

WATERWAYS SAFETY FUND
COOPERATIVE BOATING FACILITY GRANT AGREEMENT
OHIO DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATERCRAFT
AND

VILLAGE OF NEW RICHMOND

The State of Ohio, represented by the Ohio Department of Natural Resources, and the Village of New Richmond (hereinafter referred to as the Cooperative Agency) agree to provide a boating access improvement project as follows:

Name of Project: Ohio River Augusta Street Boat Ramp Improvements

Watercraft Purchase Order Number:

A. The Cooperative Agency agrees to

The Cooperative Agency signatory to this Cooperative Boating Facility Grant Agreement agrees to complete this project on or before December 1, 2016. If unforeseen circumstances preclude completing the Project by the date specified, a revised completion date may be agreed upon in writing by the Cooperative Agency and the State.

And to perform in compliance with the terms, promises, conditions, plans, specifications, estimates, procedures, maps, and assurances set forth in the Project Proposal, included by reference as if fully set out herein, and the General Provisions attached hereto and hereby made a part thereof; (1) promptly submit to the State of Ohio, such reports and documents as the Ohio Department of Natural Resources may request; (2) operate, maintain, and keep for public boating access the property or facilities acquired or developed pursuant to this agreement, and refrain from conversion unless a proposed change is approved by the State of Ohio; (3) display a suitable sign acknowledging Waterways Safety Fund, Cooperative Boating Facility Grant Fund assistance.

- B. The total estimated cost of the project is \$132,800.00 which includes construction, engineering, and advertising costs. The State agrees to pay a maximum of **100%** of the estimated project costs including engineering and advertising or \$132,800.00, whichever is the lesser, and the Cooperative Agency agrees to pay the remainder. In no event shall the State's share of the Project cost exceed \$132,800.00. The State of Ohio hereby agrees to (1) obligate the Cooperative Agency funding assistance not to exceed **\$132,800.00** from Ohio's fiscal allocations made available under the provisions of House Bill 497, Section 223.10; (2) upon receipt of tangible proof of actual eligible costs paid by the Cooperative Agency in performing this agreement, reimburse the Cooperative Agency funds equal to no more than **100%** of such eligible costs.
- C. Obligations of the State of Ohio are subject to the provisions of the Ohio Revised Code Section 126.07 which provides that the Director of Budget and Management must certify that there is a balance in the appropriation which may satisfy the contractual obligation.
- D. The State of Ohio and the Cooperative Agency mutually agree to perform this agreement in accordance with the policies and procedures set forth by the Ohio Department of Natural Resources. Failure to comply with or show sufficient progress in complying may result in the termination of this agreement.

- E. This agreement will terminate **June 30, 2016**, at which time the Ohio Department of Natural Resources may renew this Agreement upon thirty (30) days prior written notice under the same terms and conditions and subject to appropriation for the fiscal biennium beginning **July 1, 2016** and ending **June 30, 2018** unless this Agreement is canceled prior thereto in accordance with any other provision of this Agreement. In the event this Agreement extends in time beyond the current biennium, this Agreement shall be valid and enforceable only if funds are appropriated and the Director of the Office of Budget and Management certifies that there is a balance in the appropriation not previously obligated to pay existing obligations.
- F. The Cooperative Agency has furnished the State evidence of its ownership of said land on which the Project is situated in which the Cooperative Agency has fee simple title, an attorneys opinion of title, title guarantees, title insurance, a lease or easement lasting 25 years or more in the community in which the real estate is situated (Attachment B).
- G. Upon completion of the Project, the Cooperative Agency agrees to operate and maintain the facilities for public boating access purposes, without cost to the State, for a period of not less than twenty-five (25) years, or such other period mutually agreed to in writing by both parties, in a manner satisfactory to the Director of the Department of Natural Resources or the Director's Representative and will make ample provisions each year for maintenance. The Cooperative Agency covenants that it will not transfer any interest in the real estate owned by the Cooperative Agency upon which the Project is to be constructed, as described in (Attachment C) (real estate description), for a period of not less than twenty-five (25) years, or such other period mutually agreed to in writing by both parties.

GENERAL PROVISIONS

Part I – Definitions

- A. The term "ODNR" or "State" as used herein means the Ohio Department of Natural Resources.
- B. The term "Director" as used herein means the Director of the Ohio Department of Natural Resources, or any representative lawfully delegated the authority to act for such Director.
- C. The term "Project" as used herein means a single project that is subject to the project agreement.
- D. The term "Cooperative Agency" means the local governmental entity that is a party to the project agreement. For the purposes of these provisions, the terms "cooperative agency", "grantee", and "recipient" are deemed synonymous.
- E. The term "Chief" as used herein means the Chief of the Division of Watercraft, or any representative lawfully delegated the authority to act for the Chief.

Part II – Project Execution

- A. The Project period shall begin with the date of approval of the project agreement and shall terminate at the end of the stated or amended project period unless the project is completed or terminated sooner in which event the project shall end on the date of completion or termination.

- B. The Cooperative Agency will begin work on the project per the Project Schedule (Attachment E) agreed upon by both parties as part of this executed agreement and assure that the project will be prosecuted to completion with reasonable diligence.
- C. The Cooperative Agency shall secure completion of the work in accordance with approved construction plans and specifications, and shall secure compliance with all applicable Federal, State, and local laws and regulations.
- D. The Cooperative Agency shall establish a separate special account for the funds for the project. The State reserves the right to audit this special account, either during or after completion of the Project.
- E. Before entering into a contract with the State, the Cooperative Agency must provide certification from local planning and zoning authorities with jurisdiction that the Project is approved. (Attachment D)
- F. The Cooperative Agency is responsible for obtaining all federal, state and local permits and licenses that may be required for this Project.
- G. If the Project is located within any FEMA-mapped 100-year flood hazard area, the Cooperative Agency shall comply with the flood-plain management criteria of the National Flood Insurance Program (NFIP) and all procedures and rules authorized by 1521.14 of the Ohio Revised Code.
- H. Before the Cooperative Agency enters into a professional consulting services contract for the planning, and/or design, of the Project, the contract for those services shall be submitted to the State for approval prior to the start of any work under the Agreement.
- I. The Cooperative Agency agrees to provide notice to the public of the Project to enable review and comment to identify any environmental concerns that need to be considered. Furthermore, the design of the Project will provide accessibility for the handicapped when applicable. Also, to the extent practical, Project facilities will be designed to minimize the adverse effects of flooding. The Cooperative Agency will also consult with the State Historic Preservation Office to identify any properties on or eligible for, the National Register of Historic Places that may be affected by the Project. State Historic Preservation Office clearance will be obtained by the Cooperative Agency prior to construction, or continuation of construction should evidence of potential archaeological significance be discovered during construction.
- J. The Project submittals associated with each phase of this grant process shall be submitted by the Cooperative Agency to the State for approval prior to the start of the next phase of work per the agreed Project Schedule as follows.

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| <ul style="list-style-type: none"> 1. Executed Agreement 2. Consultant Contract 3. Preliminary Design 4. 50% Design 5. Bid Package | <ul style="list-style-type: none"> 6. Bid Recommendation 7. Construction Startup 8. Final Inspection 9. Close Out Documents |
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One (1) copy of all submittals shall be sent to the following address:

ODNR - Division of Watercraft
 Grants Coordinator
 2045 Morse Road – Bldg. A-2
 Columbus, Ohio 43229-6693

- K. The Americans with Disabilities Act Accessibility Guidelines shall be employed in design of all proposed facilities including parking areas, restrooms, signage, walkways and boating access facilities.
- L. The Cooperative Agency agrees to serve as the contracting agency, with full responsibility for advertising the project, awarding contracts, and inspecting Project work. A performance bond in the full amount of the contract shall be required to be furnished by the successful bidder to the Cooperative Agency prior to execution of a contract. The Cooperative Agency shall forward all proposed contracts and bid tabulations relating thereto, together with its recommendations, to the State, for approval by the State, before entering into any bidding contracts.
- M. The Cooperative Agency agrees to comply with all applicable competitive bidding requirements and agrees to provide certification of compliance (Attachment E), therewith from the Cooperative Agency's legal advisor to be submitted with the bid recommendation.
- N. The State's financial obligations are set forth at paragraph B of the first page of this Agreement.
- O. The Cooperative Agency shall provide all lands, easements, utility lines and services, and rights-of-way necessary for the Project without cost to the State.
- P. Upon execution of this Agreement by the Cooperative Agency and the State, the Cooperative Agency shall submit to the State, for its approval, a Project Disbursement Schedule. The Project Disbursement Schedule shall contain an itemized list of costs for all aspects of the Project, and an anticipated timetable for completion of the items listed.
- Q. Each invoice submitted by the Cooperative Agency shall be accompanied by an accounting of all Project costs, to date. The accounting shall show the amount authorized by the State, and the amount paid, to date, by the State.
- R. The State reserves the right to have all periodic invoices for expenses incurred on this Project, which have been approved by the Cooperative Agency, forwarded to the State for approval prior to payment to contractors by the Cooperative Agency.
- S. Upon completion of the Project, the Cooperative Agency shall notify the State, in writing, so that a final review of the Project can be performed. If deficiencies in the work are noted during this review, the State shall provide to the Cooperative Agency a list of remedial work items to be performed prior to acceptance of the Project. The Cooperative Agency shall notify the State once all remedial work is completed; however, the State shall retain the right to re-examine the Project to assure compliance with all listed remedial work items.
- T. The State will withhold 10% as final payment until full accounting is received which will include the final site inspection, completion of any punch list items and receipt of one set of as built plans.
- U. No changes, additions, or deletions shall be made in the approved plans and specifications for the Project without the express written consent of the State and the Cooperative Agency prior to any such change. Costs incurred for any work not approved by the State shall not be considered in the State's share of the Project costs.
- V. The Cooperative agency agrees to erect and maintain a permanent project sign, which identify the Division of Watercraft, Waterways Safety Fund participation in the project. The Cooperative Agency shall submit drawings of the permanent project signs for approval by the State prior to

their construction and erection. The location and placement of the permanent project sign will be included in the plans submitted to the State for approval by the Cooperative Agency (see clause J of this section).

- W. The State reserves the right to review the Project at any time during the contract period to assure compliance with the approved plans and specifications and to review the progress of the work.
- X. During the contract period, the Cooperative Agency shall submit to the State written reports on the progress of the work and the estimated completion date based on said progress. Frequency of these submittals shall be a minimum of one (1) per month at the end of each month and submitted to the Division of Watercraft, Capital Improvements Coordinator, 2045 Morse Road, Bldg. A-2, Columbus, Ohio 43229-6693.
- Y. If during this Project, some unforeseen condition is encountered which will change the scope of the Project beyond that contained in the original contract, the Cooperative Agency will immediately call the matter to the attention of the State. No further work shall be performed on the item on which the overrun will occur until the amount thereof and the method of payment is mutually agreed to in writing.

Part III – Compliance

- A. The Cooperative Agency agrees that any facilities which may be developed in the future on the lands acquired or developed under this Project will be made available to all persons regardless of race, color, sex, religion, national origin, ancestry, age, handicap or disability on the same terms and conditions.
- B. Pursuant to RC 125.111 the Cooperative Agency agrees that neither it nor any person acting on its behalf will discriminate, by reason of race, color, religion, sex, age, disability, military status as defined in Section 4112.01 of the Ohio Revised Code, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the work under this Agreement. Cooperative Agency further agrees that neither it nor any person acting on its behalf shall discriminate in any manner against, intimidate, or retaliate against any employee hired for the performance of work under the Agreement on account of race, color, religion, sex, age, disability, military status as defined in Section 4112.01 of the Ohio Revised Code, national origin, or ancestry. The Cooperative Agency agrees to comply with all pertinent provisions of Section 125.111 of the Ohio Revised Code.
- C. The Cooperative Agency agrees that it will fully cooperate with the State Equal Employment Opportunity Coordinator, with any other official or agency of the State or Federal Government which seeks to eliminate unlawful employment discrimination, and with all other State and Federal efforts to assure equal employment practices, and said Local Agency shall comply promptly with all requests and directions from the state of Ohio or any of its officials and agencies in this regard, both before and during performance.
- D. The above noted Equal Employment Opportunity provisions are applicable to this Project, and all bidding documents and contract documents shall contain necessary requirements to implement these provisions.
- E. In the event of the Cooperative Agency's non-compliance with the non-discrimination clauses of this contract, this contract may be canceled, terminated or suspended in whole or in part.

- F. The parties agree that the Cooperative Agency shall be solely responsible for any and all claims, demands, or causes of action arising from the Cooperative Agency obligations under this agreement. Each party to this Agreement must seek its own legal representative and bear its own costs, attorney fees and expenses, in any litigation that may arise from the performance of this Agreement. It is specifically understood and agreed that ODNR does not indemnify the Cooperative Agency. Nothing in this Agreement shall be construed to be a waiver of the sovereign immunity of the State of Ohio or the immunity of any of its employees or agents for any purpose. In no event shall ODNR be liable for indirect, consequential, incidental, special, liquidated, or punitive damages or lost profits even if it has been advised of the possibility of such loss or damage.
- G. If the Cooperative Agency does not comply with all terms of this Agreement, the Agreement shall be void and the Cooperative Agency shall return all State funds that have been expended as part of this Agreement within ninety (90) days of said termination.
- H. The Cooperative Agency will not charge fees for access to the project or launch fees without written permission of the State. If entrance or user fees are to be charged, the Cooperative Agency will submit proposed fee schedules and documentation of need to the State for approval. Any fees charged shall be offered equally and not discriminate against any user group on the basis of residence, preferential fees, reservations, membership system, or allocation of spaces. All fees so charged will be used solely for maintenance of the Project. The Cooperative Agency shall establish a separate special account for the deposit of fees and the disbursement of funds therefrom, and shall submit to the State an annual report of revenue and expenditures from the account. The State reserves the right to audit this account. Detailed documentation shall be kept to substantiate the reports for three years following the end of each reporting period. If all of the fee revenues and interest earned thereon are not used for maintenance of the Project, the excess revenue must be credited to the Ohio Department of Natural Resources.
- I. Neither the initial cost nor the amortization of the Cooperative Agency's share of the Project cost can be included in the calculations of the operation and maintenance of the Project.
- J. As may be required by Chapter 4115 of the Ohio Revised Code the contractor and all subcontractors shall pay the applicable prevailing wage rate if any, of the locality as determined by the Department of Industrial Relations on all work performed on this project. The contractor shall comply with all other applicable provisions of Chapter 4115 of the Ohio Revised Code including making the required reports to the Prevailing Wage Coordinator.
- K. The Cooperative Agency agrees that the hiring of employees for the performance of work under this Agreement shall be done in accordance with Sections 153.59 and 153.591, Ohio Revised Code.
- L. The Cooperative Agency certifies that neither it nor its employees are public employees of the State under federal and state law for tax, retirement deduction, and Workers Compensation purposes and that the Cooperative Agency carries Workers Compensation coverage.
- M. The Cooperative Agency certifies that it will maintain a Drug-Free Workplace. The Cooperative Agency agrees to comply with all applicable state and federal laws regarding drug-free workplace. The Cooperative Agency shall make a good faith effort to ensure that no employee of the Cooperative Agency shall purchase, transfer, use, or possess illegal drugs or alcohol or abuse prescription drugs in anyway.
- N. The Cooperative Agency affirms that, as applicable to it, no party listed in Division (I) or (J) of Section 3517.13 of the Ohio Revised Code or spouse of such party has made, as an individual,

within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.

- O. The Cooperative Agency agrees to comply with all applicable federal, state, and local laws in the conduct of the work hereunder. The Cooperative Agency and its employees are not employees of the Department with regard to the application of the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, and state revenue and tax laws. The Cooperative Agency accepts full responsibility for payment of any and all taxes, insurance premiums, or payroll deductions required for all employees engaged by the Cooperative Agency in the performance of the work authorized by this Agreement, including without limitation, unemployment compensation, workers' compensation, and all health care, income tax, social security, and Medicare deductions. The Department is exempt from federal, state, and local taxes and shall not be liable for any taxes under this Agreement. The laws of the state of Ohio shall govern this agreement and any claims arising in any way out of this Agreement. Any provision of this Agreement prohibited by the law of Ohio shall be deemed void and of no effect, including, without limitation, Revised Code Section 149.43. Any litigation arising out of or relating in any way to this Agreement or the performance hereunder shall be brought only in the courts of Ohio, and the Cooperative Agency hereby irrevocably consents to such jurisdiction.
- P. The State of Ohio is self-insured for the indemnification of its officers and employees in the maximum aggregate amount of one million dollars per occurrence in accordance with section 9.87 of the Ohio Revised Code.
- Q. The Cooperative Agency affirmatively represents and warrants to the Department that it is not subject to a finding for recovery under R.C. 9.24, or that it has taken appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that section. The Cooperative Agency agrees that if this representation or warranty is deemed to be false, the Agreement shall be void ab initio as between the parties to this Agreement, and any funds paid by the Department hereunder immediately shall be repaid to the Department, or an action for recovery immediately may be commenced by the Department for recovery of said funds.
- R. The Cooperative Agency, by signature on this document, certifies that the Cooperative Agency: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in Ohio Revised Code Chapter 102 and in Ohio Revised Code Sections 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. The Cooperative Agency understands that failure to comply with Ohio's ethics and conflict of interest laws is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State of Ohio.
- S. The Cooperative Agency affirms to have read and understands Executive Order 2011-12K issued by Ohio Governor John Kasich and signed and completed the Standard Affirmation and Disclosure Form (Exhibit G) and shall abide by those requirements in the performance of this Agreement and perform no services required under this Agreement outside of the United States. The Executive Order is proved as an attachment (Exhibit H) and also is available at the following web site: (<http://www.governor.ohio.gov/Portals/0/pdf/executiveOrders/EO%202011-12K.pdf>). The Cooperative Agency also affirms, understands, and agrees to immediately notify the Department of any change or shift in the location(s) of services performed by the Cooperative Agency or its subcontractors under this Agreement, and no service shall be changed or shifted to a location(s) that are outside of the United States.
- T. In case any one or more of the provisions previously contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or

unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

- U. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and taken together shall be deemed to be one and the same instrument. This Agreement may be executed and delivered by facsimile or electronically in Microsoft Word or PDF format.
- V. The Cooperative Agency also agrees to abide by all policies and procedures of the State which were stated in the application at the time of the Cooperative Agency agreed to this Project.
- W. The following items shall be provided by the Cooperative Agency prior to signature of this Agreement. All items will be attached to this Agreement and be fully incorporated herein:

- Attachment A: Project Description (Watercraft will provide)
- Attachment B: Copy of Deed, Lease or Easement
- Attachment C: Real Estate Description and Plat map
- Attachment D: Certification from Planning and Zoning Authorities
- Attachment E: Approved Project Schedule
- Attachment F: Authority for Cooperative Agency

In witness whereof, the parties hereto have executed this agreement as of the last date entered below:

**STATE OF OHIO DEPARTMENT OF
NATURAL RESOURCES:**

Michael R. Miller, Acting Chief
Division of Watercraft
As Designee For:
James Zehringer, Director

(Signature)

(Date)

COOPERATIVE AGENCY

(Type Name and Title)

(Signature)

(Date)

Federal Tax Identification Number