

EAST MULTNOMAH SOIL & WATER CONSERVATION DISTRICT

PARTNERS IN CONSERVATION PROGRAM

PROJECT FUNDING AGREEMENT

Between

XYZ Organization (“Partner”)

And

East Multnomah Soil and Water Conservation District (“EMSWCD”)

Project No: EMSWCD-PIC-22-### Project Name: XYZ Organization Project

1. PURPOSE

The purpose of this Project Funding Agreement is to clarify the respective responsibilities of EMSWCD and Partner in carrying out a project (“Project”), as described in Exhibit A, funded by the EMSWCD’s Partners in Conservation Program (PIC). The funding granted by the EMSWCD pursuant to this Agreement is intended to be a “grant” as that term is defined in ORS 279A.010(1)(k)(ii). The EMSWCD’s obligations shall be limited to providing funding and monitoring grant conditions. Therefore, as provided by ORS 279A.025(2)(d), the Oregon public contracting code does not apply to this Project.

2. COMPLETE AGREEMENT

This document constitutes the entire agreement between the EMSWCD and the Partner. It incorporates and includes by this reference the following documents:

- Exhibit A: Scope of Work/Timeline and Project Locator Map
- Exhibit B: Project Budget
- Exhibit C: Indemnity Agreement for Third Party Contractors
- IRS W-9 form if not already on file (to be kept in a secure file in the EMSWCD office)

3. EFFECTIVE DATE AND DURATION

This Agreement shall be effective upon signing by all parties, and shall terminate on June 30, ####, unless earlier terminated as provided in Section 13 of this Agreement. This Agreement may be extended or amended by mutual agreement of the parties in writing. Work related to this Project is anticipated to be carried out between (dates) ####, 2020 and ####, 202X.

4. FUNDING

- 4.1 The EMSWCD awards to Partner funding in an amount not to exceed \$#####, for the purpose of carrying out the duties and obligations described in this Agreement. EMSWCD funds shall be awarded on a reimbursement basis, based on written documentation of the Partner’s actual costs. Costs shall be subject to approval by the EMSWCD. Work that takes place before or after the effective dates of this Agreement will not be reimbursed.

SAMPLE DOCUMENT: Actual Funding Agreement provided in electronic format in ZoomGrants.

- 4.2 If the funding amount is more than \$10,000, the Partner will secure matching funds (including cash, in-kind contributions, or a combination thereof) to support the Project, in an amount equal to or exceeding the amount provided by the EMSWCD, as provided in Exhibit B.

5. PARTNER RESPONSIBILITIES

The Partner is responsible for managing the Project. The Partner is fully accountable for all EMSWCD funds received. EMSWCD funds may be used only for purposes approved by the EMSWCD.

The Partner shall:

- A. Determine the need for and obtain any necessary permits before beginning work for which a permit is required.
- B. Purchase any materials needed for the Project.
- C. Carry out, hire, or contract for activities of the Project, as described in Exhibit A. The Partner shall be responsible for the employment, supervision and work assignments of its employees and/or contractors, and for executing and enforcing any contracts and agreements entered into by the Partner to carry out the Project.
- D. Rent or provide any equipment needed for carrying out the Project.
- E. If the Partner contracts with any contractor(s) to perform work related to this Agreement, the Partner will have the contractor(s) sign Exhibit C: Indemnity Agreement for Third Party Contractors and will forward that agreement to the EMSWCD.
- F. It is highly recommended that the Partner use only contractors who are licensed, bonded, and insured.
- G. Ensure that Project work is carried out as described in Exhibit A.
- H. Within six (6) months of the effective date of this Agreement, submit a progress report to the EMSWCD that describes: a) the activities and accomplishments that have resulted from the Project; and b) a detailed accounting of the expenditure of EMSWCD funds to date. Failure to make progress within a reasonable period of time may require an amendment to this Agreement to adjust the timeline and/or Scope of Work. Continued delays may result in termination of the Agreement.
- I. Provide the EMSWCD with all receipts and invoices (original or photocopy) within thirty (30) days after Project completion. For projects involving more than one phase, conservation practice, or product, reimbursement may be requested (accompanied by receipts/invoices) as phases, practices, or products are completed, rather than at Project completion. Payment will not be made until the EMSWCD has received the appropriate documentation for that reimbursement request. Expenditures exceeding budget allocations by more than 10% must be pre-approved by the EMSWCD.
- J. Maintain documentation of the Partner's (and Landowner's, if applicable) in-kind contribution of labor and materials, and of matching funds and in-kind contributions received from other sources. Partner must retain copies of documentation for all budget line items listed in the Itemized Statement of Match form for EMSWCD review or audit purposes.
- K. Fill out, sign and submit to the EMSWCD an IRS form W-9 with or prior to request for reimbursement.
- L. Complete the Project by the date provided in Section 3 of this Agreement.
- M. Submit a written Project Completion Report (with photos) to the EMSWCD within sixty (60) days of the completion of the Project, or before the termination date of this Agreement, whichever occurs first. The EMSWCD may withhold ten percent (10%) of grant funds until the Project Completion Report is submitted and approved.

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- N. On the ground project: Manage the property and maintain the funded practices for their design life (or ensure that the Landowner does so).
- O. Educational Project: Develop educational materials that will be usable for at least two years, and purchase items for workshops, etc. that are of sufficient quality that they will be usable for at least two years.
- P. Repair or replace work that is damaged by normal use or ordinary natural events. (The Partner is not responsible for repair or replacement due to catastrophic natural events.)
- Q. For the design life of the Project, permit the EMSWCD, its officers, agents, employees, contractors and invitees to enter onto the property where the Project is located for purposes of inspecting the work as it is carried out, and to monitor the condition and effectiveness of the Project following completion. The EMSWCD shall provide reasonable notice to the Partner of such entry, which shall be at times agreeable to the Partner.
- R. At the EMSWCD's discretion, allow a sign to be placed at the site (at EMSWCD's expense) indicating Project type and funding source, and/or allow one or more tours of the Project site if scheduled at a convenient time.
- S. Provide recognition of the EMSWCD in outreach and educational materials. This may include mention of the EMSWCD as a sponsor/funder on the Partner's website, newsletters, annual reports, and at Project-related events, and inclusion of the EMSWCD's name and logo on workshop materials, as applicable.

6. EMSWCD RESPONSIBILITIES

The EMSWCD is responsible for providing partial funding to the Partner as described below and in the Program budget in Exhibit B, and for establishing and monitoring grant conditions.

The EMSWCD shall:

- A. Reimburse the Partner for agreed-upon Project costs incurred during the period of this Agreement, in the amounts established under Exhibit B to this Agreement.
- B. Monitor progress and effectiveness of the Project at agreed-upon frequencies.
- C. Prepare reports about the Project, including but not limited to the results and condition of the work, which shall be public records.
- D. Any time it is determined that the work to be completed under this Agreement is not being done in the prescribed time and manner, advise the Partner of any issues or concerns and request, if necessary, an amendment to this Agreement to reflect any adjustments, including the dollar amount of the contract.
- E. If the Partner receives payments from the EMSWCD exceeding \$600 in any calendar year, the payments may be considered reportable income by the IRS. The EMSWCD may submit a 1099-MISC form to the IRS and to the Partner for the tax year(s) if applicable. The Partner should consult a tax advisor about reporting the payments as income and about whether the Project-related expenses may be included as deductions on the Partner's tax returns.

7. PROJECT MANAGERS

All reports, correspondence, and required documentation shall be directed to the appropriate Project Manager.

For the EMSWCD:

Suzanne Easton, Grants Manager

For the Partner:

Project Manager
XYZ Organization

East Multnomah Soil & Water
Conservation District
5211 N Williams Ave
Portland, OR 97217
Phone: 503-935-5370
Email: suzanne@emswcd.org

Street Address
Portland, OR 97XXX
Phone: 503-###-####
Email: contact@xyzorg.org

8. OWNERSHIP

- 8.1 On-the-ground Project: After completion of the Project, all improvements funded with EMSWCD funds and affixed to the land shall become the property of the Partner or Landowner, whichever is applicable. Improvements not affixed to the land and funded with EMSWCD funds, such as unused/excess materials and portable equipment, will become the property of the EMSWCD at the EMSWCD's discretion.
- 8.2 Educational Project: After completion of the Project, all educational materials and other products funded with EMSWCD funds, including any intellectual property rights, shall become the property of the Partner. Supplies not used for the Project and funded with EMSWCD funds, such as unused/excess materials and portable equipment, will become the property of the EMSWCD at the EMSWCD's discretion. If transferred to the EMSWCD, upon receiving permission from the Partner (or other original author), the EMSWCD may use these products, at no additional cost to the EMSWCD, in its own outreach and program work, and may incorporate all or part of the content of these products into EMSWCD materials (such as workshop notebooks and lists of resources). In doing so, the EMSWCD must acknowledge the Partner (or other original author) as the author/developer of the relevant materials.

9. COMPLIANCE WITH APPLICABLE LAWS

The Partner will comply with all federal, state and local laws and ordinances applicable to the work to be done under this Agreement.

10. LIABILITY AND INDEMNIFICATION

- 10.1. The Partner and the EMSWCD shall each be solely responsible for any damage or any third-party liability which may arise from that party's respective acts or omissions under this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution.
- 10.2. In carrying out its duties and obligations under this Agreement, each Party shall indemnify, hold harmless, and defend the EMSWCD, its officers, directors, agents and employees, against any and all losses, claims, damages and expenses, including reasonable and necessary attorney's fees, to the extent any such losses, claims, damages and expenses are due to the acts or omissions of the indemnifying Party, its officers, directors, agents and employees. The Partner shall have no obligation to indemnify the EMSWCD should any such losses, claims, damages and expenses result, in whole or in part, from acts, omissions, willful misconduct or gross negligence of the EMSWCD, its affiliates, officers, directors, agents and employees.

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- 10.3. Any contractor or other third party that enters into an agreement with, or on behalf of, the Partner pursuant to this Agreement shall be required to execute the Indemnity Agreement attached hereto as Exhibit C.

11. NON-DISCRIMINATION

For work related to this Agreement, the Partner agrees to comply with the EMSWCD's policy of prohibiting discrimination on the basis of race, color, national origin, age, disability, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisals, or because all or part of an individual's income is derived from any public assistance program.

12. RETURN OF EMSWCD FUNDS

- 12.1. If the Partner fails to perform the project as identified in Exhibit A or if any of the practices or products funded under this Agreement fail within their design life due to circumstances within the Partner's control (e.g., neglect, failure to protect and maintain the practices, destruction of the practice before the expiration of its design life, or other actions which cause the funded practice to become non-viable), the Partner hereby agrees to refund to the EMSWCD some or all of the funds provided for those practices or products, as determined by the EMSWCD.
- 12.2. The Partner shall not be responsible for, and the EMSWCD shall not be obligated to replace, failed practices or products if such failure is caused by force majeure (e.g., catastrophic weather events, earthquake, wildfire, drought, or other significant events beyond either party's control).
- 12.3. Any funds disbursed to the Partner under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement must be returned to the EMSWCD not later than thirty (30) days after the EMSWCD's written demand.

13. TERMINATION OF AGREEMENT

- 13.1 The EMSWCD or the Partner may terminate this Agreement at any time by giving thirty (30) days' written notice to the other.
- 13.2 If a notice of termination is given, the Partner shall halt work and shall make all reasonable efforts to cancel any commitments that are dependent on EMSWCD funds.
- 13.3 In the event of termination, the EMSWCD's sole obligation shall be to reimburse Partner for actual, documented costs incurred up to and including the date of termination.

I have read this Agreement including any attached Exhibits. I understand the Agreement and agree to be bound by its terms.