



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

May 16, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of a Maintenance Assistance Grant Intergovernmental Agreement No. 2325-033 with Oregon State Marine Board for Operation and Maintenance Funding for Five County Recreational Boating Access Sites. Total value is \$71,135 for July 1, 2023 through June 30, 2025. Funding through Oregon State Marine Board. No County General Funds are Involved.

Previous Board Action/Review	May 14, 2024: Request for Consent		
Performance Clackamas	1. Which indicator of success does this item affect? <ul style="list-style-type: none"> • Build public trust through good government • Honor, utilize, promote and invest in our natural resources 		
Counsel Review	4/15/24 AN	Procurement Review	No
Contact Person	Tom Riggs	Contact Phone	(503) 781-3137

EXECUTIVE SUMMARY: County Parks operates and maintains four recreational boating facilities (boat ramps), and one boat waste pump out station at the Boones Ferry ramp, for a total of five facilities that fall under this Agreement and as detailed in Attachment “C” to this Agreement. Through their Boating Facility Grant program the Oregon State Marine Board (OSMB) provides funds in support of operations and maintenance of the County’s boat facilities. Total funding from the Marine Board is \$51,100, inclusive of \$2,700 in federal pass-through Clean Vessel Act funds coming from the US Department of the Interior, Fish and Wildlife Services. Federal funds support operations and maintenance of the Boones Ferry boat waste pump-out station.

County Parks’ matching requirement is a total of 25%, or \$675, towards the \$2,700 federal pass-through funding for the Boones Ferry waste pump-out station, and 40% match or \$19,360 towards the \$48,400 in OSMB Boating Facility Grant funds. County Parks’ matching funds will come from park and boat ramp user fees. No County General Funds are involved.

The term of the agreement is July 1, 2023 through June 30, 2025. Due to changes in Federal funding language and required edits to the Intergovernmental Agreement by OSMB, receipt of the final IGA document was delayed until April 2024.

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These grant funds help offset costs for labor, and costs to operate and maintain the facilities covered by this agreement. This continued funding support from OSMB is vital to County Parks' budget.

RECOMMENDATION: Staff recommends Board approval of the Maintenance Assistance Grant Intergovernmental Agreement No. 2325-033 and requests the Board Chair sign the agreement on behalf of the County.

Respectfully submitted,

Dan Johnson

Dan Johnson, Director
Department of Transportation & Development

Attachments: 1. Maintenance Assistance Grant IGA #2325-033
2. Grant Lifecycle Form (4/24/23)

**MAINTENANCE ASSISTANCE GRANT
INTERGOVERNMENTAL AGREEMENT**
Agreement No. 2325-033

This Agreement is between the State of Oregon acting by and through its Marine Board (“OSMB”) and the Clackamas 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. OSMB is a recipient of a grant from United States Department of Interior, Fish and Wildlife Service. OSMB has sufficient facility 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 five recreational boating access site hereinafter called the “Project,” as described in the Recipient’s Maintenance Assistance Grant Application No. 2325-033 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, 2023 and terminates on June 30, 2025 or the date of final payment issuance, whichever is later, unless terminated earlier in accordance with Section 18.
- 3.2 Project Completion.** The Project shall be completed by June 30, 2025 and final billing for the Project shall be submitted to OSMB, on or before October 31, 2025. Unless approved in writing, OSMB shall not be obligated to disburse any payments after this date.
- 3.3 Closeout.** (See 2 CFR § 200.343) OSMB will closeout this award under this Agreement when it determines that all applicable administrative actions and all required work of this Agreement have been completed by the Recipient.

SECTION 4: AUTHORIZED REPRESENTATIVES

- 4.1 OSMB’s Authorized Representative is:**
Janine Belleque, Boating Facilities Program Manager
PO Box 14145, Salem, OR 97309 or 435 Commercial Street NE Suite #400, Salem 97301
(503) 877-7580 Office, Janine.Belleque@boat.oregon.gov

4.2 Recipient's Authorized Representative is:
Tom Riggs, Manager
150 Beavercreek Rd, Oregon City, OR 97045
triggs@clackamas.us (503) 781-3137

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 5.1.11.
Indemnification by Subcontractors.

5.1.2 Matching Funds. The Recipient shall contribute a minimum of 25% for each pumpout, dump station and floating restroom and contribute a minimum of 40% for all other approved sites as identified in the Maintenance Assistance Grant Application and Site Inventory.

5.1.3 Indirect Rate. The Recipient is charging the indirect rate of 0%. Total Indirect Costs to be charged are *\$0.00*.

5.1.4 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.

5.1.5 Pumpout, Dump Station or Floating Restroom. The Recipient will provide performance reports and gallons of sewage collected with each reimbursement request.

5.1.6 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.

5.1.7 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.

5.1.8 User Fees. No fees can be charged to recreational boaters for the use of pumpout, dump station or floating restroom. 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.

5.1.9 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 construction or maintenance activities at the Project.

5.1.10 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.

5.1.11 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 75% of the cost for pumpouts, dump stations and floating restrooms and Recipient's match not being less than 25% of any request. For all other recreational boating access sites identified as the Project OSMB will not reimburse more than 60% of any request and Recipient's match not being less than 40% of any request.
- b. All reimbursement requests for pumpouts, dump stations, and floating restrooms must include a performance report and number of gallons collected.

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 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 7.2. 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 Federal Fund Approval. OSMB has received a grant from the United States Department of the Interior, Fish and Wildlife Services, (USFWS) as described pursuant to 2 CFR 200.331. In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, and 2 CFR 200.330, OSMB's determination is that the Recipient is the sub-recipient of federal

funds.

- 7.2 Grant Funds.** Upon approval by its governing body, OSMB shall provide grant funds in the amount of \$48,400.00 state Boating Facility Grant, \$2,700.00 federal Clean Vessel Act funds for a total of \$51,100.00 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.
- 7.3 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".
- 7.4 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.
- 7.5 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 disallowed costs is provided by OSMB.

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 operation, maintenance or construction 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: RECIPIENT DEFAULT

Recipient will be in default under this Agreement upon the occurrence of any of the following events:

13.1 Recipient fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;

- 13.2** Any representation, warranty or statement made by Recipient in this Agreement or in any documents or reports relied upon by OSMB to measure the delivery of services, the expenditure of funds or the performance by Recipient is untrue in any material respect when made;
- 13.3** Recipient (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or
- 13.4** A proceeding or case is commenced, without the application or consent of Recipient, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Recipient, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Recipient or of all or any substantial part of its assets, or (c) similar relief in respect to Recipient under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Recipient is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

SECTION 14: OSMB DEFAULT

OSMB will be in default under this Agreement if OSMB fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

SECTION 15: REMEDIES

- 15.1** In the event Recipient is in default under Section 13, 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 18, (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) initiation of an action or proceeding for damages, or declaratory or injunctive relief, or (d) exercise of its right of recovery of overpayments under Section 16 (which is in addition to the remedies provided in Section 7.4), 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.
- 15.2** In the event OSMB is in default under Section 14 and whether or not Recipient elects to

exercise its right to terminate this Agreement under Section 18, or in the event OSMB terminates this Agreement under Sections 18.1, 18.2, or 18.3, 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 15.2, Recipient shall promptly pay any excess to OSMB.

SECTION 16: RECOVERY OF OVERPAYMENTS

In addition to the remedies provided in Section 7.4, 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 17: 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 18: TERMINATION

- 18.1 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 (0.9%) per annum, or, if such rate shall exceed the maximum rate allowed by law, then as such maximum rate, and shall be payable on demand.
- 18.2 Termination Because of Non-Appropriation or Project Ineligibility.** OSMB, as provided in Section 29 "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.

18.3 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 maintenance and operation sites or 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 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.

18.4 Rights and Remedies.

- a. The Recipient shall, within 30 days of its receipt of a notice of default, 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.

- b. In the event that Recipient has materially failed to comply with this Agreement and such non-compliance has resulted in the Federal Funding Agency terminating OSMB's grant or cause or requires OSMB to return funds to the Federal Funding Agency, Recipient will return to OSMB an amount equal to the funds which OSMB is not reimbursed for or is required to return to Federal Funding Agency.

SECTION 19: 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 20: AMENDMENTS

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

SECTION 21: 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 21. 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 22: 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 9,10,12,16,17 and 22 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 23: 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 24: 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 25: COMPLIANCE WITH LAW

- 25.1 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.
- 25.2 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.
- 25.3 Tax Compliance.** As set forth on Exhibit B, 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 25 constitutes a material breach of this Agreement. Further, any failure to comply with Recipient's certifications set forth in Exhibit B 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:

- 25.3.1 Termination of this Agreement, in whole or in part, this is in addition to any remedies available under Section 18;
- 25.3.2 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
- 25.3.3 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 26: 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 27: 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 28: 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 29: 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 30: 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. Any sub grant entered into under this Agreement shall contain terms and conditions substantially similar to this Agreement, including Federal provisions contained in Exhibit A and the sub grant shall:

- a. Be awarded in accordance with §200.317 to §200.326 Procurement Standards
- b. If the contract is not to a unit of local government as defined in ORS 190.003, the contract shall require the contractor 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 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 intentions 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.

SECTION 31: 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 32: TIME IS OF THE ESSENCE

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

SECTION 33: 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 34: 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 35: 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 36: ADDITIONAL REQUIREMENTS

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

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, attached Exhibit A (Federal Compliance Terms), Exhibit B (Tax Compliance), Exhibit C (Additional Requirements) Attachment A (FFATA Data Collection Form), Attachment B (Federal Debarment, Suspension, Ineligibility and Voluntary

Exclusion), and Attachment C (Site Inventory).

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 Marine Board

Larry Warren, Director _____
Date

Clackamas County

Tootie Smith, Chair _____
Board of Commissioners Date

Approved for Legal Sufficiency in accordance with ORS 291.047

Approval Authorized by Letter August 2, 2017
Steven Marlowe, Assistant Attorney General Date

EXHIBIT A

MAINTENANCE ASSISTANCE GRANT NO. 2325-033 BOATING FACILITY IMPROVEMENTS FEDERAL COMPLIANCE TERMS

I. Grant Recipient Compliance Requirements:

A. Recipient is responsible to ensure compliance with the federal implementing regulations for (Clean Vessel Act 50 CFR Part 85 or Boating Infrastructure Grant Program 50 CFR Part 86).

B. Recipient to comply with Assurances – Construction Programs (Standard Form 424D)

C. Pursuant to 2 CFR Part 170, Recipient must complete and return the Federal Funding Accountability and Transparency Act (FFATA) form to OSMB prior to execution of this grant agreement.

grant agreement.

II. Administrative Requirements, Cost Principles and Audit Requirements:

Without limiting the general requirement of Section 25 of the Agreement, Recipient is responsible to comply with the following Federal Terms and Conditions, as applicable:

- Uniform Administrative Requirements, 2 CFR Part 200, Subparts A through D as supplemented by 2 CFR Part 1402
- Recipient Integrity and Performance Matters Appendix XII to 2 CFR Part 200
- Cost Principles 2 CFR Part 200, Subpart E
- Contracts with Commercial Organizations 48 CFR Subpart 31.2
- Indirect Cost Proposals for states, local government agencies and Indian Tribes Appendix VII 2 CFR Part 200. See also the DOI negotiated indirect cost rate deviation policies at 2 CFR §1402.414
- Audit Requirement 2 CFR Part 200, Subpart F

III. Statutory and National Policy Requirements

A. Universal Identifier and System for Award Management Appendix A 2 CFR Part 25

B. Award Term for Reporting Subaward and Executive Compensation Appendix A to 2 CFR Part 170

- C. Award Terms for Trafficking in Persons 2 CFR §175.15
- D. Nonprocurement Debarment and Suspension 2 CFR Part 1400
- E. Requirements for Drug-Free Workplace(Financial Assistance) 2 CFR Part 1401
- F. New Restrictions on Lobbying 43 CFR Part 18. Recipients are prohibited from using any federally appropriated funds (annually appropriated or continuing appropriations) or matching funds under a Federal award to pay any person for lobbying in connection with the award. Lobbying is influencing or attempting to influence an officer or employee of any U.S. agency, a Member of the U.S. Congress or an officer or employee of a Member of the U.S. Congress in connection with the award.
- G. Whistleblower Protection for Contractor or Grantee Employees 41 U.S.C. §4712
- H. Prohibition on Members of Congress Making contracts with Federal Government 41 U.S.C. §6306
- I. Federal Non-discrimination Statutes. Recipient is responsible to comply with all federal statutes relating to non-discrimination, including but not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; Title IX of the Education Amendments of 1972 (20 USC §§ 1681-1683; 1685-1686) which prohibits discrimination on the basis of gender; Section 504 of the Rehabilitation Act of 1973 (29 USC § 794) which prohibits discrimination on the basis of handicaps; Age Discrimination Act of 1975 (42 USC §§ 6101-6107) which prohibits discrimination on the basis of age; Drug Abuse Office and Treatment Act of 1972 (PL 92-255) which prohibits discrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616) regarding non-discrimination on basis of alcohol abuse or alcoholism; Sections 523 and 527 of the Public Health Services Act of 1912 as amended (42 USC §§ 290 dd-3 and 290 ee-3) regarding confidentiality of alcohol and drug abuse patient records; Title VIII of the Civil Rights Act of 1968 (42 USC §§ 3601 et seq.) regarding nondiscrimination in the sale, rental or financing of housing; any other nondiscrimination provisions of the specific statutes under which this agreement is being made; and the requirements of any other nondiscrimination statute(s) which apply to the federal financial assistance award received by OSMB.
- J. Eligible Workers. Recipient shall ensure that all employees complete the I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). Recipient shall comply with regulations regarding certification and retention of the completed forms.
- K. Domestic preferences for procurements 2 CFR 200.322.

- As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work under this award.
- For purposes of this section:
 1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete, glass, including optical fiber; and lumber.

IV. Mandatory Disclosures

Failure to make required disclosures may result in any of the remedies for noncompliance described in 2 CFR§200.339, including suspension or debarment (see also 2 CFR Part 180).

- A. Conflict of Interest: Per 2 CFR §1402.112, non-Federal entities and their employees must take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements. In the procurement of supplies, equipment, construction and services by recipients and by subrecipients, the provisions in 2 CFR §200.318 apply. Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR §200.112. Recipients must establish internal controls that include, at a minimum , procedures to identify, disclose and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Service Project Officer identified in their notice of award in writing of any conflicts of interest that may arise during the life of the award, including those that reported by subrecipients. The Service will examine each disclosure to determine whether a significant potential conflict exists and, if it does, work with the applicant or recipient to develop an appropriate resolution. Failure to resolve conflicts of interest in a manner that satisfies the government may be cause for termination of the award.
- B. Lobbying: If the Federal share of the award is more than \$100,000, recipients must disclose making or agreeing to make any payment using non-appropriated funds for lobbying in connection with the award. To make such disclosures, recipients must complete and submit the SF-LLL, “Disclosure of Lobbying Activities” form to OSMB. This form is available at: <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html> . For more information on when additional submission of this form is required, see 43 CFR, Subpart 18.100. These restrictions are not applicable to

such expenditures by Indian tribe, tribal organization or any other Indian organization that are specifically permitted by other Federal law.

- C. Other Mandatory Disclosures: Recipients and subrecipients must disclose, in a timely manner, in writing to the Service Project Officer identified in their notice of award or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities subject to the 2 CFR 200, Appendix XII-Award Term and Conditions for Recipient Integrity and Performance Matters are required to report certain civil, criminal or administrative proceedings to SAM.

V. National Policy Encouragement

- A. Increasing Seat Belt Use in the United States Executive Order 13043. Non-Federal entities are encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles. Individuals are encouraged to use seatbelts while driving in connection with award activities.
- B. Federal Leadership on Reducing Text Messaging While Driving, Executive Order 13513. Non-Federal entities are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in section 3(a) of the order. Individuals are encouraged to not text message while driving in connection with award activities.

VI. Buy America Provision

Required Use of American Iron, Steel, Manufactured Products, and Construction Materials for Infrastructure

As required by Section 70914 of the Infrastructure Investment and Jobs Act (Pub. L. 117-58), on or after May 14, 2022, none of the funds under a federal award that are part of a Federal financial assistance program for infrastructure may be obligated for a project unless all the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. Recipients must include the requirements in this section all subawards, including all contracts and purchase orders for work or products under this program.

None of the funds provided under this award may be used for a project for infrastructure unless:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States,
2. All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and

the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation, and

3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

This Buy America preference only applies to articles, materials, and supplies consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

For more information, visit the Department's Buy America site at www.doi.gov/grants/BuyAmerica and the Office of Management and Budget's site at www.whitehouse.gov/omb/management/made-in-america/.

Waivers

There may be instances where an award qualifies, in whole or in part, for an existing DOI general applicability waiver as described at www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers. If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the Recipient does not need to request a separate waiver for non-domestic materials.

When necessary, recipients may apply for, and the Department of the Interior (DOI) may grant, a waiver from these requirements, subject to review by the Made in America Office. The DOI may waive the application of the domestic content procurement preference in any case in which it is determined that one of the below circumstances applies:

1. **Non-availability Waiver:** the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality,
2. **Unreasonable Cost Waiver:** the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent, or
3. **Public Interest Waiver:** applying the domestic content procurement preference

would be inconsistent with the public interest.

If a general applicability waiver does not already apply, and the Recipient believes that one of the above circumstances applies to an award, the Recipient may submit a request to waive the application of the domestic content procurement preference.

Waiver Submission Instructions

Recipients must submit all waiver requests to the Service in writing. Email all waiver requests to fwhqfasupport@fws.gov. Please use the subject line: "Buy America Waiver Request". Include the following information with each waiver request:

1. Type of waiver requested (non-availability, unreasonable cost, or public interest)
2. Requesting entity name and Unique Entity Identifier (UEI)
3. Awarding bureau: U.S. Fish and Wildlife Service
4. Awarding program Assistance Listing number and title (Notice of Award, Block 2)
5. Project title (Notice of Award, Block 8)
6. Federal Award Identification Number (Notice of Award, Block 4)
7. Federal award amount (Notice of Award, Block 11)
8. Total infrastructure costs, to the extent known (federal and non-federal funds)
9. Infrastructure project description and location, to the extent known
10. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America requirements. Include the name, cost, countries of origin, if known, and relevant PSC or NAICS code for each (see <https://psctool.us/> and <https://www.census.gov/naics/>).
11. A certification that the Recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
12. A statement of waiver justification, including a description of the Recipient's efforts (e.g., market research, industry outreach) to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
13. Anticipated impact if no waiver is issued.

Do not include any Privacy Act information, sensitive data, or proprietary information with the waiver request.

Waiver Review Process

The Department will post waiver requests to www.doi.gov/grants/buyamerica for the required 15-day public comment period. The Made in America Office will also review

all waiver requests. The Department will post approved waivers at www.doi.gov/grants/BuyAmerica/ApprovedWaivers. The Service will notify Recipients of their waiver request determination by email.

Definitions

Construction materials includes an article, material, or supply that is or consists primarily of:

- non-ferrous metals,
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables),
- glass (including optic glass),
- lumber, or
- drywall.

Construction materials does **not** include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

Domestic content procurement preference means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

Infrastructure includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

Project means the construction, alteration, maintenance, or repair of infrastructure in the United States.

2. Notice of Temporary Waiver of the Applicable Buy America Preference for Infrastructure In Effect July 13, 2022-January 12, 2023

Per the Buy America, Build America Act (Section 70914 of the Infrastructure Investment and Jobs Act, Pub. L. 117-58) applicable to this award, none of the funds under a federal award may be obligated for an infrastructure project unless all the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver.

The Recipient hereby notified that as of July 13, 2022, the applicable Buy America

preference for infrastructure is temporarily waived through January 12, 2023. On July 13, 2022, the Office of Management and Budget's Made in America office approved a General Applicability Waiver suspending the Buy America preference for Department of the Interior recipients for a six-month period. A copy of the approved waiver is available for the public on the "Approved Waivers" section of the Department of the Interior's Buy America web page (<https://www.doi.gov/grants/buyamerica>).

This waiver does not change the terms and conditions of this award, but rather suspends them for the specified period. This provides a window of opportunity in which your organization may identify known domestic supply chain issues affecting your Service award(s). If such issues are identified, please notify your Service program point of contact as soon as possible.

VII. Special Terms and Requirements

▪ Environmental Compliance Reviews

The project must adhere to all terms and conditions of the U.S. Army Corps of Engineers (USACE) Permit, NWP-2019-513. In particular,

- Compliance with the permit-referenced PDCs contained within the NMFS SLOPES IV In-water Over-water Structures programmatic biological opinion dated April 5, 2012(NMFS 2011/05580).
- Adherence to specified work window
- Adherence to the permit Inadvertent Discovery Plan, and
- Compliance with the conditions specified in the Oregon Department of Land Conservation and Development coastal zone management consistency determination, dated December 22, 2020.

▪ Inadvertent Archaeological or Historical Discoveries

In the event any archaeological or historic materials are encountered during project activity, work in the immediate area must stop and the following actions taken:

3. Implement reasonable measures to protect the discovery site, including any appropriate stabilization or covering
4. Take reasonable steps to ensure the confidentiality of the discovery sites; and
5. Take reasonable steps to restrict access to the site of discovery.

The recipient must notify the concerned Tribes and all appropriate county, state, and federal agencies, including the State Historic Preservation Office. Agencies and the Tribe(s) will discuss the possible measures to remove or avoid cultural material and will reach an agreement with the recipient regarding actions to be taken and disposition of material. If Human remains are uncovered, appropriate law enforcement agencies must be notified first, and the above steps followed. If the remains are determined to be Native, consultation with the affected Tribe(s) will take place in order to mitigate the final disposition of said, remains.

C. To the extent applicable to this award, Recipient is responsible to comply with

1. National Environmental Policy Act; E.O. 11514 (which requires the recipient to comply

with environmental standards which may be prescribed pursuant to institution of environmental quality control measures under the National Environmental Policy Act of 1969 (42 USC Chapter 55, [Pub. L. 91-190]) and Executive Order 11514.

2. E.O. 11988: Floodplain Management; E.O. 11988 and E.O. 14030 (which requires the recipient to comply with environmental standards for the evaluation of flood hazards in floodplains)

3. Coastal Zone Management Act (which requires recipient to ensure that the work performed will not violate State management programs developed under the Coastal Zone Management Act of 1972) (16 USC Chapter 33, Sections 1451 et seq.).

5. Wild and Scenic Rivers Act (which requires the recipient to protect components or potential components of the national wild and scenic rivers system). (Public Law 90-542; 16 USC Sections 1271 et seq.) -

6. Historic Preservation Act, E.O. 11593 (which requires recipient to assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC 470), E.O. 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 USC Sec. 469a-1 et seq.).

7. Endangered Species Act (which requires the recipient to comply with environmental standards for the protection of endangered species) 16 USC 1531-1544.

8. Marine Mammal Protection Act (which requires permits and reports for research projects that will involve the taking or importation of protected marine mammals or marine mammal products) (16 U.S.C. Chapter 1361-1407).

ATTACHMENT "A"
FFATA Data Collection Form

The Federal Funding Accountability and Transparency Act (FFATA) requires OSMB to report on certain federal subawards which are for more than \$30,000 via a public website by the federal government. This reporting applies only to

- Grants issued under federal grants, unless the recipient is an individual
- Subcontracts issued under federal contracts, unless subcontractor's gross annual income from the previous tax year was \$300,000 or less. Identify if subcontractor's gross income from all sources in the previous tax year was \$300,000 or less ___Yes or XNo.

OSMB: Complete this section before sending to XX Subrecipient or ___Subcontractor.

Title of Federal Award Project: Inland CVA

Federal Sponsor: US Fish and Wildlife Service

Federal Award Number: F20AP11947-00

Prime award (received by OSMB) is a XX grant or ___contract

CFDA Number (if Prime award is a grant):15.622

Date of Sub-Award: July 1, 2020

Amount of Sub-Award: \$2,700.00

Sub-Award agreement number: 2325-033

Short description of work, (maintenance and operation of number of pumpouts, dump stations and floating restrooms)

X Subrecipient or ___subcontractor: Please provide the following information.

1. Name of Organization: Clackamas County
2. Organization Address: 2051 Kaen Rd., Oregon City, OR 97045
3. Congressional District of Organization: Congressional District OR-005
4. Organization Unique Entity Identifier (UEI). If organization does not have a UEI, please go here to obtain one. [SAM.gov](https://sam.gov) | [Duns - Sam UEI](https://duns.sam.gov) : NVWKAVB8JND6

5. Is Organization registered in the System for Award Management (SAM)?
 Yes No. Organization must be registered.

6. Subcontractor NAICS Code (if prime award is a contract): _____

7. In the preceding fiscal year did subrecipient receive 80% of its annual gross revenues from the Federal government? Yes No. If Yes, continue to question 8. If No, questionnaire is complete. Thank you.

8. In the preceding fiscal year, were the subrecipients' s annual gross revenues from the Federal government more than \$25 million annual? Yes No. If Yes, continue to question 9. If No, questionnaire is complete. Thank you.

9. Is information about the compensation of the senior executives in the subrecipient's organization (including parent organization, all branches, and all affiliates worldwide) publicly available? If no, report executive compensation for the five highest paid officials below.

**For the purposes of this Exhibit, the term "Subrecipient" refers to Recipient*

Name of Preparer: Joseph Rosevear

Phone Number: 503-742-5429

Email: JRosevear@clackamas.us

Position: Grants Manager

ATTACHMENT "B"

**Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier
Suspension Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, "Debarment and Suspension", and 2 CFR Part 180 or 78 CFR 52.209-6.

By signing and submitting this form, the prospective lower tier participant is provoking the certification set out below.

- (1) The prospective lower tier participant certifies, by submission of this form, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- (3) The prospective lower tier participant shall provide immediate written notice to the person to which this form is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (4) The prospective lower tier participant agrees by submitting this form that, should the proposed transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- (5) The prospective lower tier participant further agrees by submitting this form that it will include the clause titled "Debarment and Suspension," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (6) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this form.

Clackamas County

Full Organization Name:

Tootie Smith, Chair
Board of Commissioners

Name and Title of Authorized Representative:

Signature Date:

- (7) The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntary excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this form is submitted for assistance in obtaining a copy of those regulations.
- (8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (<http://epls.gov>).
- (9) Nothing contained in the foregoing shall be constructed to require establishment of a system of records in order to render in good faith the certification required by the clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

EXHIBIT B

RECIPIANT TAX CERTIFICATION

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: 93-6002286

Oregon Tax Number: 0502173-6

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 Contractor'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 Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and

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

Recipient Signature _____

Date _____

Tootie Smith, Chair
Board of Commissioners

EXHIBIT C

ADDITIONAL REQUIREMENTS

- 1 The Recipient must spend funds identified for pumpout and dump stations and floating restrooms only on those specified items. The federal Clean Vessel Act funds cannot be spent on other boating access sites identified on the Site Inventory.
- 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 "C"
SITE INVENTORY**

Clackamas County		Barton Park		Boones Ferry Ramp	
MAG 2023-25 Inventory		Reported	Allocation	Reported	Allocation
Restroom	Flush	N	0	N	0
	Vault/Compost	Y	10	N	0
	Portable	Y	4	Y	8
	Number of Additional Stalls	1	4	1	4
	Season of Use(months)	12	\$1,600.00	12	\$1,200.00
Grounds	Vegetation Maintenance	Y	6	Y	6
	Garbage Can or Dumpster	Y	6	Y	6
	Season of Use(months)	12	\$1,200.00	12	\$1,200.00
Parking	Total Number of Paved Single Car Stalls	28	0	27	0
	Total Number of Paved Boat Trailer Stalls	31	12	91	24
	Gravel Parking Square Feet	0	0	0	0
	Gravel Overflow Square Feet	0	0	0	0
	Season of Use(months)	12	\$1,200.00	12	\$2,400.00
Ramp	Single Lane	Y	6	Y*	6
	Additional Number of Lanes	0	0	1	4
	Season of Use(months)	12	\$600.00	12	\$2,000.00
Docks	Total Linear Feet	0	0	120	3
	Season of Use(months)	0	\$0.00	12	\$300.00
Short Term Tie-up	Total Linear Feet	0	0	0	0
	Season of Use(months)	0	\$0.00	0	\$0.00
Debris Boom	Log	N	0	Y	2
	Polypipe	N	0	N	0
	Season of Use(months)	0	\$0.00	0	\$200.00
CVA	Pumpout/Dump Station				
	Monitoring System				
	Pumpout only				
	Dump only				
	Holding Tank				
	Season of Use(months)				
Floating RR	Season of Use(months)				
	Sub-Total Allocation**		\$4,900.00		\$7,600.00
	Use Fee		\$2.00		\$2.00
	Use Fee Adjustment		\$0.00		\$0.00
	Total Awarded Allocation		\$4,900.00		\$7,600.00
	* \$1,000 awarded for yearly underwater dive inspection of cantilever ramp at Boones Ferry				
	** Includes \$300 Travel Adjustment				

		Pumpout/Dump Station		Carver Ramp	
		Reported	Allocation	Reported	Allocation
Restroom	Flush			Y	12
	Vault/Compost			N	0
	Portable			Y	4
	Number of Additional Stalls			1	4
	Season of Use(months)			12	\$2,000.00
Grounds	Vegetation Maintenance			Y	6
	Garbage Can or Dumpster			Y	6
	Season of Use(months)			12	\$1,200.00
Parking	Total Number of Paved Single Car Stalls			32	0
	Total Number of Paved Boat Trailer Stalls			61	18
	Gravel Parking Square Feet			0	0
	Gravel Overflow Square Feet			0	0
	Season of Use(months)			12	\$1,800.00
Ramp	Single Lane			Y	6
	Additional Number of Lanes			0	0
	Season of Use(months)			12	\$600.00
Docks	Total Linear Feet			0	0
	Season of Use(months)			0	\$0.00
Short Term Tie-up	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	Y	9.0		
	Monitoring System	Y	0		
	Pumpout only	N	0		
	Dump only	N	0		
	Holding Tank	Y	4.5		
	Season of Use(months)	6	\$1,350.00		
Floating RR	Season of Use(months)				
	Sub-Total Allocation**		\$1,350.00		\$5,900.00
	Use Fee		\$0.00		\$2.00
	Use Fee Adjustment		\$0.00		\$0.00
	Total Awarded Allocation		\$1,350.00		\$5,900.00

		Hebb Park	
		Reported	Allocation
Restroom	Flush	Y	12
	Vault/Compost	N	0
	Portable	N	0
	Number of Additional Stalls	1	4
	Season of Use(months)	12	\$1,600.00
Grounds	Vegetation Maintenance	Y	6
	Garbage Can or Dumpster	Y	6
	Season of Use(months)	12	\$1,200.00
Parking	Total Number of Paved Single Car Stalls	16	0
	Total Number of Paved Boat Trailer Stalls	37	12
	Gravel Parking Square Feet	0	0
	Gravel Overflow Square Feet	0	0
	Season of Use(months)	12	\$1,200.00
Ramp	Single Lane	Y	6
	Additional Number of Lanes	0	0
	Season of Use(months)	12	\$600.00
Docks	Total Linear Feet	280	9
	Season of Use(months)	12	\$900.00
Short Term Tie-up	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		
	Monitoring System		
	Pumpout only		
	Dump only		
	Holding Tank		
	Season of Use(months)		
Floating RR	Season of Use(months)		
	Sub-Total Allocation**		\$5,800.00
	Use Fee		\$2.00
	Use Fee Adjustment		\$0.00
	Total Awarded Allocation		\$5,800.00
	CVA 2-year Awarded Allocation	\$2,700.00	
	Total 2-year Awarded Allocation	\$51,100.00	

In the next section, limit answers to space available.

Section III: Funding Opportunity Information - To Be Completed at Pre-Application Meeting by Dept Program and Fiscal Staff

Mission/Purpose:

1. *How does the grant/funding opportunity support the Department and/or Division's Mission/Purpose/Goals?*

2. *Who, if any, are the community partners who might be better suited to perform this work?*

3. *What are the objectives of this funding opportunity? How will we meet these objectives?*

4. *Does the grant/financial assistance fund an existing program? If yes, which program? If no, what is the purpose of the program?*

Organizational Capacity:

1. *Does the organization have adequate and qualified staff? If no, can staff be hired within the grant/financial assistance funding opportunity timeframe?*

2. *Are there partnership efforts required? If yes, who are we partnering with and what are their roles and responsibilities?*

3. *If this is a pilot project, what is the plan for sun setting the project and/or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?*

4. *If funded, would this grant/financial assistance create a new program, does the department intend for the program to continue after initial funding is exhausted? If yes, how will the department ensure funding (e.g. request new funding during the budget process, supplanted by a different program, etc.)?*

Collaboration

1. List County departments that will collaborate on this award, if any.

Reporting Requirements

1. What are the program reporting requirements for this grant/funding opportunity?

2. How will performance be evaluated? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

3. What are the fiscal reporting requirements for this funding?

Fiscal

1. Are there other revenue sources required, available, or will be used to fund the program? Have they already been secured? Please list all funding sources and amounts.

2. For applications with a match requirement, how much is required (in dollars) and what type of funding will be used to meet it (CGF, In-kind, local grant, etc.)?

3. Does this grant/financial assistance cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are those sources?

Other information necessary to understand this award, if any.

Program Approval:

		<i>Tom Riggs</i>
Name (Typed/Printed)	Date	Signature

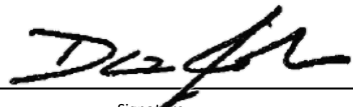
** NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR **
ATTACH ANY CERTIFICATIONS REQUIRED BY THE FUNDING AGENCY. COUNTY FINANCE OR ADMIN WILL SIGN

Section IV: Approvals

DIVISION DIRECTOR (or designee, if applicable)


Name (Typed/Printed)	Date	Signature
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DEPARTMENT DIRECTOR (or designee, if applicable)

Dan Johnson	4/19/2023	
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Name (Typed/Printed)	Date	Signature
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FINANCE ADMINISTRATION

Elizabeth Comfort	4.20.2023	
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Name (Typed/Printed)	Date	Signature
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EOC COMMAND APPROVAL (WHEN NEEDED FOR DISASTER OR EMERGENCY RELIEF APPLICATIONS ONLY)

Name (Typed/Printed)	Date	Signature
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Section V: Board of County Commissioners/County Administration

*(Required for all grant applications. If your grant is awarded, all grant **awards** must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.)*

For applications less than \$150,000:

COUNTY ADMINISTRATOR	Approved: <input checked="" type="checkbox"/>	Denied:
Gary Schmidt	4/24/2023	
Name (Typed/Printed)	Date	Signature

For applications under \$150,000 email form to Christina Fadenrecht at CFadenrecht@clackamas.us for Gary Schmidt's approval.

For applications \$150,000 and above, email form with Staff Report to the Clerk to the Board at ClerktotheBoard@clackamas.us to be brought to the consent agenda.

BCC Agenda item #: _____ Date: _____

OR

Policy Session Date: _____

County Administration Attestation

County Administration: re-route to department at _____ and _____ Grants Manager at financegrants@clackamas.us when fully approved.

Department: keep original with your grant file.