



DEPARTMENT OF PARKS AND RECREATION

Division of Boating and Waterways

One Capitol Mall, Suite 410

Sacramento, California 95814

Major General Anthony L. Jackson, USMC (Ret.), Director

January 3, 2014

Delmarie Snodgrass, Marina Manager  
City of San Leandro Marina  
40 Mulford Point Drive  
San Leandro, CA 94577

**RE: ABANDONED WATERCRAFT ABATEMENT FUND (AWAF)  
GRANT AGREEMENT INSTRUCTION LETTER**

**Agreement Number: #C7701015**  
**Fiscal Year: 2013/14**  
**Term: January 15, 2014 through January 15, 2016**  
**Amount: \$49,000.00**

Dear Ms. Snodgrass:

Your application to participate in the AWWAF has been approved. Enclosed is the grant agreement between the Division of Boating and Waterways (DBW) and your agency.

Before this agreement is finalized, this agreement must be signed and completed by an authorized representative of your agency per the instructions below, and returned to DBW for final review and approval. **Do not begin any work until you have received your copy of the final agreement and the fully executed agreement instruction letter.**

Please complete the following steps:

1) Sign, complete, and date (as needed) the enclosed copies of these documents:

Grant Agreement (cover sheet)—4 copies  
Exhibit A (Scope of Work), page 1  
Exhibit D (Certification), page 12  
Exhibit F (Darfur Contracting Act), page 18

2) Provide an original copy (1) of the Minute Order or Resolution from your County Board / City Council authorizing the execution of this agreement. The Minute Order or Resolution must authorize by name and title the signatory of the contract.

3) Provide a Certificate of Insurance and Endorsement for your agency, or if self-insured, provide a written explanation of the self-insurance program. Follow the specific instructions as listed on page 5 of the enclosed Exhibits under INSURANCE.

NOTE: If providing a Certificate of Insurance, the Endorsement must be included.

Delmarie Snodgrass, Marina Manager  
January 3, 2014  
Page 2 of 2

4) Provide a Certificate of Insurance for all subcontractors to be used if they currently known; otherwise, provide verification as soon as subcontractors are selected. Insurance must be received and approved by DBW before any work commences.

Please make a copy of these documents for your records, and return the signed and completed originals to our office.

If you have any questions, please call me at (916) 327-1825, or by email, [susan.sykes@parks.ca.gov](mailto:susan.sykes@parks.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Sykes", with a long horizontal flourish extending to the right.

Susan Sykes  
Vessel Abatement Programs Analyst

Enclosures

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

**GRANT AGREEMENT**

**GRANTEE** City of San Leandro Marina

**THE TERM OF THIS AGREEMENT IS** January 15, 2014 **THROUGH** January 15, 2016

**GRANT TITLE:** **ABANDONED WATERCRAFT ABATEMENT FUND (AWAF)**

**GRANT NUMBER:** C7701015

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. 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:** City of San Leandro Marina

**Agency:** Department of Parks and Recreation,  
Division of Boating and Waterways  
ATTN: Susan Sykes

**Address:** 40 Mulford Point Drive  
San Leandro, CA 94577

**Address:** One Capitol Mall, Suite 500  
Sacramento, CA 95814

**BY:** \_\_\_\_\_  
(Authorized Signature)

**BY:** \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Printed Name and Title of Authorized Representative)

**SYLVIA ORTEGA HUNTER, DEPUTY DIRECTOR**  
(Printed Name and Title of Authorized Representative)

**Date** \_\_\_\_\_

**Date** \_\_\_\_\_

**CERTIFICATE OF FUNDING**

GRANT NO <b>C7701015</b>	AMENDMENT NO	CALSTARS VENDOR NO		PROJECT NO
AMOUNT ENCUMBERED BY THIS DOCUMENT <b>\$ 49,000.00</b>	FUND TITLE <b>Abandoned Watercraft Abatement Fund #0577</b>		AGENCY BILLING CODE NO <b>032011</b>	
PRIOR AMOUNT ENCUMBERED BY THIS DOCUMENT <b>\$ 0.00</b>	ITEM <b>3790-101-0577</b>	CHAPTER <b>20</b>	STATUTE <b>2013</b>	FISCAL YEAR <b>2013/14</b>
TOTAL AMOUNT ENCUMBERED TO DATE <b>\$ 0.00</b>	INDEX <b>1700</b>	OBJECT CODE <b>702</b>	PCA CODE <b>69001</b>	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 <b>77-1</b>	ACCOUNTING OFFICER'S SIGNATURE		DATE	

**STATE OF CALIFORNIA**

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

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**EXHIBIT A**  
**Abandoned Watercraft Abatement Fund-Grant Program (AWAF)**

**SCOPE OF WORK**

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

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

The services shall be performed in the jurisdiction of:

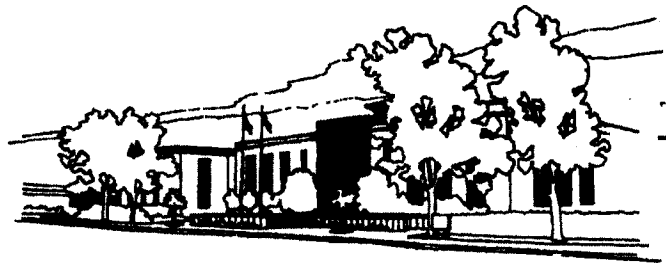
**City of San Leandro Marina**

State Agency: <b>Division of Boating and Waterways</b>	Grantee (Agency Name): City of San Leandro Marina
Name: Susan Sykes	Grantee Representative*:
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

Ms. Susan Sykes  
Department of Boating and Waterways  
2000 Evergreen Street, Suite 100  
Sacramento, CA 95815

RE: Abandoned Watercraft Abatement Fund (AWAF) Grant Application

Dear Ms. Sykes:

The City of San Leandro is submitting an application to receive grant funding for several abandoned vessels.

### Statement of Need

The City of San Leandro Marina owns and operates a 465 berth recreational marina. Various issues arise commencing in a vessel being abandoned, such as death of the owner, non-payment, or a vessel dropped off in the marina.

Currently there are three vessels that have been liened and authorized for sale by the Department of Motor Vehicles (DMV). The vessels went up for lien sale in March and were not sold. The vessels are on the most current list to be destroyed and disposed. In addition, there are three vessels in the middle of lien processing that may also need to be destroyed and disposed.

Due to severe budget cuts, the City is no longer able to pay for destruction and disposal of vessels. For purposes of cost estimation, attached is a quote from Parker Diving Service for two of the liened vessels. Based on the quote for two vessels, I estimate a total cost of \$75,000 for six vessels. The City's municipal code Title 1, Chapter 5, section 200 states: expenditures in excess of \$5,000 are subject to competitive bidding.

### Plan of Action

From 2004 through 2010 an average of two vessels per year were destroyed and disposed. Over the past 2 years the San Leandro Marina has liened 27 boats. 4 of the

Stephen H. Cassidy, Mayor

City Council:

Pauline Russo Cutter  
Jim Prola

Michael J. Gregory  
Ursula Reed

Benny Lee  
Diana M. Souza



Letter of Intent  
City of San Leandro Marina  
April 30, 2013

boats were liened more than one time due to non-payment. Of the 27 liened boats 11 were paid and redeemed by the owner, 5 were sold, 5 were destroyed and disposed, and 6 are awaiting destruction and disposal. Attached is a copy of the lien and disposal procedure. Procedures are subject to change per the grant agreement if applicable.

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 AWAFF 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: AWAFF Grant Application  
Parker Diving Quote  
San Leandro Marina Lien/Disposal Procedures  
San Leandro Marina Procedure of sinking vessel  
Lien Vessel status 4-13

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

State of California – California Natural Resources Agency  
**DEPARTMENT OF BOATING AND WATERWAYS**  
2000 EVERGREEN STREET, SUITE 100  
SACRAMENTO, CA 95815  
(916) 263-8194  
WWW.DBW.CA.GOV



**THE ABANDONED WATERCRAFT ABATEMENT FUND (AWAF)**  
**GRANT APPLICATION AND QUESTIONNAIRE**  
Fiscal Year 2013/14

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:** \$ 75,000.00

**ABANDONED WATERCRAFT ABATEMENT FUND  
GRANT APPLICATION AND QUESTIONNAIRE**

<p>1. Does your agency have a local marine law enforcement detail tasked with addressing abandoned vessels in your jurisdiction? If yes, explain in detail. If no, elaborate on your agency's efforts to create a program.</p>	<p>Attach plan</p>
<p>2. Does your agency have a submerged navigational hazard abatement plan? Please explain.</p>	<p>Attach plan</p>
<p>3. List by name and size the bodies of water or waterways your agency is responsible for in its jurisdiction.</p>	<p>San Leandro Marina located on the south west side of the San Francisco Bay</p>
<p>4. Local agencies are required to make a 10 percent match by cash, or in-kind. Is your agency able to comply with the 10 percent match in advance before any grant money is reimbursed?</p>	<p>Yes - in kind. Administrative costs, personnel hours, and storage fees</p>

*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." This matching fund may be rendered in cash, or through in-kind contributions which must be verified, and are at the discretion of DBW. These contributions may include (but are not limited to) the following: administrative costs, personnel hours, removal, and/or storage.*

*Grant monies WILL NOT be reimbursed by DBW unless 10% of each claim is met.*

Prepared by: Name: Delmarie Snodgrass Signature: *Delmarie Snodgrass* Date: 4/29/13  
 Reviewed by: Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Approving Officer: Name: Delmarie Snodgrass Signature: *Delmarie Snodgrass* Date: 4/29/13  
 Title of Approving Officer: Marina Manager Phone: 510 577-3488



## **EXHIBIT B**

### **Abandoned Watercraft Abatement Fund-Grant Program (AWAF)**

#### **1. NEEDS AND OBJECTIVES OF DBW**

Pursuant to its authority under Harbors and Navigation Code section 525, the Division of Boating and Waterways (DBW) wishes to contract with Grantee for the removal and disposal of abandoned, wrecked or dismantled vessels, or parts thereof, or any other partially submerged objects (hereinafter "eligible water hazards") which pose a substantial hazard to navigation within Grantee's jurisdiction as listed on the Questionnaire, 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 and/or disposal of eligible water hazards. For purposes of this Agreement, "abandoned" is defined in Harbors and Navigation Code section 522(a):

"Any hulk, derelict, wreck, or parts of any ship, vessel, or other watercraft sunk, beached, or allowed to remain in an unseaworthy or dilapidated condition upon publicly owned submerged lands, salt marsh, or tidelands within the corporate limits of any municipal corporation or other public corporation or entity having jurisdiction or control over those lands, without its consent expressed by resolution of its legislative body, for a period longer than 30 days without a watchman or other person being maintained upon or near and in charge of the property, is abandoned property".

The funds provided under this Agreement shall not be utilized for 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 abatement, removal, storage, and/or disposal of an eligible water hazard by the registered or legal owner or other person or entity known to have an interest in the water hazard, then the water hazard 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 water hazard 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. 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.

#### **5. TITLES AND LIENS**

Grantee shall comply with all relevant provisions of the Harbors and Navigation Code regarding notices, hearings and liens in the performance of this Agreement. Grantee (in conjunction with local law enforcement) shall conduct a title search for all vessels presumed to be abandoned, as provided by Harbors and Navigation Code section 526.

#### **6. 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.

#### **7. 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.

#### **8. PERMITS AND DOCUMENTATION**

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

#### **9. 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.

#### **10. 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.

## **11. 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.

## **12. 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.

## **13. ENTIRE AGREEMENT**

This Agreement consists of 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 the parties and approved as required.

## **14. 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.

## **15. DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PARTICIPATION REQUIREMENT**

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

## **16. 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.

## **17. 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.

## **18. 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.

## **19. INSURANCE**

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).

Grantee must furnish a certificate of insurance and endorsement to DBW stating the following:

- A. Grantee currently carries commercial general liability insurance of not less than \$1,000,000 per occurrence for bodily injury and property damage combined [or more specific and greater coverage].
- B. The hazardous activities to be performed under this Agreement are covered under Grantee's insurance.
- C. The insurer shall provide a 30 day cancellation clause in Grantee's policy.
- D. The State of California, its officers, agents, and employees are included as additional insureds with respect to the work performed for DBW under this Agreement.

If Grantee is self-insured, Grantee must provide DBW written explanation of the self-insurance program, which must be approved by the Office of Risk and Insurance Management (ORIM). Grantee warrants that its liability insurance shall be in effect at all times during the term of this agreement. In the event Grantee's insurance coverage expires at any time during the term of this Agreement, Grantee agrees to provide, at least 30 days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein and for not less than the remainder of the term of the agreement or for a period of not less than one year. New certificates of insurance are subject to the approval of the ORIM. Grantee agrees that no work or services shall be performed prior to such approval.

## **20. 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.

## **21. 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.

## **22. MATCHING REQUIREMENT**

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."

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

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.

## **23. BUDGET DETAIL AND PAYMENT PROVISIONS**

### Invoicing and Payment

- A. DBW will reimburse the grantee for actual expenditures within the scope of the AWAFF 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# if available; otherwise, description of vessel.

C. Documents to submit with reimbursement claims:

1. Invoices from subcontractors
2. Proof of payment from Grantee to subcontractors for services received
3. Statement of 10% match contribution
4. Photos of vessels with CF numbers (if available)
5. Department of Motor Vehicles (DMV) documents (if available)

D. Invoices and reimbursement requests must be itemized, extended, totaled and mailed in **triplicate** to:

Division of Boating and Waterways  
Enforcement Unit - AWAFF  
Attention: Susan Sykes  
One Capitol Mall, Suite 500  
Sacramento, CA 95814

- 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 reimbursement request(s) received or for any services completed after this date.

**24. 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 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. 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 the 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 department 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 department: (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 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 department 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 agreement 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 agreement with the State.

Failure to make a good faith effort may be cause for non-renewal of a state agreement for legal services, and may be taken into account when determining the award of future contracts/agreements 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 Department of Industrial Relations website located at [www.dir.ca.gov](http://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 (PCC 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 (PCC 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. (PCC 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. (PCC 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. Any changes of the Grantee's representative shall be notified to DBW within 30 days written notice on Grantee's letterhead.

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

**OR**

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