

# GREAT SALT LAKE WATERSHED ENHANCEMENT TRUST GRANT AGREEMENT

This Agreement (the “**Agreement**”) is entered into as of the 1st day of January, 2023, (“**Effective Date**”) by and among the State of Utah Department of Natural Resources, Division of Forestry, Fire and State Lands (“**FFSL**”); National Audubon Society, Inc. (“**NAS**”), a New York Non-Profit Corporation; and The Nature Conservancy (“**TNC**”), a District of Columbia Non-Profit Corporation. FFSL, NAS, and TNC may be referred to individually as a “**Party**” or collectively as the “**Parties**.” NAS and TNC may also be referred to individually as a “**Grantee**” or collectively as “**Grantees**.”

## RECITALS

WHEREAS, in 2022, the Utah Legislature passed H.B. 410 enacting the Great Salt Lake Watershed Enhancement Program, Utah Code Title 65, Chapter 16 (the “**Act**”), authorizing FFSL to select “eligible applicants” to create and manage a “Great Salt Lake Watershed Enhancement Trust” (“**Trust**”) to benefit Great Salt Lake and its wetlands in conformance with the objectives of the Act;

WHEREAS, the Legislature appropriated forty million dollars (\$40,000,000) for FFSL to provide as a pass-through grant to eligible applicants to support the establishment and operation of the Trust;

WHEREAS, on May 13, 2022, Grantees submitted a joint “Grant Application for the Great Salt Lake Watershed Enhancement Program” (“**Joint Application**”) to FFSL, with a copy to the Utah Division of Water Quality and the Great Salt Lake Advisory Council;

WHEREAS, by letter dated June 2, 2022, FFSL notified Grantees it had selected them to receive the grant to establish the Trust pursuant to the provisions of the Act;

WHEREAS, Section 65A-16-201(5)(b) of the Act requires Grantees and FFSL to execute a grant agreement that satisfies the requirements of Utah Code Sections 51-2a-201.5(4) and 63J-1-220(2);

WHEREAS, Section 65A-16-301 of the Act provides the Trust may be established as either an “agreement between two or more conservation organizations” or as “a private non-profit organization;”

WHEREAS, in accordance with the Act, Grantees, both of which are tax-exempt charities under Section 501(c)(3) of the Internal Revenue Code, shall establish the Trust through an agreement between themselves (“**Collaboration Agreement**”);

WHEREAS, Grantees intend to create the Trust through the Collaboration Agreement between their organizations but, subject to FFSL’s written approval, may subsequently transfer

their rights and responsibilities along with the Trust's assets to a Successor Trust Manager that satisfies the criteria of Section 65A-16-301(1)(a) of the Act;

WHEREAS, it is the intention of the Parties to enter into this Agreement in order to fulfill the criteria of the Act;

NOW THEREFORE, the Parties agree as follows in consideration of their respective mutual promises, covenants, and conditions as set forth below:

1. **PURPOSE OF THE TRUST:** The purpose of the Trust (the "**Purpose**") shall be to fulfill the criteria of the Act as set forth in Section 65A-16-201(1) of the Act.
2. **DEFINITIONS:** In addition to other terms defined herein, the below terms shall have the following meanings for the purposes of this Agreement:
  - a. Administrative Expenses: "Administrative Expenses" has the meaning assigned in Exhibit 1.
  - b. Direct Operating Expenses: "Direct Operating Expenses" has the meaning assigned in Exhibit 1.
  - c. Fiduciary: "Fiduciary" means the fiduciary under Section 65A-16-301(2)(a) of the Act.
  - d. Financial Management Expenses: "Financial Management Expenses" means financial management expenses charged by the Fiduciary to Grantees. Financial Management Expenses include, but are not limited to:
    - i. Fees, charges, and related costs owed to the Fiduciary for setting up the financial management arrangements; and
    - ii. Costs and fees related to the management, reporting, distribution, and investment of the State Grant Money.
  - e. Future Appropriations: "Future Appropriations" means any money, in addition to the State Grant Money, that the State of Utah may appropriate for the Trust.
  - f. Major Project: "Major Project" means:
    - i. A project or program expected to utilize two hundred and fifty thousand dollars (\$250,000) or more of State Grant Money, which amount Grantees and the Trust Advisory Council may agree to increase; or
    - ii. Actions that include approval of or amendments to the Trust Advisory Council's bylaws or charter or the creation of additional advisory councils.A Major Project does not include the Trust's annual operating budget.
  - g. Other Funds: "Other Funds" means other monies or resources deposited with the Fiduciary from any source that is not State Grant Money or Future Appropriations.

- h. Report Recipients: “Report Recipients” means, collectively, the Utah Division of Forestry, Fire and State Lands, the Utah Division of Water Quality, the Great Salt Lake Advisory Council, and the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.
- i. Required Reports: “Required Reports” means the reports submitted by the Fiduciary under the schedule in Paragraphs 5(h)(i)-(iii).
- j. Scope of Work or Services: “Scope of Work” or “Services” means the actions described in Paragraph 5 of this Agreement.
- k. State Grant Money: “State Grant Money” means the forty million dollars (\$40,000,000) appropriated pursuant to Section 8 of H.B. 410 (2022) and interest or income derived therefrom. State Grant Money consists of funds from the State of Utah and does not include funds from the federal government.
- l. Sub-grants: “Sub-grants” means grants the Trust makes to sub-grantees to accomplish the purposes of the Act and Trust goals.
- m. Successor Trust Manager: “Successor Trust Manager” means an entity that Grantees transfer their rights and responsibilities, along with the Trust’s assets, to and that complies with the criteria in Section 65-A-16-301(1)(a) of the Act.
- n. Trust Advisory Council: “Trust Advisory Council” means the advisory council, required by Utah Code Section 65A-16-301(5)(a) through (b) and created pursuant to Paragraph 5(k) of this Agreement, with the purpose of consulting with the Trust on matters related to the mission and objectives of the Trust.
- o. Water and Habitat Related Project and Program Expenses: “Water and Habitat Related Project and Program Expenses” has the meaning assigned in Exhibit 1.

**3. ELIGIBILITY AND CONFORMANCE:** The Parties agree and acknowledge that:

- a. Grantees satisfy the requirements of “an eligible applicant,” as defined by Section 65A-16-101(4) of the Act.
- b. This Agreement is intended to satisfy Utah Code Sections 51-2a-201.5(4) and 63J-1-220(2), as required by Section 65A-16-201(5)(b) of the Act.
- c. Pursuant to Section 65A-16-301(1)(a) of the Act, the Trust may be organized “[a]s an agreement between two or more private non-profit organizations.” As such, the Trust, the Trust Advisory Council, and any other advisory council created pursuant to the Act or this Agreement are private entities and shall not be considered public

entities, political subdivisions of the State of Utah, nor governmental nonprofit corporations.

**4. SELECTION OF FIDUCIARY AND DISTRIBUTION OF STATE GRANT MONEY:**

- a. Grantees shall select a third-party fiduciary (the “**Fiduciary**”) to hold and administer the State Grant Money, pursuant to Section 65A-16-301(2)(a) of the Act.
- b. Grantees shall use a Fiduciary that is independent of Grantees and not an employee or officer of Grantees, FFSL, or the State of Utah.
- c. After Grantees create the Trust pursuant to Paragraph 5(a)(i) of this Agreement, Grantees shall provide FFSL with written notice of the name and contact information of the Fiduciary and a summary of the Fiduciary’s qualifications.
- d. FFSL shall transmit State Grant Money in the amount of forty million dollars (\$40,000,000) to the Fiduciary via an electronic funds transfer or bank-to-bank wire transfer after verifying that the Fiduciary satisfies the requirements of Paragraph 4(b). Grantees shall instruct the Fiduciary to provide FFSL with account information and necessary authorizations to complete the transfer of the State Grant Money or such other information as may be reasonably required by the State of Utah Treasurer’s office. Such information will be provided in a manner to ensure the security of the information being transmitted and the security of transfer of funds. FFSL shall have no obligation to transmit the State Grant Money to the Fiduciary until it receives instructions and a W-9 form from the Fiduciary.
- e. Grantees may change the Fiduciary during the term of this Agreement, subject to Grantees following the process set forth in this Paragraph 4 and FFSL verifying that the new Fiduciary satisfies the requirements of this Paragraph 4.
- f. Grantees shall ensure their contract with the Fiduciary requires the Fiduciary to operate and maintain separate accounts for the State Grant Money and any Other Funds. Subject to this requirement, the Trust will determine the optimal number and purpose of the accounts.
- g. The Parties agree the State Grant Money will be used to pay for Financial Management Expenses.

**5. SCOPE OF WORK:** The following actions shall constitute the scope of work for this Agreement (the “**Scope of Work**” or the “**Services**”).

- a. Creation of the Trust:

- i. Grantees shall establish the Trust in accordance with the Act. Pursuant to Section 65A-16-301(1)(a) of the Act, Grantees will initially establish the Trust pursuant to the Collaboration Agreement.
  - ii. Subject to FFSL's written approval and at any time after the Effective Date of this Agreement, Grantees may subsequently transfer and assign their rights and responsibilities under this Agreement, along with the Trust's assets, to a Successor Trust Manager. The Parties anticipate this will occur within three (3) years of the date of this Agreement.
- b. Operation of the Trust:
  - i. Grantees shall comply with the Act and applicable laws, regulations, and ordinances in operating the Trust, including complying with the reporting requirements of Section 65A-16-203 of the Act.
  - ii. Grantees shall have authority to take any action Grantees deem necessary to operate the Trust unless prohibited by the Act, this Agreement, or applicable laws, regulations, or ordinances, including without limitation entering into Sub-grants.
- c. Trust Use of State Grant Money:
  - i. Grantees shall only use the State Grant Money for the purposes authorized by the Act. The Fiduciary shall manage State Grant Money exclusively for the benefit of the Trust. Grantees shall have no direct access to State Grant Money. During the term of this Agreement, Grantees shall maintain records of all such reimbursements and shall ensure the Fiduciary maintains such records.
  - ii. From June 2, 2022, the date of the award through the Effective Date of this Agreement, Grantees and Fiduciary have incurred expenses and costs in establishing the Trust, that are entitled to reimbursement under the Act. These costs are in addition to other reimbursable expenses and costs associated with establishing, operating, or administering the Trust.
  - iii. Grantees may direct the Fiduciary to release funds from State Grant Money in accordance with this Agreement and the Act.
- d. Conflicts of Interest: If either Grantee or any of its employees have a financial interest or ownership interest in a project or program for which any State Grant Money is sought to be used for Trust purposes, the respective Grantee shall disclose

such interest to both the Trust Advisory Council and FFSL prior to the use of any State Grant Money for such project or program. If the Trust Advisory Council supports, by majority vote, the use of State Grant Money for such project or program, the Trust Advisory Council shall notify FFSL in writing of such support. The foregoing shall not apply to Grantees' rights to receive reimbursement for expenses and costs to operate the Trust.

- e. Investment of State Grant Money: Pursuant to Section 65A-16-301(3)(c) of the Act, Grantees may authorize the Fiduciary to invest the State Grant Money provided:
  - i. The earnings received from the investment of State Grant Money are used to carry out the purposes of the Trust as described in Section 65A-16-201(1); and
  - ii. The investment of State Grant Money is made and accounted separately from any Other Funds deposited with the Fiduciary. Grantees shall not have any responsibility or liability for investment losses.
  
- f. Endowment: Section 65A-16-201(1)(j) of the Act requires the "creation of one or more endowments to sustain the water trust and fulfill the purposes of [the Act.]" The Parties agree that within two (2) years of the Effective Date of this Agreement, Grantees will utilize two million dollars (\$2,000,000) of the State Grant Money to establish an unrestricted term endowment of ten (10) years to meet this requirement. Grantees may, at their discretion, elect to transition the term endowment to a longer-term endowment or create other endowments.
  
- g. No Guarantee of Outcomes: The Parties acknowledge and agree Grantees cannot guarantee the results or the effectiveness of the Services. Rather, Grantees shall use their best efforts to provide the Services in a professional manner and in accordance with all federal, state, and local laws, but do not promise or guarantee any specific outcomes or results.
  
- h. Reporting: Grantees, either directly or through the Fiduciary, shall submit the Required Reports on behalf of the Trust. The Parties acknowledge Grantees' fiscal years begin on July 1 and end on June 30; however, the Fiduciary has or may have a fiscal year that begins on January 1 and ends on December 31. The Parties further agree that the reporting deadlines in the Act pertain to Grantees' prior fiscal years, in which case the following deadlines shall apply after the completion of the fiscal years of Grantees' or the Fiduciary, as the case may be:
  - i. On or before January 31 of each year of the term of the Agreement, a report that satisfies Section 65A-16-301(2)(b)(iv) of the Act. Such report will be submitted to the Report Recipients. If the report indicates the Trust's expenditure of the State Grant Money met or exceeded the dollar amounts

in Utah Code Section 51-2a-201.5(2), FFSL shall notify the State Auditor, pursuant to Utah Code Section 51-2a-201.5(4)(b).

- ii. On or before June 30 of each year of the term of the Agreement, a report consisting of an itemized accounting that satisfies Section 65A-16-301(2)(b)(ii) of the Act describing: (i) in-kind contributions and other monetary contributions the Trust has obtained during the prior fiscal year to support its operations and to fulfill the purposes set forth in Section 65A-16-201(1) of the Act; and (ii) costs associated with the establishment, operation, and administration of the Trust, including the hiring of staff and contractors. Such itemized accounting shall be submitted to the State Auditor and the Report Recipients. Pursuant to Utah Code Section 63J-1-220(3), FFSL shall, if required, provide a copy of this accounting to the Governor’s Office of Planning and Budget.
  
- iii. On or before June 30 of each year of the term of the Agreement, an accounting report that satisfies Section 65A-16-301(2)(b)(ii)(A) of the Act, which refers to Utah Code Section 51-2a-201.5. Utah Code Section 51-2a-201.5(2) requires different accounting reports depending on the thresholds in the statute. The below table describes those amounts and their corresponding accounting reports. Utah Code Section 51-2a-102 further defines each of the accounting reports. The applicable accounting report shall be submitted to the State Auditor and the Report Recipients.

Dollar Amount of State Grant Money Expended	Type of Accounting Report Required
\$1,000,000 or more	Audit of Fiduciary’s accounts made by an independent certified public accountant
At least \$350,000 but less than \$1,000,000	Review of Fiduciary’s accounts made by an independent certified public accountant
At least \$100,000 but less than \$350,000	A compilation of the Fiduciary’s accounts made by an independent certified public accountant
At least \$25,000 but less than \$100,000	A fiscal report made in a format prescribed by the State Auditor

- i. Additional Reporting Requirements for the Fiduciary: The Parties acknowledge that if the Fiduciary has a fiscal year that ends on December 31, the Fiduciary’s independent annual audit of its accounts may not be completed before the deadlines required under Section 65A-16-301(2)(b) of the Act due to the nature of the accounts audited. If an audited report is required and the Fiduciary is not able to submit an audit report on or before a required deadline, Grantees shall require the

Fiduciary to submit an un-audited report for the prior year that satisfies the applicable deadline, if requested by FFSL, and Grantees shall require the Fiduciary to submit the final audited Required Reports as soon as they are available. The inability of Grantees or Fiduciary to submit the Required Reports by the above deadlines shall not constitute a default under Paragraph 14 of this Agreement.

- j. Registration as a Limited Purpose Entity: Within thirty (30) days after the date the Fiduciary receives the State Grant Money pursuant to Paragraph 4 of this Agreement, Grantees shall register as limited purpose entities pursuant to Section 65A-16-301(2)(i) of the Act, Utah Code Section 51-2a-201.5(7), and Utah Code Section 67-1a-15. Grantees shall maintain this registration for each year of the term of this Agreement.
- k. Creation of Trust Advisory Council: The following provisions shall apply to the creation of the Trust Advisory Council:
  - i. To nominate members of the Trust Advisory Council, Grantees shall provide FFSL with a written list of two (2) to three (3) names for each category listed in Section 65A-16-301(5)(b) of the Act. FFSL shall consult with the Utah Division of Water Quality and the Great Salt Lake Advisory Council to select members of the Trust Advisory Council from the list of names FFSL receives from Grantees. If FFSL determines none of the nominations Grantees have made for a given category satisfy Section 65A-16-301(5)(b) of the Act, FFSL shall notify Grantees in writing of the reasons why the nominations are deficient and shall either instruct Grantees to provide additional information to resolve the deficiencies or instruct Grantees to provide additional nominations. The Parties shall follow this process until FFSL has approved a Trust Advisory Council member for each category in Section 65A-16-301(5)(b) of the Act.
  - ii. Each member of the Trust Advisory Council shall serve a four (4) year term, provided that the initial terms for four (4) of the Trust Advisory Council members shall be two (2) years in length, to ensure the Trust Advisory Council's members have staggered terms. FFSL and Grantees shall consult with each other to select which Trust Advisory Council members will have two (2) year initial terms.
  - iii. When a member's term ends, or a vacancy otherwise occurs, the Parties shall follow the process set forth in Paragraph 5(k)(i) above to nominate and select a successor. When a vacancy is filled, the newly selected member will serve for the unexpired term of the individual leaving the Trust Advisory Council. A member of the Trust Advisory Council may serve until the member's successor is appointed.



- iv. Grantees and the Trust Advisory Council may adopt bylaws or a charter to further guide the Trust Advisory Council governance in conformance with the Act and this Agreement.
- I. Operation of Trust Advisory Council:
- i. Grantees shall secure the Trust Advisory Council's majority support for the Trust to implement a Major Project. Grantees may undertake such work as Grantees deem appropriate to investigate and develop a Major Project proposal for presentation to the Trust Advisory Council.
  - ii. If a majority of the Trust Advisory Council votes not to support a Major Project proposed by Grantees, Grantees may ask FFSL to review the matter for consistency with the Act and FFSL may then authorize Grantees to implement such Major Project.
  - iii. By a majority vote, the Trust Advisory Council may ask FFSL to review any action taken by Grantees to implement a Major Project to determine if Grantees are implementing the Project in accordance with the Act, applicable law, and in a manner consistent with the Trust Advisory Council's support. If FFSL determines Grantees are not implementing a Project appropriately, FFSL shall provide Grantees with written directions informing Grantees of the actions needed to remedy any deficiencies in their implementation of a Project. Grantees shall comply with such directions.
  - iv. FFSL may take any actions it deems necessary to perform its responsibilities under Paragraph 5(l). FFSL shall also issue all decisions it may render under this subparagraph in writing to Grantees and to the Trust Advisory Council.
- m. Additional Advisory Councils: Grantees may create additional advisory councils pursuant to Section 65A-16-301(5)(a) of the Act and as provided herein, provided that such additional advisory councils shall not replace the Trust Advisory Council or interfere with the Trust Advisory Council's roles under Subparagraph 5(l). Grantees shall notify FFSL following the creation of any such additional advisory councils.
- n. Cost Recovery and Administrative Expenses: Pursuant to Section 65A-16-301(3)(a) of the Act, Grantees are entitled to use State Grant Money for cost recovery of Water and Habitat Related Project and Program Expenses, Direct Operating Expenses, and Financial Management Expenses. However, Grantees shall not exceed the FFSL standard rate of ten percent (10%) for Administrative Expenses, calculated against Direct Operating Expenses. Grantees shall not apply Administrative Expenses to Financial Management Expenses charged by the Fiduciary and paid from State Grant Money. For Water and Habitat Related Project and Program Expenses, the Parties agree to rates for recovery of Administrative Expenses as follows:

- i. Project or program value of one million dollars (\$1,000,000) or less will be subject to three percent (3%) in recoverable Administrative Expenses;
- ii. Project or program value between one million dollars (\$1,000,000) and three million dollars (\$3,000,000) will be subject to two percent (2%) in recoverable Administrative Expenses;
- iii. Project or program value over three million dollars (\$3,000,000) will be subject to one percent (1%) in recoverable Administrative Expenses;
- iv. Recoverable Administrative Expenses on water leases, including 10-year leases, will be calculated according to the above “1,2,3” percentages on the basis of the net present value of the agreed lease payments.

The Trust may use State Grant Money for Sub-grants. Sub-grants may, as determined by the Trust, include reasonable cost recovery, including Administrative Expenses as provided in Paragraph 5(n).

- o. One-time Initial Fee: Each Grantee shall receive seventy-five thousand dollars (\$75,000) from the State Grant Money as an initial fee to cover a portion of expenses and costs to establish, operate, or administer the water trust, incurred by Grantees from June 2, 2022, the date of the award, to the Effective Date of this Agreement.
- p. Match of In-Kind or Monetary Contributions: Pursuant to Section 65A-16-301(4) of the Act, Grantees shall provide a significant match of monetary or in-kind contributions to support the Trust’s operations and for the purposes described in Section 65A-16-201(1) of the Act (the “**Match**”). There shall be no requirement as to how much of the Match must derive from monetary or in-kind contributions. Grantees shall calculate a running total of matching contributions over the term of the Agreement, as well as in annual reporting, documented in relevant Required Reports. Sub-grantees or parties other than Grantees may make or contribute to the Match and such contributions shall count towards the requirements of Section 65A-16-301(4) of the Act. Sub-grants must also provide significant match of monetary or in-kind contributions. In-kind contributions or monetary contributions may include items, costs, or monetary contributions for which reimbursement is not sought from State Grant Money. Such contributions may be determined and accounted for from June 2, 2022, the date of the award of the Grant to Grantees. The Match shall be considered significant and satisfy the requirements of Section 65A-16-301(4) of the Act if it meets at least ten percent (10%) of expended State Grant Money, as

calculated every third year following the Effective Date of this Agreement. Such In-Kind or Monetary Contributions include, but are not limited to:

- i. Monetary contributions or other financial contributions (e.g., securities), or assets;
  - ii. Funding from other grants, whether private or public, including but not limited to, funding from federal, other state, local, or other governmental entities;
  - iii. Value of contributions of Water and Habitat Related Projects and Programs and Direct Operating Expenses;
  - iv. Value of contributions of associated Administrative Expenses, up to a contributor's standard rate for Administrative Expenses, even if such rate is in excess of FFSL's standard rate for Administrative Expenses;
  - v. Value of volunteer labor associated with Trust activities or projects;
  - vi. Water, water rights, or water shares, real property assets, or associated costs;
  - vii. Contributions made to acquire or lease water, water rights, or water shares, real property assets, or costs associated therewith.
- q. Monetary Contribution: The contribution referenced in Paragraph 5(p) shall include a monetary contribution of five hundred thousand dollars (\$500,000) by Grantees. Such contribution shall be made on or before three (3) years after the Effective Date of this Agreement, but no later than upon the transfer of the rights and responsibilities and Trust assets, as provided in Paragraph 5(a)(ii). Such contribution shall be deposited with the Fiduciary on behalf of and for the account of the Trust.
- r. Changes in Scope: Any changes in the scope of the Services to be performed under this Agreement shall: (i) be in the form of a written amendment to this Agreement that conforms to the Act or any amendments to the Act; (ii) be mutually agreed to and signed by the Parties; and (iii) specify the changes in the scope of Services.
6. **OVERSIGHT:** FFSL shall be responsible for overseeing Grantees' operation of the Trust in accordance with the Act. Pursuant to Section 65A-16-202 of the Act, FFSL shall establish interventions by rule if Grantees or the Trust fail(s) to comply with the Act. Nothing in this Agreement shall be construed as limiting the oversight authority of FFSL, the enforcement authority of the State Auditor, or the authority of any other regulatory agency or body with jurisdiction over Grantees, the Trust, or the Fiduciary.

7. **TERM:** The term of this Agreement shall begin on the Effective Date and shall end on the date the Agreement is terminated pursuant to Paragraph 14.
8. **GOVERNING LAW AND VENUE:** This Agreement shall be governed by the laws, rules, and regulations of the State of Utah. Any action proceeding from this Agreement shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County and the courts of appeal therefrom.
9. **RECORDS ADMINISTRATION:** Grantees shall maintain or supervise the maintenance of all records necessary to properly account for Grantees' performance under this Agreement. Grantees shall retain these records for, at least, six (6) years after Grantees have expended the State Grant Money (the "**Retention Period**"). In addition to the Required Reports, Grantees agree to allow, at no additional cost to Grantees, FFSL staff, DNR Auditors, and the Utah State Auditor access to all such records during the Retention Period.
10. **CONFLICTS OF INTEREST:** Grantees represent that none of their officers or employees are officers or employees of FFSL or the State of Utah. Grantees shall not act nor represent themselves to be officers, employees, or agents of the State of Utah or FFSL.
11. **INDEMNITY:** Except as otherwise provided in this Agreement, each Grantee shall be fully liable for the actions of its respective agents, employees, officers, and contractors, and shall fully indemnify, defend, and hold harmless FFSL and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of the indemnifying Grantee's performance of this Agreement to the extent caused by the intentional wrongful act or negligence of that indemnifying Grantee and its employees, agents, officers, and contractors; provided, however, each Grantee shall not be required to indemnify that portion of any claim, loss, or damage arising hereunder due to the intentional wrongful act, omission, or negligence of FFSL, the State of Utah, or the other Grantee. Notwithstanding the above, Grantees will not be liable for investment losses incurred in the accounts established by the Fiduciary.
12. **EMPLOYMENT PRACTICES:** Grantees shall operate the Trust in compliance with federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or application for employment or any applicant or recipient of services, on the basis of race, religion, color or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Grantees shall abide by any other laws, regulations, or

orders that prohibit the discrimination of any kind by Grantees in the operation of the Trust.

**13. AMENDMENTS:** This Agreement may only be amended by the mutual written agreement of the Parties, provided that the amendment is within the Scope of Work and is within the scope and purpose of the Act. Any amendments shall be made part of this Agreement.

**14. DEFAULT AND TERMINATION:**

- a. This Agreement may be terminated with cause by FFSL upon a written notice of default that describes in reasonable detail the grounds for default. Grantees shall have thirty (30) days after receiving a written notice of default to correct and cease any defaults under this Agreement, after which, if Grantees have not cured such defaults, or have not diligently commenced the cure of defaults, FFSL may do one or more of the following:
  - i. Exercise any remedy provided by law or equity;
  - ii. Terminate this Agreement;
  - iii. Suspend Grantees from receiving future contracts or agreements from FFSL or the State of Utah; or
  - iv. Demand a full refund of any unexpended portion of the State Grant Money or other funds the State provided to the Trust.
- b. FFSL and Grantees may jointly terminate this Agreement, in whole or in part, at any time, by mutual agreement in writing, provided such termination will allow FFSL and Grantees at least ninety (90) days to wind-down the affairs of the Trust including executing necessary documents and distributing funds. On termination of this Agreement, all accounts and payments shall be processed according to the requirements set forth herein.
- c. Grantees may terminate this Agreement without cause with one hundred and twenty (120) days advance written notice to FFSL, provided that Grantees shall:
  - i. Cause the Fiduciary to return any unexpended portion of the State Grant Money to FFSL;
  - ii. Cause the Fiduciary to prepare a final written itemized report that satisfies Utah Code Section 63J-1-220(2)(b)(ii) by describing the Trust's total expenditure of all State Grant Money received; and
  - iii. Ensure that all Required Reports associated with the State Grant Money are

submitted. Nothing in this Paragraph shall infringe or limit the ability of FFSL and the Auditor to require the Grantees to comply with any other requirements in the Act, law, or regulation needed for Grantees to terminate the Agreement.

- d. If, after the Effective Date of this Agreement, any of the statutes referenced in this Agreement or affecting this Agreement are replaced, amended or repealed, or if any new statutes or regulations impacting this Agreement are enacted, FFSL or Grantees may, individually or collectively at their discretion, terminate this Agreement and shall be released from all terms, conditions and requirements of this Agreement.
  - e. Upon termination, Grantees shall cause the Fiduciary to return unexpended State Grant Money, if any, to FFSL.
  - f. Grantees shall be compensated from the State Grant Money administered by the Fiduciary, for the Services they properly perform under this Agreement up to the effective date of the notice of termination. Grantees agree that in the event of such termination, Grantees' sole remedy and monetary recovery from FFSL or the State of Utah is limited to full payment for all Services properly performed as authorized under this Agreement or the Act up to the date of termination, as well as any reasonable monies owed as a result of Grantees having to terminate other agreements necessarily and appropriately entered into by Grantees pursuant to this Agreement. FFSL shall not be liable to the Grantees for compensation for any Services that are contrary to the Act.
- 15. SUSPENSION OF WORK:** FFSL may suspend Grantees from executing new contracts for the Trust if FFSL has a reasonable basis to believe Grantees are not operating the Trust in accordance with the Act or terms of this Agreement. FFSL may suspend Grantees' contracting authority by providing written notice to Grantees, explaining in reasonable detail the basis for the suspension, at least fourteen (14) days prior to the start of suspension. During the period of suspension, Grantees shall continue to have the authority to operate the Trust, administer existing contracts, ensure the Trust's obligations are fulfilled, and recover costs and expenses pursuant to the Act and this Agreement. FFSL shall complete its investigation within thirty (30) days of the date it issued the above written notice. Grantees shall cooperate with FFSL's investigation. If FFSL's investigation concludes that Grantees have operated the Trust in accordance with the Act and the terms of this Agreement, FFSL shall issue a written notice to Grantees reinstating Grantees' contracting authority within fifteen (15) days of completing its investigation. If FFSL determines that Grantees have not operated the Trust in accordance with the Act or the terms of this Agreement, FFSL may terminate the Agreement pursuant to Paragraph 14(a).
- 16. CONSEQUENTIAL DAMAGES:** No Party to this Agreement shall be liable to any other party for special, indirect, or consequential damages under any provision of this Agreement or for any special, indirect, or consequential damages arising out of any act or failure to act

hereunder.

17. **SURVIVAL OF TERMS:** Termination or expiration of this Agreement shall not extinguish or prejudice a Party's right to enforce this Agreement with respect to any default or defect in the Services that has not been cured.
18. **PUBLIC INFORMATION:** Grantees agree that this Agreement and the Required Reports may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act ("**GRAMA**"). Grantees give FFSL and the State of Utah express permission to make copies of this Agreement and the Required Reports in accordance with GRAMA. Except for specific sections identified in writing by Grantees and expressly approved by the State of Utah Division of Purchasing and General Services, Grantees also agree that the Joint Application is a public document, and copies may be given to the public as permitted under GRAMA. FFSL and the State of Utah shall inform Grantees of any GRAMA requests for disclosure of this Agreement or the Joint Application.
19. **STANDARD OF CARE:** Grantees shall perform the Services in accordance with the standard of care exercised by members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Agreement.
20. **REVIEWS:** FFSL reserves the right to perform checks, reviews, and/or comment upon the Services of Grantees in accordance with the Act. Such reviews do not waive the requirement of Grantees to meet all of the terms and conditions of this Agreement.
21. **ASSIGNMENT:** Except as provided in Paragraph 5(a)(ii) of this Agreement, Grantees shall not assign, sell, or transfer any right or obligation under this Agreement, in whole or in part, without FFSL's prior written approval. Nothing herein shall preclude Grantees from entering into Sub-grants.
22. **FORCE MAJEURE:** No Party to this Agreement shall be held responsible for delay or default caused by fire, riot, public health emergencies, pandemics, acts of God, nature and/or war, which is beyond that Party's reasonable control. Grantees or FFSL may terminate this Agreement in accordance with Paragraph 14 after determining such delay will prevent successful performance of this Agreement.
23. **PUBLICITY:** Grantees and FFSL shall coordinate with each other for approval of media statements and publicity matters announcing this Agreement. FFSL agrees Grantees may publish and circulate materials and information describing the work of the Trust (including but not limited to brochures, websites, publications, fact sheets, social media posts, press releases, marks, and logos etc.) without approval or review by FFSL.
24. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of

any subsequent right, power, or privilege.

25. **ATTORNEY'S FEES:** If any judicial action arises to enforce rights under this Agreement, the prevailing Party shall be entitled to its costs and expenses, including reasonable attorney's fees incurred in connection with such action subject to Paragraph 16.
26. **DISPUTE RESOLUTION:** Prior to any Party filing a judicial proceeding, the Parties agree to participate in the mediation of any dispute. The Parties shall endeavor to reasonably agree upon a mediator and shall mediate the dispute in good faith with the mediator they select. Each Party shall be responsible for their own mediation costs and shall split the costs of the mediator between them by dividing the total costs of the mediator by the number of Parties involved. If the Parties do not agree upon a mediator, each Party shall name a mediator and such mediators shall select a mediator to mediate the dispute. The Parties shall be bound to mediate the dispute with the selected mediator.
27. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Agreement shall not affect the validity or enforceability of any other provision, term, or condition of this Agreement, which shall remain in full force and effect.
28. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the Parties and supersedes any and all other prior and contemporaneous agreements and understandings between the Parties, whether oral or written.
29. **NOTICES:** All notices and communications under this Agreement, including the Required Reports, shall be in writing and shall be deemed to have been duly given and delivered as of the date the notice is sent, if delivered by mail or email to the following, which a Party may change from time to time by written notice to the other Parties.

**As to NAS:**

National Audubon Society  
Attn: General Counsel  
225 Varick St., 7<sup>th</sup> Floor  
New York, NY 10014  
[contracts@audubon.org](mailto:contracts@audubon.org)

With a copy to:

Director  
National Audubon Society Saline Lakes Program  
231 West 800 South, Ste. E  
Salt Lake City, UT 84101  
[marcelle.shoop@audubon.org](mailto:marcelle.shoop@audubon.org)

**As to TNC:**

The Nature Conservancy



Attn: Utah State Director  
559 E. South Temple  
Salt Lake City, UT 84102  
[dlivermore@tnc.org](mailto:dlivermore@tnc.org)

With a copy to:  
The Nature Conservancy  
Attn: Utah Conservation Director  
559 E South Temple  
Salt Lake City, UT 84102  
[kelley.hart@tnc.org](mailto:kelley.hart@tnc.org)

**As to FFSL:**  
Utah Division of Forestry, Fire, and State Lands  
Director  
1594 W. North Temple, Suite 3520  
P.O. Box 14610  
Salt Lake City, UT 84114-5703  
[jamiiebarnes@utah.gov](mailto:jamiiebarnes@utah.gov)

- 30. COUNTERPARTS AND ELECTRONIC SIGNATURES:** This Agreement may be executed in counterparts, each of which shall be deemed an original and together constitute the same Agreement whether all Parties execute each counterpart. The Parties may execute the Agreement with electronic signatures pursuant to Utah Code Section 46-4-201.
- 31. NECESSARY ACTS OF COOPERATION:** Each of the Parties shall execute and deliver such further instruments, documents, and agreements and do such further acts and things as may be useful or required to carry out the purpose and intent of this Agreement and which are not inconsistent with the provisions hereof.
- 32. REQUIRED APPROVALS AND CONSENT:** The Parties shall not unreasonably withhold, condition, or delay their consent for any approvals required herein.
- 33. INCORPORATION OF RECITALS:** The recitals are incorporated as part of this Agreement by reference. The Parties further acknowledge and agree that each of the recitals is true and correct.
- 34. TITLES AND HEADINGS:** The headings in the Agreement are for the convenience of the Parties only and are not to be considered when interpreting this Agreement.
- 35. SUCCESSOR LEGISLATION OR FUTURE APPROPRIATIONS:** Subject to Paragraph 14(d), if future legislative action is taken that modifies the Act or its substance, the Act as of the Effective Date of this Agreement shall remain the controlling language governing this


Agreement unless and until all the Parties agree otherwise in writing. The Parties recognize the Legislature may amend the Act to include new requirements for the Trust to receive Future Appropriations. If Future Appropriations are made for the Trust, the Parties may, at their discretion, amend the Agreement or enter into a new agreement to address such Future Appropriations.

- 36. NO THIRD-PARTY BENEFICIARIES:** This Agreement is not intended to be a third-party beneficiary contract for the benefit of any third parties.
- 37. NO PARTNERSHIP:** This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership among the Parties.
- 38. LEGAL REVIEW:** The Parties represent and agree that they had full opportunity to review this Agreement and that they accept the terms hereof. The rule that such an agreement is to be construed against its drafter shall not be applied to this Agreement.
- 39. GOOD FAITH:** The Parties shall act at all times in good faith in fulfilling their obligations under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date first set forth above.

[signature pages follow]

UTAH DIVISION OF FORESTRY, FIRE, AND STATE LANDS

  
[Jamie Barnes \(Dec 20, 2022 20:11 MST\)](#)

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**By: Jamie Barnes**  
**Its: Director**

Date: Dec 20, 2022

NATIONAL AUDUBON SOCIETY, INC.

  
[Ingrid Milne \(Dec 21, 2022 11:36 EST\)](#)

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**By: Ingrid Milne**  
**Its: Chief Financial Officer**

Date: Dec 21, 2022

NATIONAL AUDUBON SOCIETY, INC.

  
[Marshall Johnson \(Dec 22, 2022 10:37 CST\)](#)

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**By: Marshall Johnson**  
**Its: Chief Conservation Officer**

Date: Dec 22, 2022

THE NATURE CONSERVANCY



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**By: Dave Livermore**  
**Its: Utah State Director**

Date: Dec 20, 2022

**Approved As to Form:**

**SEAN D. REYES**  
Utah Attorney General



[Emma Whitaker \(Dec 20, 2022 18:41 MST\)](#)

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**By: Emma K. Whitaker**

**Its: Assistant Attorney General, Counsel for Division of Forestry, Fire and State Lands**

**Date:** Dec 20, 2022

## Exhibit 1

### DEFINITIONS OF EXPENSES AND COSTS OF THE TRUST

#### Direct Operating Expenses

Direct Operating Expenses include, but are not limited to:

- salaries and benefits for personnel directly contributing to accomplishing the purposes of the Great Salt Lake Watershed Enhancement Program (the Act) and Trust goals;
- associated travel, meetings, and lodging;
- office supplies, postage, telecommunications, communications, computer equipment, supplies, printing, photography, publications, social media costs, marketing and advertising expenses, and equipment (excluding the purchase of vehicles);
- expenses and fees incurred directly related to the negotiation, contract preparation, documentation and closing of water-related purchases and/or water-related leases;
- costs of due diligence, appraisals, valuations, closing costs, title insurance, application fees and costs related to the transaction;
- legal fees, consulting fees, other costs related to preparing and filing water right applications, including but not limited to the costs associated with responding to protests, filing requests for reconsideration and appeals, and other actions needed to implement and maintain water rights;
- costs or fees associated with access, licensing, or real property assets;
- costs associated with protecting, restoring, and/or enhancing uplands, wetlands and habitats that benefit Great Salt Lake hydrologic or ecosystem functions;
- costs for consulting services for strategic planning, ecological studies, hydrologic studies, outcome monitoring, and water market research and analysis;
- legal and consulting costs associated with the establishment and operation of the Trust.

#### Water and Habitat Related Project and Program Expenses

- Acquisition costs include, but are not limited to:
  - the purchase or lease price of water, water shares, or water rights, which may include associated real property assets;
  - annual assessment fees and costs associated with water shares and/or maintaining water rights;
  - interest carrying costs associated with holding real property assets until reimbursement can occur.
- Water and Habitat Protection, Restoration, and Enhancement Costs, include, but are not limited to, capital construction costs for:
  - restoring or protecting wetlands or uplands habitats consistent with the purpose of the Act;
  - improving, restoring, and/or enhancing water flows to Great Salt Lake, including costs and equipment and infrastructure associated with distributing, ensuring, and monitoring water delivery, as well as costs associated with pumping or distribution of water, or other infrastructure consistent with purpose of the Act.

#### Administrative Expenses (also known as Overhead Costs)

Administrative Expenses are general or operational expenses not readily identified as a specific cost to a

project or program. These include, but are not limited to: rent, utilities, lighting, furniture, insurance, office repairs, and each organization’s administrative operations and management absorbed by an organization such as accounting, finance, legal, human resources, information technology systems support, and related costs.












# Final GSLWET Agmt. FFSL-NAS-TNC

Final Audit Report

2022-12-22

Created:	2022-12-21
By:	Marcelle Shoop (MShoop@audubon.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAr50I0M5a_ngl5eQYWA9CiAdF6M05uKc

## "Final GSLWET Agmt. FFSL-NAS-TNC" History


-  Document created by Marcelle Shoop (MShoop@audubon.org)  
2022-12-21 - 1:27:45 AM GMT- IP address: 174.23.143.235
-  Document emailed to Emma Whitaker (emmawhitaker@agutah.gov) for signature  
2022-12-21 - 1:33:34 AM GMT
-  Email viewed by Emma Whitaker (emmawhitaker@agutah.gov)  
2022-12-21 - 1:40:51 AM GMT- IP address: 136.60.224.95
-  Document e-signed by Emma Whitaker (emmawhitaker@agutah.gov)  
Signature Date: 2022-12-21 - 1:41:12 AM GMT - Time Source: server- IP address: 136.60.224.95
-  Document emailed to Jamie Barnes (jamiebarnes@utah.gov) for signature  
2022-12-21 - 1:41:15 AM GMT
-  Email viewed by Jamie Barnes (jamiebarnes@utah.gov)  
2022-12-21 - 1:41:21 AM GMT- IP address: 74.125.215.29
-  Document e-signed by Jamie Barnes (jamiebarnes@utah.gov)  
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-  Document emailed to dlivermore@tnc.org for signature  
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-  Email viewed by dlivermore@tnc.org  
2022-12-21 - 3:12:04 AM GMT- IP address: 40.94.28.126
-  Signer dlivermore@tnc.org entered name at signing as Dave Livermore  
2022-12-21 - 4:25:16 AM GMT- IP address: 107.3.103.224
-  Document e-signed by Dave Livermore (dlivermore@tnc.org)  
Signature Date: 2022-12-21 - 4:25:18 AM GMT - Time Source: server- IP address: 107.3.103.224

 Document emailed to [ingrid.milne@audubon.org](mailto:ingrid.milne@audubon.org) for signature


2022-12-21 - 4:25:19 AM GMT

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2022-12-21 - 2:59:39 PM GMT- IP address: 69.123.126.49

 Signer [ingrid.milne@audubon.org](mailto:ingrid.milne@audubon.org) entered name at signing as Ingrid Milne

2022-12-21 - 4:36:17 PM GMT- IP address: 69.123.126.49

 Document e-signed by Ingrid Milne ([ingrid.milne@audubon.org](mailto:ingrid.milne@audubon.org))

Signature Date: 2022-12-21 - 4:36:19 PM GMT - Time Source: server- IP address: 69.123.126.49

 Document emailed to [marshall.johnson@audubon.org](mailto:marshall.johnson@audubon.org) for signature


2022-12-21 - 4:36:21 PM GMT

 Email viewed by [marshall.johnson@audubon.org](mailto:marshall.johnson@audubon.org)


2022-12-21 - 4:43:10 PM GMT- IP address: 24.117.31.114

 Email viewed by [marshall.johnson@audubon.org](mailto:marshall.johnson@audubon.org)

2022-12-22 - 4:36:50 PM GMT- IP address: 24.117.31.114

 Signer [marshall.johnson@audubon.org](mailto:marshall.johnson@audubon.org) entered name at signing as Marshall Johnson

2022-12-22 - 4:37:22 PM GMT- IP address: 24.117.31.114

 Document e-signed by Marshall Johnson ([marshall.johnson@audubon.org](mailto:marshall.johnson@audubon.org))

Signature Date: 2022-12-22 - 4:37:24 PM GMT - Time Source: server- IP address: 24.117.31.114

 Agreement completed.

2022-12-22 - 4:37:24 PM GMT