

**OQO CAPACITY DEVELOPMENT FUNDING PROGRAM
- FUNDING AGREEMENT -**

This Agreement is made as of the ____ day of _____, 2017

BETWEEN **THE NATURE CONSERVANCY OF CANADA**
(Hereinafter referred to as “NCC”)

AND

<Insert Land Trust Name >
(Hereinafter referred to as the “Organization”)

WHEREAS:

- (a) By agreement made as of the 11th day of September, 2014 (hereinafter called the “Contribution Agreement”), Her Majesty the Queen in Right of Canada as represented by the Minister of the Environment and Climate Change Canada (hereinafter called “ECCC”) agreed with NCC to provide to NCC an amount (hereinafter called the “Fund”) to administer the OQO Capacity Development Funding Program (the “Program”) to assist other land trusts with the recovery of costs in relation to complying with Practices originating from the Canadian Land Trust Standards and Practices;
- (b) ECCC and NCC agreed that NCC may transfer an amount from the Fund not exceeding \$125,000 in the aggregate to other qualifying land trusts to be used in accordance with the terms of the Contribution Agreement and to support the Program; and
- (c) NCC has agreed to provide to the Organization the Amount (defined in Section 4.02 below), to be provided to and used by the Organization to support the Program, in accordance with this Agreement.

Now, therefore, in consideration of the sum of \$2 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual promises and agreements hereinafter set out, NCC and the Organization (hereinafter called the “Parties”) agree as follows:

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1.0 DEFINITIONS

1.01 Definitions. The following words or phrases as used in this Agreement shall be deemed to have the following meanings unless the context otherwise indicates:

“**Agreement**” means this document with the appendices or schedules in the following list which together form an integral part of this Agreement, and together constitute the entire agreement between the Parties, superseding all previous agreements, documents, representations, negotiations, understandings and undertakings related to its subject matter. The organization acknowledges having read the Agreement and agrees with the contents.

“**Application Form**” means the form prepared and submitted by the Organization, which was approved by NCC prior to the completion of Practices.

“**Eligible Expenditure**” means an expenditure incurred by the Organization between April 1, 2016 and March 31, 2017, in accordance with the terms and conditions outlined Section 4 of this Agreement.

“**Payment Request Form**” means the form prepared and submitted by the Organization to NCC, which records eligible expenditures incurred between April 1, 2016 and March 31, 2017, for which the Organization is seeking reimbursement under the Program.

“**Practices**” means the practices described in the *NCC Capacity Development Assessment Manual*, which were derived originally from *the Canadian Land Trust Standards and Practices*.

“**Project**” means the project as outlined in the original Application Form, in combination with the completed Practices and the final Payment Request Form (as per Schedule 1).

1.0 PURPOSE

2.01 The Purpose of this Agreement: The purpose of this Agreement is to enable the Organization to recover eligible costs incurred as a result of completing any number of Practices under the Program.

2.0 REPRESENTATIONS & WARRANTIES

3.01 Representations and Warranties of the Organization. The Organization represents and warrants to NCC that:

- (a) it is a registered Canadian charity that is an approved recipient of ecological gifts under ECCC’s Ecological Gifts program;
- (b) the information contained in the Application Form and the Payment Request Form (as per Schedule 1), was at the time of completion accurate, true and complete and sets

out fully all the facts necessary to enable NCC to make an informed decision to fund the Project described therein;

- (c) it has full power to execute and deliver this Agreement and to perform its obligations hereunder;
- (d) this Agreement constitutes a legally binding obligation of the Organization, enforceable against it in accordance with its terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization and other laws affecting generally the enforcement of the rights of creditors and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies;
- (e) the execution and delivery of this Agreement and the performance by the Organization of its obligations hereunder will not, with or without the giving of notice or the passage of time or both:
 - (i) violate the provisions of the Organization's by-laws, any other corporate governance document subscribed to by the Organization or any resolution of its Board of Trustees;
 - (ii) violate any judgement, decree, order or award of any court, government agency, regulatory authority or arbitrator made in respect of the Organization; or
 - (iii) conflict with or result in the breach or termination of any material term or provision of, or constitute a default under or cause any acceleration under, any licence, permit, concession, franchise, indenture, mortgage, lease, equipment lease, contract, deed of trust or any other instrument or agreement by which it is bound.

3.02 Representations and Warranties of NCC: NCC represents and warrants to the Organization that:

- (a) it has full power to execute and deliver this Agreement and to perform its obligations hereunder;
- (b) this Agreement constitutes a legally binding obligation of NCC, enforceable against it in accordance with its terms.

3.03 Survival: All representations and warranties will survive the execution of this Agreement.

4.0 FUNDING BY NCC

4.01 Funding Approval: The parties acknowledge that the Organization has submitted to NCC an approved Application Form and a complete Payment Request Form (as per Schedule 1), and NCC has delivered to the Organization notice of Project approval.

4.02 Amount and Use. NCC agrees to disburse an amount (not to exceed \$5,000) of **\$<Insert Amount approved>** (the "Amount"), to the Organization upon the terms and conditions set out

in the Agreement provided that the Organization is, at the time of such disbursement, in compliance with its obligations under this Agreement, and the Amount will be used by the Organization in accordance with and for the purposes set out in this Agreement.

4.03 Funding to the Organization

- (a) The Organization acknowledges that NCC is required to provide certain confirmation to ECCC about further distribution of the Fund and, in respect of such confirmation:
 - (i) the Organization agrees that the public purpose of the Program and the need to provide transparent, fair and equitable service shall be respected.
 - (ii) the Organization agrees to carry out its financial and non-financial roles and responsibilities under this Agreement in a manner that permits NCC to meet its related obligations under the Agreement.
 - (iii) the Organization agrees that the decisions made between it and NCC will be transparent and open, having regard to their legitimate interests in protecting their proprietary rights and their rights of privacy.
- (b) The Organization agrees with NCC's right to perform periodic audits of the Organization's compliance with the terms and conditions of the Agreement, as well as the right to provide ECCC with copies of audit reports or any financial progress or other reports conducted pursuant to the Agreement:
 - (i) The Organization agrees with NCC to provide to ECCC such right of access to documents and premises as may be necessary.
 - (ii) The Organization agrees that NCC has consent on behalf of the Organization for the public disclosure by ECCC of any information provided by the Organization to NCC in connection with their application for funding of their respective Project, or relating to activities falling within the scope of this Agreement.
 - (iii) the Organization agrees that ECCC may obtain from NCC a copy of all signed agreements between NCC and the Organization relating to the Project.
- (c) The Organization shall indemnify and hold harmless NCC from and against all claims, losses, damages, costs, expenses, actions and other proceedings made, sustained, brought, prosecuted, threatened to be brought or prosecuted in any manner, based upon, occasioned by, attributable to, or arising from any wilful or negligent act, omission or delay on the part of the Organization, or the directors, members, officers, employees or agents of the Organization relating to the use of the Amount.
- (d) The Organization agrees with NCC to provide to NCC and to ECCC such documents and further assurances in respect of its agreements in this Article 4.0 and elsewhere in this Agreement as NCC and/or ECCC may reasonably require.

4.04 Eligible expenditures. The Amount can be used only to support:

- (a) The costs related directly to completing any of the Practices for which documentation has been submitted and approved by NCC, and such expenditures

having been incurred between April 1, 2016 and March 31, 2017, including, but not limited to the following:

- (i) legal fee
- (ii) professional fees;
- (iii) workshops and/or training courses fees,
- (iv) seminar fees;
- (v) staff time or consultant costs incurred, not to exceed a day rate of \$350/day¹;

- (b) GST/HST/PST: The organization acknowledges and agrees that no part of the Amount may be used to fund GST/HST that is reimbursable by the Canada Revenue Agency (CRA) and/or PST that is reimbursable by the Provinces;

4.05 Method of Payment: Within the limits of and subject to the terms of this Agreement, the Amount will be disbursed by NCC to the Organization in the manner determined by NCC.

5.0 CONFLICT OF INTEREST

5.01 Parliament: The Organization shall ensure that no current or former public servant or public office holder to whom the *Conflict of Interest Act*, the Conflict of Interest and Post-Employment Code for Public Office Holders or the Values and Ethics Code for the Public Service applies shall derive direct benefit from this Agreement unless the provision or receipt of such benefit is in compliance with such legislation and codes;

- i) The Organization shall ensure that no member of the House of Commons and the Senate be admitted to any share or part of the funding under this Agreement or to any benefit arising thereof. The members of the House of Commons and the Senate shall not be appointed as Directors on the Board of Trustees of the Organization;
- ii) The Organizations shall ensure no member of the Senate or the House of Commons shall be admitted to any share or part of this Agreement, or to any benefit arising from it, that is not otherwise available to the general public;

5.02 Federal Policies: The Organization shall ensure that no former federal public officer or public servant who is not in compliance with the federal *Conflict of Interest and Post-employment Code for Public Office Holders* or *Conflict of Interest and Post-Employment Code for the Public Service*, respectively, be admitted to any share or part of the funding under this Agreement or to any benefit arising thereof.

5.03 NCC Policies: The Organization shall ensure that no member of its Board of Trustees, staff or other representative who is not in compliance with NCC's Conflict of Interest Policies, (as they exist at the time of the signing of this Agreement, governing Board members, staff or other representatives of NCC) be admitted to any share or part of the funding under this Agreement or to any benefit arising thereof.

5.04 Other Provisions:

¹ Mileage is not to exceed a maximum of 48¢ per kilometre.

- i) The Organization shall ensure no bribe, gift, or other inducement has been paid, given, promised, or offered to any person for, or with a view to, the obtaining of this Agreement by the Organization;
- ii) The Organization shall ensure it has not employed any person to solicit or secure this Agreement upon any agreement for commission, percentage, brokerage or contingent fee;
- iii) The Organization shall ensure it and any person lobbying on its behalf to obtain the contribution under this Agreement or any benefit hereto related and who is required to be registered pursuant to the Lobbying Act, is registered pursuant to that Act.

6.0 MISCELLANEOUS

6.01 Severability. If any provision of this Agreement is determined to be invalid or unenforceable by an arbitrator or a court of competent jurisdiction from which no further appeal lies or is taken, that provision shall be deemed to be severed therefrom and the remaining provisions of this Agreement shall not be affected thereby and shall remain valid and enforceable; provided that in the event that any portion of this Agreement shall have been so determined to be or become invalid or unenforceable (the "offending portion"), the Parties shall negotiate in good faith such changes to this Agreement as will best preserve for the Parties the benefits and obligations of such offending portion.

6.02 Amendments. This Agreement may only be amended, modified or supplemented by a written agreement signed by both of the Parties.

6.03 Waiver. No waiver of any of the provisions of this Agreement by either Party shall be deemed to constitute a waiver of such provision by the other Party or a waiver by such Party of any other provision (whether or not similar); nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing duly executed by the Party to be bound thereby.

6.04 Governing Law. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

6.05 Entire Agreement. Except as otherwise provided for herein, this Agreement constitutes the entire agreement between the Parties pertaining to the matters contemplated hereby and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties in respect of the Amount and the Program.

6.06 Public Access to Information. NCC may provide public access to information related to results and accomplishments achieved under the Program.

6.07 Relationship of the Parties. Nothing contained in this Agreement shall be construed to place the Parties in the relationship of partners or joint ventures and neither Party shall have any right to obligate or bind the other Party in any manner.

6.08 Indemnification and Limitation of Liability. The Organization shall indemnify and hold harmless NCC from and against all claims, losses, damages, costs, expenses, actions and other proceedings made, sustained, brought, prosecuted, threatened to be brought or prosecuted in any

manner, based upon, occasioned by, attributable to, or arising from any wilful or negligent act, omission or delay on the part of the Organization, or the directors, members, officers, employees or agents of the Organization relating to the use of the Amount and the delivery of the Program. Notwithstanding anything to the contrary contained herein, neither of the Parties will be liable for the indirect, or consequential damages of the other Party nor for the loss of revenues or profits. Therefore, the Parties expressly acknowledge and agree that they will not be liable for each other's indirect, or consequential damages or for damages for lost profits or lost revenues under this Agreement, regardless of whether such a liability arises in tort (including negligence), contract, fundamental breach or breach of a fundamental term, misrepresentation, breach of warranty, breach of fiduciary duty, indemnification or otherwise.

6.09 Notices. Any notice, direction or other instrument required or permitted to be given under this Agreement shall be in writing (including telecopier, telex or any other means of communication by which words are capable of being visibly and instantaneously reproduced at a distant point of reception) and given by delivering it or sending it by telecopy or other similar means of communication addressed:

(a) if to NCC, at:

The Nature Conservancy of Canada
36 Eglinton Avenue West, Suite 400
Toronto, Ontario
M4R 1A1

Attention: Bronwyn Daigle, Federal Funding Agreement Coordinator

(b) if to the Organization at:

<INSERT ADDRESS OR
ORGANIZATION HERE>

Attention: <Insert Name here>, <Insert Title Here.>

Any such notice, direction or other instrument given as aforesaid shall be effective upon receipt, unless received on a day, which is not a business day. Either Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to the Party at its changed address.

6.10 Time of the Essence. Time shall be of the essence in this Agreement.

6.11 Third Party Beneficiaries. Each Party intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person, other than the Parties and no Person, other than the Parties, shall be entitled to rely on the provisions hereof in any action, suit, proceeding, or hearing or other forum.

6.12 Assignment and Successors. This Agreement and any rights or duties hereunder may not be transferred, assigned or delegated to any other person, firm, corporation or other entity by

either Party without the express prior written consent of the other Party to this Agreement, such consent not to be unreasonably withheld. This Agreement shall inure to the benefit of and be binding upon, the Parties, their successors and permitted assigns.

6.13 Remedies Cumulative. All rights, powers and remedies provided under this Agreement or otherwise available in respect thereof at law or in equity shall be cumulative and not alternative and the exercise or beginning of the exercise of any thereof by either Party shall not preclude the simultaneous or later exercise of any other such right, power or remedy by such Party. No failure, or delay, on the part of NCC, in exercising any right, power or remedy under this Agreement or as may be otherwise available, shall operate as a waiver thereof.

6.14 Costs and Expenses. Except as otherwise or expressly provided in this Agreement, each Party shall pay its own costs and expenses incurred in authorizing, preparing, executing and performing this Agreement and the activities contemplated thereunder including, without limitation, all fees and expenses of legal counsel, auditors, accountants, investment advisors or other representatives or consultants.

6.15 Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

6.16 Excusable Delays. The dates and times by which either Party is required to perform any obligation under this Agreement shall be postponed automatically to the extent, for the period of time, that the Party is prevented from so performing by circumstances beyond its reasonable control. Said circumstances shall include acts of nature, strikes, lockouts, riots, acts of war, epidemics, government regulations imposed after the fact, fire, communications failures, power failures, earthquakes or other disasters.

6.17 Termination. This Agreement is in effect until the Amount has been spent for the purposes of this Agreement, and all audit, evaluation and reporting obligations are satisfied.

6.18 Interpretation: If the context requires it, any word in singular used throughout this Agreement also includes the plural (or vice-versa).

6.19 Declaration: The Organization acknowledges having read the Agreement and accepts its contents.

IN WITNESS WHEREOF the Parties have caused their duly authorized representatives to execute this Agreement effective as of the date first above written.

THE NATURE CONSERVANCY OF CANADA

Per: _____

Name:

Position:

I have authority to bind the corporation.

ORGANIZATION

Per: _____

Name:

Position:

I have authority to bind the corporation