

**AUTHORIZATION FOR
AGREEMENTS, MOUs, OR
OTHER DOCUMENTS OBLIGATING
THE CITY**

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: Agreement Date: 6-28-2023

Statement of Purpose: Tourism Facilities Grant 2023
with Newport Sea Lion Docs Foundation

Department Head Signature: [Signature]

Remarks, if any: _____

City Attorney Review and Signature: See Email Date: 6-28-2023

Other Signatures as Requested by the City Attorney: _____

	Signature	Name/Position
Budget Confirmed:	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	Date: _____
Certificate of Insurance Attached:	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	
City Council Approval Needed:	Yes <input type="checkbox"/> No <input type="checkbox"/>	Date: _____

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: [Signature] Date: 6-29-23

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: _____ Date: _____

Date posted on website: _____

GRANT AGREEMENT

BETWEEN: City of Newport,
a municipal corporation of the State of Oregon, (City)

AND: Newport Sea Lion Docks Foundation
a nonprofit corporation incorporated in the State of Oregon (NSLDF)

EFFECTIVE DATE: The latest date signed by the parties.

RECITALS

- A. The City of Newport (City) is a municipal corporation with Home Rule authority pursuant to its Charter and the constitution of the State of Oregon.
- B. The Newport Sea Lion Docks Foundation (NSLDF) is a nonprofit corporation organized under section 501(c)(3) of the Internal Revenue Code and the Laws of the State of Oregon.
- C. Pursuant to state law and the Newport Municipal Code, the City collects transient room tax revenues from the occupants of transient lodging facilities located within the City.
- D. The City created the Tourism Facilities Grant Program to facilitate grants of local transient room tax revenues (Grant Funds) to fund Tourism-Related Facilities.
- E. Tourism-Related Facilities are defined as a conference center, convention center or visitor information center, or other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities.
- F. NSLDF previously submitted application materials to the City and was selected for an award of Grant Funds to be used by the NSLDF for the Final Phase of the Replacement of the Sea Lion Docks. Previous agreements between the City and NSLDF for an award of Grant Funds are dated January 8, 2014, April 16, 2015, and November 4, 2021.
- G. The Project is a Tourism-Related Facility because it is improved real property that has a useful life of ten or more years and has a substantial purpose of supporting tourism or accommodating tourist activities.
- H. The City wishes to grant, and NSLDF wishes to accept, Grant Funds totaling \$22,325 to be used for the project.

- I. NSLDF wishes to proceed with the project immediately.

AGREEMENT

1. The City agrees to grant and the NSLDF agrees to accept, Grant Funds in the amount of \$22,325 to be used to fund the Project, as set forth in the attached Exhibit A and subject to the terms and conditions of this Agreement.
2. DEFINITIONS - As used in previous agreements between the City and NSLDF for an award of Grant Funds, dated January 8, 2014, April 16, 2015, and November 4, 2021.
 - A. "Match" is any contribution to the Project made up of funds other than Grant Funds. Match may include:
 - i. Cash on hand or cash that is pledged to ~~be~~ on hand prior to commencement of the project;
 - ii. Secured funding commitments from other sources;
 - iii. Pending or potential commitments of funding from other sources. In such instances, Tourism Grant Program funding will not be released prior to secured commitment of the other funds. Pending commitments of the funding must be secured within the time provided in this Agreement;
 - iv. In-kind contributions (such as labor or materials) approved by the City; or
 - v. Subject to approval ~~by~~ the City, monies expended by NSLDF on the Project prior to the effective date of this Agreement.

3. TERM.

This Agreement takes effect on the date it is signed by all the parties, and expires June 30, 2024, unless earlier terminated pursuant to the terms of this Agreement.

4. NSLDF OBLIGATIONS.

- A. NSLDF will perform all work on the Project.
- B. NSLDF will obtain all required city, state, and federal permits prior to beginning work on the Project.
- C. NSLDF represents that the Project is a component of a project for which initial funding was provided in 2014.

- D. NSLDF acknowledges and agrees that Grant Funds received by NSLDF from the City pursuant to this Agreement will be used exclusively to perform work on the Project. NSLDF further acknowledges and agrees that Grant Funds may not be used to refinance existing debt.
- E. NSLDF acknowledges and agrees that NSLDF is responsible for all the expenses of operation and maintenance of the Project, including but not limited to adequate insurance and any taxes or special assessments applicable to the Project.
- F. NSLDF will comply with all federal, state, and local laws and regulations applicable to the Project, including but not limited to the City's Tourism Facilities Grant Program Policies (rev. April 2014) and workers' compensation laws.
- G. NSLDF will provide, upon the City's request, any documents or information identified or referenced in NSLDF's previously-submitted application materials. This information may include, but is not limited to, information pertaining to Project schedule, budget and cash flow, feasibility, readiness to construct, permits, likelihood of completion within a planned time frame, agreement for loan of the propeller from the Port of Newport, and other items related to completion of proposed Project elements.
- H. During the term of this Agreement, NSLDF will maintain its status as a tax-exempt nonprofit corporation, duly organized and validly existing under the laws of the State of Oregon.
- I. NSLDF will indemnify, defend, save, and hold harmless the City and its officers, employees, and agents from any and all claims, suits, or actions of any nature arising out of the activities and due to the negligence and/or fault of NSLDF, its officers, employees, agents, contractors, and subcontractors pursuant to this Agreement.
- J. Notwithstanding NSLDF's defense obligations described in paragraph I of this section, neither NSLDF nor any attorney engaged by NSLDF shall defend any claim in the name of the City, nor purport to act as a legal representative of the City, without the prior written consent of the City's attorney. The City may, at any time, elect to assume its own defense and settlement. The City reserves all rights to pursue any claims it may have against NSLDF if the City elects to assume its own defense.
- K. NSLDF acknowledges and agrees that the City shall have reasonable access to NSLDF's books, documents, papers and records related to this Agreement during the term of this Agreement and for a period of six years after termination of this Agreement. NSLDF will make copies of applicable records available to the City upon request.

- L. NSLDF acknowledges and agrees that this Agreement does not create an employment relationship between the City and NSLDF, its officials, employees, agents, or contractors. NSLDF further agrees that NSLDF is exclusively responsible for all costs and expenses related to NSLDF's employment of individuals to perform work related to the Project, including but not limited to retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
- M. NSLDF will keep an accounting of Grant Funds received pursuant to this Agreement to ensure that the Grant Funds are used as required by this Agreement. NSLDF will provide the accounting required by this paragraph to the City annually during the term of this Agreement, as well as upon request by the City.
- N. Within 60 days of completion of the Project, NSLDF will submit a final project report to the City detailing each expenditure of Grant Funds, and requesting payment of the remaining Grant Funds. In the event that NSLDF completes the Project without using all of the Grant Funds provided by the City, any unexpended Grant Funds will be returned to the City with the final project report, and the final project report will not include a request for payment of the remaining Grant Funds. The obligation to return unused Grant Funds upon completion of the Project survives the expiration or earlier termination of this Agreement.
- O. In the event of default by NSLDF under section 6 of this Agreement, NSLDF agrees, upon the City's demand, to return any unexpended Grant Funds to the City and to repay to the City any Grant Funds expended in violation of the terms and conditions of this Agreement or of the Tourism Facilities Grant Program Policies (rev. April 2014).

5. CITY OBLIGATIONS.

- A. The City agrees to pay NSLDF the total grant amount of \$22,325 once this agreement is fully executed by both parties.
- B. Grantee is required to notify the City if the project does not move forward in the 2023-2024 fiscal year, and to submit a final report on completion of the project.
- C. Notwithstanding paragraphs A and B of this section, the City's payment obligations under this Agreement are contingent upon the availability of funds.

6. DEFAULT.

- A. The following constitute default by NSLDF under this Agreement:

- i. Failure to substantially commence work on the Project within one year of the effective date of this Agreement;
 - ii. Failure to complete the Project by June 30, 2024;
 - iii. A determination by the City that material statements, information, or representations made by NSLDF related to this Agreement are false, misleading, fraudulent, or misrepresentations;
 - iv. A change in circumstances such that material information relied upon by the City in making the decision to award Grant Funds to NSLDF is no longer true or accurate;
 - v. Failure of the Project to meet the definition of a Tourism-Related Facility;
 - vi. Violation of any of the terms or conditions of this Agreement;
 - vii. Dissolution of NSLDF; and
 - viii. Appointment of a receiver, trustee, liquidator, or conservator for NSLDF or to take possession of all or substantially all of NSLDF's property; or the filing of a petition for bankruptcy, insolvency, dissolution, liquidation, or reorganization, or order for relief in which NSLDF is named as debtor, by, against, or with respect to NSLDF pursuant to any federal or state statute, regulation or law for the protection of debtors; and, with respect to any such appointment or filing, failure of NSLDF to secure a stay or discharge thereof within 45 days after such appointment or filing.
- B. In the event of a default by NSLDF, the City will not exercise the remedies provided in paragraph C of this section unless and until the City notifies NSLDF in writing of the default and NSLDF fails to cure the default within 20 days of receipt of the notice; or if the default cannot reasonably be cured within 20 days, NSLDF commences action to cure the default within 10 days of receipt of the notice and diligently pursues the cure to completion. In no event will the time for opportunity to cure exceed 60 days from the date of receipt of notice of default. If the default is not cured within the time provided in this paragraph, the City may elect to pursue any of the remedies provided in paragraph C of this section.
- C. In the event of default or failure to cure within the time period provided in paragraph B of this section, the City may pursue any one or more of the following remedies:
- i. Revocation of Grant Funds;

- ii. Withholding of undisbursed funds;
- iii. Return of unexpended grant funds by NSLDF;
- iv. Repayment of expended grant funds by NSLDF;
- v. Termination of this Agreement.

D. The remedies provided by paragraph C of this section are cumulative, not exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.

7. TERMINATION.

- A. The City may terminate this Agreement effective upon delivery of written notice to NSLDF or at such later date as may be determined by the City upon the following conditions:
 - i. Default by NSLDF under this Agreement; or
 - ii. Lack of funding necessary to award Grant Funds to NSLDF.
- B. NSLDF may terminate this Agreement effective upon delivery of written notice to the City if the City fails to make payments due under this Agreement or fails to abide by the terms and conditions of this Agreement.
- C. Termination of this Agreement will not prejudice any rights or obligations of the parties accrued prior to termination.
- D. The City's entitlement to the remedies provided in section 6 of this Agreement survives termination of this Agreement.

8. NOTICE.

All notices given pursuant to this Agreement must be in writing and delivered to the parties at the addresses herein. Notice given pursuant to this section will be deemed to have been received on the date of personal delivery, three calendar days after deposit in the United States mail postage prepaid, or on the date of confirmed delivery by: 1) facsimile; 2) registered mail, return receipt requested; or 3) overnight delivery. Either party may change its notice address under this section at any time by written notice to the other party.

CITY:

NSLDF:

City of Newport
Spencer R. Nebel, City Manager
169 SW Coast Highway
Newport, Oregon 97365

Newport Sea Lion Docks Foundation
Janell Goplen, President
333 SW Bay Boulevard
Newport, Oregon 97365

9. ASSIGNMENT.

NSLDF may not assign any of its rights, interests, or obligations under this Agreement without the prior written consent of the City, which may be withheld in the City's sole discretion.

10. MODIFICATION.

No modification of this Agreement will be valid unless it is in writing and signed by both parties.

11. RELATIONSHIP OF PARTIES.

The parties acknowledge and agree that nothing in this Agreement is intended to nor shall be construed to create any form of partnership or joint venture relationship between the parties.

12. NO THIRD PARTY BENEFICIARIES.

This Agreement is entered into for the sole benefit of the City and NSLDF, and nothing contained herein is intended for the benefit of any other person or entity.

13. SEVERABILITY.

If any provision of this Agreement is held by any court of competent jurisdiction to be invalid, such invalidity will not affect any other provisions of this Agreement, and this Agreement will be construed as if the invalid provision had never been included in this Agreement.

14. WAIVER OF BREACH.

The waiver by either the City or NSLDF of a breach of any provision of this Agreement will not operate or be construed as a waiver of any other provision of this Agreement or of any subsequent breach of the same provision of this Agreement.

15. GOVERNING LAW.

This Agreement is to be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflicts of law principles.

16. VENUE.

Any legal action or proceeding arising out of or relating to this Agreement shall be commenced in the Circuit Court of the State of Oregon for Lincoln County. The parties hereby consent to the jurisdiction of that court, waive any objections to venue and waive any claim that the forum is an inconvenient forum.

17. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement of the parties relating to the subject matter herein. There are no promises, terms, conditions, or obligations oral or written other than those contained herein. This Agreement supersedes all prior communications, representations or agreements, either oral or written, between the parties relating to the subject matter herein.

18. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.

19. PARAGRAPH HEADINGS.

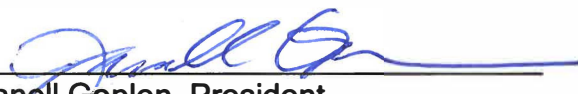
Paragraph headings are used solely for convenience and are not to be used in construing or interpreting this Agreement.

20. AUTHORITY TO ENTER INTO AGREEMENT.

Each person executing this agreement on behalf of a party to this agreement hereby covenants that he or she is duly authorized by that party to bind that party to this agreement.



Spencer R. Nebel, City Manager
City of Newport



Janell Goplen, President
Newport Sea Lion Docks Foundation

06-29-23

Date

6.29.2023

Erik Glover

From: David Allen
Sent: Tuesday, June 27, 2023 3:43 PM
To: Erik Glover; Spencer Nebel
Subject: Re: Newport Sea Lion Docks Foundation Grant Agreement 2023
Attachments: Newport Sea Lion Docks Foundation Grant Agreement 2023 - final edits.doc; Exhibit A - Sea Lion Docks Grant Agreement 2023.pdf

Attached is the draft agreement with edits in track changes, and also attached is the e-mail request (Ex. A to agreement). --David

From: Erik Glover
Sent: Monday, June 26, 2023 12:36 PM
To: David Allen; Spencer Nebel
Subject: KPTV Contract and Sealion Docks Foundation Grant Agreement

Attached for your review:

On the KPTV contract, customarily I have seen language where we have the option to extend this for 2 additional years, for a total of 3 years.

In my review it appears this is being spooled up as a 3 year contract by KPTV, and I'm assuming went to Council for that reason. I wrote it as a 3 year term contract.

Erik

Erik Glover
Assistant City Manager/City Recorder
City of Newport, Oregon 97365
541-574-0613
e.glover@newportoregon.gov