

BLAINE COUNTY – WOOD RIVER LAND TRUST & LAND, WATER AND WILDLIFE  
LEVY GRANT AGREEMENT

This Grant Agreement (“Agreement”) is made October \_\_, 2020, and is by and between Blaine County, a political subdivision of the State of Idaho (the “County”), and the Wood River Land Trust (“Applicant”).

RECITALS

It is the County’s policy and practice to record every agreement to which it is a party, in order to serve record keeping and public disclosure functions. As a result, the County will record this Agreement in the real property records maintained by the Blaine County Recorder’s Office. This Agreement is not generally signed by the fee simple title holder (singularly or collectively referred to as “Owner”) of real property described in this Agreement (the Property”). As a result, it is not intended to and does not affect the right, title and interest in and to any real property and should not be listed as an exception on any commitment for title insurance.

On October 21, 2008, in Resolution Number 2008-71, the Blaine County Board of Commissioners (the “Commissioners”) clarified the Goals and Purposes of Proposition 1, The Land, Water and Wildlife Levy (the “Levy”) and set forth guidelines for determining how to allocate the proceeds of the Levy, including:

Land, Water and Wildlife Fund objectives include, but are not limited to:

- Preserving natural areas and important open space; preserving water quality; protecting rivers and streams and their riparian corridors, flood plains and wetlands; protecting wildlife habitat and movement corridors including highway crossings; preserving agricultural lands; preserving or enhancing trail corridors; or providing public access to water bodies in the Big Wood and Little Wood River watersheds;
- Supporting joint projects between counties and municipalities, or other governmental entities in the County;
- Conserving, restoring, maintaining or otherwise providing for proper Stewardship of lands and waters as provided herein.

Areas of greatest interest include the Big Wood River corridor and its major tributaries; the Transfer of Development Rights (TDR) Program sending area; the Little Wood River watershed from the Little Wood Reservoir dam north to the boundary with U.S. Forest Service Lands.

Fund objectives may be accomplished by measures including:

- Acquiring fee title interest in real property for the purposes provided herein;
- Acquiring less than fee interests in real property for the purposes provided herein, such as easements (including conservation and

- agricultural), future interests, covenants, development rights, subsurface rights and contractual rights, either on an exclusive or nonexclusive basis; and
- Acquiring water rights for use in connection with the purposes provided herein.
  - Non-acquisition projects including improvements to wildlife habitat, water quality and quantity or natural systems and processes, stream reconnections and studies linked to projects.

On April 12, 2011, in Resolution Number 2011-20, the Commissioners adopted “the Land, Water and Wildlife Program Guide, Pre-Application, Application and Project Evaluation Checklist as the working procedures for the Levy Advisory Board (the “LAB”), County staff and the Commissioners as the Blaine County Land, Water and Wildlife Program (“LWWP”) in accordance with all applicable laws.”

On July 2, 2013, in Resolution Number 2013-24, the Commissioners adopted, in accordance with all applicable laws, amendments to the Land, Water and Wildlife Program Guide, Pre-Application, Full Application and Project Evaluation Checklist as the working procedures for the Levy Advisory Board, Staff and Board of County Commissioners.

On January 3, 2019, the LAB conducted a Final Review of the Full Application for the project which is the subject of this Agreement (the “Project”), determined it meets the conservation and programmatic goals of the LWWP and voted 8 – 0 with one seat vacant to recommend this Project to the BCC for Funding. **[AMEND TO REFLECT OCTOBER 7, 2020 LAB MEETING.]** The agreement involves a grant to the Applicant for the Project, which consists of stream restoration at Colorado Gulch, including removing old bridge abutments, rip rap, and bridge approach material, reconnecting an historic side channel to increase fish habitat and provide habitat diversity, and bank stabilization through addition of natural large woody materials and revegetation with native plants. The location of the overall Project is designated in “Attachment A” (Attachment A. Colorado Gulch Stream Restoration Project Map). Project details are outlined in Exhibit A (Biota Design Memo to BCC) and Exhibit B (Colorado Gulch Stream Restoration Project Budget), attached to this document.

The Commissioners voted on March 19, 2019 to give conceptual approval to the Project, thereby moving it to the Due Diligence Phase as defined in the Program Guide.

According to the Application, the particular conservation values to be preserved and protected for the public benefit under the Project include, without limitation:

“The Project will allow the main channel to access the floodplain approximately every 1-2 years. Benefits of connectivity to the floodplain include flood mitigation, groundwater recharge, channel stability, and vegetation and habitat recovery.”

(collectively, the “**Conservation Values**”).

## TERMS AND CONDITIONS

Pursuant to and incorporating the above recitals into the Agreement, the County and Applicant agree as follows:

1. GRANT AMOUNT. The County shall provide partial funding to Applicant for the Project in the amount not to exceed twenty nine thousand six hundred and thirty two dollars (\$29,632) or fifty percent (50%) of total project costs, whichever is less, (“the Grant”), subject to the conditions set forth below, and in accordance with applicable rules and regulations.

2. GRANT PURPOSE. Applicant shall only use the Grant towards payment of expenses set out in the Project Budget (Exhibit B. Colorado Gulch Stream Restoration Project Budget) and not for any other expenses arising out of the Project, including without limitation transaction or settlement costs, due diligence investigations, enforcement or a stewardship endowment. If the Grant is not fully expended pursuant to this Agreement, for any reason, any remaining amount of the Grant must be automatically and promptly returned to the County within five business days.

3. GRANT DISBURSAL PROCESS. Subject to this Agreement, the County will reimburse the Applicant for eligible costs incurred according to the Project Budget as set out under Exhibit B. Colorado Gulch Stream Restoration Project Budget not to exceed twenty nine thousand six hundred and thirty two dollars (\$29,632) or fifty percent (50%) of total project costs, whichever is less. Upon receipt of invoices(s) from the Applicant that verify completion of study components (materials and labor) in accordance with the Project Details as set out in Exhibits A. and B. and Attachment A., the County will reimburse the Applicant for eligible costs incurred.

4. REQUIRED DOCUMENTATION. Applicant shall provide the following documentation to the County:

(a) Two (2) annual reports (2021-2022) and one (1) final project report (2023), approved and authorized by the Applicants; and (b) A written statement that this agreement is made, executed and delivered by officers of the Applicant vested with authority to execute same.

Upon review and approval of the above documentation required by 4(b) along with this Agreement, the Commissioners shall authorize disbursement of the Grant through adoption of a resolution finally and fully approving the Grant. If the Commissioners do not approve the documentation required by 4(b) or this Agreement, either party may terminate this Agreement upon five days’ written notice to the other party, and in that event, this Agreement shall be void and of no further force or effect.

5. GRANT CONDITIONS. By accepting the Grant, Applicant specifically agrees to the following:

(a) Applicant attests that the Project has been approved by Applicant's required officers, managers and/or employees.

(b) The Applicant shall provide the County with all final, fully signed documents outlined in paragraphs 4(a) and 4(b), above, and any agreements necessary to implement the Project.

(c) Applicant shall ensure the Project's completion according to the terms of this Agreement including any documentation required in paragraph 4(a) and 4(b), above.

(d) Applicant shall notify the County in writing within 15 business days of (i) Applicant's discovery of any breach of paragraph 4(a), above, (ii) any written notice by Applicant or a third party contractor of Applicant directly involved with the Project that may be responsible to implement or oversee the Project of any breach of paragraph 4(a), above; or (iii) any request for amendment of paragraph 4(a), above, by any party. Any material amendment to paragraph 4(a) shall require the County's prior written approval, which approval shall not be unreasonably withheld, denied or delayed.

(e) Applicant shall maintain detailed files on the status of the Project, and make them available for review with reasonable advance, written notice to Applicant by the employees, representatives and/or independent contractors authorized by the County and identified by County notice to Applicant. The files will include, at least, any agreement in paragraph 4, above, and any amendments, any and all full monitoring reports, notices required by paragraph 5(d), status and resolution of compliance issues and any records of transfer of Owner's interest.

6. NO AGENCY. No legal partnership or agency is established by this Agreement. Neither party is authorized or empowered to act as an agent, employee or representative of the other, nor transact business or incur obligations in the name of the other party or for the account of the other party. Neither party shall be bound by any acts, representations, or conduct of the other.

8. BINDING EFFECT/AMENDMENTS. Upon signature, this Agreement is binding on and shall inure to the benefit of the respective trustees, administrators, successors and assigns of the parties. Any reference to the parties in this Agreement by name or abbreviation shall also be a reference to any successors in interest of that party. This Agreement supersedes all prior or contemporaneous communications and negotiations, both oral and written and constitutes the entire agreement between the parties relating to the Project set out above. No amendment shall be effective except in writing signed by both parties.

9. NOTICES. Any notice required by this Agreement will be in writing and hand delivered, sent by overnight courier, such as FedEx or by certified mail, return receipt requested to the parties at the addresses contained in the Agreement or changed by notice to the other party. Applicant shall give the County notice to the Civil Deputy, Blaine County Prosecutor, 201 2nd Avenue S, Suite 200, Hailey, ID 83333 and Blaine County Land Use and Building Services, 219 1st Avenue S, Hailey, ID 83333. The County shall give Applicant notice at Wood River Land Trust, 119 East Bullion Street, Hailey, ID 83333.

10. BREACH; REMEDIES. If either party alleges that the other party has breached any term of this Agreement, that party shall deliver written notice of breach to the party alleged to be in breach in accordance with Paragraph 9 above. Within 30 days following such notice of breach, the party alleged to be in breach shall cure the breach, or under circumstances where the breach cannot reasonably be cured within such 30-day period, shall commence curing such breach as soon as possible within such 30-day period and shall continue diligently to cure such breach until finally cured. In the event of litigation regarding a breach of this Agreement, the parties agree that specific performance is the preferred remedy, provided that such remedy is deemed by a court to meet the standards for an award of specific performance under Idaho law. No waiver of any breach by a party of the terms of this Agreement shall be deemed a waiver of any subsequent breach of the Agreement.

11. MEDIATION OF DISPUTES. Except for any claim for which a party deems a temporary restraining order necessary, all claims, disputes, or alleged breaches of this Agreement shall first be subject to mediation, prior to either party filing an action in a court of law. Either party shall have the right to begin the process by giving the other party a written notice requesting mediation and describing the issues involved. The parties agree to appoint and equally share the cost of a mutually acceptable mediator within thirty (30) days after notice. The mediation shall occur within thirty (30) days after the selection of the mediator, unless the parties agree otherwise. Nothing in this paragraph will prevent either party's right to a trial or trial by jury in a court of law. In the event of mediation, each party shall bear that party's own attorney fees. In the event of litigation to enforce this Agreement, the prevailing party shall be awarded its attorney fees and costs.

12. MISCELLANEOUS. This Agreement incorporates any attached exhibits into the terms and conditions of the Agreement. It is the intention of the parties that if any part of this Agreement is invalid, for any reason, that invalidity will not void the rest of the Agreement. Idaho law governs this Agreement. Ambiguities, if any, will not be construed against either party as a result of preparation of this Agreement. The individuals whose signatures appear below represent and warrant that the respective entity each represents and is authorized to enter into, execute and deliver this Agreement on behalf of the entity each represents, in accordance with the controlling documents or any duly adopted resolution of that entity; and that this Agreement is binding upon that entity in accordance with its terms and conditions. This Agreement may be signed in more than one counterpart that when compiled shall be considered one original.

The parties have executed this Agreement, effective as of the date of the County resolution approving this Agreement.

BLAINE COUNTY  
By and through its Board of County Commissioners

By: \_\_\_\_\_  
Jacob Greenberg, Chairman

STATE OF IDAHO            )  
  ) ss.  
COUNTY OF BLAINE        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, known or identified to me to be the Chairman of the Board of County Commissioners of Blaine County, Idaho, a political subdivision of the State of Idaho, and acknowledged to me that such County executed the same.

\_\_\_\_\_  
Notary Public for Idaho  
Address: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

APPLICANT

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Wood River Land Trust

STATE OF IDAHO            )  
  ) ss.  
COUNTY OF BLAINE        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of the Idaho Department of Fish and Game, an agency of the State of Idaho, and acknowledged to me that such entity executed the same.

\_\_\_\_\_  
Notary Public for Idaho  
Address: \_\_\_\_\_