

SAMPLE

AGREEMENT NUMBER
xx-101-xxx
REGISTRATION NUMBER
3680

PROJECT CODE XXX

- This Agreement is entered into between the _____ and _____ as defined below:
STATE AGENCY'S NAME
DEPARTMENT OF BOATING AND WATERWAYS (DEPARTMENT)
CONTRACTOR'S NAME
U. S. FOREST SERVICE (GOVERNMENT)
- 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	12 pages
Exhibit A Attachment 1 – Department of Boating and Waterways Maintenance Guidelines	4 pages
Exhibit B – (NAME) Boat Launching Facility Feasibility Report	6 pages
Exhibit C – General Terms and Conditions for Federal Agreements	5 pages

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 <i>(if other than an individual, state whether a corporation, partnership, etc.)</i> United States of America acting through the U. S. FOREST SERVICE		
BY <i>(Authorized Signature)</i> 	DATE SIGNED <i>(Do not type)</i>	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS ADDRESS		
STATE OF CALIFORNIA		
AGENCY NAME DEPARTMENT OF BOATING AND WATERWAYS		
BY <i>(Authorized Signature)</i> 	DATE SIGNED <i>(Do not type)</i>	
PRINTED NAME AND TITLE OF PERSON SIGNING RAYNOR TSUNEYOSHI, Director		
ADDRESS 2000 EVERGREEN STREET, SUITE 100 SACRAMENTO, CALIFORNIA 95815-3888		
		<input type="checkbox"/> Exempt per:

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

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ARTICLE 1 – DEFINITIONS

- A. “Account”: An account to be established by the Government in accordance with federal accounting procedures 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 - [INSERT 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. “Commission”: The Boating and Waterways Commission.
- D. “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.
- E. “Department”: The Department of Boating and Waterways.
- F. “Effective Date”: The date this Agreement is approved by the Department of General Services.
- G. “Grant”: Funds provided pursuant to Harbors and Navigation Code section 72.5 to finance all or part of the Project Costs.
- H. “Government”: The Entity identified on the Standard Agreement STD 213.
- I. “Project”: The construction, improvement, acquisition, or maintenance of a small craft launching facility as described in Exhibit B.
- J. “Project Area”: The real property, and improvements thereto, identified in Exhibit B, within which the Project will be undertaken.
- K. “Project Completion Certification”: A fully executed Notice of Completion, or equivalent, which states the Government has accepted the Project as complete on a specific date (Date of Acceptance).
- L. “Project Costs”: Engineering, labor, equipment, materials and any other costs that are incurred by the Government for the purpose of completing the Project. However, Project costs incurred:
1. For indirect or overhead charge may only be reimbursed with prior written approval by the Department and may be no greater than the combined maximum budget allocated 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 Government or

Government'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 - SPECIAL PROVISIONS

- A. The Government certifies that the Government has title to, or adequate interest 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.

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 Government.
- 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 Government that, when added to Government'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 Government 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 Government has not accepted any grant funds, Department shall have no liability to pay any funds whatsoever to Government or to

furnish any other consideration under this Agreement and Government 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 Government has drawn grant funds:
1. Government 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. Government shall complete the Project within the scheduled timeline using Government's own funds, or
 3. Department and Government 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 Government, or
 4. Department and Government 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 Government 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 Government 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 Government demonstrates that it has acquired all permits necessary to construct and operate the Project.
- B. 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 Government may request the transfer of the Grant (or any portion thereof) in writing; transfer may be made prior to the Government's going to bid on the construction of the Project or at any time thereafter.
 - (b) All transfers of Grant funds shall:

- (1) Remain the property of the Department until the Government obligates such funds in accordance with the terms and conditions of this Agreement,
 - (2) Be disbursed by the Government for the sole purpose of paying those Project Costs incurred after the effective date of this Agreement, and
 - (3) Be disbursed by the Government upon receipt and approval of a correct Construction Contractor's invoice; such invoices and any support documentation shall be provided to the Department upon payment to the Construction Contractor.
 - (c) The Department reserves the right to require prior written approval before the Government makes payment to a Construction Contractor if the Department determines the Government has made payment for incomplete and/or substandard work by the Construction Contractor under the terms of this Agreement.
 - (d) All expenditures of advanced Grant funds may require the prior written approval of the Department if the Government fails to comply with any of the provisions of this Agreement.
 - (e) The Government shall return to the Department all Grant funds remaining in the Account after all Project Costs have been paid no later than Ninety (90) days following Date of Acceptance of the Project by the Government.
2. Grant disbursements made in arrears shall be made as follows:
- (a) The Government may request a Grant disbursement in arrears not more than once every Thirty (30) days; such requests must be accompanied by Construction Contractor invoices and any support documentation of the Government's Project Costs.
 - (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 Government shall request final disbursement no later than Ninety (90) days following the Date of Acceptance of the Project by the Government.
- C. The Government shall provide the following to the Department within Ninety (90) days of the Date of Acceptance:
1. Project Completion Certification (or equivalent)
 2. An accounting of all Grant funds

ARTICLE 6 - CONSTRUCTION OF PROJECT

- A. The Government shall complete the Project no later than May 1, 200X (*five year period tied to the Budget Act*). At its sole discretion, the Department may extend the 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 Government 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 Government 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 Government 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 Government; and, submission of a Project Completion Certificate to the Department.
- C. The Government shall obtain from the Department advance written approval of the following:
1. All bid documents prior to advertisement including plans and specifications, and
 2. All construction change orders that increase or decrease the contract amount by \$5,000 or more.
- D. The Government shall notify the Department of the award of all contracts.
- E. All architectural and engineering contracts for plans and specifications shall require that the plans and specification:
1. 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*,
 2. Be submitted to the Department and Government 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,
 3. Become the property of the Government,
 4. Provide for all Project facilities set forth in Exhibit B, and
 5. Be prepared in conformance with Executive Order D-8-99.
- F. All construction contracts for of 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 to state 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 Government or Government's representative, and
 7. Require the preparation of a concrete test panel as specified in subsection G of this Article.
- G. 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.)
- H. The Government's personnel and construction of the Project shall be under the supervision of qualified inspectors.

- I. 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 Government.

ARTICLE 7 - OPERATION OF PROJECT

- A. The Government 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 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 subsection K of this Article.
- D. The Government (or any lessee or concessionaire operating under the authority of the Government) 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 Government obtains the written approval of the Department.
- E. The Government 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.

Exhibit A

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 Government 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 Government 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 Government's responsibility to ensure that such maintenance schedule adequately addresses Government'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 Government from receiving any future grants allocated to projects within the Forest Service District's jurisdiction.
 3. Update its maintenance schedule outlined in the Guidelines. Government 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 5 (F.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 Government 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 Government 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 Government 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.
- K. The Department may require the Government to repay the Department for any Project Costs covered by the Grant if any of the following occur:
1. The Project is discontinued as a recreational boating facility, or
 2. The Government fails to maintain or operate the Project in accordance with the terms of this Agreement; or
 3. The Government terminates this Agreement pursuant to Article 17 of this Exhibit.
- The Government shall make such repayment within Ninety (90) days from receipt of written notice from the Department. 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)).
- L. In the event the Government adopts a time-of-day, speed zones, special-use area, or pollution control measures, or any other restriction 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 Government to repay the Grant on a prorated unexpired term basis for that percentage of all Project Costs funded by the Grant. The Government

Exhibit A

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 Government.

ARTICLE 8 - INSTALLATION OF OTHER FACILITIES

- A. The Government 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 9 - SIGN REFERRING TO DEPARTMENT FINANCING

The Government 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 10 - DIRECTIONAL SIGNS

The Government 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 11 - 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 12 – NOTICES

The parties agree that to avoid unreasonable delay in the progress of the services performed hereunder; the Government 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) *NUMBER*
FAX Number: (916) 263-1852

For the Government:

GOVERNMENT
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 13 - REMEDIES NOT EXCLUSIVE

The use by either the Department or the Government 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 14 - 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 Government, 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 15 – ASSIGNMENT

No assignment or transfer of this Agreement or any part hereof, rights hereunder, or interest herein by the Government 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 16 - 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 17 – TERMINATION BY THE GOVERNMENT

The Government may terminate this Agreement at any time subject to the penalty provided in Article 7 (K) of this Exhibit and upon a Thirty (30) day written notice to the Department.

ARTICLE 18- FEDERAL CONTRACT RESTRICTIONS

- A. Nothing herein shall be construed as (1) obligating the Government to expend, or (2) involving the Government in any contract or other obligation for the future payment of, money in excess of appropriations authorized by law and administratively allocated for this work.
- B. No member of or delegate to Congress or Resident Commissioner shall be admitted to share any part of this Agreement, or to any benefit that may arise there from; but this provision shall not be construed to extend to this Agreement if made with the corporation for its general benefit.

ARTICLE 19 - PRIOR TERMINATION

This Agreement shall terminate on the date specified in Article 6 (A) of this Exhibit if by such date (1) the Government has not met all conditions precedent to disbursement under this Agreement, or (2) the Department has disbursed no part of the Grant funds.

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.

Exhibit C
General Terms and Conditions for Federal Agreements

1. **APPROVAL**: This Agreement is of no force or effect until signed by authorized representatives of all Signatory Agencies and approved by the Department of General Services, if required. Signatory Agencies may not commence performance until such approval has been obtained.

2. **AMENDMENT**: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the Signatory Agencies parties and approved as required. No oral understanding or Agreement not incorporated in this Agreement is binding on any of the Signatory Agencies parties.

3. **ASSIGNMENT**: This Agreement is not assignable by the Signatory Agencies, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. **AUDIT**: Signatory Agencies agree that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative, and Federal auditors in accordance with Government Code Section 10532, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Signatory Agencies agree to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Signatory Agencies agree to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Signatory Agencies agree to include a similar right of the State and Federal auditors to audit records and interview staff in any contract related to performance of this Agreement. (California Government Code GC 8546.7, Public Contract Code 10115 et seq., California Code of Regulations Title 2, Section 1896).

5. **INDEMNIFICATION CLAUSE – Applies to All Federal Agreements:**

a. **FEDERAL**

The United States shall be liable, to the extent allowed by the Federal Tort Claims Act 28 United States Code. 2671-2680, for claims of personal injuries or property damage resulting from the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his or her employment, arising out of this Agreement.

b. STATE

The State of California shall be liable, to the extent allowed by law and subject to California Government Code, Division 3.6, providing for the filing of tort claims against the State of California, for personal injuries or property damage resulting from the negligent or wrongful act or omission of State employees while acting within the scope of his or her employment, arising out of this Agreement.

6. DISPUTES: Signatory Agencies shall continue with the responsibilities under this Agreement during any dispute.

7. TERMINATION FOR CAUSE: Any Signatory Agency may terminate cancel this Agreement at any time by giving thirty (30) days' written notice to the other Signatory Agencies. None of the Signatory Agencies shall incur any new obligations for the terminated portion of this agreement after the effective date of the termination and shall cancel as many obligations as possible. Full credit shall be allowed for each Signatory Agency's Party's expenses and all non-cancelable obligations properly incurred up to the effective date of termination.

8. INDEPENDENT CONTRACTOR: Signatory Agencies agree that agents and employees of their respective agencies, in the performance of this Agreement, shall not act as officers or employees or agents of the other Signatory Agencies to this agreement.

9. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Signatory Agencies and their subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, 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. Signatory Agencies and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. State and Federal agencies shall adhere to all State and Federal Laws pertinent to their respective organizations as they apply to non-discrimination described within this agreement. Signatory Agencies shall include a similar non-discrimination clause in any resulting contract.

10. TIMELINESS: Time is of the essence in this Agreement.

11. COMPENSATION: The consideration to be paid by Signatory Agencies to one another, as provided herein, in this Agreement, shall be in compensation for all expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

12. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California, and the United States. It is the intent of the Signatory Agencies that venue shall be in a court located within the geographic boundaries of the State of California.

13. ANTITRUST CLAIMS: The **Each Federal Agency** signatory agency by signing this **aAgreement** hereby certifies that if these services or goods are obtained by means of a competitive bid, the **each Federal Agency** signatory agency shall comply with the requirements of the Federal Acquisition Regulations, Chapter 1, Title 48, Code of Federal Regulations (CFR).

14. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the **Signatory Agencies** parties agree that all other provisions of this Agreement have force and effect and shall not be effected thereby.

15. UNION ACTIVITIES: For all contracts, except fixed price contracts of \$50,000 or less, State Agencies acknowledge that:

- a. By signing this agreement State Agencies hereby acknowledge the applicability of Government Code Section 16645 through Section 16649 to this agreement and agree to the following:
 - a) State Agencies will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
 - b) No **sState** funds received under this **aAgreement** will be used to assist, promote or deter union organizing.
 - c) State Agencies will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
 - d) If State Agencies incur costs, or make expenditures to assist, promote or deter union organizing, State Agencies will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that State Agencies shall provide those records to the Attorney General upon request.

Federal agencies shall adhere to all Federal laws pertaining to Union activities including Title 5 United States Code 7101 as a condition of this **aAgreement**.

16. EXCISE TAX: State of California is exempt from federal excise taxes, and no payment will be made for any taxes levied on employees' wages. State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

17. SETTLEMENT OF DISPUTES: In the event of any issue of controversy under this Agreement, the Signatory Agencies parties may pursue Alternate Dispute Resolution procedures to voluntarily resolve those issues. Those may include, but are not limited to conciliation, facilitation and mediation.

The Agency heads of the agencies affected by the dispute will make a final determination for dispute resolution if other informal venues have not succeeded. If resolution cannot be reached informally through these methods, the parties may pursue whatever legal remedies they may have.

18. DVBE AUDITS: If State determines this Agreement contract is subject to disabled veteran-owned business enterprise requirements, State agencies contractor shall comply with Public Contract Code section 10115 et seq. and California Code of Regulations section 1896.60 et seq. State agencies Contractor shall make pertinent records available to State for review, shall permit State access to its premises pertinent records upon reasonable notice during normal business hours for interviewing employees and inspecting records, and shall maintain records for audit purposes for a period of 3 years after final payment under the Agreement contract. Federal agencies shall comply with the DVBE requirements of the Federal Acquisition Regulation as referenced in item 13 of these Terms and Conditions for Federal Agencies. All requirements as stated in this section pertaining to DVBE AUDITS and Federal agencies shall be to the extent as allowed by Federal law.

19. POTENTIAL SUBCONTRACTORS: Nothing contained in this agreement or otherwise, shall create any contractual relation between State and any subcontractors, and no subcontract shall relieve Signatory Agencies of their responsibilities and obligations hereunder. Federal Agencies Signatory Agencies agree to include the necessary Federal Acquisition Regulation clauses relating to indemnification and insurance requirements for any resulting contract pursuant to this Agreement be as fully responsible to State for the acts and omissions of subcontractors and of persons, either directly or indirectly employed by any of them, as it is for the acts and omissions of persons directly employed by the Signatory Agencies.. Each Signatory Agency's obligation to pay its subcontractors is an independent obligation from State's obligation to make payments to the Signatory Agencies. As a result, State shall have no obligation to pay or to enforce payment of any moneys to any subcontractor.

20. AGENCY LIABILITY: The Signatory Agencies warrant by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Signatory Agencies for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

21. FORCE MAJEURE: Each Signatory Agency shall not be liable to other Signatory Agencies for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by "Force Majeure." As used in this section, "Force Majeure" is defined as follows: Acts of war and acts of God such as earthquakes, floods, and other natural disasters such that performance is impossible.

22. NON ELIGIBLE ALIEN – All Sole Proprietor Contracts – (SCM 2.07): Signatory Agencies shall comply with US Code, Title 8, United States Code Section 1621 (a), (b), (c), and (d), concerning aliens or immigrants ineligible for State and local public benefits.

23. PRIORITY HIRING CONSIDERATION – Contracts With a Value in excess of \$200,000: If the a resulting contract will have a total contract value of \$200,000 or more, the Signatory Agencies are hereby advised that they will be obligated to give priority consideration in filling vacancies in positions funded by the resulting contract to qualified recipients of aid under Welfare and Institutions Code Section 11200. This requirement shall not interfere with or require a violation of a collective bargaining agreement, a federal affirmative action obligation for hiring disabled veterans of the Vietnam era, or nondiscrimination compliance laws of California and does not require the employment of unqualified recipients of aid. All requirements as stated in this section pertaining to Priority Hiring Consideration as it applies to State and Federal agencies shall be to the extent required by State or Federal law, respectively.

24. CONTRACTOR CERTIFICATION - Copyright Laws for Computer Software - I.T. Agreements Only: Signatory Agencies certify that appropriate systems and controls are in place to ensure that State funds will not be used in the performance of this Agreement contract for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

25. FEDERAL AGREEMENTS – SCM 2.07 AND 3.11:

All contracts, except for state construction projects, that are funded in whole or part by the federal government must contain the following provisions, and are in

addition to Section A of this Exhibit: The following provisions are made part of this Agreement.

- a. Debarment – Federal Regulations: Government Code Sections 4477 is incorporated by reference into this Agreement.
- b. Federal Policy: Federal Disclosure Statement and Disadvantaged Business Enterprise/Small Business Affirmative Steps are incorporated by reference into this Agreement.
- c. Fund Availability – Federal Policy:
 1. The Government's obligation under this agreement is contingent upon the availability of appropriated funds from which payment for services arising from this agreement can be made. No legal liability on the part of the Government for any payment may arise until funds are made available for this and until the party receiving reimbursement receives notice of such availability, to be confirmed in writing by the party providing funding.
 2. The department **Department of Boating and Waterways** has the option to invalidate the contract under the 30-day cancellation clause or to amend the contract to reflect any reduction in funds.
- d. Disclosure Requirements – Federal Regulation: Government Code Section 7550 is incorporated by reference into this agreement.

26. WAIVER OF CLAIMS: In accordance with Title 42, United States Code Chapter 15A, Subchapter I, Section 1856a, the State and the Federal Agencies hereby waive all claims between and against each other, arising in the performance of this agreement, for compensation for loss or damage to each other's property, and personal injury, including death, of employees, agents and contractors.