



MICHIGAN GRANT IN AID PROGRAM BOATING ACCESS SITE DEVELOPMENT PROJECT AGREEMENT

This Agreement is between _____ in the county of _____ County, hereinafter referred to as the "GRANTEE," and the MICHIGAN DEPARTMENT OF NATURAL RESOURCES, an agency of the State of Michigan, hereinafter referred to as the "DEPARTMENT." The DEPARTMENT has authority to issue grants to local units of government for the development of public recreation facilities under Part 781 of the Natural Resources and Environmental Protection Act, P.A. 451 of 1994, as amended and Article IX, Section 40 of the Michigan Constitution. The GRANTEE has been approved by the Director of the DEPARTMENT to receive a grant. In Public Act _____, the Legislature appropriated funds from the Waterways Account (Grant in Aid or GIA) to the DEPARTMENT for a grant-in-aid to the GRANTEE.

The purpose of this Agreement is to provide funding in exchange for work to be performed for the project named below. This Agreement is subject to the terms and conditions specified herein.

Project Title: _____ Project #: _____
Amount of grant: _____ % PROJECT TOTAL: _____
Amount of match: _____ %
Start Date: _____ End Date: _____

As a precondition to the effectiveness of the Agreement, the GRANTEE is required to sign the Agreement and return it to the DEPARTMENT with the required attachments by _____ or the Agreement may be cancelled by the DEPARTMENT. **This Agreement is not effective until the GRANTEE has signed it, returned it, and the DEPARTMENT has signed it.** The Agreement is considered executed when signed by the DEPARTMENT.

The individuals signing below certify by their signatures that they are authorized to sign this Agreement on behalf of their agencies, and that the parties will fulfill the terms of this Agreement, including any attached appendices, as set forth herein.

GRANTEE

SIGNED _____
By [Print Name]: _____
Title: _____
Date: _____

DUNS Number

SIGMA Vendor Number

SIGMA Address ID

MICHIGAN DEPARTMENT OF NATURAL RESOURCES

Waterways Grant Coordinator

Administrative Services Section Chief

Date of Execution by DEPARTMENT

1. The Parties agree as follows:

- a. This Agreement shall be administered on behalf of the DEPARTMENT by the Administrative Services Section within the Parks and Recreation Division. All notices, reports, documents, requests, actions, or other communications required between the DEPARTMENT and the GRANTEE shall be submitted through the department's current procedure. Primary points of contact pertaining to this agreement shall be:

GRANTEE CONTACT

(Grantee enter information here)

Name/Title

(Grantee enter information here)

Organization

(Grantee enter information here)

Address

(Grantee enter information here)

Address

(Grantee enter information here)

Telephone Number

(Grantee enter information here)

E-mail Address

DEPARTMENT CONTACT

Name/Title

Grants & Infrastructure Finance/DNR Parks and Recreation

Organization

Address

Address

Telephone Number

E-mail Address

- b. The encumbrances identified in the terms of this agreement shall apply to the "boating access site" as identified by the included legal description and map for the useful life of the project facility.
- c. The word "project area" shall mean the land and area highlighted on the boating access site map identifying the area of development.
- d. "Project facility" shall mean the following individual components, as further described in the application:
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- e. A legal description and map of the boating access site, a map highlighting the project area, and the development grant application bearing the number _____ are by this reference made part of this Agreement.
- f. The time period allowed for completion of the development in the project area is from _____ through _____, hereinafter referred to as the "project period." Requests by the GRANTEE to extend the project period shall be submitted before the expiration of the project period. Extensions to the project period are at the discretion of the DEPARTMENT and may only be extended by an amendment to this Agreement.
- g. This Agreement together with the referenced documents constitute the entire Agreement between the parties and may be modified only in writing and executed in the same manner as the Agreement is executed.

2. The DEPARTMENT will:

- a. Grant the GRANTEE a sum of money equal to _____ percent (_____ %) of _____ dollars (\$ _____), which is the total eligible cost of construction of the project facilities including engineering costs, but in any event not to exceed _____ dollars (\$ _____).
- b. Grant these funds in the form of reimbursements to the GRANTEE for eligible costs and expenses incurred as follows:
- i. Payments will be made on a reimbursement basis at _____ percent (_____ %) of the eligible expenses incurred by the GRANTEE up to 90% of the maximum reimbursement allowable under the grant.

- ii. Reimbursement will be made only upon DEPARTMENT review and approval of a complete reimbursement request submitted by the GRANTEE on a form provided by the DEPARTMENT which includes an expenditure list supported by documentation as required by the DEPARTMENT, including but not limited to copies of invoices, cancelled checks, EFTs and/or list of volunteer/s and/or force account time and attendance records.
- iii. The DEPARTMENT shall conduct an audit of the project's financial records upon approval of the final 10 % reimbursement request by DEPARTMENT staff. The DEPARTMENT may issue an audit report with no deductions or may find some costs ineligible for reimbursement.
- iv. Final payment will be released upon completion of a satisfactory audit by the DEPARTMENT and documentation that the GRANTEE has erected a sign in compliance with Section 3(k) of this Agreement.

3. The GRANTEE will:

- a. Immediately make available all funds needed to incur all necessary costs required to complete the project and to provide **dollars (\$)** in local match. This sum represents **percent (%)** of the total eligible cost of construction including engineering costs. Any cost overruns incurred to complete the project facilities called for by this Agreement shall be the sole responsibility of the GRANTEE.
- b. Certify to the best of its knowledge and belief that the GRANTEE and any principal, agent, contractor, and subcontractor of the GRANTEE:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any State or Federal agency.
 - ii. Have not been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction, as defined in 45 CFR 1185; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property within a three-year period preceding this Agreement.
 - iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses.
 - iv. Have not had one or more public transactions (Federal, State, or local) terminated for cause or default within three years preceding this Agreement.
 - v. Will comply with all applicable requirements of all Federal and State laws, rules, executive orders, regulations, and policies governing this program.
- c. Complete construction of the project facilities to the satisfaction of the DEPARTMENT and to comply with the development project procedures set forth by the DEPARTMENT in completion of the project, including but not limited to the following:
 - i. **Within 180 days** following execution of this Agreement by the GRANTEE and the DEPARTMENT and before soliciting bids or quotes or incurring costs other than costs associated with the development of plans, specifications, or bid documents, provide the DEPARTMENT with plans, specifications, and bid documents for the project facilities, sealed by the GRANTEE 'S Prime Professional
 - ii. Permit DEPARTMENT review and approval of all professional services agreements, project contracts, bidding documents, specifications, and final engineering drawing plans before being sent out to bid. The final engineering drawings shall provide, or conduct, soil boring data for any projects below the waterline. The DEPARTMENT must approve all change orders before being initiated. The DEPARTMENT reserves the option to have a representative on the selection panel for all contracts.
 - iii. Upon DEPARTMENT approval of plans, specifications and bid documents, openly advertise and seek written bids for contracts for purchases or services with a value equal to or greater than \$50,000 and accept the lowest qualified bid as determined by the GRANTEE 'S Prime Professional.

- iv. Upon DEPARTMENT approval of plans, specifications and bid documents, solicit three (3) written quotes for contracts for purchases or services between \$5,000 and \$50,000 and accept the lowest qualified bid as determined by the GRANTEE 'S Prime Professional.
 - v. Maintain detailed written records of the contracting processes used and submit these records to the DEPARTMENT upon request.
 - vi. Complete construction to all applicable local, state and federal codes, as amended; including but not limited to the federal Americans with Disabilities Act (ADA) of 2010, as amended; the Persons with Disabilities Civil Rights Act, Act 220 of 1976, as amended; the Utilization of Public Facilities by Physically Limited Act, P.A. 1 of 1966, as amended; and the Elliott-Larsen Civil Rights Acts, Act 453 of 1976, as amended; 2013 Access Boards Final Guidelines for Outdoor Developed Areas.
 - vii. When possible, utilities should be buried within the project area.
 - viii. Correct any deficiencies discovered at the final inspection within 90 days of written notification by the DEPARTMENT. These corrections shall be made at the GRANTEE 'S expense and are eligible for reimbursement at the discretion of the DEPARTMENT and only to the degree that the GRANTEE 'S prior expenditures made toward completion of the project are less than the grant amount allowed under this Agreement.
 - ix. The GRANTEE must submit invoices for reimbursement within ninety (90) days of invoice date.
- d. All funds granted within the dates specified in this Agreement. The GRANTEE shall maintain satisfactory financial accounts, documents and records, and shall make them available to the DEPARTMENT for auditing at reasonable times. The GRANTEE shall retain all accounts, documents, and records for the facilities for the life of the facility plus ten (10) years following completion of construction.
 - e. Operate the project facilities for the anticipated useful life, minimum of **20** years, upon completion of the facility measured by the final reimbursement request. Operate means regulate the use thereof to the satisfaction of the DEPARTMENT, and to appropriate such monies and/or provide such services as shall be necessary to provide such adequate maintenance.
 - f. Provide to the DEPARTMENT for approval, no more than once annually a complete rate schedule containing all charges to be assessed against the public utilizing the project area and/or any of the facilities constructed thereon, and to provide to the DEPARTMENT for approval, all amendments thereto before the effective date of such amendments
 - g. Adopt such ordinances and/or resolutions as shall be required to effectuate the provisions of this Agreement; certified copies of all such ordinances and/or resolutions adopted for such purposes shall be forwarded to the DEPARTMENT before the effective date.
 - h. Separately account for and reserve in a restricted fund net revenues accruing from the operation of the public boating access site for the future maintenance or expansion of the public boating access site or, with the approval of the department, the construction of other recreational boating facilities.
 - i. Furnish the DEPARTMENT, upon request, detailed statements covering the annual operation of the project area and/or project facilities, including income and expenses and such other information the DEPARTMENT might reasonably require.
 - j. Maintain the premises in such condition as to comply with all federal, state, and local laws which may be applicable and to make any and all payments required for all taxes, fees, or assessments legally imposed against the project area.
 - k. Erect and maintain a sign on the property for the life of the facilities which designates this project as having been constructed with the assistance of GIA. The size, color and design of this sign shall be in accordance with DEPARTMENT specification and shall be approved by the DEPARTMENT before constructed. The sign shall be placed in a location where it is visible and readable to the majority of boaters using the boating access site.

4. Only eligible costs and expenses incurred toward completion of the project facilities after execution of the Project Agreement shall be considered for reimbursement under the terms of this Agreement. Any costs and expenses incurred before or after the project period shall be the sole responsibility of the GRANTEE.
5. To be eligible for reimbursement, the GRANTEE shall comply with the DEPARTMENT requirements. At a minimum, the GRANTEE shall:
 - a. Submit a progress report quarterly during the project period (due January 1, April 1, July 1, and October 1). Reports shall be submitted to the Waterways Grant Coordinator.
 - b. Submit complete requests for partial reimbursement when the GRANTEE is eligible to request at least 25 percent of the grant amount and construction contracts have been executed or construction by force account labor has begun. For grants \$15,000 or less, the request reimbursement should be submitted for entire amount at completion of the project.
 - c. Submit a complete request for final reimbursement within **90 days of project completion and no later than (date 90 days after project period)**. If the GRANTEE fails to submit a complete final request for reimbursement by **(date 90 days after project period)**, the DEPARTMENT may audit the project costs and expenses and make final payment based on documentation on file as of that date or may terminate this Agreement and require full repayment of grant funds by the GRANTEE.
6. All project facilities constructed or purchased by the GRANTEE under this Agreement shall be placed and used at the project area and solely for the purposes specified in the application and this Agreement. Upon completion of the project, a final set of "as built" plans shall be submitted to the DEPARTMENT in an appropriate digital format.
7. The facilities constructed pursuant to this Agreement, or pursuant to any amendments or extensions of this Agreement, shall be reserved for the life a facility by the GRANTEE for the exclusive use and/or rental, on a daily basis, by the operations of transient recreational watercraft, unless otherwise authorized in writing by the Department.
8. The project area and all facilities provided thereon and the land and water access ways to the project facilities shall be open to the general public at all times on equal and reasonable terms. No individual shall be denied ingress, egress, or employment thereto or the use thereof on the basis of sex, race, color, religion, national origin, residence, age, height, weight, familial status, marital status, or disability in accordance with the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101 as amended or the Persons with Disabilities Civil Rights Act 1976 PA 220, MCL 37.1101 as amended. Any violation of this requirement shall be a material breach of contract, subject to penalties as provided in this Agreement.
9. Unless an exemption has been authorized by the DEPARTMENT pursuant to this Section, the GRANTEE hereby represents that it possesses fee simple title, free of all liens and encumbrances, to the project area. The fee simple title acquired shall not be subject to: 1) any possibility of reverter or right of entry for condition broken or any other executory limitation which may result in defeasance of title or 2) any reservations or prior conveyance of coal, oil, gas, sand, gravel or other mineral interests. For any portion of the project area that the GRANTEE does not possess in fee simple title, the GRANTEE hereby represents that it has:
 - a. Supplied the DEPARTMENT with an executed copy of the approved lease or easement, and
 - b. Confirmed through appropriate legal review the terms of the lease or easement are consistent with GRANTEE 'S obligations under this Agreement and will not hinder the GRANTEE 'S ability to comply with all requirements of this Agreement. In no case shall the lease or easement tenure be less than the useful life of the project facilities.
10. The GRANTEE shall not allow any encumbrance, lien, security interest, mortgage or any evidence of indebtedness to attach to or be perfected against the project area or project facilities included in this Agreement.
11. During the life of the facilities, none of the project area, nor any of the project facilities constructed under this Agreement, shall be wholly or partially conveyed, either in fee, easement, or otherwise, or leased for a term of years or for any other period, nor shall there be any whole or partial transfer of the lease title, ownership, or right of maintenance or control by the GRANTEE except with the written approval and consent of the DEPARTMENT. The GRANTEE shall regulate the use of the project area to the satisfaction of the DEPARTMENT.
12. The assistance provided to the GRANTEE as a result of this Agreement is intended to have a lasting effect on the supply of recreation and recreation facilities beyond the financial contribution alone and commits the project area to Michigan's recreation estate for the useful life of the project facilities. Prior to completion of the project, the GRANTEE and the DEPARTMENT may mutually agree to alter the project area through an amendment to this Agreement to provide the most satisfactory public boating access site. Proceeding with unauthorized changes

shall result in excluding the work from State fund eligibility. No amendment to the Agreement shall be binding upon the parties unless it is in writing and signed by a duly authorized representative of both parties.

13. The GRANTEE acknowledges that:

- a. The GRANTEE has examined the project area and has found the property safe for public use or actions will be taken by the GRANTEE before beginning the project to assure safe use of the property by the public, and
- b. The GRANTEE is solely responsible for development, operation, and maintenance of the project area and project facilities, and that responsibility for actions taken to develop, operate, or maintain the property is solely that of the GRANTEE, and
- c. The DEPARTMENT'S involvement in the premises is limited solely to the making of a grant to assist the GRANTEE in developing project site.

14. The GRANTEE assures the DEPARTMENT that the proposed State-assisted action will not have a negative effect on the environment and, therefore, an Environmental Impact Statement is not required.

15. The GRANTEE hereby acknowledges that this Agreement does not require the State of Michigan to issue any permit required by law to construct the boating access site project that is the subject of this Agreement. It is the sole responsibility of the GRANTEE to determine what permits are required for the project, secure the needed permits and remain in compliance with such permits.

16. Before the DEPARTMENT will approve plans, specifications, or bid documents; or give written approval to the GRANTEE to advertise, seek quotes, or incur costs for this project, the GRANTEE must provide documentation to the DEPARTMENT that indicates either:

- a. It is reasonable for the GRANTEE to conclude, based on the advice of an environmental consultant, as appropriate, that no portion of the project area is a facility as defined in Part 201 of the Michigan Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994, as amended;

or

- b. If any portion of the project area is a facility, documentation that DEPARTMENT of Environmental, Great Lakes and Energy-approved response actions have been or will be taken to make the site safe for its intended use within the project period, and that implementation and long-term maintenance of response actions will not hinder public recreation use and/or the resource protection values of the project area.

17. If the DEPARTMENT determines that, based on contamination, the project area will not be made safe for the planned recreation use within the project period, or another date established by the DEPARTMENT in writing, or if the DEPARTMENT determines that the presence of contamination will reduce the overall usefulness of the property for public recreation and resource protection, the grant may be cancelled by the DEPARTMENT with no reimbursement made to the GRANTEE.

18. The GRANTEE shall acquire and maintain insurance which will protect the GRANTEE from claims which may arise out of or result from the GRANTEE'S operations under this Agreement, whether performed by the GRANTEE, a subcontractor or anyone directly or indirectly employed by the GRANTEE, or anyone for whose acts may hold them liable. Such insurance shall be with companies authorized to do business in the State of Michigan in such amounts and against such risks as are ordinarily carried by similar entities, including but not limited to public liability insurance, worker's compensation insurance or a program of self-insurance complying with the requirements of Michigan law. The GRANTEE shall provide evidence of such insurance to the DEPARTMENT at its request.

19. Nothing in this Agreement shall be construed to impose any obligation upon the DEPARTMENT to operate, maintain or provide funding for the operation and/or maintenance of any recreational facilities in the project area.

20. The GRANTEE hereby represents that it will defend any suit brought against either party which involves title, ownership, or any other rights, whether specific or general rights, including appurtenant riparian rights, to and in the project area of any lands connected with or affected by this project.

21. The GRANTEE is responsible for the use and occupancy of the premises, the project area and the facilities thereon. The GRANTEE is responsible for the safety of all individuals who are invitees or licensees of the premises. The GRANTEE will defend all claims resulting from the use and occupancy of the premises, the project area and the facilities thereon. The DEPARTMENT is not responsible for the use and occupancy of the premises, the project area and the facilities thereon.

22. Failure by the GRANTEE to comply with any of the provisions of this Agreement shall constitute a material breach of this Agreement. Once a non-compliance issue(s) has been documented, the DEPARTMENT shall notify the GRANTEE. The GRANTEE shall respond to the non-compliance within forty-five (45) calendar days. The GRANTEE shall collaborate with the DEPARTMENT to develop an acceptable plan to remedy non-compliance issue(s).
23. Upon breach of the Agreement by the GRANTEE, the DEPARTMENT may, in addition to any other remedy provided by law:
- Terminate this Agreement; and/or
 - Withhold and/or cancel future payments to the GRANTEE on any or all current waterway grant projects until the violation is resolved to the satisfaction of the DEPARTMENT; and/or
 - Withhold action on all pending and future grant applications submitted by the GRANTEE on all DEPARTMENT administered grant programs until the breach is corrected; and/or
 - Require repayment of grant funds already paid to GRANTEE.
 - Require specific performance of the Agreement.
 - Purchase the facilities and the right of access over GRANTEE property to the facilities at the existing value of the facilities, less any financial contribution made by the Department. The value of the facilities shall be determined by three competent appraisers; one to be selected by the GRANTEE, one to be selected by the Department, and the third to be selected by the first two appraisers. The DEPARTMENT and the GRANTEE shall equally share the total fees of these appraisers, including expenses. The appraisal shall be limited to the value of the facilities for the construction, repair, or rehabilitation in which the facilities are located. No value shall be assigned to the right of access to the facilities over GRANTEE property. The DEPARTMENT shall have ninety (90) days from the date of receipt of the appraisals within which to exercise its option. If the DEPARTMENT does not exercise the option within that period, the GRANTEE shall pay to the DEPARTMENT a sum equal to the total financial contribution made by the DEPARTMENT towards the construction or maintenance of the facilities.
24. This Agreement may be canceled by the DEPARTMENT, upon 30 days written notice, due to Executive Order, budgetary reduction, other lack of funding; upon request by the GRANTEE; or upon mutual Agreement by the DEPARTMENT and GRANTEE. The DEPARTMENT may honor requests for just and equitable compensation to the GRANTEE for all satisfactory and eligible work completed under this Agreement up until 30 days after written notice, upon which time all outstanding reports and documents are due to the DEPARTMENT and the DEPARTMENT will no longer be liable to pay the GRANTEE for any further charges to the grant.
25. The GRANTEE agrees that the benefit to be derived by the State of Michigan from the full compliance by the GRANTEE with the terms of this Agreement is the preservation, protection and the net increase in the quality of public recreation facilities and resources which are available to the people of the State and of the United States and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the State of Michigan by way of assistance under the terms of this Agreement. The GRANTEE agrees that after final reimbursement has been made to the GRANTEE, repayment by the GRANTEE of grant funds received would be inadequate compensation to the State for any breach of this Agreement. The GRANTEE further agrees therefore, that the appropriate remedy in the event of a breach by the GRANTEE of this Agreement after final reimbursement has been made shall be the specific performance of this Agreement.
26. Prior to the completion of the project facilities, the GRANTEE shall return all grant money if the project area or project facilities are not constructed, operated or used in accordance with this Agreement.
27. The DEPARTMENT shall terminate and recover grant funds paid if the GRANTEE or any subcontractor, manufacturer, or supplier of the GRANTEE appears in the register compiled by the Michigan DEPARTMENT of Labor and Economic Growth pursuant to Public Act No. 278 of 1980.
28. The GRANTEE may not assign or transfer any interest in this Agreement without prior written authorization of the DEPARTMENT.
29. The rights of the DEPARTMENT under this Agreement shall continue for the anticipated life of the project facilities as stated in Section 3(e).
30. Unless otherwise provided in the grant agreement or otherwise authorized in writing by the DEPARTMENT, commercial operations of any type shall not be permitted to regularly use the public boating access site or any of the facilities constructed for use in conjunction with the public boating access site consistent with MCL 342.78115.

31. Failure of either party to insist on the strict performance of this Agreement shall not constitute waiver of any breach of the Agreement.

32. This Agreement supersedes all Grant in Aid Boating Access Site Waterways Program agreements for this project area between the parties.

If this Agreement is approved by Resolution, a true copy must be attached to this Agreement. A sample Resolution is on the next page.

SAMPLE RESOLUTION

(Development)

Upon motion made by _____, seconded by

_____, the following Resolution was adopted:

"RESOLVED, that the _____, Michigan, does hereby accept the terms of the Agreement as received from the Michigan DEPARTMENT of Natural Resources, and that the _____ does hereby specifically agree, but not by way of limitation, as follows:

1. To appropriate all funds necessary to complete the project during the project period and to provide _____ (\$_____) dollars to match the grant authorized by the DEPARTMENT.
2. To maintain satisfactory financial accounts, documents, and records to make them available to the DEPARTMENT for auditing at reasonable times.
3. To construct the project and provide such funds, services, and materials as may be necessary to satisfy the terms of said Agreement.
4. To ensure that all premises, buildings, and equipment related procedures comply with all applicable State and Federal regulations.
5. To establish and appoint the ____ (agency or person) _____ to regulate the use of the facilities constructed under this Agreement to assure the use thereof by the public on equal and reasonable terms.
6. To enforce all State statutes and local ordinances pertaining to marine safety and to enforce statutes of the State of Michigan within the confines of the GRANTEE pertaining to the licensing of watercraft. Watercraft not fully complying with the laws of the State of Michigan relative to licensing shall not be permitted to use the facility until full compliance with those laws has been made.
7. To comply with any and all terms of said Agreement including all terms not specifically set forth in the foregoing portions of this Resolution."

The following aye votes were recorded: _____

The following nay votes were recorded: _____

STATE OF MICHIGAN)
) ss
COUNTY OF _____)

I, _____, Clerk of the _____, Michigan, do hereby certify that the above is a true and correct copy of the Resolution relative to the Agreement with the Michigan DEPARTMENT of Natural Resources, which Resolution was adopted by the _____ at a meeting held _____.

Signature

Title

Date