



**PORT OF GARIBALDI
MINUTES OF REGULAR MEETING
FEBRUARY 9, 2022**

CALL TO ORDER

President Folkema called the regular meeting to order at 7:00 p.m.

Commissioners present: Val Folkema, Bob Browning, Paul Daniels, Kelly Barnett, Jaime Perez.

Staff present Michael Saindon, Jessi Coon, Mats Jonsson.

Visitors: Kenny Bushnell, Casey Bushnell, Jennie Martin, Sam Cummings.

CHANGES TO AGENDA

None.

PUBLIC COMMENT

Bushnell asked the commission to consider, when dock space comes open, to allow boats to work on their gear or boat at the dock space. Bushnell stated that he knows leases are coming up that may allow for public use of dock frontage. Folkema noted that it was premature to talk about the use of leased space before the lease is no longer in effect. Daniels noted that there are strict regulations regarding working on vessels, and that they are getting stricter every day as all work must be contained. It was noted that the port may have to police work on vessels because regulations are so strict. Saindon noted that the port will work with fishermen to coordinate needed repairs. Folkema ensured the port will do their best.

APPROVAL OF MINUTES/FINANCIAL REPORTS

Motion by Browning, second by Daniels to approve minutes of January 12 regular meeting and January 21 emergency meeting. Motion carried 4 – 0.

Motion by Daniels, second by Barnett to approve the January financial reports and payment of bills. Motion carried 4 – 0.

CORRESPONDENCE

Saindon noted updated employment statistics shared with commissioners.

OLD BUSINESS

SOUTH JETTY UPDATE.

Saindon noted working with US Army Corps of Engineers (USACE) on contracts. USACE sent teams out to do survey work. Coordinating with USACE and DEQ as far as permitting. Saindon noted that the Aids to Navigation team has been lined up for the finished project. There are hopes that all parties are lined up early so that all aspects of the project can be in place at completion.

HAZARD MITIGATION UPDATE.

Saindon noted getting together next week, Absher is coordinating.

COVID-19 UPDATE.

Nothing new.

L-12/22 GARIBALDI LANDING.

All has been reviewed by both the port's legal team and the lessor. L-12 will be a lease to Bornstein's and L-22 to Astoria Canyon Investments, DBA Fishpeople. Perez asked what the fair market value as assessed would be. Saindon noted that due to the process previously adopted by the port commission to assess lease fees. Perez noted not looking for the real market value as assessed by the county assessor, but looking to see what the port is essentially subsidizing. Saindon invited Perez to come in and talk through the process. Daniels asked about future plans of the tenant. Saindon noted plans to add crane. Barnett asked for the real market value to be emailed to the commission. Folkema welcomed input to the lease calculation equations.

Motion by Daniels, second by Browning to approve L-12 to Bornstein Seafoods, Inc. Motion Carried 4 – 0.

Motion by Daniels, second by Barnett to approve L-22 to Astoria Canyon Investments. Motion carried 4 – 0.

NEW BUSINESS

PARKING ENFORCEMENT (TCSO)

Saindon noted that there are some parking issues coming up, also noted that a couple on a road trip through the county was almost killed due to carbon monoxide poisoning. Jonsson noted three lots having issues, working on increasing signage. Working on options to change the trailer parking lots to no longer be pull through. Right now the biggest issue is transient and abandoned vehicles. Tow companies are going to work with the port and charge a flat rate to haul off and will bill owner. Trying to move forward and better. Folkema asked about public trash, may need

to be a topic of conversation. Saindon thanked Deputy Cummings, noting that he does a lot behind the scenes and toward building a relationship.

RESOLUTION 2022-02 COMPENSATION PLAN

Folkema noted the resolution as clear cut and a housekeeping item. Perez asked about the salary rates and how they are set, noting the salary range seemed low. Saindon noted the benefits package offered for employees to offset. Perez noted concern with wage not being enough to allow use of the offered benefits.

Motion by Browning, second by Daniels to adopt Resolution 2022-02 Compensation Plan for employees. Motion carried 4 – 0.

Break to Executive Session: 7:45 p.m.

Executive Session adjourned: 7:57 p.m.

Regular meeting reconvened: 7:57 p.m.

STAFF REPORTS

Coon noted working on the budget for FY 2022-23 and grants.

Saindon noted public workshop happening tonight for Garibaldi Days.

Lettenmaier has been commissioned to survey L-17 Big Tuna lots.

Saindon noted that he has been talking with CEU Oakland regarding the USCG Station Tillamook Bay boathouse replacement. Working on price quotes for moorage for 3 - 47's and utility charges. Browning asked where we are mooring them. Saindon noted looking for 2023. Folkema also noted that she received a call from USCG about an 87' vessel, asked if the office had any contact regarding. Saindon noted no contact regarding an 87' vessel.

Saindon noted that the hole at the boat ramp was repaired January 30/31st.

Working with county on dredging issues at Memaloose ramp.

Port of Tillamook Bay and Port of Garibaldi received reports of a homeowner making changes to the PoTB right of way, jackhammering rip-rap to make access to the water. Commission asked if that makes it part of the jetty, not part of the jetty map. May fall under State Highway department.

Saindon noted working with Councilors Wandell and Riggs toward becoming a US Coast Guard City. Due to the current housing problem the station is on the verge of being classified as housing critical.

Meeting with Visit Tillamook Coast. Bringing back night markets, Crave the Coast and Blessing of the Fleet.

COMMISSIONER CONCERNS

Barnett – asked about the trail signs. Also asked about the individual kicked out due to DEQ violations. Individual is currently tied up in the port.

Perez – none.

Daniels – asked about the budget process. Asked about any unforeseen costs or surprises coming up. None at this time.

Browning – asked about the blue building in Bay City. Saindon noted still planning a burn to learn. Also asked about the crab pot lot, noting that his lot is mostly empty and can be used to shuffle gear around during fixes.

Folkema – Appreciates everyone’s time. Noted that Saindon is doing a stellar job at keeping communication open for the South Jetty work. Noting no one has left the table. Saindon noted that county parks didn’t give great notice about the North Jetty, hopes to give better notice about South Jetty. Folkema noted that will be talking with Visit Tillamook about Coastcheck, much like Tripcheck.

ADJOURNMENT

The meeting adjourned at 8:21 p.m.

Respectfully Submitted,



Valerie Folkema, President

ATTEST:



Kelly Barnett, Secretary/Treasurer



Port of Garibaldi

PURCHASE
ORDER (PO)
NO.

PAGE

Department Maintenance	PO Date 3/4/22	Required Delivery Date 6/15/22	FY 22	Project Title/Workorder Number Floating Head Trailer
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Vendor/Contractor Name and Address FAM Fabrication 8140 Bewley St Bay City, OR 97107 US famfabrication@outlook.com famfabricationllc.com	Bill To Port of Garibaldi
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Ship To	Special Terms and Conditions:
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Item	Description	Quantity	Unit Price	Extended Amt.
1	Floating Head Trailer Replacement	1	\$17,860.00	\$17,860.00
				\$0.00
				\$0.00
				\$0.00
				\$0.00
				\$0.00
				\$0.00
				\$0.00
				\$0.00
				\$0.00

Comments: Funding \$10,000.00 from OSMB Grant \$7,860.00 from Port Match	Sub Total	\$17,860.00
	Shipping & Handling	\$0.00
	Total	\$17,860.00

This Purchase Order and the terms and conditions on page 2 constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written.

Submitted By/Date	Funds Available & Obligated By Date
Port Manager/Date <i>[Signature]</i>	<input type="checkbox"/> Approved (Under \$5,000.00) <input checked="" type="checkbox"/> Recommended and forwarded (Over \$5,000.00) <input type="checkbox"/> Disapproved, see above comments
Port Commission/Date <i>[Signature]</i>	<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved, see above comments
Ordered By/Date	Received By/Date
Reconciled By/Date	Funding Source & Project Code

PORT OF GARIBALDI –TERMS AND CONDITIONS

1. DELIVERY: Deliveries will be F.O.B destination. Contractor shall pay all transportation and handling charges. Contractor is responsible and liable for loss or damage until final inspection and acceptance of the Goods. Contractor remains liable for latent defects, fraud, and warranties.

2. INSPECTIONS: Port may inspect and test the Goods and related Services (collectively, Goods). Port may reject non-conforming Goods and require Contractor to correct them without charge or deliver them at a reduced price, as negotiated. If Contractor does not cure any defects within a reasonable time, Port may reject the Goods and cancel the PO in whole or in part. This paragraph does not affect or limit Port's rights, including its rights under the Uniform Commercial Code, ORS chapter 72 (UCC).

3. PAYMENT: Port shall pay Contractor within 30 days from (i) the date the Goods are delivered and accepted or (ii) the date the invoice is received, whichever is later. If Port fails to pay within 45 days of such date, Contractor may assess overdue account charges up to a rate of 2/3% per month (8% APR) or the maximum rate allowed by law on the outstanding balance.

4. PORT PAYMENT OF CONTRACTOR CLAIMS: If Contractor does not pay promptly any claim that is due for Goods or Services furnished to the Contractor by any subcontractor in connection with this PO, the Port may pay such claim and charge that payment against any payment due to the Contractor under this PO. The Port's payment of a claim does not relieve the Contractor or its surety, if any, from their obligations for any unpaid claims.

5. WARRANTIES: Contractor represents and warrants that the Goods are new, current, and fully warranted by the manufacturer. Delivered Goods will comply with specifications and be free from defects in labor, material and manufacture. All UCC implied and expressed warranties are incorporated in this PO. Contractor shall transfer all warranties to the Port.

6. TERMINATION: (i) The parties may terminate this PO by mutual agreement. (ii) Port may terminate this PO at any time with written notice to Contractor. Upon receipt of the written notice, Contractor shall stop performance, and Port shall pay Contractor for Goods delivered and accepted. (iii) Port may terminate this PO at any time if Port fails to receive funding, appropriations, or other expenditure authority. (iv) If Contractor breaches any PO provision or is declared insolvent, Port may terminate this PO for cause with written notice to Contractor, and Contractor shall be liable for all incidental and consequential damages resulting from its breach, including all damages as provided in the UCC.

7. HOLD HARMLESS: *Contractor shall indemnify, defend and hold harmless the Port, officers, employees, and agents, from all claims, suits or actions of any nature arising out of or related to the activities of Contractor, its officers, subcontractors, agents or employees under this PO.*

8. GOVERNING LAW, JURISDICTION, and VENUE: This PO is governed by Oregon law, without resort to any other jurisdiction's laws. Any claim, action, suit, or proceeding between the Port and the Contractor that relates to this PO (Claim) must be heard exclusively in the Circuit Court of Tillamook County for the State of Oregon. If the Claim must be brought in a federal forum, then it must be heard exclusively in the US District Court for the District of Oregon. Contractor consents to the in personam jurisdiction of these courts. *Neither this Section nor any other provision of this PO is a waiver by the Port of any form of defense, sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the US Constitution, or other immunity, from any Claim or from the jurisdiction of any court.*

9. FORCE MAJEURE: Neither party is responsible for delay or default caused by an event beyond its reasonable control. Port may terminate this PO without liability to Contractor upon written notice after determining the delay or default reasonably prevents performance of this PO.

10. ASSIGNMENT/SUBCONTRACT/SUCCESSORS: Contractor shall not assign, transfer, or subcontract rights (Subcontract) or delegate responsibilities under this PO in whole or in part, without the prior written approval of Port. This PO's provisions are binding upon and inure to the benefit of the parties to the PO and their respective successors and assigns.

11. ACCESS TO RECORDS: Contractor shall maintain all accounting records relating to this PO according to GAAP and any other records relating to Contractor's performance ("Records") for six (6) years from termination or as otherwise required. Contractor shall grant the Port and its agencies, the Secretary of State Audits Division, the federal government, and their duly authorized representatives' access to the Records, including reviewing, auditing, copying, and making transcripts.

12. COMPLIANCE WITH APPLICABLE LAWS: Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as amended (Rules), including: (i) Titles VI and VII of Civil Rights Act of 1964; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) Executive Order 11246; (v) The Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975; (vi) The Vietnam Era Veterans' Readjustment Assistance Act of 1974; (vii) ORS Chapter 659; (viii) ORS 279B.020, , and 279B.270; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (x) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products; and (xi) all regulations and administrative rules established pursuant to the foregoing laws. Port's performance is conditioned upon Contractor's compliance with, 279A, 279B, and 279C, as applicable. All applicable Rules are incorporated by reference in this PO.

13. WORKERS' COMPENSATION: Contractor shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless exempt under ORS 656.126(2). Contractor shall ensure that its Subcontractors, if any, comply with these requirements.

14. SAFETY AND HEALTH REQUIREMENTS: Contractor represents and warrants that the Goods comply with all federal and Oregon safety and health requirements.

15. MATERIAL SAFETY DATA SHEET: Contractor shall provide Port with a Material Safety Data Sheet for any Goods which may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use (OAR 437- 002-0360 and 29 CFR 1910.1020). Contractor shall label, tag or mark such Goods.

16. RECYCLABLE PRODUCTS: Unless otherwise required, Contractor shall use recycled and recyclable products to the maximum extent economically feasible in the performance of the PO. These products shall include recycled paper, recycled PETE products, other recycled products (ORS 279A.010(1)(gg),(hh),(ii)), and other recycled plastic resin products.

17. AMENDMENTS: All amendments to this PO must be in writing, signed by Port.

18. SEVERABILITY: If a court of competent jurisdiction declares any provision of this PO to be invalid, the other provisions and the rights and obligations of the parties remain in effect.

19. WAIVER: Port's failure to enforce any provision of this PO is not a waiver or relinquishment by Port of its rights to such performance in the future or to enforce any other provisions.

20. AWARD TO FOREIGN CONTRACTOR: If Contractor is not registered to do business or has no office in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this PO. Port may withhold final payment under this PO until Contractor has met this requirement.

21. TAX CERTIFICATION: Contractor hereby certifies under penalty of perjury: (a) the number shown on this form is the correct Federal Employer Identification Number; (b) it is not subject to backup withholding because (i) it is exempt from backup withholding, (ii) it has not been notified by the IRS that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that it is no longer subject to backup withholding; and (c) it is not in violation of any Oregon tax laws.



Oregon

Kate Brown, Governor

State Marine Board

435 Commercial St NE, Suite 400

PO Box 14145

Salem, OR 97309-5065

Main (503) 378-8587

Fax (503) 378-4597

www.BoatOregon.com



March 2, 2022

Michael Saindon, General Manager
Port of Garibaldi
PO Box 10
Garibaldi, OR 97118

RE: Small Grant 2122-07 Floating Restroom Trailer Replacement Project

Dear Ms. Saindon,

This letter confirms and approves your request for a Small Grant pursuant to OAR 250-014-003(4)(g) in the amount of 10,000.00 dedicated federal Clean Vessel Act (CVA) funds. The Port of Garibaldi will be providing \$7,860.00 cash and project administration. Total project cost is \$17,860.00 as identified in your application March 1, 2022.

This grant is for the replacement of the transportation trailer associated with the floating restrooms. This approval is conditioned upon the Port of Garibaldi completing the work and submitting for reimbursement by September 30, 2022. Attached is a Small Grant agreement, please sign and return for execution. A copy will be returned to you for your files.

When the project is completed, please include a copy of the final invoices and photos of the completed project with the attached grant reimbursement form. If you have any questions, please contact Janine Belleque, Boating Facilities Manager at 503-378-2628 or email janine.belleque@boat.oregon.gov.

Sincerely,

Larry Warren
Director

CC: Business Services
Boating Facilities

Attachment: Small Grant Agreement
Standard Billing Form

Mike Saindon

From: PETERSON Jennifer * BOAT <Jennifer.PETERSON@boat.oregon.gov>
Sent: Friday, March 4, 2022 8:28 AM
To: Mike Saindon
Cc: Jessi Coon; BELLEQUE Janine * BOAT
Subject: Small Grant 2122-07 Floating Restroom Trailer Replacement
Attachments: 2122-07 Approval Ltr.pdf; 2122-07 SMG_AGR_Fed.docx

Mike,

Attached is the letter of approval from our Director and the Small Grant Agreement. Please have the agreement signed and return to me for execution.

Please review the following items before signing and returning the grant agreement:

- Section 3.2 identifies a completion date no later than September 30, 2022.
- Section 4.2 Recipient's Authorized Representative. Verify the contact information is correct.
- Section 5.1.2 Matching Cash Funds and Section 5.1.3 Matching Non-cash Resources. Verify the amounts are correct.
- Section 7.2 Grant Funds
- Exhibit B- Tax Compliance. Fill in the Federal and Oregon Tax Number Oregon Tax Number and the Organizational DUNS number.
- Exhibit C- Additional requirements if applicable.
- Sign Page 16 **and** Page 23

Let us know if you have any questions.



Jennifer Peterson, Administrative Specialist

Boating Facilities Program

Oregon State Marine Board

503-378-2727 | Email: Jennifer.peterson@boat.oregon.gov

P.O. Box 14145, Salem, OR 97309

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Keeping it Green; conserve paper and print only what you need.

**BOATING FACILITY GRANT
INTERGOVERNMENTAL AGREEMENT**
Agreement No. 2122-07

This Agreement is between the State of Oregon acting by and through its Marine Board (“OSMB”) and Port of Garibaldi (“Recipient”), each a “Party” and, together, the “Parties”.

SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110. OSMB is authorized to provide Small Grants for boating facility projects under ORS 830.150 and OSMB 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 OSMB adopted policies and procedures.

SECTION 2: PURPOSE

The purpose of this Agreement is to set forth the obligations of both Parties in the development of recreational boating facilities at *Port of Garibaldi for the replacement of the transportation trailer associated with the floating restroom*, hereinafter called the “Project,” as described in the Recipient’s Small Grant Application 2122-07. With this reference, the Small Grant Application are made part of this Agreement. If a conflict exists between the Small Grant Application and this Agreement, the Agreement will govern.

SECTION 3: EFFECTIVE DATE AND DURATION

- 3.1 **Term.** This Agreement is effective on the date of the last signature and terminates on the date 20 years after the date of Project completion 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, and final billing for the Project shall be submitted to OSMB, on or before September 30, 2022. 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
435 Commercial Street NE Suite #400, Salem OR 97301
(503) 378-2628 Office, Janine.Belleque@boat.oregon.gov

4.2 Recipient's Authorized Representative is:

Michael Saindon, General Manager
PO Box 10, Garibaldi, OR 97118
503-322-3292 Office, manager@portofgaribaldi.org

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 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".

5.1.2 Matching Cash Funds. The Recipient shall contribute the total sum of *\$7,860.00* in cash as described in the Small Grant Application.

5.1.3 Matching Non-cash Resources. The Recipient shall contribute the total sum of *\$0.00* administrative and force account match. These are non-reimbursable items.

5.1.4 Indirect Rate. The Recipient is charging the indirect rate shown on Attachment B. Total Indirect Costs to be charged are *\$0.00*.

5.1.5 Construction. The Recipient shall award and monitor the contractor's performance under the construction contract or construction consultant contract in such a manner as to insure compliance with Project plans and specifications. The Recipient must notify OSMB 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 OSMB.

5.1.6 Commercial and Other Uses.

- a. For purposes of this Section 5, Commercial Use means any activity on or affecting the Project that was not described in the Small Grant Application 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. 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, including, but not limited to, how Recipient must be able to prohibit boaters from exceeding stay limits on short term tie up docks or using the facilities in unintended ways. If, in the sole discretion of OSMB, 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 short-term tie-up 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.

5.1.7 Publications & Advertising. The Recipient shall include the following statement if publishing any report, news release or publication regarding this project: *“Partial funding was through the Oregon State Marine Board Facility Small Grant Program, and in cooperation with U.S. Fish and Wildlife Service Clean Vessel Act Grant Program.”*

5.1.8 Project Sign. Requirement Waived

5.1.9 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.

5.1.10 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 operational costs (for example, maintenance and repair costs) for the Project. User fees may affect Maintenance Assistance Program, as described in OAR 250-014-0004 eligibility on publicly owned and operated Projects.

5.1.11 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 5.1.14, Indemnification by Subcontractors.

5.1.12 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 OSMB, due to any construction or maintenance activities at the Project.

5.1.13 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.

5.1.14 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.

5.1.15 Boating Facility Operation. The Parties have entered into other grant agreement(s) for boating facilities, 1291, 1487, 1514, 1522, 1523, 1524, which provide for the Recipient to operate boating facilities, including but not limited to, [restrooms, boat trailer parking, docks, boat ramps]. The Recipient shall continue to operate those boating facilities for the duration of this Agreement, even if the terms of the other grant agreements have expired.

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. Prior to Project solicitation or construction, the final architectural and engineering plans, specifications, and cost estimate(s), statement of work, request for proposal or other documentation for the Project, documents must be in form and substance satisfactory to OSMB;
- 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, supplier's or consultant pricing,

unless the Recipient is completing the Project; and

- d. Reimbursement Requests must be submitted on the approved OSMB Boating Small Grant Reimbursement 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 5 and Section 7.

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 of the percentage of Project completion 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; and
- b. Recipient provides a minimum of three photographs detailing the completed work. One photo must be of the installed sign crediting OSMB with funding the Project; and
- c. Inspection and approval of the Project 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 on Attachment B. 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 *\$10,000.00* federal Clean Vessel Act (CVA) funds to the Recipient to fund the Project. OSMB shall not provide to the Recipient, and the Recipient shall not use any funds described in this section for administrative or for accounting costs whether or not related to this Agreement.

7.3 Payments. After the Recipient awards the contract for the Project, and activities commence, 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.

- 7.6 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 7.1. and Section 5: "RESPONSIBILITIES OF EACH PARTY"

SECTION 8: REPRESENTATIONS AND WARRANTIES

Recipient represents and warrants to OSMB that:

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

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

SECTION 9: GOVERNING LAW, CONSENT TO JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between OSMB or any other agency or department of the State of Oregon, or both, and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the

District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. RECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

SECTION 10: OWNERSHIP OF WORK PRODUCT

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

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

SECTION 11: NO DUPLICATE PAYMENT

The Recipient shall not be compensated for, or receive any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon, including, but not limited to the Oregon Department of Fish and Wildlife, or the United States of America or any other party.

SECTION 12: CONTRIBUTION

12.1 If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third-Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section 10 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) requiring Recipient to perform, at Recipient's expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 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 10, 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 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 OSMB, uses the funds provided by OSMB hereunder to build any project other than the Project described in the final architectural and engineering drawings approved by OSMB; 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, 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.
- h. 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 20. 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 9,10,16,17 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 ("indemnatee") 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 Indemnatee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnatee, 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

**SECTION 37: Recipient shall comply with the additional requirements set forth in Exhibit A and Exhibit 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), Attachment A (Project Timeline), Attachment B (Information Required by 2CFR200), and Exhibit C (Additional Requirements).

SECTION 38: 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

Port of Garibaldi

Signature

Date

Name:

Title:

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

FACILITY GRANT NO. 2122-07 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, OSMB will enter grant information into the Federal Funding Accountability and Transparency Act (FFATA).

II. Federal Terms and Conditions:

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 or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B.

B. including but not limited to the following:

1. Property Standards. 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.

2. Contract Provisions. The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit. These are, to the extent applicable, obligations of Recipient, and Recipient shall also include these contract provisions in its contracts with non-Federal entities.

3. Audits. Recipient shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law. If Recipient expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, Recipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to OSMB within 30 days of completion.

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 OSMB.

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. 41 U.S.C. 4712 Enhancement of Recipient and Sub-recipient Employee Whistleblower Protection:

a. 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 established at 41 USC 4712b. 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.

c. 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.

ATTACHMENT "A"
PROJECT TIMELINE

Responsibility	Date	Description
Recipient	March 2022	Fabricator under contract
OSMB	Ongoing	Provide assistance to Recipient throughout process.
Recipient	August 2022	Receive contractor invoices, issue payment and request final reimbursement from OSMB.
OSMB	September 2022	Issue final reimbursement, close the grant and term of the grant begins.

ATTACHMENT "B"
INFORMATION REQUIRED BY 2 CFR §200.331(A) (1)*

Federal Award Identification:

- (i) Subrecipient name (which must match registered name in DUNS): Port of Garibaldi
- (ii) Subrecipient's DUNS number: 06912077
- (iii) Federal Award Identification Number (FAIN): CVA F20AP11946
- (iv) Federal Award Date: 7/1/2020
- (v) Sub-award Period of Performance Start and End Date: 7/1/2020 From to 12/31/2023
- (vi) Total Amount of Federal Funds Obligated by this Agreement: \$10,000.00
- (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement**: \$10,000.00
- (viii) Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: \$10,000.00
- (ix) Federal award project description: Build floating restroom transport trailer
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
 - (a) Name of Federal awarding agency: U.S. Fish & Wildlife Service
 - (b) Name of pass-through entity: Oregon State Marine Board
 - (c) Contact information for awarding official of the pass-through entity:
Ianine Belleque, 503-378-2628, janine.belleque@boat.oregon.gov
- (xi) CFDA Number and Name: 15.616

Amount: \$10,000.00
- (xii) Is Award R&D? No
- (xiii) Indirect cost rate for the Federal award: 0%

**For the purposes of this Exhibit, the term "Subrecipient" refers to Recipient and the term "pass-through entity" refers to OSMB.*

***The Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity is the Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity during the current State/Federal [specify which applies] fiscal year.*

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 93-6013899

Oregon Tax Number _____

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 _____

EXHIBIT C
ADDITIONAL REQUIREMENTS

(Reserved)