

GRANT AGREEMENT NO.

This is a Grant Agreement between the CITY OF PORTLAND, OREGON (“CITY” OR “GRANTOR” and _____ (OR “GRANTEE”) in an amount not to exceed _____.

RECITALS:

1. The City of Portland Water Bureau (City) funds programs and projects for the purposes of complying with the Federal Endangered Species and Clean Water Acts.
2. Improving water quality, physical habitat and stewardship for the Sandy River basin are goals set forth in the Bull Run Water Supply Habitat Conservation Plan (Habitat Conservation Plan), Ordinance No. 182235.
3. The Grantee, _____ is a charitable and non-profit public benefit corporation dedicated to protecting and restoring native wild fish and the ecosystems that sustain them.
4. Coordinated effort by the City and Grantee to implement the Sandy River Basin Restoration Strategy shall assist the City to meet its obligations under the Habitat Conservation Plan.
5. The City now desires to enter into a formal grant agreement with the Grantee in the amount of \$XXXXXX for the purpose of implementing the PROGRAM/PROJECT.

AGREED:

I. ACTIONS TO BE TAKEN BY GRANTEE

In consideration of the grant funds provided by the City, GRANTEE agrees to perform the following actions and/or spend grant funds in the following way:

[Performance/Actions that the grantee is going to undertake as a result of the Grant funds shall be inserted here.]

II. SPECIFIC CONDITIONS OF THE GRANT

A. RECORDS:

Progress Reports:

Grantee shall furnish the City’s Project Manager with brief monthly reports describing progress toward completion of the work funded by this Grant, any implementation changes, and any obstacles foreseen in the coming month. At the completion of the project, the Grantee shall provide to the City a summary report of the work accomplished under the grant.

Financial Reports:

Grantee shall furnish the City Project Manager with a brief monthly accounting of grant monies expended for that month and monies remaining available in grant funds. At the end of the project, Grantee shall provide to the City a summary financial report and proof of grant fund expenditures.

Schedule:

Grantee shall provide monthly reports by the 15th day of the month. Final summary reports are due within 60 days of the completion of the project.

B. Project Managers:

The City's Project Manager shall be Burke Strobel, or such other persons as shall be designated in writing by the Portland Water Bureau Administrator. The City Project Manager is authorized to approve work and billings hereunder, to give notices referred to herein, to terminate this agreement, as provided herein, and to carry out all other city actions referred to herein. All formal, written communication to the Portland Water Bureau regarding the agreement should be directed to the City Project Manager.

The Grantee's Project Manager is to be XXXXXX. All formal written communication regarding the agreement should be directed to its Project Manager. The Grantee's Project Manager is authorized to approve all financial and performance reports.

C. Amendments:

The City's Project Manager is authorized to amend the terms and conditions of the grant provided such changes do not increase the City's financial risk. If approved, such changes shall be incorporated into a formal grant amendment. Changes in funding up to twenty-five percent of the agreement total must be approved by the Portland Water Bureau Administrator. Any change that exceeds twenty-five percent of the original funding amount requires City Council approval.

III. FUNDING, METHOD OF PAYMENTS & AUDIT REQUIREMENTS

- A.** The City shall provide funding not to exceed \$XXXX to the Grantee for purposes described in Part I above.
- B.** If for any reason GRANTEE receives a grant payment under this Grant Agreement and does not use grant funds, provide required services or take any actions required by the Grant Agreement the CITY may, at its option terminate, reduce or suspend any grant funds that have not been paid and may, at its option, require GRANTEE to immediately refund to the CITY the amount improperly expended or received by GRANTEE.
- C.** Grant payments under this Agreement may be used only to provide the services or take the actions listed previously in this Grant Agreement and shall not be used for any other purpose.
- D.** If, for any reason, GRANTEE's anticipated services or actions are terminated, discontinued or interrupted, the CITY's payment of funds under this grant may be terminated, suspended or reduced.

- E. The City's Project Manager is authorized to approve work and billings and invoices submitted pursuant to this grant and to carry out all other City actions referred to herein in accordance with this Agreement.
- F. Grantee shall be required to cooperate with a City audit of all expenses.

IV. Defaults and Remedies

- A. A default will consist of:
 - (1) any use of Grant funds for any purpose other than activities related to the conditions of the grant;
 - (2) any breach of any covenant, agreement, provision, representation, or warranty of the Grantee made in this Grant Agreement;
 - (3) an assignment for the benefit of creditors or admission in writing of its inability to pay its debts generally as they become due, the appointment of a receiver, liquidator or trustee of the Grantee, or an adjudication of the Grantee a bankrupt or insolvent, or the filing of any petition for bankruptcy, reorganization or arrangement pursuant to the federal Bankruptcy Reform Act, or any similar Federal or state statute by or against the Grantee; or any proceeding for the dissolution, reorganization or liquidation of the Grantee is instituted; unless any such appointment, adjudication, petition, or proceeding is involuntary and not consented to by the Grantee and the same is discharged, stayed or dismissed within 60 days after it is instituted;
 - (4) a failure by the Grantee to commence, to the satisfaction of the City, work under any conditions of the grant by _____ unless the start date is modified by mutual agreement of the City and the Grantee; and
 - (5) a failure by the Grantee to complete, to the satisfaction of the City, work under any conditions of the grant by _____ unless the end date is modified by mutual agreement of the City and the Grantee.
- B. Promptly upon the discovery of any default with respect to any conditions of the grant, the Grantee shall:
 - (1) give prompt written notice to the City; and
 - (2) to the fullest extent possible, vigorously pursue or cause to be pursued all remedies available to Grantee to remove or cure such default, obtain redress therefore and minimize the effects of the default, including all reasonable efforts under the circumstances to complete the conditions of the grant.
- C. Upon the occurrence of any default, the City may reduce or recapture the Grant or take other appropriate action. For purposes of this section, "other appropriate action" means any remedial action legally available. In the event that the City makes such a determination, then the Grantee will deliver to the City certified, true copies of all documents in its possession relevant to the defaulted conditions of the grant.

V. GENERAL GRANT PROVISIONS

- A.** TERMINATION FOR CAUSE. If, through any cause, GRANTEE shall fail to fulfill in timely and proper manner his/her obligations under this Grant Agreement, or if GRANTEE shall violate any of the covenants, agreements, or stipulations of this Grant Agreement, the CITY shall have the right to terminate this Grant Agreement by giving written notice to GRANTEE of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination.
- (1) During the 30-day period CITY is under no obligation to continue providing Grant Funds and Grantee is not authorized to perform services or take actions that would require the City to pay additional grant funds to Grantee.
 - (2) During the 30-day period, GRANTEE shall not spend unused grant funds; and
 - (3) In the event of a termination for cause, all finished or unfinished documents, data, studies, and reports prepared by GRANTEE under this Grant Agreement shall, at the option of the CITY, become the property of the CITY and GRANTEE shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents up until the time of notice of termination.
- B.** TERMINATION BY AGREEMENT OR FOR CONVENIENCE. The CITY and GRANTEE may terminate this Grant Agreement at any time by mutual written agreement. Alternatively, the CITY may, upon thirty (30) days written notice, terminate this agreement for any reason deemed appropriate in its sole discretion. If the Grant Agreement is terminated as provided in this paragraph GRANTEE shall return any Grant funds that would have been used to provide services after the effective date of termination.
- C.** NON-DISCRIMINATION. In carrying out activities under this Grant Agreement, GRANTEE shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, familial status, sexual orientation or national origin. GRANTEE shall take actions to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, handicap, familial status, sexual orientation or national origin. Such action shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. GRANTEE shall post in conspicuous places, available to employees and applicants for employment, notices provided by the CITY setting for the provisions of this nondiscrimination clause. GRANTEE shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. GRANTEE shall incorporate the foregoing requirements of this paragraph in all of its Grant Agreements for work funded under this Grant Agreement, except Grant Agreements governed by Section 104 of Executive Order 11246.
- D.** ACCESS TO RECORDS. GRANTEE shall provide the CITY, or its duly authorized representatives, prompt access to any and all books, general organizational and administrative information, documents, papers, and records of GRANTEE that are related to this Grant Agreement or GRANTEE's performance of services, for the purpose of making audit examination, copies, excerpts, and transcriptions. All required records must be maintained by GRANTEE for six years after the CITY makes final payment and all other pending matters are closed.

- E.** MAINTENANCE OF RECORDS. GRANTEE shall maintain records on a current basis to support any billings or invoices submitted by GRANTEE to CITY. The CITY, or its authorized representative, shall have the authority to inspect, audit, and copy on reasonable notice, and from time to time may examine any records of GRANTEE regarding its billings or its work hereunder. GRANTEE shall retain these records for inspection, audit, and copying for six years from the date of completion or termination of this Grant Agreement.
- F.** AUDIT. The CITY, either directly or through a designated representative, may audit the records of GRANTEE at any time during the six-year period established by Section D above. If an audit discloses that payments to GRANTEE were in excess of the amount to which GRANTEE was entitled, then GRANTEE shall repay the amount of the excess to the CITY.
- G.** INDEMNIFICATION. GRANTEE shall hold harmless, defend, and indemnify the CITY and the CITY's officers, agents, and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from GRANTEE's work or any of GRANTEE's contractors work under this Grant Agreement.
- H.** WORKERS' COMPENSATION INSURANCE.
- (1) GRANTEE, its contractors, if any, and all employers working under this Agreement, are subject employers under the Oregon Worker's Compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. A certificate of insurance, or copy thereof, shall be attached to this Agreement and shall be incorporated herein and made a term and part of this Agreement. GRANTEE further agrees to maintain worker's compensation insurance coverage for the duration of this Agreement; and
 - (2) In the event GRANTEE's worker's compensation insurance coverage is due to expire during the term of this Agreement, GRANTEE agrees to timely renew its insurance, either as a carrier-insured employer or a self-insured employer as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration, and GRANTEE agrees to provide the CITY such further certification of worker's compensation insurance a renewals of said insurance occur.
- I.** LIABILITY INSURANCE.
- (1) GRANTEE shall maintain public liability and property damage insurance that protects GRANTEE and the CITY and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from GRANTEE's work under this Grant Agreement. The insurance shall provide coverage for not less than \$1,000,000 per occurrence. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the CITY and its officers, agents, and employees.

Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that it shall not terminate

or be canceled without 30 days written notice first being given to the CITY Auditor.

If the insurance is canceled or terminated prior to completion of the Grant Agreement, GRANTEE shall provide a new policy with the same terms. GRANTEE agrees to maintain continuous, uninterrupted coverage for the duration of the Grant Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by GRANTEE; and

- (2) GRANTEE shall maintain on file with the CITY Auditor a certificate of insurance certifying the coverage required under subsection (1). The adequacy of the insurance shall be subject to the approval of the CITY Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this agreement by the CITY. In lieu of filing the certificate of insurance required herein, if GRANTEE is a public body, GRANTEE may furnish a declaration that GRANTEE is self-insured for public liability and property damage for a minimum of the amounts set forth in ORS 30.270.

- J. GRANTEE'S CONTRACTORS AND ASSIGNMENT. If GRANTEE utilizes contractors to complete its work under this Grant Agreement, in whole or in part, GRANTEE shall require any of its contractors to agree, as to the portion contracted, to fulfill all obligations of the Grant Agreement as specified in this Grant Agreement. However, GRANTEE shall remain obligated for full performance hereunder, and the CITY shall incur no obligation other than its obligations to GRANTEE hereunder. GRANTEE agrees that if GRANTEE's contractors are employed in the performance of this Grant Agreement, GRANTEE and its contractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation. GRANTEE shall not assign this Grant Agreement in whole or in part or any right or obligation hereunder, without prior written approval of the CITY. GRANTEE's contractors shall be responsible for adhering to all local, state and federal laws and regulations.
- K. INDEPENDENT STATUS OF GRANTEE. GRANTEE is independent of the CITY and GRANTEE and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. GRANTEE and its contractors and employees are not employees of the CITY and are not eligible for any benefits through the CITY, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.
- L. CONFLICTS OF INTEREST. No CITY officer or employee, during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in this Grant Agreement or the proceeds thereof. No CITY officer or employees who participated in the award of this Grant Agreement shall be employed by GRANTEE during the period of the Grant Agreement.
- M. OREGON LAWS AND FORUM. This Grant Agreement shall be construed according to the laws of the State of Oregon, without regard to its provisions regarding conflict of laws. Any litigation between the CITY and GRANTEE arising under this Grant Agreement or out of work performed under this Grant Agreement shall occur, if in the state courts, in the Multnomah County court having jurisdiction thereof, and if in the federal courts, in the United States District Court

for the State of Oregon.

- N. COMPLIANCE WITH LAWS. In connection with its activities under this Grant Agreement, GRANTEE shall comply with all applicable federal, state, and local laws and regulations. GRANTEE shall be EEO certified by the City of Portland in order to be eligible to receive grant funds.
- O. INDEPENDENT FINANCIAL AUDITS/REVIEWS. Any Grantee receiving \$300,000 or more in CITY funding, in any program year, is required to obtain an independent audit of the CITY-funded program(s). Any Grantee receiving between \$25,000 and \$300,000 in CITY funds, in any program year, is required to obtain an independent financial review. Two copies of all required financial audits or reviews shall be submitted to the City's Project Manager within thirty days of their completion.
- P. SEVERABILITY. If any provision of this agreement is found to be illegal or unenforceable, this agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
- Q. INTEGRATION. This agreement contains the entire agreement between the CITY and GRANTEE and supersedes all prior written or oral discussions or agreements. There are no oral or written understandings that vary or supplement the conditions of this Grant that are not contained herein.
- R. PROGRAM AND FISCAL MONITORING. The CITY shall monitor on an as needed basis to assure Grant Agreement compliance. Such monitoring may include, but are not limited to, on site visits, telephone interviews, and review of required reports and will cover both programmatic and fiscal aspects of the Grant Agreement. The frequency and level of monitoring will be determined by the City's Project Manager. Notwithstanding such monitoring or lack thereof, GRANTEE remains fully responsible for performing the services required by this Grant in accordance with its terms and conditions.
- S. THIRD PARTY BENEFICIARIES: There are no third-party beneficiaries to this grant agreement. The agreement may only be enforced by the parties.
- T. ASSIGNMENT: This agreement cannot be assigned or transferred by GRANTEE without the prior written permission of CITY.

VI. TERM OF GRANT

The terms of this Grant Agreement shall be effective when an ordinance is passed by City Council and the Grant Agreement is executed by all the parties, as shown by their signatures

below, and shall remain in effect during any period for which GRANTEE has received CITY funds. Work by GRANTEE shall terminate as of June __, 20XX.

Dated this _____ day of _____, 20XX.

CITY OF PORTLAND

GRANTEE

Name:
Title:

Name:
Title:

APPROVED AS TO FORM:

XX, City Attorney