminate against any individual, who receives or applies for services as part of the Project, on the basis of actual or perceived age, race, creed, religion, color, national origin, gender, disability, marital status, sexual orientation, alienage or citizenship. 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 state law.
- K. **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.
- L. **Assignment of Agreement, Successors in Interest.** Grantee shall not assign or transfer its interest in this Agreement without the prior written approval of OWEB.
- M. **Survival.** The following provisions of this Agreement shall survive termination or expiration of this Agreement: Sections 5 (Due Diligence), 13 (Representations and Warranties), 14 (Records Maintenance and Access), 16(A) (Indemnity), 16(B) (Tax Benefits), 16(P) (Limitations on OWEB's Approval), 16(G) (No Third Party Beneficiaries), 16(I) (Governing

Law, Consent to Jurisdiction), 16(M) (Survival), 16(R) (Exhibits), and any other provisions that by their terms are intended to survive termination or expiration of this Agreement. **[INSERT IF FEDERAL FUNDS ARE USED: 16(S) (Federal Funds)].**

- N. **Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the subject matter of this Agreement, with no other understandings, agreements, or representations, oral or written, 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. Grantee, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.
- O. **Counterparts.** This Agreement may be executed in several counterparts, including by facsimile or by signature on a portable document format (PDF) delivered by email, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- P. **Limitations of OWEB's Approval.** OWEB's approval of the legal and financial terms of the acquisition of the Property Interest is solely for the purpose of disbursing Grant Funds under this Agreement. OWEB's approval does not constitute a legal opinion, representation, or warranty as to the enforceability of the Property Interest or the financial soundness or adequacy of the terms under which it is acquired.
- Q. **Insurance.**
- i. In addition to any insurance specified in **Exhibit I** (Insurance Requirements), Grantee shall carry, at a minimum: (i) general liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate; and (ii) auto liability insurance in the amount of \$1,000,000 for a combined single limit. Grantee shall continue this coverage through completion of the Project. In addition, Grantee shall require that all contractors, consultants, or subgrantees hired to develop or implement the Project carry said insurance types and amounts.
 - ii. If requested by OWEB, Grantee shall provide OWEB with certificates of insurance for all required insurance. As proof of insurance, OWEB has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Agreement.
 - iii. Grantee or insurer must provide at least 30 days' written notice to OWEB before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).
- R. **Exhibits.** This Agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement by reference:
- | | |
|------------|--|
| Exhibit A: | Property Map |
| Exhibit B: | Grant Application |
| Exhibit C: | Required Conditions |
| Exhibit D: | Project Schedule |
| Exhibit E: | Budget |
| Exhibit F: | Confirmations of Grantee |
| Exhibit G: | Prevailing Wage Law Requirement |
| Exhibit H: | Permits and Licenses |

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Exhibit I: **Insurance Requirements**
[INSERT IF FEDERAL FUNDS ARE USED
Exhibit J: **Federal Grant Requirements**
Exhibit K: **Information required by 2 CFR § 200.331(a)(1)]**

In the event of a conflict between two or more provisions of this Agreement, the most restrictive provision shall control.

- S. **[INSERT IF FEDERAL FUNDS ARE USED] Federal Funds.** The OWEB grant is funded with [\$_____ in state funds] and \$_____ in federal funds (Catalogue Federal Domestic Assistance Number _____).
- i. As a condition of accepting an OWEB grant which is partly or wholly funded with federal funds from a grant agreement between OWEB and **[INSERT NAME OF AGENCY]** (the "Federal Grant"), Grantee agrees as follows:
 - a. Grantee agrees to meet, or assist OWEB in meeting, all terms and conditions of the Federal Grant, as may be requested by OWEB; and
 - b. To comply with the Terms and Conditions provided in Exhibit J.

Project Name:
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Grantee Name:

AGREED:

FOR THE GRANTEE:

Grantee Signature

Print Name

Date

FOR OWEB:

OWEB Executive Director or Designee

Date

APPROVED FOR LEGAL SUFFICIENCY:

Assistant Attorney General
Oregon Department of Justice

Date

Project Name:
Grant Number:
Grantee Name:

EXHIBIT A
PROPERTY MAP

Project Name:
Grant Number:
Grantee Name:

EXHIBIT B
GRANT APPLICATION

EXHIBIT C REQUIRED CONDITIONS

In addition to other requirements specifically provided for in the Agreement, the disbursement of the Grant Funds is further conditioned as described below. Items submitted to meet the conditions must be consistent with the current version of OWEB's land acquisition guidance, forms, templates, and other applicable documents, in OWEB's determination.

Project-Specific Conditions. Unless otherwise agreed by the Director under OAR 695-045-0195(3), Grant Funds shall not be disbursed under this Agreement until all initial and secondary Project-specific conditions have been fulfilled by Grantee to the full satisfaction of the Director.

Initial Project-Specific Conditions. The following initial Project-specific conditions must be satisfied before OWEB will review due diligence items or reimburse costs associated with the secondary Project-specific conditions or standard conditions below.

- (1) Grantee meets with OWEB staff within sixty (60) days from the Effective Date to:
 - a) Confirm roles and responsibilities;
 - b) Agree on preferred methods for sharing information;
 - c) Discuss approaches to addressing Project challenges; and
 - d) Address other Project matters that would benefit from early discussions between Grantee and OWEB.
- (2) Grantee participates in regularly scheduled Project update meetings with OWEB staff.
- (3) [additional initial Project-specific conditions imposed by the OWEB Board]

Secondary Project-Specific Conditions. OWEB shall review due diligence items and reimburse costs associated with the following secondary Project-specific conditions only after Grantee has satisfied the initial Project-specific conditions above.

- (1) [secondary Project-specific conditions imposed by the OWEB Board]

Standard Conditions. Unless otherwise agreed by the Director under OAR 695-045-0195(3), Grant Funds shall not be disbursed under this Agreement until the following standard conditions have been fulfilled by Grantee to the full satisfaction of the Director. OWEB shall review due diligence items and reimburse costs associated with the standard conditions only after Grantee has satisfied the initial Project-specific conditions above.

- (1) Grantee obtains:
 - a) All reasonably necessary Property information (the "Property Information") for OWEB to complete a due diligence review of the Project, including Property Information in the Seller's possession; and
 - b) Permissions from the Seller, as necessary, to release Property Information, regardless of the source, to OWEB and other funding entities. Property Information includes, but is not limited to: appraisals; title reports; environmental site assessments; surveys; water rights documentation; rights of first refusal; option agreements; purchase and sale agreements; leases; licenses; rental agreements; permits; easements; security instruments; UCC financing statements; fixture filings;

documents pertaining to litigation, encroachments, disputes (including boundary line disputes), or prescriptive rights; a description of any work performed on or use made of the Property by parties other than the Seller within one hundred eighty (180) days before the Effective Date; and other documents and information that OWEB determines are reasonably necessary to review before disbursing Grant Funds. Upon written request of Grantee or the Seller, OWEB agrees to treat Property Information as confidential, to the extent permitted by the Oregon Public Records Law, ORS 192.311-192.478. OWEB may disclose Property Information that is subject to a confidentiality request if it determines that disclosure is reasonably necessary as part of its due diligence review process, or if it is ordered to do so pursuant to Public Records Law. OWEB shall not be responsible for a breach of confidentiality by other entities that OWEB is reasonably expected to share the Property Information with as part of the grant administration process.

- (2) Grantee obtains, if deemed necessary by OWEB, reasonable Closing Date extensions for the purpose of providing OWEB with adequate time to determine that Grantee has met all requirements under this Agreement. If Grantee elects to purchase the Property Interest without the Grant Funds and subsequently seek reimbursement from OWEB, it will be doing so with the understanding that the reimbursement request shall be subject to any remaining OWEB approvals necessary under this Agreement.
- (3) Grantee fully complies with the intent of ORS 35.500-35.530 (Relocation of Displaced Persons), and OWEB requirements related to said provisions of law, if residential or business tenants will be displaced as a result of the acquisition of the Property Interest.
- (4) Grantee imposes title restrictions on the Property consistent with OWEB's standard form conservation easement, as it may be revised from time to time at OWEB's sole discretion [**FOR FEE ACQUISITIONS ONLY**].
- (5) The Director, by the Closing Date specified in Exhibit D, approves of the legal and financial terms of the acquisition of the Property Interest, including, but not limited to:
 - a) The acquisition agreement (e.g., option, purchase and sale agreement, etc.) and the agreement to transfer the Property to another, if planned.
 - b) The purchase price for the Property Interest, which shall be based on an appraisal and review appraisal completed in accordance with applicable appraisal standards, including the Uniform Standards of Professional Appraisal Practice, and if required, the Uniform Appraisal Standards for Federal Land Acquisitions.
 - c) The Phase 1 Environmental Site Assessment, as well as additional investigative reports and action plans resulting from the Phase 1 Assessment.
 - d) The Property survey, if required.
 - e) The Seller's vesting deed.
 - f) The baseline documentation completed for the Property, which shall include a description of the intended future conditions of the Property if restoration of the Property is required to achieve the intended ecological outcomes of the Project.
 - g) The water rights, if applicable.
 - h) Documented access rights to all tracts comprising the Property, including a clear depiction of the access on a map provided by Grantee.

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- i) The planning and zoning circumstances associated with the Property, as evidenced by the OWEB Land Use Information Form submitted with the Grant Application, as well as other information obtained during the OWEB due diligence review process.
- j) The legal description of the Property.
- k) The warranty deed for a fee transaction, or easement for a conservation easement acquisition.
- l) The condition of title and the title insurance policy, including specific exceptions to the policy, with the Director's approval based on review of an assessment, including a map, of the exceptions provided by Grantee.
- m) The notice of federal participation, if required for the use of any federal funds.
- n) The statement of just compensation, if required for the use of any federal funds.
- o) Escrow documents including settlement statements.
- p) A title report dated within sixty (60) days of the Closing Date.
- q) The matching contribution.
- r) Grantee's demonstrated compliance with applicable federal and state laws regarding relocation of displaced persons, including but not limited to requirements contained in ORS 35.510, as may be revised from time to time.
- s) Other conditions that the Director deems reasonably necessary as a result of OWEB due diligence review efforts after the Agreement has been signed by the Parties.

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**EXHIBIT D
PROJECT SCHEDULE**

KEY GRANTEE ACTIONS	ESTIMATED COMPLETION DATE, INCLUDING APPROVAL	Comments
Completion of due diligence		
Legal sufficiency review of Project materials		Allow up to 6 weeks for legal sufficiency review
Updated preliminary title report		
Proforma title insurance policy		
Fiscal documentation		Allow up to 2 weeks for fiscal review
Closing		Allow 1 month for final Closing steps after approval of all Project documentation
Management plan	TBD; see Comments column	18 months after actual date of Closing
Site stabilization	TBD; see Comments column	24 months after actual date of Closing
Project progress report	TBD; see Comments column	5 years after actual date of Closing

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**EXHIBIT E
BUDGET**

Budget Category	Amount
OWEB Funds	
Salaries, Wages and Benefits	\$0.00
Contracted Services	\$0.00
Travel and Training	\$0.00
Materials and Supplies	\$0.00
Other	\$0.00
Modified Total Direct Costs (MTDC)	\$0.00
Other (Purchase Price of Property)	\$0.00
Indirect Costs	\$0.00
Grant Total	\$0.00

Eligible Project expenses and Match shall be incurred no earlier than **[INSERT** date 18 months prior to grant application deadline, or date 36 months prior to grant application deadline if OWEB determines that Project is eligible for the administrative rule waiver described in the Application Guidance document] and no later than __ months after the actual date of Closing.

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EXHIBIT F
CONFIRMATIONS OF GRANTEE

Grantee, by executing this Agreement, hereby confirms that:

[insert items previously included in funding conditions beginning with, "Grantee confirms that..."
to reduce the number of funding conditions]

EXHIBIT G
PREVAILING WAGE RATE LAW

1. The prevailing wage rate requirements that may apply to the Project are set forth in ORS 279C.800 through 279C.870 and the administrative rules promulgated thereunder (OAR Chapter 839, Division 25) (collectively, "PWR"). If applicable, Grantee shall:
 - a) Comply with PWR and require its contractors and subcontractors to pay the applicable PWR rates and to comply with all other Oregon Bureau of Labor and Industries ("BOLI") requirements pursuant to the PWR, including on all contracts and subcontracts;
 - b) File a separate public works bond with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8), or (9), and require its contractors and subcontractors to do the same, unless they are exempt under ORS 279C.836(4), (7), (8), or (9); and
 - c) File the notice to BOLI required by ORS 279C.835 and pay to BOLI, within the required timeframe and in the appropriate amount, any project fees required by ORS 279C.825 or OAR 839-025-0200 to 839-025-0230, including any additional fee that may be owed upon completion of the Project.
2. Grantee represents and warrants that it is not on the BOLI current [List of Contractors Ineligible to Receive Public Works Contracts](#) and that it will not contract with any contractor on this list.
3. Pursuant to ORS 279C.817, Grantee 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.

Information regarding prevailing wage rate law can be found on the BOLI website.

[INSERT IF FEDERAL FUNDS ARE USED]

4. If the federal Davis-Bacon Act applies to the Project, Grantee shall require that any and all contractors and subcontractors on the Project will pay the prevailing rate of wage as determined by the United States Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*). Exhibit J, section 2(c) contains a reference to the Davis-Bacon Act provision that Grantee must include in any contracts with non-federal entities.
5. If both PWR and the federal Davis-Bacon Act apply to the Project, Grantee shall require that any and all contractors and subcontractors on the Project must pay a rate of wage that meets or exceeds the greater of the PWR rate or the Davis-Bacon wage rate.
 - a) The latest prevailing wage rates can be accessed online on the BOLI website: <https://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx>
 - b) The latest Davis-Bacon wage rates can be accessed online on the United States General Services Administration website: <https://sam.gov/wage-determinations>

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EXHIBIT H PERMITS AND LICENSES

Before the release of Grant Funds for Project activities requiring a permit or license, or for activities dependent on portions of the Project for which a permit or license has yet to be issued, Grantee must submit to OWEB copies of all required permits or licenses or submit written evidence acceptable to the Board that permits and licenses are not required.

OWEB may release funds for elements of the Project that do not require a permit or license. To be considered for release, Grantee must provide written documentation to OWEB requesting such consideration and affirming that the Project element(s) for which no permits or licenses are required will lead to ecological benefits consistent with the Project objectives and are not dependent on the portion of the Project for which a permit or license has yet to be issued.

The following are often required for projects involving waterway alteration or watershed enhancement.

- Removal/Fill permit(s) – Dept. of State Lands
- Water Right Permit(s) – Water Resources Dept.
- Zoning or Development Permit(s) – City or County Planning Department
- State, Federal and Tribal Cultural Resources Protection permits
- 401 Water Quality Certificate – Department of Environmental Quality
- Fill permit(s) – US Army Corps of Engineers
- City or County permit(s)

The foregoing list of permits and licenses is not exhaustive. Grantee is responsible for determining which permits, licenses, or other authorizations are required for the Project.

Instructions to Grantee: List the components of your Project requiring permits or licenses. By your signature on this Agreement, you certify to OWEB that the following is a complete and accurate list of the Project components requiring permits or licenses and the associated permits or licenses.

Project Activity Requiring Permit/License	Permit/License Name and Entity Issuing

☐ The work related to this Project will not require permits or licenses.

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EXHIBIT I INSURANCE REQUIREMENTS

Section 16 of this Agreement specifies base insurance requirements. OWEB considers some projects and project activities to have an increased risk to the organization, organization's employees, volunteers, and the community and may require additional insurance. If required for the Project under this Agreement, the additional insurance types required, the amount, and who will carry the insurance are set forth below.

- ☐ The work related to this Project **shall not** require additional insurance beyond base Agreement requirements.
- ☐ The work related to this Project **shall** require additional insurance beyond base Agreement requirements.

If Grantee is performing Project work requiring additional insurance, Grantee shall carry the insurance types and amounts described below and shall continue this coverage through Project completion. If Grantee is contracting out the work requiring additional insurance, Grantee shall: i) only be required to meet the base insurance requirements of **Section 16** of this Agreement; and ii) require that all contractors or consultants carry the insurance types and amounts described below.

Insurance Type	Coverage Amount	Organization carrying insurance

[INSERT IF FEDERAL FUNDS ARE USED]

**EXHIBIT J
FEDERAL GRANT REQUIREMENTS**

For the purposes of the federal granting agency, OWEB is the recipient of federal funds and in accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, and 2 CFR 200.331, OWEB's determination is that the Grantee is the subrecipient of federal funds. In the following requirements, the Grantee is also referred to as "Recipient."

As a subrecipient of Federal grant funds, pursuant to this Agreement with the state, Recipient assumes sole liability for Recipient breach of the conditions of the grant, and shall, upon Recipient breach of grant conditions that requires the state to return funds to the grantor, hold harmless and indemnify the state for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the Recipient, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

1. All materials purchased with funds made available by this Agreement must be used only for purposes of the same general nature outlined in this Agreement. Federal funds cannot be used to purchase equipment or to pay federal agencies for any expenses under this Agreement.
2. Recipient shall comply with the requirements in 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, including but not limited to the following:
 - (a) Property Standards. 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
 - (b) Procurement Standards. When procuring goods or services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
 - (c) Contract Provisions. Recipient shall include the contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, in its contracts with non-Federal entities.

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3. The Recipient agrees to ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds, complies with the Hotel and Motel Fire Safety Act of 1990.
4. The Recipient agrees to comply with the requirements of 2 CFR 200.501, including, but not limited to, that Subrecipients receiving federal funds in excess of \$1,000,000 in the Subrecipient's fiscal year are subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Subrecipient did not expend \$1,000,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant. Subrecipient shall save, protect and hold harmless Agency from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the State of Oregon.
5. Pursuant to Section 18 of the Lobbying Disclosure Act, the Recipient affirms that it is not a nonprofit organization described in Section 501(c) (4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c) (4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
6. If Grant Agreement exceeds \$100,000, Recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying* and to submit certification and disclosure forms accordingly. Any Recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
7. If Grant Agreement exceeds \$150,000, 41 U.S.C 4712, Enhancement of Recipient and Subrecipient Employee Whistleblower Protection applies:
 - (a) This award, related sub-awards, and related contracts over the simplified acquisition threshold and all employees working on this award, related sub-awards, and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies established at 41 USC 4712.
 - (b) Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC 4712.
 - (c) The recipient shall insert this clause, including this paragraph (c), in all sub-awards and in contracts over the simplified acquisition threshold related to this award.

[INSERT IF FEDERAL FUNDS ARE USED]

**EXHIBIT K
INFORMATION REQUIRED BY 2 CFR § 200.332(b)(1)**

For the purposes of the federal granting agency, OWEB is the recipient of federal funds and the grantee is the subrecipient of federal funds.

Federal Award Identification:

1. Grantee name (which must match unique entity identifier): _____
2. Grantee's unique entity identifier: _____
3. Federal Award Identification Number (FAIN): _____
4. Federal Award Date: _____
5. Subaward Period of Performance Start and End Date: _____
6. Subaward Budget Period Start and End Date: _____
7. Total Amount of Federal Funds Obligated by this Agreement: \$ _____
8. Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement: \$ _____
9. Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: \$ _____
10. Federal award project description: _____
11. Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
 - (a) Name of Federal awarding agency: _____
 - (b) Name of pass-through entity: _____
 - (c) Contact information for awarding official of the pass-through entity: _____
12. Assistance Listings Number and Title: _____
13. Federal Award Amount: _____
14. Is Award R&D? Yes ___ No ___
15. Grantee's indirect cost rate for the Federal award (including if the de minimis rate is charged) per 2 CFR § 200.414: ___%