

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

GRANT AGREEMENT

GRANTEE: SAN LEANDRO MARINA, CITY OF
GRANT TITLE: VESSEL TURN-IN PROGRM (VTIP)
GRANT AMOUNT: \$9,400.00
GRANT NUMBER: C7702116
GRANT TERM: OCTOBER 1, 2014 THROUGH OCTOBER 1, 2016

The Grantee agrees to the terms and conditions of this contract, 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. The GRANTEE agrees to complete the SCOPE OF WORK as defined in the Agreement.

The General and Special Provisions attached are made a part of and incorporated into the Agreement.

GRANTEE: SAN LEANDRO MARINA, CITY OF
ATTN: Delmarie Snodgrass, Marina Manager
ADDRESS: 40 Mulford Point Drive
 San Leandro, CA 94577

AGENCY: Department of Parks and Recreation
 Division of Boating and Waterways
 Attn: Susan Sykes
ADDRESS: One Capitol Mall, Suite 410
 Sacramento, CA 95814

 Authorized Signature

 Authorized Signature

 Printed Name and Title of Authorized Representative

RAMONA FERNANDEZ, CHIEF OF OPERATIONS
 Printed Name and Title of Authorized Representative

 Date

 Date

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

CONTRACT NO C7702116	AMENDMENT NO	CALSTARS VENDOR NO 4000004105-01		PROJECT NO
AMOUNT ENCUMBERED BY THIS DOCUMENT \$9400.00	FUND TITLE Abandoned Watercraft Abatement Fund #0577		AGENCY BILLING CODE NO 032011	
PRIOR AMOUNT ENCUMBERED BY THIS DOCUMENT \$0.00	ITEM 3790-101-0577	CHAPTER 25	STATUTE 2014	FISCAL YEAR 2014/15
TOTAL AMOUNT ENCUMBERED TO DATE \$9400.00	INDEX 1706	OBJECT CODE 702	PCA CODE 69003	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 77-1	ACCOUNTING OFFICER'S SIGNATURE		DATE	

STATE OF CALIFORNIA

Department of Parks and Recreation, Division of Boating and Waterways
One Capitol Mall, Suite 410
Sacramento, CA 95814

**EXHIBIT A
Vessel Turn-In Program (VTIP)**

SCOPE OF WORK

Grantee agrees to provide to the Division of Boating and Waterways (DBW) as described herein:

See Letter of Intent/Cover Letter/Work Plan, and Grant Application of Exhibit A.

The services shall be performed in the jurisdiction of:

CITY OF SAN LEANDRO MARINA

State Agency: Division of Boating and Waterways	Grantee (Agency Name): CITY OF SAN LEANDRO MARINA
Name: Susan Sykes	Grantee Representative*: Delmarie Snodgrass, Marina Manager
Title: Derelict Vessel Programs Administrator	Title:
Phone: 916- 327-1825	Phone::
Fax: 916-327-1772	Fax:
Email: susan.sykes@parks.ca.gov	Email:

* Grantee representative information may only be changed by giving 30 days written notice to DBW.

City of San Leandro

Civic Center, 835 E. 14th Street
San Leandro, California 94577
www.sanleandro.org



LETTER OF INTENT

April 30, 2013

Division of Boating and Waterways
One Capitol Mall, Suite 500
Sacramento, CA 95814

RE: Vessel Turn-In Program (VTIP)

To Whom It May Concern:

The City of San Leandro would like to request grant funding for participation in the Vessel Turn-In Program.

The San Leandro Marina is a public marina that has 465 recreational vessel berths. Due to recent economic impacts, many vessel owners are unable to continue paying their slip fees and have expressed interest in surrendering their boat through the VTIP.

In response to this need, the San Leandro Marina has developed a work plan to facilitate this process. Public outreach will consist of placing informational posters around the marina, sending a letter to current berthers, and placing an advertisement in the local paper, The San Leandro Times, notifying local constituents that we will accept unwanted recreational vessels. Owners will be required to provide proof of ownership of said vessel, sign over the title of their vessel, and complete a release of liability/interest form before we will accept their vessel. The marina will contract with a local salvage company for the removal and disposal of each vessel. The San Leandro Marina will continue this program until all allocated grant funds have been expended.

The City of San Leandro Marina will commit to the 10% contribution in the form of administrative costs, personnel hours, and storage.

Please consider awarding the VTIP grant to the City of San Leandro Marina. If you have any questions, please contact me at (510) 577-3490.

Sincerely,

Delmarie Snodgrass, Marina Manager
City of San Leandro Marina

DS:ds

Att: VTIP Grant Application

F:\Marina\dbw\VTIP - ltr of intent.doc

Stephen H. Cassidy, Mayor

City Council:

Pauline Russo Cutter

Michael J. Gregory

Benny Lee

Jim Prola

Ursula Reed

Diana M. Souza



State of California – California Natural Resources Agency
DIVISION OF BOATING AND WATERWAYS
ONE CAPITOL MALL, SUITE 500
SACRAMENTO, CA 95814
(916) 327-1825
WWW.DBW.PARKS.CA.GOV



VESSEL TURN IN PROGRAM (VTIP)
GRANT APPLICATION
Fiscal Year 2014/15

Local Agency Name: City of San Leandro Marina
Address: 40 Mulford Point Drive
City: San Leandro State: CA Zip Code: 94577
Phone: 510 577-3488 Fax: 510 352-0449

Contact Person: Name: Delmarie Snodgrass
Phone: 510 577-3490
Fax: 510 352-0449
E-Mail: dsnodgrass@sanleandro.org

Note: The contact person is the individual who will address ALL questions and concerns on behalf of the Grantee.

Grant request amount: \$ 15,000.00

Note: Per Harbors and Navigation Code 525 (C) "A grant awarded by the department pursuant to subparagraph (A) shall be matched by a 10% contribution from the local agency receiving the grant." Grant monies WILL NOT be reimbursed by the Department of Boating and Waterways until the 10% contribution is met.

Prepared by: Delmarie Snodgrass Date: 04/21/14
Signature of Officer: *Delmarie Snodgrass* Date: 04/28/14
Title of Officer: Marina Manager

EXHIBIT B

Vessel Turn-In Program (VTIP)

1. NEEDS AND OBJECTIVES OF DBW

Pursuant to its authority under Harbors and Navigation Code sections 525 and 526, the Division of Boating and Waterways (DBW) wishes to contract with Grantee for the removal and disposal of surrendered vessels, or parts thereof, which are in danger of being abandoned and has a likelihood of causing environmental degradation or becoming a hazard to navigation within Grantee's jurisdiction as specified according to the Grantee's Work Plan, found in Exhibit A.

2. WATER HAZARDS ELIGIBLE FOR REMOVAL AND DISPOSAL

The funds provided under this Agreement shall be used for the abatement, removal, storage and disposal of eligible surrendered vessels. For purposes of this Agreement, "surrendered" is defined in Harbors and Navigation Code section 526.1(a):

A "surrendered vessel" means a recreational vessel that the verified titleholder has willingly surrendered to a willing agency under both of the following conditions:

(1) The public agency has determined in its sole discretion that the vessel is in danger of being abandoned, and therefore has a likelihood of causing environmental degradation or becoming a hazard to navigation.

(2) The decision to accept a vessel is based solely on the potential of the vessel to likely be abandoned and cause environmental degradation or become a hazard to navigation."

The funds provided under this Agreement shall not be utilized for surrender, abatement, removal, storage, or disposal of commercial vessels. Commercial vessels include those vessels for which the most recent registration or documentation was commercial, even though that registration or documentation may have lapsed.

If Grantee is reimbursed for the costs related to the removal, storage, and/or disposal of a surrendered vessel by the registered or legal owner or other person or entity known to have an interest in the vessel, then the vessel shall no longer be eligible for funding under this Agreement. Grantee shall notify DBW in writing of such reimbursement and shall return all funds disbursed by DBW to Grantee with respect to such vessel immediately.

3. RIGHT OF INSPECTION

Grantee shall allow DBW and other state agency representatives, at any reasonable time, to inspect any site where Grantee or its subcontractors are performing work under this Agreement.

4. ANNUAL MEETING

Grantee's representative or alternate shall participate in an annual one-day video or phone conference conducted by DBW during the term of this agreement. Should the Grantee or representative be unable to attend the meeting and cannot provide a substitute from the

agency, the Grantee must forward a letter to DBW stating the reason why they cannot attend. DBW must grant approval in writing in order for the Grantee not to be in breach of this Agreement for failure to attend.

5. ACTIVITY/NON ACTIVITY: REPORTING REQUIREMENTS

a. Grantee shall provide quarterly reports to DBW describing the status of existing issues known, pending, or in progress.

b. Lack of quarterly reporting and/or removal activity within any twelve month period during the term of this agreement is subject to possible revocation of grant.

6. OVERLAPPING ANNUAL GRANT AWARDS

A minimum of fifty percent (50%) of an existing AWAFF grant must be utilized and reported for reimbursement to DBW to qualify for a new fiscal year grant.

7. HAZARDOUS MATERIALS

Grantee shall be responsible for securing any necessary or prudent studies, permits, or authorizations associated with treatment, removal, storage, or any other handling of hazardous substances including, but not limited to, toxic waste, petroleum waste, asbestos, and similar substances, prior to the removal of any vessel and water hazard pursuant to this Agreement.

Grantee shall be responsible for the proper and lawful handling, abatement, removal, storage, and/or disposal of any hazardous substances encountered in the execution of this Agreement.

8. TITLES AND LIENS

Grantee shall comply with all relevant provisions of Harbors and Navigation Code section 526.1 in the performance of this Agreement, requiring that a surrendered vessel be that of the "verified titleholder."

9. MEDIA

Grantee agrees to acknowledge DBW's financial support whenever work funded by this Agreement is publicized in any news media, brochures, or other type of promotional material.

10. MEDIA MATERIALS RELEASE

Grantee agrees to irrevocably grant to California State Parks, Division of Boating and Waterways, its employees, officers, agents, and assigns (hereinafter referred to as "DBW"), the non-exclusive, royalty-free, perpetual and worldwide right and permission to use, reproduce, publish, copy, distribute, alter, license, adapt, and display the photographs, motion pictures, caption information, and/or written quotes (hereinafter referred to collectively as "Photographs"), that the Grantee has submitted to DBW for art, editorial, advertising, marketing, trade, broadcast, print, educational programs, or any other lawful purpose whatsoever, in any and all media. In connection with the foregoing license, the Grantee agrees not to use, reproduce, adapt, or display the Photographs, or allow others to do so, in a manner that tends to subject DBW or its AWAFF, VTIP and/or SAVE programs to ridicule, disparagement, mockery, satire, or that could tarnish the image of the DBW's AWAFF, VTIP, and/or SAVE programs. Grantee hereby releases and discharges DBW from

any and all claims and demands arising out of or in connection with the use of the Photographs, including without limitations, any and all claims for libel, defamation, invasion of privacy, and/or publicity rights. DBW assumes no responsibility for lost or damaged Photographs or for the use of same. DBW may sell, assign, license, or transfer all rights granted to it hereunder.

Grantee also grants DBW and its licensees the unrestricted right to use and disclose its name in connection with use of the Photographs. The Grantee understands that it will not be paid for any use or right granted herein.

The Grantee understands and agrees that the Photographs may be used in whole or in part, at any time. The license granted herein to DBW includes the right and permission to conduct or have conducted such alterations to the Photographs as DBW deems necessary. Grantee releases and discharges DBW and agrees to indemnify and hold DBW harmless from any liability by virtue of any blurring, distortion, alteration, optical illusion or use in composite form, loss or damage, whether intentional or otherwise, that may occur in the use of the Photographs. The Grantee waives any right to inspect or approve any finished product, advertising or other copy that may be used in connection therewith or the use to which it may be applied.

The Grantee declares and avows that the Photographs it is submitting to DBW are its own original work in all respects. The Grantee is the sole and exclusive owner of the Photographs; they are free, clear, and unencumbered. No part of them is taken from or based on any other work; no part infringes the copyright or any other right of any person; and the reproduction, publication, exhibition, or any other use by DBW of the Photographs in any form whatever will not in any way, directly or indirectly, infringe on the rights of any person. The Grantee agrees to indemnify and hold DBW harmless from and against any and all loss, damage, costs, charges, legal fees, recoveries, judgments, amounts paid in settlement, penalties, and expenses that may be obtained against, imposed on, or suffered by DBW by reason of (1) any violation or infringement of any proprietary right or copyright; or (2) any libelous or unlawful matter contained in the Photographs. Grantee also agrees to indemnify and hold DBW harmless for any such amounts arising from its breach of any covenant, representation, or warranty of this agreement.

11. OUTSIDE SERVICES

It is understood and agreed that, at its discretion, DBW reserves the right to obtain marine salvage services outside the terms of this Agreement.

12. PERMITS AND DOCUMENTATION

Prior to the removal of any surrendered vessel, the Grantee shall obtain all necessary permits, authorizations, and documentation necessitated by any applicable provision of law.

13. SECURING OF BIDS

Grantee shall comply with any applicable laws and regulations governing the competitive bidding process when awarding subcontracts to marine salvage companies under this Agreement.

14. SUBCONTRACTORS

The Grantee warrants that any marine salvage company performing work under this Agreement holds a valid business license and carries general commercial liability insurance

coverage sufficient to fully insure against any and all risks of hazardous activities associated with the work to be performed under this Agreement. Grantee shall provide DBW with a certificate of insurance from any subcontractor prior to the commencement of any work under this Agreement.

15. TRAFFIC CONTROL AND TRAFFIC SAFETY

The Grantee shall provide for adequate traffic control and safety measures at any site where Grantee and its subcontractors will perform any work under this Agreement.

16. AIR OR WATER POLLUTION VIOLATION

Grantee warrants that it is not (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to any cease and desist order not subject to review issued pursuant to Water Code section 13301 for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

17. ENTIRE AGREEMENT

This Agreement consists of all the terms of this Agreement and all attachments, which are expressly incorporated herein. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by all of the parties and approved as required.

18. APPROVAL OF AGREEMENT AND AMENDMENTS

This Agreement and any variation thereto is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Commencement of performance prior to approval of this Agreement will be at the Grantee's own risk.

19. DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PARTICIPATION REQUIREMENT

There are no Disabled Veteran Business Enterprise participation requirements with this agreement.

20. AUTHORITY TO CONTRACT

Grantee must provide DBW with evidence of its authority to enter into this Agreement. Grantee may provide a delegation of contracting authority from its local governing body that by law has authority to contract. Alternatively, Grantee shall provide DBW with a resolution, order, motion, or ordinance of its local governing body that by law has authority to contract, authorizing execution of this Agreement.

21. COMPLIANCE WITH LAW AND REGULATIONS

Grantee and its subcontractor(s) shall comply with all applicable laws and regulations of the State of California for all work to be performed under this Agreement. By signing this Agreement, Grantee certifies its compliance and the compliance of all subcontractors with: (a) applicable provisions of the California Environmental Quality Act; (b) Nondiscrimination Program requirements of Government Code section 12990 (a-f) and Title 2, California Code of Regulations, section 8103 (and section 8113 in contracts over \$5,000) along with section 7285 et. seq. of the Fair Employment and Housing Act; (c) Drug-

Free Workplace requirement of Government Code section 8350 et seq.; (d) National Labor Relations Board Certification of Public Contract Code section 10296; (e) Workers' Compensation requirement of Labor Code section 3700; and (f) Americans with Disabilities Act regulations issued pursuant to 42 U.S.C. section 12101 et seq.

22. INDEPENDENT CONTRACTOR

Grantee and its employees are independent contractors and shall not be considered officers or employees of DBW or agents of the State of California.

23. INSURANCE REQUIREMENTS

The abatement, removal, storage, and /or disposal of vessels under this Agreement is a hazardous activity. Grantee therefore must maintain commercial general liability insurance in an amount and of a type acceptable to DBW and to the Department of General Services / Office of Risk and Insurance Management (ORIM).

1. General provisions applying to all policies

a. Coverage Term

Coverage needs to be in force for the complete term of the Agreement. If insurance expires during the term of the grant, a new certificate must be received by the Division at least ten (10) days prior to the expiration of this insurance. Any new insurance must still comply with the original terms of the grant.

b. Policy cancellation or termination & notice of non-renewal

Insurance policies shall contain a provision stating coverage will not be cancelled without 30 days prior written notice to the Division. In the event Grantee fails to keep in effect at all times the specified insurance coverage, the Division may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.

c. Deductible

Grantee is responsible for any deductible or self-insured retention contained within their insurance program.

d. Primary clause

Any required insurance contained in this Agreement shall be primary, and not excess or contributory, to any other insurance carried by the State.

e. Insurance carrier required rating

All insurance companies must carry a rating acceptable to the Office of Risk and Insurance Management. If the Grantee is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.

f. Endorsements

Any required endorsements requested by the Division must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the

certificate of insurance.

In the case of the Grantee's utilization of subcontractors to complete the scope of work, the Grantee shall include all subcontractors as insured's under Grantee's insurance or supply evidence of insurance to the Division equal to policies, coverages and limits required of Grantee.

Any proposed change in this status shall be reported to the Division prior to the change and may result in restrictions being imposed on the usage of the monies or equipment.

g. Inadequate Insurance

Inadequate or lack of insurance does not negate the Grantee's obligations under the Agreement.

h. Use of Subcontractors

In the case of Contractor's utilization of subcontractors to complete the contracted scope of work, contractor shall include all subcontractors as insured's under Contractor's insurance or supply evidence of subcontractor's insurance to The State equal to policies, coverages, and limits required of Contractor.

2. Insurance Requirements

a. Commercial General Liability

The Grantee shall maintain general liability on an occurrence form with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined with a \$2,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Grantee's limit of liability. The policy must include:

The State of California, its officers, agents, employees and servants as additional insureds, but only with respect to work performed under the contract. This **endorsement** must be supplied under form acceptable to the Office of Risk and Insurance Management.

In the case of Contractor's utilization of subcontractors to complete the contracted scope of work, contractor shall include all subcontractors as insured's under Contractor's insurance or supply evidence of insurance to The State equal to policies, coverages and limits required of Contractor.

b. Automobile Liability

The Grantee shall maintain motor vehicle liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles.

c. Watercraft Liability

The Grantee shall maintain watercraft liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of the maintenance and use of any watercraft (owned, hired or non-owned).

d. Workers Compensation and Employers Liability

The Grantee shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement. Employer's liability limits of \$1,000,000 are required. The insurer waives any right of recovery the insurer may have against the State because of payments the insurer makes for injury or damage arising out of the work done under contract with the State. A Waiver of Subrogation or Right to Recover endorsement in favor of the State must be attached to certificate.

If applicable, Grantee shall provide coverage for all its employees for any injuries or claims under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations, or statutes applicable to maritime employees. By signing this contract, Grantee acknowledges compliance with these regulations.

e. Environmental/Pollution Liability

Grantee, or in the case of Grantee's utilization of subcontractors to complete the scope of work, shall maintain Pollution Liability for limits not less than \$1,000,000 occurrence covering the Grantee's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred arising out of the work or services to be performed under this contract. The policy must include the State of California, its officers, agents, employees and servants as additional insured, but only with respect to work performed under the contract. This **endorsement** must be supplied under form acceptable to the Office of Risk and Insurance Management.

Coverage shall be provided for both work performed on site and during transportation as well as proper disposal of hazardous materials. Proof of Pollution during transportation shall be provided on an MCS-90 form or equivalent.

3. Self-Insurance

If the Grantee is self-insured for a portion or all of its insurance, the Grantee shall provide evidence of self-insurance. Review of financial information including a letter of credit may be required. The Division reserves the right to request financial information

24. TERMINATION

a. DBW may terminate this Agreement for any reason upon thirty (30) days written notice to Grantee.

b. If the Grantee fails to keep the required insurance in effect at all times during the term of this agreement, DBW may, in addition to other remedies it may have, terminate this agreement upon two days written notice.

c. DBW may, by two-day written notice to Grantee and without any prejudice to its other remedies, terminate this agreement because of failure of Grantee to fulfill any of the requirements of this agreement.

d. Upon receipt of any notice terminating this Agreement, Grantee shall immediately discontinue all removal and disposal activities affected, unless the notice directs otherwise. In such event, DBW shall pay Grantee only for removal and disposal activities completed prior to the termination date.

e. Upon termination of this agreement, Grantee shall promptly return all advanced funds. At

DBW's sole discretion, DBW may offer an opportunity to cure any breach prior to terminating for default.

25. ASSIGNMENT

This Agreement is not assignable by the Grantee, either in whole or in part, without the consent of the State in the form of a formal written amendment.

26. MATCHING REQUIREMENT

a. Section 525(C) of the Harbors and Navigation Code states, "A grant awarded by the department pursuant to subparagraph (A) shall be matched by a 10-percent contribution from the local agency receiving the grant."

b. The 10-percent contribution is in addition to funds awarded in the grant.

c. The burden of proof in complying with the 10-percent contribution requirement is the responsibility of the grantee. Grant funds will not be disbursed until the grantee has provided DBW with acceptable documentation that it complied with the 10-percent contribution requirement for each disbursement.

27. BUDGET DETAIL AND PAYMENT PROVISIONS

Invoicing and Payment

a. DBW will reimburse the grantee for actual expenditures within the scope of the VTIP program upon written request by Grantee.

b. Invoices from service providers and subcontractors to Grantee, submitted by Grantee to DBW for reimbursement, must contain the following:

1. Name and address of Grantee
2. Contract or invoice number
3. Description of service performed
4. Date the service was performed
5. Location of each service
6. Vessel name, CF# or HIN#

c. Documents to submit with reimbursement claims:

7. Invoices from subcontractors to Grantee
8. Proof of payment by Grantee to subcontractors for services received
9. Statement of 10% match contribution with supporting verification of in-kind contribution: personnel hours, purpose or action, date provided, or other as requested by DBW.
10. Photos of vessels (if available)
11. Statement of Release completed and signed by owner(s)
12. Department of Motor Vehicles (DMV) documents: Certificate of Ownership signed by owner, or DMV Notice of Transfer and Release of Liability Form, completed and signed by owner(s)

d. Invoices must be itemized, extended, totaled and mailed in **triplicate** to:

Division of Boating and Waterways
One Capitol Mall, Suite 410
Sacramento, CA 95814
Attention: S. SYKES – VTIP / Enforcement Unit

- e. Submission of fraudulent invoices or other claim documentation is a breach of this Agreement, which shall result in forfeiture of all funds advanced and provided under this Agreement.
- f. All requests for payment must be submitted to DBW no later than 45 days prior to the expiration date of the agreement. DBW is not obligated to make payment on any invoice or reimbursement request received or for any services completed after this date.

28. BUDGET CONTINGENCY CLAUSE

- a. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program; this Agreement shall be of no further force and effect. In this event, DBW shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Agreement and Grantee shall not be obligated to perform any provisions of this Agreement.
- b. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, DBW shall have the option to either cancel this Agreement with no liability occurring to DBW, or offer an agreement amendment to Grantee to reflect the reduced amount.

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. Grantee may not commence performance until such approval has been obtained.
2. **EFFECTIVE DATE**: Effective date means either the start date or the approval date by the Department of General Services (DGS), whichever is later. In cases where DGS approval is not required, this Agreement is of no force or effect until the date of the last DBW signature. No work shall commence until the effective date.
3. **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.
4. **ASSIGNMENT**: This Agreement is not assignable by the Grantee, either in whole or in part, without the consent of the State in the form of a formal written amendment.
5. **AUDIT**: Grantee agrees that the awarding Division, 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. Grantee 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. Grantee 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, Grantee 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).
6. **INDEMNIFICATION**: Grantee agrees to indemnify, defend and save harmless the State, 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 or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by subcontractor or Grantee in the performance of this Agreement.
7. **DISPUTES**: Grantee shall continue with the responsibilities under this Agreement during any dispute.
8. **TERMINATION FOR CAUSE**: The State may terminate this Agreement and be relieved of any payments should the Grantee 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 Grantee under this Agreement and the balance, if any, shall be paid to the Grantee upon demand.
9. **RECYCLING CERTIFICATION**: The Grantee 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, Grantee 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. Grantee and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee 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. Grantee 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.

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

11. CERTIFICATION CLAUSES: The **GRANTEE CERTIFICATION CLAUSES** contained in the document 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 Grantee, as provided herein, shall be in compensation for all of Grantee's expenses incurred in the performance hereof, as outlined in Exhibit B, item #1.

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

15. ANTITRUST CLAIMS: The Grantee by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the

Grantee 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 Grantee acknowledges in accordance with Public Contract Code 7110, that:

a. The Grantee 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 Grantee, 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 agreement includes services in excess of \$200,000, the Grantee shall give priority consideration in filling vacancies in positions funded by the Agreement 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 Agreement Grantee made a commitment to achieve small business participation, then Grantee must within 60 days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this Agreement) report to the awarding Division the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Agreement Grantee made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Grantee must within 60 days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this

Agreement) certify in a report to the awarding Division: (1) the total amount the prime Grantee received under the Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement; (3) the amount each DVBE received from the prime Grantee; (4) that all payments under the Agreement 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:

If this agreement involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: 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 defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

EXHIBIT D

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Grantee to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Grantee Agency Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

GRANTEE CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Grantee has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,

2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Grantee may be ineligible for award of any future State agreements if the Division determines that any of the following has occurred: the Grantee has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Grantee certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Grantee within the immediately preceding two-year period because of Grantee's failure to comply with an order of a Federal court, which orders Grantee to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Grantee hereby certifies that Grantee will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Grantee agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Grantee hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Grantees contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies,

other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Grantee further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Division of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The Grantee agrees to cooperate fully in providing reasonable access to the Grantee's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the Grantee's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the Grantee certifies that Grantee is in compliance with Public Contract Code section 10295.3.

EXHIBIT E

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Grantee needs to be aware of the following provisions regarding current or former state employees. If Grantee has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Grantee violates any provisions of above paragraphs, such action by Grantee shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Grantee needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and

Grantee affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Grantee assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. GRANTEE NAME CHANGE: An amendment is required to change the Grantee's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the Grantee is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate Grantee performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Grantee shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all grantees that are not another state agency or other governmental entity.

EXHIBIT F

Bid/Proposal Attachment regarding the Darfur Contracting Act of 2008

Effective January 1, 2009, all Invitations for Bids (IFB) or Requests for Proposals (RFP) for goods or services must address the requirements of the Darfur Contracting Act of 2008 (Act). (Public Contract Code sections 10475, *et seq.*; Stats. 2008, Ch. 272). The Act was passed by the California Legislature and signed into law by the Governor to preclude State agencies generally from contracting with "scrutinized" companies that do business in the African nation of Sudan (of which the Darfur region is a part), for the reasons described in Public Contract Code section 10475.

A scrutinized company is a company doing business in Sudan as defined in Public Contract Code section 10476. Scrutinized companies are ineligible to, and cannot, bid on or submit a proposal for a contract with a State agency for goods or services. (Public Contract Code section 10477(a)).

Therefore, Public Contract Code section 10478 (a) requires a company that currently has (or within the previous three years has had) business activities or other operations outside of the United States to certify that it is not a "scrutinized" company when it submits a bid or proposal to a State agency. (See # 1 on the sample Attachment).

A scrutinized company may still, however, submit a bid or proposal for a contract with a State agency for goods or services if the company first obtains permission from the Department of General Services (DGS) according to the criteria set forth in Public Contract Code section 10477(b). (See # 2 on the sample Attachment).

The following sample Attachment may be included in an IFB or RFP to satisfy the Act's certification requirements of bidders and proposers.

EXHIBIT F – DARFUR CONTRACTING ACT

Pursuant to Public Contract Code section 10478, if a bidder or proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must certify that it is not a “scrutinized” company as defined in Public Contract Code section 10476.

Therefore, to be eligible to submit a bid or proposal, please complete only one of the following three paragraphs (via initials for Paragraph # 1 or Paragraph # 2, or via initials and certification for Paragraph # 3):

1. _____
 Initials We do not currently have, or we have not had within the previous three years, business activities or other operations outside of the United States.

OR

2. _____
 Initials We are a scrutinized company as defined in Public Contract Code section 10476, but we have received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code section 10477(b). A copy of the written permission from DGS is included with our bid or proposal.

OR

3. _____
 Initials
 + certification
 below We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we certify below that we are not a scrutinized company as defined in Public Contract Code section 10476.

CERTIFICATION For # 3.

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer/bidder to the clause listed above in # 3. This certification is made under the laws of the State of California.

<i>Grantee Agency Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County and State of</i>	

YOUR BID OR PROPOSAL WILL BE DISQUALIFIED UNLESS YOUR BID OR PROPOSAL INCLUDES THIS FORM WITH EITHER PARAGRAPH #1 OR #2 INITIALED OR PARAGRAPH #3 INITIALED AND CERTIFIED