



Oregon

Kate Brown, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

www.oregon.gov/LCD



March 21, 2022


Spencer Nebel, City Manager
City of Newport
169 SW Coast Hwy
Newport, OR 97365

SENT VIA E-MAIL

Re: Extension Grant Agreement, Grant Number PSM-23-002

Dear,

Grant Agreement PSM-23-002 has an end date of 3/31/2022. DLCD wishes to extend this agreement to 3/31/2023. Your signature below and that of an authorized representative of DLCD constitute an amendment to extend this agreement. All other terms and conditions remain in effect.

Print Name of Authorized Official for the Grantee	Title	Date
Spencer Nebel	City Manager	3-22-22
Signature of Authorized Official for the Grantee 		
Print name of Authorized Official for DLCD	Title	Date
Signature of Authorized Official for DLCD	Grant Program Manager	

Please contact Lisa Phipps, DLCD Coastal Policy Specialist at 503-812-5448 or lisa.phipps@dlcd.oregon.gov with questions or information regarding completion of the project. If you have questions regarding the submittal of the closeout report or this amendment, please contact Kacy Markowitz, Coastal Grants Coordinator at 971-239-9467 or kacy.markowitz@dlcd.oregon.gov.

Yours truly,

Kacy Markowitz

Kacy Markowitz
Coastal Grants Coordinator

cc: Lisa Phipps, DLCD Coastal Policy Specialist
Jeff Hunt, DLCD Procurement Coordinator

STATE OF OREGON
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT



**2021-2023 PROJECT OF SPECIAL MERIT (PSM)
PLANNING ASSISTANCE GRANT**

AGREEMENT COVER SHEET This cover sheet is informational and not a part of the agreement	
Offer Date: November 16, 2021	Grant No. PSM-23-002
Grantee City of Newport 169 SW Coast Hwy Newport, Oregon 97365	DLCD Grant Manager Jeff Hunt, Coastal Grants Coordinator 971-375-5976 jeff.hunt@dlcd.oregon.gov
GRANT AMOUNT: \$10,000	CLOSING DATE: March 31, 2022

INSTRUCTIONS – READ CAREFULLY

In order to receive this grant, Grantee must sign this Agreement and scan it and e-mail it to DLCD at jeff.hunt@dlcd.oregon.gov by **December 1, 2021**. Alternatively, the signed Agreement may be mailed to:

Jeff Hunt, Coastal Grants Coordinator
Department of Land Conservation and Development
635 Capitol St. NE, Suite 150
Salem, OR 97301

If the Agreement is not signed and returned without modification by Grantee by the due date, DLCD may withdraw the grant offer. Upon receipt of the signed Agreement, the DLCD Grant Program Manager will countersign the Agreement and return an electronic file containing the executed Agreement to Grantee with a payment voucher for the grant amount as listed in the Grant Amount box above, to the address provided above.

STATE OF OREGON
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
2021-2023 PLANNING ASSISTANCE GRANT
AGREEMENT

DLCD Grant Number: PSM-23-002

City of Newport

This agreement (“Agreement”) is made and entered into by and between the **State of Oregon**, acting by and through its Department of Land Conservation and Development, hereinafter referred to as “DLCD,” and **City of Newport**, hereinafter referred to as “Grantee,” and collectively referred to as the “Parties.”

1. **Effective Date and Availability of Grant Funds.** This Agreement is effective on the date on which every party has signed this Agreement and all required State approvals have been obtained (“Effective Date”). Grant Funds under this Agreement are available for eligible costs as defined in Section 8 incurred beginning on the Effective Date and ending on the earlier of the termination of this Agreement or **March 31, 2022** (“Closing Date”). DLCD’s obligation to disburse Grant Funds under this Agreement ends 60 days after the earlier of termination of this Agreement or the Closing Date.
2. **Agreement Documents.** The Agreement consists of this document and one attachment, all of which are attached hereto and incorporated by reference:
3. **Grant Funds.** The maximum, not-to-exceed, grant amount that the DLCD will pay to Grantee is **\$10,000**. Disbursements will be made only in accordance with the schedule and requirements contained in this Agreement.
4. **Closeout Report.** Grantee must submit a closeout report to DLCD within 30 days after the termination of the Agreement or the Closing Date, whichever is earlier to the DLCD Grant Manager in writing by personal delivery, e-mailing, or mailing at the address or number set forth in the attachment. The closeout report is attached to this Agreement.
5. **Subsequent funding:** Eligibility for subsequent funding to the Grantee is contingent upon receipt of the closeout report as referenced in Section 4.
6. **Acknowledgment.** All reports, studies, and other documents produced in whole or in part under this grant must indicate on the cover or title page an acknowledgment of the financial assistance provided by DLCD.
7. **Final Products.** Grantee shall provide copies of all final products produced under this grant to DLCD upon request. Grantee must describe final products in the Grant Closeout Report. DLCD may display products on its website.

8. **Acceptable use of grant funds.** Grant funds may be used by Grantee to accomplish and carry out one or more of the following in support of the Yaquina Bay Estuary Management Plan Update:
 - a. Paying the salary of an employee or the fee of a contractor to support the Yaquina Bay Estuary Management Plan update.
 - b. Preparing for meetings such as planning commission, city council, and board of commissioners to support the Yaquina Bay Estuary Management Plan update process. Examples include postage, copying, paper, notices, and other documents.
 - c. Creating, updating, amending, or codifying all or a part of a comprehensive plan, land use regulations, or other planning studies or reports for the purposes of the Yaquina Bay Estuary Management Plan update.
 - d. Collecting data and conducting inventories and studies related to comprehensive plan elements, land use regulations, development codes, zoning ordinances as it relates to the Yaquina Bay Estuary Management Plan update.
 - e. Updating and reprinting estuary management plan maps, inventory data, and plan documents.
 - f. Supporting citizen involvement programs and activities through the Yaquina Bay Estuary Management Plan update including the development and conducting of public workshops.
 - g. Developing, amending, or implementing intergovernmental coordination programs or agreements associated with the Yaquina Bay Estuary Management Plan.
 - h. Purchasing maps, aerial photos, GIS products, or mapping software for the update of the Yaquina Bay Estuary Management Plan.
 - i. Other planning activities or products pre-approved by DLCD.
9. **Excluded uses of grant funds:** The grant funds may not be used for office equipment or other types of hardware such as desks, tables, chairs, cabinets, appliances, computers, printers, photo copiers, digital equipment, vehicles, outdoor supplies, beautification projects, and other business supplies. Grant funds may not be used by the grantee for legal or administrative costs associated with defending the grantee or other grantees from decisions made by the Land Conservation Development Commission or DLCD. Grant funds may not be used for legal or administrative costs associated with Measure 37 or Measure 49 costs incurred by Grantee.
10. **Subsequent funding.** Eligibility for subsequent funding is contingent upon timely receipt of the Closeout Report by DLCD.
11. **Unexpended Funds.** Grantee will return all unexpended grant funds to DLCD with submission of the Closeout Report.
12. **Payment.** All grant funds will be disbursed upon execution of this Agreement.
13. **DLCD Funds.** DLCD certifies that at the time this grant is written sufficient funds are available and authorized.)

14. **Reporting.** At any time during the grant period, when requested by the DLCD grant manager, Grantee shall provide a written report on the status and progress of work performed under this grant.

15. **Indemnity.**

a. **GENERAL INDEMNITY.** SUBJECT TO THE LIMITS OF THE OREGON CONSTITUTION AND STATE OF OREGON TORT CLAIMS ACT, IF APPLICABLE TO GRANTEE, GRANTEE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS DLCD, THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEY FEES, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF GRANTEE OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS AGREEMENT.

b. **CONTROL OF DEFENSE AND SETTLEMENT.** GRANTEE SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO SECTION 15.a; HOWEVER, NEITHER GRANTEE NOR ANY ATTORNEY ENGAGED BY GRANTEE SHALL DEFEND THE CLAIM IN THE NAME OF THE STATE OF OREGON OR ANY AGENCY OF THE STATE OF OREGON, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE STATE OF OREGON OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING FROM THE OREGON ATTORNEY GENERAL, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE ATTORNEY GENERAL, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE STATE OF OREGON. NOR SHALL GRANTEE SETTLE ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE APPROVAL OF THE ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE STATE OF OREGON DETERMINES THAT GRANTEE IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON'S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE.

16. **Recovery of Grant Moneys.** Any Grant moneys disbursed to Grantee under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement must be returned to DLCD. Grantee shall return all Misexpended Funds to DLCD promptly after DLCD's written demand and no later than 15 days after DLCD's written demand. Grantee shall return all Unexpended Funds to DLCD within 14 days after the earlier of expiration or termination of this Agreement."

17. Termination:

- a. **DLCD's Right to Terminate at its Discretion.** At its sole discretion, DLCD may terminate this Agreement:
 - i. **For its convenience** upon thirty (30) days' prior written notice by DLCD to Grantee;
 - ii. **Immediately upon written notice** if DLCD fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow DLCD, in the exercise of its reasonable administrative discretion, to continue to make disbursement under this Agreement; or
 - iii. **Immediately upon written notice** if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- b. **DLCD's Right to Terminate for Cause.** In addition to any other rights and remedies DLCD may have under this Agreement, DLCD may terminate this Agreement immediately upon written notice by DLCD to Grantee, or at such later date as DLCD may establish in such notice, after the occurrence of any of the following events:
 - i. **Grantee is in default** because Grantee 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;
 - ii. **Grantee is in default** because Grantee commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform any of its obligations under this Agreement within the time specified herein or any extension thereof, or so fails to pursue its work hereunder as to endanger Grantee's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after DLCD's notice, or such longer period as DLCD may specify in such notice.
- c. **Grantee's Right to Terminate for Cause.** Grantee may terminate this Agreement by written notice to DLCD if DLCD is in default because DLCD fails to pay Grantee any amount due pursuant to the terms of this Agreement, and DLCD fails to cure such failure within thirty (30) calendar days after Grantee's notice or such longer period as Grantee may specify in such notice; or
- d. **Termination** under Section 14 shall be without prejudice to any claims, obligations, or liabilities either party may have incurred prior to such termination.

- 18. Failure to Comply:** If a party fails to comply with any of the requirements or conditions of this Agreement, the other may, without incurring liability, refuse to perform further pursuant to this Agreement. DLCD shall make no further reimbursement to Grantee and Grantee shall

upon demand by DLCD promptly repay DLCD all unexpended grant funds and grant funds expended in breach of this Agreement.

19. **Accounting and Fiscal Records:** Grantee shall maintain its fiscal records related to this Agreement in accordance with generally accepted accounting principles. The Grantee shall maintain records of the receipt and expenditure of all funds subject to this Agreement for a period of six (6) years after the Project End Date, or for such longer period as may be required by applicable law or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Accounting records related to this Agreement will be separately maintained from other accounting records.
20. **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 DLCD (or any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State 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, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
21. **Audit:** The Oregon Secretary of State, Attorney General of the State of Oregon and the Director of DLCD or any other duly authorized representative of DLCD shall have access to and the right to examine any records of transactions related to this Agreement for six (6) years after the final disbursement of Grant Funds under this Agreement is authorized by DLCD.
22. **Amendments:** Amendments must be facilitated by the DLCD Grant Manager. An amendment to this Agreement may be initiated at any time during the grant period and be signed by all parties on or before thirty (30) days prior to the Closing Date.
23. **Counterparts.** This Grant Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all the parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.
24. **Survival.** All agreements, representations, and warranties of Grantee shall survive the execution and delivery of this Agreement, any investigation at any time made by DLCD or on its behalf and the making of the Grant.
25. **Successors and Assigns.** Recipient may not assign this Agreement or any right hereunder or interest herein, in whole or in part, without the prior written consent of DLCD. This

Agreement shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns.

26. **Validity and Severability.** If any provision of this Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Agreement and the remainder shall be construed without the invalid provision so as to carry out the intent of the parties to the extent possible without the invalid provision.
27. **Relationship of the Parties.** Nothing contained in this Agreement, or any acts of the parties hereto shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture or of any other association other than that of independent contracting parties.
28. **No Third-Party Beneficiary Rights.** No person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

DLCD Planning Assistance Grant Information and Signature Page

This grant, approved by the Director of DLCD, acting on behalf of the Land Conservation and Development Commission, constitutes an obligation of funds in return for the work described herein. By signing the document, Grantee agrees to comply with the provisions contained in and attached to this Agreement. Upon acceptance by Grantee, the signed Agreement shall be returned to DLCD.

By signing this Agreement, the Parties each represents and warrants that it has the power and authority to enter into this Agreement and that the Agreement is executed by its duly authorized representative. By signing the document, Grantee agrees to comply with the terms of this Agreement.

Grantee Jurisdiction Name City of Newport		E-mail Address s.nebel@newportoregon.gov	
Mailing Address, City, State, Zip code 169 SW Coast Highway			
Telephone Number 541-574-0601		Fax Number 541-574-0644	
Print Name of Authorized Official for the Grantee Spencer Nebel		Title City Manager	Date 12-7-21
Signature of Authorized Official for the Grantee 			
Print name of Authorized Official for DLCD 		Title Grant Program Manager	Date
Signature of Authorized Official for DLCD			

Attachment A

**Department of Land Conservation and Development
2021-23 PSM Planning Assistance Grant Closeout Report**

Grantee City of Newport	Grant No. Assigned by DLCD PSM-23-002	Grant Funds – Already Dispersed \$10,000*	Final Report
Funding / Grant Period From: Agreement Execution	Funding / Grant Period To: 3/31/2022	Summary of Activities and Products Provide a brief description of activities performed and/or products worked on using funds from this grant in the space provided below. Expenditure detail not needed for this section. In many cases a sentence or two is all that is required but we welcome as much information as you can provide.	
Transactions	Do not write in this space		
DLCD Grant Funding Expenditures	Provide amounts in spaces below		
1. Salaries and Benefits			
2. Supplies and Services			
3. Agreements (including consultants – provide name and contact information)			
4. Other (provide detailed list and explanation)			
5. DLCD Total (add lines 1, 2, 3, 4)			
Local Contributions – not required	Provide amounts in spaces below		
6 Salaries and Benefits			
7. Supplies and Services			
8. Agreements			
9. Other			
10. Local Total (if any)			
11. Certification: I certify to the best of my knowledge and belief that this report is correct, complete, and that all expenditure are for the purposes set forth in the award document. I further certify that all records are available upon request, and the financial records will be retained for SIX (6) YEARS after the Final Products and Payment are received.			
12. * If the total grant expenditures are less than the grant funds already dispersed, enter the difference here and send a reimbursement check for that amount to: DLCD, ATTN: Fiscal. \$ _____			
13. Typed or Printed Name and Title (required)		14. Mailing Address: Include City, State and Zip Code (required)	
15. Authorized Certifying Official Signature (required)		16. Date (required)	
PLEASE DO NOT WRITE BELOW THIS LINE			
DLCD CERTIFICATION (for DLCD use only) I certify, as a representative of the Department of Land Conservation and Development, that the grantee: ____ has met the terms and conditions of the grant and that all funds have been expended. ____ has not met the terms and conditions of the grant for the reasons stated on the attached sheet, and reimbursement from the grantee in the amount of \$ _____ is due.			
Signature of DLCD Grant Manager		Date Signed	
Signature of DLCD Program Manager		Date Signed	
BATCH #/DATE _____		VOUCHER#/DATE _____ PCA _____	
OBJ. CODE _____		VENDOR NO. _____ AMOUNT _____	

Closeout Form Attachment - Instructions

Instructions for Department of Land Conservation and Development 2021-23 Planning Assistance Grant Closeout Report

If you have questions about the Closeout Report or what the grant can be used for, please contact Jeff Hunt, Coastal Grants Coordinator at 971-375-5976 or jeff.hunt@dlcd.oregon.gov.

The closeout report documents the allowable expenditures of previously distributed funds. Unexpended funds must be returned to DLCD.

- In the second row of the closeout report, please fill in the Starting Date (“Funding / Grant Period From”) for which the reimbursable expenditures were incurred. This will be the date the city or county signed the grant agreement.
- Under “Transactions,” complete items 1–5 for how the grant funds were used (required) and items 6–10 for local contributions (optional). Please do not include expenditures for projects or activities that the grant did not contribute to.
 1. **Salaries and Benefits** include the grantee’s staff time, including Other Personnel Expenses. Receipts are not required with this report submission.
 2. **Supplies and Services** include the grantee’s supplies used for the planning program and services not covered by an agreement or contract. Receipts are not required with this report submission.
 3. **Agreements** include consultants, attorneys, and any company or individual retained by the grantee to conduct work under the grant. This category does not include employees of the grantee, but rather an individual or entity that invoices the grantee for services rendered. Information required for the closeout report is: Name, address, and phone number of the payee. If there are multiple entities, please provide the amount of grant funds allocated for the reimbursement of each individually. If space in the Summary of Activities and Products box is insufficient to identify contractors, please attach an additional sheet.
- 4. Please provide a brief explanation and dollar breakdown for amounts listed as **“Other.”** Receipts are not required.
- 5. The **Total** listed in the “DLCD Grant Expenditures” section cannot exceed the total amount of the previously dispersed funds. If the total is less than the dispersed amount, the difference between the amount previously dispersed and the amount listed on the **Total** of the DLCD Grant Expenditures section is due and payable to DLCD upon submission of the closeout report. Please send a check with the report to: DLCD, Attn: Fiscal Department, 635 Capitol Street NE, Suite 150; Salem, OR 97301.

- Reporting of Local Contributions (boxes 6–10) is not required. DLCD asks for the information to receive accurate information regarding the cost of activities and/or products worked on in compliance with this grant. This category includes both in-kind and cash contributions.
- **Certification (box 11): Please read and understand the certification statement.** If you have questions please contact Jeff Hunt, Coastal Grants Coordinator at 971-375-5976 or jeff.hunt@dlcd.oregon.gov.
- **Returning funds (box 12):** When returning general grant funds that were awarded to the jurisdiction because expenditures were less than the grant funds award to the jurisdiction, please indicate the number of dollars being returned.

Boxes 13–16 are for documenting responsibility for the information being submitted and requesting payment. Please use dark blue or black ink so the information shows when copied or scanned.

13. Print Name and Title legibly.

14. Print the mailing address where payment should be sent.

15. Signature of Authorized Certifying Official: by signing this box this person takes responsibility of the information and accuracy of the information.

16. “Date” is the date the closeout form was signed. It must be sent by the closeout date.

- The “Summary of Activities and Products” box, located on the top right side of form, must be completed. Please provide a brief description of activities performed and/or products worked on in compliance of this grant. Use additional sheets as needed. The Planning Assistance Grant Awards Conditions describes in detail the projects and activities allowed. (If you have questions, please contact Jeff Hunt, Coastal Grants Coordinator at 971-375-5976 or jeff.hunt@dlcd.oregon.gov).

The grant funds dispersed to you must be used after the date on which all parties have signed the agreement and not after the closing date of this agreement.

It is important that you retain documentation of expenditures in a grant file maintained in your jurisdiction for six (6) years from the closeout date.

Two ways to submit the Closeout Report:

1. E-mail a PDF file of the signed closeout form attachment and cover memo to jeff.hunt@dlcd.oregon.gov
2. Send the hard copy of the signed closeout form and cover memo via US Mail to:

Coastal Grants Coordinator
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540

