

Oregon Watershed Enhancement Board
DRINKING WATER SOURCE PROTECTION GRANT PROGRAM
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 HERE]** (“Grantee”) with OWEB and Grantee collectively referred to as “the **Parties**”.

RECITALS

WHEREAS, under ORS 448.370 through 448.380, OWEB may fund projects for the purpose of protecting, restoring, or enhancing sources of drinking water through the acquisition of lands from willing sellers; entering into covenants, easements, or similar agreements with willing landowners; or repaying a loan used to finance the project types described previously in this clause.

WHEREAS, Grantee has proposed a project for OWEB funding and qualifies under OAR 695-048-0040 as an eligible applicant and under OAR 695-048-0060 as an eligible system with OWEB’s Drinking Water Source Protection Grant (“DWSP”) Program.

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 from the Effective Date through **[INSERT END DATE HERE]**, 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 a **[INSERT TYPE OF PROTECTIVE INSTRUMENT]** (the “Protective Instrument”) that is identified on **Exhibit A** pertaining to a certain property (the “Property”) that is also identified on **Exhibit A**. The purpose of the project (the “Project Purpose”) is to complete the land transaction evidenced by the Protective Instrument which will ensure the protection, restoration, or enhancement of sources of drinking water. The details of the Protective Instrument and the Project Purpose are described in Grantee’s grant application (the “Grant Application”) which is attached as **Exhibit B**. The Protective Instrument shall comply with the requirements of OAR 695-048-0030. For the purposes of this Agreement, the project and Project Purpose are collectively referred to as the “Project”.

3. Conditional Grant Approval. OWEB conditionally approved the granting of up to **[INSERT GRANT AWARD AMOUNT]** (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 7 (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”).

The fund source for the Grant Funds for this Project:

- General Funds
- Lottery Revenue Bonds

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. Additional key actions may be added to the Project Schedule depending on the circumstances of the Project.

5. Due Diligence. Grantee is solely responsible for completing all due diligence for the purchase of the Protective Instrument, for communicating OWEB’s requirements to the seller of the Protective Instrument (“Seller”), and for any errors or omissions in the due diligence. 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. Pursuant to OAR 695-048-0080 and OAR 695-048-0120, Grantee shall contribute non-OWEB match in the amount of at least five percent of the Grant Funds (the “Match”). Grantee must secure the Match before 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.

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

- A. Grant Funds disbursements will not occur until OWEB has reconciled conditionally approved funding with actual costs of the Project, as required under OAR 695-048-0160. 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.

- B. Total OWEB disbursements will not exceed the total Grant Funds.
- C. OWEB's contribution to the purchase price of the Protective Instrument will not exceed the amount specified in the Approved Budget or the OWEB-approved third-party documentation verifying the purchase price of the Protective Instrument, whichever is less.
- D. 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 Section 7 (Disbursements).
- E. 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 any other law regulating liabilities or monetary obligations to the State of Oregon.
- F. 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.
- G. 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 10 (Closing).
- H. OWEB may withhold payments of Grant Funds to Grantee if OWEB determines that there are significant and persistent difficulties with satisfying Project requirements.
- I. OWEB will approve the distribution of Grant Funds. Grant Funds will be distributed throughout the time between approval by OWEB and transaction closing as the following conditions are met:
 - i. A grant agreement is executed by OWEB and the Grantee;
 - ii. The funding conditions applicable to the allowable cost, if any, imposed by OWEB are satisfied to the full satisfaction of OWEB;
 - iii. The legal and financial terms of the proposed real estate transaction are approved by OWEB;
 - iv. The Protective Instrument and any required title restrictions are approved by OWEB;
 - v. OWEB has reconciled conditionally approved funding with actual Project costs; and
 - vi. The Grantee has satisfied the Match requirements under OAR 695-048-0080, with modifications for grants awarded in the first grant solicitation cycle as allowed in OAR 695-048-0120.

8. Partnership Agreement. If the Grantee forms a partnership with an eligible holder (“Holder” has the meaning given to it in ORS 271.715, other than a state agency) for the acquisition of the Protective Instrument, then the Grantee must submit the partnership agreement to OWEB for review and approval. The partnership agreement shall be in writing and be duly signed by an authorized officer of the Grantee and the Holder. The partnership agreement must include:

- A. Commitment of the Grantee and Holder to coordinate funding, expertise, materials, labor, or other assistance for the benefit of the Project.
- B. Roles and responsibilities of Grantee and Holder to ensure the requirements of this Grant Agreement are satisfied, including documentation for reimbursement requests with written evidence of materials and labor furnished to or work performed under the Project.
- C. **[INCLUDE ITEM C FOR PROJECTS WITH LOTTERY REVENUE BOND FUNDING]** Provisions in **Exhibit H** “Lottery Revenue Bonds Requirements” including records retention and the provisions within the section titled “Restrictions on Use of Bond Proceeds and the Project”.

9. Title Restrictions and Easement, Covenant, Equitable Servitude, and Other Similar Agreement Terms. Unless otherwise agreed in writing between OWEB and Grantee, the Protective Instrument will affect a property area substantially the same as depicted on Exhibit A. Grantee shall provide to OWEB the legal description of the Protective Instrument as soon as it is available to Grantee. In accordance with OAR 695-048-0180 the Protective Instrument shall include terms that give OWEB **[INCLUDE FOR PROJECTS WITH LOTTERY REVENUE BOND FUNDING: “and the Oregon Department of Administrative Services (“DAS”)”]** the authority to approve, approve with conditions, or deny the subsequent transfer, conveyance, assignment, or modification of the Protective Instrument by Grantee or a Holder in partnership with Grantee. If Grantee, or a Holder in partnership with Grantee, acquires an estate in fee simple absolute, Grantee or the Holder, shall record on title a Notice of Grant Requirements (**Exhibit G**) that includes the requirements listed in OAR 695-048-0030(1)(a)-(e). OWEB, at its sole discretion, will determine the sufficiency of the terms included in the Protective Instrument consistent with DWSP Grant Program guidance, statutes, and administrative rules.

10. 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 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 amount and enrollment in direct deposit through the State of Oregon. 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.

11. Access. Grantee acknowledges that the Protective Instrument must include a provision that OWEB and its designees will be provided sufficient legal access to the Property, given reasonable notice, for the purpose of compliance inspections. Grantee acknowledges that it holds the burden of demonstrating, to the sole satisfaction of OWEB, the existence of sufficient legal and physical access to all tracts impacted by the Protective Instrument.

12. Project Update Reports and Meetings. Grantee will meet with the OWEB Project Manager identified in section 18(h) for Project Update Meetings in accordance with the timeframe provided in Exhibit D. The Project Update Meetings will include: (i) a discussion of Grantee's progress toward closing on the Protective Instrument; and (ii) a discussion of Grantee's progress in finalizing a Long-Term Management Plan required under this Agreement. Prior to Project Update Meetings, Grantee is expected to submit in writing via email to the OWEB Project Manager an annotated Project Schedule that shows progress toward each Project milestone, including any updates to estimated completion dates.

13. Project Completion Report and Three-Year Status Report: The following reports are required of the Grantee after Project closing:

- A. Prior to completion of the Term, the Grantee must submit a Project Completion Report electronically through OWEB's Grant Management System (OGMS). The Project Completion Report must include: (i) a description and explanation of any changes to the original proposal; (ii) a summary of outreach activities related to the Project; (iii) lessons learned; and (iv) recommendations for more effective implementation of similar projects or programs.
- B. Three years after the completion of the Project, the Grantee will provide OWEB with a copy of a Three-Year Status Report in the format prescribed by OWEB verifying that the purposes of the grant continue to be met.

14. Monitoring, Compliance, and Enforcement of Protective Instrument: The following conditions will provide assurance that the Protective Instrument and associated land continue to meet the purposes of the grant after Project closing:

- A. For all Protective Instruments other than an estate in fee simple absolute, Grantee will monitor and enforce the Protective Instrument for as long as the Protective Instrument remains in effect.
- B. The ongoing use of the land addressed in the Protective Instrument shall be consistent with the purposes specified in ORS 448.370 and the terms of the Protective Instrument. If OWEB determines at its sole discretion that a compliance problem cannot be resolved to its full satisfaction, after providing reasonable written notice to Grantee, OWEB may initiate any and all legal remedies available to OWEB to address compliance issues, including but not limited to recovery of the Grant Funds that were used to purchase the Protective Instrument together with reasonable interest and penalties. Grantee is

responsible for fulfilling the terms and conditions of any agreement between the Grantee and OWEB; between the Grantee and a landowner, or other person or entity, necessary for the Grantee to carry out the Project; and if a partnership is proposed, between the Grantee and the Holder. Grantee acknowledges and agrees that terminology regarding compliance and enforcement obligations in this section will be required in the final terms of the Protective Instrument.

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

- A. **Organization and Authority.** The Grantee, and the Holder if applicable, are 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 Protective Instrument.** Grantee acknowledges that the Protective Instrument shall be used in a manner that is consistent with this Agreement and the purposes specified in ORS 448.370 through ORS 448.380.
- D. **Review of Law.** Grantee has reviewed and understands the provisions of law applicable to this Agreement, including but not limited to ORS 448.370 through ORS 448.380, OAR Chapter 695 Division 48, and OAR Chapter 695 Division 5.
- 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 16 (Records Maintenance and Access) 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.

16. 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 Protective Instrument.
- 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 Protective Instrument is acquired, or such longer period as may be required by other provisions of this Agreement or applicable 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. **[INCLUDE FOR PROJECTS WITH LOTTERY REVENUE BOND FUNDING: “Exhibit H outlines additional record retention requirements provided by DAS for Projects funded by Lottery Revenue Bonds.”]**
- 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 695-048-0160.

17. 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 Long-Term Management Plan, and OWEB reviews in accordance with the Project Schedule, the purchase of the Protective Instrument on or before the closing date, unless adjustments to the 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 the terms of the Protective Instrument; 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 the Grantee, including, but not limited to, other grants from OWEB to the Grantee.
 - iii. Requiring repayment of the Grant Funds and all interest 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 Protective Instrument 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 or 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 7.

18. General Provisions.

- A. **Indemnity.** 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 Protective Instrument for tax or any other benefits of the Seller; or ii) tax consequences, if any, of the Protective Instrument 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 requirements for conservation easement charitable donations under the Internal Revenue Code. 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.
- D. **Permits and Licenses.** The grantee will obtain all necessary permits and licenses from local, state and federal agencies or governing bodies and provide a copy of each permit or license to OWEB.
- 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 OWEB 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:

Audrey Squires, DWSP Specialist

Oregon Watershed Enhancement Board

Re: Grant No. XXXXXXXXX

775 Summer Street NE, Suite 360

Salem, OR 97301-1290

Phone: 503-798-6337

Email: audrey.l.squires@oweb.oregon.gov

Grantee Project Manager:

[INSERT CONTACT DETAILS]

- 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 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) 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.

- 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 any interest in this Agreement without the prior written approval of OWEB.
- M. **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 (Project Completion Report and Three-Year Status Report), 14 (Monitoring, Compliance, and Enforcement of Protective Instrument), 15 (Representations and Warranties of Grantee), 16 (Records Maintenance and Access), 18A (Indemnification), 18B (Tax Benefits), 18G (No Third-Party Beneficiaries), 18M (Survival), 18N (Integration and Waiver), 18Q (Exhibits), and Exhibit C (Required Conditions).
- 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. **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, consultants or sub-grantees 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).

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 and Protective Instrument Map**

Exhibit B: **Grant Application**

Exhibit C: **Required Conditions**

Exhibit D: **Project Schedule**

Exhibit E: **Approved Budget**

Exhibit F: **Oregon Prevailing Wage Law Requirement**

[INCLUDE EXHIBIT G FOR ESTATE IN FEE SIMPLE ABSOLUTE PROJECTS]

Exhibit G: **Notice of Grant Requirements for Estate in Fee Simple Absolute**

[INCLUDE EXHIBIT H FOR PROJECTS WITH LOTTERY REVENUE BOND FUNDING]

Exhibit H: **Lottery Revenue Bonds Requirements**

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 H; Exhibit C; Exhibit G; Exhibit F; Exhibit E; Exhibit D; Exhibit B; Exhibit A.

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: _____

By: _____

Name:

Executive Director

Title:

Date

Date

Approved for legal sufficiency

Oregon Department of Justice

By:

Date:

EXHIBIT A
PROPERTY AND PROTECTIVE INSTRUMENT MAP

[Include legal description if available at time of grant award.]

**EXHIBIT B
GRANT APPLICATION**

On File with OWEB

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.** Grant Funds will not be disbursed under this Agreement until the following Project-specific conditions have been fulfilled to the full satisfaction of OWEB.

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.

- i. Grantee meets with OWEB Project Manager 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. **[INCLUDE ii FOR PROJECTS WITH LOTTERY REVENUE BOND FUNDING]** Grantee provides to OWEB Project Manager within sixty (60) days from the Effective Date a Spending Plan that outlines an estimate of grant expenses by month.
- iii. Grantee participates in regularly scheduled Project Update Meetings with OWEB staff.
- iv. **[INSERT ADDITIONAL INITIAL PROJECT-SPECIFIC CONDITIONS IMPOSED BY OWEB]**

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.

- i. **[INSERT SECONDARY PROJECT-SPECIFIC CONDITIONS IMPOSED BY OWEB]**
- ii. **[INCLUDE ii FOR PROJECTS THAT REQUIRE A LONG-TERM MANAGEMENT PLAN]** Grantee agrees to develop or modify a "Long-Term Management Plan", as defined in OAR 695-048-0020, for the planned future management and stewardship of the land for the benefit of drinking water pursuant to a Protective Instrument and that is intended to carry out the purposes of ORS 448.370 and is consistent with guidance established by OWEB. The Long-Term Management Plan includes, but is not limited to, proposed restoration activities, strategies for monitoring, maintaining, managing, and improving the Property, including providing signage, controlling access, enforcing use restrictions, and resolving violations. Grantee will complete a Long-Term Management Plan for the Property prior to closing and in accordance applicable Conditions and DWSP Guidance for Long-Term Management Plans. The Long-Term

Management Plan will be subject to OWEB approval, which will not be unreasonably withheld.

2. **Standard Conditions.** Grant Funds will not be disbursed under this Agreement until the following standard conditions have been fulfilled to the full satisfaction of OWEB, except as allowed by OAR 695-048-0160(3) which allows for the distribution of funds prior to transaction closing for staff costs and due diligence activities specified in OAR 695-048-0100 and included in the Approved Budget. 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 Property Seller’s possession; and (ii) permissions from the Property Seller, as necessary, to release Property Information, regardless of the source, to OWEB and other funding entities. Property Information may include, 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 Property 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 Property 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.
 - 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, in the event that residential or business tenants will be displaced as a result of the acquisition of the Protective Instrument.

- D. [INCLUDE D FOR ESTATE IN FEE SIMPLE ABSOLUTE PROJECTS] Grantee imposes title restrictions on the Property consistent with the Notice of Grant Requirements in Exhibit H of this agreement.
- E. OWEB, by the closing date specified in Exhibit D, approves of the legal and financial terms of the acquisition of the Protective Instrument, including, but not limited to:
- i. The acquisition agreement (e.g., option, purchase and sale agreement, etc.) and the agreement to transfer the Protective Instrument to another party, if planned.
 - ii. The purchase price for an estate in fee simple absolute and conservation easement acquisitions shall be based on an appraisal and review appraisal completed in accordance with applicable appraisal standards, including but not limited to [REMOVE "but not limited to" FOR PROJECTS WITH LOTTERY REVENUE BOND FUNDING] the Uniform Standards of Professional Appraisal Practice. Other methods of substantiating the purchase price conducted by an independent third-party entity may be accepted at the discretion of OWEB for all other Protective Instruments. A third-party demonstration of market value of the Protective Instrument is not required for loan repayments.
 - iii. The Phase 1 Environmental Site Assessment, if required, as well as additional investigative reports and action plans resulting from the Phase 1 Assessment, if required.
 - iv. The Protective Instrument survey, if required.
 - v. The Protective Instrument Seller's vesting deed.
 - vi. The baseline inventory completed for the Protective Instrument, if required.
 - vii. The water rights, if applicable.
 - viii. Documented access rights to the Protective Instrument, including a clear depiction of the access on a map provided by Grantee.
 - ix. The planning and zoning circumstances associated with the Property.
 - x. The legal description of the Protective Instrument.
 - xi. The warranty deed for an estate in fee simple absolute transaction, the easement deed for a conservation easement acquisition, or the covenant, deed restriction, equitable servitude, or other similar agreement.
 - xii. The condition of title and any applicable title insurance policy, including specific exceptions to the policy, with OWEB's approval based on review of an assessment, including a map, of the exceptions provided by Grantee.
 - xiii. Escrow documents including settlement statements.
 - xiv. A title report dated within sixty (60) days of the closing date.
 - xv. The matching contribution.

- xvi. 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.
 - xvii. Other conditions that OWEB deems reasonably necessary as a result of OWEB due diligence review efforts after the Agreement has been signed by the Parties.
- F. OWEB'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. OWEB's approval does not constitute a legal opinion, representation or warranty as to the enforceability of the Protective Instrument or the financial soundness or adequacy of the terms under which it is acquired.

**EXHIBIT D
PROJECT SCHEDULE**

KEY GRANTEE ACTIONS*	ESTIMATED COMPLETION DATE, INCLUDING TIME FOR APPROVAL	COMMENTS
Project update meetings and reports		Frequency dependent on complexity of land transaction.
Proof of insurance		As described in Section 18.P.
Spending plan (if required)		Outlines anticipated grant spending by month. Required for projects funded by Lottery Revenue Bonds.
Vesting deed (if not provided at time of application)		
Binding purchase agreement		
Appraisal or other third-party demonstration of market value		Dependent on type of protective instrument
Environmental site assessment (if required)		
Resolution of title matters		
Survey (if required) and legal description		
Confirmation of legal and sufficient access		
Water rights analysis (if applicable)		
Deed		

KEY GRANTEE ACTIONS*	ESTIMATED COMPLETION DATE, INCLUDING TIME FOR APPROVAL	COMMENTS
Protective Instrument or Notice of Grant Requirements		
Baseline inventory documentation (if required)		
Proforma title insurance policy (if required)		
Purchase price documentation		
Confirmation of compliance with of ORS 35.500-35.530 (Relocation of Displaced Persons)		
DOJ review of Project materials		Allow up to 6 weeks for final DOJ review of Project materials
Updated preliminary title report		Within 60 days of closing
Fiscal documentation		Allow up to 2 weeks for fiscal review
Long-Term Management Plan (if required)		
Closing		
Project Completion Report		
Three-Year Status Report		

****Other Project-specific actions agreed to by Grantee and OWEB may be added to this schedule. Several actions in this table are required for some Protective Instruments and not others. This Project Schedule may be adjusted to account for varying Project-specific requirements.***

**EXHIBIT E
APPROVED BUDGET**

BUDGET CATEGORY	APPROVED AMOUNT
Salaries, Wages, and Benefits	\$0.00
Contracted Services	\$0.00
Travel	\$0.00
Other	\$0.00
Indirect Costs	\$0.00
Grant Total	\$0.00

Project expenses incurred no earlier than _____ and no later than _____ may be eligible for reimbursement.

[No earlier than 60 days prior to the Lottery Revenue Bond sale for Projects funded by Lottery Revenue Bonds and no earlier than 60 months prior to application deadline for Projects funded by General Funds. For all fund sources, no later than 18 months after conditional OWEB approval of the Grant.]

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

EXHIBIT G

NOTICE OF GRANT REQUIREMENTS FOR ESTATE IN FEE SIMPLE ABSOLUTE

If the Project involves the acquisition of an estate in fee simple absolute or the repayment of a loan for the acquisition of an estate in fee simple absolute, the Grantee, or a Holder in partnership with the Grantee, shall record in the real property records of the county where the Property is located a Notice of Grant Requirements providing protection in perpetuity to Drinking Water Source Protection Grant Program investments.

The Notice of Grant Requirements shall include or provide the following terms:

1. A legal description of the land.
2. The objectives of the grant and terms demonstrating how the acquisition of the Property will meet those objectives.
3. Specific obligations of the Grantee including, but not limited to:
 - a. A requirement that the Grantee monitor the Property, at least annually, and ensure it continues to meet the objectives of the Project;
 - b. A requirement that the Grantee will repay the Grant Funds to OWEB if Grantee fails to meet the objectives of the Project;
 - c. A covenant that the Grantee will not convey the Property without the consent of OWEB [INCLUDE FOR PROJECTS WITH LOTTERY REVENUE BOND FUNDING: “and, if applicable, DAS”]; and
 - d. Terms that provide for the obligations to run with the land and bind any successor in interest or permitted assignee.
4. A requirement that OWEB and its designees are provided with sufficient access to the land protected, restored, or enhanced for the benefit of a drinking water source accomplished by the acquisition of an estate in fee simple absolute with Drinking Water Source Protection Grants, given reasonable notice, for the purpose of compliance inspections.
5. The duration of the protection of land shall be in perpetuity.

EXHIBIT H

LOTTERY REVENUE BOND REQUIREMENTS

This Project is funded partially or fully by State of Oregon Lottery Revenue Bonds and thus the following requirements from DAS are applicable to the Project, to the Grantee, and to sub-grantees, if any.

Definitions

Capitalized terms used in this Exhibit shall have the meanings defined for such terms here or previously defined in the above Agreement, unless the context clearly requires otherwise.

“Act” means Article XV, Section 4 of the Oregon Constitution and Oregon Revised Statutes Chapter 286A, together with House Bill 5030.

“Bonds” means the State of Oregon Lottery Revenue Bonds [INSERT BOND YEAR SERIES] Bonds (Tax-Exempt) issued pursuant to the Act, and any bonds or other obligations subsequently issued by the State of Oregon to refinance such bonds.

“Code” means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

“Date of Issuance” means the date the State Treasurer, at the request of DAS, issued the Bonds. For the purposes of this Agreement, this date was [INSERT BOND ISSUANCE DATE].

“Private Person” means any person or entity other than a state or local governmental unit or an individual not acting in a trade or business. Accordingly, a Private Person would include the federal government, for-profit organizations, non-profit organizations, and individuals who are acting in a trade or business capacity.

“Private Use” means, subject to certain exceptions, the use of a portion or all of the Project by a Private Person if such use is other than as a member of the general public. Private Use can include ownership of the Property by the Private Person as well as other arrangements that transfer to the Private Person the actual or beneficial use of the Property (such as a lease, management contract, service or incentive payment contract, output contract, naming rights contract or other special arrangement) in such a manner as to set the Private Person apart from the general public. Use by employees of OWEB or of the Grantee solely in their capacity as employees ordinarily will not be considered Private Use.

“Project Costs” means expenditures incurred by Grantee that are (a) reasonable, necessary and directly used for the Project, (b) capital expenditures for federal income tax purposes within the meaning of Section 1.150-1(b) of the Code, and (c) eligible or permitted uses of the Grantee

under law and this Agreement. Project Costs do NOT include internal costs charged to the Project by Grantee or payments made to Related Parties. Project Costs also do NOT include loans or grants to be made to third parties and may only include the payment of principal due on interim financing for the Project with the prior written consent of DAS, obtained through OWEB. Project Costs do NOT include the reimbursement of principal paid on interim financing prior to the Date of Issuance or the payment or reimbursement of already paid interest or to be paid on interim financing.

“Related Parties” means, in reference to governmental units or 501(c)(3) organizations, members of the same controlled group within the meaning of Section 1.150-1(e) of the Code, and in reference to any person that is not a governmental unit or a 501(c)(3) organization, a related person as defined in Section 144(a)(3) of the Code.

REPRESENTATIONS OF THE GRANTEE

A. Records Retention. The final maturity date of the Bonds is [INSERT MATURITY DATE]. Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Project, or the Grant until the date that is three years following the later of the final maturity or earlier retirement of all of the Bonds (including the final maturity or redemption date of any obligations issued to refund the Bonds) or such longer period as may be required by other provisions of this Agreement or applicable law.

RESTRICTIONS ON USE OF BOND PROCEEDS AND THE PROJECT

In order to maintain the tax-exempt status of the Bonds, the Project and its use are subject to the following restrictions:

A. Proceeds Usage. The proceeds of the Bonds will only be used to pay the Project Costs as defined in this Agreement.

B. Working Capital. None of the proceeds of the Bonds will be used to pay working capital expenditures of the Grantee. Working capital expenditures include current operating expenses and other expenditures which would not be treated as capital expenditures for federal income tax purposes within the meaning of Section 1.150-1(b) of the Code.

C. Project Costs paid by Grantee before the Bonds are Issued. The Grant cannot be used for Project Costs that were paid more than 60 days before the Date of Issuance of the Bonds.

D. Costs Paid for by Others. Grantee may not use any of the Grant to pay internal costs charged to the Project by Grantee or by Related Parties or to repay the interest owed for any interim financing for the Project.

E. Earnings on Bond Proceeds. Any earnings on proceeds of the Bonds prior to disbursement will be retained by the State of Oregon.

F. Project Changes. The Grantee shall not change the use of the Project, or alter its design, structure, or configuration in any way inconsistent with the currently approved Project, without first requesting and receiving the written consent of OWEB.

G. Project Ownership. The Project will not be leased, subleased, sold, or otherwise transferred without the prior written consent of OWEB and DAS.

H. Private Use. The Grantee shall not, without prior written consent of OWEB, permit more than five percent (5%) of the Project to be used for Private Use by a Private Person if such Private Use could result in the State of Oregon receiving direct or indirect payments or revenues from the portion of the Project to be privately used.