



187620

**SUB-RECIPIENT
GRANT AGREEMENT**
between
OREGON DEPARTMENT OF FISH AND WILDLIFE
and
City of Portland
for
Willamette Park Boat Ramp Toe, Debris Boom, and Dredge

RECIPIENT TYPE: Local Government

This Grant Agreement is entered into by and between the State of Oregon acting by and through its **Department of Fish and Wildlife** (hereinafter referred to as ODFW), to **City of Portland** (hereinafter referred to as Recipient), both herein referred to individually or collectively as "Party" or "Parties." By signing this grant agreement and accepting grant funds, the Recipient, or a duly authorized representative of the Recipient, makes the representations and agrees to the obligations and conditions set forth below.

I. PURPOSE AND AUTHORITY

- A. ODFW is the recipient of a grant from:
United States Department of the Interior, Fish and Wildlife Service
Federal Funding Agency (abbreviation): **USFWS**
CFDA: **15.605**
Federal Grant Number: **F15AF01238**
Federal Grant Name: **Willamette Park Boat Ramp Toe, Debris Boom, and Dredge**
Date of Award: **09/02/2015**
Total amount of Federal Grant Award: **\$400,000.00**
- B. ODFW enters this sub-recipient grant agreement under this award to reimburse Recipient for expenses not to exceed **\$400,000** of implementing a project where sub-recipient is carrying out the purpose of the federal award pursuant to its authority contained in ORS 496.525.
- C. Recipient is charging **116.98%** of indirect rate applied to direct personnel costs including fringe benefits under this Agreement. **Indirect rate totals to be charged are already included in budget totals in Exhibit E.**
- D. Research and Development Project \$200.87 Yes ☐ No ☒

II. TERM OF AGREEMENT

This agreement takes effect on the date of last signature below and unless terminated or extended, this grant agreement expires on January 31, 2017. ODFW will make no payment for any services performed or expenses incurred before the beginning date or after the expiration date of the period of performance: **September 1, 2015 through January 31, 2017.**

III. AGREEMENT DOCUMENTS

This agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, Exhibit A (Project Description and Budget), Exhibit B (Federal Compliance Terms), Exhibit C (Insurance Requirements for First-Tier Contractors under Agreement), Exhibit D (Administrative Summary), and Exhibit E (City of Portland Detailed Budget Showing Indirect) attached hereto and by this referenced made a part hereof.

IV. RECIPIENT'S OBLIGATIONS

- A. **Implement Project.** The Recipient will
1. implement the project, as defined in Exhibit A, and

2. request a formal amendment to the project if needed. Certain changes to the Project may only be made via formal amendment to this Agreement, as identified in section IV. H. Any prior approvals are to be sought from ODFW and not from the Federal Funding Agency.
- B. Maintain Project.** The Recipient is responsible for the term of this agreement to maintain the public boating access facility that results from the implementation of the project (Facility). If Recipient fails to maintain the Facility, Recipient agrees to relinquish its interest in the Facility to ODFW via appropriate legal instrument.
- C. Ensure the Public Boating Access Facility is used for its authorized purpose.** The Recipient is responsible for the term of this agreement to ensure that the Facility is used as a public boating access facility. If Recipient fails to maintain this use, then Recipient agrees to relinquish its interest in the Facility to ODFW via appropriate legal instrument.
- D. Match.** Recipient must provide **\$239,000** of the total Project cost. Recipient must document any cash and in-kind contributions Recipient makes to the Project and retain such documentation. A summary of the match contributed for the period and the cumulative match amount must be included in Recipient's reimbursement requests.
1. Match costs may include (1) allowable costs incurred by ODFW, the Recipient, or cost-type contractors under this agreement where the costs are funded by non-Federal grants or by others' cash donations from non-Federal third parties and are not counted as match of another federal grant agreement or (2) third party in-kind contributions received during the period of performance of this Agreement.
 2. **Special rules apply to valuing third party in-kind contributions.** Volunteer services should be valued at rates, including fringe benefits, consistent with those ordinarily paid for similar work within the recipient's organization, or at rates consistent with those ordinarily paid by other employers for similar work in the same labor market. Services of employees of third party organizations should be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs.

E. Performance and Financial Reporting

1. Reports are due according to the following schedule:
 - a. Project Progress Reports:

Interim Financial and Performance Report Due for work thru September 30, 2016:	December 1, 2016
Final Financial and Performance Report Due:	February 28, 2017

- b. Final Project Report: **February 28, 2017.**
1. Recipient shall compile and deliver to ODFW progress and final project reports that describe the work completed under this Agreement using ODFW approved reporting template. The ODFW project manager will provide the report format to the Recipient's project manager.
2. The Progress and Final Project Reports must include:
 - a. Status of Objectives (from Project Description Exhibit A) (a comparison of actual accomplishments to the objectives established for the period);
 - b. Description of work completed and methods used in completing the work;
 - c. Explanation of why objectives or portions of objectives were not completed. If the work could not be performed within the period specified, provide a statement of the problem, the actions to be taken to resolve the problem, and when it is anticipated that the objectives will be completed;
 - d. Summary of expenditures and match to date;
 - e. Explanation of why expenditures differ from original Project budget;
 - f. Any additional information that would be helpful in evaluating the strengths and weaknesses of the Project methods, materials or assumptions based on expectations of results.

F. Grant Reimbursement Requests

1. **Basis of Payment.** This is a reimbursable grant program. Recipient must complete or make progress on the Project before grant funds will be disbursed. Recipient must submit the final request for reimbursement to ODFW within thirty (30) calendar days of termination of this Agreement and is due no later than February 28, 2017.
2. **Request for Reimbursement.**
 - a. Recipient may request disbursement of the grant funds for up to a six month period, but no more than once per month.
 - b. To request reimbursement, Recipient must submit a signed request for reimbursement showing current and cumulative costs by budget category (i.e. Salaries, Fringe Benefits (OPE), Travel, non-expendable equipment (greater than \$5,000 per item), Supplies (less than \$5,000 per item), Contract Services, Construction, and Indirect Costs, if contained in the budget depicted in Exhibit A) and the total of current and cumulative match.
 - c. This request for reimbursement must include the following (or a substantially similar) certification: "By signing this request for reimbursement, I certify to the best of my knowledge and belief that the information is correct, that all expenditures were made in accordance with the award conditions, and that the amount due, indicated for the current period, has not been previously requested."

G. Give credit and seek approval before publishing publicity, news releases, and reports.

Recipient shall include the following statement if publishing any report, news release or publication regarding this project:

Partial funding for this project was through Oregon Department of Fish and Wildlife's Sport Fish Restoration Grants Program in cooperation with the USFWS, under Federal Award number F15AF01238.

H. Unauthorized use of grant funds. Recipient will only be reimbursed for allowable costs of the recipient necessary for implementing the project, including allowable costs in the form of payments to cost-type contractors, under the terms of this agreement including all its Exhibits.

I. Dual Payment. The Recipient may not be compensated for or receive any other form of dual payment for the costs reimbursed by ODFW for the project described in Exhibit A from any agency of the State of Oregon, the United States of America, or any other party.

J. Obtain Written Amendment prior to making changes. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both ODFW and Recipient. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

1. When Amendment Needed. Recipient must request an amendment to this agreement prior to any of the following changes:

- a. If recipient needs additional funding to complete the project (as identified in Exhibit A);
- b. If the federal award received by ODFW is more than \$100,000, when the recipient determines that the budgeted amount within any budget category is going to change by an amount that exceeds 10% of the total federal grant funds.
- c. If recipient revises the scope or objectives of the project (as identified in Exhibit A);
- d. If Recipient needs additional time to complete the project beyond the Term of Agreement or Period of Performance identified in Section II of this Agreement;
- e. If Recipient changes key persons in cases where specific persons are identified in Exhibit A of this agreement;
- f. If the Recipient intends to purchase equipment with a per unit value of \$5,000 or more, and the costs have not been identified in Exhibit A;
- g. If the Recipient wants to subgrant or contract out services to a third party to perform activities which are central to the purpose of the work to be performed under this Agreement, where not already identified in Exhibit A.

2. Amendment Process.

- a. Any and all requests to ODFW for Amendment(s) to this agreement must:
 - i. be in writing addressed to ODFW's Project Manager;
 - ii. be made to ODFW as early as possible because these types of changes may require prior approval of USFWS before the change can be implemented;
 - iii. be made to ODFW at least 60 days prior to the expiration of the agreement; and
 - iv. state the reasons for the need to amend the agreement.
- b. Upon receipt of any request for amendment to this Agreement, ODFW will review the request and
 - i. If in agreement with the request, and if necessary seek approval from USFWS promptly, and inform Recipient of USFWS's decision, including the date of USFWS approval, as soon as possible.
 - ii. If an amendment is approved, prepare a written amendment for signature by ODFW and Recipient.
 - iii. If an amendment is denied, submit a written notice to Recipient that the Amendment request is denied.

K. Maintain Records. Recipient shall create and maintain fiscal records in accordance with generally accepted accounting principles and in sufficient detail to permit ODFW, the Oregon Secretary of State's Office, the federal awarding agency and their authorized representatives to verify how grant funds were used.

1. Expenditures. All grant revenues and expenditures shall be documented in such a way as to readily identify and distinguish revenue and expenditures specific to this agreement from other federal and non-federal funding sources.
2. Funds Received. Recipient shall assume liability for all funds received pursuant to this agreement and shall assume responsibility for repayment to ODFW of any expenditures not authorized by this agreement.
3. Recipient shall retain all records (whether in electronic or hard copy form) created or maintained pertinent to this agreement (fiscal, program, and administrative) for a period of at least six (6) years from the date Recipient submits its project completion report.
4. Records related to any real property or equipment purchased under this Agreement shall be maintained for a period of six years starting from the date of disposition, replacement or transfer of the real property or equipment.

L. Provide access to records. Recipient will provide access to ODFW, Federal Awarding Agency, the Comptroller General of the United States, the Secretary of State's Office of the State of Oregon and their duly authorized representatives to the books, documents, papers and records (whether in electronic or hard copy form) of Recipient that are directly related to this agreement, the Project or the Grant Funds provided hereunder, for the purpose of monitoring compliance with this agreement, making audits, examinations, excerpts, and transcripts.

M. Audits. Subrecipient is responsible to comply with requirements and standards under §200.501 Audit requirements.

N. Closeout. (See §200.343) ODFW will close-out 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. Recipient must:

1. Submit no later than 30 calendar days after the end date of the period of performance, all financial, performance and other reports as required by the terms and conditions of this Agreement.
2. Liquidate all obligations incurred under this Agreement within 30 days after the end date of this Agreement.
3. Make prompt payments to its subcontractors, if any, for allowable costs under this Agreement.

4. Must promptly refund any balances of unobligated cash that ODFW paid in advance or paid and that are not authorized to be retained by the Recipient for use in other projects.
5. Must make a settlement for any upward or downward adjustments to the award share costs after closeout reports are received.
6. Must account for any real and personal property, if any, acquired from this Agreement.
7. Complete all closeout actions no later than one year after closeout actions no later than one year after receipt and acceptance of all required final reports.

V. ODFW'S OBLIGATION

Provide funds. ODFW agrees to pay the Recipient the total sum not to exceed **\$400,000.00** ("Grant Funds") to reimburse Recipient for the allowable costs of implementing project as described in Exhibit A upon the following conditions:

1. ODFW has received sufficient funding, appropriations and expenditure authorizations to allow ODFW, in the exercise of its reasonable administrative discretion, to make the disbursement.
2. ODFW will pay Recipient no later than thirty calendar days (30) days following receipt and approval of Recipient's request for reimbursement.
3. ODFW will not pay for any project work performed before the beginning date or after the expiration date of the period of performance identified in Section II.
4. ODFW is not obligated to pay the Recipient if the Final Project Report and/or the Final Grant Reimbursement Request Form are delivered to ODFW more than thirty calendar days (30) days after the expiration of this Agreement.
5. ODFW can pay Recipient an approved federally recognized indirect cost rate negotiated between the Recipient and the federal government, or if no such rate exists, a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (b).

VI. STANDARD CONDITIONS

- A. **Notice.** All notices required or allowed to be given by this Agreement shall be by first-class mail, facsimile, or e-mail and addressed to the Administrative and Project Manager contact of each organization as listed in Exhibit D.
- B. **Circumstances outside of Parties' Control.** Neither ODFW nor the Recipient will be held responsible for delay or failure to perform when such act or delay or failure is due to fire, flood, epidemic, strikes, acts of God or the public enemy, legal acts of public authorities, or delays or defaults caused by public carriers, which cannot be reasonably foreseen or provided against.
- C. **Contribution**
 1. **Liability of One Party.** 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 a copy of the claim, process and all legal pleadings with respect to the Third Party Claim. 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 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 liability with respect to the Third Party Claim.
 2. **Joint Liability.** With respect to a Third Party Claim for which the Parties are jointly liable, each Party shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Party in such proportion as is appropriate to reflect the Parties' relative fault. The Parties' relative fault 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. Each Party's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if that Party had sole liability in the proceeding.

D. Indemnification by Subcontractors. 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 ("Indemnatee") 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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful actions of the Indemnatee, be indemnified by the contractor from and against any and all Claims.

E. Dispute Resolution and Consent to Jurisdiction.

1. If a dispute should arise out of this Agreement, the Parties may attempt in good faith to resolve the dispute short of litigation. This may be done through communication between the Parties at any management level, including at a level higher than persons directly responsible for administration of the Agreement or the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration), or both.
2. However, if a dispute is not resolved short of litigation, the Parties agree that any claim, suit or action between the Parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State 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, from any Claim or from the jurisdiction of any court. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue and waives any claim that such forum is an inconvenient forum.

F. Termination and Default

1. FOR CONVENIENCE

- a. **Termination by Recipient.** The Recipient may terminate this agreement at any time upon thirty (30) days prior written notice to ODFW setting forth the reasons for such termination, and the effective date, delivered by certified mail or in person to ODFW's Project Manager as listed in Exhibit D.
- b. **Termination by Mutual Consent.** ODFW may terminate this agreement with the consent of Recipient in which case ODFW and Recipient shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated.
- c. **Termination by ODFW.** If the Federal Funding Agency's funding support for this project is terminated, suspended or discontinued, ODFW will immediately notify Recipient to stop all work and may terminate this agreement.

2. FOR CAUSE (DEFAULT)

- a. **Event of default.** A Party will be in default under this Agreement if:
 - i. the Party commits any material breach or default of any covenant, warranty, obligation or other provision under this Agreement or fails to perform under this Agreement within the applicable time specified under this Agreement; and
 - ii. such breach, default or failure is not cured within 30 days after the other Party's notice.
- b. **Remedies.** In the event a Party is in default under this Section, the other Party may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, without limitation:
 - i. Withhold all monies due under the Agreement;
 - ii. Exercise a setoff against any amounts due under this Agreement;

- iii. Wholly or partly suspend or terminate this Agreement;
- iv. Institute the dispute resolution process as outlined in Section VI.D. of this Agreement; and
- v. Take other remedies that may be legally available.

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

3. Recipient's Obligation upon submittal or receipt of notice of termination.

- a. Within 30 days of submittal or receipt of a notice of termination of this agreement, the Recipient must, submit a final project report for work completed prior to termination.
- 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 ODFW's grant or causes or requires ODFW to return funds to the Federal Funding Agency, Recipient will return to ODFW an amount equal to the funds which ODFW is not reimbursed for or is required to return to Federal Funding Agency.

- 4. ODFW's Obligations upon termination.** Upon termination of this Agreement and receipt of Recipient's final request for reimbursement, and subject to the limitations of this section, ODFW will reimburse Recipient for actual and allowable costs incurred under this Agreement prior to the termination date.

G. No Third Party Beneficiaries. ODFW and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

H. Non-appropriation. ODFW's obligation to pay any amounts, perform any activities or provide any items under this Agreement is conditioned upon ODFW receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODFW, in the exercise of its reasonable administrative discretion, to meet its obligations under the 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 ODFW.

I. Subgrants, Subcontracts and Assignment.

- 1. Recipient may not enter into any subgrant or subcontract, not already identified in Exhibit A, or assign or transfer any of its interest in this Agreement without ODFW's prior written consent. Subawards and subcontracts with known parties identified in Exhibit A are deemed to be approved.
- 2. Any subgrant entered into under this agreement shall contain terms and conditions substantially similar to this Agreement, including Federal provisions contained in Exhibit B.
- 3. Any contract entered into under this agreement:
 - a. Shall be awarded in accordance with §200.317 to §200.326 Procurement Standards.
 - b. Shall contain the applicable terms and conditions of Exhibit B, "Federal Compliance Terms."
 - c. 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 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.

4. Recipient shall requires its first tier contractor(s) (i.e. a contractor with which the Recipient directly enters a contract) that are not units of local governments as defined in ORS 190.003, if any, to (i) obtain insurance specified under Exhibit C of this Agreement, (ii) maintain the insurance in full force throughout the duration of the contract. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODFW. Recipient shall not authorized contractors to begin work under the contract until the insurance is in full force. Thereafter, the Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the contracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce compliance. In no event shall recipients permit a contractor to work under a contract when the Recipient is aware that the contractor is not in compliance with the insurance requirements.
- J. **Compliance with Applicable Law.** Recipient agrees to comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement or to Recipient's obligations under this Agreement, as those laws, regulations and ordinances may be adopted or amended from time to time and as identified in Exhibit B.
- K. **Integration.** This agreement, including all Exhibits, constitutes 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. The failure of either party to enforce any provision of this agreement shall not constitute a waiver by that party of that or any other provision.
- L. **Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together constitute one agreement binding on CONTRACTOR and ODFW, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed constitutes an original.

The Recipient, by signature of its authorized official, hereby acknowledges that he/she has read this Agreement, understands it, agrees to be bound by its terms and conditions (including all references to other documents) and is authorized by the authorized official to execute this Agreement on the authorized official's behalf. Failure to comply with this Agreement and with applicable State and Federal rules and guidelines may result in the withholding of reimbursement, the termination or suspension of the Agreement, denial of future grants, and damages to ODFW.

STATE OF OREGON, by and through its
Department of Fish and Wildlife

RECIPIENT:
City of Portland

By: _____
William Herber

By: _____
Name:

Title: Deputy Director for Administration

Title: _____

Date: _____

Date: _____

Federal Tax ID # 93-6002236

Federal DUNS # 054971197

APPROVED AS TO FORM

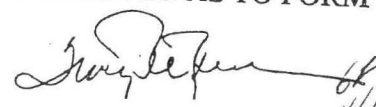

CITY ATTORNEY 11/16/15

EXHIBIT A

PROJECT DESCRIPTION AND BUDGET

I. TITLE OF THE PROJECT: Willamette Park Boat Ramp Toe, Debris Boom, and Dredge**II. PROJECT LOCATION:**

GPS Location: Latitude: 45.475580; Longitude: -122.6687

Waterbody and mile: Willamette River, river mile 15.8

Location: From Portland head south on Hwy 42. Turn east on SW Nebraska, cross railroad tracks to park entrance.

III. PROJECT DESCRIPTION:**Completion Date:** 01/31/2017

July 1 to October 31 & December 1 to January 31 In-water work period

Although we would like to have construction take place this winter, the time needed to secure federal funding from USFWS and ODFW will mostly likely result in the construction occurring during 2016 in-water work period.

Need: Willamette Park has been identified as a critical motorized access point and is the largest and most heavily used boat ramp facility within the City of Portland boundaries of the Willamette River. The entire facility was upgraded in 1997 and the marine infrastructure remains in good condition. The facility has not been dredged since it was upgraded.

Accumulated sediments around the ramp and docks are hindering boaters' use of the facility, particularly when flows are lower during the summer months. The accumulated sediment prevents boats from using the outside of the boarding dock and inside of the short term tie-up dock. The reduced amount of usable dock reduces the efficiency of launching and retrieving.

The four-lane boat ramp has a significant power loading drop-off at the ramp toe. The City has received complaints from users concerned with damaging their boat trailer. The existing debris boom is not operating optimally and will be reconfigured and replaced in a manner that will continue to deflect debris but also increase flow to discourage suspended sediments from settling on the ramp and beneath the docks. All of the components the City has identified as priorities will increase boater safety, increase traffic flow and use of the ramp and docks for the continued longevity of the site.

<i>Nearby Facility</i>	<i>Rivermile-Location</i>	<i>Site Attributes</i>
Sellwood Riverfront Park	1.0 Mile South (upstream)	Short term tie-up dock, park
Jefferson Street	2.5 Miles South	Concrete ramp, docks, paved parking, & flush restroom
Macadam Bay	1.0 Miles North (downstream)	Private marina
Riverplace Marina	2.5 Miles North	Short term tie-up dock, private marine, & pumpout/dump

Approach:

The City of Portland will follow the City's procurement practices to receive bids and select a contractor. OSMB and the City of Portland will cooperatively review and evaluate bids prior to award. The contractor will complete the project as designed by the City's consultant, follow best management practices for working in-water and maintain compliance with issued environmental regulatory agency permits. The City of Portland will monitor and inspect the contractors work.

Expected Results: Safe launching and retrieval of recreational boats at all water levels. The City is estimating the work will have a 20-year useful life based on the City's historic dredging practices at Willamette Park.

Objectives:

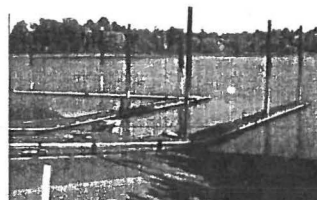
1. Remove sediment accumulation allowing safe launching, retrieval and use of the docks at all water levels.
2. The ramp toe will be repaired to prevent boaters from damaging their trailers.
3. The debris boom will be repaired and reconfigured to reduce sediment accumulation and debris deflection.

Locations:

GPS Location: Latitude: 45.475580; Longitude: -122.6687

Waterbody and mile: Willamette River, river mile 15.8

Location: From Portland head south on Hwy 42. Turn east on SW Nebraska, cross railroad tracks to park entrance.

**Estimated Costs:**

<i>Source</i>	<i>Amount</i>	<i>Percentage</i>
City of Portland In-kind administration	\$76,281	10%
City of Portland Cash*	\$162,719	21%
OR. Dept. of Fish and Wildlife	\$400,000	53%
OSMB Cash	\$120,438	16%
Match Total	\$639,000	84%
OSMB Total	\$120,438	16%
Grand Total	\$759,438	100%

EXHIBIT B

FEDERAL COMPLIANCE TERMS

Willamette Park Boat Ramp Toe, Debris Boom, and Dredge

- I. ODFW Project Specific Compliance Requirements: *Please refer to the U.S. Army Corps of Engineers Permit (NWP-2011-95) for specific provisions related to in-water work, endangered species and critical habitat.*

II. Grant Recipient Compliance Requirements:

- A. Recipient is responsible to ensure compliance with the federal implementing regulations for the Dingell-Johnson Sport Fish Restoration Act, contained in 50 CFR Part 80.
- 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 ODFW prior to execution of this grant agreement.

III. Federal Terms and Conditions:

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

- A. Uniform Administrative Requirements, 2 CFR Part 200, Subparts A through D
- B. Cost Principles 2 CFR Part 200, Subpart E
- C. Central Service Cost Allocation Plans Appendix V to Part 200
- D. Indirect Cost Proposals Appendix VII to Part 200
- E. Audit Requirements 2 CFR Part 200, Subpart F
- F. 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 ODFW.
- G. 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.
- H. 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. 11990: Protection of Wetlands (which requires the recipient to comply with environmental standards for the protection of wetlands)

3. E.O. 11988: Floodplain Management; E.O. 11988 (which requires the recipient to comply with environmental standards for the evaluation of flood hazards in floodplains)
4. 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). (16 USC Chapter 28, 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 Chapter 35, Sections 1531ff [Pub. L. 93-205]).
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 31, Subchapter I, Sections 1361ff).

I. Other Requirements (USFWS specific)

1. Universal Identifier and Central Contractor Registration 2 CFR Part 25
2. Reporting Sub-awards and Executive Compensation 2 CFR Part 170
3. Award Term for Trafficking in Persons (applicable to private entity sub-recipients) 2 CFR Part 175
4. Government-wide Debarment and Suspension (Non-procurement) 2 CFR Part 1400
5. Requirements for Drug-Free Workplace (Financial Assistance) 2 CFR Part 1401
6. 43 CFR 18 New Restrictions on Lobbying: Submission of an application also represents the applicant's certification of the statements in 43 CFR Part 18, Appendix A, Certification Regarding Lobbying.
7. Pilot Program for Enhancement of Recipient and Sub-recipient Employee Whistleblower Protection: This requirement applies to all awards issued after July 1, 2013 and shall be in effect until January 1, 2017, 41 USC §4712.
 - i. This award, related sub-awards, and related contracts over the simplified acquisition threshold and all employees working on this award, related sub-awards and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistle blower protections established at 41 USC §4712 by section 828 of the National Defense Authorization act for Fiscal Year 2013 (P.L. 112-239).
 - ii. Recipients, their sub-recipients, and their contractors award contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.
 - iii. The recipient shall insert this clause, including this paragraph (c), in all sub awards and in contracts over the simplified acquisition threshold related to this award.
8. Prohibition on Members of Congress Making Contracts with Federal Government: No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public's general benefit. 41 USC §6306
9. Federal Leadership on Reducing Text Messaging while Driving: Recipients 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. Executive Order 13513.

EXHIBIT C**Insurance Requirements for First Tier Contractors under this Agreement**

During the term of this Agreement, Sub recipient shall require its first tier contractor(s) that are not units of local government to obtain insurance as specified below:

1. Workers' Compensation

☒ **Required by Agency of Contractors with one or more workers, as defined by ORS 656.027**

All employers, including Contractor, 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 an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

2. Commercial General Liability ☒ Required by Agency || Not required by Agency

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products, and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

Bodily Injury/Death

- ☒ \$2,048,300 Per occurrence limit for any single claimant; and
☒ \$4,096,600 Per occurrence limit for any number of claimants

Property Damage

- ☒ \$112,000 Per occurrence limit for any single claimant; and
☒ \$560,000 Per occurrence limit for multiple claimants

3. Automobile Liability ☒ Required by Agency ☐ Not required by Agency

Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

Bodily Injury/Death

- ☒ \$2,048,300 Per occurrence limit for any single claimant; and
☒ \$4,096,600 Per occurrence limit for any number of claimants

Property Damage

- ☒ \$112,000 Per occurrence limit for any single claimant; and
☒ \$560,000 Per occurrence limit for multiple claimants

4. Additional Insured: ☒ Required by Agency

The Commercial General Liability, Automobile Liability, and Aircraft Liability insurance coverages required under this Contract shall include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

5. Notice of Cancellation or Change. The Contractor or its insurer must provide 30 days written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage (s).**6. Certificate(s) of Insurance:**

Contractor shall obtain from contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: (i) all entities and individuals who are endorsed on the policy as Additional Insured and (ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

EXHIBIT D**ADMINISTRATIVE SUMMARY****RECIPIENT'S CONTACT INFORMATION:****Project Manager:****Shelly Miller**

Address:

Development Manager

Telephone:

1120 SW Fifth Avenue, Suite 1302

Email:

Portland, OR, 97204

(503) 823-4131

Shelly.Hunter@portlandoregon.gov

Contracts Officer:**Maya Agarwal**

Address:

City Planner II | Planning Group

Telephone:

1120 SW Fifth Ave., Suite 1302

Email:

Portland, OR 97204

(503) 823-2507

Maya.Agarwal@PortlandOregon.gov

ODFW'S CONTACT INFORMATION:**Project Manager:****Holly Huchko**

Address:

4192 N. Umpqua Hwy.

Telephone:

Roseburg, OR 97470

Fax:

(541) 440-3353 x263

Email:

(541) 673-0372

Holly.a.huchko@state.or.us

Contracts Officer:**Patty Whalen**

Address:

4034 Fairview Industrial Drive SE

Telephone:

Salem, OR 97302-1142

Fax:

(503) 947-6138

Email:

(503) 947-6156

Patty.l.whalen@state.or.us

Accounts Payable:**Kellie Jones**

Address:

4034 Fairview Industrial Drive SE

Telephone:

Salem, OR 97302-1142

Fax:

(503) 947-6190

Email:

(503) 947-6140

Kellie.s.Jones@state.or.us

Exhibit E

City of Portland Detailed Budget Showing Indirect

Capital Project Budget History

PROJECT	Willamette Park Boat Ramp Dredging						
SCOPE	Date & Purpose of Estimate	PROJECT PLANNING Oct 2015	PROJECT PREDESIGN	SCHEMATIC	DESIGN DEVELOPMENT	CONSTRUCTION DOCS	COMPLETION
	Project Description:	Dredging and disposal of material at the base of the boat ramp.					
	Key assumptions:	Cost quantities based on Escherich's cost estimate dated 2/13/15 and includes design, boom repairs, No Greenway review, is required-site development, permits only.					
	Current Actions & Key Events (Date & Result)						
SCHEDULE	K&A/Contracts						
	Feasibility						
	Land Acq						
	LU Approval						
	Design						
	Permits						
	BLP						
	Construction						
	Closed						

187620

ODFW # 333-15
Funded by 53100 - 235300.00

Capital Project Budget History

BUDGET

Costs	Account Name	PROJECT PLANNING Feb 2015	PROJECT PREDESIGN	SCHEMATIC	DESIGN DEVELOPMENT	CONSTRUCTION DOCS	BID	COMPLETION
Acct#		\$	\$	\$	\$	\$	\$	\$
563000	Construction	616,640						
	Direct cost:	\$55,719						
	Construction contingency @ 10%:	55,572						
	PPR Operations work	5,557						
521000	Professional Services	42,000						
	Architect							
	Engineer	40,000						
	Legal							
	Other (specify): survey, special inspections, 3rd party construction management, commissioning agent							
549000	Miscellaneous costs	90,362						
	Land Use Approvals							
	Bldg Permit Review Fees	13,622						
	SDCs and TIF							
	Market Study							
	Environmental Report							
	HazMat Report (lead, asbestos)	0						
	Soils Report/geotech							
	Utilities, water, cable							
	Public involvement expense							
	Dedication ceremony							
	Other (specify): security, stormwater mitigation, urban forestry fees							
522100	Printing repro service	830						
561000	Land							
511000	Project Management/Staff Costs *	13,230						
511100	Construction Management/Staff *	16,672						
	Project Management Assistant *	5,557						
	PM/CM Overhead (98% of PM/CM)							
549900	(total)	20,192						
564000	FF&E	0						
	Fest/contingency problem solving	10,000						
	Other (specify):	0						
	Soft Cost Contingency	11,672						
	Percent for Art	0						
	Prevailing Wage Rate Fee	536						
	Solar surcharge (+\$1/M)	0						
	Total Costs	759,438						

* Indirect is charged at rate of 16.98% on the full amount of this line item.

187620

ODFW # 333-15
Funded by 53100 - 235300.00

Capital Project Budget History

Revenues		PROJECT PLANNING Feb 2015	PROJECT PREDESIGN	SCHEMATIC	DESIGN DEVELOPMENT	CONSTRUCTION DOCS	BID	COMPLETION
Code	Revenue Source							
	General Fund	0						
	Grants-State, Federal, Local							
	SDC							
	PDC							
	Donations/Contributions							
	IGAs							
Total Funding								
Surplus or Shortfall		(755,400)						

Approvals

Project Manager/Construction Manager							
OP Manager							
Finance Director							
SF/B Manager							

**STATE MARINE BOARD
FACILITY GRANT COOPERATIVE AGREEMENT
FACILITY GRANT NO. 1554 – WILLAMETTE PARK BOATING IMPROVEMENTS**

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

RECITALS

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

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

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

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

The purpose of this Agreement is to set forth the obligations of both Parties in the development of recreational boating facilities at *Willamette Park* for sediment removal at the boat ramp, boarding docks and short-term tie-up dock, repair the boat ramp toe and repair and reconfigure the debris boom hereinafter called the "Project," as described in the Recipient's Facility Grant Application (FG#1554) and Staff Report to the Board. With this reference, the Facility Grant Application and Staff Report are made part of this Agreement. If a conflict exists between the Facility Grant Application, Staff Report and this Agreement, the Agreement will govern.

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

I. BOARD COVENANTS

1. Grant Funds. Upon approval by its governing body, the Board shall provide grant funds in the amount of \$120,438 in dedicated state boater funds to the Recipient to fund the Project. The Board shall not provide to the Recipient, and the Recipient shall not use any funds described in this section for administration, overhead, or indirect costs whether or not related to this Agreement.
2. Payments. After the Recipient awards the contract for the Project, and activities commence, the Board shall, upon receipt of the Recipient's request for reimbursement and appropriate documentation all in form and substance satisfactory to the Board, disburse funds to the Recipient in accordance with Section III.
3. Overpayment. In the event that the aggregate amount of the Board's interim progress payments to the Recipient exceeds the allowable reimbursable costs of the Recipient for the Project, the Recipient agrees to refund to the Board the amount paid in excess of such allowable expenses within thirty (30) days of final billing by the Recipient or the Project Completion Date, whichever is earlier.

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

Name/Title: Janine Belleque Boating Facilities Manager

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

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

II. TERM; PROJECT COMPLETION; PROJECT OWNERSHIP

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

III. CONDITIONS TO DISBURSEMENT

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

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

IV. RECIPIENT COVENANTS

1. Project Timeline. The Recipient is responsible for maintaining the project timeline for all dates and activities outlined as the Recipient's responsibility as identified in Attachment "A".
2. Matching Cash Funds. The Recipient shall contribute the total sum of \$162,719 in cash and procure up to \$400,000 from Oregon Department of Fish and Wildlife federal Sport Fish Restoration funds as described in the Staff Report.
3. Matching Non-cash Resources. The Recipient shall contribute the total sum of \$76,281 in-kind administration, permit fees, and project management. These are non-reimbursable items.
4. Construction. The Recipient shall award, and monitor the contractor's performance under the construction contract in such a manner as to insure compliance with Project plans and specifications. The Recipient must notify the Board immediately of any proposed change in Project design, cost modifications, proposed change orders or modification of scope. The Recipient shall be responsible for all costs associated with unauthorized changes or modifications unless otherwise specifically agreed to in writing by the Board.

5. Commercial and Other Uses.

- a. For purposes of this section 4, Commercial Use means any activity on or affecting the Project that was not described in the Facility Grant Application or Staff Report, or not approved pursuant to Board Policy 93-06 or 93-02, where the Recipient
 - i. has financial profit as a goal,
 - ii. charges any fees or receives any benefit to provide services, supplies or goods, or
 - iii. allows third parties to charge any fees or receive any benefit to provide services, supplies or goods.

b. Commercial Use is prohibited.

- c. Recipient must have the capability to make an ordinance, rule, or other regulation to the effect that the Projects are for the benefit of recreational boaters. If, in the sole discretion of the Board, the use by non-recreational boaters such as swimmers, fishermen, divers, crabbers impact recreational boating uses or diminishes the useful life of the Project, then the Recipient must establish and enforce its ordinance, rule, or other regulation.

- d. If Project funded a pumpout or dump station in a marina or transient dock, the Recipient must include language in its moorage agreement requiring use of the pumpout and/or dump station if a boat has a holding tank or marine toilet.

- e. Recipient must restrict use of the Project to only boats that comply with ORS 830.770 and 830.775.

- 6. Project Sign. The Recipient shall post in a conspicuous location at the site a sign identifying the Board's participation in the Project.

- 7. Public Access to Project. During the term of this Agreement the Recipient shall allow open and unencumbered public access to the Project to all persons without regard to race, color, religious or political beliefs, sex, national origin, or place of primary residence.

- 8. User Fees. Recipient shall notify and request written approval from the Board of any user fees charged to recreational boaters for the use of the improvements described herein throughout the term of this Agreement. Fees charged shall be reasonable and are subject to review and approval by the Board. If user fees are charged for the use of the completed Project, the Recipient shall maintain sufficient records and accounting procedures that demonstrate all of the gross income from the fees is used to defray direct operational costs (for example, maintenance and repair costs) for the Project. User fees may affect Maintenance Assistance Program, as described in OAR 250-14-004 eligibility on publicly owned and operated Projects.

- 9. Maintenance. The Recipient shall at all times be responsible for the maintenance and operation of the Project and related facilities during the term of the Agreement. This does not restrict the Recipient's ability to subcontract for the performance of maintenance and operation services. Such subcontractors would be subject to Section IV. 13, Indemnification by Subcontractors.

10. Payments. Recipient agrees to:

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

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

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

With respect to a Third Party Claim for which the Recipient is jointly liable with the Board (or would be if joined in the Third Party Claim), the Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Board in such proportion as is appropriate to reflect the relative fault of the Recipient on the one hand and of the Board on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Recipient on the one hand and of the Board on the other hand shall be

determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

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

retention requirement, the Recipient shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

17. Recipient Principal Contact: A Party may designate a new authorized principal contact by written notice to the other Party. The Recipient must notify the Board within 30 days if the point of contact changes.

Name/Title: Maya Agarwal, City Planner II

Address: 1120 SW Fifth Ave, Suite 1302, Portland, Or 97204

Phone/Email: 503-823-2507 maya.agarwal@portlandoregon.gov

V. TERMINATION; REMEDIES

1. Termination for Convenience. The Recipient may terminate this Agreement at any time upon thirty (30) days prior written notice to the Board; provided, however, that the Recipient shall, within thirty (30) days of such termination, reimburse the Board for all funds contributed by the Board to the Project; provided further that until the Recipient has fully reimbursed the Board for such funds, the Recipient shall comply with the terms hereof.
2. Termination Because of Non-Appropriation or Project Ineligibility. The Board, as provided in VI.3 Force Majeure, may modify or terminate this Agreement and at any time upon thirty (30) days prior written notice to the Recipient, may modify or terminate this Agreement if:
 - a. The Board fails to receive funding or allotments, appropriations, limitations, or other expenditure authority at levels sufficient to pay for the allowable costs of the Project to be funded hereunder or should any state law, regulation or guideline be modified, changed or interpreted in such a way that the Project, or any portion of the Project, is no longer eligible for facility grant funds as described in ORS 830.150.
 - b. In the event insufficient funds are appropriated for the payments under this Agreement and the Recipient has no other lawfully available funds, then the Recipient may terminate this Agreement at the end of its current fiscal year, with no further liability to the Board. The Recipient shall deliver written notice to the Board of such termination no later than thirty (30) days from the determination by the Recipient of the event of non-appropriation. The Board shall pay for all authorized Project costs expended up to the date of written notice of termination.
3. Termination for Default. The Board, at any time upon thirty (30) days prior written notice of default to the Recipient, may modify or terminate this Agreement if:
 - a. The design, permitting, or construction of the Project is not pursued with due diligence; or
 - b. The Recipient's fee simple title to or other interest in the construction sites or Project is not sufficient, legal and valid; or
 - c. The construction of the Project is not permissible under federal, state, or local law; or
 - d. The Recipient, does not abide by the nondiscrimination and affirmative action provisions of this Agreement; or

- e. The Recipient, without the prior written approval of the Board, uses the funds provided by the Board hereunder to build any project other than the Project described in the final architectural and engineering drawings approved by the Board; or
 - f. The construction is not completed in a good and workmanlike manner or fails to comply with any required permits; or
 - g. During the term of this Agreement, the Recipient fails to perform any obligation or requirement of this Agreement, or conveys the Project or the Project property or any part thereof or converts the use of the Project or the Project property to a use that precludes free and unencumbered recreational public boating access.
 - h. The Recipient defaults under any other agreement between Recipient and Board.
4. Rights and Remedies. The Recipient shall, within thirty (30) days of its receipt of a notice of default, reimburse the Board for all funds contributed by the Board to the Project. Further, the Board shall have any and all rights and remedies available at law or in equity.

VI. GENERAL PROVISIONS

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

6. Tax Compliance. By signature on this Agreement for Recipient, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Recipient and that Recipient is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes And Tobacco Products) and the elderly rental assistance program under ORS 310.630 to 310.706 and any local taxes administered by the Department of Revenue under ORS 305.620.
7. Assignment and Successors in Interest. The Recipient may not assign or transfer its interest in this Agreement without the prior written consent of the Board and any attempt by the Recipient to assign or transfer its interest in the Agreement without such consent will be void and of no force or effect. Board's consent to the Recipient's assignment or transfer of its interest in this Agreement will not relieve the Recipient of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.
8. Severability. The Board and the Recipient agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.
9. Notice. Except as otherwise expressly provided in this Agreement, any notices to be given hereunder relating to this Agreement must be given in writing by personal delivery, facsimile, email or, postage prepaid mail, to the Board or the Recipient at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Agreement Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.
10. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.
11. Governing Law; Venue; Consent to Jurisdiction.
This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Board or any other agency or department of the State of Oregon, or both, and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of

Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. RECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

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

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

BOARD:

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

RECIPIENT:

City of Portland

By: _____

Scott Brewen

Title: Director

Date: _____

Telephone: (503) 378-2619

Fax No: (503) 378-4597

Address: PO Box 14145,

Salem, OR 97309

By: _____

Title: _____

Date: _____

Telephone: _____

Fax No: _____

Address: _____

Federal Employer Identification Number: _____

DUNS ID. No. _____

APPROVED AS TO FORM


CITY ATTORNEY 11/23/15

ATTACHMENT "A"
FACILITY GRANT NO. – 1554
WILLAMETTE PARK BOATING FACILITY IMPROVEMENTS

PROJECT TIMELINE

Responsibility	Date	Description
Recipient	Estimated early March 2016	Solicit for bids-prepare documents, bid opening, evaluate responses, award contract and manage the process.
Recipient	Estimated late May 2016	Provide Board with a copy of bid document, bid results and awarded contract.
Recipient	Estimated early May 2016	Consult with the Board on notifying the public of potential boat ramp closures and reduction of use. Establish timeline to implement public notification.
Recipient	Estimated September 2016	Notify the Board when the contractor mobilizes onsite.
Recipient	Estimated late October 2016	Notify the Board when the Contractor has requested a final inspection
Recipient	Estimated mid-November 2016	Receive contractor invoices, issue payment and request final reimbursement from the Board.
Board	Estimated early December 2016	Issue final reimbursement, close the grant and term of the grant begins.