

State of California – Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION
DIVISION OF BOATING AND WATERWAYS

GRANT AGREEMENT SAMPLE

GRANTEE: XXXXXXXX

GRANT PERFORMANCE PERIOD is from: _____ through February 1, 20XX.

GRANT AGREEMENT TERM is from: _____ through February 1, 20XX.

PROJECT TITLE: XXXXXX (#XXXX)

GRANT NUMBER: CXXXXXX

The Grantee agrees to the terms and conditions of this grant, hereinafter referred to as Agreement, and the State of California, acting through its Director of Parks and Recreation, agrees to fund the total grant amount indicated below for the project identified in the Feasibility Report which is a part of the Agreement consisting of: Exhibit A "Small Craft Launching Facility Construction Grant and Operating Agreement", pages 1-17. Exhibit A, Attachment 1 "Department of Parks and Recreation, Division of Boating and Waterways Maintenance Guidelines", pages 1-4. Exhibit B "XXXXXXXX Feasibility Report", pages 1-9. Exhibit C "General Terms and Conditions", pages 1-5. Exhibit D "Contractor Certification Clauses", pages 1-4.

Grantee: XXXXXXXX

Agency: Department of Parks and Recreation
Division of Boating and Waterways
Address: P.O. Box 942896
Sacramento, CA 94296-0001

Address: XXXXXXXXX
XXXXXXXXXX

BY: _____
(Authorized Signature)

XXXXXXXX, TITLE
(Printed Name and Title of Authorized Representative)

BY: _____
(Authorized Signature)

KEREN DILL, STAFF SERVICES MANAGER II
(Printed Name and Title of Authorized Representative)

Date _____

Date _____

**CERTIFICATE OF FUNDING
(FOR STATE USE ONLY)**

GRANT CXXXXXXXX	AMENDMENT NO	FISCAL SUPPLIER NO XXXXXXXXXX		PROGRAM 2855019
AMOUNT ENCUMBERED BY THIS DOCUMENT \$XXXXXXXX	FUND TITLE HARBORS AND WATERCRAFT REVOLVING FUND		AGENCY BILLING CODE NO 053709	
PRIOR AMOUNT ENCUMBERED BY THIS DOCUMENT \$0.00	GL / APPROP REF / FUND 3790-101-051600001	CHAPTER X	STATUTE (ENY) XXXX	FISCAL YEAR XXXX/XX
TOTAL AMOUNT ENCUMBERED TO DATE \$XXXXXXXX	RPTG STRUCTURE 37900709	ACCOUNT / ALT ACCOUNT 5432000/ 5432000000	ACTIVITY XXXXXX	PROJECT 3790OTHER

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

Table of Contents

ARTICLE 1 - DEFINITIONS	2
ARTICLE 2 - GRANTEE'S WARRANTIES	3
ARTICLE 3 - TERM OF AGREEMENT	3
ARTICLE 4 - BUDGET CONTINGENCY	4
ARTICLE 5 - DISBURSEMENT OF GRANT	5
ARTICLE 6 - DESIGN AND CONSTRUCTION OF PROJECT	6
ARTICLE 7 - COMPLETION OF PROJECT.....	9
ARTICLE 8 - OPERATION AND MAINTENANCE OF PROJECT	9
ARTICLE 9 - BREACH OF AGREEMENT.....	12
ARTICLE 10 - LIABILITY AND FIRE INSURANCE	13
ARTICLE 11 - INSTALLATION OF OTHER FACILITIES.....	14
ARTICLE 12 - SIGN REFERRING TO DEPARTMENT FINANCING.....	14
ARTICLE 13 - DIRECTIONAL SIGNS	15
ARTICLE 14 - WAIVER OF RIGHTS	15
ARTICLE 15 - PROJECT REPRESENTATIVES	15
ARTICLE 16 - REMEDIES NOT EXCLUSIVE	15
ARTICLE 17 - OPINIONS AND DETERMINATIONS	16
ARTICLE 18 - ASSIGNMENT.....	16
ARTICLE 19 - SUCCESSORS AND ASSIGNS OBLIGATED	16
ARTICLE 20 - LIABILITY.....	16
ARTICLE 21 - TERMINATION	17
ARTICLE 22 - SUPERSEDING GENERAL TERMS AND CONDITIONS (GTC).....	17

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 – XXXXXXXX Launching Facility Construction 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 of 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, Subpart A of this Exhibit.
- F. "Department": The Department of Parks and Recreation, Division of Boating and Waterways.
- G. "Exhibit B": The feasibility report exhibit presents the proposed Project in "concept" form only. The actual Project layout shall be determined by the Grantee and the engineer of record (to be determined) during the design process taking actual site conditions and public safety into account. The Project must meet the scope, cost and intent of this report and shall conform to Department guidelines.
- H. "Grant": Funds provided pursuant to Harbors and Navigation Code section 72.5 to finance all or part of the Project Costs.
- I. "Grant Performance Period": The time during which the grantee may carry out the work authorized by the Grant Agreement.
- J. "Grantee": The Entity identified as Grantee on the face page of the Grant Agreement.
- K. "Project": The construction, improvement or development of a recreational small craft boat launching facility as described in Exhibit B.
- L. "Project Area": The real property, and improvements thereto, identified in Exhibit B, within which the Project will be undertaken.
- M. "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).

- N. "Project Costs": Engineering, permitting, material and construction costs that are incurred by the Grantee for the purpose of completing the Project. However, Project costs incurred:
1. Shall not include any indirect or overhead charges,
 2. For engineering, permitting and inspection shall be no greater than the combined maximum budget allocation for *Engineering, Inspection* and *Permit* Costs as identified in Exhibit B (Feasibility Report – Cost Estimate Table),
 3. For engineering, inspection, and construction management services provided by Grantee or Grantee's personnel may only be reimbursed with prior written approval of Department, and
 4. Shall not include any expenses incurred prior to the start 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 first date of the Grant Performance Period and shall continue for twenty (20) years from the Date of Acceptance by the Grantee. If the Date of Acceptance occurs before or after the

stated Grant Performance Period end date, the Agreement will be amended to reflect the revised 20-year term.

B. This Agreement may be extended, amended or cancelled upon the written agreement of the parties.

B-C. Failure by the GRANTEE to comply with the terms of any Department of Parks and Recreation grant agreement may jeopardize the grantee's ability to be awarded funding in future grant opportunities offered by the Department of Parks and Recreation.

Formatted: Font: (Default) Arial, 11 pt

ARTICLE 4 - BUDGET CONTINGENCY

- A. Only funds that have been appropriated by the Legislature and approved for expenditure on the Project by the Department, on or before the first date of the Grant Performance Period of this Agreement, are authorized for disbursement through this Agreement.
- B. In the event that the Legislature or Department, for any reason, does not approve sufficient funding for this Project, or should the Grantee be unable to complete the Project within the established budget or otherwise be unable to fund any costs over the established budget, 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.
- C. In the event that the Legislature or Department does not approve sufficient funds to complete the Project, or should the Grantee be unable to complete the Project within the established budget or otherwise be unable to fund any costs over the established budget, and Grantee has drawn grant funds:
 - 1. Grantee shall repay all drawn grant funds within ninety (90) 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 ninety (90) 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 twenty (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 the face page of the Grant Agreement, however:

- A. No funds shall be disbursed for work performed prior to the first date of the Grant Performance Period of this Agreement.
- B. The Department shall have no obligation to disburse any of the Grant for construction activities unless and until the Grantee demonstrates that it has acquired all permits necessary to construct and operate the Project.
- C. The Department shall have no obligation to disburse any of the Grant unless and until the Grantee provides the Department with copies of fully executed contracts for which it seeks reimbursement.
- D. 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.
- E. Grant disbursements to cover Project Costs shall be made in arrears as follows:
 1. Grantee shall request a Grant disbursement in arrears at least quarterly, but not more frequently than monthly, for any and all reimbursable expenses incurred during that period, using the form provided by the Department unless Grantee has a form otherwise approved by the Department in writing. Paid invoices or other evidence of Grantee's payment of Project Costs must accompany Grant disbursement requests.
 2. Grant disbursement requests shall be submitted in duplicate hardcopy to the Department in a form satisfactory to the Department.
 3. In the event no reimbursable expenses were incurred during a quarter, the Grantee shall report to the Department of any progress made on the Project,

or explanation of no progress made on the Project, at least quarterly, but not more frequently than monthly.

4. The Department shall withhold from each Grant disbursement 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 and all stop notices or other liens have been released.

5. Grantee shall request final Grant disbursement no later than thirty (30) days following the Date of Acceptance of the Project by the Grantee.

- F. The Department at its sole discretion, may withhold any Grant disbursement if the Grantee fails to comply with any of the provisions of this Agreement or if the Grantee is in breach of any contract with the State or the Department until the breach is remedied.
- G. The Grantee shall maintain accounting records in accordance with Generally Accepted Accounting Principles.

ARTICLE 6 - DESIGN AND CONSTRUCTION OF PROJECT

- A. The Grantee shall obtain from the Department advance written approval of the following:
1. All bid documents prior to advertisement including plans and specifications,
 2. All contracts prior to award,
 3. All change orders of \$5,000 or more, for any work performed under this Agreement, and
 4. All changes to Project schedule discussed in Subpart D of this Article, of thirty (30) days or more.
- B. 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 in 11" X 17" hardcopy and on CD or DVD in full sized and 11" X 17" PDF format. Specifications shall also be submitted in hardcopy and in PDF format,
4. Become the property of the Grantee,
5. Provide for all Project facilities set forth in Exhibit B, and
6. Provide for shore side facilities for removing waste from vessel holding tanks in accordance with the Harbors and Navigation Code section 654.1.

C. All construction contracts for the Project shall:

1. Be awarded in accordance with all applicable laws and regulations,
2. Contain the following clause: "The Department of Parks and Recreation, Division of Boating and Waterways 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."
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, regulations, ordinances and statutes which apply to the Project and any work performed pursuant to this Agreement,
5. 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
6. Require the preparation of a concrete test panel as specified in Subpart F of this Article.

7. Shall contain the requirements of Article 10 Liability and Fire Insurance and Article 20 Liability of this Agreement.
- D. 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:
1. Beginning and ending dates of Project design consultant selection by Grantee,
 2. Submission of the consultant services agreement to the Department for approval,
 3. Beginning and ending of Project design,
 4. Submission of plans and specifications to the Department for approval at 30%, 60%, 90% and 100% completion,
 5. Beginning and ending dates of Grantee advertising of Project for bids,
 6. Project bid opening date,
 7. Submission of the construction Agreement to the Department for approval,
 8. Beginning and ending dates of Project construction,
 9. Acceptance of Project by the Grantee, and
 10. Submission of a Project Completion Certification to the Department.
- E. The Grantee shall provide the Department with a Construction Schedule showing all construction milestones, including the date the v-grooving test panel will be prepared and ready for Department inspection as required by Subpart F below.
- 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 shall provide at least quarterly written reporting to the Department as to the progress and status of the Project using the form provided by the Department unless Grantee has a form otherwise approved by the Department in writing.

ARTICLE 7 - COMPLETION OF PROJECT

- A. The Grantee shall complete the Project no later than February 1, 20XX.
- B. The Grantee shall provide the following to the Department within sixty (60) days of the Date of Acceptance:
 1. A Project Completion Certification (or equivalent)
 2. An accounting of all Grant funds
 3. As-built plans and specifications on CD or DVD

ARTICLE 8 - OPERATION AND MAINTENANCE 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 small craft 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. 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. Failure to obtain prior approval of

the Department for such restrictions shall constitute a breach of this Agreement and may result in penalties set forth in Article 9 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 recreational small craft boat launching facility and to keep the facility in good repair at all times. The total fee charged may be adjusted annually in accordance with percentage changes in the *United States Bureau of Labor Statistics Consumer Price Index* (CPI) using the *U.S. City Average, All Items, 1982-84 = 100*, as of the first date of the Grant Performance Period of this Agreement. Any adjustment exceeding the annual percentage change in the CPI shall be made only after the Grantee obtains the written approval of the Department. Such rates and fees shall be maintained at a level comparable to those charged at State owned boat launching facilities in the region.
- E. The Grantee shall maintain the Project Area and all improvements funded by this Agreement in accordance with the Department of Parks and Recreation, Division 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.
1. The Grantee shall provide to the Department, within sixty (60) days of the first date of the Grant Performance Period 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. The Grantee shall comply with the 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. Any changes to the maintenance schedule must be approved in writing by the Department.
- 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, Subpart C 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 small craft boat launching facility

unless receiving written permission from the Grantee and the Department 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 9 - 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:

- A. 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.
- B. The Department may require the Grantee to repay the Department for all Project Costs funded by the Grant. Grantee shall make such repayment within one-hundred and 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 twenty (20) year term as determined in Article 3, Subpart A).
- C. 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 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 and 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 10 - LIABILITY AND FIRE INSURANCE

- A. The Grantee shall, at a minimum, maintain in full force and effect during the term of this Agreement the following insurance:

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.

- B. All 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.
- C. 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 and kinds specified above in Article 10, Subpart A.
- D. The insurance requirements specified above in Article 10, Subpart A, 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 approved by the Department.
- E. 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.
- F. 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.

- G. 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.
- H. The Department shall not be responsible for the payment of any premiums or assessments on Grantee's insurance policies.
- I. Grantee shall provide proof of insurance to the Department annually and upon written request by the Department.

ARTICLE 11 - 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 8 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 12 - 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 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 13 - 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 (Cal Trans) policy. The locations and make-up of the signs, including the dimensions, materials, and lettering, require the prior approval of the Department.

ARTICLE 14 - WAIVER OF RIGHTS

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 15 - PROJECT REPRESENTATIVES

The Grantee and the Department shall each designate specific staff representatives for the purposes of communication between parties. Grantee's representative shall be by delegation of authority, signed by the person designated by Resolution to sign the Agreement or any amendments, and to make decisions concerning the Agreement.

ARTICLE 16 - 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 17 - 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 18 - 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 19 - 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 20 - LIABILITY

- A. The Grantee waives all claims and recourse against the Department, including the right to contribution for any losses or damages arising from, growing out of, or in any way connected with or incident to this Agreement.
- B. The Grantee agrees to indemnify, defend and hold 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, entity or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and/or from any and all claims and losses accruing or resulting to any person, firm, entity or corporation who may be injured or damaged by Grantee in the performance of this Agreement.
- C. The Grantee shall indemnify, hold harmless, and defend the Department, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability connected with or arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the Project.

- D. If the Department is named as a co-defendant, 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 21 - TERMINATION

- A. Prior Termination. This Agreement shall terminate on the date specified in Article 7, Subpart 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.