

**OREGON BUSINESS DEVELOPMENT DEPARTMENT
BROWNFIELDS REDEVELOPMENT FUND
GRANT AGREEMENT**

BETWEEN: State of Oregon, acting by and through its ("State")
Oregon Business Development Department
775 Summer Street NE, Suite 200
Salem, OR 97301-1280

AND: City of XXXXXXXX ("Recipient")
XXXXXXXXXXXXX
XXXXXXXXXX, OR 97XXX

DATE OF AWARD: XXXXXXXX XX, 2014

PROJECT NUMBER: N1500X

**SECTION 1
LEGAL BASIS OF AWARD**

Pursuant to ORS 285A.188(2) and OAR 123-135-0000 through 123-135-0110 ("Program Rules"), State is authorized to enter into a grant agreement and to make an award from the Brownfields Redevelopment Fund ("Fund"). State is willing to make the grant on the terms and conditions of this Agreement. Accordingly, the parties agree as follows:

**SECTION 2
GRANT AWARD**

Section 2.01. Grant. In accordance with the terms and conditions of this Agreement, State will provide Recipient with a maximum of \$XX,XXX ("Grant") from the Brownfields Redevelopment Fund for the activities and purposes set forth in Exhibit A (the "Project"). All expenditures of Grant moneys must be in accordance with the Project budget set forth in Exhibit B.

Section 2.02. Disbursement of Grant Moneys. Subject to Sections 2.03, State will disburse the Grant moneys to Recipient on an expense reimbursement basis, within thirty (30) days after State's receipt of a disbursement request on a form provided by State, accompanied by documentation satisfactory to State of the expenses for which reimbursement is requested. The documentation must include invoices and receipts as applicable. Subject to the availability of undisbursed Grant moneys, each disbursement of Grant moneys under this Section 2.02 will be in an amount equal to the total amount of expenses satisfactorily documented in the disbursement request, provided that any reimbursement of travel expenses cannot exceed the State of Oregon approved rates.

Section 2.03. Conditions Precedent to Each Disbursement. State's obligation to disburse Grant moneys to Recipient pursuant to Section 2.02 is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

(a) The Oregon Department of Administrative Services has not notified the Business Development Department of an anticipated shortfall in Oregon State Lottery revenues for the biennium in which this Agreement becomes effective or for any biennium thereafter;

(b) Moneys are available in the Brownfields Redevelopment Fund to finance the disbursement;

(c) State has received sufficient appropriations and other expenditure authorizations to allow State, in the reasonable exercise of its administrative discretion, to make the disbursement;

(d) No default as described in Section 6.03 has occurred and is continuing;

(e) Recipient's representations and warranties set forth in Section 4 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

Section 2.04. Grant Availability Termination. The availability of Grant moneys under this Agreement and State's obligation to disburse Grant moneys pursuant to Section 2.02 ends on the earlier of thirty (30) days after the date the Project is completed or thirty (30) days after the Project completion deadline set forth in Section 5.01 (the "Availability Termination Date"). Recipient will not submit any disbursement requests and State will not disburse any Grant moneys after the Availability Termination Date.

SECTION 3 USES OF GRANT

Section 3.01. Uses of Grant. Recipient's use of the Grant moneys is limited to those activities necessary to complete the Project. Recipient will not use the Grant moneys to retire any debt. Recipient must provide documentation acceptable to the State for all requested expenditures, including, but not limited to the nature of the activity, when it took place, cost details, and applicable receipts and invoices.

SECTION 4 RECIPIENT'S REPRESENTATIONS AND WARRANTIES

Recipient represents and warrants to State as follows:

Section 4.01. Existence and Power. Recipient is a municipality, duly organized and validly existing under the laws of Oregon; and Recipient has full power, authority and legal right to execute and deliver this Agreement and to incur and perform its obligations hereunder.

Section 4.02. Authority, No Contravention. The making and performance by Recipient of this Agreement (a) have been duly authorized by all necessary action of Recipient, (b) 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 and (c) 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.

Section 4.03. Binding Obligation. This Agreement has been duly authorized, executed and delivered on behalf of Recipient and constitutes the legal, valid, and binding obligation of Recipient, enforceable in accordance with its terms.

Section 4.04. Approvals. No further 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.

SECTION 5 RECIPIENT'S AGREEMENTS

Section 5.01. Project Completion. Recipient will complete the Project within twenty-four months from the date of execution of this Agreement.

Section 5.02. Notifications. Recipient will reasonably acknowledge in some public fashion, such as in promotional materials, on its web site and in public statements, that the Project was funded in part with Oregon State Lottery Funds administered by the Oregon Business Development Department.

Section 5.03. Semi-Annual Reports. Recipient shall provide State with semi-annual reports (due July 15 and January 15) on a form provided by State, until the Project is complete. At its sole discretion, State may waive this reporting requirement upon written notice to Recipient.

Section 5.04. Final Report. Within thirty (30) days after the completion of the Project, but no later than thirty (30) days after the date set forth in Section 5.01, Recipient will submit to State a final report on the Project on a form provided by State.

Section 5.05. Books, Inspection. Recipient will keep proper books of account and records on all activities associated with the Grant, including, but not limited to, invoices, cancelled checks, instruments, agreements and other supporting financial records documenting the use of the Grant. Recipient will maintain these books of account and records in accordance with generally accepted accounting principles and will retain these books of account and records at least until three years after the later of the Availability Termination Date or the date that all disputes, if any, arising under this Agreement have been resolved.

Recipient will permit State, the Secretary of State of the State of Oregon, or their duly authorized representatives to inspect its properties, all work done, labor performed and materials furnished in and about the Project, and to review and make excerpts, transcripts, and copies of its books of account and records with respect to the receipt and disbursement of funds received from State. The authorized representatives will have access to these books of account and records for as long as those books of account and records are required to be maintained by Recipient pursuant to this Section 5.05; provided that if such records are kept for a longer period, the authorized representatives shall have access to these records for as long as they are kept by Recipient.

Section 5.06. Compliance with Laws. Recipient will comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority, except to the extent an order of a governmental authority is contested in good faith and by proper proceedings. Applicable laws and rules include, but are not limited to: Workers' Compensation laws (ORS Chapter 656); Wages, Hours and Records Laws (ORS Chapter 652); Conditions of Employment Laws (ORS Chapter 643); and Unemployment Insurance (ORS Chapter 657).

Section 5.07. Responsibility for Taxes. Recipient will be responsible for all taxes, if any, arising from or related to Recipient's receipt of the Grant. State will not withhold from the disbursements made to Recipient hereunder, any amounts to cover Recipient's tax liability.

Section 5.08. Minority, Women & Emerging Small Business. ORS 200.090 requires all public agencies to "aggressively pursue a policy of providing opportunities for available contracts to emerging small businesses..." The Oregon Business Development Department encourages Recipient in any contracting activities to follow good faith efforts in ORS 200.045, which may be accessed at <http://www.leg.state.or.us/ors/200.html>. Additional resources are provided by the Governor's Advocate for Minority, Women & Emerging Small Business at <http://egov.oregon.gov/Gov/MWESB/index.shtml>. Also, the Office of Minority, Women, and Emerging Small Business at the Department of Consumer and Business Services maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <http://imd10.cbs.state.or.us/ex/dir/omwesb/>.

Section 5.09. Economic Benefit Data. State may request that Recipient submit specific requested data on the economic development benefits of the Project, from the date hereof until six (6) years after the Project completion date. Upon such request by State, Recipient will, at Recipient's expense, prepare and file the requested data within the time specified in the request. Data must include specific requested information such as any new direct permanent or retained jobs resulting from the Project and other information to evaluate the success and economic impact of the Project.

Section 5.10. Conditions of Award. The award is subject to the following conditions:

Pre-Award Costs: Recipient will provide sufficient documentation that pre-award expenditures meet all programmatic eligibility requirements, including, but not limited to, the nature of the activity, when the activity took place, its cost, etc. Pre-award expenses incurred in accordance with all program rules and policies are eligible to be reimbursed.

SECTION 6 TERMINATION AND DEFAULT; REMEDIES

Section 6.01. Mutual Termination. This Agreement may be terminated by mutual consent of both parties.

Section 6.02. Termination by State. State may terminate this Agreement effective upon written notice to Recipient, or at such later date as may be established by State in such notice, under any of the following circumstances: (a) the Oregon Department of Administrative Services notifies State of an anticipated shortfall in Oregon State Lottery revenues, (b) State fails to receive sufficient appropriations or other expenditure authorizations to allow State, in the reasonable exercise of its administrative discretion, to continue making payments under this Agreement, (c) there are not sufficient funds in the Fund to permit State to continue making payments under this Agreement, (d) there is a change in federal or state laws, rules, regulations or guidelines so that the Project funded by this Agreement is no longer eligible for funding, or (e) in accordance with Section 6.04.

Section 6.03. Default. Recipient will be in default under this Agreement upon the occurrence of any of the following events:

(a) Recipient fails to perform, observe or discharge any of its covenants, agreements or obligations contained herein or in any exhibit attached hereto; or

(b) Any representation, warranty or statement made by Recipient herein or in any documents or reports relied upon by State to measure progress on the Project, the expenditure of Grant moneys or the performance by Recipient is untrue in any material respect when made

Section 6.04. Remedies Upon Default. If Recipient's default is not cured within thirty (30) days of written notice thereof to Recipient from State or such longer period as State may authorize in its sole discretion, State may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of this Agreement, return of all or a portion of the Grant amount, payment of interest earned on the Grant amount, and declaration of ineligibility for the receipt of future Fund awards. If, as a result of Recipient's default, State demands return of all or a portion of the Grant amount or payment of interest earned on the Grant amount, Recipient will pay the amount upon State's demand. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

SECTION 7 MISCELLANEOUS

Section 7.01. No Implied Waiver. No failure or delay on the part of State to exercise any right, power, or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

Section 7.02. Choice of Law; Designation of Forum; Federal Forum.

(a) 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 Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

(b) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract 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.

(c) Notwithstanding Section 7.02(b), 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 Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

Section 7.03. Notices. Except as otherwise expressly provided in this Agreement, any required or permitted notice will be given in writing by personal delivery, facsimile, or by mail, postage prepaid, to Recipient or State at the address or number on page 1 of this Agreement, or to such other addresses or numbers as either party may subsequently indicate pursuant to this Section 7.03. Any notice so addressed and mailed will be deemed to be given five (5) days after mailing. Any notice delivered by facsimile will be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any notice by personal delivery will be deemed to be given when actually delivered.

Section 7.04. Amendments. This Agreement may not be altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties.

Section 7.05. Severability. If any provision of this Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision.

Section 7.06. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of State, Recipient, and their respective successors and assigns, except that Recipient may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of State, which consent will not be unreasonably withheld in the event the Recipient wishes to assign its rights or obligations hereunder to the Recipient's Urban Renewal Agency.

Section 7.07. Indemnity. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Recipient will defend (subject to ORS chapter 180), save, hold harmless and indemnify the State of Oregon, the Oregon Business Development Department and their officers, agents, employees, and members from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from or arising out of, or relating to the activities of Recipient or its officers, employees, contractors, or agents under this Agreement.

Section 7.08. Titles and Subtitles. The titles in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision of this Agreement.

Section 7.09. Counterparts. This Agreement may be executed in more than one counterpart, which, taken together, will constitute one and the same instrument, and either party may execute this Agreement by signing any such counterpart.

Section 7.10. No Third Party Beneficiaries. State and Recipient are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives or provides, or is intended to give or provide, to third persons any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

Section 7.11. Entire Agreement. This Agreement (including any attachments hereto which are by this reference incorporated herein) 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. Any waiver or consent, if made, will be effective only if in writing signed by

the party against whom such waiver or consent is sought to be enforced and is effective only in the specific instance and for the specific purpose given.

Section 7.12. Survival. All provisions of this Agreement set forth in the following sections and any that by their terms are intended to survive shall survive termination of this Agreement: Section 3.02. Unexpended Grant Moneys; Section 5.05. Books; Inspection; Section 5.10. Special Conditions; Section 6.04. Remedies Upon Default; Section 7.07. Indemnity; and this Section 7.12.

Section 7.13. Time is of the Essence. Recipient agrees that time is of the essence under this Agreement.

Section 7.14. Attorney Fees. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Agreement will be entitled to recover from the other its reasonable attorney fees and costs and expenses at trial, in a bankruptcy, receivership or similar proceeding, and on appeal. Reasonable attorney fees shall not exceed the rate charged to the State by its attorneys.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the dates set forth below their respective signature and approved as required by applicable laws. The Recipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through its Business
Development Department

CITY OF XXXXXXXXXXXXX

By:

XXXXXXXXXXXXXXXXXX, XXXXXXXX
XXXXXXXXXXXXXXXXXX

By:

XXXXXXXXXXXXXXXXXX
Mayor of the City of XXXXXXXX

Date: _____ Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Exhibit A: Project Description and Special Conditions
Exhibit B: Project Budget

EXHIBIT A
PROJECT DESCRIPTION

Recipient shall contract for completion of the following activities at the property located at XXXXXXXXXX, XXXXXXXXXX, Oregon, situated at T, R, Section XX and identified as Tax Lot #XXXXXX:

1. XXXXXX
2. XXXXXXXXXX
3. XXXXXXXXXX.....

Recipient shall ensure that activities are conducted XXXXXXXXX.