

OREGON WATERSHED ENHANCEMENT BOARD
WATERSHED IMPROVEMENT GRANT AGREEMENT

Grantee: City of Portland Environmental Services

Grant Number: 208-3090-6899

Grant Name: Lower Willamette River Off-Channel Habitat Restoration at the Confluence of Stephens Creek

Award Amount: \$199,060.00

Grant Completion Date: December 31, 2012

Post-Implementation Reporting Period: 0 years (See Exhibits C and D)

Post-Implementation Status Reporting Schedule: None

Grantee

City of Portland Environmental Services
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Portland OR 97204
Phone: 503-823-5549
Fax: 503-823-6995
Email: paul.ketcham@bes.ci.portland.or.us
Contact: Paul Ketcham

Project Manager for the Grantee

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Project Manager for the Board

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Fund Source:

This grant includes \$199,060.00 of “Capital” funds, either Oregon Lottery funds or other state funds, as identified in Exhibit A. The use of “Capital” Lottery funds must comply with the requirements defined in ORS 541.351(4) (Exhibit G).

This grant includes \$0.00 of “Non-Capital” funds, as identified in Exhibit A, which may be from a federal source (Catalogue of Federal Domestic Assistance Number 11.438). The Grantee may be subject to the federal single audit act requirements in OMB Circular A-133.

This Grant Agreement is between the Oregon Watershed Enhancement Board, hereafter called “Board,” and the Grantee as identified above, in consideration of the mutual covenants contained herein. This Agreement consists of the following, in descending order of precedence: this Agreement less all exhibits; attached Exhibits A (Schedule for Release of Funds), B (Special Conditions), C (Project Completion Report Requirements), D (Post-Implementation Status Report Requirements), E (Permits and Licenses), F (Cooperative/Landowner Agreement(s)), G (Applicable Statutory Definitions), and H (Grant Application approved by the Board). All exhibits are incorporated by reference.

A. Authorization

This grant is authorized by ORS 541.351 to 541.401 and is subject to Oregon Administrative Rules 695-001-0000 to 695-050-0050, as such rules may periodically be amended by the Board.

B. Grant Award

The Grantee agrees to perform the project described in the grant application (Exhibit H) and as specified in this Agreement, including without limitation in accordance with Conditions C through O of this Agreement, and in accordance with the Special Conditions identified in Exhibit B. In return, the Board agrees to payment of costs identified in this Agreement according to the *Schedule for Release of Funds*, attached as Exhibit A.

The Grantee agrees that funds provided by the Board shall be used only for the purposes specified in the grant application (Exhibit H) and as detailed in Exhibits A and B.

C. Term of Agreement

This Agreement shall become effective upon signature by all parties. Any changes to the project must be approved before implementation and approved by all parties according to Section F, Amendments. The Project Completion Report is due within 60 days following grant completion. The Grantee shall provide at least 25% non-Board match for the total amount of funding from the Board unless otherwise specified in Exhibit B.

D. Funding Conditions

The Board certifies that at the time this Agreement is written sufficient funds are authorized for expenditure within the Board’s current appropriation or limitation. Funding is contingent on the Board receiving sufficient expenditure authorizations to allow the Board, in the exercise of its reasonable administrative discretion, to provide the funding. The Board may reduce the amount of this grant if a reduction in Oregon State Lottery revenues results in reduced funding to the Board. If all or any portion of the grant funds are not disbursed before the end of the current state fiscal biennium, disbursement of all remaining funds is contingent upon legislative and any other necessary approvals of the Board’s next biennial expenditure limitation.

As a condition for the disbursement of any Board funds, the Grantee agrees to do the following:

1. Acknowledge Funding

- (a) Provide a “funding partners sign” on the project site if the property is adjacent to a federal, state, county, or other well-traveled road and is visible from the road.
- (b) Provide for review and approval by the Board’s Project Manager, draft and final copies of any technical, educational or informational materials produced through the grant before publication or electronic posting.
- (c) Provide acknowledgement on any technical, educational or informational material produced through this grant and distributed either in copy or electronic form that funding was provided by the Board.

2. Obtain Necessary Permits and Licenses

Submit to the Board’s Project Manager, before release of any Board funds, all applicable permits and licenses from local, state or federal agencies or governing bodies that have been obtained, or written evidence that permits and licenses are not needed (see Exhibit E, *Permits and Licenses*) as required by ORS 541.375(10).

3. Implementation Conditions

- (a) Submit to the Board’s Project Manager, before release of any Board funds, copies of the Cooperative/Landowner Agreement(s) [see Exhibit F] as required by OAR 695-005-0060(4) and documentation that non-Board match has been secured as required by OAR 695-005-0030(3).
- (b) Notify the Board’s Project Manager when any change or modification of the project is proposed.
- (c) Comply with the Oregon Aquatic Habitat Restoration Guidelines under the Oregon Plan for Salmon and Watersheds.
See <http://www.oregon.gov/OWEB/docs/pubs/habguide99-complete.pdf>.
- (d) Inform the Board’s Project Manager of any address changes.
- (e) Adhere to the Special Conditions as described in Exhibit B.

4. Document and Report Project Completion

- (a) Submit to the Board’s Project Manager all verifiable receipts, expenditure tracking sheet, and other accounting records throughout the grant to document expenditure of grant fund installments, and to account for all other funding, in-kind contributions and donations in the Project Completion Report.
- (b) Submit to the Board’s Project Manager a Project Completion Report (Exhibit C) and final Request for Release of Funds form within 60 days of grant completion date.

5. Post Implementation Reporting

Submit to the Board’s Project Manager a Post-Implementation Status Report, as required in Exhibit D.

E. Records Maintenance and Access

1. **Access to Records and Facilities.** The Board, the Secretary of State's Office of the State of Oregon and their duly authorized representatives shall have access to the books, documents, papers and records of Grantee that are directly related to this Agreement, the grant moneys provided hereunder, or the project for the purpose of making audits and examinations. In addition, the Board, the Secretary of State's Office of the State of Oregon and their duly authorized representatives may make and retain excerpts, copies and transcriptions of the foregoing books, documents, papers and records. Grantee shall permit authorized representatives of the Board, the Secretary of State's Office of the State of Oregon and their duly authorized representatives to perform site reviews of all services delivered as part of the project.
2. **Retention of Records.** Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the grant moneys or the project for a minimum of three (3) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following termination or expiration of this Agreement. If there are unresolved audit questions at the end of the three-year period, Grantee shall retain the records until the questions are resolved.
3. **Expenditure Records.** Grantee shall document the expenditure of all grant moneys disbursed by the Board under this Agreement. Grantee shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit the Board to verify how the grant moneys were expended, including without limitation accounting for all other funds expended, as well as in-kind services and donated materials.

F. Amendments

Any modifications of this Agreement must be mutually agreed to in writing by all parties. Modifications to the budget elements only, as shown in Exhibit A, may be approved for change upon signature of the Board's Project Manager.

G. Assignment

The Grantee shall not assign or transfer its interest in this Agreement without prior written approval from the Board.

H. Access to Project Sites

Upon Board request and consistent with the Cooperative/Landowner Agreement(s) that meet the requirements as specified in Exhibit F, Grantee will seek the landowner's permission for mutually convenient access to the project site by Board members and their representatives for the purposes of evaluating project implementation, completion, post-implementation status or effectiveness.

I. Public Domain Information

Projects funded by this grant may be used in the collection of monitoring information on private lands about the effects of the project on aquatic or terrestrial conditions. Grantee acknowledges that all monitoring information obtained from private lands may become public information subject to the requirements of ORS 192.410 to 192.505.

J. Post-Implementation Maintenance and Post-Implementation Reports

Projects funded by the Board are intended to provide long-term benefits to the watershed. The Grantee or landowner will provide necessary and normal maintenance to sustain the value of the project once it is completed. Maintenance will be in accordance with the terms of the Cooperative/Landowner Agreement(s) (Exhibit F).

Grantee may be required to submit a Post-Implementation Status Report to the Board on the status of the grant at a frequency and period specified on page 1 of this Agreement. Those reports will be in accordance with the *Post-Implementation Status Reporting Requirements*, attached as Exhibit D.

K. Termination of Grant Agreement

If this Agreement is not signed by all parties within one (1) year of Board approval, funding shall be terminated. OAR 695-005-0050(2)

This Agreement may be terminated:

1. At any time by mutual written consent of all parties;
2. Upon written notice by the Board to Grantee for Grantee's failure to perform any other provision of this Agreement;
3. Upon 30 days written notice by the Board to Grantee for any other reason specified in writing; or
4. At any time, upon written notice by the Board, should Board funding be reduced. The Board shall be solely responsible for determining grant reductions.

Within 30 days of termination, Grantee shall return to the Board any unspent funds provided by the Board under this Agreement in accordance with Section O, Recovery of Grant Funds. The Board shall reimburse the Grantee for authorized services performed and expenses incurred before termination under this Agreement.

L. Compliance With Applicable Law

Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement or to the project. Without limiting the generality of the foregoing, all employers, including Grantee, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.

M. Grantee Authority

The individual signing on behalf of the Grantee hereby certifies and swears under penalty of applicable law that s/he is authorized to act on behalf of Grantee, has authority and knowledge regarding Grantee's payment of taxes, and to the best of her/his knowledge, Grantee is not in violation of any Oregon tax laws.

N. Indemnity

Subject to the limitations imposed by Article XI, section 9 of the Oregon Constitution, grantee shall defend (subject to any limitation imposed by ORS Chapter 180), save, hold harmless, and indemnify the State of Oregon and the Board and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities of Grantee or its officers, employees, contractors, or agents under this Agreement or in the implementation of the project

O. Recovery of Grant Funds

Any funds disbursed to Grantee 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 termination of this Agreement or grant completion ("Unexpended Funds") must be returned to the Board not later than 15 days after the Board's written demand.

THIS AGREEMENT, INCLUDING ALL MATERIALS INCORPORATED BY REFERENCE, CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THIS SUBJECT. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HERE REGARDING THIS AGREEMENT. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THE FAILURE OF THE BOARD TO ENFORCE ANY PROVISION OF THIS AGREEMENT SHALL NOT CONSTITUTE A WAIVER BY THE BOARD OF THAT OR ANY OTHER PROVISION. GRANTEE, BY EXECUTING THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT GRANTEE HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

AGREED:

FOR THE GRANTEE:

Print Name

Date

FOR THE BOARD:




Thomas M. Byler, OWEB Executive Director

12/15/08

Date

**(If the grant is for more than \$100,000)
APPROVED FOR LEGAL SUFFICIENCY:**



Assistant Attorney General
Oregon Department of Justice

Dec 11, 2008

Date

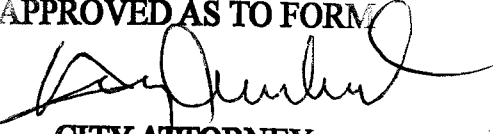
APPROVED AS TO FORM

CITY ATTORNEY

EXHIBIT A

SCHEDULE FOR RELEASE OF FUNDS

All fund requests must be submitted using a Request for Release of Funds form signed by the Grantee or the Grantee's authorized agent. Funds are released upon presentation of receipts, invoices or bills for purchases or work accomplished. However, Capital funds can also be released in advance on the basis of a detailed estimate of expenses. Receipts/invoices and an expense tracking spreadsheet must be submitted to document **all funds** received from OWEB for this project within 120 days of the date of the check. Failure to comply may delay new grants from being issued and may delay other grant payment requests and amendments. **No advances of Non-Capital funds are allowed.**

Authorized travel expenses shall be reimbursed at State of Oregon rates. Receipts for lodging are required for reimbursement. In-house personnel costs include: gross wages, payroll taxes, health insurance, retirement benefits, accrued leave liability, and workers compensation insurance. Administration costs include: accounting, auditing, contract management and fiscal reporting expenses, including final report expenses for this grant.

The grant budget consists of the elements listed below:

Expense Category	Amount
Capital Funds	
Pre-Implementation	\$0.00
Project Management	\$0.00
In-House Personnel	\$0.00
Contracted Services	\$184,787.00
Travel	\$0.00
Supplies/Materials	\$14,273.00
Equipment	\$0.00
Effectiveness Monitoring	\$0.00
Capital Subtotal	\$199,060.00
Fiscal Administration (OAR 695-005-0030(5))*	\$0.00
Post-Implementation Status Reporting	\$0.00
Capital Total	\$199,060.00
Non-Capital Funds (no advances allowed)	
Education/Outreach	\$0.00
Equipment	\$0.00
Non-Capital Total	\$0.00
Grant Total	\$199,060.00

***10% of Capital Subtotal and Non-Capital Total combined**

Budget change amendments between Capital funds and Non-Capital funds will not be allowed.

Note: The final 10% of the grant (\$19,906.00) will be released for payment upon receipt of all grant expense documentation and acceptance of the Project Completion Report by the Board. OAR 695-005-0060(8)

EXHIBIT B

SPECIAL CONDITIONS

- 1. The Board's Project Manager will be notified when:**
 - (a) Final project design is developed and initial construction is scheduled; and
 - (b) Initial construction is scheduled for a site review with the contractor.

- 2. Special Grant Conditions:**

No conditions apply.

- 3. Effectiveness Monitoring Conditions:**

No conditions apply.

EXHIBIT C

PROJECT COMPLETION REPORT REQUIREMENTS

Oregon Administrative Rule 695-010-0100(1) states that “Grantee must submit a report at completion of the project describing the work done and placing it in its larger watershed context.”

Therefore, the Board requires **Grantee to submit a Project Completion Report within 60 days following project completion** that includes, but is not limited to:

- (1) A brief, narrative description of the project including:
 - (a) Background on the problem that generated the project;
 - (b) A description of the work done, placing it in its larger watershed context;
 - (c) A description and explanation of any changes to the original proposal;
 - (d) A summary of any public awareness or educational activities related to the project, including identification of any tours or presentations and copies of newspaper or other media coverage about the project;
 - (e) Lessons learned from the project; and
 - (f) Recommendations, if any, for more effective implementation of similar projects.
- (2) Documentation that the project complies with the Oregon Aquatic Habitat Restoration and Enhancement Guide, if applicable.
See <http://www.oregon.gov/OWEB/docs/pubs/habguide99-complete.pdf>.
- (3) Color photographs of the project areas before and after the project completion taken at pre-set photo points. Guidelines for photo point documentation are provided on the OWEB website at: http://www.oregon.gov/OWEB/docs/pubs/PhotoPoint_Monitoring_Doc_July2007.pdf.
- (4) Completed copy of the most current version of the Oregon Watershed Restoration Inventory (OWRI) with the required map(s) and location information. The forms and instructions for submittal are available on the OWEB website at: <http://www.oregon.gov/OWEB/MONITOR/OWRI.shtml>.
- (5) An accounting of the expenditures of Board moneys and all other funding in the project, including a final accounting of all in-kind contributions, donations and the **required non-Board match funds**, using the Match Form for Final Report form provided on the OWEB website at <http://www.oregon.gov/OWEB/forms.shtml>.

The Board’s Project Manager must review and approve project completion, including the review and approval of all documents, permits, invoices, etc., before the final 10% of the grant award is released.

Submittal and acceptance of a Project Completion Report and final request for release of funds will authorize OWEB to retain any remaining unspent funds.

- (6) **See Exhibit B for any Special Conditions applying to the Project Completion Report.**

OWEB will not issue new grant agreements when the Grantee’s Post-Implementation Status or Project Completion reports are past-due

EXHIBIT D

POST-IMPLEMENTATION STATUS REPORT REQUIREMENTS

Oregon Administrative Rule 695-010-0100(2) states that “Grantee will monitor the long-term effectiveness of the project, and continue its maintenance, submitting periodic reports on a schedule set by the Board. All reports will be filed with the Board or at a location specified by the Board.”

A Post-Implementation Status Report must include the following elements:

1. An assessment of whether the project continues to meet the goals specified in the Grant Agreement.
2. A description of any maintenance or modifications made since project completion or since the last Status Report, whichever was last.
3. An accounting of any costs associated with project maintenance and reporting to the Board.
4. A summary of any public awareness or educational activities related to the project undertaken since project completion or since the last Status Report, whichever was last.
5. Lessons learned from the project.

Unless otherwise specified, the Grantee will provide color photos of all project elements (i.e., fencing, planting, or structures) to show compliance of the project with the Board funding decision. Photo points will be set up, and the color photographs should be taken with the same focal-length lens at the same time of year, showing conditions before and after project completion. Guidelines for photo point documentation are provided on the OWEB website at: http://www.oweb.state.or.us/OWEB/docs/pubs/PhotoPoint_Monitoring_Doc_July2007.pdf.

Photos must be taken:

1. At the same location as photographs from before project implementation (see Exhibit C);
2. Upon project completion; and
3. For each year the Board requires a Status Report. (See reporting requirements for this grant in Section J.)

NOTE: See Exhibit B for any Special Conditions applying to the Post-Implementation Status Report.

EXHIBIT E

PERMITS AND LICENSES

ORS 541.375(10) requires that all applicable permits and licenses be obtained before funds are released for a project. Oregon Administrative Rule 695-005-0060(5) states that “funds will not be disbursed until the Board receives satisfactory evidence that necessary permits and licenses have been granted and documents required by the Board have been submitted.” All or any portion of the project may require a state or federal permit, license, or General Authorization. Before the release of any Board funds, the Grantee must submit written evidence that the work under this Agreement will comply with all applicable federal, state and local laws. Copies of the applicable permits, licenses, and other agreements that have been obtained will provide sufficient evidence that this requirement has been met.

The following are often required for projects involving waterway alteration or watershed enhancement. (See Oregon Plan for Salmon and Watersheds, A Guide to Oregon Permits Issued by State and Federal Agencies, Spring 2000 on the OWEB website at: <http://www.oregon.gov/OWEB/docs/pubs/permitguide.pdf>.)

- | | | |
|--|-----------------------------------|---------------------------------------|
| ▪ Removal / Fill permit(s), Dept. of State Lands | <input type="checkbox"/> Required | <input type="checkbox"/> Not required |
| ▪ Fill permit(s), U.S. Army Corps of Engineers | <input type="checkbox"/> Required | <input type="checkbox"/> Not required |
| ▪ Water Right Permit(s), Water Resources Dept. | <input type="checkbox"/> Required | <input type="checkbox"/> Not required |
| ▪ City Permit(s) | <input type="checkbox"/> Required | <input type="checkbox"/> Not required |
| ▪ County Permit(s) | <input type="checkbox"/> Required | <input type="checkbox"/> Not required |

The foregoing list of permits is not exhaustive. I understand that it is my responsibility to determine whether and which permits, licenses, and General Authorizations are required for the project. I have determined that in addition to the above-checked permits, the following permits, licenses and General Authorizations are also required for my project:

 Grantee Signature

 Date

EXHIBIT F

COOPERATIVE/LANDOWNER AGREEMENT(S)

In addition, before the release of any Board funds, the Grantee must submit Cooperative/Landowner Agreement(s). A sample Cooperative/Landowner Agreement form is available on OWEB's website at <http://www.oregon.gov/OWEB/forms.shtml>. Such Agreement(s) shall include (but are not limited to):

- Landowner's certification that the landowner owns the land where the work will be carried out;
- Landowner's Agreement to allow Grantee to carry out the work, or a portion of the work on the Landowner's property;
- Landowner's Agreement to allow maintenance of the work over a time period consistent with the grant application;
- Landowner's Agreement to allow the OWEB Board and its representatives access to the site where the work is being carried out for inspection and evaluation; and
- Landowner's acknowledgment that information relating to the work, including effectiveness monitoring data, is a public record.

EXHIBIT G

STATUTORY DEFINITION OF “CAPITAL EXPENDITURE” and OREGON PREVAILING WAGE RATE LAW

Capital Expenditure

(4) “Capital expenditures” means direct expenses related to:

- (a) Personal property of a non-expendable nature including items that are not consumed in the normal course of operations, can normally be used more than once, have a useful life of more than two years and are for use in the enforcement of fish and wildlife and habitat protection laws and regulations; or
- (b) Projects that restore, enhance or protect fish and wildlife habitat, watershed functions, native salmonid populations or water quality, including but not limited to:
 - (A) Expenses of assessment, research, design or other technical requirements for the implementation of a project;
 - (B) The acquisition of determinate interests, including fee and less than fee interests, in land or water in order to protect watershed resources, including appraisal costs and other costs directly related to such acquisitions;
 - (C) Development, construction or implementation of a project to restore, enhance or protect water quality, a watershed, fish or wildlife, or riparian or other habitat;
 - (D) Technical support directly related to the implementation of a project; and
 - (E) Monitoring or evaluation activities necessary to determine the actual effectiveness of a project.

Oregon Prevailing Wage Rate Law

Grantees may be required to comply with Oregon’s prevailing wage rate law. ORS 279.348 - 279.380. This law requires that entities using public funds for public works must pay not less than the prevailing rate of wage for an hour’s work, including fringe benefits, in the same trade in the locality where the work is performed. Contracts not exceeding \$50,000 are exempt from prevailing wage rate laws and nonprofit organizations are exempt for work other than construction. Public works is defined as including “roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest . . .” ORS 297.348(3). Construction is defined as “the initial construction of buildings and other structures, or additions thereto, and of highways and roads.” OAR 839-025-0004(5)

Failure to comply with prevailing wage rate laws could result in a Grantee being liable to the workers affected in the amount of their unpaid minimum wages, including all fringe benefits, and in an additional amount equal to unpaid wages as liquidated damages.

Information regarding prevailing wage rate law can be found on the Bureau of Labor and Industries website at www.oregon.gov/BOLI/WHD/PWR/W_PWR_Pwrbk.shtml.

EXHIBIT H

**OWEB GRANT APPLICATION
(In OWEB files)**