



Gary Barth
Director

BUSINESS AND COMMUNITY SERVICES

Development Services Building
150 Beaver Creek Road Oregon City, OR 97045

March 24, 2016

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of an Oregon State Marine Board Facility Grant Two Party Cooperative Agreement
with Portland General Electric

Purpose/Outcomes	Provides for the pass through of Oregon State Marine Board Grant Funds from County Parks to Portland General Electric for the construction and management of a non-motorized boat launch facility on US Forest Service property along the Upper Clackamas River.
Dollar Amount and Fiscal Impact	\$19,000
Funding Source	Oregon State Marine Board
Duration	June 30, 2016
Previous Board Action	N/A
Strategic Plan Alignment	1. Build Public Trust Through Good Government 2. Honor, Utilize, Promote and Invest in our Natural Resources
Contact Person	Rick Gruen, County Parks & Forest Manager – 503-742-4345
Contract No.	N/A

BACKGROUND:

Clackamas County Parks and Portland General Electric collaborated on a submittal of an Oregon State Marine Board grant application to secure funds to construct a non-motorized boat launch facility on US Forest Service property known as Hole in the Wall along the Upper Clackamas River. Oregon State Marine Board approved the application from County Parks to serve as the fiscal agent for the project. This Two-Party agreement recognizes the transfer of funds, responsibility and long term management of the project from County Parks to Portland General Electric. Oregon State Marine Board and US Forest Service are in agreement with this action. The Hole in the Wall facility, when complete, will provide a needed up-river access for non-motorized boaters and other river recreation users.

County Counsel has reviewed and approved the language of this Two Party Cooperative Agreement.

RECOMMENDATION:

Staff recommends the Board approve the attached Two Party Cooperative Agreement and sign on behalf of Clackamas County.

Respectfully submitted,

Gary Barth, Director
Business and Community Services Director

**CLACKAMAS COUNTY PARKS
FACILITY GRANT TWO PARTY COOPERATIVE AGREEMENT
WITH
PORTLAND GENERAL ELECTRIC COMPANY**

This Cooperative Agreement (this "Agreement") is entered into by and between Clackamas County Parks, acting by and through its Board of County Commissioners, hereinafter called the "Recipient," and Portland General Electric Company hereinafter called the "Manager."

RECITALS

WHEREAS, the Recipient is eligible to receive funding for boating facility projects from the Oregon State Marine Board under ORS § 830.150.

WHEREAS, the Manager has the authority from US Forest Service (Owner) to manage property known as Hole in the Wall located along the Clackamas River in the Mt. Hood National Forest in Oregon ("Hole in the Wall").

WHEREAS, US Forest Service has granted authority to Manager for the development and construction of a boat rail slide, single car and boat trailer parking and vault toilet at Hole in the Wall.

WHEREAS, the Recipient and Manager agree to comply with Oregon State Marine Board ("OSMB") Boating Facility Grant Program rules in OAR Chap. 250 Div. 014 and other OSMB adopted policies and procedures.

WHEREAS, the purpose of this Agreement is to set forth the obligations of the parties for the development and construction of a boat rail slide, single car and boat trailer parking and vault toilet at Hole in the Wall (hereinafter called the "Project") as more fully described in the Recipient's Facility Grant Cooperative Agreement #1540 – Hole in the Wall Boating Improvements attached as Exhibit A (the "Grant"). With this reference, the Grant is made part of this Agreement and if a conflict exists between the Grant and this Agreement, this Agreement will govern.

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

I. GENERAL PROVISIONS

1. Project Funding. Upon approval of the Grant by the OSMB, grant funds in the amount of \$19,000.00 will be provided to the Recipient to fund the Project. The Recipient shall not use any funds described in this section for administration, overhead, or indirect costs whether or not related to this Agreement. Recipient will convey such funds to Manager for use in implementing the Project. Manager will provide supporting capital funds for the Project in the amount of \$75,960.00 as well as contribute an estimated sum of \$30,000.00 for project administration, pre-agreement and permitting costs.

2. Construction. Manager shall award, and monitor the contractor's performance under a construction contract in such a manner as to ensure compliance with the Project plans and specifications. Manager shall provide on-site project management. Manager shall notify Recipient, who in turn will notify the OSMB, of any proposed change in Project design, cost modifications, proposed change orders or modification of scope. The Manager shall be responsible for all costs associated with unauthorized changes or modifications unless otherwise specifically agreed to in writing by Recipient.
3. Payments. Manager agrees to make payment promptly to all contractors, subcontractors, vendors or any other persons supplying labor or materials for the project. Manager shall supply Recipient with copies of all invoices and documents related to contract payments. Manager shall be reimbursed by Recipient for the actual payment expenditures incurred up to the awarded amount received from OSMB.
4. Commercial Use. Under the Grant, Recipient is held to the following and therefore Manager agrees as follows:
 - a. The facilities will not be operated or used for commercial purposes, where the Manager:
 - 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.
5. Project Sign. Manager agrees to post in a conspicuous location at the Project, and in compliance with the OSMB's sign guidelines, a sign identifying the OSMB's and federal aid participation in the Project.
6. User Fees. Pursuant to the requirements of the Grant, Manager shall notify and request written approval from the OSMB of any user fees charged for the use of the improvements described herein during the term of this Agreement except as otherwise required by State or Federal law. Fees charged shall be reasonable and are subject to reasonable review and approval by the OSMB. If user fees are charged for the use of the completed Project, the Manager shall maintain sufficient records and accounting procedures that demonstrate all of the gross income from the fees used to defray direct operational costs (for example, maintenance and repair costs) for the Project. Notwithstanding the foregoing, fees charged by Manager for Hole in the Wall shall not be deemed fees under this Agreement.
7. Maintenance. The Manager shall at all times be responsible for the maintenance and operation of the Project and related facilities.
8. Compliance with Applicable Law. The Recipient and Manager agree to comply with Boating Facility Grant Program rules OAR Chap. 250 Div. 114 and all applicable OSMB adopted policies and procedures. The Recipient and Manager shall use best efforts to comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Grant. The Recipient and Manager shall, to the maximum extent economically feasible in the performance of the Agreement, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products) as defined in ORS 279A.010(1)(ff)), and other recycled plastic resin products and recycled products (as recycled product is defined in ORS 279A.010(1)(gg)).
9. Records Maintenance. The Recipient and Manager shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, the Recipient and Manager shall maintain any other records pertinent to this Agreement in such a manner as to clearly document the 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.

10. Access. The Recipient and Manager acknowledge and agree that the OSMB and the Oregon Secretary of State's Office and the federal government and duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of the Recipient and Manager that are pertinent to the Grant and related improvements to perform examinations and audits and make excerpts and transcripts. The Recipient and Manager shall retain and keep accessible all such fiscal records, books, documents, papers, plans and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and 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.

11. Recipient /Manager Principal Contacts. Notifications should be made to OSMB immediately if principal contacts change.

Name/Title: Rick Gruen, Clackamas County Parks & Forest Manager
Address: 150 Beaver Creek Road, Oregon City, OR 97045
Phone/email: 503-742-4345(p) / rgruen@clackamas.us

Manager Contact:

Name/Title: Tony Dentel, Portland General Electric Company (PGE)
Address: 121 SW Salmon Street, Portland, OR 97204
Phone/email: 503-464-7009 / tony.dental@pgn.com

12. Term. The term of this Agreement shall commence on the Effective Date and shall continue for 20 years after the date of Project completion or the date of final payment issuance by the OSMB, whichever is later. The Effective Date is the date on which the last party to sign this Agreement duly executes this Agreement.

13. Project Completion. The Project shall be completed, and final billing for the Project shall be submitted by the Recipient to the OSMB, on or before June 30, 2016. Unless Recipient receives approval in writing, OSMB shall not be obligated to disburse any payments after this date.

14. Property Improvements. The parties acknowledge and agree that improvements placed on US Forest Service land shall thereupon become property of the United States, and shall be subject to the same regulations and administration of the US Forest Service as other improvements of a similar nature.

15. Ownership. Recipient and Manager acknowledge and agree that the Project is the exclusive property of the US Forest Service. No part of this Agreement shall entitle the Recipient, or Manager to any share or interest in the Project other than the right to use and enjoy the same under existing regulations of the US Forest Service.

16. Operation and Maintenance. Operation and maintenance of the Project will be the responsibility of the Manager under the authority granted by the US Forest Service. The Recipient is neither responsible nor liable in any manner for operation or maintenance of the Project.

17. Reimbursements. Upon receipt by Recipient of grant funds described in Section I.1 of Exhibit A, Recipient shall reimburse Manager for eligible funds expended by the Manager up to the full amount received from the OSMB. The Recipient and Manager shall not deduct any amount from the payment for overhead, administration or processing fees.

18. Responsible for Project. The Recipient is not responsible for the completion or any other performance with respect to the Manager's and Owner's proposed project except as described herein.

II. INDEMNITY AND INSURANCE REQUIREMENTS

1. Indemnity. Manager agrees to indemnify, defend, and hold harmless the Recipient and its elected officials, officers, agents and employees against all liability, loss, and costs arising from actions, suits, claims, or demands, except when due to Recipient's sole negligence, arising from or relating to the performance of this Agreement.

2. Insurance. Manager shall obtain, at its expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than \$1 Million per occurrence/\$2 Million general aggregate for the protection of the Recipient, its elected officials, officers, agents, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to the Recipient.

Alternatively to the Commercial General Liability Insurance described above, Manager may maintain self-insurance in amounts deemed acceptable to Recipient upon the completion of the Self Insurance Certification attached hereto as Exhibit B.

III. MISCELLANEOUS

1. Participation in Similar Activities. This Agreement in no way restricts the Manager or Recipient from participating in similar activities with other public or private agencies, organizations and individuals.

2. Duplicate Payment. The Recipient and Manager acknowledge and agree that they 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.

3. Amendments. This Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, except by written instrument signed by all parties. Parties to this Agreement are not obligated to fund any changes not approved in advance.

4. Force Majeure. Neither the Recipient nor Manager shall be held responsible for delay or failure to perform when such delay or failure is due to fire, flood, epidemic, terrorism, strike, public carrier, act of God, act of a public enemy or a public authority or a cause which cannot be reasonably foreseen or provided against.

5. No Third-Party Beneficiaries. The Recipient and Manager 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.

6. Tax Compliance. The Recipient and Manager have the authority and knowledge regarding their payment of taxes and to the best of their knowledge, they are not in violation of any Oregon tax laws.

7. Successors and Assigns. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Recipient and Manager and their respective successors and assigns; provided however that the Recipient or Manager may not assign this Agreement or any interest therein without the prior written consent of the other party, which consent shall not be unreasonably withheld.

8. Alternative Dispute Resolution. The parties shall 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 this 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.

9. Severability. The Recipient and the Manager 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 shall be construed and enforced as if this Agreement did not contain the particular term or provisions held to be invalid.

10. Notice. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to the Recipient or the Manager at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as any party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

11. 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.

12. 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, or federal law, as applicable. Any claim, action, suit or proceeding collectively, "Claim" between the Recipient and Manager that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas 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, or the Court of Federal Claims as appropriate.

14. Merger Clause; Waiver. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE MANAGER AND THE RECIPIENT ON THE SUBJECT MATTER HEREOF. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND ANY PARTY UNLESS IN WRITING AND SIGNED BY THE MANAGER, AND THE RECIPIENT. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE DELAY OR FAILURE OF A PARTY TO ENFORCE ANY PROVISION OF THIS AGREEMENT SHALL NOT CONSTITUTE A WAIVER BY SUCH PARTY OF THAT PROVISION OR ANY OTHER PROVISION. THE MANAGER, AND RECIPIENT, BY THE SIGNATURE BELOW OF THEIR RESPECTIVELY AUTHORIZED REPRESENTATIVES, HEREBY ACKNOWLEDGES THAT THEY HAVE EACH READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

RECIPIENT:

Clackamas County

By: _____
John Ludlow

Title: Board Chair

Date: _____

Telephone: (503) 742-4299

Fax No: (503) 742-4420

Address: 150 Beaver Creek Road

Oregon City, OR 97045

Fed. Employer ID Number: 93-6002286

DUNS ID No. 096992656

MANAGER:

Portland General Electric Company *JML*

By: *Maria M. Pope*
Maria M. Pope
SRVP Power Supply &
Operations & Resource Strategy

Title: _____

Date: *3/2/2016*

Telephone: *503-464-2095*

Fax No: *503-464-2022*

Address: *421 S.W. Salmon St*

Portland, OR 97204

Fed. Employer ID Number: *93-0256820*