

AUG 23 2016

OREGON WATER RESOURCES DEPARTMENT
GRANT AGREEMENT

SALEM, OR

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through its Department of Water Resources, hereinafter referred to as "State," and the **Port of Morrow**, hereinafter referred to as "Recipient." State and Recipient are referred to individually without distinction as "Party" and collectively as the "Parties."

- 1. Effective Date.** This Agreement shall become effective on the earlier of March 1, 2016 or the date when this Agreement is fully executed and approved as required by applicable law. Subject to the terms and conditions of this Agreement, Grant Funds (defined below) under this Agreement shall be available for Eligible Project Costs (defined below) incurred on or after the effective date of this Agreement and until two years after the closing date of the sale of the lottery revenue bonds issued by the State Treasurer to fund State's obligations under this Agreement (the "Expiration Date").
- 2. Agreement Documents.** This Agreement consists of the Grant Agreement through the signature page, together with the following Exhibits, all of which are attached hereto and incorporated herein by reference:

Exhibit A: Project Plan Form

Exhibit B: Project Budget Form

Exhibit C: Reimbursement Request Form

Exhibit D: Quarterly Report Form

In the event of a conflict between portions of this Agreement, the following order of precedence, listed from highest precedence to lowest precedence, will prevail: this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C; Exhibit D.

- 3. Project Costs; Grant Funds.** In accordance with the terms and conditions of this Agreement, State shall provide Recipient an amount not to exceed **\$11,000,000.00** (the "Grant Funds") for Eligible Project Costs as provided in this Agreement.
- 4. Project.** Recipient shall submit one or more project plans to State substantially in the format and containing the information prescribed in Exhibit A to this Agreement describing a water supply project for development of water delivery infrastructure in the Umatilla Basin to deliver water primarily to lands that are currently un-irrigated or under-irrigated due to groundwater and/or surface water restrictions, thereby resulting in economic development within the Umatilla Basin. The Project Plans that are approved by State, and are appended to this Agreement as part of the Agreement or Agreement amendments that are approved by the Oregon Department of Justice pursuant to ORS 291.047, will constitute the project that State agrees to fund under this Grant Agreement (the "Project").

5. Disbursement; Recovery of Grant Funds.

- a. **Project Budget/Disbursements.** At least sixty (60) days prior to the date Recipient submits a request for reimbursement of Eligible Project Costs, Grantee shall submit a proposed budget for the Project substantially in the format and containing the information prescribed in Exhibit B to this Agreement. The completed budget that is approved by State will be appended to the Project Plan as part of an amendment to this Agreement that is approved by the Department of Justice and will constitute the "Project Budget" for purposes of this Agreement. Subject to the conditions precedent set forth below, State shall reimburse Eligible Project Costs incurred in carrying out the Project, in one or more disbursements up to the maximum amount of the Grant Funds described in Section 3. Reimbursement(s) shall be made by State within 30 days of State's approval of a request for reimbursement from Recipient that is substantially in the form of Exhibit C to this Agreement, and the required supporting documentation. Recipient shall not submit a reimbursement request more often than once a month. Recipient agrees to request reimbursement of Grant Funds on an equal and proportionate basis with its expenditure of or draws against other funding for the Project.
- b. **Definition of Eligible Project Costs.** "Eligible Project Costs" are the Project costs incurred by Recipient, or under a subagreement described in Section 10 of this Agreement, in performance of the Project that are: (i) consistent with the costs allocated to State in the Project Budget and with the construction outlined in the Project Plan; (ii) if federally tax-exempt bonds are sold to fund this Agreement, that are incurred no more than sixty (60) days prior to the date of an applicable reimbursement resolution and otherwise qualify as capital costs under the provisions of the Internal Revenue Code (the "Code") governing federally tax-exempt bonds; and (iii) that are not excluded from reimbursement by this Agreement or by State as a result of State's review of a reimbursement request or a financial review or audit. Subject to the limitations of the preceding sentence, "Eligible Project Costs" include (i) principal payments on Project construction loans provided on or after August 12, 2015, (ii) equipment costs that are not asset purchases, and (iii) costs incurred after the effective date of 2015 Oregon Laws chapter 812 but before the effective date of this Agreement, if Recipient submits with its reimbursement request a report on the Project activities and accomplishments during that period and State approves such reimbursement in its discretion. "Eligible Project Costs" do NOT include legal fees, loan interest, and expenses related to water rights.
- c. **Recovery of Grant Funds.** Any funds disbursed to Recipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to State. Recipient shall return all Misexpended Funds to State within 15 days of State's written demand. Recipient shall return all Unexpended Funds to State within 15 days after the earlier of expiration or termination of this Agreement.

6. Reports.

- a. **Progress Reports.** Recipient shall submit quarterly progress reports to State no later than 45 days after the close of each quarterly reporting period. Reporting periods are July 1 through September 30, October 1 through December 31, January 1 through March 31, and April 1 through June 30. Reports must be substantially in the form attached hereto as Exhibit D, with all the required information, including a narrative of the Project's general status and progress, accomplishments in that quarter for each key task, a summary of expenses incurred during that quarter, and a description of all funds received for the Project during that quarter in addition to Grant Funds, and a summary of the progress anticipated in the next quarter. Each quarterly report must be timely submitted to the State Contact listed below the signature blocks. State reserves the right to request such additional information as may be necessary to comply with federal or state reporting requirements or any other information it needs to review and evaluate the reports.
- b. **Final Report.** Within 90 days after the Expiration Date, Recipient shall file with State a final report (the "Final Report"). The Final Report must include a summary of all Project costs compared to the Project Budget. The final report shall also include a summary of the Project as completed. The Final Report shall also identify number of acres and geographic location of acreage that the Project will benefit and the economic benefits of the Project to the Umatilla Basin region, including the estimated number of un-irrigated acres that will be served and the estimated number of under-irrigated acres that will be served.
- c. **Annual Reports.** Beginning on or before the one year anniversary of the Expiration Date, and continuing through the five year anniversary of the Expiration Date, Recipient shall submit an annual report to State on the benefits of the Project(s) to the Umatilla Basin Region. The report shall include irrigated acreage receiving primary or supplemental water from the Project(s) and regional economic benefit of the Project(s).

7. Conditions Precedent.

- a. **Conditions Precedent to State's Obligations.** State's obligations under this Agreement are subject to the receipt by State of the following items, all in form and substance satisfactory to State and its counsel:
 - (i) A copy of the resolution of the board of Recipient authorizing the execution and delivery of this Agreement and performance by Recipient of its obligations hereunder.
 - (ii) An opinion addressed to State from counsel for Recipient opining that Recipient has full power and authority to enter into this Agreement and perform the obligations of Recipient contemplated in this Agreement, including carrying out the Project, and that this Agreement constitutes a valid, binding and enforceable contract of Recipient.

- b. **Conditions to Disbursement.** State's obligation to disburse any of the Grant Funds to Recipient is subject to the following conditions:
- (i) **Bond Sale.** State has sold the lottery revenue bonds authorized by 2015 Oregon Laws chapter 812 for the Project (the "Bonds") and received Bond proceeds in an amount sufficient to allow State, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - (ii) **Expenditure Authority.** State has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - (iii) **No Default.** Recipient is in compliance with the terms of this Agreement.
 - (iv) **Representations.** Recipient's representations and warranties set forth in Section 8 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - (v) **Construction Manager.** If a subcontract is awarded by the Recipient for construction of the Project by an entity in lieu of Recipient or under the supervision of Recipient, State has received a copy of the contract and the resolution of the board of Recipient authorizing the contract between Recipient and the Sub-Recipient. Any subcontract for a construction manager must incorporate and pass through all of the applicable requirements of this Agreement to the construction manager. Use of a subcontract and construction manager does not relieve Recipient of its responsibilities under this Agreement.
 - (vi) **Successor Entity.** If an entity other than Recipient will be responsible for the operation of the Project after its completion ("Successor Entity"), State has received, reviewed and approved the relevant documents under which the Successor Entity is formed and will undertake the operation of the Project which may include, but is not limited to: (i) the contract, if any, between the Recipient and the Successor Entity; (ii) the formation documents or evidence of the governmental actions under which the Successor Entity is formed; and (iii) an opinion from counsel to the Successor Entity that the entity is duly formed and validly existing with full power and authority to enter into the contract with Recipient, if any, and to operate the Project.
 - (vii) **Project Plan.** State has received, reviewed and approved a Project Plan as provided in Section 4 of this Agreement.
 - (viii) **Project Budget.** State has received, reviewed and approved a Project Budget as provided in Section 5 of this Agreement.
 - (ix) **Request/Supporting Documents.** Recipient has provided to State, and State has approved, a request for reimbursement that is substantially in the form of Exhibit C attached hereto that includes all the necessary supporting documentation for Eligible Project Costs including, without limitation:
 - (A) Invoices evidencing expenditures by Recipient on Eligible Project Costs, and
 - (B) Invoices from any subrecipients, with supporting documentation, such as invoices, evidencing the expenditure of funds by sub-recipients for Eligible Project Costs; EXCEPT
 - (C) Invoices for less than \$1,000 need not be submitted with a reimbursement request, unless requested by State.

- (x) **Permits.** Recipient, and if necessary for the construction and operation of the Project(s) any Subrecipients or other entities, has obtained all permits, licenses, and other regulatory approvals from local, state, or federal agencies or governing bodies necessary to perform its obligations under this Agreement and has provided State with a copy thereof.
 - (xi) **Other Funding.** If requested by State, Recipient has provided contracts or other assurances for the loans, grants or other agreements providing the other funding for the Project.
 - (xii) **Water Rights.** Recipient has obtained water-related approvals necessary to construct and operate the project and has provided documentation to the State. Regulatory approvals may include but are not limited to: new fully mitigated water rights from the Columbia River, Claims of Beneficial Use to perfect existing rights to serve as mitigation, and transfers of perfected water rights to provide mitigation of water that is legally protected instream. Recipient shall include a list of water rights associated with the Project(s) and proposed water-related approvals in its submission of Project Plan(s) (Exhibit A) for review by State.
- c. **Retainage.** State shall withhold 5% of Grant Funds (the “Retainage”) from the amount paid pursuant to each reimbursement request and shall release this Retainage as the following conditions are met: (i) Eighty percent (80%) of the Retainage will be released to Recipient upon State’s inspection and approval of the Project and the most recently submitted monthly report; and (ii) the remainder of the Retainage will be released to Recipient upon review and approval of Recipient’s Final Report.

8. Representations, Warranties and Covenants of Recipient.

- a. **Recipient Representations, Warranties.** Recipient makes the following representations and warranties to State. 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.
- (i) **Organization and Authority.** Recipient is a duly organized and validly existing port formed pursuant to ORS 777.010 and 777.050 and is eligible to receive the Grant Funds. Recipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder; and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient, (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 Recipient’s organizational documents, and (3) do not and will not result in the breach of, or constitute a default or require any consent under, any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.

- (ii) **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and, when executed and delivered by State, constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms.

b. Recipient's Covenants and Obligations.

- (i) **Inspections; Information.** During construction of the Project and any time prior to State approval of the Final Report, Recipient shall permit State: (i) to inspect, at any reasonable time, the property, both real and personal, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investment of Grant Funds, if any, and any other matters related to the use of Grant Funds or construction of the Project. The Recipient shall supply related reports and information relating to the Project Plan as State may reasonably require.
- (ii) **Participation.** Recipient shall post a sign that is visible either at the Project site or at another location approved by State acknowledging the participation of State in the Project. Upon completion of the Project, Recipient shall post a permanent sign at each pump station, booster station or at other locations approved by State, acknowledging the participation of the State of Oregon (Oregon Water Resources Department) in the Project. These signs shall be at least 30 inches by 24 inches. Signage content must be approved by State to be eligible for reimbursement as an Eligible Project Cost.
- (iii) **Cultural Material.** If any cultural material is discovered during Project activities, all work should cease immediately until a professional archaeologist can assess the discovery, and Recipient shall immediately notify the State's Department of Water Resources, the Tribe and the State's Historic Preservation Office (SHPO). Additionally, Recipient shall prepare a report of the Project outlining the results of the archaeological monitoring and submit its report to SHPO for inclusion in SHPO's resource library and GIS database.
- (iv) **Operation and Maintenance of the Project.** Until ten (10) years after the Expiration Date, Recipient shall operate and maintain the Project, or cause the Project to be operated and maintained, in good repair and operating condition so as to preserve the long-term public benefit of the Project, including making all necessary and proper repairs, replacements, additions and improvements to the Project. On or before the Expiration Date, Recipient shall adopt a plan acceptable to State for the ongoing operation and maintenance of the Project without reliance on State financing and furnish State, at its request, with evidence of such adoption. The plan must include measures for generating revenues sufficient to assure the operation and maintenance of the Project during the usable life of the Project.
- (v) **Taxes and Assessments; Utilities.** Recipient shall pay, or cause to be paid, all taxes, utility charges and governmental charges of any kind whatsoever that may at

any time be lawfully assessed or levied against or with respect to the Project. If any governmental charges may lawfully be paid in installments over a period of years, the Recipient may pay, or cause to be paid, those charges in installments. The Recipient may contest, or permit to be contested, in good faith the validity or application of any tax, utility charge or governmental charge in any reasonable manner, so long as the contest does not subject any portion of the Project to loss or forfeiture.

- (vi) **Bonds Compliance.** State expects to issue the Bonds under the authority of ORS chapter 286A and 2015 Oregon Laws, chapter 812 to provide the Grant Funds. Recipient agrees to take any action, or refrain from taking any action, specified by State that is necessary, if applicable, to maintain the excludability of interest on the Bonds from gross income under the Code, including without limitation, maintaining records regarding the expenditure of Grant Funds until three years after the maturity of the Bonds, including any refunding bonds and to use the Grant Funds only for purposes allowed under Code. Without limiting the foregoing, Recipient shall not take any action or omit any action that would cause the Bonds to become “arbitrage bonds” under Section 148 of the Code or “private activity bonds” under Section 141 of the Code. State expects the Bonds to be outstanding until April 1, 2037 (including any refunding bonds, the “Maturity Date”). Grantee agrees that if the Project, or any partial interest in or portion thereof, on which Grant Funds were expended is sold prior to the Maturity Date, then at least thirty (30) days prior to the scheduled closing date for such sale, Recipient will notify State of the intended sale and request the amount necessary to fully pay the remaining outstanding Bonds (or refunding bonds) according to their terms as of the closing date. State will provide the amount to Recipient prior to the closing date. Promptly after the sale is closed, Recipient shall pay, or cause to be paid, to State from the sale proceeds the amount necessary to retire the remaining outstanding Bonds or refunding bonds.

9. Records Maintenance and Access; Audit Requirements.

- a. **Records Maintenance and Access.** Recipient shall make and retain proper and complete books of record, and account and maintain all fiscal records related to this Agreement, the Grant Funds, and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards, and state minimum standards for audits of municipal corporations. Recipient shall create and maintain all expenditure records in sufficient detail to permit State to verify how the Grant Funds were expended. Recipient shall ensure that each of its subrecipients, and subcontractors complies with these requirements. State and the Secretary of State of the State of Oregon (“Secretary of State”) and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, State and the Secretary of State and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of State and the Secretary of State to perform site reviews of the Project as needed to determine compliance with the terms of this Agreement.

- b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds, or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the Expiration Date. If there are unresolved disputes or audit questions at the end of the retention period, Recipient shall retain the records until the disputes or questions are resolved.
- c. **Audit Requirements.** Recipient shall save, protect and hold harmless State from the cost and expenses of any audits or special investigations performed by the Secretary of State with respect to the expenditure by Recipient of Grant Funds disbursed under this Agreement. Recipient acknowledges and agrees that any costs and expenses incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and State.

10. Recipient Subagreements.

- a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project. All subagreements must be in writing and duly executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Except for a subagreement for a Construction Manager described in Section 7.b of this Agreement, Recipient agrees to provide State with a copy of any signed subagreement within ten (10) days of its execution. Any material breach of a term or condition of a subagreement relating to use of the Grant Funds must be reported by Recipient to State within ten (10) days of its being discovered. Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
- b. **Indemnity.** Recipient's subagreement(s) shall require the other party to such subagreements(s) to indemnify State on substantially the same terms as Recipient is indemnifying State as set forth in Section 11(a).
- c. **Insurance.** Recipient shall cause the other party, or parties, to each of its subagreements to obtain and maintain insurance of the types and in the amounts as set forth in Section 11(b).

11. Indemnity; Insurance.

- a. **Indemnity.** Recipient shall defend, save, hold harmless, and indemnify State of Oregon and its officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorney fees, resulting from or arising out of, or relating to the activities of Recipient or its officers, employees, subrecipients, contractors, or agents in connection with this Agreement or the Project (collectively a "Claim"). Neither Recipient, nor any attorney engaged by Recipient shall defend any Claim in the name of State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of

its agencies, without the prior written consent of the Oregon Attorney General. State may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient is prohibited from defending State or that Recipient is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Recipient if State elects to assume its own defense.

- b. Insurance.** Until the Maturity Date, the Recipient shall maintain, or cause to be maintained, insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by entities constructing, operating and maintaining similar facilities.
- c. Proceeds/Condemnation.** If the Project or any portion is destroyed or transferred under a condemnation proceeding, any insurance or condemnation proceeds will be paid to State, not to exceed the Grant Funds, unless State agrees in writing that the insurance or condemnation proceeds may be used to rebuild the Project.

12. Compliance with Laws.

- a. Compliance with Laws.** Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Agreement and the Project, including without limitation:
 - (i)** The prevailing wage rate requirements set forth in ORS 279C.800 through 279C.870 and the administrative rules promulgated thereunder ("Prevailing Wage Rate Law" or "PWR"), or, if applicable, 40 U.S.C. 3141 et seq. ("Davis-Bacon Act"). If Recipient believes the Project is not subject to prevailing wage requirements, Recipient must obtain and provide State with a copy of a coverage determination letter from BOLI that confirms a project is not subject to prevailing wage rate requirements before proceeding. Recipient shall require its contractors and subcontractors to pay the applicable prevailing wage rate and to comply with all other Oregon Bureau of Labor and Industries ("BOLI") requirements pursuant to the Prevailing Wage Rate Law, including on all contracts and subcontracts and in filing separate works bonds with the Construction Contractors Board, unless exempt under ORS 279C.836 and OAR 839-025-0015. If the Project is subject to the Davis-Bacon Act, Recipient shall comply with and require its contractors and subcontractors to comply with the Davis-Bacon Act and any applicable provisions of Oregon PWR. If the Project is or becomes subject to both PWR and the Davis-Bacon Act, all subject workers must be paid the higher of applicable state or federal prevailing wage rate. The applicable rates are those in effect on the Effective Date of this Agreement. PWR and Davis-Bacon Act prevailing wage rates may be accessed via: http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx and <http://www.wdol.gov>.

Recipient 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. Recipient agrees to indemnify, hold harmless and reimburse State and its officers, employees and agents for any liability, cost, expense, fine, fee or penalty payable to a person or private or governmental entity, including another agency of the State of Oregon (collectively "liability") incurred to comply with, to obtain a determination under, or in any other way related to the Prevailing Wage Rate Law or Davis-Bacon Act.

- (ii) Other applicable law and local contracting procedures including but not limited to: procurement, site acquisition, site development, construction, equipping and implementation of the Project. In particular, and without limiting the foregoing, Recipient shall comply, and require its subrecipients, and contractors to comply, with all applicable procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C. These laws, rules, regulations and orders are incorporated by reference in this Agreement to the extent required by law.
 - (iii) Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- b. Recipient agrees to contract with, and require any subrecipients to contract with, competent, properly licensed and bonded contractors and professionals for the performance of the Project.
 - c. All subagreements that Grantee may enter which are funded wholly or in part with the Grant Funds must be subcontractual in nature, with the other party engaged in the role of a subrecipient or contractor. Recipient will administer all contracts with its subrecipients and contractors to ensure compliance by any subrecipients or subcontractors with the terms of this Agreement with respect to requirements that flow through to subrecipients and subcontractors.

13. Termination; Default

- a. **Termination by State.** State may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by State in such written notice, if:
 - (i) State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or

- (ii) Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - (iii) The occurrence of an Event of Default listed below.
- b. Event of Default.** The occurrence of any of the following listed events shall constitute an Event of Default under this Agreement:
 - (i) Any false or misleading representation is made by Recipient in this Agreement or in any document provided by or on behalf of Recipient related to this Agreement or the Project; or
 - (ii) A petition, proceeding or case is filed by or against Recipient, or a construction manager or Successor Entity described in Section 7.b of this Agreement (for purposes of this section, each a “Debtor”) under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against the Debtor, the Debtor acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal; Debtor files a petition seeing to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts; Debtor admits its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors; Debtor applies for or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of Debtor or any substantial portion of its property; or Debtor takes any action for the purpose of effecting any of the above; or
 - (iii) Recipient fails to perform any obligation required under this Agreement and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by State, except with respect to any shorter period expressly provided in this Agreement, such as in Subsection 5.c for Misexpended or Unexpended Funds.
- c. Remedies.** Upon the occurrence of an Event of Default, State may, at its option, pursue any or all of the remedies available under this Agreement and at law or in equity, including but not limited to:
 - (i) Ceasing disbursement of Grant Funds;
 - (ii) Terminating this Agreement, in which event Recipient shall pay to State within sixty (60) days of the termination an amount sufficient to defease the then-outstanding Bonds and any costs of defeasing the Bonds, as reasonably determined by State, plus any principal and interest payments State has made or will make before the Bonds are defeased (such costs being the “Defeasance Costs”). If the amount of Defeasance Costs paid by the Recipient to State pursuant to this Section

exceeds State's actual Defeasance Costs, State shall refund the excess to the Recipient within thirty (30) days after the defeasance is accomplished. If the amount of Defeasance Costs paid by the Recipient to State is less than State's actual Defeasance Costs, State shall so notify the Recipient and the Recipient shall pay the deficiency to State within thirty (30) days after State notifies the Recipient;

- (iii) Bringing an action at law to recover damages incurred as a result of the Event of Default, in order to recover all Grant Funds disbursed to the Recipient hereunder, with interest thereon; and
 - (iv) Seeking any equitable remedies, including specific performance, which may be available to State.
- d. Termination by Recipient.** Recipient may terminate this Agreement effective upon delivery of written notice of termination to State, or at such later date as may be established by Recipient in such written notice, if Recipient has not received any Grant Funds under this Agreement.
- e. Remedies.** If Grant Funds have been disbursed to Recipient, the Recipient may not terminate this Agreement prior to fulfilling Recipient's obligations under this Agreement unless and until the Recipient returns all disbursed Grant Funds to State or pays to State the Defeasance Costs. If Grant Funds have been disbursed and the Recipient wishes to terminate this Agreement pursuant to this Section 13(b), the Recipient shall so notify State and specify a proposed termination date (which shall be at least sixty (60) days after the Recipient gives the notice to State). Upon receipt of the Recipient's notice, State shall estimate the Defeasance Costs for a termination on the date specified in the Recipient's notice, and provide that estimate to the Recipient at least fifteen (15) days after State receives the Recipient's notice. If the Recipient then desires to proceed with terminating this Agreement pursuant to this Section 13(b), the Recipient shall so notify State and pay the estimated Defeasance Costs to State not later than thirty (30) days before the proposed termination date specified in the Recipient's notice. If the amount of Defeasance Costs paid by the Recipient to State pursuant to this Section 13(b)(ii) exceeds State's actual Defeasance Costs, State shall refund the excess to State within thirty (30) days after the defeasance is accomplished. If the amount of Defeasance Costs paid by the Recipient to State is less than State's actual Defeasance Costs, State shall so notify the Recipient and the Recipient shall pay the deficiency to State within thirty (30) days after State notifies the Recipient.

14. General Provisions

- a. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

- b. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved by the Department of Justice as required by applicable law.
- c. Duplicate Payment.** Recipient shall not receive duplicate payments for any activities that are paid with Grant Funds under this Agreement.
- d. No Third Party Beneficiaries.** State and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- e. Notices; Project Contacts.** Recipient shall identify in writing Officers who will act in the following Capacities: (i) Project Manager, who will serve as the primary point of contact between State and Recipient and (ii) Fiscal Contact, who will be the point of contact for invoicing matters and other accounting or reimbursement related activities. Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to Recipient Contact or State Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 14.e. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against State, such facsimile transmission must be confirmed by telephone notice to State Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
- f. Choice of Law; Designation of Forum; Federal Forum.**

 - (i)** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
 - (ii)** Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

- (iii) Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against State only to the extent Congress has appropriately abrogated State's sovereign immunity, and is not consent by State to be sued in federal court. This paragraph is also not a waiver by State of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.
- g. Survival.** The following sections or subsections of this Agreement shall survive the Expiration Date and any earlier termination of this Agreement: Sections 5.c, 6.b and c, 7.c, 8, 9, 11, 13, 14.a and f, and any other section or provision that by its terms is intended to survive.
- h. 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.
- i. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- j. Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

Port of Morrow

By *Joe Taylor*
Name Joe Taylor
(printed)
Title Commissioner Resident
Date 8/10/16

APPROVED
(If required)

By *Samuel E. Tucker*
Recipient's Legal Counsel Samuel E. Tucker
Date 8/19/16

Recipient Contact:

Name: _____
Title: _____
Address: _____
Address: _____
Phone: _____
Email: _____

State Contact:

Name: Salem Opeifa
Title: Loan & Contract Officer
725 Summer Street NE, Suite A
Salem OR 97301
Phone: 503-986-0929
Email: Salem.b.opeifa@state.or.us

STATE OF OREGON, acting by and through its
Department of Water Resources

By *Paul Hutter*
Paul Hutter
Administrative Services Division – Interim
Administrator

Date 9/20/16

APPROVAL RECOMMENDED

By _____
Date _____
By _____
Date _____

APPROVED AS TO LEGAL SUFFICIENCY
(For funding over \$150,000)

By _____
Assistant Attorney General
Name _____
(printed)
Date _____

EXHIBIT A

Project Description

PROJECT PLAN – [INSERT PROJECT TITLE]

Project Summary

[Provide a summary of project plan and anticipated outcomes after construction is complete. A summary should include:

- A description of the need, nature, and purpose of the project*
- A description of what the Grantee will accomplish with the grant funds (i.e., the anticipated outcomes)*
- A description of the anticipated public benefits from the project]*

Project Water Rights

[List the water rights associated with the operation of the project in the table below. Indicate the status of the water right, including any outstanding approvals still needed.]

Water Right	Status
<i>[List permit/certificate/lease/transfer ID number (e.g., S-88206 or IL-1536)]</i>	<i>[Give the status of the water right (secured, application under development, under WRD review)]</i>

Project Key Tasks

Task 1. *[insert key task title, should match key tasks in budget]*

- Task Timeline – [Include the anticipated beginning and ending date for the task, e.g., August 2016-December 2016]*
- Task Description – [Provide a narrative description of the activities and work to be accomplished in this task]*
- Permitting Required – [Provide a list of permits/authorizations required to accomplish this task and the status of each (e.g., secured, application pending, application under development, etc.)]*

Task 2. *[insert key task title, should match key tasks in budget]*

- Task Timeline – [Include the anticipated beginning and ending date for the task, e.g., August 2016-December 2016]*
- Task Description – [Provide a narrative description of the activities and work to be accomplished in this task]*

- *Permitting Required – [Provide a list of permits/authorizations required to accomplish this task and the status of each (e.g., secured, application pending, application under development, etc.)]*

Task 3. [insert key task title, should match key tasks in budget]

- *Task Timeline – [Include the anticipated beginning and ending date for the task, e.g., August 2016-December 2016]*
- *Task Description – [Provide a narrative description of the activities and work to be accomplished in this task]*
- *Permitting Required – [Provide a list of permits/authorizations required to accomplish this task and the status of each (e.g., secured, application pending, application under development, etc.)]*

[Include as many tasks as required by the project]

EXHIBIT B

PROJECT BUDGET – [INSERT PROJECT TITLE]

Table 1. Key Tasks Timeline and Funding Breakdown

Project Key Tasks	Applicant Funds (Equity/Risk Capital)	OWRD Grant Funds	Loan Funds	Total Cost	Key Task Timeline					
					2016				2017	
					1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr	1 st Qtr	2 nd Qtr
Project A				\$						
Task 1. [insert key task title]				\$	X					
Task 2. [insert key task title]				\$	X					
Task 3. [insert key task title]				\$	X	X				
Task 4. [insert key task title]				\$		X				
Task 5. [insert key task title]				\$		X				
Task 6. [insert key task title]				\$		X				
Task 7. [insert key task title]				\$	X	X				
<i>Project Subtotals</i>	\$	\$	\$	\$						
Project B										
Task 8. [insert key task title]				\$				X	X	
Task 9. [insert key task title]				\$				X	X	
Task 10. [insert key task title]				\$				X	X	
Task 11. [insert key task title]				\$				X	X	
Task 12. [insert key task title]				\$				X	X	
Task 13. [insert key task title]				\$				X	X	
Task 14. [insert key task title]				\$				X	X	
Task 15. [insert key task title]				\$				X	X	
Task 16. [insert key task title]				\$				X	X	
Task 17. [insert key task title]				\$				X	X	
<i>Project Subtotals</i>	\$	\$	\$	\$						
Total	\$	\$	\$	\$						

Note:

- Key tasks in the Project Budget should match the key tasks in the Project Plan.
- For tasks including wages, the task cost should include prevailing wage.
- Source and amounts of applicant's funds and loan funds are to be detailed on an attachment to this Exhibit.

EXHIBIT C

REIMBURSEMENT REQUEST FORM

Project: Umatilla

Request is for period ending: _____

Date of Request: _____

(1) Task	(2) Task Budget	Total Expenditures to Date				WRD Grant Only		
		(3) WRD Grant Funds	(4) Other Funds	(5) Total	(6) % of Budget Expended	(7) Prior WRD Requests	(8) Current Request	(9) Total Requests
Task 1	\$1,000	\$100	\$200	\$300	30%	\$10	\$90	\$100
Task 2	\$2,000	\$200	\$400	\$600	30%	\$90	\$110	\$200
Task 3	\$3,000	\$300	\$600	\$900	30%	\$210	\$90	\$300
Task 4	\$4,000	\$400	\$300	\$700	18%	\$200	\$200	\$400
Totals	\$10,000	\$1,000	\$1,500	\$2,500	25%	\$510	\$490	\$1,000
% by funding source		40%	60%	100%				

Request Submitted by: _____
Grantee

Date: _____

Approved by: _____
OWRD – Salem Opeifa

Date: _____

Approved by: _____
OWRD – Kim Ogren

Date: _____

Approved by: _____
OWRD – Tracy Loudon

Date: _____

EXHIBIT C

Column Instructions

(1) List task from Project Budget

(2) List Budget for this individual task

Columns (3), (4), (5) and (6) are Expenditures to date, detailed by the allocated share of costs by funding source

(3) Expenditures funded by WRD Grant

(4) Expenditures funded by other fund sources including equity, non-WRD grants, loans, etc.

(5) Calculate the total by adding columns (3) and (4) together

(6) Calculate this column by dividing column (5) by column (1)

Columns (7), (8), and (9) are related only to costs funded by the WRD grant

(7) This column is the cumulative total of requests prior to this request

(8) This column is the amount being requested for this reimbursement request

(9) This column is the sum of column (7) and (8) and should equal column (3) by task

Row Instructions

% by funding source is a row which documents the allocation of total expenditures to date for the Project by dividing the totals for columns (3) and (4) by column (5)

EXHIBIT D

QUARTERLY REPORT FORM

Overall Project Status

- 1) **What is the general status of the Project?** *Please provide a summary narrative on the current status of the Project in terms of work completed and permits/authorizations obtained.*

- 2) **Describe any significant variances in the task schedule implementation to date. Indicate if the variance was a delay or an early completion.**

- 3) **If there has been a delay that may cause a task to be completed after the target date, describe what actions are being taken to address the delay and if the delay may impact the overall timely completion of the Project.**

- 4) **Have all Project Schedule issues, concerns, or problems identified in the last report been addressed? If no, please explain if the problem still exists and why not resolved. Are there any new issues, concerns, or problems regarding this Project Schedule? If yes, please describe the issue and what actions are being taken to address the issue.**

Key Task Reporting

Key Task #	Task Description		
Progress to Date			
Not Started <input type="checkbox"/>	<50% Complete <input type="checkbox"/>	>50% Complete <input type="checkbox"/>	Complete <input type="checkbox"/>
Quarterly Work Summary (Summarize task activity during this Quarter and what you plan to be doing next quarter)			
Task Progress to Date (Provide a running history from previously reported quarterly reports. Cut and paste prior narrative to allow review of progress to date in this one report)			

Key Task #	Task Description
Progress to Date	
Not Started <input type="checkbox"/>	<50% Complete <input type="checkbox"/> >50% Complete <input type="checkbox"/> Complete <input type="checkbox"/>
Quarterly Work Summary (Summarize task activity during this Quarter and what you plan to be doing next quarter)	
Task Progress to Date (Provide a running history from previously reported quarterly reports. Cut and paste prior narrative to allow review of progress to date in this one report)	

Key Task #	Task Description
Progress to Date	
Not Started <input type="checkbox"/>	<50% Complete <input type="checkbox"/> >50% Complete <input type="checkbox"/> Complete <input type="checkbox"/>
Quarterly Work Summary (Summarize task activity during this Quarter and what you plan to be doing next quarter)	
Task Progress to Date (Provide a running history from previously reported quarterly reports. Cut and paste prior narrative to allow review of progress to date in this one report)	

Key Task #	Task Description
Progress to Date	
Not Started <input type="checkbox"/>	<50% Complete <input type="checkbox"/> >50% Complete <input type="checkbox"/> Complete <input type="checkbox"/>
Quarterly Work Summary (Summarize task activity during this Quarter and what you plan to be doing next quarter)	
Task Progress to Date (Provide a running history from previously reported quarterly reports. Cut and paste prior narrative to allow review of progress to date in this one report)	

Key Task #	Task Description
Progress to Date	
Not Started <input type="checkbox"/>	<50% Complete <input type="checkbox"/> >50% Complete <input type="checkbox"/> Complete <input type="checkbox"/>
Quarterly Work Summary (Summarize task activity during this Quarter and what you plan to be doing next quarter)	

Task Progress to Date
 (Provide a running history from previously reported quarterly reports. Cut and paste prior narrative to allow review of progress to date in this one report)

Financial Reporting

Table 1. Expenditures by Key Task

Key Task	Budget	Prior Expenditures	Expended this quarter	Total Spent	% of Budget Expended
Task 1	\$1,000	\$100	\$50	\$150	15%
Task 2	\$2,000	\$200	\$100	\$300	15%
Task 3	\$3,000	\$300	\$100	\$400	13%
TOTALS	\$6,000	\$600	\$250	\$850	14%

Source of funding is not requested for quarterly financial reporting. Source of funding is required for reimbursement requests to document % of task paid by WRD Grant Funds.

Table 2. Expenditures by Entity Paid

Costs paid to ¹	Amount
Vendor 1	\$100
Vendor 2	\$100
Vendor 3	\$200
Various Entities	\$650
TOTAL (Equals Total Spent in Table 1)	\$850

¹ The term "Various Entities" may be used to group aggregate expenditures less than \$10,000. Attach all invoices and receipts for costs over \$1,000.