

MAINTENANCE ASSISTANCE GRANT INTERGOVERNMENTAL AGREEMENT

Agreement No. 2123-070

This Agreement is between the State of Oregon acting by and through its State Marine Board ("OSMB") and Yamhill County ("Recipient"), each a "Party" and, together, the "Parties".

SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110. OSMB is authorized to provide grants for boating facility projects under ORS 830.150 and OSMB has sufficient maintenance assistance 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 Maintenance Assistance Grant Program rules in OAR 250-014-0300 -0305 and other OSMB adopted policies and procedures.

SECTION 2: PURPOSE

The purpose of this Agreement is to set forth the obligations of both Parties in the operation and maintenance of three recreational boating access sites hereinafter called the "Project," as described in the Recipient's Maintenance Assistance Grant Application *MAG# 2123-070* and Site Inventory to OSMB. With this reference, the Maintenance Assistance Grant Application and Site Inventory are made part of this Agreement. If a conflict exists between the Maintenance Assistance Grant Application, Site Inventory and this Agreement, the Agreement will govern.

SECTION 3: EFFECTIVE DATE AND DURATION

- 3.1 Term.** This Agreement is effective on July 1, 2021 and terminates on June 30, 2023 or the date of final payment issuance, whichever is later, unless terminated earlier in accordance with Section 16.
- 3.2 Project Completion.** The Project shall be completed by June 30, 2023, and final billing for the Project shall be submitted to OSMB, on or before September 30, 2023. Unless approved in writing, OSMB shall not be obligated to disburse any payments after this date.

SECTION 4: AUTHORIZED REPRESENTATIVES

- 4.1** OSMB's Authorized Representative is:

Janine Belleque, Boating Facilities Program Manager
PO Box 14145, Salem OR 97309 435 Commercial Street NE Suite #400, Salem Oregon
(503) 877-7580 Office, Janine.Belleque@boat.oregon.gov

- 4.2** Recipient's Authorized Representative is:

Mark Lago, Public Works Director
2060 NE Lafayette Ave., McMinnville, OR 97128
(503) 434-7515 Office, lagom@co.yamhill.or.us

- 4.3** A Party may designate a new Authorized Representative by written notice to the other Party.

SECTION 5: RESPONSIBILITIES OF EACH PARTY

- 5.1 Responsibilities of Recipient:**

5.1.1 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 5.1.9, Indemnification by Subcontractors.

5.1.2 Matching Funds. The Recipient shall contribute a minimum of 40% match for approved sites, as described in the Maintenance Assistance Grant Application and Site Inventory.

5.1.3 Notification of Changes. Recipient will notify OSMB if there are any modifications in fees, season of use, quantities, ownership or management of any recreational boating access sites identified on the Inventory Sheet prior to requesting reimbursement. The Recipient will provide details of the modifications to OSMB in order for OSMB to evaluate for changes to the grant award. In the event the modifications effect the grant award an amendment will be issued.

5.1.4 Commercial and Other Uses. OSMB funds and matching funds cannot be used to support or accommodate commercial or other non-recreational boating uses or activities at the Project.

- a. For purposes of this Section 5, Commercial Use means any activity on or affecting the Project that was not described in the Maintenance Assistance Grant Application and Site Inventory, or not approved pursuant to OSMB Policy 93-06 or 93-02, where the Recipient:
 1. has financial profit as a goal,
 2. charges any fees or receives any benefit to provide services, supplies or goods, or
 3. allows third parties to charge any fees or receive any benefit to provide services, supplies or goods.
- b. Recipient must restrict use of the Project to only boats that comply with ORS 830.770, 830.775 and 830.624-630 or have current registration with another state.

5.1.5 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.

5.1.6 User Fees. Recipient shall notify and request written approval from OSMB 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 OSMB. 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 maintenance and operational costs for the Project.

5.1.7 Payments. Recipient agrees to:

- a. Make payment promptly as due to all contractors, subcontractors, vendors or any other persons supplying labor, materials or services 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 OSMB, due to any maintenance or operation activities at the Project.

5.1.8 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.

5.1.9 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.

5.2 Responsibility of OSMB:

5.2.1 OSMB shall pay Recipient as described in Sections 6 and 7.

SECTION 6: CONDITIONS TO DISBURSEMENT

6.1 Conditions Precedent to Any Reimbursement. OSMB shall not be obligated to disburse any of the grant funds to reimburse the Recipient for Project costs hereunder unless OSMB has received from the Recipient:

- a. Reimbursement Requests must be submitted on the approved OSMB Maintenance Assistance Grant Reimbursement form along with all supporting documentation. Reimbursements shall be prorated between the Parties with OSMB not reimbursing more than 60% of any request and Recipient's match not being less than 40% of any request.

6.2 Conditions Precedent to Partial Progress Payment(s). OSMB shall not be obligated to make partial progress reimbursement payment(s) hereunder until supporting documentation for the request has been received, reviewed and approved by OSMB. In no event shall OSMB disburse more than ninety percent (90%) of the amount indicated in Section 7.1. as progress payments.

6.3 Conditions Precedent to Final Payment. OSMB 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 OSMB, has been received reviewed and approved by OSMB.

SECTION 7: COMPENSATION AND PAYMENT TERMS

- 7.1 Grant Funds.** Upon approval by its governing body, OSMB shall provide grant funds in the amount of *\$30,950.00 Maintenance Access Grant* funds to the Recipient to fund the Project. OSMB shall not provide to the Recipient, and the Recipient shall not use any funds described in this section for large-scale construction or capital projects such as replacing docks, installing restrooms, or paving parking areas or to match other grants.
- 7.2 Payments.** OSMB shall, upon receipt of the Recipient's request for reimbursement and appropriate documentation all in form and substance satisfactory to OSMB, disburse funds to the Recipient in accordance with Section 6 "CONDITIONS TO DISBURSEMENT".
- 7.3 Overpayment.** In the event that the aggregate amount of OSMB's interim progress payments to the Recipient exceeds the allowable reimbursable costs of the Recipient for the Project, the Recipient agrees to refund to OSMB 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.
- 7.4 Disallowed Costs.** The Recipient agrees that payment(s) made by OSMB under this Agreement shall be subject to offset or reduction for any amounts previously paid hereunder that are found by OSMB 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 OSMB the amount of such excess within 30 days after written notice of

SECTION 8: REPRESENTATIONS AND WARRANTIES

Recipient represents and warrants to OSMB that:

- 8.1** Recipient is a county, duly organized and validly existing. Recipient has the power and authority to enter into and perform this Agreement;
- 8.2** The making and performance by Recipient of this Agreement (a) have been duly authorized by Recipient, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is party or by which Recipient may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement, other than those that have already been obtained;
- 8.3** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient enforceable in accordance with its terms;
- 8.4** Recipient has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and Recipient will apply that skill and knowledge with care and diligence to perform its

obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession; and

- 8.5** Recipient shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement.

The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by Recipient.

SECTION 9: GOVERNING LAW, 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 OSMB 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.

SECTION 10: OWNERSHIP OF WORK PRODUCT

- 10.1** As used in this Section 10 and elsewhere in this Agreement, the following terms have the meanings set forth below:

- 10.1.1 Project Ownership.** OSMB acknowledges and agrees that the Project is the exclusive property of the Recipient. OSMB is neither responsible nor liable in any manner for the construction, operation or maintenance of the Project.

SECTION 11: 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, including, but not limited to, the Oregon Department of Fish and Wildlife, or the United States of America or any other party.

SECTION 12: CONTRIBUTION

- 12.1** 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 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall 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. Each 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 a 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 12 with respect to the Third-Party Claim.

- 12.2** With respect to a Third Party Claim for which OSMB is jointly liable with Recipient (or would be if joined in the Third Party Claim), OSMB 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 Recipient in such proportion as is appropriate to reflect the relative fault of OSMB on the one hand and of Recipient on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OSMB on the one hand and of 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. OSMB's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- 12.3** With respect to a Third Party Claim for which Recipient is jointly liable with OSMB (or would be if joined in the Third Party Claim), 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 OSMB in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of OSMB on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of OSMB 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. 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.

SECTION 13: REMEDIES

- 13.1** In the event Recipient is in default under Section 16.3, OSMB may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 16, (b) reducing or withholding payment for work or Work Product that Recipient has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Recipient to perform, at Recipient's expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 14 (in addition to the remedies provided in Section 7.3) of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and OSMB may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- 13.2** In the event OSMB is in default under Section 16.3 and whether or not Recipient elects to exercise its right to terminate this Agreement under Section 16, or in the event OSMB

terminates this Agreement under Sections 16.1, 16.2, or 16.3, Recipient's sole monetary remedy will be (a) for work compensable at a stated rate, a claim for unpaid invoices for work completed and accepted by OSMB, for work completed and accepted by OSMB within any limits set forth in this Agreement but not yet invoiced, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less any claims OSMB has against Recipient, and (b) for deliverable-based work, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed on the deliverable and accepted by OSMB, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less previous amounts paid for the deliverable and any claims that OSMB has against Recipient. In no event will OSMB be liable to Recipient for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Recipient exceed the amount due to Recipient under this Section 13.2, Recipient shall promptly pay any excess to OSMB.

SECTION 14: RECOVERY OF OVERPAYMENTS

In addition to the remedies provided in Section 7.3, if payments to Recipient under this Agreement, or any other agreement between OSMB and Recipient, exceed the amount to which Recipient is entitled, OSMB may, after notifying Recipient in writing, withhold from payments due Recipient under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

SECTION 15: LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 12, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

SECTION 16: TERMINATION

16.1 Termination for Convenience. The Recipient may terminate this Agreement at any time upon thirty (30) days prior written notice to OSMB; provided, however, that the Recipient shall, within thirty (30) days of such termination, reimburse OSMB for all funds contributed by OSMB to the Project; provided further that until the Recipient has fully reimbursed OSMB for such funds, the Recipient shall comply with the terms hereof. Delinquent payments shall bear interest at the rate of nine percent per annum, as authorized by ORS 82.010 or, if such rate shall exceed the maximum rate allowed by law, then as such maximum rate, and shall be payable on demand. After ninety (90) days OSMB will turn any delinquent debt over to the Department of Revenue for collection per ORS 293.231.

16.2 Termination Because of Non-Appropriation or Project Ineligibility. OSMB, as provided in Section 27 "FORCE MAJEURE," may modify or terminate this Agreement and at any time upon 30 days prior written notice to the Recipient, may modify or terminate this Agreement if:

- a. OSMB 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 OSMB. The Recipient shall deliver written notice to OSMB of such termination no later than 30 days from the determination by the Recipient of the event of non-appropriation. OSMB shall pay for all authorized Project costs expended up to the date of written notice of termination.

16.3 Termination for Default. OSMB, at any time upon 30 days prior written notice of default to the Recipient, may modify or terminate this Agreement if:

- a. The maintenance and operation of the Project is not pursued with due diligence; or
- b. The Recipient's fee simple title to or other interest in the Project is not sufficient, legal and valid; or
- c. The Recipient, does not abide by the nondiscrimination and affirmative action provisions of this Agreement; or
- d. The Recipient, without the prior written approval of OSMB, uses the funds provided by OSMB hereunder to maintain and operate any project other than the Project described this agreement; or
- e. The maintenance and operation of the Project is not completed in a good and workmanlike manner or fails to comply with any required federal, state or local law; or
- f. During the term of this Agreement, the Recipient fails to perform any obligation or requirement of this Agreement, including, but not limited to, exceeding the length of stay at a short term tie-up dock, allowing non-recreational boating use such as crabbing, fishing, swimming, diving or other activities to impact a recreational boaters ability to use the Project or coveys 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.
- g. The Recipient defaults under any other agreement between the Parties.

16.4 Rights and Remedies. The Recipient shall, within 30 days of its receipt of a notice of default, cure the default or, if the default cannot be cured within 30 days reimburse OSMB for all funds contributed by OSMB to the Project. Further, OSMB shall have any and all rights and remedies available at law or in equity.

SECTION 17: NONAPPROPRIATION

OSMB's obligation to pay any amounts and otherwise perform its duties under this Agreement

is conditioned upon OSMB receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OSMB, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of OSMB.

SECTION 18: AMENDMENTS

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.

SECTION 19: NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative 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 Section 19. 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.

SECTION 20: SURVIVAL

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 9, 10, 12, 14, 15 and 20 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

SECTION 21: SEVERABILITY

The Parties 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 will 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 provision held to be invalid.

SECTION 22: COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

SECTION 23: COMPLIANCE WITH LAW

- 23.1 Compliance with Law Generally.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Recipient and the Agreement. **Oregon False Claims Act.** Recipient acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Recipient pertaining to this Agreement,

including the procurement process relating to this Agreement that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Agreement, Recipient certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Agreement. In addition to other penalties that may be applicable, Recipient further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Recipient. Recipient understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State or OSMB under this Contract or any other provision of law.

- 23.2 Tax Compliance.** As set forth on Exhibit A, Recipient has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state. Recipient shall, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, "tax laws" includes: (i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this state that applied to Recipient, to Recipient's property, operations, receipts, or income, or to Recipient's performance of or compensation for any work performed by Recipient; (iii) Any tax provisions imposed by a political subdivision of this state that applied to Recipient, or to goods, services, or property, whether tangible or intangible, provided by Recipient; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Any failure to comply with the provisions of this subsection 23.2 constitutes a material breach of this Agreement. Further, any failure to comply with Recipient's certifications set forth in Exhibit A also shall constitute a material breach of this Agreement. Any failure to comply shall entitle OSMB to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to:

- 23.2.1** Termination of this Agreement, in whole or in part;
- 23.2.2** Offsetting against any amount owed to Recipient, and withholding of amounts otherwise due and owing to Recipient, in an amount equal to State's setoff right, without penalty; and
- 23.2.3** Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. OSMB may recover any and all damages suffered as the result of Recipient's breach of this Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services and applications.

In addition, this Agreement will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing the Recipient's compensation under this Agreement or (ii) exercising a right of setoff against Recipient's compensation under this Agreement for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department

of Revenue collects debts.

These remedies are cumulative to the extent the remedies are not inconsistent, and OSMB may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

SECTION 24: INDEPENDENT CONTRACTORS

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

SECTION 25: 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.

SECTION 26: INTENDED BENEFICIARIES

OSMB 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.

SECTION 27: FORCE MAJEURE

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's 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. OSMB may terminate this Agreement upon written notice to Recipient after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 28: ASSIGNMENT AND SUCCESSORS IN INTEREST

Recipient may not assign or transfer its interest in this Agreement without the prior written consent of OSMB and any attempt by Recipient to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. OSMB's consent to Recipient's assignment or transfer of its interest in this Agreement will not relieve 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.

SECTION 29: SUBCONTRACTS

Recipient shall not, without OSMB's prior written consent, enter into any subcontracts for any

of the work required of Recipient under this Agreement. OSMB's consent to any subcontract will not relieve Recipient of any of its duties or obligations under this Agreement.

SECTION 30: TIME IS OF THE ESSENCE

Time is of the essence in Recipient's performance of its obligations under this Agreement.

SECTION 31: MERGER, WAIVER

This 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.

SECTION 32: RECORDS MAINTENANCE AND ACCESS

Recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Recipient shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Recipient's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Recipient acknowledges and agrees that OSMB 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. 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, Recipient shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

SECTION 33: HEADINGS

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

SECTION 34: ADDITIONAL REQUIREMENTS

Recipient shall comply with the additional requirements set forth in Exhibit B, attached hereto and incorporated herein by this reference.

SECTION 35: AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, the Facility Grant Application, attached Exhibit A

(Certificate of Tax Compliance), and Exhibit B (Additional Requirements). Attachment A (Site Inventory)

SECTION 36: ATTORNEY FEES

In the event that either party to this Agreement shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this Agreement each party shall be wholly responsible for its own expenses which it may incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any nonjudicial action.

SECTION 37: SIGNATURES

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

STATE OF OREGON acting by and through its State Marine Board.



Larry Warren, Director

8-18-22

Date

Yamhill County



Signature

7-21-2022

Date

Lindsay Berschauer Chair Commissioner
Name: _____ Title: _____

Approved for Legal Sufficiency in accordance with ORS 291.047

Approval Authorized by Letter

Steven Marlowe, Assistant Attorney General

August 2, 2017

Date

Accepted by Yamhill County
Board of Commissioners on
7-21-2022 by Board Order
22-241

EXHIBIT A

CERTIFICATION OF TAX COMPLIANCE

The individual signing on behalf of Recipient hereby certifies and swears under penalty of perjury to the best of the individual's knowledge that:

1. The number shown on this form is Recipient's correct taxpayer identification;

Federal Tax Number 93-6002318

Oregon Tax Number 51-20718

Organizational DUNS 780546677

2. Recipient is not subject to backup withholding because:

(i) Recipient is exempt from backup withholding,

(ii) Recipient has not been notified by the IRS that Recipient is subject to backup withholding as a result of a failure to report all interest or dividends, or

(iii) the IRS has notified Recipient that Recipient is no longer subject to backup withholding.

3. S/he is authorized to act on behalf of Recipient; s/he has authority and knowledge regarding Recipient's payment of taxes,

4. For a period of no fewer than six calendar years preceding the Effective Date of this Contract, Recipient faithfully has complied with:

(i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

(ii) Any tax provisions imposed by a political subdivision of this state that applied to Recipient, to Recipient's property, operations, receipts, or income, or to Recipient's performance of or compensation for any work performed by Recipient;

(iii) Any tax provisions imposed by a political subdivision of this state that applied to Recipient, or to goods, services, or property, whether tangible or intangible, provided by Recipient; and

(iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Recipient Signature [Signature] Date 8/17/22

EXHIBIT B

ADDITIONAL REQUIREMENTS

1. OSMB may revoke the grant award if the grant agreement is not signed by both parties within 90 days.
2. The Recipient will post advanced notice a minimum of two weeks prior to facility closure or partial closure when possible. Additionally, the Recipient will notify OSMB of closures and reopening, complete outreach to users through resources such as local media, social media, websites, ODFW District, and angling and boating organizations,
3. OSMB will post notice of facility closures and reopening on website, online boating map and through social media as appropriate.
4. The Recipient will have an Inadvertent Discovery Plan (IDP) and provide training to staff about the plan prior to ground disturbing activities.
5. In the event the Recipient determines to only submit one reimbursement request upon completion of the agreement a progress report must be submitted in the manner and form identified by OSMB.

**ATTACHMENT A
SITE INVENTORY**

Yamhill County MAG 2021-23 Inventory		Dayton Boat Landing		Rogers Landing	
		Reported	Allocation	Reported	Allocation
Restroom	Flush	N	0	Y	18
	Vault/Compost	N	0	N	0
	Portable	Y	16	Y	16
	Number of Additional Stalls	0	0	3	18
	Season of Use(months)	24	\$1,600.00	24	\$5,200.00
Grounds	Vegetation Maintenance	Y	12	Y	12
	Garbage Can or Dumpster	Y	12	Y	12
	Season of Use(months)	24	\$2,400.00	24	\$2,400.00
Parking	Total Number of Paved Car Stalls	0	0	52	0
	Total Number of Paved Boat Trailer Stalls	0	0	154	60
	Gravel Parking Square Feet	13,500	6	0	0
	Gravel Overflow Square Feet	0	0	0	0
	Season of Use(months)	24	\$600.00	24	\$6,000.00
Ramp	Single Lane	Y	12	Y*	12
	Additional Number of Lanes	0	0	2	16
	Season of Use(months)	24	\$1,200.00	24	\$4,800.00
Boarding Docks	Total Linear Feet	0	0	400	30
	Season of Use(months)	0	\$0.00	24	\$3,000.00
Short Term Tie-up Docks	Total Linear Feet	0	0	194	10
	Season of Use(months)	0	\$0.00	24	\$1,000.00
Debris Boom	Log	N	0	N	0
	Polypipe	N	0	Y	6
	Season of Use(months)	0	\$0.00	24	\$600.00
CVA	Pumpout/Dump Station	N	0	N	0
	Monitoring System	N	0	N	0
	Pumpout only	N	0	N	0
	Dump only	N	0	N	0
	Holding Tank	N	0	N	0
	Season of Use(months)	N	\$0.00	N	\$0.00
Floating Restroom	Season of Use(months)	N	\$0.00	N	\$0.00
Sub-Total Allocation			\$5,800.00		\$23,000.00
Use Fee			\$0.00		\$3.00
Use Fee Adjustment			\$0.00		\$3,450.00
Total Awarded Allocation			\$5,800.00		\$19,550.00

*\$2,000 awarded for yearly underwater dive
inspection of cantilever ramp at Roger's Landing

		Edinger Landing	
		Reported	Allocation
Restroom	Flush	N	0
	Vault/Compost	N	0
	Portable	Y	12
	Number of Additional Stalls	0	0
	Season of Use(months)	24	\$1,200.00
Grounds	Vegetation Maintenance	Y	12
	Garbage Can or Dumpster	Y	4
	Season of Use(months)	24	\$1,600.00
Parking	Total Number of Paved Car Stalls	0	0
	Total Number of Paved Boat Trailer Stalls	0	0
	Gravel Parking Square Feet	6,000	6
	Gravel Overflow Square Feet	0	0
	Season of Use(months)	24	\$600.00
Ramp	Single Lane	Y	12
	Additional Number of Lanes	0	0
	Season of Use(months)	24	\$1,200.00
Boarding Docks	Total Linear Feet	0	0
	Season of Use(months)	0	\$0.00
Short Term Tie-up Docks	Total Linear Feet	0	0
	Season of Use(months)	0	\$0.00
Debris Boom	Log	N	0
	Polypipe	N	0
	Season of Use(months)	0	\$0.00
CVA	Pumpout/Dump Station	N	0
	Monitoring System	N	0
	Pumpout only	N	0
	Dump only	N	0
	Holding Tank	N	0
	Season of Use(months)	N	\$0.00
Floating Restroom	Season of Use(months)	N	\$0.00
Sub-Total Allocation			\$4,600.00
Use Fee			\$0.00
Use Fee Adjustment			\$0.00
Total Awarded Allocation			\$4,600.00
Total 2-year Awarded Allocation		\$30,950.00	