



CONTRACT FOR "LET'S GO BOATING" ASSISTANCE PROGRAM



This Contract is hereby entered into under the provisions of Title 46 United States Code 13105(a) Authorization of Contract Spending, and Budget note: Attachment B: Boating Safety Education Proposals, Federal Funds 2006-2007 Projects, by and between the State of Oregon, acting by and through its Oregon State Marine Board, hereinafter called MARINE BOARD, and the _____, hereinafter called RECIPIENT.

Contract Number: _____

Assistance Funds Awarded \$ _____

Project Number: RBS _____ - _____

Project Period for Costs: Eligibility Starts: _____ Eligibility Ends: _____

Project Title: _____

Project Scope: _____

WHEREAS, the purpose of this Contract is to set forth the obligations of both parties related to the project or program described in the "Scope of Work," which is based on the RECIPIENT'S application and the Staff Recommendation.

NOW, THEREFORE, the MARINE BOARD and RECIPIENT agree to the following:

PART I - PERFORMANCE

A. ADMINISTRATION

- 1. Accomplishment of Project - The project shall be accomplished according to the terms of this Contract and applicable Federal and State laws. The Scope of Work is based on the original application and the Staff Recommendation and is included in this Contract as Exhibit A - Statement of Work.
2. Amendments - The Contract may be amended in writing by the parties of the Contract upon written request of the RECIPIENT and good cause shown, to adjust the project period, project costs, specific project scope items, or other specified adjustments to the Contract.
3. Accountability - The assistance funds awarded by the MARINE BOARD for the project or program shall be expended only as authorized under the terms of this Contract.
4. Persons Not to Benefit - No member of or delegate to Congress, resident commissioner, officer, agent or employee of the United States of America, member of the Oregon Legislative Assembly, elected official of the State of Oregon, or official, agent, or employee of the State of Oregon, or elected member, officer, agent, or employee of any political subdivision, municipality or municipal corporation of the State of Oregon shall be admitted to any share or part of this Contract or derive any financial benefit that may arise therefrom.

5. **Conditions** - The RECIPIENT will perform all Scope of Work under this Contract in compliance with all Federal, State and local laws, rules, regulations and guidelines applicable to this project or program.

Nothing in this Contract shall be construed as obligating the MARINE BOARD or RECIPIENT to the expenditure or obligation of funds in excess of appropriations authorized by law.

6. **Equipment** – The RECIPIENT agrees to maintain in good working condition any major piece of equipment purchased, in whole or in part, by the MARINE BOARD with assistance funds received pursuant to this Contract, and used by the RECIPIENT for the project or program described in the Scope of Work. Further, upon termination of project or program, all major pieces of equipment purchased in whole or in part, with assistance funds received pursuant to this Contract and used by the RECIPIENT for the project or program shall be returned to the MARINE BOARD for reassignment. The RECIPIENT agrees to maintain insurance for such equipment over \$5,000 in value. The RECIPIENT agrees to furnish proof of required insurance to the MARINE BOARD within 30 days of execution of this Contract.
7. **Legal Authority** - ORS 830.110 (4) authorizes the MARINE BOARD to enter into this Contract.
8. **Operation and Maintenance** - The RECIPIENT is responsible for operation and maintenance of all improvements acquired or constructed with assistance funds awarded in this Contract throughout the useful life of each improvement.
9. **Participation in Similar Activities** – This Contract in no way restricts the RECIPIENT or the MARINE BOARD from participating in similar activities with other public or private agencies, organization, and individuals.
10. **Refunds** – Assistance funds authorized for use by the RECIPIENT that are not spent or obligated for the project or program described in the Scope of Work will remain with the MARINE BOARD and may be authorized for use for new projects by the MARINE BOARD.
11. **Special Conditions** – Special conditions to this Contract shall be binding upon and inure to the benefit of the successors and assigns each of the parties to this Contract. Breach of any condition shall justify the MARINE BOARD to seek any remedy available under applicable State and Federal Law.
12. **Use of Awarded Assistance Funds** – Awarded assistance funds shall be used solely for eligible purposes of the funding program Recreational Boating Safety (RBS) Program, Title 46 United States Code (U.S.C.) 13105(a) Authorization of Contract Spending and as approved by the MARINE BOARD.
13. **Use of Project** – Project accomplishments shall be open or available to the public.
14. **Notice** – Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, mailing the same, postage prepaid, to the MARINE BOARD or the RECIPIENT at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either 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.

B. RESPONSIBILITY FOR SUBCONTRACTOR

The RECIPIENT shall be responsible for compliance with provisions of this Contract in the event of default by any subcontractor for the remainder of the term.

C. PROJECT COSTS AND THE PROJECT PERIOD

1. The amount of assistance funds awarded by MARINE BOARD to RECIPIENT to perform the project described in the Scope of Work is \$_____.
2. Only those costs associated with the Scope of Work that are incurred during the project period shall be eligible for funding.
3. The project period is designated to be one (1) year from the effective date of this Contract. A project extension may be requested through an amendment (see OSMB Form B3).

D. SUBCONTRACTS

1. Subcontracts awarded to accomplish approved project Scope of Work shall incorporate by reference in each sub-contract the provisions of this contract. The RECIPIENT shall ensure that performance is acceptable under each sub-contract.
2. The RECIPIENT shall pay any claim of a subcontractor or other employed individual performing Scope of Work on this project for services pursuant to this Contract when due, and unless the RECIPIENT is a State agency or an agency of the United States Government, shall indemnify and hold the State of Oregon and the MARINE BOARD harmless from any such claim or damages relating thereto.
3. Any subcontract for employment by the RECIPIENT shall be in writing and shall contain a provision whereby a person so employed, or with whom a subcontract has been entered, acknowledges that the State of Oregon and the MARINE BOARD shall not be liable for any cost, claims, damages, reimbursement, or payment of any kind relating to such subcontract.

E. PROJECT REPORTING, REVIEWS, AND ON-SITE INSPECTIONS

1. The RECIPIENT agrees to submit a quarterly project status report to the MARINE BOARD within 30 days after the end of each quarter. This report will include at a minimum the following: (1) progress in completing the approved Scope of Work; and (2) any problems encountered and solutions to problems regarding completion of the project. Failure to submit the reports may result in delays in receipt of assistance funds. Failure to submit reports may also affect eligibility for additional assistance funds.
2. The RECIPIENT agrees to consult with the MARINE BOARD, as needed, to review progress. The MARINE BOARD reserves the right to review project progress and to conduct on-site inspections, as applicable and as needed, at any reasonable time during the project period to assure compliance with the terms of this Contract.
3. The RECIPIENT agrees to provide the MARINE BOARD, upon completion of the project, a completed Project Closure Form, photos of completed project/program, a signed and completed expenditure record that itemizes all expenditures, and certify in writing, to the MARINE BOARD, that the project is complete or the program is executed.

F. PRODUCT OR PUBLISHABLE MATTER OWNERSHIP

1. Any and all copyrights developed for the products of this project are the property of the RECIPIENT. The MARINE BOARD is hereby granted a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use all products for MARINE BOARD purposes, and to authorize others to do so.
2. All materials such as originals, artwork, photographs, paste-ups, negatives, die plates and magnetic media (if any) provided by the MARINE BOARD and used in the production of the printing called for in the Contract shall remain the property of the MARINE BOARD, and shall be delivered back to the MARINE BOARD along with the printed material. The MARINE BOARD reserves the right to allow retention and use by the RECIPIENT.

G. FUND SOURCE RECOGNITION

The RECIPIENT agrees to permanently and publicly acknowledge awarded funding used to assist project accomplishments (including, but not limited to, project sign) at the location of the project. At a minimum, this acknowledgment should include the following: "This project was donated from a grant by the U.S Coast Guard Recreational Boating Safety Fund (USCG), administered by the Oregon State Marine Board."

H. SUCCESSORS AND ASSIGNS

The provisions of the Contract shall be binding upon and shall inure to the benefit of the MARINE BOARD and the RECIPIENT and their respective successors and assigns; provided however that the RECIPIENT may not assign this Contract or any interest therein without the prior written consent of the MARINE BOARD, which consent may be withheld for any reason.

I. PERMITS REQUIRED

The RECIPIENT is responsible for obtaining all necessary documentation and/or permits for any type of construction work (i.e. building permits, environmental permits, etc.). The RECIPIENT must partner with the land manager/owner to acquire all necessary permits, if applicable.

PART II – COMPLIANCE

A. SEVERABILITY

The MARINE BOARD and the RECIPIENT agree that if any term or provision of this Contract 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 the Contract did not contain the particular term or provisions held to be invalid.

B. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION

This Contract 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, a claim between the MARINE BOARD and/or other agency or department of the State of Oregon and the RECIPIENT that arises from or relates to this Contract 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.

C. COMPLIANCE WITH APPLICABLE LAW

RECIPIENT shall comply with all Federal, State and local laws, regulations, executive orders and ordinances applicable to the Contract. Without limiting the generality of the foregoing, RECIPIENT expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. The MARINE BOARD'S performance under the Contract is conditioned upon RECIPIENT'S compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235 which are incorporated by reference herein. RECIPIENT shall, to the maximum extent economically feasible in the performance of this Contract, 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 products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

D. RECORDS MAINTENANCE; ACCESS

RECIPIENT shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, RECIPIENT shall maintain any other records pertinent to this Contract in such a manner as to clearly document RECIPIENT'S performance. RECIPIENT acknowledges and agrees that the MARINE BOARD and the Oregon Secretary of State's Office and the Federal government and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of RECIPIENT that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. RECIPIENT shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments 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 Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

F. DEFAULT; REMEDIES; TERMINATION

a. **Default by RECIPIENT.** RECIPIENT shall be in default under this Contract if:

- (i) RECIPIENT institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
- (ii) RECIPIENT no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and RECIPIENT has not obtained such license or certificate within fourteen (14) calendar days after MARINE BOARD'S notice or such longer period as the MARINE BOARD may specify in such notice; or
- (iii) RECIPIENT commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Scope of Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Scope of Work as to endanger RECIPIENT'S performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after the MARINE BOARD'S notice, or such longer period as the MARINE BOARD may specify in such notice.

- b. **MARINE BOARD'S Remedies for RECIPIENT'S Default.** In the event RECIPIENT is in default under Section F.a, MARINE BOARD may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:
- (i) termination of this Contract under Section F.e(ii);
 - (ii) withholding all monies due for Scope of Work that RECIPIENT has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
 - (iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
 - (iv) exercise of its right of setoff.
- These remedies are cumulative to the extent the remedies are not inconsistent, and MARINE BOARD may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that RECIPIENT was not in default under Sections F.a, then RECIPIENT shall be entitled to the same remedies as if this Contract was terminated pursuant to Section F.e(i).
- c. **Default by MARINE BOARD.** MARINE BOARD shall be in default under this Contract if:
- (i) MARINE BOARD fails to pay RECIPIENT any amount pursuant to the terms of this Contract, and MARINE BOARD fails to cure such failure within thirty (30) calendar days after RECIPIENT'S notice or such longer period as RECIPIENT may specify in such notice; or
 - (ii) MARINE BOARD commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within thirty (30) calendar days after RECIPIENT'S notice or such longer period as RECIPIENT may specify in such notice.
- d. **RECIPIENT'S Remedies for MARINE BOARD'S Default.** In the event MARINE BOARD terminates the Contract under Section F.e(i), or in the event the MARINE BOARD is in default under Section F.c and whether or not RECIPIENT elects to exercise its right to terminate the Contract under Section F.e(iii), RECIPIENT'S sole monetary remedy shall be (a) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and (b) with respect to deliverable- based Scope of Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Scope of Work completed and accepted by the MARINE BOARD, less previous amounts paid and any claim(s) that the MARINE BOARD has against RECIPIENT. In no event shall the MARINE BOARD be liable to RECIPIENT for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to RECIPIENT exceed the amount due to RECIPIENT under this Section F.d, RECIPIENT shall pay immediately any excess to MARINE BOARD upon written demand provided in accordance with Section 18.
- e. **Termination.**
- (i) **MARINE BOARD'S Right to Terminate at its Discretion.** At its sole discretion, MARINE BOARD may terminate this Contract:
 - (A) For its convenience upon thirty (30) days' prior written notice by MARINE BOARD to RECIPIENT;
 - (B) Immediately upon written notice if MARINE BOARD fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Scope of Work; or
 - (C) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the MARINE BOARD'S purchase of the Scope of Work under this Contract is prohibited or MARINE BOARD is prohibited from paying for such Scope of Work from the planned funding source.
 - (ii) **The MARINE BOARD'S Right to Terminate for Cause.** In addition to any other rights and remedies the MARINE BOARD may have under this Contract, the MARINE BOARD may terminate this Contract immediately upon written notice by the MARINE BOARD to RECIPIENT, or at such later date as the MARINE BOARD may establish in such notice, or upon expiration of the time period and with such notice as provided in Section F.e(ii)(B) and F.e(ii)(C) below, upon the occurrence of any of the following events:
 - (A) RECIPIENT is in default under Section F.a(i) because RECIPIENT institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
 - (B) RECIPIENT is in default under Section F.a(ii) because RECIPIENT no longer holds a license or certificate that is required for it to perform services under the Contract and RECIPIENT has not obtained such license or certificate within fourteen (14) calendar days after the MARINE BOARD'S notice or such longer period as the MARINE BOARD may specify in such notice; or
 - (C) RECIPIENT is in default under Section F.a(iii) because RECIPIENT commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Scope of Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Scope of Work as to endanger RECIPIENT'S performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after the MARINE BOARD'S notice, or such longer period as the MARINE BOARD may specify in such notice.
 - (iii) **RECIPIENT'S Right to Terminate for Cause.** RECIPIENT may terminate this Contract with such written notice to the MARINE BOARD as provided in Sections F.e(iii)(A) and F.e(iii)(B) below, or at such later date as RECIPIENT may establish in such notice, upon the occurrence of the following events:

(A) RECIPIENT is in default under Section F.c(i) because MARINE BOARD fails to pay RECIPIENT any amount pursuant to the terms of this Contract, and the MARINE BOARD fails to cure such failure within thirty (30) calendar days after RECIPIENT'S notice or such longer period as RECIPIENT may specify in such notice; or

(B) MARINE BOARD is in default under Section F.c(ii) because MARINE BOARD commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and MARINE BOARD fails to cure such failure within thirty (30) calendar days after RECIPIENT'S notice or such longer period as RECIPIENT may specify in such notice.

(iv) Return of Property. Upon termination of this Contract for any reason whatsoever, RECIPIENT shall immediately deliver to the MARINE BOARD all of the MARINE BOARD'S property (including without limitation any Scope of Work for which the MARINE BOARD has made payment in whole or in part) that is in the possession or under the control of RECIPIENT in whatever stage of development and form of recordation such the MARINE BOARD property is expressed or embodied at that time. Upon receiving a notice of termination of this Contract, RECIPIENT shall immediately cease all activities under this Contract, unless the MARINE BOARD expressly directs otherwise in such notice of termination. Upon the MARINE BOARD' request, RECIPIENT shall surrender to anyone Agency designates, all documents, research or objects or other tangible things needed to complete the Scope of Work.

G. FORCE MAJEURE:

Neither the RECIPIENT or the MARINE BOARD shall be held responsible for the delay or failure to perform when such acts delay or failure is due to fire, flood, epidemic, strikes, acts of God or the public enemy, legal acts of public authorities, or delays or defaults caused by public carriers, which cannot be reasonably foreseen or provided against.

H. COUNTERPARTS:

This Contract may be executed in several counterparts, all or which when taken together shall constitute one contract binding all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

I. PRINCIPAL CONTACT: The principal contacts for this Contract are:

RECIPIENT Project Contact	MARINE BOARD Project Coordinator
	MariAnn Koloszar Mandatory Boating Education Coordinator 435 Commercial St. NE – Suite 400 Salem, OR 97301
Phone:	Phone: 503-378-5158
FAX:	FAX: 503-378-4597
E-Mail:	E-Mail: mariann.koloszar@state.or.us

J. MERGER CLAUSE; WAIVER: THIS CONTRACT CONSTITUTES THE ENTIRE CONTRACT BETWEEN THE MARINE BOARD AND THE RECIPIENT ON THE SUBJECT MATTER HEREOF. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THE CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH THE MARINE BOARD 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 CONTRACT. THE DELAY OR FAILURE OF THE MARINE BOARD TO ENFORCE ANY PROVISION OF THIS CONTRACT SHALL NOT CONSTITUTE A WAIVER BY THE MARINE BOARD OF THAT PROVISION OR ANY OTHER PROVISION. THE RECIPIENT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed as of the day and year last written below.

RECIPIENT

OREGON STATE MARINE BOARD

By: _____

By: _____

Date: _____

Date: _____

This document is subject to revision prior to and up to the time of execution

EXHIBIT A – STATEMENT OF WORK

The Scope of Work (from original application) will be negotiated with the selected RECIPIENT. Upon completion of negotiations it will be included in the final Contract here as the Statement of Work.