

### Amendment No. 1 to Grant No. 35695

This is Amendment No. 1 to Grant No. 35695 effective October 1, 2023 (as amended from time to time, the "Grant"), between the State of Oregon, acting by and through its Department of Education ("Agency") and Vernonia SD 47J ("Grantee") each a "Party" and together, the "Parties". This Amendment is effective on the date signed by all Parties and upon receipt of all approvals necessary for signing ("Amendment Effective Date").

#### RECITALS

The purpose of this Amendment No. 1, is to:

- a. Revise Section 1: Authority.
- b. Revise Section 3: Effective Date and Duration to extend duration.
- c. Revise Section 4: Grant Managers to update Agency's Grant Manager and correct section numbering.
- d. Revise Section 6: Grant Funds to add funds for Grant Year 2 and Grant Year 3 Quarters 1, 2 and 3.
- e. Revise Exhibit A Section II: Project Definitions.
- f. Revise Exhibit A Section III: Project Activities, Schedule, and Budget.
- g. Revise Exhibit A Section V: Project Evaluation/Reporting Requirements.
- h. Revise Exhibit A Section VI: Disbursement Provisions.
- i. Revise Sections 7.1.2 (Disbursement) and 7.2.4 (Conditions Precedent to Disbursement).
- j. Revise Sections 7 through 19, to correct section numbering across pages.

The Grant is amended as follows (new language is indicated by **underlining and bold** and deleted language is indicated by ~~strikethrough~~):

1. Section 1: AUTHORITY is amended as follows:

Pursuant to the "Early Literacy Success Initiative", codified under ORS 327.825-327.845, and as amended from time to time (the "Act"), Early Literacy Success School District Grant funds are appropriated to the Department of Education through the Statewide Education Initiatives Account established **within the Fund for Student Success**, under ORS 327.250 for the purposes **described in ORS 327.254 including funding** of distributing the Early Literacy Success School Grant **program** under the Act.

2. Section 3 of the Grant is amended as follows:

SECTION 3: EFFECTIVE DATE AND DURATION

When all Parties have executed this Grant, and all necessary approvals have been obtained (“Executed Date”), this Grant is effective and has a Grant funding start date as of October 1, 2023 (“Effective Date”), and, unless extended or terminated earlier in accordance with its terms, will expire on ~~September 30, 2025~~ **March 31, 2026**.

3. Section 4 of the Grant is amended as follows

SECTION 4: GRANT MANAGER

A Party may designate a new Grant Manager by written notice to the other Party.

4.1 Agency's Grant Manager is:

Cassie Medina **Brittany Deckard**  
Office of Education Innovation & Improvement  
255 Capitol St NE  
Salem, OR 97310-0203  
cassie.medina@ode.oregon.gov **brittany.deckard@ode.oregon.gov**

4.1 ~~4.1~~ **4.2** Grantee's Grant Manager is:

Vernonia SD 47J  
1201 Texas Ave  
Vernonia, OR 97064  
503-429-5891  
jhelmen@vernoniak12.org

4.2 ~~4.2~~ **4.3** A Party may designate a new Grant Manager by written notice to the other Party.

4. Section 6 of the Grant is amended as follows:

SECTION 6: GRANT FUNDS

In accordance with the terms and conditions of this Grant, Agency will provide Grantee ~~up to \$51,513.22~~ **for each year of the Project (“Grant Year”) the following amounts** (“Grant Funds”); ~~for the Project.~~

**Grant Year 1 (GY1) (October 1, 2023 - June 30, 2024) up to \$51,513.22**  
**Grant Year 2 (GY2) (July 1, 2024 - June 30, 2025) up to \$53,349.77**  
**Grant Year 3 (GY3Q1 – Q3) (July 1, 2025 – March 31, 2026) up to \$45,266.37**  
**Total not to exceed Grant Funds: \$150,129.36**

**The parties agree and understand that GY3Q1 – Q3 funds are based on projections and require the legislature to act during the 2025 legislative session to appropriate funds to ODE and allow ODE to expend the funds. Grantee further understands and agrees that the execution of this amendment does not excuse the performance of any obligations associated with the 2025-2027**

**biennium funding, and Grantee's failure to perform any such obligation may result in withholding of GY3Q1-Q3 funds under this Agreement.**

Agency will pay the Grant Funds from monies available through its Statewide Education Initiatives Account ("Funding Source").

5. Exhibit A, Section II. PROJECT DEFINITIONS of the Grant is amended as follows:

The terms and definitions contained in the Act and in OAR 581-017-0800~~1~~ *et seq.* shall apply to this Grant and shall be incorporated herein. The following terms have the meanings assigned below for purposes of Exhibit A.

"Act" means the "Early Literacy Success Initiative" codified in Oregon Revised Statute (ORS) 327.825-327.845, as amended from time to time, inclusive.

"Allowable Costs of the Project" means Grantee's actual costs that are reasonable, necessary and directly related to the implementation of the Early Literacy Success Plan and are allowable uses of the Grant Funds under the Act, including those listed in ORS 327.829(2) ~~pursuant to ORS 327.829(3), and under the Early Literacy Rules, including OAR 581-017-0813 through OAR 581-017-0816.~~ Pursuant to ORS 327.829(3), all Allowable Costs of the Project must be for the benefit of children and students in prekindergarten through grade three.

**Notwithstanding ORS 327.829(3) and pursuant to Or Laws 2023, c.534 §8, for the 2023-2024 and 2024-2025 school years only, Allowable Costs include Grant Funds used for the benefit of students in grades four and five in addition to being used for the benefit of children and students in prekindergarten through grade three. To constitute Allowable Costs, Grant Funds used for the benefit of students in grades four and five must be:**

**A. Limited as follows:**

**(1) For the 2023-2024 school year, no more than 20 percent of the total GY1 Grant Funds may be used for the benefit of students in grades four and five; and**

**(2) For the 2024-2025 school year, no more than 10 percent of the total GY2 Grant Funds may be used for the benefit of students in grades four and five; and**

**B. Matched by moneys otherwise available to the Grantee.**

**These temporary provisions allowing grant funds to be used for students in grades four and five override the normal restrictions in ORS 327.829(3) for those specified years. Once that period ends, the original restrictions in the statute will once again apply, meaning the use of funding will revert to being used solely for the benefit of children and students in prekindergarten through grade three as stated in the ORS 327.829(3).**

"Early Literacy Success Plan" means the plan as defined under ORS 327.831(3)(a) in the Act and in the Early Literacy Success Rules.

**“Early Literacy Success Rules”** means those administrative rules promulgated under the Act at OAR 581-017-08000801 *et seq.*, as amended from time to time.

**“Early Literacy School Grant”** means the grant awarded to Grantee, through this Grant, by Agency under its Early Literacy Success School Grant program, established in ORS 327.829, to implement the purposes of the Early Literacy Success Initiative, as identified in ORS 327.827. This term may also be referred to as “Early Literacy Success School Grants.”

**“Extended Learning Programs”** as defined in ORS 327.829(2)(b) and the Early Literacy Success Rules are programs that use research-aligned literacy strategies and that are made available to students in early elementary grades by licensed teachers or qualified tutors.

**High-Dosage Tutoring** has the meaning contained in ORS 327.825(3) and the Early Literacy Success Rules.

**“Integrated Guidance”** refers to ODE’s April 2024 guidance entitled **“Aligning for Student Success: Integrated Guidance Update for 2025-27 , available at [https://www.oregon.gov/ode/StudentSuccess/Documents/ODE\\_IntegratedGuidance25-27.pdf](https://www.oregon.gov/ode/StudentSuccess/Documents/ODE_IntegratedGuidance25-27.pdf)**

**“Integrated Plan”** means the plan developed in accordance with the Integrated Guidance.

**“Research-aligned Literacy Strategies”** as defined in ORS 327.825(8), and the Early Literacy Success Rules, means strategies that:

- (a) Are literacy focused;
- (b) Are culturally responsive and relevant to diverse learners;
- (c) Are based on long-term research derived from the Science of Reading and Writing; and
- (d) Apply instructional practices that are developmentally appropriate and specifically designed for students with disabilities and students who are English language learners.

**“Science of Reading and Writing”** as defined in ORS 327.825(9), and the Early Literacy Success Rules, means:

- (a) The convergence of findings from research on reading and writing processes, development and instruction; and
- (b) The teaching of phonemic awareness, phonics, fluency, vocabulary and comprehension through explicit and systematic instruction that can be differentiated to meet the needs of individual learners through developmentally appropriate practices.

6. Exhibit A Section III of the Grant is amended as follows:

### SECTION III. PROJECT ACTIVITIES, SCHEDULE, AND BUDGET

## **Early Literacy Plan Implementation**

Grantee submitted an Early Literacy Success Plan, as that term is defined in the Early Literacy Success Rules, which was accepted by Agency. Grantee shall implement and adhere to the terms of the Early Literacy Success Plan, which shall be incorporated herein to this Grant by reference. In carrying out these Project activities, and without limiting the foregoing requirements of this Grant, Grantee shall at all times comply with the Act and any rules adopted thereunder, including the Early Literacy Success Rules.

## **Early Literacy Plan Match Requirement**

**Pursuant to OAR 581-017-0809 (11), Grantee must advance the Early Literacy Success Plan with at least a 25 percent match of the Grant Funds for each Grant Year using any other fund sources available to the applicant, unless exempt under OAR 581-017-0809 (11)(b).**

## **Allowable Project Activities**

Agency will disburse Grant Funds in accordance with this Exhibit A and the Grant. ~~In accordance with ORS 327.829(3),~~ Grantee shall use Grant Funds only for the Allowable Costs of the Project activities that occur, including expenses incurred, during the Performance Period and in accordance with Grantee's Early Literacy Success Plan. If Grantee does not use the Grant Funds for Allowable Project Costs of the Project, Agency may exercise any of the remedies provided in this Grant.

**In accordance with ORS 327.829(2) and (3), the Grantee shall use Grant Funds for the following activities:**

- a. **The provision of professional development and coaching in research-aligned literacy strategies to teachers and administrators in early elementary grades to improve early literacy instruction.**
- b. **The provision of extended learning programs that use research-aligned literacy strategies and that are made available to students in early elementary grades by licensed teachers or by qualified tutors. The extended learning programs may include:**
  - i. **Home-based summer reading activities for students who need additional support and enrichment; and**
  - ii. **An intensive summer school program for students who need the most additional support and who receive at least 60 hours of direct literacy instruction by an instructional assistant or a licensed teacher trained in research-aligned literacy strategies.**
- c. **The provision of High-Dosage Tutoring to students in early elementary grades that integrates reading and writing and that is delivered by a qualified tutor using developmentally appropriate practices.**
- d. **The adoption of curricula that uses research-aligned literacy strategies and the implementation of that curricula. Funding under this paragraph may be used to:**
  - i. **Purchase curricula and materials that are culturally relevant; or**
  - ii. **Provide professional development and time for teachers and administrators to attend training related to the curricula.**
- e. **The employment of literacy specialists, coaches or interventionists.**

**Indirect/Administrative Costs.** Grantee may be reimbursed for indirect or administrative costs, directly related to allowed expenditures, as a percentage of the Grant Funds disbursed under this Grant, in an amount that does not exceed 5% per the Early Literacy Success Rules. The rates described in this

paragraph override any other verbal or written rate(s) provided by Agency, including in any notice of award provided by Agency’s Electronic Grants Management System (“EGMS”).

7. Exhibit A Section V. of the Grant is amended as follows:

**SECTION V. PROJECT EVALUATION/REPORTING REQUIREMENTS**

If the Performance Period begins prior to the Executed Date, any reports for Project activities shown in this Exhibit A as due prior to the Executed Date must be provided to Agency within 30 days of the Executed Date, if not already provided to Agency despite the lack of an executed Grant. Grantee will not be in default for failure to perform any reporting requirements prior to the Executed Date.

Grantee must submit quarterly financial and performance progress reports as well as a final yearly report on the dates set forth in Section V. This reporting requirement shall survive termination of this Agreement.

**Financial Reports**

Beginning in April of 2024 and continuing each quarter thereafter, Grantee must submit a financial report detailing its expenditure of Grant Funds to the Agency using the form provided by the Agency.

Grantee must submit its quarterly report within the Reporting Window indicated in the tables below.

**Table 1: GY1**

Quarter 3 (Reporting Expenditures between October 1, 2023-March 30, 2024)	Reporting Window (due between April 1, 2024 – April 30, 2024)
Quarter 4 (Reporting Expenditures between April 1, 2023 - <del>September</del> <b>June</b> 30, 2024)	Reporting Window (due between September 1, 2024 - November 30, 2024)

**Table 2: GY2**

Quarter 1 (Reporting Expenditures between July 1, 2024 - September 30, 2024)	Reporting Window (due between October 1, 2024 - October 31, 2024)
Quarter 2 (Reporting Expenditures between October 1, 2024 - December 31, 2024)	Reporting Window (due between January 1, 2025 - January 31, 2025)
Quarter 3 (Reporting Expenditures between January 1, 2025 - March 31, 2025)	Reporting Window (due between April 1, 2025 - April 30, 2025)
Quarter 4 (Reporting Expenditures between April 1, 2025 - <b>June</b> 30, 2025)	Reporting Window (due between <del>November 1, 2025 – November 30, 2025</del> <b>September 1, 2025 – November 30, 2025</b> )

**Table 3: GY3**

<b>Quarter 1 (Reporting Expenditures between July 1, 2025 - September 30, 2025)</b>	<b>Reporting Window (due between October 1, 2025 – November 15, 2025)</b>
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<b><u>Quarter 2 (Reporting Expenditures between October 1, 2025 - December 31, 2025)</u></b>	<b><u>Reporting Window (due between January 1, 2026 - February 15, 2026)</u></b>
<b><u>Quarter 3 (Reporting Expenditures between January 1, 2026 - March 31, 2026)</u></b>	<b><u>Reporting Window (due between April 1, 2026 - May 15, 2026). This Reporting requirement survives termination of the Agreement.</u></b>

If Grantee does not use the Grant Funds for Allowable Costs of the Project, Agency may exercise the remedies provided in Section 17 of this Grant, including without limitation deducting amounts from future disbursements of Grant Funds.

~~Any Grant Funds that are not used by Grantee by September 30 of each grant year must be returned to Agency for deposit in the Statewide Education Initiatives Account.~~

### Annual Reports

In addition to the quarterly financial report, Grantees shall submit an annual report as defined in ORS 327.835. The annual report shall include:

- 1) Grantee’s progress toward achieving the goals established in the Early Literacy Success Plan;
- 2) An inventory of literacy assessments, tools, curricula and digital resources used by Grantee;
  - a) Evidence that the literacy assessments, tools, curricula, and digital resources in the inventory are used with fidelity to research-aligned literacy strategies;
  - b) Evidence that teachers and administrators are provided with professional development for using and implementing (with fidelity and research-aligned strategies) the literacy assessments, tools, curricula, and digital resources in the inventory;
- 3) The number and percentage of teachers for early elementary grades receiving professional development and coaching disaggregated by grade level;
- 4) The number and percentage of students participating in early literacy Extended Learning Programs and their outcomes disaggregated by student group and by grade level;
- 5) The number and percentage of students participating in High-Dosage tutoring and their outcomes disaggregated by student group and by grade level; and
- 6) The curricula being used by Grantee.

Grantee must submit its **GY1** annual report by **no later than November 30, 2024** of each fiscal grant year. **Grantee Must submit its GY2 annual report no later than November 30, 2025. For GY3Q1 – Q3, Grantee must submit quarterly financial and performance progress reports by the deadlines set forth in Table 3 above. This Agreement does not require submission of an annual report for GY3Q1 – Q3 but quarterly reports will be considered in the evaluation of the subsequent annual report as required in a subsequent grant agreement.**

**Early Literacy Success School District Grant Monitoring**

In accordance with ORS 327.835~~837~~**837**, the Agency will monitor Grantee’s performance under this Grant in person, video conferencing or by phone. Agency will provide written notice to Grantee, as provided in Section 19.4 of the Grant, at least 15 days in advance of Agency’s monitoring activities and will schedule in person visits, video conferencing and phone calls.

A Grant monitoring visit or call may cover a variety of topics at Agency’s discretion including but not limited to: Grantee’s compliance with the Early Literacy Success School District Grant purposes; challenges faced by the Grantee in implementing its Plan; Plan outcomes; its budget and expenditure of moneys received for the purposes of the Grant; financial reporting, any expenditure changes, and reconciliation of Grant Funds; or Grantee’s training and technical assistance needs.

Before an on-site visit, the Agency will advise Grantee on how to prepare for the monitoring visit and financial reconciliation, the format for the visit, and which Grantee organizational leaders, staff or others should be involved in the visit. Once a date and time are confirmed, the Grantee should send a notification to its organizational leaders, staff, students and community partners who are expected to participate; identify a meeting location and prepare all necessary monitoring documents and data.

8. Exhibit A Section VI. of the Grant is amended as follows:

**SECTION VI. DISBURSEMENT PROVISIONS**

Grantee will have access to the Grant Funds using EGMS, as outlined below:

<b>Funding Period</b>	<b>Grant Amount</b>
Year <b>GY1</b>	\$51,513.22
Year <b>GY2</b>	TBD <b>\$53,349.77</b>
<b>GY3</b>	<b>\$45,266.37</b>
<b>Disbursement Date</b>	<b>Quarterly Amount</b>
March 1, 2024*	65% of Year 1 Grant Funds
April 1, 2024*	35% of Year 1 Grant Funds
July 1, 2024*	25% of Year 2 Grant Funds
October 1, 2024*	25% of Year 2 Grant Funds
January 1, 2025	25% of Year 2 Grant Funds
April 1, 2025	25% of Year 2 Grant Funds
<b>July 1, 2025</b>	<b>33 % of Year 3 Q1-Q3 Grant Funds</b>
<b>October 1, 2025</b>	<b>33 % of Year 3 Q1-Q3 Grant Funds</b>
<b>January 1, 2026</b>	<b>34 % of Year 3 Q1-Q3 Grant Funds</b>

\*Grant Funds will be released and available to claim as soon as this Grant is fully executed.

**GY3Q1 – Q3 funds are based on projections and require the legislature to act during the 2025 legislative session to appropriate funds to ODE and allows ODE to expend the funds.**

Agency will disburse the Grant Funds in quarterly disbursements, when possible, in advance of expenditures, not on a reimbursement basis. 100% of the Grant Funds for the respective grant year must be drawn down by June 30<sup>th</sup>, each year.



**Any Grant Funds allocated for GY1 that are unexpended by June 30, 2024 may be carried over to GY2 but if not expended by Grantee by June 30, 2025, must be returned to Agency.**

**Any Grant Funds allocated for GY2 that are unexpended by the Grantee by June 30, 2025 must be returned to Agency.**

**Any Grant Funds allocated for GY3Q1 - Q3 that are unexpended by June 30, 2027 must be returned to Agency. This section survives termination of the Agreement.**

### **Allocation and Projections**

- 1. By April 30, 2025, Grantee shall submit an Integrated Plan, inclusive of Early Literacy initiatives, and a Budget for the subsequent biennium, 2025-27. The Plan shall outline how the Grant Funds allocated for GY3Q1 - Q3 will be utilized. Grantee's timely submission of an Integrated Plan and Budget is a condition precedent to Agency's obligation to disburse funds for GY3Q1 - Q3.**
  - 2. The amount of Grant Funds allocated for GY3Q1 - Q3 is based on projections for the continued implementation and sustainability of the approved Early Literacy Success Plan; therefore, Grantee acknowledges and agrees that GY3Q1-Q3 funds may be deducted from future apportionments as necessary to comply with OAR 581-017-0809 (Early Literacy Success School District Grants: Fund Administration).**
9. Revise Terms and Condition - SECTION 7: DISBURSEMENT GENERALLY through SECTION 19: MISCELLANEOUS, are deleted in their entirety and replaced by Attachment 1, to this Amendment 1. The additions to Sections 7.1.2. and 7.2.4 are indicated by **underlining and bold**.

Except as expressly amended above, all other terms and conditions of the Grant are still in full force and effect. Grantee certifies that the representations, warranties and certifications contained in the Grant are true and correct as of the Amendment Effective Date and with the same effect as though made at the time of this Amendment.

EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES IT HAS READ THIS AMENDMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. The Parties further agree that by the exchange of this Amendment electronically, each has agreed to the use of electronic means, if applicable, instead of the exchange of physical documents and manual signatures. By inserting an electronic or manual signature below, each authorized representative acknowledges that it is their signature, that each intends to execute this Amendment, and that their electronic or manual signature should be given full force and effect to create a valid and legally binding agreement.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the dates set forth below.

**STATE OF OREGON acting by and through its Department of Education**

By:   
Contracting Officer

12/4/2024  
Date

**Vernonia SD 47J**

By:   
Authorized Signature

12/12/24  
Date

Jim Helmen  
Printed Name

Superintendent  
Title

93-6000336  
Federal Tax ID Number

**Approved for Legal Sufficiency in accordance with ORS 291.047**

By: Via email  
[Nina Englander, AAG]

11/22/2024  
Date

## Attachment 1

### SECTION 7: DISBURSEMENT GENERALLY

#### 7.1 Disbursement.

**7.1.1** Subject to the availability of sufficient moneys in and from the Funding Source based on Agency's reasonable projections of moneys accruing to the Funding Source, Agency will disburse Grant Funds to Grantee for the allowable Project activities described in Exhibit A that are undertaken during the Performance Period.

**7.1.2** Grantee must provide to Agency any information or detail regarding the expenditure of Grant Funds required under Exhibit A ~~prior to disbursement~~, **with actual expenditures reported quarterly after disbursement**, or as Agency may request.

**7.1.3** Agency will only disburse Grant Funds to Grantee in accordance with Exhibit A. Grantee shall use Grant Funds only for the Allowable Costs of the Project activities that occur, including expenses incurred, during the Performance Period and in accordance with Grantee's Early Literacy Success Plan, as those terms are defined in this Grant and Exhibit A of this Grant. If Agency determines any completed Project activities are not acceptable or any expenses are not allowable and any deficiencies are the responsibility of Grantee, Agency will prepare a detailed written description of the deficiencies within 15 days of receipt of the materials or performance of the activity, and will deliver such notice to Grantee. Grantee must correct any deficiencies at no additional cost to Agency within 15 days. Grantee may resubmit a request for disbursement that includes evidence satisfactory to Agency demonstrating deficiencies were corrected.

**7.2 Conditions Precedent to Disbursement.** Agency's obligation to disburse Grant Funds to Grantee under this Grant is subject to satisfaction of each of the following conditions precedent:

**7.2.1** Agency has received sufficient funding, appropriations, expenditure limitation, allotments or other necessary expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement from the Funding Source;

**7.2.2** No default as described in Section 15 has occurred; and

**7.2.3** Grantee's representations and warranties set forth in Section 8 are true and correct on the date of disbursement(s) with the same effect as though made on the date of disbursement.

**7.2.4** **Grantee has timely submitted: (1) an Integrated Plan and Budget as required by Exhibit A, Section VI of this Agreement and (2) a complete application for the Early Literacy Success School Grant by the close of the application period pursuant to OAR 581-017-0808 and OAR 581-017-0809. This Section 7.2.4 applies only to**

**GY3Q1 - Q3 funds.**

- 7.3 No Duplicate Payment.** Grantee may use other funds in addition to the Grant Funds to complete the Project; provided, however, the Grantee may not credit or pay any Grant Funds for Project costs that are paid for with other funds and would result in duplicate funding.
- 7.4 Suspension of Funding and Project.** Agency may by written notice to Grantee, temporarily cease funding and require Grantee to stop all, or any part, of the Project dependent upon Grant Funds for a period of up to 180 days after the date of the notice, if Agency has or reasonably projects that it will have insufficient funds from the Funding Source to disburse the full amount of the Grant Funds. Upon receipt of the notice, Grantee must immediately cease all Project activities dependent on Grant Funds, or if that is impossible, must take all necessary steps to minimize the Project activities allocable to Grant Funds.327.831

If Agency subsequently projects that it will have sufficient funds, Agency will not Grantee that it may resume activities. If sufficient funds do not become available, Grantee and Agency will work together to amend this Grant to revise the amount of Grant Funds and Project activities to reflect the available funds. If sufficient funding does not become available or an amendment is not agreed to within a period of 180 days after issuance of the notice, Agency will either (i) cancel or modify its cessation order by a supplemental written notice or (ii) terminate this Grant as permitted by either the termination at Agency's discretion or for cause provisions of this Grant.

**SECTION 8: REPRESENTATIONS AND WARRANTIES**

- 8.1 Organization/Authority.** Grantee represents and warrants to Agency that:
- 8.1.1** Grantee is a District duly organized and validly existing;
  - 8.1.2** Grantee has all necessary rights, powers and authority under any organizational documents and under Oregon Law to (i) execute this Grant, (ii) incur and perform its obligations under this Grant, and (iii) receive financing, including the Grant Funds, for the Project;
  - 8.1.3** This Grant has been duly executed by Grantee and when executed by Agency, constitutes a legal, valid and binding obligation of Grantee enforceable in accordance with its terms;
  - 8.1.4** If applicable and necessary, the execution and delivery of this Grant by Grantee has been authorized by an ordinance, order or resolution of its governing body, or voter approval, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings; and
  - 8.1.5** There is no proceeding pending or threatened against Grantee before any court or governmental authority that if adversely determined would materially adversely affect the Project or the ability of Grantee to carry out the Project.
- 8.2 False Claims Act.** Grantee acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) made by (or caused by) Grantee that pertains to this Grant or to the Project. Grantee certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited

by ORS 180.755. Grantee further acknowledges in addition to the remedies under Section 16, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Grantee.

- 8.3 No limitation.** The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations or warranties provided by Grantee.

## SECTION 9: OWNERSHIP

- 9.1 Intellectual Property Definitions.** As used in this Section and elsewhere in this Grant, the following terms have the meanings set forth below:

“Third Party Intellectual Property” means any intellectual property owned by parties other than Grantee or Agency.

“Work Product” means every invention, discovery, work of authorship, trade secret or other tangible or intangible item Grantee is required to create or deliver as part of the Project, and all intellectual property rights therein.

- 9.2 Grantee Ownership.** Grantee must deliver copies of all Work Product as directed in Exhibit A. Grantee retains ownership of all Work Product, and grants Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, to reproduce, to prepare derivative works based upon, to distribute, to perform and to display the Work Product, to authorize others to do the same on Agency’s behalf, and to sublicense the Work Product to other entities without restriction.
- 9.3 Third Party Ownership.** If the Work Product created by Grantee under this Grant is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Grantee must secure an irrevocable, non-exclusive, perpetual, royalty-free license allowing Agency and other entities the same rights listed above for the pre-existing element of the Third party Intellectual Property employed in the Work Product. If state or federal law requires that Agency or Grantee grant to the United States a license to any intellectual property in the Work Product, or if state or federal law requires Agency or the United States to own the intellectual property in the Work Product, then Grantee must execute such further documents and instruments as Agency may reasonably request in order to make any such grant or to assign ownership in such intellectual property to the United States or Agency.

## SECTION 10: CONFIDENTIAL INFORMATION

- 10.1 Confidential Information Definition.** Grantee acknowledges it and its employees or agents may, in the course of performing its responsibilities, be exposed to or acquire information that is: (i) confidential to Agency or Project participants or (ii) the disclosure of which is restricted under federal or state law, including without limitation: (a) personal information, as that term is used in ORS 646A.602(12), (b) social security numbers, and (c) information protected by the federal Family Educational Rights and Privacy Act under 20 USC § 1232g (items (i) and (ii) separately and collectively “Confidential Information”).

- 10.2 Nondisclosure.** Grantee agrees to hold Confidential Information as required by any applicable law and in all cases in strict confidence, using at least the same degree of care Grantee uses in maintaining the confidentiality of its own confidential information. Grantee may not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information except as is allowed by law and for the Project activities and Grantee must advise each of its employees and agents of these restrictions. Grantee must assist Agency in identifying and preventing any unauthorized use or disclosure of Confidential Information. Grantee must advise Agency immediately if Grantee learns or has reason to believe any Confidential Information has been, or may be, used or disclosed in violation of the restrictions in this Section. Grantee must, at its expense, cooperate with Agency in seeking injunctive or other equitable relief, in the name of Agency or Grantee, to stop or prevent any use or disclosure of Confidential Information. At Agency's request, Grantee must return or destroy any Confidential Information. If Agency requests Grantee to destroy any Confidential Information, Grantee must provide Agency with written assurance indicating how, when and what information was destroyed.
- 10.3 Identity Protection Law.** Grantee must have and maintain a formal written information security program that provides safeguards to protect Confidential Information from loss, theft, and disclosure to unauthorized persons, as required by the Oregon Consumer Information Protection Act, ORS 646A.600-646A.628. If Grantee or its agents discover or are notified of a potential or actual "Breach of Security", as defined by ORS 646A.602(1)(a), or a failure to comply with the requirements of ORS 646A.600-628, (collectively, "Breach") with respect to Confidential Information, Grantee must promptly but in any event within one calendar day (i) notify the Agency Grant Manager of such Breach and (ii) if the applicable Confidential Information was in the possession of Grantee or its agents at the time of such Breach, Grantee must (a) investigate and remedy the technical causes and technical effects of the Breach and (b) provide Agency with a written root cause analysis of the Breach and the specific steps Grantee will take to prevent the recurrence of the Breach or to ensure the potential Breach will not recur. For the avoidance of doubt, if Agency determines notice is required of any such Breach to any individual(s) or entity(ies), Agency will have sole control over the timing, content, and method of such notice, subject to Grantee's obligations under applicable law.
- 10.4 Subgrants/Contracts.** Grantee must require any subgrantees, contractors or subcontractors under this Grant who are exposed to or acquire Confidential Information to treat and maintain such information in the same manner as is required of Grantee under subsections 10.1 and 10.2 of this Section.
- 10.5 Background Check.** If requested by Agency and permitted by law, Grantee's employees, agents, contractors, subcontractors, and volunteers that perform Project activities must agree to submit to a criminal background check prior to performance of any Project activities or receipt of Confidential Information. Background checks will be performed at Grantee's expense. Based on the results of the background check, Grantee or Agency may refuse or limit (i) the participation of any Grantee employee, agent, contractor, subgrantee, or volunteer, in Project activities or (ii) access to Agency Personal Information or Grantee premises.

## **SECTION 11: INDEMNITY/LIABILITY**

- 11.1 Indemnity.** Grantee must defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorneys' fees, resulting from, arising out of, or relating to the activities of Grantee or its officers, employees, subgrantees, contractors, subcontractors, or agents under this Grant (each of the foregoing individually or collectively a "Claim" for purposes of this Section). If legal limitations apply to the indemnification ability of Grantee, this indemnification must be for the maximum amount of funds available for expenditure, including any available contingency funds, insurance, funds available under ORS 30.260 to 30.300 or other available non-appropriated funds.
- 11.2 Defense.** Grantee may have control of the defense and settlement of any Claim subject to this Section. But neither Grantee nor any attorney engaged by Grantee may defend the Claim in the name of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon. Nor may Grantee settle any Claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event the State of Oregon determines Grantee is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or an important governmental principle is at issue and the State of Oregon desires to assume its own defense. Grantee may not use any Grant Funds to reimburse itself for the defense of or settlement of any Claim.
- 11.3 Limitation.** Except as provided in this Section, neither Party will be liable for incidental, consequential, or other indirect damages arising out of or related to this Grant, regardless of whether the damages or other liability is based in contract, tort (including negligence), strict liability, product liability or otherwise. Neither Party will be liable for any damages of any sort arising solely from the termination of this Grant in accordance with its terms.

## **SECTION 12: INSURANCE**

- 12.1 Private Insurance.** If Grantee is a private entity, or if any contractors, subcontractors, or subgrantees used to carry out the Project are private entities, Grantee and any private contractors, subcontractors or subgrantees must obtain and maintain insurance covering Agency in the types and amounts indicated in Exhibit B.
- 12.2 Public Body Insurance.** If Grantee is a "public body" as defined in ORS 30.260, Grantee agrees to insure any obligations that may arise for Grantee under this Grant, including any indemnity obligations, through (i) the purchase of insurance as indicated in Exhibit B or (ii) the use of self- insurance or assessments paid under ORS 30.282 that is substantially similar to the types and amounts of insurance coverage indicated on Exhibit B, or (iii) a combination of any or all of the foregoing.

## **SECTION 13: GOVERNING LAW, JURISDICTION**

This Grant is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim")

between Agency or any other agency or department of the State of Oregon, or both, and Grantee that arises from or relates to this Grant must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event may this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. GRANTEE, BY EXECUTION OF THIS GRANT, HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURTS.

## **SECTION 14: ALTERNATIVE DISPUTE RESOLUTION**

The Parties should attempt in good faith to resolve any dispute arising out of this Grant. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Grant. 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. Each Party will bear its own costs incurred for any mediation or non-binding arbitration.

## **SECTION 15: DEFAULT**

- 15.1 Grantee.** Grantee will be in default under this Grant upon the occurrence of any of the following events:
- 15.1.1** Grantee fails to use the Grant Funds for the intended purpose described in Exhibit A or otherwise fails to perform, observe or discharge any of its covenants, agreements or obligations under this Grant;
  - 15.1.2** Any representation, warranty or statement made by Grantee in this Grant or in any documents or reports relied upon by Agency to measure the Project, the expenditure of Grant Funds or the performance by Grantee is untrue in any material respect when made; or
  - 15.1.3** A petition, proceeding or case is filed by or against Grantee under any federal or state bankruptcy, insolvency, receivership or other law relating to reorganization, liquidation, dissolution, winding-up or adjustment of debts; in the case of a petition filed against Grantee, Grantee 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; or Grantee becomes insolvent or admits its inability to pay its debts as they become due, or Grantee makes an assignment for the benefit of its creditors.
- 15.2 Agency.** Agency will be in default under this Grant if, after 15 days written notice specifying the nature of the default, Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Grant; provided, however, Agency will not be in default if Agency fails to disburse Grant Funds because there is insufficient expenditure authority for, or moneys available from, the Funding Source.



## SECTION 16: REMEDIES

- 16.1 Agency Remedies.** In the event Grantee is in default under Section 15.1, Agency may, at its option, pursue any or all of the remedies available to it under this Grant and at law or in equity, including, but not limited to: (i) termination of this Grant under Section 18.2, (ii) reducing or withholding payment for Project activities or materials that are deficient or Grantee has failed to complete by any scheduled deadlines, (iii) requiring Grantee to complete, at Grantee's expense, additional activities necessary to satisfy its obligations or meet performance standards under this Grant, (iv) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, (v) exercise of its right of recovery of overpayments under Section 17 of this Grant or setoff, or both, or (vi) declaring Grantee ineligible for the receipt of future awards from Agency. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- 16.2 Grantee Remedies.** In the event Agency is in default under Section 15.2 and whether or not Grantee elects to terminate this Grant, Grantee's sole monetary remedy will be, within any limits set forth in this Grant, reimbursement of Project activities completed and accepted by Agency and authorized expenses incurred, less any claims Agency has against Grantee. In no event will Agency be liable to Grantee for any expenses related to termination of this Grant or for anticipated profits.

## SECTION 17: WITHHOLDING FUNDS, RECOVERY

Agency may withhold from disbursements of Grant Funds due to Grantee, or Grantee must return to Agency within 30 days of Agency's written demand:

- 17.1** Any Grant Funds paid to Grantee under this Grant, or payments made under any other agreement between Agency and Grantee, that exceed the amount to which Grantee is entitled;
- 17.2** Any Grant Funds received by Grantee that remain unexpended or contractually committed for payment of the Project at the end of the Performance Period;
- 17.3** Any Grant Funds determined by Agency to be spent for purposes other than allowable Project activities or Allowable Costs of the Project activities, as that term is defined in Exhibit A; or
- 17.4** Any Grant Funds requested by Grantee as payment for deficient activities or materials.

## SECTION 18: TERMINATION

- 18.1 Mutual.** This Grant may be terminated at any time by mutual written consent of the Parties.
- 18.2 By Agency.** Agency may terminate this Grant as follows:
- 18.2.1** At Agency's discretion, upon 30 days advance written notice to Grantee;
- 18.2.2** Immediately upon written notice to Grantee, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in

Agency’s reasonable administrative discretion, to perform its obligations under this Grant;

**18.2.3** Immediately upon written notice to Grantee, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency’s performance under this Grant is prohibited or Agency is prohibited from funding the Grant from the Funding Source; or

Immediately upon written notice to Grantee, if Grantee is in default under this Grant and such default remains uncured 15 days after written notice thereof to Grantee.

**18.3 By Grantee.** Grantee may terminate this Grant as follows:

**18.3.1** If Grantee is a governmental entity, immediately upon written notice to Agency, if Grantee fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to perform its obligations under this Grant.

**18.3.2** If Grantee is a governmental entity, immediately upon written notice to Agency, if applicable laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project activities contemplated under this Grant are prohibited by law or Grantee is prohibited from paying for the Project from the Grant Funds or other planned Project funding; or

**18.3.3** Immediately upon written notice to Agency, if Agency is in default under this Grant and such default remains uncured 15 days after written notice thereof to Agency.

**18.4 Cease Activities.** Upon receiving a notice of termination of this Grant, Grantee must immediately cease all activities under this Grant, unless Agency expressly directs otherwise in such notice. Upon termination, Grantee must deliver to Agency all materials or other property that are or would be required to be provided to Agency under this Grant or that are needed to complete the Project activities that would have been performed by Grantee.

## **SECTION 19: MISCELLANEOUS**

**19.1 Conflict of Interest.** Grantee by signature to this Grant declares and certifies the award of this Grant and the Project activities to be funded by this Grant, create no potential or actual conflict of interest, as defined by ORS Chapter 244, for a director, officer or employee of Grantee.

**19.2 Nonappropriation.** Agency’s obligation to pay any amounts and otherwise perform its duties under this Grant is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Grant. Nothing in this Grant may be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of Agency.

**19.3 Amendments.** The terms of this Grant may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.

- 19.4 Notice.** Except as otherwise expressly provided in this Grant, any notices to be given under this Grant must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Grant Manager at the physical address or email address set forth in this Grant, or to such other addresses as either Party may indicate pursuant to this Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.
- Survival.** All rights and obligations of the Parties under this Grant will cease upon termination of this Grant, other than the rights and obligations arising under Sections 11, 13, 14, 16, 17 and subsection 19.5 hereof and those rights and obligations that by their express terms survive termination of this Grant; provided, however, termination of this Grant will not prejudice any rights or obligations accrued to the Parties under this Grant prior to termination.
- 19.5 Severability.** The Parties agree if any term or provision of this Grant 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 will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Grant did not contain the particular term or provision held to be invalid.
- 19.6 Counterparts.** This Grant may be executed in several counterparts, all of which when taken together constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Grant so executed constitutes an original.
- 19.7 Compliance with Law.** In connection with their activities under this Grant, the Parties must comply with all applicable federal, state and local laws.
- 19.8 Intended Beneficiaries.** Agency and Grantee are the only parties to this Grant and are the only parties entitled to enforce its terms. Nothing in this Grant provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Grant.
- 19.9 Assignment and Successors.** Grantee may not assign or transfer its interest in this Grant without the prior written consent of Agency and any attempt by Grantee to assign or transfer its interest in this Grant without such consent will be void and of no force or effect. Agency's consent to Grantee's assignment or transfer of its interest in this Grant will not relieve Grantee of any of its duties or obligations under this Grant. The provisions of this Grant will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.
- 19.10 Contracts and Subgrants.** Grantee may not, without Agency's prior written consent, enter into any contracts or subgrants for any of the Project activities required of Grantee under this Grant. Agency's consent to any contract or subgrant will not relieve Grantee of any of its duties or obligations under this Grant.
- 19.11 Time of the Essence.** Time is of the essence in Grantee's performance of the Project activities under this Grant.

- 19.12 Records Maintenance and Access.** Grantee must maintain all financial records relating to this Grant in accordance with generally accepted accounting principles. In addition, Grantee must maintain any other records, whether in paper, electronic or other form, pertinent to this Grant in such a manner as to clearly document Grantee’s performance. All financial records and other records, whether in paper, electronic or other form, that are pertinent to this Grant, are collectively referred to as “Records.” Grantee acknowledges and agrees Agency and the Oregon Secretary of State’s Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Grantee must retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Grant, or until the conclusion of any audit, controversy or litigation arising out of or related to this Grant, whichever date is later.
- 19.13 Headings.** The headings and captions to sections of this Grant have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Grant.
- 19.14 Grant Documents.** This Grant consists of the following documents, which are incorporated by this reference and listed in descending order of precedence:
- This Grant less all exhibits
  - Exhibit A (the “Project”)
  - Exhibit B (Insurance)
- 19.15 Merger, Waiver.** This Grant and all exhibits and attachments, if any, constitute 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 Grant. No waiver or consent under this Grant binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given.