

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 collectively referred to 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.

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 will 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.** The OWEB Board 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 under this Agreement will be made in accordance with Section 8 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”).

Project Name:
Grant Number:
Grantee Name:

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

4. Project Schedule. The Project will 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 are expected to be completed, including the deadlines for: (i) purchasing the Property Interest (the “Closing Date”); (ii) completing the management plan required under Section 10 (the “Management Plan Completion Date”); and (iii) submitting the project progress report required under Section 11 (the “Project Progress Report Completion Date”). With the exception of the Closing Date, Management Plan Completion Date, and Project Progress Report Completion Date, Section 15 (Default, Remedies and Termination) will not be applicable to Project Schedule Compliance matters if Grantee has demonstrated a good-faith effort to complete the Project, including but not limited to the required conditions in Exhibit C, in accordance with the Project Schedule.

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, 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 will 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 commits to contributing 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(E), 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. Notwithstanding Section 6(B) of this Agreement, Match is reduced to a minimum of \$1.00 for Focused Investment Partnership (“FIP”) Projects, in accordance with OAR 695-047-0110(7) (the “FIP Match”). However, all additional cash or in-kind funds designated by Grantee as FIP Match and utilized in the course of completing the Project must be documented for the Project. Grantee must secure the FIP Match by the time of OWEB’s first payment of Grant Funds and provide a report of expended FIP Match at the time of OWEB’s final payment of Grant Funds.
- D. 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.

Project Name:
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- E. 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 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 document on the Match Property’s title 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 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 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 amount specified in the Approved Budget or the OWEB-approved appraised value of the Property Interest, whichever is less.
- F. Purchase price savings, if any, may be applied to the non-purchase price items specified in the Approved Budget, provided, however, that total OWEB contributions to non-purchase price costs will not exceed one hundred and ten percent (110%) of the Approved Budget as to those costs.

Project Name:
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- G. 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.
- H. 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.
- I. Upon OWEB approval of the Management Plan described in Section 10, Grantee will submit one invoice for reimbursement of actual Management Plan costs incurred by Grantee if the Approved Budget includes Grant Funds for such costs. Grantee costs must be documented with receipts, time and effort records and other appropriate documentation to support the reimbursement request to the satisfaction of OWEB. OWEB's reimbursement will be subject to limitations provided for in this Section 8.
- J. Upon completion of any site stabilization activities specifically described in the Grant Application and included in the Approved Budget, Grantee will submit:
 - i. One request for the release of Grant Funds for actual site stabilization costs incurred by Grantee, documented with receipts, time and effort records and other appropriate documentation to support the reimbursement request to the satisfaction of OWEB;
 - ii. A written summary of the site stabilization activities that were completed; and
 - iii. Color photographs that document the site stabilization.OWEB's reimbursement will be subject to limitations provided for in this Section 8.
- 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 being in compliance with all terms of this Agreement and all other grant agreements it has with OWEB, including without limitation that all representations and warranties set forth in Section 13 are true and correct on the date of disbursement with the same effect as though they are made on the date of disbursement.

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. OWEB, at its sole discretion, will determine the

Project Name:
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sufficiency of title restrictions to be placed on the Property Interest in fulfillment of title restriction requirements under ORS 541.960.

- C. Under no circumstances will the OWEB Board 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 will 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 will be subject to OWEB approval, which will not be unreasonably withheld. The Management Plan is to be completed in accordance with OWEB’s management plan guidance. The Management Plan will: (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 will complete a project progress report (the “Project Progress Report”) in accordance with the timeframe provided in Exhibit D. The Project Progress Report will include: (i) a description of Grantee’s progress in implementing actions specified in the management plan required under this Agreement, 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; (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 in writing, Closing shall occur on or before the Closing Date. OWEB may, but is not obligated to, assist Grantee with Closing before the Closing Date. OWEB may wire 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 release Grant Funds to Grantee in the form of a check, direct deposit, or wire. OWEB reserves the right, at its sole discretion, to require an escrow closing, with the closing to be completed in accordance with OWEB-approved closing instructions.

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 4(b) 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 will 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.
- 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 from the date the Property Interest is acquired, or such longer period as may be required by other provisions of this Agreement or applicable

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law, following the expiration date. If there are unresolved audit questions at the end of the six (6) year period, Grantee shall retain the records until the questions are 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 due diligence including obtaining OWEB approval in accordance with the Project Schedule, the purchase of the Property Interest on or before the Closing Date and approval of the Management Plan on or before the Management Plan Completion Date;
- 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, termination of this Agreement.

C. **Termination.**

- i. OWEB may immediately terminate this Agreement by written notice to Grantee: (a) upon Grantee's failure to remedy a default under this Agreement or; (b) if OWEB does not obtain sufficient funding and expenditure authorizations to allow OWEB to meet its payment obligations under this Agreement.
- ii. OWEB may terminate this Agreement upon 30 days written notice to Grantee for any other reason specified in writing.
- iii. OWEB and Grantee may mutually agree to terminate this Agreement in writing.
- iv. In the event of termination, OWEB will reimburse Grantee for any expenses incurred prior to termination, provided said expenses are determined by OWEB to be eligible expenses under this Agreement and meet the disbursement requirements provided for herein.

- D. **Other Remedies.** Grantee affirms its understanding that an uncured default under this Agreement may result in OWEB withholding its approval as to other transactions between OWEB and Grantee, including, but not limited to, other grants from OWEB to Grantee.

16. **General Provisions.**

- A. **INDEMNIFICATION.** *Grantee will defend (subject to any limitation imposed by ORS Chapter 180) and indemnify* [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 will defend (subject to any limitation imposed by ORS Chapter 180), and indemnify”] the State of Oregon and OWEB and their officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever arising out of, or relating to the acts or omissions of Grantee or Grantee’s officers, employees, contractors, or agents under this Agreement.***

B. 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.

C. 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 for tax benefits. 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.

D. 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.

E. 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.

F. 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.

G. 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,

Project Name:
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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, 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:

- H. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between 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. 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. 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.
- I. **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) Executive Order 11246, as amended, (f) the Health Insurance Portability and Accountability Act of 1996, (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (i) all regulations and administrative rules established pursuant to the foregoing laws, and (j) 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.

J. Insurance.

- i. Grantee shall carry, at a minimum: (i) general liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 in 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 or consultants hired to develop or implement the Project also 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).

K. 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.

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

M. Assignment of Agreement, Successors in Interest. Grantee shall not assign or transfer any interest in this Agreement without the prior written approval of OWEB.

N. Survival. All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 5 (Due Diligence), 13 (Representations and Warranties), 14 (Records Maintenance and Access), 16A (Indemnification), 16C (Tax Benefits), 16F (No Third Party Beneficiaries), 16N (Survival), 16O (Integration and Waiver), and 16Q (Exhibits). **[INSERT IF FEDERAL FUNDS ARE USED: 16R (Federal Funds)].**

O. 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.

Project Name:
Grant Number:
Grantee Name:

- P. **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.
- Q. **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: **Oregon Prevailing Wage Law Requirement**
 - [INSERT IF FEDERAL FUNDS ARE USED**
 - Exhibit G: **Federal Grant Requirements**
 - Exhibit H: **Information required by 2 CFR § 200.331(a)(1)]**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: This Agreement minus all exhibits, Exhibit G, Exhibit C; Exhibit F; Exhibit E; Exhibit D; Exhibit B; Exhibit A; and Exhibit H. **[REMOVE EXHIBITS G AND H FROM THE STATEMENT OF PRECEDENCE IF FEDERAL FUNDS ARE NOT USED]**

- R. **[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;
 - b. The state funds, if any, may include 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; and
 - c. To comply with the Terms and Conditions provided in Exhibit G.

Project Name:
Grant Number:
Grantee Name:

IN WITNESS THEREOF: the Parties have caused this agreement to be properly executed by their authorized representatives as of the day this Agreement is signed by the Parties.

Grantee:

**State of Oregon, acting by and through its
Oregon Watershed Enhancement Board:**

By: _____
Name:
Title:

By: _____
Executive Director

Date

Date

**Approved for legal sufficiency
Oregon Department of Justice**

By: _____

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 on:

1. **Project-Specific Conditions.** Unless otherwise agreed by the Director under OAR 695-045-0195(3), Grant Funds will not be disbursed under this Agreement until the following Project-specific conditions have been fulfilled to the full satisfaction of the Director.
 - A. **Initial Conditions.** The following initial conditions must be satisfied before OWEB will review due diligence items or reimburse costs associated with the secondary conditions or standard conditions 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.
 - i. Grantee meets with OWEB staff within sixty (60) days from the Effective Date to: (i) confirm roles and responsibilities; (ii) agree on preferred methods for sharing information; (iii) discuss approaches to addressing Project challenges; and (iv) address other Project matters that would benefit from early discussions between Grantee and OWEB.
 - ii. Grantee participates in regularly scheduled Project update meetings with OWEB staff.
 - iii. [additional initial Project-specific conditions imposed by the OWEB Board]
 - B. **Secondary Conditions.** OWEB will review due diligence items and reimburse costs associated with the following secondary conditions only after Grantee has satisfied the initial conditions above. 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.
 - i. [secondary Project-specific conditions imposed by the OWEB Board]
2. **Standard Conditions.** Unless otherwise agreed by the Director under OAR 695-045-0195(3), Grant Funds will not be disbursed under this Agreement until the following standard conditions have been fulfilled to the full satisfaction of the Director. OWEB will review due diligence items and reimburse costs associated with the standard conditions only after Grantee has satisfied the initial conditions above.
 - A. Grantee obtains: (i) 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 (ii) 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

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(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 from 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 will 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.

- B. 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 will be subject to any remaining OWEB approvals necessary under this Agreement.
- C. 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.
- D. 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**].
- E. 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:
 - i. The acquisition agreement (e.g., option, purchase and sale agreement, etc.) and the agreement to transfer the Property to another party, if planned.
 - ii. 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.
 - iii. The Phase 1 Environmental Site Assessment, as well as additional investigative reports and action plans resulting from the Phase 1 Assessment.
 - iv. The Property survey, if required.
 - v. The Seller's vesting deed.
 - vi. The baseline inventory completed for the Property, which will include a description of the intended future conditions of the Property if restoration of

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the Property is required to achieve the intended ecological outcomes of the Project.

- vii. The water rights, if applicable.
 - viii. Documented access rights to the Property, including a clear depiction of the access on a map provided by Grantee.
 - ix. 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.
 - x. The legal description of the Property.
 - xi. The warranty deed for a fee transaction, or easement for a conservation easement acquisition.
 - xii. 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.
 - xiii. The notice of federal participation, if required for the use of any federal funds.
 - xiv. The statement of just compensation, if required for the use of any federal funds.
 - xv. Escrow documents including settlement statements.
 - xvi. A title report dated within sixty (60) days of the Closing Date.
 - xvii. The matching contribution.
 - xviii. 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.
 - xix. 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.
- F. The Director's approval of the legal and financial terms of the items listed under condition 2(E) above is solely for the purpose of disbursing Grant Funds under this Agreement. The Director'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.

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**EXHIBIT D
 PROJECT SCHEDULE**

KEY GRANTEE ACTIONS	ESTIMATED COMPLETION DATE, INCLUDING APPROVAL	Comments
Binding purchase agreement		
Appraisal		
Environmental site assessment		
Resolution of title matters		
Survey and legal description		
Confirmation of legal and sufficient access		
Water rights analysis		
Deed		
Conservation easement		
Baseline inventory documentation		
Proforma title insurance policy		
DOJ review of Project materials		Allow up to 6 weeks for final DOJ review of Project materials
Updated preliminary title report		
Fiscal documentation		Allow up to 2 weeks for fiscal review
Closing		
Management plan		
Site stabilization		
Project progress report		

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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

Project expenses and Match incurred no earlier than [*INSERT* date 18 months prior to grant application deadline] and no later than [*INSERT* date up to 24 months after Closing, if site stabilization funds are included in the Grant Funds] may be eligible for reimbursement.

EXHIBIT F
OREGON 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, 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 and in filing separate public works bonds with the Construction Contractors Board; and
 - b) pay to BOLI, within the required timeframe and in the appropriate amount, the project fee required by 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 at https://www.oregon.gov/BOLI/WHD/PWR/Pages/W_PWR_Pwrbk.aspx

[INSERT IF FEDERAL FUNDS ARE USED]

**EXHIBIT G
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 200.330, OWEB’s determination is that the grantee is the sub-recipient of federal funds. In the following requirements, the Grantee is also referred to as “Recipient”.

As a sub-recipient of Federal grant funds, pursuant to this Agreement with the state, Recipient assumes sole liability for that Recipient breach of the conditions of the grant, and will, 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 grant funds, the indemnification amount will 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 equipment and materials purchased with funds made available by this Agreement must be used only for purposes of the same general nature outlined in this Agreement.
2. Recipient will 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.
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, “Audits of States, Local Governments, and Non-Profit Organizations, including, but not limited

to, that Subrecipients receiving federal funds in excess of \$750,000 in the Subrecipient's fiscal year are subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Subrecipient, if subject to this requirement, shall at Subrecipient's own expense submit to Agency a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Agreement and shall submit or cause to be submitted to Agency the annual audit of any Subrecipient(s), contractor(s), or subcontractor(s) of Subrecipient responsible for the financial management of funds received under this Agreement. Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Subrecipient did not expend \$750,000 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 Sub-recipient 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 sub-recipients, 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 (3), in all sub-awards and in contracts over the simplified acquisition threshold related to this award.

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[INSERT IF FEDERAL FUNDS ARE USED]

**EXHIBIT H
INFORMATION REQUIRED BY 2 CFR § 200.331(a)(1)***

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

Federal Award Identification:

1. Grantee name (which must match registered name in DUNS): _____
2. Grantee's DUNS number: _____
3. Federal Award Identification Number (FAIN): _____
4. Federal Award Date: _____
5. Total Amount of Federal Funds Obligated by this Agreement: \$_____
6. Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement**: \$_____
7. Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: \$_____
8. Federal award project description: _____
9. 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:
State of Oregon, Oregon Watershed Enhancement Board
 - (c) Contact information for awarding official of the pass-through entity:
Miriam Scharer, Fiscal Officer
775 Summer St. NE, Suite 360
Salem, OR 97301_____
10. CFDA Number and Name: _____
Federal Award Amount: \$_____
11. Is Award R&D? Yes X No
12. Grantee's indirect cost rate for the Federal award: _____%