

OREGON STATE MARINE BOARD
Abandoned Vessel Project Agreement

<i>TO BE COMPLETED BY MARINE BOARD</i>		Abandoned Vessel ID#:
Biennium:	Date Received:	

Certification and Agreement

THIS AGREEMENT is entered into between _____, with offices at _____, hereinafter referred to as the REMOVING AUTHORITY, and the STATE OF OREGON acting by and through the OREGON STATE MARINE BOARD, located at 435 Commercial St. NE, Suite 400, Salem, Oregon 97309-5065, hereinafter referred to as the BOARD.

RECITALS:

WHEREAS, the BOARD and the REMOVING AUTHORITY are authorized under ORS Chapter 190 to enter into cooperative agreements;

WHEREAS, the BOARD is authorized to utilize funds in the Abandoned Boat Removal and Cleanup Subaccount to reimburse the REMOVING AUTHORITY for costs associated with the removal of eligible abandoned vessels, floating homes, and boathouses under ORS 830.907 through 830.927;

WHEREAS, the REMOVING AUTHORITY seeks reimbursement for the costs of removal and/or cleanup of an abandoned vessel, floating home, or boathouse in accordance with the scope of work outlined within this Agreement and Attachments;

WHEREAS, the BOARD has sufficient funds available in the Abandoned Boat Removal and Cleanup Subaccount within its current biennial budget to meet its obligations under this Agreement;

WHEREAS, the REMOVING AUTHORITY agrees to comply with the Abandoned Vessel Program Policies and Procedures adopted by the BOARD; and

WHEREAS, the performance of tasks identified in the Article I and Attachments is consistent, compatible and beneficial to the STATE OF OREGON and, in consideration of the mutual promises and covenants contained herein;

NOW, THEREFORE, the BOARD and the REMOVING AUTHORITY agree to the following:

ARTICLE I. SCOPE OF WORK

The REMOVING AUTHORITY agrees to perform the activities described in the Abandoned Vessel Program Notification and Tracking Form and/or Attachment A.

ARTICLE II. AGREEMENT PERIOD

This Agreement shall become effective on the date of last signature and shall be completed on _____, unless subsequent time extension, supplement, addition, continuation or renewal is mutually agreed upon in writing between the parties. Costs incurred from _____ are eligible for reimbursement under this Agreement.

ARTICLE III. COMPENSATION

The BOARD agrees to reimburse the REMOVING AUTHORITY for activities performed under this cost-reimbursable Agreement in the amount of \$_____ in accordance with the budget itemized in the Abandoned Vessel Program Notification and Tracking Form and/or Attachment B.

ARTICLE IV. LIABILITIES

Each party is responsible, to the extent required by law (including the Oregon Tort Claims Act, ORS 30.260-30.300), only for the acts, omissions or negligence of its own officers, employees or agents.

OREGON STATE MARINE BOARD

Abandoned Vessel Project Agreement

ARTICLE V. COMPLIANCE WITH APPLICABLE LAWS

The REMOVING AUTHORITY will comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement. The BOARD's performance under this Agreement is conditioned upon the REMOVING AUTHORITY's compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555 (unless inapplicable as a matter of federal law), which are incorporated by reference herein.

ARTICLE VI. RECORDS MAINTENANCE

The REMOVING AUTHORITY will maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, the REMOVING AUTHORITY will maintain any other records pertinent to this Agreement in such a manner as to clearly document the REMOVING AUTHORITY's performance. The REMOVING AUTHORITY's accounting procedures must provide for an accurate and timely recording of receipt of funds by source, of expenditures made from such funds, and of unexpended balances. Controls shall be established which are adequate to ensure that all expenditures reimbursed under this Agreement are for allowable purposes and that documentation is readily available to verify that such charges are accurate.

ARTICLE VII. ACCESS.

The REMOVING AUTHORITY acknowledges and agrees that the BOARD and the Oregon Secretary of State's Office and the federal government and duly authorized representatives can access such fiscal records and other books, documents, papers, plans and writings of the REMOVING AUTHORITY that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts. The REMOVING AUTHORITY will retain and keep accessible all such fiscal records, books, documents, papers, plans and writings for a minimum of five (5) 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.

ARTICLE VIII. TERMINATION; REMEDIES

1. Termination for Convenience. The REMOVING AUTHORITY may terminate this Agreement at any time upon thirty (30) days prior written notice to the BOARD; provided, however, that the REMOVING AUTHORITY will, within thirty (30) days of such termination, reimburse the BOARD for all funds contributed by the BOARD to the Project; provided further that until the REMOVING AUTHORITY has fully reimbursed the BOARD for such funds, the REMOVING AUTHORITY agrees to comply with the terms hereof.
2. Termination Because of Non-Appropriation or Project Ineligibility. The BOARD, at any time upon thirty (30) days prior written notice to the REMOVING AUTHORITY, may modify or terminate this Agreement if:
 - a. The BOARD fails to receive funding or appropriations, limitations, or other expenditure authority at levels sufficient to pay for the allowable costs of the Project to be funded in this Agreement 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 Abandoned Vessel funds as described in ORS 830. 907 through 830.927.
 - b. In the event insufficient funds are appropriated for the payments under this Agreement and the REMOVING AUTHORITY has no other lawfully available funds, then the REMOVING AUTHORITY may terminate this Agreement at the end of its current fiscal year, with no further liability to the BOARD. The REMOVING AUTHORITY must deliver written notice to the BOARD of such termination no later than thirty (30) days from the determination by the REMOVING AUTHORITY of the event of non-appropriation. The BOARD agrees to pay for all authorized project costs expended up to the date of written notice of termination.

OREGON STATE MARINE BOARD
Abandoned Vessel Project Agreement

3. Termination for Default. The BOARD may, at any time upon thirty (30) days prior written notice of default to the REMOVING AUTHORITY, may terminate, modify or terminate this Agreement if:
 - a. The planning, permitting, or implementation of the Project is not pursued with due diligence; or
 - b. The completion of the Project is not permissible under federal, state, or local law; or
 - c. The REMOVING AUTHORITY, does not abide by the nondiscrimination and affirmative action provisions of this Agreement; or
 - d. The Project is not completed in a good and workmanlike manner or fails to comply with any required permits.
4. Rights and Remedies. The REMOVING AUTHORITY agrees, within thirty (30) days of its receipt of a notice of default, to reimburse the BOARD for all funds contributed by the BOARD to the Project. Further, the BOARD shall have any and all rights and remedies available at law or in equity.

ARTICLE IX. ASSIGNMENT

Neither party may assign or transfer any interest in this Agreement, nor assign any claims for money due or to become due during this Agreement without the prior written approval of the other party.

ARTICLE X. GENERAL PROVISIONS

1. No Duplicate Payment. The REMOVING AUTHORITY may not be compensated for, or receive any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party.
2. Amendments. This Agreement cannot be waived, altered, modified, supplemented or amended in any manner whatsoever, except by written instrument signed by both parties.
3. Force Majeure. Neither the BOARD nor the REMOVING AUTHORITY can be held responsible for delay or failure to perform when such delay or failure is due to fire, flood, epidemic, 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.
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 is allowed to be admitted to any share or part of this Agreement or derive any financial benefit that may arise therefrom.
5. No Third Party Beneficiaries. The BOARD and REMOVING AUTHORITY 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 may 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. Successors and Assigns. The provisions of this Agreement are binding upon and must inure to the benefit of the BOARD and REMOVING AUTHORITY and their respective successors and assigns; provided however that the REMOVING AUTHORITY may not assign this Agreement or any interest therein without the prior written consent of the BOARD, which consent may be withheld for any reason.
7. Severability. The BOARD and the REMOVING AUTHORITY agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.

OREGON STATE MARINE BOARD Abandoned Vessel Project Agreement

8. 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 BOARD or the REMOVING AUTHORITY at the address or number set forth on the signature page of this Agreement, 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 is deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile is deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery is deemed to be given when actually delivered.

9. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together constitute one agreement binding all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

10. Governing Law; Venue; Consent to Jurisdiction. This Agreement is 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 the BOARD and/or other agency or department of the State of Oregon and the REMOVING AUTHORITY that arises from or relates to this Agreement must 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 must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

11. Merger Clause; Waiver. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE BOARD AND THE REMOVING AUTHORITY ON THE SUBJECT MATTER HEREOF. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT CAN BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH THE BOARD AND THE REMOVING AUTHORITY. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, MAY 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 THE BOARD TO ENFORCE ANY PROVISION OF THIS AGREEMENT DOES NOT CONSTITUTE A WAIVER BY THE BOARD OF THAT PROVISION OR ANY OTHER PROVISION. THE REMOVING AUTHORITY, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

BOARD: State of Oregon acting by and through its State Marine Board By: _____ Paul Donheffner, Director Phone: (503) 378-8587 Fax No.: (503) 387-4597 Date: _____	REMOVING AUTHORITY: Through its authorized representative By: _____ Name: _____ Title: _____ Phone: _____ Fax No.: _____ Date: _____
--	---

Federal Employer Identification Number of Removing Authority: _____

APPROVED FOR LEGAL SUFFICIENCY

Assistant Attorney General

Date