

## STATE OF OREGON GENERAL FUND GRANT CONTRACT

Project Name: Eastern Oregon University Grand Staircase

Grant #21-208

This grant contract (“Contract”), dated as of the date the Contract is fully executed and all required approvals are obtained, if any, is made by the State of Oregon, acting by and through the Higher Education Coordinating Commission (“HECC”) and Eastern Oregon University (“Grantee”) for financing of the project referred to above and described in Exhibit A (the “Project”). This Contract becomes effective only when fully signed and approved as required by applicable law. This Contract includes the following exhibits, incorporated into and made a part of this Contract:

- Exhibit A: Project Description and Budget
- Exhibit B: Progress Reports, Performance Plan, and Spend Plan
- Exhibit C: Form of Disbursement Request
- Exhibit D: Certificate of Final Completion

In the event of a conflict between the body of this Contract and the exhibits, the following order or precedence will control: this Contract less any exhibits, Exhibit A, B, C, then D.

### SECTION 1 – DEFINITIONS OF KEY TERMS

The following capitalized terms have the meanings assigned below.

“Authorizing Legislation” means HB 5202 section 413, as may be amended from time to time.

“Cost-Incurred Deadline” means that the Grantee must incur its Costs of the Project no later than December 31, 2024.

“Costs of the Project” means Grantee’s actual costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for the Project. A cost is considered to have been incurred if Grantee has incurred an Obligation with respect to such cost by the Cost-Incurred Deadline.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Expenditure Deadline” means that the date Grantee must expend grant funds to cover its Costs of the Project no later than December 31, 2026.

“Grant Amount” means grant funds in an amount not to exceed \$4,000,000.

“Obligation” means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.

“ORS” means the Oregon Revised Statutes.

“Project” means the project described in Exhibit A.

“Project Budget” means the budget for the Project described in Exhibit A.

“Project Closeout Deadline” means December 31, 2026. All project expenditures and disbursement confirmations must be shared with HECC Postsecondary Finance and Capital no later than December 31, 2026.

“Project Completion Date” means the date on which Grantee completes the Project.

“Project Completion Deadline” means December 31, 2026. All the projects obligations in contracts, subawards, and similar transactions must be completed by this date.

“State” means the State of Oregon, acting by and through HECC.

## SECTION 2 – FINANCIAL ASSISTANCE

The State shall provide the Grantee, and the Grantee shall accept from the State, a grant (the “Grant”) in an aggregate amount not to exceed the Grant Amount.

## SECTION 3 – DISBURSEMENTS

- A. Disbursement Requests. The Grantee must request disbursement of the Grant Amount using the Disbursement Request form attached to this Contract as Exhibit C, containing the information and certifications shown in Exhibit C. Grantee’s disbursement requests shall be submitted on or about the following fiscal quarter starting dates and in equal amounts to exhaust the entirety of the Grant Amount:
- As soon as practicable following execution of this Contract
  - Fiscal quarter starting October 1, 2022
  - Fiscal quarter starting January 1, 2023
  - Fiscal quarter starting April 1, 2023
- B. Conditions to Disbursements. As to any disbursement, the State has no obligation to disburse funds unless all of the following conditions are met on the date of disbursement:
- (1) There is no Default or Event of Default.
  - (2) The representations and warranties made by the Grantee in this Contract are true and correct as if made on such date.

(3) [reserved]

(4) Any conditions to disbursement elsewhere in this Contract are met.

- C. Conditions to the State's Obligations. The State's obligation to make, and the Grantee's right to request, disbursements under this Contract terminates on the Project Closeout Deadline.
- D. Disbursement by the State. Upon receipt and approval of a Disbursement Request and satisfaction of the conditions set forth in Section 3.B and Section 3.C, the State shall disburse or cause to be disbursed the portion of the Grant Amount so requested to the Grantee within 30 days of the date of such Disbursement Request.

#### SECTION 4 – USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Grantee shall use disbursements of the Grant only for Costs of the Project and in compliance with the Grantee's certifications in its Disbursement Request. Grantee must expend the entire Grant Amount on Costs of the Project no later than the Expenditure Deadline.
- B. Unexpended Proceeds. If the full Grant Amount is not required to pay Costs of the Project that were incurred by the Grantee on or before the Project Completion Deadline, the State will retain the excess or if the grant funds are in Grantee's possession, Grantee will return to the State the excess amount.

#### SECTION 5 – REPRESENTATIONS AND WARRANTIES

State and the Grantee each, as separate parties, represent and warrant to the other:

- A. Organization and Authority.
- (1) The party is a public entity, validly created and existing under the laws of the State of Oregon and authorized by law to either grant (State) or receive (Grantee) state aid.
  - (2) The party has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract, (b) incur and perform its obligations under this Contract, and (c) grant (State) or receive (Grantee) financing for the Project.
  - (3) This Contract has been duly authorized and executed by an authorized representative of the party, and when executed by the both parties, is legal, valid and binding, and enforceable in accordance with its terms.
- B. Full Disclosure. The Grantee has disclosed in writing to the State all facts that may materially adversely affect the Project, or the ability of Grantee to perform all obligations required by this Contract. The information contained in this Contract is true and accurate in all respects.

- C. Pending Litigation. The Grantee has disclosed in writing to the State all proceedings pending (or to the knowledge of the Grantee, threatened) against or affecting the Grantee, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of the Grantee to perform all obligations required by this Contract.
- D. No Defaults.
- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract.
  - (2) The Grantee has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of the Grantee to perform all obligations required by this Contract.
- E. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract will not: (i) cause a breach of a material agreement, indenture, mortgage, deed of trust, or other instrument, to which the Grantee is a party or by which the Project or any of the Grantee's property or assets may be bound; (ii) violate any provision of the charter or other document pursuant to which the Grantee was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to the Grantee, the Project or the Grantee's properties or operations.
- F. Governmental Consent. The Grantee has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract and undertaking and completion of the Project.

## SECTION 6 – COVENANTS OF GRANTEE

Grantee covenants as follows:

- A. Compliance with Laws. The Grantee shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract and the Project, including but not limited to, the American Rescue Plan Act Coronavirus State Fiscal Recovery Fund (codified as 42 U.S.C. 802), and all implementing regulations 31 CFR 35.1 et seq. and other guidance promulgated by the U.S. Department of the Treasury (hereafter collectively called "CSFRF"). These laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.
- B. Project Reporting Obligations.
- (1) The Grantee shall furnish progress reports to DAS and to HECC, in a form substantially similar to Exhibit B, attached to this Contract. The report shall describe the progress of the Project as measured against an established Project timeline of deliverables or objectives

and describe expenditures incurred to date as measured against the Project Budget. The progress report deadlines are stated in Exhibit B.

- (2) The Grantee shall submit to HECC a Performance Plan and Spend Plan as specified in Exhibit B.
- (3) Promptly after the Project Completion Date and in no event later than the Project Closeout Deadline, the Grantee shall furnish to HECC a final report on the Grantee's expenditure of the Grant Amount and a certificate of occupancy, if applicable, for the Project. In addition, the Grantee shall submit a Certificate of Final Completion by the Project Closeout Deadline in a form substantially similar to Exhibit D attached to this Contract.
- (4) The Grantee shall provide such additional reports as the State may reasonably request from time to time.

- C. Real Property. Legal title to all real property that is part of the Project shall be owned in fee simple by Grantee or as lessee under a 99-year lease, free and clear of all encumbrances other than minor encumbrances. If Grantee holds the property as a lessee, the lease must be approved by HECC and cannot be terminated without HECC's approval. Grantee shall maintain a standard form of title insurance policy for the value of the purchase price of the property, and where appropriate will purchase endorsements to that policy in amounts sufficient to cover improvements. If Grantee suffers a loss that is covered by title insurance, insurance proceeds will be paid to the State of Oregon, not to exceed the amount of this Grant which was disbursed to Grantee for this Project.
- D. Operation and Maintenance of the Project. The Grantee shall construct the Project. The Grantee shall not abandon the Project and shall operate and maintain the Project in good repair and operating condition so as to preserve the long-term public university public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements.
- E. Insurance, Damage. The Grantee shall maintain, or cause to be maintained, insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. If the Project or any portion is destroyed, Grantee shall inform the State in writing that the insurance proceeds will be used to rebuild the Project.
- F. Sales, Leases and Encumbrances. In the case of sale, lease, exchange, transfer or other disposition of any substantial portion of or interest in the Project, the Grantee shall, within 30 days of receipt of any proceeds, inform the State.
- G. Condemnation Proceeds. If the Project or any portion is condemned, within 30 days of receipt of any condemnation proceeds, the Grantee shall inform the State and shall pay such proceeds to the State, up to the Grant Amount disbursed for the Project, unless Grantee has informed the State in writing that the condemnation does not impair the use of the Project for the purposes contemplated in this Agreement or that the condemnation proceeds will be used to rebuild the Project.

- H. Financial Records. The Grantee shall keep accurate books and records for the use of the Grant and maintain them according to generally accepted accounting principles established by the Governmental Accounting Standards Board in effect at the time.
- I. Inspections; Information. The Grantee shall permit the State and any party designated by the State: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, the Grantee's records regarding receipts, disbursements, contracts, investments and any other related matters. The Grantee shall supply any related reports and information as the State may reasonably require.
- J. Records Maintenance. The Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project, the Grant for a period no less than six years or such longer period as may be required by other provisions of this Contract, applicable law, or other agreements.
- K. Notice of Default. Each party shall give the other prompt written notice of any Default as soon as any senior administrative or financial officer of the party becomes aware of its existence or reasonably believes a Default is likely.
- L. Indemnity; Release.
- (1) To the extent allowed by law, each party ("Indemnifying Party") shall defend (subject to ORS chapter 180), indemnify, save, and hold harmless and release the other party, its officers and employees ("Indemnified Party") from and against any and all claims, demands, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and reasonable attorneys' fees and expenses at trial, on appeal and in connection with any petition for review, arising out of or relating to the Indemnifying Party's acts or omissions in connection with this Contract or the Project.
  - (2) The Indemnifying Party will have control of the defense and settlement of any claim that is subject to Section 6.L.(1). Notwithstanding the forgoing, neither Indemnifying Party nor any attorney engaged by the Indemnifying Party may defend the claim in the name of Indemnified Party, nor purport to act as legal representative of the Indemnified Party, without first receiving from the Indemnified Party (for HECC and the State of Oregon, from the Attorney General, in a form and manner determined appropriate by the Attorney General), authority to act as legal counsel for the Indemnified Party. Nor may the Indemnifying Party settle any claim on behalf of the Indemnified Party without the approval of the Indemnified Party (for HECC and the State of Oregon, from the Attorney General). The Indemnified Party may, at its election and expense, assume its own defense and settlement if the Indemnified Party determines that the Indemnifying Party is prohibited from defending the Indemnified Party, or is not adequately defending the Indemnified Party's interests, or that an important legal principle is at issue and the Indemnified Party desires to assume its own defense.

- M. Administrators are not Federal Employee. Grantee certifies that none of its employees, contractors, subcontractors or subrecipients who will administer this Contract are currently employed by an agency or department of the federal government.

## SECTION 7 – DEFAULTS

- A. Any of the following constitutes an “Event of Default” of the Grantee:
- (1) Any false or misleading representation is knowingly made (as defined by ORS 180.755(2)) by or on behalf of the Grantee, in this Contract or in any document provided by the Grantee to the State related to this Grant or the Project.
  - (2) The Grantee fails to perform any obligation required under this Contract, other than those referred to in subsection A of this Section 7, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to the Grantee by the State. The State may agree in writing to an extension of time if it determines the Grantee has instituted and has diligently pursued corrective action.
- B. State Default. The State will be in default under this Contract if it fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Contract.

## SECTION 8 – REMEDIES

- A. Remedies. Upon any Event of Default, the State may pursue any or all remedies in this Contract, and any other remedies available at law or in equity (including specific performance) to collect amounts due or to become due or to enforce the performance of any obligation of the Grantee. Remedies may include, but are not limited to:
- (1) Terminating the State’s commitment and obligation to make any further disbursements of the Grant under this Contract.
  - (2) Withholding amounts otherwise due to the Grantee under this Contract or and applying such amounts to the payment of amounts due under this Contract.
  - (3) Requiring repayment of the Grant and the State’s costs of exercising its remedies under this Contract, including reasonable attorney’s fees and costs.
- If, as a result of an Event of Default, the State demands return of the portion of the Grant moneys related to the Event of Default, such amount shall be due and payable upon demand.
- B. Application of Moneys. Any moneys collected by the State pursuant to Section 8.A will be applied first, to pay any reasonable attorneys’ fees and other fees and expenses incurred by the State; then, to repay any Grant Amount owed; and last, to pay any other amounts due and payable under this Contract.

- C. No Remedy Exclusive; Waiver; Notice. No remedy available to the State is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right, power or privilege under this Contract will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The State is not required to provide any notice in order to exercise any right or remedy, except as set forth in Section 7.A.(2).
- D. Grantee Remedies. In the event of default by the State, Grantee's sole remedy will be for disbursement of all or a portion of the Grant Amount used, or to be used, for Costs of the Project reviewed and accepted by the State, less any claims the State has against Grantee.

## SECTION 9 – MISCELLANEOUS

- E. Time is of the Essence. The Grantee agrees that time is of the essence under this Contract.
- F. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
  - (2) This Contract will be binding upon and inure to the benefit of the State, the Grantee, and their respective successors and permitted assigns.
  - (3) The Grantee hereby approves and consents to any assignment or transfer of this Contract that the State deems to be necessary.
- G. Disclaimer of Warranties; Limitation of Liability. The Grantee agrees that:
- (1) The State makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
  - (2) In no event are the State, any agency of the State or their agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.
- H. Notices. All notices to be given under this Contract must be in writing and addressed as shown below, or to other addresses that either party may hereafter indicate pursuant to this section. Notices may only be delivered by personal delivery or mailed, postage prepaid. Any such notice is effective five calendar days after mailing, or upon actual delivery if personally delivered.



If to HECC: Director, Office of Postsecondary Finance and Capital  
Higher Education Coordinating Commission  
3225 25<sup>th</sup> Street SE  
Salem, OR 97302

If to the Grantee: Lara Moore, Vice President for Finance & Administration  
Eastern Oregon University  
One University Blvd  
La Grande, OR 97850

- I. No Construction Against Drafter. This Contract is to be construed as if the parties drafted it jointly.
- J. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction to be illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- K. Survival. Except as specifically provided in Section 3.C, and notwithstanding any other provision of this Contract, the obligations of the parties under this Contract survive disbursement of the Grant Amount and do not terminate.
- L. Amendments, Waivers. This Contract may not be amended without the prior written consent of the State and the Grantee. No waiver or consent is effective unless in writing and executed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given. In the event that rules or laws change in a manner that affects the administration of this Contract or the disbursement of the Grant Amount under this Contract, the State and the Grantee agree to cooperate to implement any amendments to this Contract that the parties deem necessary and desirable.
- M. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to the State by its attorneys in the Oregon Department of Justice.
- N. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State only to the extent Congress has appropriately abrogated the State's sovereign immunity and is not consent by the State to be sued in federal court. This paragraph is also not a waiver by the State of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- O. Integration. This Contract (including all exhibits, schedules or attachments) constitutes the entire agreement among the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.
- P. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

## **SECTION 10 – FEDERAL AMERICAN RESCUE PLAN ACT REQUIREMENTS**

- A. Federal Contract Clauses. Unless exempt by federal law, Grantee must comply and cause all contractors and subcontractors to comply with all federal requirements to the extent that they are applicable to this Contract, to Grantee, or to the Project, or to any combination of the foregoing. For purposes of this Contract, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.
- B. Employee Whistleblower Protection. Grantee must comply, and ensure the compliance by contractors and subcontractors, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Grantee must inform contractors, subcontractors, and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.
- C. Compliance with 2 CFR Part 200. Unless otherwise exempt by federal law, Grantee must comply with all applicable provisions of 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, including the Cost Principles and Single Audit Act requirements.
- D. Federal Funds; Federal False Claims. The State's payments to Grantee under this Agreement will be paid by funds received by the State from the United States Federal Government. By signing this Agreement, Grantee certifies neither it nor its employees, contractors, or subcontractors who will administer this Agreement are currently employed by an agency or department of the federal government. Grantee acknowledges that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject Grantee to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise under 18 U.S.C § 1001; 31 U.S.C. §§ 3729-3733 and 3801-3812.
- E. Federal Nondiscrimination. Grantee must comply, and require all contractors and subcontractors to comply, with all federal laws, regulations, and executive orders applicable to the Contract or to the delivery of Project. Without limiting the generality of the foregoing, Grantee expressly

agrees to comply and require all contractors and subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (a) Title VI and VII of the Civil Rights Act of 1964, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, (c) the Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975, (e) the Americans with Disabilities Act of 1990, and (e) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated.

F. Equal Employment Opportunity. If this is a construction contract as defined by 41 C.F.R. § 60-1.3 exceeding \$10,000, including amendments, then Grantee must comply, and require all contractors and subcontractors to comply, with the following:

- (1) Not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) In all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) Not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) Send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (5) Comply with all provisions of Executive Order 11246 of September 24, 1965, as amended and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) Furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) Include this Section F (EEO), subsections (1) through (7), in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. Take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- (9) Be subject to sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Grantee, its contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246 of September 24, 1965, as amended.

G. Minority and Women Business Enterprises. Grantee hereby agrees to comply with the following: The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). Accordingly, Grantee hereby agrees to take affirmative steps to assure that women and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps include the following:

- (1) Including qualified women's business enterprises and small and minority businesses on solicitation lists;
- (2) Assuring that women's enterprises and small and minority businesses are solicited whenever they are potential sources;

- (3) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (4) Where the requirement permits, establishing delivery schedules which will encourage participation by women's business enterprises and small and minority business;
- (5) Using the services and assistance of the Small Business Administration, and the U.S. Office of Minority Business Development Agency of the Department of Commerce; and
- (6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in (1) through (5) above. For the purposes of these requirements, a Minority Business Enterprise is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by members of the following groups: Black, Hispanic, Asian or Pacific Islander, American Indian, or Alaskan Natives. A Women Business Enterprise is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by women.

#### H. Prevailing Wage.

- (1) State of Oregon Prevailing Wage for Public Works. If this contract is for a "public work" as defined by ORS 279C.800(6)(a), and not otherwise exempt under ORS 279C.810 Grantee must require of its contractors that:
  - (i) All workers must be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840;
  - (ii) Every contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless the contractor or subcontractor is exempt under ORS 279C.836 (4), (7), (8) or (9); and
  - (iii) If a contractor is required to file certified statements under ORS 279C.845, the contractor must comply with all provisions of ORS 279C.845 and Grantee shall retain 25 percent of any amount earned by the contractor on the public works until the contractor has filed with the certified statements as provided by ORS 279C.845.
- (2) Davis-Bacon – Federal Prevailing Wage. If this is a prime construction contract exceeding \$2,000, Grantee must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Grantee's contractors must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Grantee's contractors must pay wages not less than once a week. Grantee must ensure its contractors and subcontractors acknowledge the current prevailing wage determination issued by the Department of Labor. Grantee's decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. Grantee acknowledges all suspected or reported violations will be reported to the appropriate Federal awarding agency.

- (3) When Subject to Both State and Federal Prevailing Wage. If this Contract is subject to ORS 279C.800 to ORS 279C.870 (State of Oregon Prevailing Wage) and 40 U.S.C. 3141 et seq. (Davis-Bacon Act – Federal Prevailing Wage), Grantee must require all contractors and subcontractors to pay wages at not less than the higher of the applicable state or federal prevailing rate of wage, and as further provided by the Commissioner of the Bureau of Labor and Industries.

- I. Anti-Kickback. Grantee must comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). Each contractor or subcontractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which the person is otherwise entitled. Grantee acknowledges all suspected or reported violations will be reported to the appropriate Federal awarding agency.
- J. Contract Work Hours and Safety Standards Act. For all contracts exceeding \$100,000 that involve the employment of mechanics or laborers, Grantee must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Each contractor must compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work exceeding the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- K. Federal Rights to Inventions Made Under a Contract or Agreement. The federal funding agency, as the awarding agency of the funds used, at least in part, for the Project under this Contract, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. The Grantee agrees that it has been provided the following notice:
- (1) The federal funding agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the any intellectual property created under this Contract, and to authorize others to do so, for Federal Government purposes with respect to:(1) The copyright in any intellectual property developed under a grant, subgrant or contract under a grant or subgrant; and (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grantsupport.
- (2) If this Contract meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and Grantee, its contractors or subcontractors, wish to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Grantee, its contractors or subcontractors, must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small

Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

- (3) The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.

L. Debarment and Suspension. Grantee will ensure its contractors and subcontractors certify that they are not listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

M. Byrd Anti-Lobbying Amendment. Grantee must comply with 31 U.S.C. 1352. In addition, each tiered contractor must certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Grantee, contractors, and subcontractors must forward all certifications to the State.

By signing this Contract, the Grantee certifies, to the best of the Grantee’s knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of Grantee, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Grantee shall complete and submit Standard Form LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.
- (3) Grantee shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.

- (4) This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by Section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

N. Prohibition on certain telecommunications and video surveillance services or equipment (Huawei and ZTE). Grantee is prohibited from obligating or expending funds received under this Contract to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
  - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

O. Buy USA Preference. Grantee must, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts including all contracts and purchase orders for work or products under this contract. For purposes of this section:

- (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as



polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

P. Procurement of Recovered Materials. Grantee must comply with all applicable requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In addition, in the performance of this Contract, Grantee must make maximum use of products containing recovered materials designated by the Environmental Protection Agency (EPA) at 40 CFR part 247, unless the product cannot be acquired:

- (1) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (2) Meeting contract performance requirements; or
- (3) At a reasonable price.

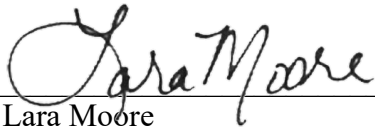
Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site,  
<https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

The Grantee, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions. The undersigned are each authorized to execute and deliver this Contract on behalf of the respective parties hereto.

**STATE OF OREGON**  
acting by and through the  
Higher Education Coordinating Commission

By: \_\_\_\_\_  
Ben Cannon  
Executive Director

Eastern Oregon University

By: \_\_\_\_\_  
Lara Moore  
Vice President for Finance &  
Administration

Date: \_\_\_\_\_

Date: 11.28.2022

HECC Procurement Review

By: \_\_\_\_\_  
Derek Dizney  
Procurement Manager

Date: \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:**

\s\ via email on 11/07/2022

Sean Brady, Senior Assistant Attorney General

## **EXHIBIT A – PROJECT DESCRIPTION AND BUDGET**

### **Project Description:**

This project is for the restoration of Grantee's Grand Staircase, as stated in HB 5006, Section 413 (2021).

### **Budget:**

Grant Amount: \$4,000,000.

## **EXHIBIT B – PROGRESS REPORTS, PERFORMANCE PLAN, AND SPEND PLAN**

### **Progress Reports**

#### *Due Dates:*

Grantee shall provide quarterly and annual progress reports to HECC on the following dates, commencing on the next due date following execution of this Contract and on a form provided by HECC after execution of this Contract:

Quarterly Reports Due: January 1, April 1, July 1, October 1

Annual Reports Due: July 1

#### *Quarterly Report Content:*

Quarterly Reports must contain the following information which is necessary for HECC and Department of Administrative Services (“DAS”) to comply with the reporting requirements established by 42 U.S.C. 802, guidance issued by the U.S. Treasury, and 2 CFR Part 200, aka Super Circular.

#### 1. Expenditure Report

- a) Quarterly Obligation Amount
- b) Quarterly Expenditure Amount
- c) Projects
- d) Primary Location of Project Performance
- e) Detailed Expenditures (categories to be provided by DAS)

#### 2. Project Status Update

- a) Status of project: not started, completed less than 50 percent, completed 50 percent or more, completed.
- b) Progress since last update including project outputs and achieved outcomes.
- c) Identify barriers/risks to outcomes and describe actions taken to mitigate delays/risks to the overall project goal.
- d) Optional: Share with HECC any community outreach/engagement or other positive local news stories.

#### *Annual Report Content:*

1. How the Project is promoting equitable outcomes, if applicable
2. How the Project is engaging with the community, if applicable

### **Project Performance Plan**

Grantee shall provide a Project Performance Plan to HECC no later than 30 days following execution of this Contract, on a form provided by HECC following execution of this Contract.

The Project Performance Plan must include the following information:

1. Problem Statement
2. Goal

3. Rationales
4. Assumptions
5. Resources
6. Activities
7. Outputs
8. Short-Term Outcomes
9. Intermediate Outcomes
10. Long-Term Outcomes

### **Spend Plan**

Grantee shall submit a Project Spending Plan in substantially similar format to the below chart no later than 30 days following execution of this Contract.

<b>Project Spending Plan</b>	
Quarter Ending:	Amounts
September-22	\$ -
December-22	\$ -
March-23	\$ -
June-23	\$ -
September-23	\$ -
December-23	\$ -
March-24	\$ -
June-24	\$ -
September-24	\$ -
December-24	\$ -
March-25	\$ -
June-25	\$ -
September-25	\$ -
December-25	\$ -
March-26	\$ -
June-26	\$ -
September-26	\$ -
December-26	\$ -
Total	\$ -

## EXHIBIT C – FORM OF DISBURSEMENT REQUEST

### DISBURSEMENT REQUEST

Date: [insert date of request]

Project Name: Grand Staircase, Grant # 21-208

Name of Grantee: Eastern Oregon University

On behalf of Eastern Oregon University (the “Grantee”) I hereby request a total disbursement of \$ \_\_\_\_\_ under the Grant Contract listed above (the “Grant Contract”).

I hereby make the following certifications in connection with this Disbursement Request:

1. All of the funding requested by this Disbursement Request (the “Disbursement”) will be used solely for Costs of the Project.
2. The Grantee is eligible to receive the Disbursement under the terms of the Grant Contract, and has satisfied all conditions that the Grant Contract requires be satisfied for HECC to make the Disbursement.
3. All of the Disbursement will be used to pay for Costs of the Project.
4. All representations of the Grantee in the Grant Contract are true and correct on the date of this Disbursement Request and all warranties by the Grantee in the Grant Contract continue to be in effect.

The certifications in this Disbursement Request are true and accurate to the best of my knowledge and belief, after reasonable investigation.

Capitalized terms that are used but are not defined in this Disbursement Request have the meanings defined for those terms in the Grant Contract.

Eastern Oregon University

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

## EXHIBIT D – CERTIFICATE OF FINAL COMPLETION

Date: [insert date]

Project Name: Grand Staircase

Name of Grantee: Eastern Oregon University

In accordance with Section 6.B.(3) of the Grant Contract listed above (the “Grant Contract”), Eastern Oregon University (“Grantee”) has submitted a final report to the Higher Education Coordinating Commission (“HECC”) for the Project. The final report includes the Grantee’s expenditure of the Grant Amount and a certificate of occupancy, if applicable, for the Project.

The Project, as described in Exhibit A of the Grant Contract, has been completely and satisfactorily performed; and as applicable, acquired, constructed, delivered and installed in accordance with the contract between Grantee and the contractor engaged to perform the Project work.

All costs incurred by the Grantee in connection therewith and all expenses incidental thereto have been determined and paid, or provision has been made for the payment.

Amount of Grant Spent for Project: \$ \_\_\_\_\_

Amount of Unspent Grant Amount: \$ [\_\_\_\_\_]