

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

**GRANT AGREEMENT**

**GRANTEE:** San Francisco Recreation and Park Department

**GRANT PERFORMANCE PERIOD** is from: Effective date and continues to March 1, 2017.

**GRANT AGREEMENT PERFORMANCE PERIOD** is from: Effective date and continues 20 years from Date of Acceptance of Project.

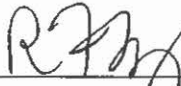
**PROJECT TITLE:** Lake Merced Non-Motorized Boat Launching Facility (#1079)      **GRANT NUMBER:** C4123019

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, pursuant to the State of California agrees to fund the total State grant amount indicated below for the project identified in Exhibit B which is a part of the GRANT AGREEMENT consisting of: Exhibit A "Non-Motorized Boating Access Development Construction Grant and Operation Agreement", Exhibit A, Attachment 1 "Department of Parks and Recreation, Division of Boating and Waterways Maintenance Guidelines", Exhibit B, "Lake Merced Non-Motorized Boat Launching Facility Project Scope and Budget", Exhibit B, Attachment 1 "Application for Non-Motorized Boating Facility Grant Funding" and Exhibit C "General Terms and Conditions"; 58 total pages .

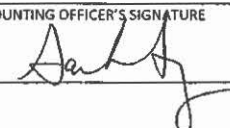
**Grantee:** San Francisco Recreation and Park Department  
**Address:** 30 Van Ness, Fifth Floor  
San Francisco, CA 94102

**Agency:** Department of Parks and Recreation,  
Division of Boating and Waterways  
**Address:** One Capitol Mall, Suite 500  
Sacramento, CA 95814

BY:   
(Authorized Signature)  
Philip Ginsburg, General Manager  
(Printed Name and Title of Authorized Representative)  
Date 4/15/15

BY:   
(Authorized Signature)  
RAMONA FERNANDEZ for  
CHRISTOPHER C. CONLIN, DEPUTY DIRECTOR (ACTING)  
(Printed Name and Title of Authorized Representative)  
Date 4/24/15

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

GRANT C4123019	AMENDMENT NO	CALSTARS VENDOR NO <u>4000003037-00</u> <del>0000004225-00</del>		PROJECT NO
AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 225,000.00	FUND TITLE HARBORS AND WATERCRAFT REVOLVING FUND			AGENCY BILLING CODE NO 053709
PRIOR AMOUNT ENCUMBERED BY THIS DOCUMENT \$0.00	ITEM 3790-101-0516	CHAPTER 25	STATUTE 2014	FISCAL YEAR 2014/15
TOTAL AMOUNT ENCUMBERED TO DATE \$225,000.00	INDEX 1709	OBJECT CODE 702	PCA CODE 61008	PROJECT/WORK PHASE
T.B.A. NO	<i>I hereby certify upon my own personal knowledge that the budgeted funds are available for this encumbrance.</i>			
B.R.NO	ACCOUNTING OFFICER'S SIGNATURE 		DATE <u>5/5/15</u>	

**NON-MOTORIZED BOATING ACCESS DEVELOPMENT  
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 – Lake Merced Non-Motorized 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 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. "Effective Date": The effective date of this Agreement is either the mutually agreed upon Project start date or the approval date by the Department of General Services (DGS), whichever is later. In cases when DGS approval is not required, this Agreement is of no force or effect until the date of the last signature. No work shall commence until the Effective Date.
- H. "Exhibit B": The Project proposal 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.
- I. "Grant": Funds provided pursuant to Harbors and Navigation Code section 72.5 to finance all or part of the Project Costs.
- J. "Grantee": The Entity identified as Grantee on the face page of the Grant Agreement.
- K. "Project": The construction, improvement, or development of the recreational non-motorized boat launching facility or waterway public access 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, labor, equipment, materials, permitting and any other 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,
  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 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 - 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 Effective Date 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 Effective Date of this Agreement.
- B. 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.
- C. 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.
- D. 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 triplicate 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.
- E. The Department may withhold any Grant disbursement if the Grantee fails to comply with any of the provisions of this Agreement.

## 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 shoreside 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 March 1, 2017.
- 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 non-motorized boat launching or access 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 non-motorized boat launching or access 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 Effective Date 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 Effective Date 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 non-motorized boat launching or access 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 (CalTrans) 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 contract or any amendments, and to make decisions concerning the contract.

#### 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.**

#### ARTICLE 22 - 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.**
- C. **Paragraph 5 in Exhibit C is replaced by Article 20 of this Exhibit.**

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# ***Department of Parks and Recreation, Division of Boating and Waterways Maintenance Guidelines***

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## ***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 Parks and Recreation, Division 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.

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.

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.

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.

LAKE MERCED NON-MOTORIZED  
BOAT LAUNCHING FACILITY GRANT  
PROJECT SCOPE AND BUDGET

**Scope Summary:**

Contribute a maximum of \$225,000 towards rehabilitation of the Lake Merced Non-Motorized Boat Launching Facility (North Lake). Department of Parks and Recreation, Division of Boating and Waterways (DBW) grant will be used to demolish existing boarding floats and piles and construct approximately 115 feet of low freeboard boarding floats, a new concrete abutment, and gangplank (if necessary). Other funding contributed by alternate sources will be used to engineer, permit, inspect, and construct remaining portions of the project, including all renovations to meet current ADA requirements at the non-motorized boat launch facility.

Grant award is for reimbursement of construction costs identified in the column titled "NMBLF Grant" in the attached "Lake Merced (North Lake) Project Cost Estimate and Funding Split" spreadsheet. DBW reserves the right to comment on the proposed project engineering design at the 30%, 60%, 90%, and 100% stages of completion as well as inspect the facility at any point during construction. In addition, no funding will be reimbursed to the City until the following has been demonstrated to the State's satisfaction:

1. Completed of CEQA for the proposed project.
2. Project has been fully funded.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor 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 parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees 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. Contractor agrees 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, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: This section is superseded by Article 20 of Exhibit A to this agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.



9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its 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 (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES (CCC) contained in the document No. CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

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

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

**16. CHILD SUPPORT COMPLIANCE ACT:** For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code Section 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

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

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

Pursuant to Public Contract Code Section 10344, if this contract involves the furnishing of equipment, materials, or supplies then it is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as that term is defined in Section 17030 of the Business and Professions Code.