

SAMPLE

AGREEMENT NUMBER
xx-101-xxx
REGISTRATION NUMBER
3680

PROJECT CODE XXX

- This Agreement is entered into between the _____ named below:
 STATE AGENCY'S NAME
DEPARTMENT OF BOATING AND WATERWAYS (DEPARTMENT)
 CONTRACTOR'S NAME
 NAME (GRANTEE)
- The term of this Agreement is: _____ DATE _____ through _____ *(20 years from Date of Acceptance of the Project)*
- The maximum amount of this Agreement is: **\$ XXX,000.00**
 XXX THOUSAND DOLLARS
- The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference, made a part of the Agreement.

(PROJECT NAME) BOAT LAUNCHING FACILITY

Exhibit A – Small Craft Launching Facility Construction Grant and Operation Agreement	15 pages
Exhibit A, Attachment 1 – Department of Boating and Waterways Maintenance Guidelines	4 pages
Exhibit B – (NAME) Boat Launching Facility Feasibility Report	9 pages
Exhibit C* - General Terms and Conditions	GTC 306

Items shown with an Asterisk (), are hereby incorporated by reference and made a part of this agreement as if attached hereto. These documents can be viewed at <http://www.ols.dgs.ca.gov/Standard+Language/default.htm>*

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		<i>California Department of General Services Use Only</i>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) NAME		
BY (Authorized Signature) 	DATE SIGNED(Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
ADDRESS		
STATE OF CALIFORNIA		
AGENCY NAME DEPARTMENT OF BOATING AND WATERWAYS		
BY (Authorized Signature) 	DATE SIGNED(Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING RAYNOR TSUNEYOSHI, Director		
ADDRESS 2000 EVERGREEN STREET, SUITE 100 SACRAMENTO, CALIFORNIA 95815-3888		

Exempt per:

**SMALL CRAFT LAUNCHING FACILITY
CONSTRUCTION GRANT AND OPERATION AGREEMENT**

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ARTICLE 1 – DEFINITIONS

- A. “Account”: An interest bearing account to be established by the Grantee for the deposit of Grant funds when grant funds are disbursed in advance (see Article 5); such account is to be designated the “Boating Grant - NAME Boat Launching Facility Development Fund” which shall reflect all receipts and expenditures of grant funds.
- B. “Budget Act”: The Legislature enactment of a budget in support of on-going programs (appropriations) in accordance with the provisions of Section 12 or Article IV of the Constitution of the State of California.
- C. “CEQA”: The California Environmental Quality Act.
- D. “Commission”: The Boating and Waterways Commission.
- E. “Date of Acceptance”: The date specified on the Project Completion Certification and which denotes the beginning of the Twenty (20) year portion of the Grant term in accordance with Article 3 (A) of this Exhibit.
- F. “Department”: The Department of Boating and Waterways.
- G. “Effective Date”: The date this Agreement is approved by the Department of General Services.
- H. “Grant”: Funds provided pursuant to Harbors and Navigation Code section 72.5 to finance all or part of the Project Costs.
- I. “Grantee”: The Entity identified on the Standard Agreement STD 213.
- J. “Project”: The construction and development of a small craft launching facility as described in Exhibit B.
- K. “Project Area”: The real property, and improvements thereto, identified in Exhibit B, within which the Project will be undertaken.
- L. “Project Completion Certification”: A fully executed Notice of Completion, or equivalent, which states the Grantee, has accepted the Project as complete on a specific date (Date of Acceptance).
- M. “Project Costs”: Management, design, material and construction costs that are incurred by the Grantee for the purpose of completing the Project. However, Project costs incurred:
1. For indirect or overhead charges may only be reimbursed with prior written approval by the Department and may be no greater than the combined maximum budget allocation for *Engineering, Inspection and Permits* Costs as identified in Exhibit B (Feasibility Report – Cost Estimate Table),
 2. For engineering, inspection, and management services provided by Grantee or

Grantee's personnel may only be reimbursed with prior written approval of Department, and

3. Shall not include any expenses incurred prior to the Effective Date of this Agreement.

ARTICLE 2 - GRANTEE'S WARRANTIES

- A. Grantee warrants that the obligation created by this Agreement will not create an indebtedness or liability contrary to the provisions of Section 18 of Article XVI of the Constitution of the State of California.
- B. Grantee warrants that it has title to, or adequate interests in, the Project Area. Adequate interests include, but are not limited to, the following:
 1. Access to the Project Area by a maintained public way,
 2. A right of passage over a waterway, open to the public, between the Project Area and navigable waters, and
 3. Easements or other rights of way outside the Project Area sufficient to provide utilities and services to the Project.
- C. Grantee warrants that there is no encumbrance, lien, easement, license, title, cloud or other interest that may interfere with the Project Area or use thereof by the public.

ARTICLE 3 - TERM OF AGREEMENT

- A. This Agreement, subject to any provision for prior termination, shall begin on the Effective Date and shall continue for Twenty (20) years from the Date of Acceptance by the Grantee.
- B. This Agreement may be extended, amended or cancelled upon the written agreement of the parties.

ARTICLE 4 – PHASE FUNDING OF GRANT/BUDGET CONTINGENCY

It is the intent of the Department to provide funding to Grantee that, when added to Grantee's available construction funds, will be sufficient to construct the Project. However, dependent upon the amount of funding necessary for Project construction and projected construction timelines, funding may be phased over multiple years. In the event that funds are to be phased over multiple years Department and Grantee understand and mutually agree:

- A. Only funds that have been appropriated by the Legislature and approved for expenditure on the Project by the Commission on or before the Effective Date of this Agreement are authorized for disbursement through this Agreement.

- B. Action by the Legislature in one or more future Budget Acts is necessary to appropriate any additional funding phases. Such action will be added to this Agreement through amendment only after the Commission approves such action.
- C. In the event that the Legislature or Commission, for any reason, do not approve sufficient future funding for this project, and provided that Grantee has not accepted any grant funds, Department shall have no liability to pay any funds whatsoever to Grantee or to furnish any other consideration under this Agreement and Grantee shall not be obligated to perform any provision of this Agreement; this Agreement shall be of no further force and effect.
- D. In the event that the Legislature or Commission do not approve sufficient funds to complete the Project and Grantee has drawn grant funds:
 - 1. Grantee shall repay all drawn grant funds within One Hundred Eighty (180) days of the end of the fiscal year that such approval is denied, or
 - 2. Grantee shall complete the Project within the scheduled timeline using Grantee's own funds, or
 - 3. Department and Grantee may agree upon a reduced scope version of the Project to be completed within the scheduled timeline and all funds in excess of those previously appropriated necessary to complete the Project shall come from Grantee, or
 - 4. Department and Grantee may, within One Hundred Eighty (180) days of knowledge of such denial, agree that the expenditure of such funds toward the Project constitutes construction completion. The date of such agreement shall become the Date of Acceptance of the Project and Grantee shall be obligated to perform all non-construction provisions of this Agreement for 20 years beyond the Date of Acceptance.

ARTICLE 5 - DISBURSEMENT OF GRANT

The Department shall provide a Grant to the Grantee in the maximum amount stated on STD 213 line 3 of this Agreement, however.

- A. The Department shall have no obligation to disburse any of the Grant unless and until the Grantee demonstrates that it has acquired all permits necessary to construct and operate the Project.
- B. The Department shall have no obligation to disburse any of the Grant unless and until the Grantee demonstrates that it has satisfactorily complied with the California Environmental Quality Act (CEQA) for the Project.

- C. Grant disbursements to cover Project Costs may be made either (1) in advance of Project work or (2) after the occurrence of work (in arrears).
1. Grant advances shall be subject to the following conditions:
 - (a) The Grantee may request a Grant advance from the Department to cover those Project Costs expected to occur in the succeeding Ninety (90) day period.
 - (b) The Grantee shall deposit all Grant funds into the Account upon receipt.
 - (c) Requests for Grant advances may not be made more than once every Ninety (90) days.
 - (d) The Grantee must request advances in writing. Invoices or other evidence of Project Costs must accompany requests.
 - (i) The Department may withhold from Grant advances an amount equal to Ten Percent (10%) of each disbursement until the Department has accepted the Project as complete and has approved all Project Costs.
 - (e) All expenditures of advanced Grant funds must have prior approval of the Department.
 - (f) The Grantee shall place in the Account any advanced Grant funds that are not required to meet immediate contractual obligations; any interest accrued from such investments shall be deposited into the Account and applied towards the Project Costs.
 - (g) The Grantee shall request Department approval of the final expenditure of advanced Grant funds no later than Thirty (30) days following the Department's acceptance of the Project as completed.
 - (h) The Grantee shall return to the Department all Grant funds, including interest; remaining in the Account after all Project Costs have been paid no later than Sixty (60) days following Date of Acceptance of the Project by the Grantee.
 2. Grant disbursements made in arrears shall be made as follows:
 - (a) The Grantee may request a Grant disbursement in arrears not more than once every Thirty (30) days; paid invoices or other evidence of Grantee's payment of Project Costs must accompany such requests.
 - (b) The Department may withhold from Grant disbursements an amount equal to Ten Percent (10%) of each disbursement until the Department has accepted the Project as complete and has approved all Project Costs.

- (c) The Grantee shall request final disbursement no later than Sixty (60) days following the Date of Acceptance of the Project by the Grantee.
- D. The Grantee shall provide the following to the Department within Sixty (60) days of the Date of Acceptance:
1. A Project Completion Certificate (or equivalent)
 2. An accounting of all Grant Funds
- E. The Department may withhold any Grant disbursement if the Grantee fails to comply with any of the provisions of this Agreement.
- F. Grant funds will not be advanced or approved for expenditure for Project Costs which the Grantee has financed with funds from another source.

ARTICLE 6 - CONSTRUCTION OF PROJECT

- A. The Grantee shall complete the Project no later than May 1, 200X (*five year period tied to Budget Act*). At its sole discretion, the Department may extend this completion date up to an additional Three (3) years if necessary to complete the Project. However, under no circumstances shall the Project be completed later than May 1, 20XX+3.
- B. The Grantee shall, within Sixty (60) days of approval of this Agreement, provide the Department with a Project schedule showing the proposed dates of the following Project phases or milestones: Beginning and ending of Grantee selection of the Project design consultant; Department approval of the consultant Agreement; beginning and ending of Project design; Department approval of final plans and specifications; beginning and ending of Grantee advertising of Project for bids; Project bid opening date; Department approval of construction Agreement; beginning and ending of Project construction; acceptance of Project by the Grantee; and, submission of a Project Completion Certificate to the Department.
- C. The Grantee shall obtain from the Department advance written approval of the following:
1. All bid documents prior to advertisement,
 2. All contracts prior to award, and
 3. All construction change orders that increase or decrease the construction contract amount by \$5,000 or more.
- D. All architectural and engineering contracts for plans and specifications shall require that the plans and specifications:

1. Be prepared by persons licensed by the State of California to undertake the type of design work required by the Project (engineer's/architect's certificate number to appear on construction contract design documents),
 2. Be prepared in conformance with the most recent version of the Department of Boating and Waterways' *Layout, Design and Construction Handbook for Small Craft Boat Launching Facilities*,
 3. Be submitted to the Department and Grantee on CD or DVD; all drawings shall be in one of the following electronic file extensions: .DWG or .DXF, and specifications shall be submitted in MS Word or WordPerfect format,
 4. Become the property of the Grantee,
 5. Provide for all Project facilities set forth in Exhibit B, and
 6. Be prepared in conformance with Executive Order D-8-99.
- E. All construction contracts for the Project shall:
1. Be awarded in accordance with all applicable laws and regulations,
 2. Contain the following clause: "Representatives of the Department of Boating and Waterways shall be allowed access to all parts of the construction work",
 3. Contain a clause stating that the Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee who is employed in the work covered by such contracts or against any applicant for such employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age, marital status, and denial of family care leave, and that such provisions shall include, but not be limited to: employment, upgrading, promotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship,
 4. Contain a clause that the construction contractor shall comply with all air pollution and environmental control rules, regulation, ordinances and statutes which apply to the Project and any work performed pursuant to this Agreement,
 5. Be awarded and executed in conformance with Executive Order D-8-99,
 6. Require that the Project be constructed according to the plans and specifications prepared for the Project, and that quality control shall be performed, and compliance with specifications shall be verified, by qualified professionals selected by the Grantee or Grantee's representative, and

7. Require the preparation of a concrete test panel as specified in subsection F of this Article.
- F. No placement or v-grooving of concrete for boat launching ramps on the Project shall be allowed until the construction contractor demonstrates proficiency in creating a satisfactory v-grooved surface by preparing a concrete test panel measuring no less than 6 feet by 4 feet. A Department representative must accept the test panel before the construction contractor shall be allowed to place or v-groove concrete for boat launching ramps. Precast boat launching ramp panels are exempt from the test panel requirement but must also be approved by a Department representative prior to placement or installation. Test panels must be adjacent to, but not part of, any ramp work to be completed and must remain accessible until all ramp work is completed and accepted by Department. Contractor may incorporate test panel into other concrete work (i.e. trash enclosure, etc.).
 - G. Prior to the commencement of the construction of the Project, the Grantee shall cause the contractor and a corporate surety acceptable to the Department to furnish in favor of the Grantee and the Department, as their interests may appear, bonds or other security interests as allowed pursuant to Public Contract Code sections 10263 and 22300 in the minimum amounts indicated below:
 1. Faithful performance - One Hundred Percent (100%) of the total contract bid price.
 2. Labor and materials - One Hundred Percent (100%) of the total contract bid price.
 - H. The Grantee's personnel and construction of the Project shall be under the supervision of qualified inspectors. Inspection reports and related inspection data shall at all reasonable times be accessible to the Department personnel, and on request copies of such reports and data shall be provided to the Department by the Grantee.

ARTICLE 7- OPERATION OF PROJECT

- A. The Grantee shall not transfer its interest in the Project Area without the written approval of the Department.
- B. The Project and all other improvements constructed or placed in the Project Area shall be operated solely as a recreational boat launching facility. Other uses of the facility such as for craft fairs, festivals, SNO-PARKS, special events, storage, transient parking, camping, etc., are not allowed without the prior written permission of the Department.
- C. The Project Area shall be open to all recreational vessels, including vessels powered by 2-stroke and 4-stroke gasoline engines, at all times during the term of this Agreement except as approved by the Department and Commission. Notwithstanding Harbors and Navigation

Code section 660, any non-emergency restrictions related to time-of-day use, speed zones, special-use areas, or pollution control measures in the Project Area which result in closure or partial closure of waterways in the project area to any recreational vessel shall be subject to prior approval by the Department and Commission. Failure to obtain prior approval of the Department and Commission for such restrictions shall constitute a breach of this Agreement and may result in penalties set forth in Article 8 (3) of this Exhibit.

- D. The Grantee (or any lessee or concessionaire operating under the authority of the Grantee) shall not charge any fee or combination of fees totaling more than: \$13.00 to include but not limited to fees for: vessel launch and retrieval, parking, entry, day-use, and water-use. Such funds *may* be collected and used only to make repairs, renewals, and replacements necessary for the efficient operation of the small craft launching facility and to keep the facility in good repair at all times. The total fee charged may be increased annually in accordance with percentage changes in the *United States Bureau of Labor Statistics Price Index* (CPI) using the *U.S. City Average (1982-84 = 100)* as of the Effective Date of this Agreement as the base for any such adjustment. However, any adjustment exceeding the annual percentage change in the CPI shall be made only after the Grantee obtains the written approval of the Department.
- E. The Grantee shall maintain the Project Area and all improvements funded by this Agreement in accordance with the Department of Boating and Waterways Maintenance Guidelines (“Guidelines”), a copy of which is attached to and made a part of this Agreement. The Department and its agents may, at any and all reasonable times during the term of this Agreement, enter the Project Area for purposes of inspecting the Project Area to determine if the facility is being maintained according to the Guidelines. The Grantee shall:
1. Provide to the Department, within Sixty (60) days of approval by the Department of General Services of this Agreement, a maintenance schedule for approval detailing how each objective of the attached Guidelines will be addressed within the Project Area over the term of this Agreement. Each objective of the Guidelines must be considered; any objectives that are not applicable to a Grantee shall be included in the schedule with notation that such objective does not apply to this Project Area. The Department shall not unreasonably withhold its approval; however, it is the Grantee’s responsibility to ensure that such maintenance schedule adequately addresses Grantee’s responsibilities and each objective. The Department’s written

approval of the maintenance schedule shall be required before any funds are disbursed.

2. Follow its approved maintenance schedule throughout the term of this Agreement. Failure to maintain the facility according to the maintenance schedule is a breach of this Agreement and shall preclude the Grantee from receiving any future grants.
 3. Update its maintenance schedule outlined in the Guidelines. Grantee must receive the prior written approval of the Department for updates to its maintenance schedule.
- F. The Department shall not be liable for any costs of maintenance, management, control or operation of the Project Area.
- G. The Project Area shall be open and accessible for the use and enjoyment by the general public on equal and reasonable terms.
- H. All Project Area facilities shall be maintained and operated with due regard to public safety and in accordance with all applicable laws, ordinances, and regulations. All contracts relating to the operation of the Project shall include a nondiscrimination and compliance clause as referenced in Article 6 (E.3) of this Exhibit.
- I. All concession agreements for the operation and maintenance of the Project Area must have the written approval of the Department prior to award. The Department will approve such concession agreements only when the Grantee can demonstrate that private sector operation is the best available alternative. Concession agreements of a short-term duration (five years or less) are preferred, with renewal based upon performance reviews by both the local governmental agency and the Department. Any concession agreement for operation and maintenance of greater than Five (5) years shall require the concessionaire to make a capital investment, acceptable to the Department, in the Project Area.
- J. All concession agreements for operation of the Project shall provide the following:
1. Fees paid to the Grantee by the concessionaire for the operation and maintenance of the Project (usually a percentage of gross receipts) may only be for “reasonable administrative charges” so as not to motivate the Grantee to turn over the operation and maintenance of the Project for purely profit considerations.
 2. Fees paid to the concessionaire for use of the facility shall be no greater than those allowed in this Agreement.

3. The concessionaire shall operate the Project and all other improvements placed in the Project Area solely as a recreational boat launching facility unless receiving written permission from the Grantee for other permanent or special event uses.
4. The Project Area shall be open and accessible for the use and enjoyment by the general public on equal and reasonable terms.
5. All Department signs shall be kept permanently in place.

ARTICLE 8 – BREACH OF AGREEMENT

The Department through written notice may require the Grantee to remedy (to Department's satisfaction) any breach of this Agreement within Ninety (90) days of the date of such notice. The Department may extend the time permitting remedy of the breach if the Grantee begins such remedy within the said period; however, if the Grantee fails to proceed with or complete any remedial action within the time allowed, then the Department may take one or more of the following steps:

1. The Department may take any action to correct the breach. The Grantee shall be liable for all costs, including administrative costs, incurred in the course of correcting the breach;
2. The Department may require the Grantee to repay the Department for all Project Costs funded by the Grant; the Grantee shall make such repayment within One Hundred Eighty (180) days of the close of the fiscal year within which Department demands repayment. Repayment shall be determined by the Department on a prorated unexpired term basis (the remainder of the 20 year term as determined in Article 3 (A)).
3. In the event the Grantee adopts time-of-day, speed zones, special-use area, pollution control measures, or any other restrictions which restrict any or all of the Project Area, or result in its closure or partial closure to any form of recreational vessel, the Department may determine the percentage of boaters affected and, with the concurrence of the Commission, may require the Grantee to repay the Grant on a prorated unexpired term basis for that percentage of all Project Costs funded by the Grant. The Grantee shall make such repayment within One Hundred Eighty (180) days of the close of the fiscal year within which a Department demands repayment. Repayment shall be made according to a schedule determined by the Department after consultation with Grantee.

ARTICLE 9 - LIABILITY AND FIRE INSURANCE

A. The Grantee shall continuously insure the Project Area through one of the following alternatives:

ALTERNATIVE I

The Grantee shall maintain in full force and effect during the term of this Agreement the following insurance in the minimum amounts specified:

Bodily Injury or Death:	\$1,000,000 each person \$1,000,000 each occurrence
Property and Product Damage	\$1,000,000 each occurrence \$1,000,000 aggregate
Fire Insurance	90% of the full insurable value of all insurable components of the Project.

ALTERNATIVE II

1. The Grantee agrees that all contracts between it and the designer (or designers) responsible for design and preparation of plans and specifications of the Project shall contain a clause requiring said designer(s) to obtain Architect's Professional Liability (errors and omissions) Insurance in the amount of \$1,000,000, and
2. The Grantee agrees that all contracts between it and the contractor (or contractors) responsible for construction of the Project shall contain a clause which requires the contractor(s) to obtain insurance in the minimum amounts specified in Alternative I, and
3. The Grantee prior to acceptance and operation of the Project shall procure and maintain in full force and effect during the remainder of the term of this Agreement insurance in the amounts specified in Alternative I.

ALTERNATIVE III

1. The insurance requirements specified in the preceding Alternative I may be satisfied to the extent that the Grantee can provide comparable protection for the Grantee and the Department by virtue of the Grantee's participation in any "risk management" plan, self insurance program, insurance pooling arrangement, or any combination of these, provided that the protection plan has been reviewed by the Department.

- B. Copies of any policy or policies, including any new or renewal policy, shall be in a form satisfactory to the Department. Copies of such policy or policies shall be submitted to the Department at least Twenty (20) days prior to the effective date or dates thereof.
- C. Under Alternative I above, any policy or policies shall contain the following endorsement:

The State of California, its officers, agents, employees and servants are hereby declared to be additional insured under the terms of this policy, as to activities of both the Grantee and the Department in respect to the Project, and this policy shall not be cancelled without Thirty (30) days prior written notice to the Department.
- D. Loss under any fire insurance policy shall be payable to the Department for deposit in an appropriate trust fund with the State of California. The proceeds may be paid to the Grantee upon the Grantee's application for the reconstruction of the destroyed facilities.
- E. The Department shall not be responsible for the payment of any premiums or assessments on Grantee's insurance policies.
- F. Grantee shall provide proof of insurance to the Department annually and upon written request by the Department.

ARTICLE 10 - INSTALLATION OF OTHER FACILITIES

- A. The Grantee may at its own expense place or cause to be placed within the Project Area any structure, alteration, and/or improvement in addition to those set forth and described in Exhibit B, provided that such facilities:
 - 1. Are constructed, maintained and operated for the use, enjoyment protection and service of the public,
 - 2. Are in compliance with Article 7 of this Exhibit,
 - 3. Do not directly or indirectly reduce the service capabilities for the boating public called for in Exhibit B including the sanitary and parking facilities, and
 - 4. Have the prior written approval of the Department. Approvals shall not be unreasonably withheld.
- B. The Department shall not be obligated to make or cause to be made any alteration, improvement, or repair to any facilities within the Project Area in addition to the original construction to the Project as provided for herein.

ARTICLE 11 - SIGN REFERRING TO DEPARTMENT FINANCING

The Grantee shall cause a permanent sign to be installed within the Project Area, which shall include the Department's logo (to be provided by Department) and a statement that the Department

financed the Project. The sign may contain additional statements, which recognize the participation of other government agencies in the Project. The sign shall be installed before the Project is made available to the public. The standard Department of Boating and Waterways precast concrete sign shall be used unless the Grantee is required to use a different sign style or motif. An electronic drawing of the standard Department project credit sign shall be furnished by the Department to the Grantee for inclusion in the plans and specifications. The location of the project credit sign and make-up of a non-standard sign, including the dimensions, materials and lettering, requires the prior approval of the Department.

ARTICLE 12 - DIRECTIONAL SIGNS

The Grantee shall at the direction of the Department cause permanent directional signs to be installed, which shall provide adequate directions for reaching the Project Area. The signs shall be installed on major roads in the area and in as close proximity as possible to freeway exits in conformance with the provisions of the Local Agency's Development Code and the State Department of Transportation (CalTrans) policy. The locations and make-up of the signs, including the dimensions, materials, and lettering, require the prior approval of the Department.

ARTICLE 13 - WAIVER OF RIGHTS

It is the intention of the parties to this Agreement that from time to time either party may waive, in writing, certain rights under this Agreement. Any waiver by either party hereto of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any other default or matter.

ARTICLE 14 – NOTICES

The parties agree that to avoid unreasonable delay in the progress of the services performed hereunder; the Grantee and the Department shall each designate specific staff representatives for the purposes of communication between parties. Any notice or other written communication required or which may be given hereunder shall be deemed given when delivered personally, or if mailed, Three (3) days after the date of mailing; unless by express mail, facsimile (FAX) telecopy, e-mail, or telegraph, then upon the date of confirmed receipt to the following representatives:

For the Department:

Department of Boating and Waterways
 Attention: NAME, Contract Administrator
 2000 Evergreen Street, Suite 100
 Sacramento, CA 95815
 Telephone Number: (916) 263-####

FAX Number: (916) 263-1852

For the Grantee:

GRANTEE
Attention: NAME, TITLE
ADDRESS

Telephone Number:
FAX Number:

Either party hereto may, from time to time by notice in writing served upon the other as aforesaid, designate a different mailing address or a different or additional person to which all such notices or demands thereafter are to be addressed.

ARTICLE 15 - REMEDIES NOT EXCLUSIVE

The use by either the Department or the Grantee of any remedy specified in this Agreement for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

ARTICLE 16 - OPINIONS AND DETERMINATIONS

Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, or determination of either the Department or Grantee, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious or unreasonable.

ARTICLE 17- ASSIGNMENT

No assignment or transfer of this Agreement or any part hereof, rights hereunder, or interest herein by the Grantee shall be valid unless and until it is approved by the Department in writing. The Department's approval shall be granted at its sole discretion and may be made subject to such reasonable terms and conditions as the Department may impose.

ARTICLE 18 - SUCCESSORS AND ASSIGNS OBLIGATED

This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

ARTICLE 19 - LIABILITY

- A. The Grantee waives all claims and recourse against the Department including the right to contribution for any loss or damage arising from, growing out of, or any way connected with or incident to this Agreement.
- B. The Grantee agrees to indemnify, defend and save harmless, the Department, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Grantee in the performance of this Agreement.
- C. If the Department is named as a co-defendant pursuant to Government Code section 895, et seq., the Grantee shall notify the Department and represent it unless the Department elects to represent itself. If the Department undertakes its own defense, it shall bear its own litigation costs, expenses and attorney's fees.

ARTICLE 20 - TERMINATION

- A. Prior Termination. This Agreement shall terminate on the date specified in Article 6 (A) of this Exhibit if by such date (1) the Grantee has not met all conditions precedent to disbursement under this Agreement, or (2) the Department has disbursed no part of the Grant funds.
- B. Termination. In addition to the Department's right to terminate pursuant to Exhibit C, and as otherwise provided in this Agreement, the Department may terminate this Agreement without cause upon a Thirty (30) calendar days advance written notice to the Grantee.
- C. The Grantee shall promptly return all advanced funds to the Department.

ARTICLE 21 – SUPERSEDING GENERAL TERMS AND CONDITIONS (GTC)

- A. The reference to the Contractor in Exhibit C is the Grantee in this Agreement.
- B. Notwithstanding Paragraph 13 in Exhibit C, payment to Grantee for expenses shall be limited as provided for in Article 5 of this Exhibit.

Department of Boating and Waterways Maintenance Guidelines

Introduction

This document presents guidelines for meeting the minimum maintenance standards for the operation and maintenance of publicly owned boat launching facilities that are funded by the California Department of Boating and Waterways (DBW).

Because DBW funds these publicly owned facilities, the State has a financial stake in their success. The attached guidelines, developed by DBW, are intended to ensure that DBW funded boat launch facilities are managed and maintained in a manner compatible with DBW's mission – *to provide safe and convenient boating access* – and that the public entity owning the facility (the "Agency") is fulfilling its responsibilities. The Agency's primary responsibility in this context is maintaining the value of the property, including both tangible site improvements and the intangible value of the boat launch facility's reputation with the boating public.

Scope

The scope of these guidelines is limited to those items that reflect the quality of the boat launch facility (BLF) and its operations. The seven categories that are addressed are: (1) regular maintenance, (2) major maintenance, (3) boat launch facility staff, (4) boat launch facility operations and administration, (5) boat launch facility regulations, (6) security, and (7) amenities.

The scope does not include financial measures and other items that would be covered separately when a Memorandum of Understanding (MOU), Operating Agreement, Concession Agreement or Lease Agreement occurred between an Agency and an operator. In addition, these guidelines are separate from, and complementary to, the conditions and expectations set forth in any contractual agreement that might exist between the Agency and an operator. These guidelines were developed under the assumption that any contractual obligations, such as financial performance, reporting, and lease payments from an operator to an Agency, would be monitored separately. However, in the event that an Agency contracts out the operation of a BLF to an operator, any agreement between the Agency and the operator must specify that the operator must apply these guidelines and operate and maintain the BLF to at least the minimum condition that would be achieved by following these guidelines.

Maintenance & Operation Guidelines

These guidelines should be applied within the context of the existing maintenance conditions of the boat launch facility. Likewise, they should reflect long-term goals for the boat launch facility.

The three key long-term goals that apply to most publicly owned boat launch facilities are as follows:

- Maintain the boat launch facility to a standard that attracts boaters to the boat launch facility
- Meet current and long-range needs of the community and of boaters in the region
- Produce, or set aside, revenues sufficient to maintain the boat launch facility infrastructure

The following guidelines represent the minimum that shall be required of an Agency to operate and maintain a DBW funded BLF.

Guidelines

The following table documents, in categories, the minimum outcomes that must be met in a properly maintained DBW funded BLF. The Agency is responsible for preparing, and updating, a maintenance schedule describing, in detail, how each of the objective/outcomes will be addressed by the Agency during the term of the BLF contract. During the grant term, the maintenance schedule shall be updated every five years, and whenever there are changes to the property, expected or unexpected, that might normally require changes in maintenance levels (examples include, but are not limited to, new construction or other major physical and non-physical changes including storm damage, faster than anticipated erosion, or higher than expected usage). In the event that such a change will not require a change in maintenance levels an updated maintenance schedule is still required; and, the Agency must clearly document why no change in service is required.

In order to verify that Agencies are maintaining facilities as required, DBW will make periodic and random inspections of funded BLFs. After an inspection, Agencies will be provided with DBW's inspection results. In the event that facilities are not being maintained to DBW's guidelines, the Agency will be required to respond and take corrective action immediately. Agencies that do not maintain their facilities to at least these guidelines will not be considered for future DBW funding.

Maintenance & Operation Guidelines

Category	Objectives/Outcomes
A. Regular Maintenance	Maintenance of existing and new structures and facilities is conducted on a regular basis to maintain viability of the boat launch facility. Taking into account the initial condition of the boat launch facility, the facilities, including ramps, boarding floats, restrooms, lighting, and landscaping are maintained in a safe, neat, sanitary, and orderly condition.
B. Major Maintenance	Inspections for possible major maintenance problems are conducted to prevent the need for premature replacement of facilities. The boat launch facility structures are maintained in an acceptable manner, enhancing the long-term viability of the boat launch facility and reducing risk to users, the Agency, and DBW. The facility is maintained in an insurable condition and is free of defects caused by neglect. Major maintenance of necessary items is scheduled and completed in a timely manner and minimizes degradation of the boat launch facility.
C. Staff	Boat launch facility staff, where provided, are qualified, competent, and experienced. Staff are (1) knowledgeable about boats and boating, (2) available every day including peak season holidays, (3) friendly, (4) professional in appearance, and (5) proactive in meeting the needs of customers.

Maintenance Guidelines

Category	Objectives/Outcomes
C. Staff (<i>cont.</i>)	Boat launch facility staff, where provided, are responsive to customers and maintain a service orientation. A mechanism to reach staff or other personnel in off-hours or emergencies is in place.
D. Operations and Administration	<p>The Operator has a long-range plan to maintain viability of the boat launch facility that is realistic and reflective of DBW's mission.</p> <p>The staff management plan specifies staffing levels and availability of staff, and procedures for responses to complaints. All facilities and services are operated in accordance with hours authorized in the contract/operating agreement.</p>
E. Regulations	The boat launch facility is in compliance with applicable federal, state, and local laws, rules, regulations, contracts, and restrictions.
F. Security	Boat launch facility security is maintained to appropriate guidelines for the region. The Boat launch facility security system is in place and operational and law enforcement incidents at the boat launch facility are at levels similar to other boat launch facilities in the region.
G. Amenities	Amenities provided are in good condition, and help draw customers to the facility.