

## PRIMARY FUNDING AGREEMENT

This Primary Funding Agreement (the “**Agreement**”) governs the disbursement of funds by Circular Action Alliance Oregon LLC, (“**CAA Oregon**”) to the undersigned (“**Recipient**,”) as of the later of (i) the date on which CAA Oregon’s final Oregon Program Plan is approved by DEQ or (ii) the date on which it is fully executed by the Parties (the “**Effective Date**”). CAA Oregon and Recipient may be referred to individually as a “**Party**” or collectively as “**Parties**.”

### BACKGROUND

- A. CAA Oregon, or its assignee in accordance with Section 7(h) below, has been approved as a producer responsibility organization (“**PRO**”) by Oregon’s Department of Environmental Quality (“**DEQ**”) pursuant to the Plastic Pollution and Recycling Modernization Act, ORS 459A, and OAR 340-090.
- B. CAA Oregon is a voluntary, private nonprofit 501(c)(3) organization focused on helping producers comply with extended producer responsibility laws by delivering harmonized services and working with governments, businesses and communities to reduce waste and recycle more.
- C. In furtherance of producers of recyclable materials sold or distributed in Oregon helping to finance the management of, and ensure an environmentally sound stewardship program for, their products, CAA Oregon is responsible for administering a program of funding and reimbursement of certain expenses related to the expansion of access to recycling services in Oregon.
- D. In its October 4, 2024 update to the Local Government Opportunity to Recycle Requirements informational document, DEQ advised local governments seeking compensation from a PRO to enter into a formal agreement with the PRO.
- E. Recipient, pursuant to a funding application submitted to CAA Oregon, desires payment or reimbursement for certain expenses for which it may be eligible to receive from CAA Oregon in accordance with Applicable Law, as defined herein.

Therefore, the Parties agree as follows:

#### 1. Disbursements.

a. Subject to the terms of this Agreement, CAA Oregon shall disburse approved funding to Recipient for expenses that are eligible for reimbursement pursuant to Oregon Revised Statutes (ORS) Chapter 459A, Oregon Administrative Rules (OAR) Chapter 340-090, and all other rules and regulations promulgated pursuant thereto, as amended from time to time (“**Applicable Law**”), including without limitation ORS 459A.890 (“**Eligible Expenses**”). In the event of a change in Applicable Law, eligibility shall be determined in accordance with Applicable Law at the time the reimbursement was requested except to the extent that the change in Applicable Law requires otherwise. In order to receive funds for an Eligible Expense,

Recipient shall submit requests for compensation including the applicable addendum or addenda for the type(s) of reimbursement sought (each, a “**Funding Request**”) in accordance with this Agreement and the instructions set forth on CAA Oregon’s website. Recipient may include multiple requests for Eligible Expenses within a single Funding Request, and may submit a maximum of one Funding Request once every calendar month.

b. CAA Oregon shall only make disbursements for reasonable Funding Requests made for Eligible Expenses. CAA Oregon will review Funding Requests and determine in its reasonable discretion whether a particular request for funding is: (i) for reasonably necessary Eligible Expenses; and (ii) a cost-effective solution to meet Recipient’s need. Recipient is responsible for submitting complete and accurate Funding Requests for Eligible Expenses. Recipient understands and acknowledges that incomplete or inaccurate Funding Requests or requests for funding that are not for Eligible Expenses may delay or prevent payment. If a Funding Request contains, in CAA Oregon’s reasonable determination, both Eligible Expenses and ineligible expenses, or a request for funds that is not a reasonable solution to meet Recipient’s need, CAA Oregon may remit payment for Eligible Expenses and withhold the remainder of the funds requested.

c. CAA Oregon shall make disbursements for a Funding Request only if it is obligated to do so under Applicable Law and as specifically required by the currently applicable Program Plan approved by DEQ. CAA Oregon shall not make disbursements to Recipient before or after it is obligated to do so under Applicable Law and as specifically required by the currently applicable Program Plan approved by DEQ. CAA Oregon’s obligation to make disbursements for a Funding Request is conditioned upon Recipient’s full and complete compliance with its obligations under this Agreement and each Funding Request.

## 2. Use of Funds.

a. Recipient shall use funds disbursed in connection with a Funding Request only for the Eligible Expenses approved in the applicable Funding Request. Recipient represents and warrants to CAA Oregon that the use of funds for such Eligible Expenses, or the purchase and/or use of such Eligible Expenses, as applicable, shall comply with Applicable Law. Recipient further represents and warrants to CAA Oregon that Recipient, including any act or omission of Recipient, will comply with all federal, state, and local laws applicable to Recipient’s receipt and use of such funds.

b. If Recipient receives funds related to an Eligible Expense that are not used for such Eligible Expense, Recipient will remit such unused funds to CAA Oregon in accordance with OAR 340-090-0810. Without limiting the generality of the foregoing, if Recipient expends funds received for an Eligible Expense on an ineligible expense, Recipient shall immediately remit an equivalent amount to CAA Oregon.

c. If Recipient receives funds related to an Eligible Expense and also submits the same Eligible Expense to another PRO or other source of reimbursement, Recipient will immediately remit all funds provided to Recipient by CAA Oregon related to such Eligible Expense to CAA Oregon, and CAA Oregon may at its discretion withhold any further funding related to such Eligible Expense.

d. Any asset(s) purchased by Recipient as Eligible Expenses in accordance with this Agreement must remain in use in the following jurisdictions to be eligible for funding in accordance with this Agreement and any applicable addenda hereto [please indicate the city or county in which the assets will be used]:

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(the “**Jurisdictions**”).

In the event that Recipient or its service provider, contractor, subcontractor, agent, or representative, removes the any such asset(s) from use in the Jurisdictions, Recipient shall immediately reimburse CAA Oregon in full for any funds provided by CAA Oregon that were used to purchase such asset(s) under this Agreement; provided that Recipient may remove the asset from service on a temporary basis for ordinary repair or maintenance.

### 3. Reporting; Records; No Confidentiality; Ownership.

a. Recipient shall promptly report to CAA Oregon all information reasonably requested by CAA Oregon, including (i) any information CAA Oregon may reasonably require to comply with its annual reporting requirements under ORS 459A.887, and (ii) any reasonably related information to substantiate that funding was used for the Eligible Expense for which it was disbursed. Without limiting the generality of the forgoing, Recipient shall timely report to CAA Oregon (i) upon completion of a project for which CAA Oregon disbursed funding for Eligible Expenses, and (ii) the status of incomplete projects for which CAA Oregon disbursed funding for Eligible Expenses.

b. For seven years after the submission of a Funding Request, Recipient shall maintain all records necessary to substantiate the expenses for which funding was requested. Upon at least 10 business days’ notice to Recipient, CAA Oregon or its authorized representative may, at its own expense, conduct audits of Recipient’s records during Recipient’s regular business hours for the purpose of (i) satisfying its obligations under Applicable Law or (ii) substantiating that funding was used for the Eligible Expense for which it was disbursed. Recipient shall take reasonable efforts to cooperate with CAA Oregon in conducting such audits. In the event that CAA Oregon’s audit reveals that Recipient used funds for an ineligible expense, Recipient shall reimburse CAA Oregon for its costs to conduct the audit within thirty (30) days of the conclusion of the audit.

c. Recipient acknowledges that CAA Oregon is required by Applicable Law to provide certain information to governmental authorities as part of its reporting obligations under Applicable Law. As such, except as required by Applicable Law, Recipient shall have no expectation of confidentiality with respect to information reported to CAA Oregon pursuant to this Agreement and applicable addenda; provided that CAA Oregon will make reasonable efforts not to disclose more information than is, in CAA Oregon’s sole discretion, required by Applicable Law or reasonably necessary for CAA Oregon to perform its obligations as a PRO.

d. As required by and in accordance with Applicable Law, CAA Oregon may, from time to time, prepare reports or other documents that contain information reported to CAA Oregon pursuant to this Agreement and applicable Addenda, or which contain content synthesized from such information. CAA Oregon shall be the sole owner of all intellectual property rights pertaining to such reports or other documents, including all derivative works thereof, free of royalties or other charges, to publish or use at any time, in whole or in part. To the extent such reports contain Recipient's information, Recipient grants CAA Oregon a non-exclusive, royalty free, fully-paid, worldwide license to publish or use Recipient's information at any time, in whole or in part.

#### 4. Term; Termination.

a. This Agreement shall remain in force through December 31, 2027 (the "**Initial Term**"); provided that the Agreement may be extended past the Initial Term by written agreement signed by both Parties (each, a "**Renewal Term**," and together with the Initial Term, the "**Term**") unless otherwise terminated in accordance with this Agreement.

b. Either Party may terminate this Agreement by giving notice to the other Party no less than 60 days before the end of a Term. Such termination will be effective at the end of the then-current Term; provided that any then-outstanding Funding Requests or portions thereof shall continue to be governed by this Agreement until full and final adjudication.

c. CAA Oregon may terminate this Agreement immediately upon notice to Recipient if, at any time after the Effective Date, CAA Oregon does not have a producer responsibility program plan that is in force and approved by DEQ, or if CAA Oregon is otherwise not subject to the obligations of a PRO under Applicable Law.

d. If Recipient breaches any of its obligations, representations, or warranties under this Agreement, CAA Oregon will have the right to terminate this Agreement by giving Recipient notice of the breach. Recipient shall have thirty (30) days or such other time as the Parties may agree in writing, to cure any such breach. In the event Recipient fails to cure such breach in accordance with this section, CAA Oregon may terminate this Agreement, effective immediately and without further notice to Recipient; provided that any then-outstanding Funding Requests or portions thereof shall continue to be governed by this Agreement until full and final adjudication.

#### 5. Indemnification; LIMITATION OF LIABILITY; NO WARRANTIES.

a. Subject to the limits of the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, Recipient hereby agrees to defend, indemnify and hold harmless CAA Oregon (including its parent and any subsidiaries or affiliates) and CAA Oregon's officials, directors, officers, agents, employees and volunteers (the "**Indemnified Parties**") from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings (collectively, "**Claims**") arising out of or relating to Recipient's receipt or use of funds or CAA Oregon's denial thereof, by whomever made, sustained, incurred, brought or prosecuted, including without limitation third party bodily injury (including death), personal injury and

property damage, contamination or pollution of soil, water, groundwater, air, or other environmental medium, fines or civil penalties, that in any way relate to, are based upon, occasioned by or attributable to any acts or omissions of Recipient, its service providers, contractors, subcontractors or Recipient's directors, officers, agents, employees, volunteers, or other party for whose conduct Recipient may be legally liable or responsible, including any breach or non-fulfillment of any representation, obligation, or covenant under this Agreement by Recipient, or any failure by Recipient to comply with any Applicable Law. Recipient is not obligated to indemnify and hold harmless an Indemnified Party to the extent that such Claims arise solely from the gross negligence or willful misconduct of any Indemnified Party. The obligations contained in this paragraph shall survive the termination or expiry of this Agreement. During the Term and for five years thereafter, Recipient shall maintain insurance or other financial resources that are sufficient, in CAA Oregon's reasonable discretion, to timely and fully fund all of Recipient's obligations under this section.

b. EXCEPT FOR CLAIMS FOR INDEMNITY PURSUANT TO SECTION 5(A) ABOVE, (i) EACH PARTY'S LIABILITY TO THE OTHER PARTY FOR ANY LOSS, COST, CLAIM, INJURY, LIABILITY, OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES, RELATING TO OR ARISING FROM ANY ACT OR OMISSION RELATED TO A FUNDING REQUEST SHALL BE LIMITED TO THE AMOUNT OF SUCH FUNDING REQUEST; AND (ii) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES.

c. CAA OREGON MAKES NO WARRANTIES OR REPRESENTATIONS AND DISCLAIMS ALL LIABILITY WITH RESPECT TO ASSETS PURCHASED PURSUANT TO FUNDING REQUESTS. CAA OREGON'S APPROVAL OF A FUNDING REQUEST OR DISBURSEMENT OF FUNDS MEANS ONLY THAT CAA OREGON HAS DETERMINED THAT THE RELEVANT EXPENSES ARE ELIGIBLE FOR FUNDING, AND DOES NOT CONSTITUTE AN ENDORSEMENT, JUDGEMENT, OR OTHER DECISION AS TO CONDITION OR FITNESS FOR ANY PURPOSE. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, ALL REPRESENTATIONS AND WARRANTIES, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED.

## 6. Dispute Resolution.

a. In the event of a dispute arising out of or relating to a Funding Request, including the interpretation, scope, or breach thereof or the extent of the Parties' obligations under a Funding Request or Applicable Law (a "**Dispute**"), the Parties shall endeavour to reach a resolution of the Dispute satisfactory to both Parties. Either Party may commence such process by requesting a meeting with the other Party, which may take place in person, or remotely. Each Party shall nominate a representative who shall meet to try to resolve the Dispute.

b. If the Dispute is not resolved within 90 days of the meeting request, then:

i. The Dispute may, at either Party's request, be referred to mediation in accordance with CAA Oregon's final Oregon Program Plan, and informal negotiations need not continue. Either Party may initiate the mediation process by

giving notice in writing, requesting mediation, to the other Party (a “**Mediation Notice**”).

ii. If there is any aspect of the form or conduct of the mediation on which the Parties cannot agree within ten (10) days from the date of delivery of the Mediation Notice, the mediation panel shall, at the request of either Party, decide that point, having first made reasonable efforts to consult with each of the Parties on the issue.

iii. The mediation shall start not later than thirty (30) days from the date of delivery of the Mediation Notice. The mediation shall be governed by the substantive law of the State of Oregon. Each Party will bear its own costs and expenses of its participation in the mediation.

c. If either Party refuses or fails to participate in the mediation process or if a resolution of the Dispute is not reached within ninety (90) days from delivery of the Mediation Notice, any action, controversy, lawsuit, or claim arising out of or relating to a Dispute, shall be resolved by binding arbitration. In the absence of any mutual agreement by the Parties, the seat of arbitration shall be Portland, Oregon, and shall be conducted in accordance with the then effective JAMS arbitration rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and expenses, including attorney's fees, and an equal share of the arbitrator's fees and any administrative fees of arbitration. The decision of the arbitrator(s) shall be final and binding on the Parties, and the Parties waive any right to appeal the decision, to the extent a waiver can be made under applicable law. Notwithstanding the foregoing, nothing in this Section 6 shall limit the ability of a Party to seek injunctive relief from a court of competent jurisdiction ordering compliance with the Agreement or enjoining and restraining the continuation of a breach of the Agreement.

## 7. Miscellaneous.

a. Relationship of the Parties. Recipient shall have no power or authority to bind CAA Oregon or to assume or create any obligation or responsibility, express or implied, on behalf of CAA Oregon. Recipient shall not hold itself out as an agent, partner or employee of CAA Oregon. Nothing in the Agreement shall have the effect of creating an employment, partnership or agency relationship between CAA Oregon and Recipient or any of Recipient's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors. Recipient acknowledges that CAA Oregon is a private nonprofit entity and not a governmental entity or functional equivalent of a governmental entity.

b. Entire Agreement. This Agreement, together with the addenda and attachments hereto, embodies the entire agreement between the Parties with regard to the funding of Eligible Expenses and supersedes any prior understanding or agreement, collateral, oral or otherwise, existing between the Parties at the Effective Date.

c. Severability. If any term or condition of the Agreement, or the application thereof to the Parties or circumstances, is to any extent invalid or unenforceable as determined by a court

of competent jurisdiction, the remainder of the Agreement, and the application of such term or condition to the Parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby to the maximum extent permitted by applicable law.

d. **Failure to Enforce Not a Waiver.** Any failure by CAA Oregon to insist in one or more instances upon strict performance by Recipient of any of the terms or conditions of the Agreement shall not be construed as a waiver by CAA Oregon of its right to require strict performance of any such terms or conditions, and the obligations of Recipient with respect to such performance shall continue in full force and effect. Any waiver must be given in writing by a duly authorized representative of CAA Oregon.

e. **Changes by Written Amendment Only.** Any changes to the Agreement shall only be by written amendment signed by the Parties. No changes shall be effective or shall be carried out in the absence of a written amendment.

f. **Force Majeure.** Neither Party shall be liable for damages caused by delay or failure to perform its obligations under the Agreement where such delay or failure is caused by an event beyond its reasonable control (a “**Force Majeure Event**”). The Parties agree that force majeure events shall include adverse weather conditions; civil disturbances, riots, war, rebellion, sabotage and atomic or nuclear incidents; fire; flood; natural disasters; shutdown resulting from investigation by government authorities (provided such shutdown is not as a result of the acts or omissions of the Party claiming a Force Majeure Event); court or governmental order (provided such order is not as a result of the acts or omissions of the Party claiming a Force Majeure Event), including without limitation a delay or suspension the Program Plan or statutory regime under which the Program Plan is effective; labor disputes; utilities outages or curtailments (including electricity system outages); epidemics or pandemics (including government mandated quarantines); changes in Applicable Law; or lack of funding due to nonpayment of membership fees in the form of producer fees or other fees owed to CAA Oregon. If a Party seeks to excuse itself from its obligations under the Agreement due to a force majeure event, that party shall immediately notify the other Party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance.

g. **Notices.** Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or email and shall be addressed in accordance with the contact information provided by each Party beneath their signature block. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five business days after such notice is mailed; or (b) in the case of personal delivery, upon receipt; or (c) in the case of email, upon receipt of a “read receipt.” In the event of a postal disruption, notices must be given by personal delivery or by email. Unless the Parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

h. **Assignment.** The rights and obligations of Recipient may not be assigned, transferred, or delegated without the prior written consent of CAA Oregon, which shall not be unreasonably withheld. CAA Oregon may assign, transfer, or delegate, in whole or in part, this Agreement or any of its rights or obligations under this Agreement without prior written consent of Recipient to an entity that controls, is controlled by, is affiliated with, or is under common control with, CAA Oregon.

i. Authority. Recipient represents and warrants to CAA Oregon that the person signing this Agreement on Recipient's behalf is duly authorized and has legal capacity to execute and deliver this Agreement on behalf of Recipient. Recipient further represents and warrants to CAA Oregon that the execution and delivery of the Agreement and the performance of Recipient's obligations hereunder have been duly authorized by Recipient and that the Agreement is a valid and legal agreement binding Recipient and enforceable in accordance with its terms.

j. Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to its or any other jurisdiction's conflicts of laws principles.

k. Counterparts. The Agreement may be executed in several counterparts, all of which taken together shall constitute one agreement binding upon the Parties.

*[signature page follows]*

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

**CIRCULAR ACTION ALLIANCE OREGON LLC**

By: \_\_\_\_\_  
Kim Holmes  
Title: Oregon Executive Director  
Date: \_\_\_\_\_  
Address: c/o Corporation Service Company  
251 Little Falls Drive  
Wilmington, New Castle County  
Delaware 19808  
Email: legal@circularaction.org

With a copy to:

Miller Nash LLP  
Attn: Will Rasmussen  
1140 SW Washington St, Suite 700  
Portland, Oregon 97205  
E-mail: William.rasmussen@millernash.com

**RECIPIENT:**

Columbia County  
\_\_\_\_\_  
[ENTITY NAME]

By: \_\_\_\_\_  
Name: Kellie Jo Smith  
Title: Chair, Columbia County Board of Commissioners  
Date: \_\_\_\_\_  
Address: 230 Strand St  
St Helens, OR 97051  
Email: kj.smith@columbiacountyor.gov

Approved as to form:  \_\_\_\_\_

## **ADDENDA**