

1 FIFTH AMENDMENT TO AGREEMENT

2 (\$5,200,000 Benicia Loan, Contract No. 6-21-23)

3 THIS AGREEMENT is entered into on September 30, 1981, between the  
4 California Department of Boating and Waterways (DEPARTMENT) and the City of  
5 Benicia (APPLICANT).

6 I.

7 DEFINITIONS

8 PREVIOUS AGREEMENT - The agreement between DEPARTMENT and APPLICANT dated  
9 July 12, 1976, as amended July 18, 1977, December 5, 1977,  
10 July 17, 1978, and July 16, 1979.

11 Except as provided by this amendment, all other terms are as defined by the  
12 PREVIOUS AGREEMENT.

13 II.

14 GENERAL TERMS

15 The DEPARTMENT and the APPLICANT, consistent with Section 71.8 of the  
16 Harbors and Navigation Code and Paragraph 27(f) of the PREVIOUS AGREEMENT,  
17 agree as follows:

18 1. The APPLICANT shall establish an account for the Benicia Marina  
19 which shall reflect 1) all revenues received by the APPLICANT from  
20 any source within the PROJECT AREA, and 2) all APPLICANT expenditures  
21 of such revenues. The APPLICANT shall provide the DEPARTMENT a full  
22 accounting of all revenues, expenses and balances of such account  
23 within 90 days of the close of every fiscal year until the loan is  
24 repaid in full.

25 2. Paragraph 11 of the PREVIOUS AGREEMENT shall be amended to read  
26 as follows:

27 "Repayment of the loan made herein shall be payable solely from the

1 gross revenues originating from fees and rentals charged and received  
 2 by the APPLICANT for services, facilities or leaseholds provided or  
 3 located within the PROJECT AREA; such gross revenues shall constitute  
 4 security for loan repayment. However, with the understanding that  
 5 loan repayment has the first priority among APPLICANT expenditures  
 6 of any gross revenues, the APPLICANT shall limit its marina-related  
 7 expenditures to \$40,000 per year from the Benicia Marina Account unless  
 8 the amount remaining in such account exceeds the amounts stated below  
 9 for each of the years indicated:

<u>Fiscal Year</u>	<u>Minimum Marina Account Balance</u>
1981-82	\$85,000
82-83	\$415,000
83-84	\$720,000
84-85	\$850,000
85-86	\$800,000
86-87	\$720,000
87-88	\$645,000
88-89	\$570,000
89-90	\$495,000
1990 until loan is repaid in full --	\$420,000

17 However, in the event the APPLICANT fails to maintain such minimum  
 18 account balances, the DEPARTMENT shall have the following options:

- a) The DEPARTMENT may increase the minimum balance requirement to ONE HUNDRED TWENTY PERCENT (120%) of the amounts shown for such period of time as the DEPARTMENT deems necessary.
- b) The DEPARTMENT may exercise the option described by Paragraph 28 of the PREVIOUS AGREEMENT."

24 3. Save and except as herein amended, the PREVIOUS AGREEMENT shall  
 25 remain in full force and effect.

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1 STATE OF CALIFORNIA  
2 DEPARTMENT OF BOATING AND WATERWAYS

CITY OF BENICIA

3  
4 By *Margaret C. Mearns*  
Director  
5  
6 11-29-81 *mem*  
Date Signed

By *Walter R. O'Brien*  
Date Signed

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8  
9 I hereby certify that all conditions for exemption set forth in State  
10 Administrative Manual Section 1209 have been complied with and this document  
11 is exempt from review by the Department of Finance.

12  
13 *Margaret Mearns*  
Director

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FORM POLICY REPORT  
Department of General Services  
**APPROVED**  
DEC 24 1981  
BY *[Signature]*  
Asst. Chief Counsel