

**REGIONAL INFRASTRUCTURE FUND  
GRANT AGREEMENT**

Project Name: Bernau Estate Biodynamic Wine and Agriculture Experience

Project Number: RS1913

This grant agreement (“Contract”), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through its Oregon Business Development Department (“OBDD”), and Yamhill County (“Recipient”) for financing of the project referred to above and described in Exhibit B (“Project”). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in Section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

Exhibit A	General Definitions
Exhibit B	Project Description
Exhibit C	Project Budget

Pursuant to an appropriation in Section 3, chapter 748, Oregon Laws 2017, OBDD is authorized to make an award from the Regional Infrastructure Fund (“Fund”) established in Section 3, chapter 786, Oregon Laws 2013 (the “Act”) to assist in financing the costs of completing the Project.

**SECTION 1 - KEY TERMS**

The following capitalized terms have the meanings assigned below.

**Estimated Project Cost:** \$10,660,000.

**Grant Amount:** \$150,000.

**Project Close-Out Deadline:** 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

**Project Completion Deadline:** 24 months after the date of this Contract.

**SECTION 2 - FINANCIAL ASSISTANCE**

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

Conditions to Closing. The OBDD’s obligations are subject to the receipt of the following items, in form and substance satisfactory to OBDD and its Counsel:

- (1) This Contract duly signed by an authorized officer of Recipient; and
- (2) Such other certificates, documents, opinions and information as OBDD may reasonably require.

### SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Financing Proceeds will be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an OBDD-provided or OBDD-approved disbursement request form (“Disbursement Request”), accompanied by receipts and other documentation of expenses that are acceptable to OBDD.
- B. Financing Availability. The OBDD’s obligation to make, and Recipient’s right to request, disbursements under this Contract terminate on the Project Close-out Deadline.
- C. Conditions to Disbursements. As to any disbursement, OBDD has no obligation to disburse funds unless all following conditions are met:
- (1) The Recipient has delivered to OBDD a copy of an agreement between Recipient and Bernau Estate Biodynamic Vineyard, Winery & Gardens that is acceptable to OBDD.
  - (2) There is no Default or Event of Default.
  - (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
  - (3) The OBDD has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within OBDD’s biennial appropriation or limitation. Notwithstanding the preceding sentence, payment of funds by OBDD is contingent on OBDD receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow OBDD, in the exercise of its reasonable administrative discretion, to continue to make payments in accordance with the terms of this Agreement, and notwithstanding anything in the Agreement, occurrence of such contingency does not constitute an event of default. Upon occurrence of such contingency, OBDD has no further obligation to disburse funds to Recipient.
  - (4) The OBDD (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as OBDD may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
  - (5) Recipient has delivered documentation satisfactory to OBDD that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
  - (6) Any conditions to disbursement elsewhere in this Contract are met.

#### SECTION 4 - USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit B and according to the budget in Exhibit C. Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of OBDD.
- B. Costs of the Project. The Recipient shall apply the Financing Proceeds to the Costs of the Project in accordance with the Act and Oregon law, as applicable. Financing Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-award Costs of the Project, except as permitted by Exhibit B.
- C. Costs Paid for by Others. The Recipient may not use any of the Financing Proceeds to cover costs to be paid for by other financing for the Project from another State of Oregon agency or any third party.
- D. Unexpended Grant Moneys. Any Grant moneys disbursed to Recipient, and any interest earned by Recipient on the Grant moneys, that are not used as set out herein or that remain after the Project is completed or this Agreement is terminated shall be immediately returned to OBDD.

#### SECTION 5 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to OBDD:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in Section 1, and the Project is fully funded.
- B. Organization and Authority.
  - (1) The Recipient is a County, validly organized and existing under the laws of the State of Oregon.
  - (2) The Recipient 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) receive financing for the Project.
  - (3) This Contract has been authorized by an ordinance, order or resolution of Recipient's governing body that was adopted in accordance with applicable law.
  - (4) This Contract has been duly executed by Recipient, and when executed by OBDD, is legal, valid and binding, and enforceable in accordance with their terms.
- C. Full Disclosure. The Recipient has disclosed in writing to OBDD all facts that materially adversely affect the Project, or the ability of Recipient to perform all obligations required by this Contract. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract, including Exhibit B and Exhibit C, is true and accurate in all respects.
- D. Pending Litigation. The Recipient has disclosed in writing to OBDD all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, 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 Recipient to perform all obligations required by this Contract.
- E. No Defaults.
  - (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract.

- (2) The Recipient 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 Recipient to perform all obligations required by this Contract.

F. 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 any agreement or instrument to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.

G. Compliance with Tax Laws. Recipient is not in violation of any Oregon tax laws, including but not limited to a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

## SECTION 6 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. Recipient shall promptly notify OBDD of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to perform all obligations required by this Contract.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract and the Project. In particular, but without limitation, Recipient shall comply with the following, as applicable:

- (1) Oregon Tax Laws, (as defined in Section 5.G).
- (2) ORS 280.518 requiring public display of information on Lottery funding of the project. Recipient shall include the following statement, prominently placed, on all plans, reports, bid documents and advertisements relating to the Project:

“This Project was funded in part by the Oregon State Lottery and administered by the Oregon Business Development Department.”

These laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

- C. Project Completion Obligations. Recipient shall:
  - (1) Ensure the completion of the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
  - (2) Ensure the completion of the Project no later than the Project Completion Deadline, unless otherwise permitted by the OBDD in writing.
  - (3) No later than the Project Closeout Deadline, provide OBDD with a final project completion report on a form provided by OBDD, including Recipient’s certification that the Project is complete, all payments are made, and no further disbursements are needed; provided however, for the purposes of this Contract, OBDD will be the final judge of the Project’s completion.

- D. Books and Records. The Recipient shall keep accurate books and records and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.
- E. Inspections; Information. The Recipient shall ensure that OBDD and any party designated by OBDD: (i) may 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, its records regarding receipts, disbursements, contracts, investments and any other related matters. The Recipient shall supply any related reports and information as OBDD may reasonably require.
- F. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds for a minimum of six years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Closeout Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.
- G. Economic Benefit Data. The OBDD may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion Date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by OBDD.
- H. Notice of Default. The Recipient shall give OBDD prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.
- I. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OBDD and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorney's fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this Section are not to be construed as a waiver by Recipient of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.

**SECTION 7 - DEFAULTS**

Any of the following constitutes an “Event of Default”:

- A. Any false or misleading representation is made by or on behalf of Recipient, in this Contract or in any document provided by Recipient related to this Grant or the Project.
- B. Recipient 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 Recipient by OBDD. The OBDD may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

## SECTION 8 - REMEDIES

- A. Remedies. Upon any Event of Default, OBDD may pursue any or all remedies in this Contract and any other remedies available at law or in equity to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to any one or more of the following:
- (1) Terminating OBDD's commitment and obligation to make the Grant or disbursements of Financing Proceeds under the Contract.
  - (2) Barring Recipient from applying for future awards.
  - (3) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract.
  - (4) Requiring repayment of the Grant and all interest earned by Recipient on those Grant funds.
- B. Application of Moneys. Any moneys collected by OBDD pursuant to section 8.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by OBDD; then, as applicable, to repay any Grant proceeds owed; then, to pay other amounts due and payable under this Contract, if any.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to OBDD 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 OBDD is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 7 of this Contract.
- D. Default by OBDD. In the event OBDD defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of OBDD's obligations.

## SECTION 9 - MISCELLANEOUS

- A. Time is of the Essence. Recipient agrees that time is of the essence under this Contract.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
  - (2) 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.
  - (3) This Contract will be binding upon and inure to the benefit of OBDD, Recipient, and their respective successors and permitted assigns.
  - (4) Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract without the prior written consent of OBDD. The OBDD may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to OBDD, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of OBDD's Counsel. Any approved assignment is not to be construed as creating any obligation of OBDD beyond those in this



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 of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon 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.

J. Integration. This Contract (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.

K. 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.

The Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



OK CT

STATE OF OREGON  
acting by and through its  
Business Development Department



YAMHILL COUNTY

By: \_\_\_\_\_  
Chris Cummings, Assistant Director  
Economic Development

By:   
Kenneth Huffer, County Administrator

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

Date: 4/4/19

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

Not Required per OAR 137-045-0030

RECEIVED 4/5/19

Accepted by Yamhill County  
Board of Commissioners on  
4/4/19 by Board Order  
# 19-98

**EXHIBIT A - GENERAL DEFINITIONS**

As used in this Contract, the following terms have the meanings below.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Financing Proceeds under applicable state statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, OBDD or Recipient.

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

“Financing Proceeds” means the proceeds of the Grant.

“ORS” means the Oregon Revised Statutes.

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

**EXHIBIT B - PROJECT DESCRIPTION**

<b>OBDD Contact</b>	<b>Project Contact</b>
Project Contact: Michelle Bilberry	Project Contact: Carrie Martin
Title: Regional Project Manager	Title: Grants and Special Projects Manager
Address: Business Oregon 775 Summer Street NE Suite 200 Salem OR 97301-1280	Address: Yamhill County 535 NE 5th Street McMinnville OR 97128-4523
Phone: 503-986-0142	Phone: 503-474-4991
Email: Michelle.Bilberry@oregon.gov	Email: martinc@co.yamhill.or.us

**Project Background:**

The Bernau Estate Biodynamic Vineyard, Winery & Gardens will be the first of its kind to welcome the public to learn about biodynamic farming practices and the benefits to the environment and our health, through a working farm and production facility. Biodynamics is a holistic, ecological, and ethical approach to farming, gardening, food and nutrition. Its location near Dundee in the heart of Oregon wine country makes this a prime site for promoting a cutting-edge agricultural practice and Oregon's role in sustainable farming, through an eco-tourism experience

Public benefit includes increased tourism dollars in the Mid-Valley region, workforce development in the service industry, and educational information sharing with the public, community colleges and agricultural community.

**Project Activities:**

This Grant will be used for the design and construction of the public biodynamic gardens portion of the Bernau Estate Biodynamic Vineyard, Winery & Gardens.

**Local Government Responsibilities:** The Recipient will ensure that Bernau Estate Biodynamic Vineyard, Winery & Gardens are operated for, and with access to, the public for a period of not less than ten years following completion of the Project, unless the Grant is repaid.

**EXHIBIT C - PROJECT BUDGET**

	<b>OBDD Funds</b>	<b>Other / Matching Funds</b>
Activity	Approved Budget	Approved Budget
Land Acquisition	\$0	\$1,805,000
Engineering / Architecture	0	650,000
Facilities Construction	0	8,000,000
Public Garden Construction	150,000	0
Construction Management	0	50,000
Professional Services (Legal)	0	5,000
<b>Total</b>	<b>\$150,000</b>	<b>\$10,510,000</b>