

NOAA GRANT APPLICATION COOPERATIVE AGREEMENT

This agreement ("Agreement") is between the City of Salem, an Oregon municipal corporation ("City"), and the Santiam Water Control District, an Oregon water control district ("District").

RECITALS

- A. The City and District are parties to a 1966 agreement ("1966 Agreement"). The 1966 Agreement assigns interests, costs, and obligations for the performance of maintenance, operation, and improvements to the Upper and Lower Bennett Dams, fish ladders and related infrastructure ("Bennett Facilities").
- B. The parties desire to make Bennett Facility improvements ("Bennett Facility Improvements"). The Bennett Facility Improvements are as yet undefined.
- C. To fund the identification, design, and partial performance of the Bennett Facility Improvements, the parties desire to submit a grant application for the 2023 NOAA Transformational Habitat and Coastal Resilience Grant ("NOAA Grant"). Time is of the essence in the submission of the NOAA Grant.
- D. After submitting the NOAA Grant application and prior to initiating construction of any improvements, the parties desire to supersede the 1966 Agreement by negotiating and entering into a new agreement controlling title and assigning obligations surrounding the Bennett Facilities ("Bennett Facilities Master Agreement").

Therefore, the parties agree to the following terms.

TERMS

- 1. **Effective Date.** This Agreement is effective on the last date of signature applied below ("Effective Date").
- 2. **Consideration.** The District is providing consideration for this Agreement by adopting the obligation to support the NOAA Grant with the City as the applicant. The City is providing consideration for this Agreement by adopting the obligation to submit the NOAA Grant as the applicant working in cooperation with the District. These mutual promises offer value to each party because they increase the likelihood of a grant award.
- 3. **Bennett Facilities Master Agreement.** The parties will enter into a Bennett Facilities Master Agreement that supersedes the 1966 agreement no later than May 1, 2026. Should parties fail to enter into a Bennett Facilities Master Agreement by May 1, 2026, construction of the Bennett Facility Improvements will not commence unless otherwise agreed by both parties in writing.

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4. **Good Faith Obligations.** Without regard for the success of NOAA Grant application, the parties adopt a good faith obligation to begin negotiations of the terms of the Bennett Facilities Master Agreement by December 31, 2024, and to enter into the Bennett Facilities Master Agreement by May 1, 2026.
5. **Term.** The Term of this Agreement is from the Effective Date until the earlier of the date that the NOAA Grant Priorities are completed or the date the Bennett Facilities Master Agreement is signed.
6. **NOAA Grant Scope.** The parties will apply the NOAA Grant to the design and permitting of the Bennett Facilities Improvements and the replacement of the Upper Bennett Dam and the construction of the Lower Bennett Dam fish ladder ("NOAA Grant Priorities"). If NOAA Grant funds are insufficient to fully perform the NOAA Grant Priorities, the City will ensure adequate funding is secured from other funding sources to fully perform the NOAA Grant Priorities. The District's financial obligations towards the NOAA Grant Priorities are limited to those specified in the District's Partner Agency Letter of Commitment submitted as part of the NOAA Grant application (Attachment 1).
7. **1966 Agreement.** The parties will not attempt to enforce, and will not bring a claim under, the 1966 Agreement during the Term of this Agreement. In the event that the Parties are unable to execute a Bennett Facilities Master Agreement by May 1, 2026, any and all restrictions on the Parties' rights and obligations under the 1966 Agreement created by this section shall be null and void.
8. **Counterparts.** This Agreement may be signed in counterparts.

9. **Signatures.**

CITY OF SALEM

By: _____

Title: _____

Date: _____

SANTIAM WATER CONTROL DISTRICT

By: _____

Title: _____

Date: _____