

**STATE MARINE BOARD
FACILITY GRANT COOPERATIVE AGREEMENT
FACILITY GRANT NO. 1563 – CLACKAMETTE PARK BOATING IMPROVEMENTS**

This Agreement is entered into by and between the State of Oregon, acting by and through its State Marine Board, hereinafter called the “Board,” and City of Oregon City, hereinafter called the “Recipient”, each a “Party” and, together, the “Parties”.

RECITALS

The Board and the Recipient are authorized under ORS Chapter 190 to enter into cooperative agreements.

The Board is authorized to provide grants for boating facility projects under ORS 830.150 and

The Board has sufficient facility grant funds available within its current biennial budget and has authorized expenditure on the Recipient’s Project as defined below, and

The Recipient agrees to comply with Boating Facility Grant Program rules in OAR 250-014 and other Board adopted policies and procedures, and

The purpose of this Agreement is to set forth the obligations of both Parties in the development of recreational boating facilities at Clackamette Park for the short term, temporary repairs of the existing boat ramp, hereinafter called the “Project,” as described in the Recipient’s Facility Grant Application FG#1563 and Staff Report to the Board. With this reference, the Facility Grant Application and Staff Report are made part of this Agreement. If a conflict exists between the Facility Grant Application, Staff Report and this Agreement, the Agreement will govern.

NOW, THEREFORE, the Board and the Recipient agree to the following:

I. BOARD COVENANTS

1. Grant Funds. Upon approval by its governing body, the Board shall provide grant funds in the amount of \$135,453.80 to the Recipient to fund the Project. The Board shall not provide to the Recipient, and the Recipient shall not use any funds described in this section for administration, overhead, or indirect costs whether or not related to this Agreement.
2. Payments. After the Recipient awards the contract for the Project, and activities commence, the Board shall, upon receipt of the Recipient’s request for reimbursement and appropriate documentation all in form and substance satisfactory to the Board, disburse funds to the Recipient in accordance with Section III.
3. Overpayment. In the event that the aggregate amount of the Board’s interim progress payments to the Recipient exceeds the allowable reimbursable costs of the Recipient for the Project, the Recipient agrees to refund to the Board the amount paid in excess of such allowable expenses within thirty (30) days of final billing by the Recipient or the Project Completion Date, whichever is earlier.

4. Disallowed Costs. The Recipient agrees that payment(s) made by the Board under this Agreement shall be subject to offset or reduction for any amounts previously paid hereunder that are found by the Board not to constitute allowable costs under this Agreement based on the results of an audit examination. If such disallowed amount exceeds the payment(s), the Recipient shall pay the Board the amount of such excess within 30 days after written notice of disallowed costs is provided by the Board,
5. Cost Savings. Any cost savings realized on the Project shall be prorated between the parties based on the percentage of their respective cash contributions as set forth in Section I.1. and Section IV.1.
6. Board Principal Contact: A Party may designate a new authorized principal contact by written notice to the other Party.

Name/Title: Janine Belleque Boating Facilities Manager

Address: PO Box 14145, 435 Commercial St. NE, Salem, OR 97309-5065

Phone/Email: (503) 378-2628 janine.belleque@state.or.us

II. TERM; PROJECT COMPLETION; PROJECT OWNERSHIP

1. Term. The term of this Agreement shall begin upon the Effective Date and **continue until the relocated new boat ramp has been constructed or up to the maximum agreement term of twenty (20) years after the date of Project completion or the date of final payment issuance, whichever is later.** The Effective Date is the date that the last party to sign this Agreement has duly executed this Agreement and all required approvals have been obtained.
2. Project Completion. The Project shall be completed, and final billing for the Project shall be submitted to the Board, on or before June 30, 2017. Unless approved in writing, the Board shall not be obligated to disburse any payments after this date.
3. Project Ownership. The Board acknowledges and agrees that the Project is the exclusive property of the Recipient. The Board is neither responsible nor liable in any manner for the construction, operation or maintenance of the Project.
4. Boating Facility Operation. If the Board and the Recipient have entered into other grant agreement(s) for boating facilities, including but not limited to, restrooms, docks, boat ramps, then Recipient shall continue to operate those boating facilities for the duration of this Agreement, even if the terms of the other grant agreement(s) have expired.

III. CONDITIONS TO DISBURSEMENT

1. Conditions Precedent to Any Reimbursement. The Board shall not be obligated to disburse any of the grant funds to reimburse the Recipient for Project costs hereunder unless the Board has received from the Recipient:
 - a. Prior to Project bid advertisement or construction, the final architectural and engineering plans, specifications, and cost estimate(s) for the Project, the plans, specifications and estimates to be

in form and substance satisfactory to the Board;

- b. Prior to Project construction a copy of all required, federal, state and local permits or approvals for the Project; and
 - c. A copy of the contractor's, vendor's or supplier's bid pricing, unless the Recipient is completing the Project; and
 - d. Reimbursement Requests must be submitted on the approved Board form along with all supporting documentation. Reimbursements shall be prorated between the parties based on the percentage of their respective cash contributions as set forth in Section I.1. and Section IV.1.
2. Conditions Precedent to Partial Progress Payment(s). The Board shall not be obligated to make partial progress reimbursement payment(s) hereunder until supporting documentation of the percentage of Project completion has been received, reviewed and approved by the Board. In no event shall the Board disburse more than ninety percent (90%) of the amount indicated in Section I.1. as progress payments.
3. Conditions Precedent to Final Payment. The Board shall not be obligated to make final payment hereunder until the following have been completed or supplied:
- a. Supporting documentation in form and content determined by the Board, has been received reviewed and approved by the Board; and
 - b. Recipient provides a minimum of three photographs detailing the completed work. One photo must be of the installed sign crediting the Board with funding the Project; and
 - c. Inspection and approval of the Project by the Board; and

IV. RECIPIENT COVENANTS

- 1. Project Timeline. The Recipient is responsible for maintaining the project timeline for all dates and activities outlined as the Recipient's responsibility as identified in Attachment "A".
- 2. Matching Cash Funds. The Recipient shall contribute the total sum of \$41,944.60 in cash and \$876 in pre-agreement expenditures as described in the Staff Report.
- 3. Matching Non-cash Resources. The Recipient shall contribute the total sum of \$0 soft match and \$0 force account labor, materials and/or equipment. These are non-reimbursable items.
- 4. Construction. The Recipient shall award, and monitor the contractor's performance under the construction contract in such a manner as to insure compliance with Project plans and specifications. The Recipient must notify the Board immediately of any proposed change in Project design, cost modifications, proposed change orders or modification of scope. The Recipient shall be responsible for all costs associated with unauthorized changes or modifications unless otherwise specifically agreed to in writing by the Board.
- 5. Commercial and Other Uses.

- a. For purposes of this section 4, Commercial Use means any activity on or affecting the Project that was not described in the Facility Grant Application or Staff Report, or not approved pursuant to Board Policy 93-06 or 93-02, where the Recipient
 - i. has financial profit as a goal,
 - ii. charges any fees or receives any benefit to provide services, supplies or goods, or
 - iii. allows third parties to charge any fees or receive any benefit to provide services, supplies or goods.
- b. Commercial Use is prohibited.
- c. Recipient must have the capability to make an ordinance, rule, or other regulation to the effect that the Projects are for the benefit of recreational boaters. If, in the sole discretion of the Board, the use by non-recreational boaters such as swimmers, fishermen, divers, crabbers impact recreational boating uses or diminishes the useful life of the Project, then the Recipient must establish and enforce its ordinance, rule, or other regulation.
- d. If Project funded a pumpout or dump station in a marina or transient dock, the Recipient must include language in its moorage agreement requiring use of the pumpout and/or dump station if a boat has a holding tank or marine toilet.
- e. Recipient must restrict use of the Project to only boats that comply with ORS 830.770 and 830.775.
6. Project Sign. The Recipient shall post in a conspicuous location at the site a sign identifying the Board's participation in the Project.
7. Public Access to Project. During the term of this Agreement the Recipient shall allow open and unencumbered public access to the Project to all persons without regard to race, color, religious or political beliefs, sex, national origin, or place of primary residence.
8. User Fees. Recipient shall notify and request written approval from the Board of any user fees charged to recreational boaters for the use of the improvements described herein throughout the term of this Agreement. Fees charged shall be reasonable and are subject to review and approval by the Board. If user fees are charged for the use of the completed Project, the Recipient shall maintain sufficient records and accounting procedures that demonstrate all of the gross income from the fees is used to defray direct operational costs (for example, maintenance and repair costs) for the Project. User fees may affect Maintenance Assistance Program, as described in OAR 250-14-004 eligibility on publicly owned and operated Projects.
9. Maintenance. The Recipient shall at all times be responsible for the maintenance and operation of the Project and related facilities during the term of the Agreement. This does not restrict the Recipient's ability to subcontract for the performance of maintenance and operation services. Such subcontractors would be subject to Section IV. 13, Indemnification by Subcontractors.
10. Payments. Recipient agrees to:
 - a. Make payment promptly as due to all contractors, subcontractors, vendors or any other persons

supplying labor or materials for the Project;

- b. All employers, including Recipient that employ subject workers as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for exemption under ORS 656.126(2). Recipient shall require and ensure that each of its subcontractors complies with these requirements (unless inapplicable as a matter of federal law); and
- c. Not permit any lien or claim to be filed or prosecuted against the Board, due to any construction or maintenance activities at the Project.

11. Liabilities. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party along with the written notice, a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section with respect to the Third Party Claim.

With respect to a Third Party Claim for which the Board is jointly liable with the Recipient (or would be if joined in the Third Party Claim), the Board shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Recipient in such proportion as is appropriate to reflect the relative fault of the Board on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Board on the one hand and of the Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Board's contribution amount in any instance is capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the Recipient is jointly liable with the Board (or would be if joined in the Third Party Claim), the Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Board in such proportion as is appropriate to reflect the relative fault of the Recipient on the one hand and of the Board on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Recipient on the one hand and of the Board on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

12. Alternative Dispute Resolution. The Parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
13. Indemnification by Subcontractors. The Recipient shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Recipient's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.
14. Compliance with Applicable Law. The Recipient agrees to comply with Boating Facility Grant Program rules OAR 250-014 and all applicable Board adopted policies and procedures. The Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement
15. Records Maintenance. The Recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, the Recipient shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of the Recipient, whether in paper, electronic or other form that are pertinent to this Agreement in such a manner as to clearly document the Recipient's performance. The Recipient's accounting procedures shall provide for an accurate and timely recording of receipt of funds by source, of expenditures made from such funds, and of unexpended balances. Controls shall be established which are adequate to ensure that all expenditures reimbursed under this Agreement are for allowable purposes and that documentation is readily available to verify that such charges are accurate. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of the Recipient whether in paper, electronic or other form that are pertinent to this Agreement, are collectively referred to as "Records"
16. Access. The Recipient acknowledges and agrees that the Board and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. The Recipient shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, the Recipient shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.
17. Recipient Principal Contact: A Party may designate a new authorized principal contact by written notice to the other Party. The Recipient must notify the Board within 30 days if the point of contact changes.

Name/Title: Denise Conrad, Interim Community Services Director
Address: PO Box 3040, Oregon City, OR 97045
Phone/Email: 503-496-1565 dconrad@orcity.org

V. TERMINATION; REMEDIES

1. Termination for Convenience. The Recipient may terminate this Agreement at any time upon thirty (30) days prior written notice to the Board; provided, however, that the Recipient shall, within thirty (30) days of such termination, reimburse the Board for all funds contributed by the Board to the Project; provided further that until the Recipient has fully reimbursed the Board for such funds, the Recipient shall comply with the terms hereof.
2. Termination Because of Non-Appropriation or Project Ineligibility. The Board, as provided in VI.3 Force Majeure, may modify or terminate this Agreement and at any time upon thirty (30) days prior written notice to the Recipient, may modify or terminate this Agreement if:
 - a. The Board fails to receive funding or allotments, appropriations, limitations, or other expenditure authority at levels sufficient to pay for the allowable costs of the Project to be funded hereunder or should any state law, regulation or guideline be modified, changed or interpreted in such a way that the Project, or any portion of the Project, is no longer eligible for facility grant funds as described in ORS 830.150.
 - b. In the event insufficient funds are appropriated for the payments under this Agreement and the Recipient has no other lawfully available funds, then the Recipient may terminate this Agreement at the end of its current fiscal year, with no further liability to the Board. The Recipient shall deliver written notice to the Board of such termination no later than thirty (30) days from the determination by the Recipient of the event of non-appropriation. The Board shall pay for all authorized Project costs expended up to the date of written notice of termination.
3. Termination for Default. The Board, at any time upon thirty (30) days prior written notice of default to the Recipient, may modify or terminate this Agreement if:
 - a. The design, permitting, or construction of the Project is not pursued with due diligence; or
 - b. The Recipient's fee simple title to or other interest in the construction sites or Project is not sufficient, legal and valid; or
 - c. The construction of the Project is not permissible under federal, state, or local law; or
 - d. The Recipient, does not abide by the nondiscrimination and affirmative action provisions of this Agreement; or
 - e. The Recipient, without the prior written approval of the Board, uses the funds provided by the Board hereunder to build any project other than the Project described in the final architectural and engineering drawings approved by the Board; or

- f. The construction is not completed in a good and workmanlike manner or fails to comply with any required permits; or
 - g. During the term of this Agreement, the Recipient fails to perform any obligation or requirement of this Agreement, or conveys the Project or the Project property or any part thereof or converts the use of the Project or the Project property to a use that precludes free and unencumbered recreational public boating access.
 - h. The Recipient defaults under any other agreement between Recipient and Board.
4. Rights and Remedies. The Recipient shall, within thirty (30) days of its receipt of a notice of default, reimburse the Board for all funds contributed by the Board to the Project. Further, the Board shall have any and all rights and remedies available at law or in equity.

VI. GENERAL PROVISIONS

- 1. No Duplicate Payment. The Recipient shall not be compensated for, or receive any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party.
- 2. Amendments. The terms of this Agreement shall not be waived, altered, modified, supplemented or otherwise amended, except by written agreement by the Parties.
- 3. Force Majeure: Neither the Board or the Recipient is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, natural causes, or war which is beyond either Parties reasonable control. Each Party shall, however make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. The Board may terminate this Agreement upon written notice to the Recipient after reasonably determining that failure or delay will likely prevent successful performance of this Agreement.
- 4. Persons Not to Benefit. No member of or delegate to Congress, resident commissioner, officer, agent or employee of the United States of America, member of the Oregon Legislative Assembly, elected official of the State of Oregon, or official, agent, or employee of the State of Oregon, or elected member, officer, agent, or employee of any political subdivision, municipality or municipal corporation of the State of Oregon shall be admitted to any share or part of this Agreement or derive any financial benefit that may arise therefrom.
- 5. Intended Beneficiaries. The Board and Recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.
- 6. Tax Compliance. By signature on this Agreement for Recipient, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Recipient and that

Recipient is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes And Tobacco Products) and the elderly rental assistance program under ORS 310.630 to 310.706 and any local taxes administered by the Department of Revenue under ORS 305.620.

7. Assignment and Successors in Interest. The Recipient may not assign or transfer its interest in this Agreement without the prior written consent of the Board and any attempt by the Recipient to assign or transfer its interest in the Agreement without such consent will be void and of no force or effect. Board's consent to the Recipient's assignment or transfer of its interest in this Agreement will not relieve the Recipient of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.
8. Severability. The Board and the Recipient agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.
9. Notice. Except as otherwise expressly provided in this Agreement, any notices to be given hereunder relating to this Agreement must be given in writing by personal delivery, facsimile, email or, postage prepaid mail, to the Board or the Recipient at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Agreement Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.
10. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.
11. Governing Law; Venue; Consent to Jurisdiction.
This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Board or any other agency or department of the State of Oregon, or both, and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity,

immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. RECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

12. Merger Clause; Waiver. The Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

BOARD:

State of Oregon, acting by and through its
State Marine Board

By: _____

Scott Brewen

Title: Director

Date: _____

Telephone: (503) 378-2619

Fax No: (503) 378-4597

Address: PO Box 14145,

Salem, OR 97309

RECIPIENT:

City of Oregon City

By: _____

Title: _____

Date: _____

Telephone: _____

Fax No: _____

Address: _____

Federal Employer Identification Number:

DUNS ID. No. _____

ATTACHMENT "A"
FACILITY GRANT NO. –
BOATING FACILITY IMPROVEMENTS

PROJECT TIMELINE

Responsibility	Date	Description
Recipient	Estimated early July 2016	Consult with the Board if a pre-construction meeting is recommended.
Recipient	Estimated late July to early August 2016	Notify the Board when the rail and precast concrete planks are scheduled to be installed.
Recipient	Estimated mid to late August 2016	Notify the Board when the Contractor has requested a final inspection
Board	Estimated July-August 2016	The Board will be available to consult with the Recipient.
Recipient	Estimated September 2016	Receive contractor invoices, issue payment and request final reimbursement from the Board.
Board	Estimated October 2016	Issue final reimbursement, close the grant and term of the grant begins.